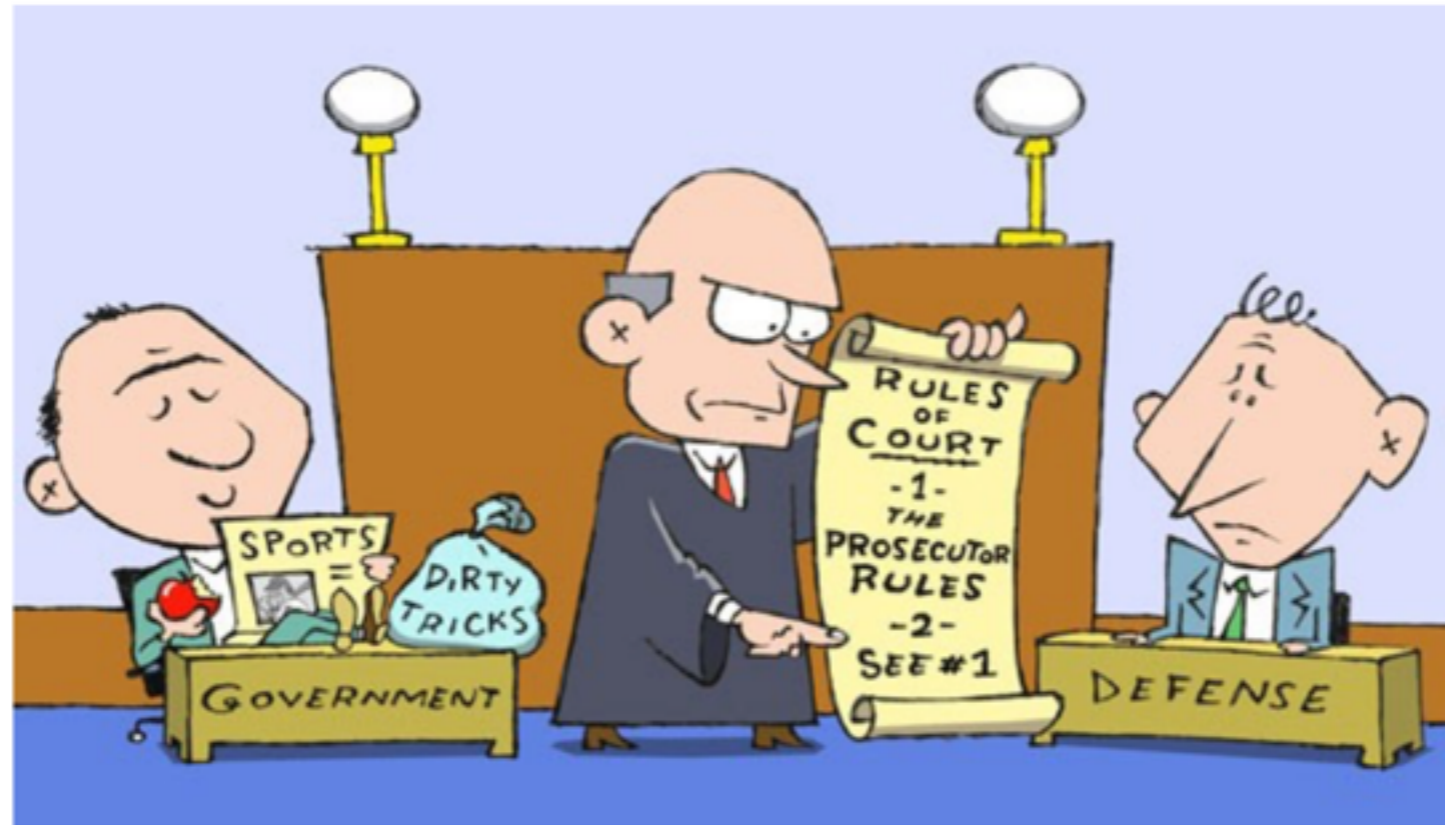


Garden State CLE presents:

The Bills of Rights in Municipal Court



Instructor: Hon. H. Robert Switzer, KMC (ret).

Lesson Plan

Introduction

a.) The Bill of Rights was enacted by the states on December 15, 1791. For the vast majority of its history, the enumerated rights therein applied only to the federal government. However, in the 20th century, beginning with *Gideon v. Wainwright*, 372 US 335 (1963), the legal doctrine of selective incorporation took a number of the provisions of the Bill of Rights and made them applicable to the States, by way of the due process clause of the 14th Amendment.

Today, many of the rights guaranteed by the first eight Amendments to the Constitution have been held to be protected against state action by the Due Process Clause of the Fourteenth Amendment. That clause now protects the right to compensation for property taken by the State; the rights of speech, press, and religion covered by the First Amendment; the Fourth Amendment rights to be free from unreasonable searches and seizures and to have excluded from criminal trials any evidence illegally seized; the right guaranteed by the Fifth Amendment to be free of compelled self-incrimination; and the Sixth Amendment rights to counsel, to a speedy and public trial, to confrontation of opposing witnesses, and to compulsory process for obtaining witnesses. *Duncan v. Louisiana*, 391 US 145, 147-48 (1968)

b.) The jurisdiction of the municipal court is generally limited to the trial and disposition of petty offenses. NJSA 2B:12-17. A petty offense has an authorized jail term of six months or less. *State v. Denelsbeck*, 225 NJ 103 (2016). *State v. Owens*, 54 NJ 153 (1969).



c.) Because the municipal court deals almost exclusively with petty offenses, there are certain limitations on due process rights, such as the right to indictment and trial by jury. NJSA 2C:1-4(b).

d.) The municipal court Part VII Rules and the related case law are designed to assure that the due process rights guaranteed under the State and federal constitutions be implemented in municipal court. Accordingly, the Rules and the interpretive case law address the right to counsel, to a fair and impartial trial, to be acquitted in the absence of proof beyond a reasonable doubt, to confront witnesses, remain silent and a wide variety of other procedural protections.

The following sections will illustrate how Part VII Municipal Court Rules operate to accomplish these goals.



1.) Challenges to Constitutionality of a State Statute or Local Ordinance

Rule 7:7-1. Pleadings; objections Pleadings in municipal court actions shall consist only of the complaint. A defense or objection capable of determination without trial of the general issue shall be raised before trial by motion to dismiss or for other appropriate relief, except that a motion to dismiss based upon lack of jurisdiction or the unconstitutionality of a municipal ordinance may be made at any time.

Discussion:

The our courts have suggested through the case law that challenges to the constitutionality of a state statute should be brought in Superior Court. See *State v. Celmer*, 80 NJ 405 (1979); *State v. Barcheski*, 181 NJ Super. 34 (App. Div. 1981).

A challenge to the constitutionality of a local ordinance may be heard in municipal court, but may be the subject of a recusal application under Rule 1:12-1(g) since the judge who will decide the motion is hired and paid by the same body that enacted it.

Other issues may involves motions to dismiss on grounds of double jeopardy under *State v. Miles*, 229 NJ 83 (2017), statute of limitations applications, and other dispositive due process issues.



2.) Motions to suppress confessions or admissions

Rule 7:7-5(b) Pretrial Hearings. The court may conduct hearings to resolve issues relating to the admissibility of statements by defendant, pretrial identifications of defendant, and sound recordings at any time prior to trial. Upon a showing of good cause, hearings as to the admissibility of other evidence may also be conducted at any time prior to trial.

Discussion:

This Rule can be used to seek dismissal of a complaint or other relief based upon constitutional grounds. These applications may include motions to suppress admissions or confessions under *Miranda v. Arizona*, 384 US 436 (1966), identification issues (*Wade* hearings) *U.S. v. Wade*, 388 US 218 (1967) and the admissibility of sound and video recordings.

It should not be used for motions to suppress physical evidence. Those motions must be brought on a pre-trial basis under Rule 7:5-2.



3.) Motions to suppress physical Evidence

Rule 7:5-2. Motion to Suppress Evidence (a) 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.

In matters beyond the trial jurisdiction of the municipal court, and in matters where a search warrant was issued by a Superior Court judge, a motion to suppress evidence shall be made and heard in the Superior Court.

(b) Procedure. If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion. The State shall submit a brief stating the facts and arguments in support of the search, within a time as determined by the judge, but no less than 10 days after submission of the motion. If the search was made without a warrant, written briefs in support of and in opposition to the motion to suppress shall be filed either voluntarily or in the discretion of the judge, who shall determine the briefing schedule.

All motions to suppress shall be heard before the start of the trial.



If the municipal court having jurisdiction over the motion to suppress evidence seized with a warrant has more than one municipal court judge, the motion shall be heard by a judge other than the judge who issued the warrant, such judge to be designated by the chief judge for that municipal court. If the municipal court having jurisdiction of the motion to suppress evidence seized with a warrant has only one judge, who issued the warrant, the motion to suppress evidence shall be heard by the Municipal Court Presiding Judge for the vicinage, or such municipal court judge in the vicinage that the Assignment Judge shall designate.

(c) Order; Stay. (1) Order Granting Suppression. An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also 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. The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.

(2) Order Denying Suppression. An order denying suppression may be reviewed on appeal from an ensuing judgment of conviction pursuant to R. 3:23 whether the judgment was entered on a guilty plea or on a finding of guilt following trial.



(d) Waiver. Unless otherwise ordered by the court for good cause, defendant's failure to make a pretrial motion to the municipal court pursuant to this rule shall constitute a waiver of any objection during trial to the admission of the evidence on the ground that the evidence was unlawfully obtained.

(e) Effect of Irregularity in Warrant. In the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution.

Discussion:

Please note that there is no time limit to the filing of this motion except that it be prior to trial. Defense attorneys may voluntarily submit briefs in warrant-less search cases.

If the motion is granted, there is an automatic 30-day stay to afford an opportunity for order preparation and an appeal as of right by the State.

The defendant has no interlocutory right to appeal the denial of a motion to suppress.



4.) *Dyal* subpoenas: issuance and suppression

A subpoena *duces tecum* to obtain the results of a blood test taken for the purpose of diagnosis and treatment from the body of an injured person can be issued on an *ex parte* basis based upon less than probable cause. *State v. Dyal*, 97 NJ 229 (1984). Although the subpoena *duces tecum* is the functional equivalent of a search warrant, it is technically not a warrant and can be thus issued upon less than probable cause. Police need only demonstrate a reasonable basis to believe that the patient was operating a motor vehicle while intoxicated.

The application procedure for the subpoena *deces tecum* is set forth in Rule 7:7-8(d).

Investigative Subpoenas in Operating While Under the Influence Cases. When the State demonstrates to the court through sworn testimony and/or supporting documentation that there is a reasonable basis to believe that a person has operated a motor vehicle in violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:3-10.13, a vessel in violation of N.J.S.A. 12:7-46, or an aircraft in violation of N.J.S.A. 6:1-18, a municipal court judge with jurisdiction over the municipality where the alleged offense occurred may issue an investigative subpoena directing an authorized agent of a medical facility located in New Jersey to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the operator's body. If no case is pending, the subpoena may be captioned "In the Matter" under investigation.



Challenges to the subpoena *duces tecum* can be brought under Rule 7:5-4.

Motion to Suppress Medical Records Obtained Pursuant to Rule 7:7-8(d) The procedures set forth in Rule 7:5-2 shall apply to a motion to suppress records obtained pursuant to a subpoena issued under Rule 7:7-8(d) to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the body of an operator of a vehicle or vessel, in matters within the trial jurisdiction of the municipal court. In matters beyond the jurisdiction of the municipal court, the motion shall be made and heard in the Superior Court.



5.) Arrest warrants



Rule 7:2-1(d)

The arrest warrant for an initial charge shall be made on a Complaint-Warrant (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by a judicial officer after a determination of probable cause that an offense was committed and that the defendant committed it. A judicial officer, for purposes of the Part VII rules, is defined as a judge, authorized municipal court administrator or deputy court administrator. An electronic signature by the judicial officer shall be equivalent to and have the same force and effect as an original signature. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it.

Discussion: Both the 4th Amendment and Article I, paragraph VII of the New Jersey Constitution of 1947 requires that no warrant shall issue except upon probable cause. To comply with this mandate, the Rules provide for the issuance of arrest warrants following a probable cause determination made by a neutral and detached magistrate. State v. Frankel, 179 N.J. 586, 597-98 (2004).

For arrest warrants, the magistrate includes the judge, court administrator and deputy court administrator. Only judges may issue search warrants.

6.) Right to Counsel



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.

Discussion:

There is neither a federal nor state constitutional right to appointed counsel for indigents. Poor people are provided counsel in New Jersey as a matter of administration discretion rather than constitutional mandate.

Rodriguez v. Rosenblatt, 58 NJ 281 (1971) (As a matter of simple justice, no indigent defendant should be subjected to a conviction entailing imprisonment in fact or other consequence of magnitude without first having had due and fair opportunity to have counsel assigned without cost.)

Argersinger v. Hamlin, 407 US 25 (1972) (No right to counsel for petty offenses unless a jail term will be imposed.) No person in the United States may be sentenced to a jail term unless he was either represented by counsel or effectively waived his right to be so represented.

Municipal Court Public Defender now codified at NJSA 2B:24-1 *et seq.*

7.) Plea entry procedures

7:6-2. Pleas, Plea Agreements

(a) Pleas Allowed, Guilty Plea. (1) Generally. A defendant may plead not guilty or guilty, but the court may, in its discretion, refuse to accept a guilty plea. Except as otherwise provided by Rules 7:6-2, 7:6-3, and 7:12-3, the court shall not, however, accept a guilty plea without first addressing the defendant personally and determining by inquiry of the defendant and, in the court's discretion, of others, that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea.



Discussion:

The proper acceptance of a guilty plea is a matter of constitutional dimension. See *United States v. McCarthy*, 394 US 459, 466 (1969).

A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be an intentional relinquishment or abandonment of a known right or privilege. Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.

See *State v. Barboza*, 115 NJ 415 (1989)

***State v. Tate*, 220 NJ 393 (2015)**

***State v. Gregory*, 220 NJ 413 (2015)**

***State v. Perez*, 220 NJ 423 (2015)**



8.) Dismissal of Charges

7:8-5. Dismissal

If the complaint is not moved on the day for trial, the court may direct that it be heard on a specified return date and a notice thereof be served on the complaining witness, all defendants and all other known witnesses. If the complaint is not moved on that date, the court may order the complaint dismissed. A complaint may also be dismissed by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion. On dismissal, any warrant issued shall be recalled, and the matter shall not be reopened on the same complaint except to correct a manifest injustice.

Discussion:

This is the only Part VII Rule that deals with the dismissal of charges. As a result, every application to dismiss a count in a complaint or a ticket must be brought under Rule 7:8-5. Note that the Rule is intended to bring about a measure of finality for the due process benefit of both the defendant and the State.

Although an attempted retrial may not be barred under double jeopardy principles (State v. Miles, 229 NJ 83 (2017), it may be prohibited under fundamental fairness grounds (State v. Yoskowitz, 116 NJ 679 (1989)) (Requires a judicial weighing of the defendant's expectation of finality, oppression or harassment vs. gross unfairness to the State).



9.) Public trial - exceptions

Rule 7:8-7(c)

Exclusion of the Public. In matters involving domestic relations, sex offenses, school truancy, parental neglect, and as may be otherwise provided by law, the court, in its discretion and with defendant's consent, may exclude from the courtroom any person not directly interested in the matter during the conduct of the trial or hearing.

Discussion:

This Rule implements the public trial requirement of Article I, paragraph 10 of the State Constitution and the parallel provision of the 6th Amendment.



10.) Compulsory process

Rule 7:7-8(b)

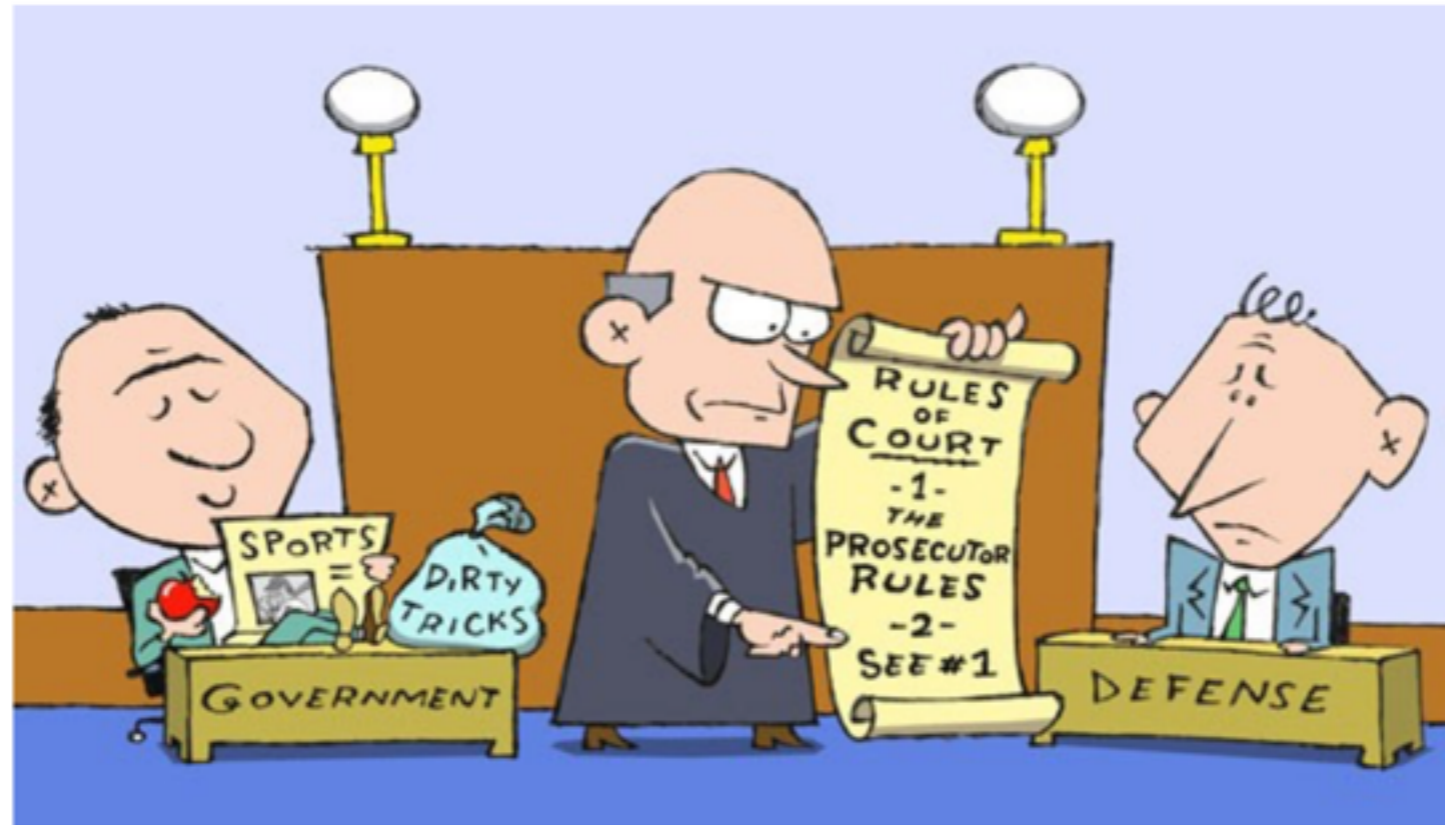
Subpoena to Testify. A subpoena to testify shall state the name of the municipal court and the title of the action. It shall contain the appropriate case docket number and shall command each natural person or authorized agent of an entity to whom it is directed to attend and give testimony at a specific time and date when the court will be in session. The subpoena may also specify that the specific time and date to attend court will be established at a later time by the court. If the witness is to testify in an action for the State or for an indigent defendant, the subpoena shall so note and shall contain an order to appear without the prepayment of any witness fee as otherwise required under N.J.S.A. 22A:1-4.

Discussion - This provision is intended to comport with the 6th Amendment as well as Article I, paragraph 10 of the State Constitution of 1947.



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