Garden State CLE Presents:

Goodbye Guideline 4! Welcome to the Future of DWI Plea Bargaining

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Lesson Plan

INTRODUCTION

The times, they are a-changin' -

Remember circa 1987:

The comprehensive Drug Reform Act, N.J.S.A. 2C:35-1...et seq.

State vs. Tischio, 107 N.J. 504, 514(1987) compared with State vs. Olenowski, 255 N.J. 529(2023).

In construing N.J.S.A. 39:4-50(a), we must also consider the entire gamut of statutory and regulatory law dealing with the societal dilemma of drunk-driving. This examination reflects the traditional interpretative guide to construe the terms of a statute in context, in pari materia. The overall scheme of these laws reflects the dominant legislative purpose to eliminate intoxicated drivers from the roadways of this State. To this end, the Legislature, working in tandem with the courts, has consistently sought to streamline the implementation of these laws and to remove the obstacles impeding the efficient and successful prosecution of those who drink and drive. One such impediment has been the introduction of conflicting expert testimony at trials. The vast majority of statutory revisions in this area have been directed towards minimizing, if not eliminating, the necessity for this kind of evidence.

a) New statutory authority to engage in DWI Plea Bargains – N.J.S.A. 39:4-50(a)(3) and N.J.S.A. 39:4-50.4a(a)(3).

Notwithstanding any judicial directive to the contrary, upon recommendation by the prosecutor, a plea agreement under this section is authorized under the appropriate factual basis consistent with any other violation of Title 39 of the Revised Statutes or offense under Title 2C of the New Jersey Statutes; provided, however, that if a person is convicted of operating a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug or permitting another

person who is under the influence of a narcotic, hallucinogenic, or habit-producing drug to operate a motor vehicle owned by the person or under the person's custody or control pursuant to the provisions of R.S.39:4-50 or a person is convicted of operating a commercial motor vehicle under the influence of a controlled substance pursuant to section 5 of P.L.1990, c.103 (C.39:3-10.13), the person shall forfeit the right to operate a motor vehicle over the highways of this State for a period of not less than six months.

b) Legislative Comment on plea bargains in DWI and U/I drugs cases

The amended bill provides that notwithstanding any judicial directive to the contrary, upon recommendation by the prosecutor, a plea agreement for a DWI or refusal to submit to a breathalyzer offense is authorized under the appropriate factual basis consistent with any other violation of Title 39 of the Revised Statutes (the State's motor vehicle code) or offense under Title 2C of the New Jersey Statutes (the State's criminal code). The bill further provides that a person who enters into a plea agreement for operating or permitting another to operate a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug will be required to forfeit the right to operate a motor vehicle for a period of not less than six months.

PART I

With the Withdrawal of Guideline 4, Presumably the DWI Transactions That Were Formerly Prohibited Can Now Be Negotiated

GUIDELINE 4 - Adopted June 29, 1990

1) No plea agreements whatsoever will be allowed in driving while under the influence of liquor or drugs offenses (N.J.S.A. 39:4-50).

2) No plea agreements will be allowed in which a defendant charged for a violation of N.J.S.A. 39:4-50 with a blood alcohol concentration of 0.10% or higher seeks to plead guilty and be sentenced under section a(1)(i) of that statute (blood alcohol concentration of .08% or higher, but less than 0.10%).

3) If a defendant is charged with a second or subsequent offense of driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.4a) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge. A refusal charge in connection with a first offense N.J.S.A. 39:4-50 charge shall not be dismissed by a plea agreement, although a plea to a concurrent sentence for such charges is permissible.

4) Except in cases involving an accident with an injury or those that occur when school properties are being utilized, if a defendant is charged with driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50(a)) and a school zone or school crossing violation under N.J.S.A. 39:4-50(g), arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50(a) offense, the judge, on the recommendation of the prosecutor, may dismiss the N.J.S.A. 39:4-50(g) charge.

5) Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any driving under the influence of liquor or drugs offense (N.J.S.A. 39:4-50).

6) The judge may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the prosecuting attorney represents that the possibility of conviction is so remote that the interests of justice require the acceptance of a plea to a lesser offense.

PART II
Drunk Driving Plea Agreements Will Henceforth Be Controlled By Rule 7:6-2(d) and the Prevailing Case Law

(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
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> (2) the defendant is either represented by counsel or knowingly waives the right to counsel on the record; and
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> (3) the prosecuting attorney represents to the court that the [complaining witness and the] victim, if the victim is present at the hearing, has 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
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> (5) the sentence recommendations, if any, do not circumvent minimum sentences required by law for the offense.

Pursuant to paragraph (a)(1) of this rule, when a plea agreement is reached, its terms and the factual basis that supports the charge(s) shall be fully set forth on the record personally by the prosecutor, except as provided in Guideline 3 for Operation of Plea Agreements. If the judge determines that the interests 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.

Comment: Under the Rule 7:6-2(d), the remaining restrictions related to plea bargaining are:

a) That the agreement calls for a legal sentence;

b) The municipal court judge finds the plea and sentence agreement to be in the interests of justice.

c) Recusal of the judge following exposure to evidence that will be relevant at trial – State vs. Medina, 349 N.J.Super 108(App.Div.2002).

A judge must recuse himself when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so. Rule 1:12–1(g). However, exposure to inadmissible evidence in the course of pretrial proceedings generally does not require disqualification of the judge even where the judge is to serve as the factfinder. A judge sitting as the factfinder is certainly capable of sorting through admissible and inadmissible evidence without resultant detriment to the decision-making process. Trained judges have the ability "to exclude from their consideration irrelevant or improper evidence and materials which have come to their attention. Having said this, a judge should be sensitive to the perception of the litigants, counsel, or the informed public that his exposure to inflammatory material might irredeemably preclude him from serving as a neutral and impartial arbiter of the facts.

PART III
Guideline 3 – Role of the Prosecutor

Nothing in these Guidelines should be construed to affect in any way the prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges pending against a defendant if the prosecutor determines and personally represents on the record the reasons in support of the motion. The prosecutor shall also appear in person to set forth any proposed plea agreement on the record. However, with the approval of the municipal court judge, in lieu of appearing on the record, the prosecutor may submit to the court a Request to Approve Plea Agreement, on a form approved by the Administrative Director of the Courts, signed by the prosecutor and by the defendant.

When a plea agreement has been reached between the defendant and prosecutor in the Judiciary's electronic system, the prosecutor shall submit any proposed amended or dismissed charge and plea agreement electronically in that system. Nothing in this Guideline shall be construed to limit the court's ability to order the prosecutor to appear at any time during the proceedings.

Comment: This Guideline was inserted prior to Guideline 4 in order to have the Guidelines as a whole conform to the Rules of Professional Conduct (R.P.C. 3.8) and the long-standing case law:

> In representing the State in a criminal action, the prosecutor is endowed with a solemn duty -- "to seek justice, not merely to convict." State vs. Williams, 113 N.J. 393, 447, 550 A.2d 1172(1988) (quoting ABA Standards Relating to the Administration of Criminal Justice, Standard 3-1.1(c) (2d ed. 1980)).

PART IV
Impact on Existing Case Law and Administrative Procedures

A December 2, 2004 memorandum from the Administrative Director of the Courts provides a painstaking procedure that municipal court judges must follow in deciding whether to grant a dismissal application from the State in a DWI case. It requires that the judge pose a series of pointed, narrow questions to the municipal prosecutor in order to assure that the dismissal application is not being made in a circumstance where there is an otherwise meritorious case. The memorandum provides the following steps:

1**)** Why do you wish to dismiss or amend the charges?

A general statement by the prosecutor that asserts only a conclusion that the State cannot prove the charge beyond a reasonable doubt is insufficient. The prosecutor must state on the record the specific reasons why the case cannot be proven beyond a reasonable doubt. The prosecutor should provide the Court with a detailed explanation of the reasons the case cannot be proven. For example, the prosecutor saying, "I cannot prove operation," is insufficient. The prosecutor needs to set forth, on the record, specific reasons why operation cannot be proven. The Court should be prepared to question the prosecutor in detail on any assertion made by the prosecutor.

2) Did you review the police reports and any videotape and discuss the case with the arresting police officer?

If the prosecutor indicates that the police reports were not reviewed or that the police officer had not been consulted, the Court should refuse to entertain the motion to dismiss or amend, until the prosecutor has indicated, on the record, that the police report was reviewed and the arresting officer was consulted.

3) The Court should be provided with specific facts to support the prosecutor's position that the charges cannot be established beyond a reasonable doubt. In exploring these facts, the Court should consider asking the following questions:

> a) If the operation cannot be proven, why not? Did the officer observe operation? Are there any witnesses who observed operation? Did the defendant make any admissions as to operation? Can the State seek to prove operation through any circumstantial evidence?
>
> b) Is there a blood alcohol reading? If yes, why does the prosecutor believe it cannot be introduced in evidence? The prosecutor should place on the place on the record the specific facts as to why the reading cannot be introduced into evidence. For example, a conclusion by the prosecutor that the machine is defective or there was a problem with the before or after test is insufficient. The prosecutor must state specific facts as to why the test is defective.
>
> c) If the prosecutor indicates that the reading is defective, then the Court should closely examine the prosecutor as to whether the charges can be proven without a blood alcohol reading. In examining the prosecutor in this regard, the Court should ask about the facts of the stop (i.e., the observations of operation observed by the officer, the defendant's conduct on the stop, [i.e., physical appearance and demeanor], the defendant's ability to perform psychophysical tests at the scene and at the police department, the defendant's admissions as to consumption of alcohol).

4) If the prosecutor seeks to dismiss or amend based on a defense expert's report, the Court should closely question the prosecutor as to whether the State will be able to produce an expert to counter the

defense expert. The Court should also be informed of the conclusions reached in the defense expert's report.

5) Is the application to dismiss or amend the case the result of a plea bargain where the defendant has agreed to plea to some other charge in return for the prosecutor dismissing or amending the charges?

PART V
The Impact of the Withdrawal of Guideline 4 Implicates the Following

1) It overrules State vs. Rastogi, 403 N.J.Super 581(LawDiv.2008)

Guideline 4 prohibits plea bargaining of DWI cases in Superior Court by the county prosecutor in a municipal appeal.

2) No impact upon the following case law:

State vs. Marsh, 290 N.J.Super 663(App.Div.1996)

A municipal police officer has no authority to bargain with "offenders against the laws" and, thus, has no power to promise dismissal of a pending DWI charge; (2) any "agreement" between the driver and a police officer which called for dismissal of the drunk-driving summons if the driver cooperated in an unrelated drug investigation was unenforceable as against public policy; and (3) the driver's detrimental reliance of the promise did not implicate due process protection.

State vs. Warren, 115 N.J. 433(1989)

In a negotiated plea, a defendant may always seek a sentence under the recommended plea agreement cap. A sentence over the cap gives the defendant the right to withdraw from the agreement. A sentence under the cap does not authorize the State to withdraw from the agreement.

In re Norton (and Kress), 128 N.J. 520(1992)

Discipline in the form of a 3-month suspension for both the prosecutor and defense counsel imposed for improperly dismissing a drunk-driving case.

In re Whitmore, 117 N.J. 472(1990)

Reprimand ordered in a DWI case where the municipal prosecutor's actions in not informing the trial judge that he had a well-grounded suspicion that police officer who had conducted a breathalyzer test had an improper motive for not making himself available to testify.

FILED

FEB 23 2024

Heather J. Baker

CLERK

SUPREME COURT OF NEW JERSEY
September Term 2023

IN RE NEW JERSEY

RULES OF COURT,

PART VII, GUIDELINE 4

O R D E R

1. This Order addresses a Court Rule adopted in 1990, known as "Guideline 4," and a recent amendment to N.J.S.A. 39:4-50.

The History of Guideline 4

2. The Court's opinion in State v. Hessen, 145 N.J. 441 (1994), recounts the history of the relevant Court Rule. In 1974, the Court prohibited all plea bargaining in municipal courts. Id. at 446. The ban stemmed from concerns about "abuse in the disposition of municipal court offenses . . . attributable to the part-time nature of the municipal courts and the lack of professionalism in those courts." Id. at 446-47.

3. In the mid-1980s, the Supreme Court Task Force on Improvement in the Municipal Courts, the New Jersey State Bar Association, the County Prosecutors Association, the Supreme Court Criminal Practice Committee, and the Supreme Court Committee on Municipal Courts recommended that

regulated plea bargaining be allowed in municipal courts. Sup. Ct. Comm. on Mun. Ct. Prac., 2015-2017 Report 4 (Feb. 1, 2017).

4. In 1988, the Court authorized a one-year experiment to allow plea agreements in municipal courts except for offenses related to driving while intoxicated (DWI) and certain drug offenses. Id. at 4-5; Hessen, 145 N.J. at 448. In doing so, the Court observed that municipal courts had become more professional and their conditions had generally improved. Ibid.

5. The following year, the Supreme Court Committee to Implement Plea Agreements in Municipal Courts reviewed the results of the experiment and accepted comments about the program. The Committee included representatives of the Office of the Attorney General, the N.J. State Police, the County Prosecutors Association, two Municipal Prosecutors Associations, the State Chiefs of Police Association, the Office of Highway Traffic Safety, the N.J. State Conference of Mayors, the Public Advocate, the Garden State Bar Association, the Hispanic Lawyers Association of N.J., Mothers Against Drunk Driving, the N.J. League of Women Voters, judges, and others. Sup. Ct. Comm. to Implement Plea Agreements in Mun. Cts., Final Report, 125 N.J.L.J. 46 (Jan. 25, 1990) (1990 Final Report).

6. The Superintendent of the State Police, a member of the Committee, submitted a letter urging that "the ban on plea agreements in the municipal

court should be reinstated on a permanent basis." As an alternative, he "urged the committee not to expand plea agreements to encompass driving while intoxicated and drug offenses."

7. The Superintendent stated that "alcohol is said to contribute to between 50,000 and 150,000 deaths each year," which counseled against "any recommendation" to permit plea bargaining for DWI offenses. Plea bargaining, he wrote, would "clearly contradict[]" and "severely undermine[]" legislative intent. He added that

> New Jersey's [driving] while intoxicated program over the years has gained recognition for its efforts in reducing alcohol related traffic deaths. The secret of success of New Jersey's efforts is said to lie in the certainty of punishment. The penalties are mandatory. There is no judicial discretion. There is no plea bargaining. . . .
>
> The health and public safety concerns should not be lessened for the sake of efficiency of time and use of resources in the municipal court system.

8. The Committee ultimately recommended "that a plea agreement process be permanently authorized in the municipal courts" subject to limitations. 1990 Final Report, 125 N.J.L.J. at 46. It proposed a court rule with guidelines, namely, Guideline 4: "Plea agreements are not permitted in . . . [d]runk [d]riving [c]ases" arising under N.J.S.A. 39:4-50 (driving under the

influence) and -50.2 (refusal to provide a breath sample), as well as certain drug offenses.

9. The Supreme Court adopted the recommendation on June 29, 1990 and incorporated Guideline 4 as part of Rule 7:4-8. Hessen, 145 N.J. at 449, 455. The Rule has been amended multiple times and appears today in Part VII of the N.J. Court Rules. Guideline 4 now reads, in part, as follows: "No plea agreements whatsoever will be allowed in driving while under the influence of liquor or drug offenses (N.J.S.A. 39:4-50)."

The Constitutional Challenge to Guideline 4 -- State v. Hessen

10. Several years later, the Rule was challenged in a DWI case. In the matter, defendant Florence Hessen had "allowed a clearly intoxicated person to drive her car." Hessen, 145 N.J. at 445. After "[t]he driver caused a head-on collision with another car, killing the other driver and seriously injuring four other persons," defendant Hessen was charged under N.J.S.A. 39:4-50. Id. at 445-46. In June 1993, the defendant and the County Prosecutor filed an application to dismiss the charge in favor of a lesser offense. Id. at 446. The municipal court rejected the plea bargain in light of Guideline 4, and the Law Division affirmed that judgment. Ibid. The Supreme Court then granted direct certification. Ibid.

11. The defendant in Hessen argued that Guideline 4 "violate[d] the separation of powers provisions of the New Jersey Constitution and impermissibly infringe[d] on the discretion of the prosecutor." Id. at 449. The Court rejected the constitutional challenge. Id. at 454. It held,

> This Court has the prerogative and the power to limit plea bargaining in the municipal courts. The limited ban on plea bargaining must be understood as one aspect of the Supreme Court's authority to use plea bargaining in the exercise of its supervening responsibility and authority over the administration of the criminal justice system. (citations omitted).
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> . . . .
>
> The judicial authorization of plea bargaining subject to strict standards and the regulation of the process are well within the Court's rule-making authority over plea-bargaining practice in the courts as contemplated by the Constitution. N.J. Const. (1947), Art. VI, § 2, ¶ 3.
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> [Id. at 450-51.]

12. Underlying its ruling, the Court noted, in part, "that this State's executive, judicial and legislative branches are unanimous in their pronouncements that deterrence of drunk driving is a paramount goal of this State." Id. at 453 (citing 1990 Final Report). The Court added that "[t]he imposition of a ban on plea bargaining in drinking and driving cases is intended to support the policy decisions of the legislative and the executive branches, in their commitment to eradicate drunk driving." Id. at 454.

13. The Court's decision invoked its constitutional authority under the New Jersey Constitution. Article VI, Section 2, Paragraph 3 grants the Court authority over the administration of, and practice and procedure within, all courts within the state. The Constitution reads as follows: "The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts." N.J. Const. art. VI, § 2, ¶ 3.

14. In Winberry v. Salisbury, 5 N.J. 240 (1950), authored by Chief Justice Arthur T. Vanderbilt two years after the modern Constitution was adopted, the Court reviewed the meaning of the phrase "subject to law" and the scope of the Court's constitutional rule-making power. The Court "conclude[d] that the rule-making power of the Supreme Court is not subject to overriding legislation, but that it is confined to practice, procedure and administration." Id. at 255. The Court drew a distinction between "substantive law, which defines . . . rights and duties," and "procedural law," like "the law of pleading and practice, through which such rights and duties are enforced in the courts." Id. at 247-48. It explained that procedural rules fall under the domain of the Court. Id. at 248. But although "the courts necessarily make new substantive law through the decision of specific cases

coming before them, they are not to make substantive law wholesale through the exercise of the rule-making power." Ibid.

15. In some settings, determining the precise line between procedural and substantive rules in practice is challenging. Over the years, the Court has considered multiple questions on this topic and has attempted to accommodate other branches of government when possible. See, e.g., Busik v. Levine, 63 N.J. 351, 373 n.10 (1973) (amending a court rule on prejudgment interest after the Legislature enacted the Tort Claims Act); Passaic Cnty. Prob. Officers' Ass'n v. County of Passaic, 73 N.J. 247, 254-56 (1977) (holding that the Judiciary's supervision of probation officers cannot be modified by the Employer-Employee Relations Act); State v. Leonardis, 73 N.J. 360, 368, 374-75 (1977) (noting that pre-trial intervention (PTI) was "within the practice and procedure over which our rule-making power extends" and, at the same time, not "foreclos[ing] the Legislature from enacting measures affecting the substantive aspects of PTI"); Knight v. City of Margate, 86 N.J. 374, 387 (1981) (deferring to legislative amendments to the Conflicts of Interest Law, which restricted dealings with casinos for certain members of the Judiciary and others, even though the statute "implicate[d] matters that are constitutionally committed to the" Court's authority); State v. Des Marets, 92 N.J. 62, 66 n.3, 80 (1983) (finding that the Legislature had the "power to preclude judicial

suspension of sentences" and "enact mandatory sentencing laws," and noting that the Court "prohibit[ed] conventional plea bargaining of Graves Act offenses" to give effect to legislative intent); In re Hearing on Immunity for Ethics Complainants, 96 N.J. 669, 672, 677-78 (1984) (finding that, because the issue of attorney discipline was within the Judiciary's domain, a court rule that provided immunity for grievants in ethics and fee arbitration proceedings prevailed over a contrary statutory provision); In re P.L. 2001, Chapter 362, 186 N.J. 368, 372-73 (2006) (invalidating legislation that would create an "armed unit . . . of probation officers" within the Judiciary because the statute "interfere[d] with the Court's exclusive constitutional authority over the administration of the courts"); In re Advisory Comm. on Pro. Ethics Op. 705, 192 N.J. 46, 48, 58 (2007) (deferring to the Legislature and holding that attorneys formerly employed by the State must comply with statutory post-employment restrictions notwithstanding a less stringent Rule of Professional Conduct).

16. In Hessen, which relates to Guideline 4, the Court expressly placed "judicial authorization of plea bargaining . . . well within the Court's rule-making authority over plea-bargaining practice in the courts as contemplated by the Constitution." 145 N.J. at 451.

The 2024 Amendment to N.J.S.A. 39:4-50

17. On September 22, 2022, S. 3011 was introduced to extend an unrelated provision in N.J.S.A. 39:4-50. The draft bill was later amended to include the following language:

> Notwithstanding any judicial directive to the contrary, upon recommendation by the prosecutor, a plea agreement under this section is authorized under the appropriate factual basis consistent with any other violation of Title 39 of the revised statutes or offense under Title 2C of the New Jersey Statutes.
>
> [S. 3011 (Second Reprint, June 26, 2023).]

No parties testified about the plea agreement provision, and no statements in the Senate or Assembly bills discuss the reasoning for it.

18. The Senate and Assembly voted unanimously in favor of the bill. See New Jersey Legislature, "Bill S3011," at https://www.njleg.state.nj.us/bill-search/2022/S3011. The Governor signed it on December 21, 2023. Press Release, Governor Murphy Takes Action on Legislation (12/21/2023), https://www.nj.gov/governor/news/news/562023/20231221c.shtml. The plea-bargaining agreement provision became effective on February 19, 2024. L. 2023, c. 191, §§ 2, 9.

19. The text of the new statute and the language of Guideline 4 directly conflict with one another. In light of that conflict, the Acting Administrative Director of the Courts issued a short memo on February 16, 2024 directing that

any challenge to Guideline 4 be brought to his attention. As the Court's spokesperson explained in a statement on February 21, 2024, the memo, issued at the direction of the Court, did not "address the merits of any potential legal issues."

The Court's Withdrawal of Guideline 4

20. To date, no legal challenge has been filed related to the conflict between the revised statute and Guideline 4. The law effectively directs that "any judicial directive" that contradicts the recent amendment is to be disregarded. In essence, the law directs that a Court Rule -- which the Supreme Court in 1994 held was "within the Court's rule-making authority over plea-bargaining practice in the courts as contemplated by the Constitution," see Hessen, 145 N.J. at 451 -- is null and void. As a result, there is a genuine question about the constitutionality of the law under the separation of powers doctrine.

21. Because no actual case is before the Court, we do not make a finding on that issue. At the same time, we recognize that the amendment reflects a policy statement by the Legislature, which is within its prerogative, related to plea bargaining in municipal courts. In 1994, the Court relied on the Final Report of the Committee to Implement Plea Agreements in Municipal Courts, which pointed to public concerns about not "undermin[ing] the

deterrent thrust of New Jersey's tough laws" on DWI. Id. at 449 (citing 1990 Final Report at 28). As noted before, the Court also explained the ban on plea bargaining was "intended to support the policy decision of the legislative and the executive branches." Id. at 454. The revised statute provides new direction on that policy.

22. On multiple occasions, this Court has stressed the importance of "cooperation among the branches of government." Ibid.; see also In re Op. 705, 192 N.J. at 54-55; Commuc'ns Workers of Am., AFL-CIO v. Florio, 130 N.J. 439, 449 (1992); Knight, 86 N.J. at 388-89. It does not serve "either the Judiciary or the Legislature [to] engage in a test of the limits of their power." Leonardis, 73 N.J. at 374 n.6; see also Busik, 63 N.J. at 373. The public interest is better served by collaboration among the coordinate branches of government.

23. Accordingly, in the interest of comity, the Court adopts the statement of policy in the amendment to N.J.S.A. 39:4-50 and withdraws Guideline 4.

24. This order will take effect immediately.

For the Court:

Stuart Rabner
Chief Justice

Justices Patterson, Solomon, Pierre-Louis, Wainer Apter, Fasciale, and Noriega join in the Order.

Filed: February 23, 2024