NOTICE TO THE BAR

ORDER ADOPTING RULE AMENDMENTS RECOMMENDED BY SUPREME COURT SPECIAL COMMITTEE ON DISCOVERY IN CRIMINAL AND QUASI-CRIMINAL MATTERS

This notice publishes the Supreme Court's December 4, 2012 Order adopting a series of amendments to the Part III and Part VII Rules Governing the Courts of the State of New Jersey. These rule amendments are effective January 1, 2013. They were initially recommended in the Report of the Supreme Court Special Committee on Discovery in Criminal and Quasi-Criminal Matters.

The Special Committee, chaired by Associate Justice Virginia A. Long, was charged with examining the policy and financial implications of more uniform and compatible means of providing discovery, including whether the types of software used to record and distribute electronic discovery should be limited in some fashion, and whether the amount charged to transmit that discovery should also be limited. The Special Committee subsequently made a series of recommendations intended to facilitate the exchange of discovery in criminal and quasi-criminal cases.

The Court placed the Special Committee's report on a separate review and consideration track, rather than consider it as part of its annual rule amendment cycle. The report was published for written comment on April 4, 2012, and is available for downloading on the Judiciary's Internet website at http://www.judiciary.state.nj.us/reports2012/index.htm.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: December 5, 2012

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to the Rules Governing the Courts of the State of New Jersey are adopted to be effective January 1, 2013.

For the Court,

Chief Justice

Dated: December 4, 2012

The Rules Amended and Adopted by this Order Are as Follows:

1:11-2
3:5-6
3:6-6
3:9-1
3:13-2
3:13-3
3:13-5 (new)
7:5-1
7:7-5
7:7-6
7:7-7

1:11-2. Withdrawal or Substitution

(a) Generally. Except as otherwise provided by R. 5:3-5(d) (withdrawal in a civil family action),

(1) prior to the entry of a plea in a criminal action or prior to the fixing of a trial date in a civil action, an attorney may withdraw upon the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear pro se. If the client will appear pro se, the withdrawing attorney shall file a substitution. An attorney retained by a client who had appeared pro se shall file a substitution. If a mediator has been appointed, the attorney shall serve a copy of the substitution of attorney on that mediator simultaneously with the filing of the substitution with the court, and

(2) after the entry of a plea in a criminal action or the fixing of a trial date in a civil action, an attorney may withdraw without leave of court only upon the filing of the client's written consent, a substitution of attorney executed by both the withdrawing attorney and the substituted attorney, a written waiver by all other parties of notice and the right to be heard, and a certification by both the withdrawing attorney and the substituted attorney that the withdrawal and substitution will not cause or result in delay.

(3) In a criminal action, no substitution shall be permitted unless the withdrawing attorney has provided the court with a document certifying

that he or she has provided the substituting attorney with the discovery that he or she has received from the prosecutor.

(b) ... no change.

Note: Source – R.R. 1:12-7A; amended July 16, 1981 to be effective September 14, 1981; amended November 7, 1988 to be effective January 2, 1989; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; amended and paragraph designations and captions added January 21, 1999 to be effective April 5, 1999; paragraphs (a)(1) and (a)(2) amended July 27, 2006 to be effective September 1, 2006; subparagraph (a)(1) amended July 19, 2012 to be effective September 4, 2012; new paragraph (a)(3) adopted December 4, 2012 to be effective January 1, 2013.

3:5-6. Filing; confidentiality

(a) ... no change.

(b) ... no change.

(c) All warrants that have been completely executed and the papers accompanying them, including the affidavits, transcript or summary of any oral testimony, duplicate original search warrant, return and inventory, and any original tape or stenographic recording shall be confidential except that the warrant and accompanying papers shall be [available for inspection and copying by] provided to the defendant in discovery pursuant to [as provided in] R. 3:13-3 and available for inspection and copying by any person claiming to be aggrieved by an unlawful search and seizure upon notice to the county prosecutor for good cause shown.

Note: Source-R.R. 3:2A-5, 3:2A-9 (second paragraph). Amended June 29, 1973 to be effective September 10, 1973; amended July 26, 1984 to be effective September 10, 1984; paragraph designations and text of paragraph (b) adopted and paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 13, 1994, paragraph (c) amended December 9, 1994, to be effective January 1, 1995; paragraph (b) amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended December 4, 2012 to be effective January 1, 2013.

3:6-6. Who May Be Present; Record and Transcript

(a) ... no change.

(b) Record; Transcript. A stenographic record or sound recording shall be made of all testimony of witnesses, comments by the prosecuting attorney, and colloquy between the prosecuting attorney and witnesses or members of the grand jury, before the grand jury.

When a digital sound recording of the grand jury proceedings has been made, after an indictment has been returned and if the indictment is not sealed, the court shall furnish or make available a copy of the grand jury proceedings to the parties on compact disk or by other electronic means. After an indictment has been returned, at the request of the defendant, a transcript of the grand jury proceedings shall be made. The request shall designate the portion or portions of the proceedings to be transcribed and the person or persons to whom the transcript is to be furnished. A copy of the request for a transcript will be served contemporaneously by the defendant upon the prosecutor, who may move for a protective order pursuant to [R. 3:13-3(f)] R. 3:13-3(e). The prosecutor may request a copy of the transcript at any time.

(c) ... no change.

Note: Source-R.R. 3:3-6(a)(b)(c); paragraphs (a) and (b) amended July 15, 1982 to be effective September 13, 1982; paragraph (b) amended and second paragraph added to paragraph (b) July 13, 1994, new text in paragraph (b) amended December 9, 1994, to be effective January 1, 1995; paragraph (c) amended July 5, 2000 to be effective September 5,

2000; paragraph (b) amended July 21, 2011 to be effective September 1, 2011; paragraph (b) amended December 4, 2012 to be effective January 1, 2013.

3:9-1. Prearraignment Conference; Plea Offer; Arraignment/Status Conference; Pretrial Hearings; Pretrial Conference

(a) Prearraignment Conference. Except for good cause shown, [A]after an indictment has been returned, or an indictment sealed pursuant to R. 3:6-8 has been unsealed, a copy of the indictment, together with the discovery for each defendant named therein, shall be either delivered to the criminal division manager's office, or be available [at] through the prosecutor's office, within [14] seven days of the return or unsealing of the indictment. After the return or unsealing of the indictment the defendant shall be notified in writing by the criminal division manager's office to appear for a prearraignment conference which shall occur within 21 days of indictment. At the prearraignment conference the defendant shall be: informed of the charges; notified in writing of the date, place and time for the arraignment/status conference; and, if the defendant so requests, be allowed to apply for pretrial intervention. The criminal division manager's office shall not otherwise advise the defendant regarding the case. The criminal division manager's office shall ascertain whether the defendant is represented by counsel and, if not, whether the defendant can afford counsel. If indicated that the defendant cannot afford counsel, the defendant shall be required to fill out the Uniform Defendant Intake Report. If a defendant does not appear for a prearraignment conference, the criminal division manager shall notify the criminal presiding judge who may

issue a bench warrant. A defendant's attorney seeking discovery shall obtain a copy of the [indictment and discovery from either the criminal division manager's office, or the prosecutor's office, no later than 28 days after the return or unsealing of the indictment] discovery from the prosecutor's office or the criminal division manager's office prior to, or at, the pre-arraignment conference. If the defendant is unrepresented and is seeking to be represented by the public defender's office, defense counsel shall obtain a copy of the discovery at the arraignment/status conference which shall occur no later than 28 days after the return or unsealing of the indictment. No prearraignment conference shall be required where the defendant has counsel and the criminal division manager's office has established to its satisfaction: (1) that an appearance has been filed under Rule 3:8-1; (2) that [discovery, if requested, has been obtained] if the defendant is represented by the public defender discovery has been obtained, or if the defendant has retained private counsel, discovery has been requested pursuant to R. 3:13-3(b)(1), or counsel has affirmatively stated that discovery will not be requested, and (3) that defendant and counsel have obtained a date, place and time for the arraignment/status conference.

(b) Plea Offer. Prior to the arraignment/status conference the prosecutor and the defense attorney shall discuss the case, including any plea offer[,] and any outstanding or anticipated motions, [and discovery

issues] and shall report thereon at the arraignment/status conference. The prosecutor and defense counsel shall also confer and attempt to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means. Any plea offer to be made by the prosecutor shall be in writing and forwarded to the defendant's attorney.

(c) Arraignment/Status Conference; In Open Court. The arraignment/status conference shall be conducted in open court no later than 50 days after indictment, unless the defendant did not appear at the prearraignment conference or was unrepresented at the prearraignment conference. If the defendant did not appear at the prearraignment conference or was unrepresented at the prearraignment conference, the arraignment/status conference shall be held within 28 days of indictment, unless the defendant is a fugitive. The judge shall advise the defendant of the substance of the charge and confirm that the defendant has reviewed with counsel the indictment and the discovery. The judge shall inform all parties of their obligation to redact confidential personal identifiers from any documents submitted to the court in accordance with Rule 1:38-7(b). The defendant shall enter a plea to the charges. If the plea is not guilty counsel shall report on the results of plea negotiations, and such other matters, discussed pursuant to R. 3:9-1(b), which shall promote a fair and expeditious disposition of the case. At that time, the dates for hearing of

motions and a further status conference, if necessary shall be scheduled according to the differentiated needs of each case. Each status conference shall be held in open court with the defendant present.

(d) ... no change.

(e) ... no change.

Note: Source-R.R. 3:5-1. Paragraph (b) deleted and new paragraph (b) adopted July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended and paragraph (b) deleted July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; first three sentences of former paragraph (a) amended and redesignated paragraph (c), last sentence of former paragraph (a) amended and moved to new paragraph (e), new paragraphs (a), (b), (d) and (e) adopted July 13, 1994 to be effective January 1, 1995; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 16, 2009 to be effective September 1, 2009; paragraphs (a), (b) and (c) amended December 4, 2012 to be effective January 1, 2013.

3:13-2. Depositions

(a) When Authorized. If it appears to the judge of the court in which a complaint, indictment or accusation is pending that a material witness is likely to be unable to testify at trial because of death or physical or mental incapacity, the court, upon motion and notice to the parties, and after a showing that such action is necessary to prevent manifest injustice, may order that a deposition of the testimony of such witness be taken and that any designated books, papers, documents or tangible objects that are not privileged, including, but not limited to, writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form [not privileged], be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, on written motion of the witness and upon notice to the parties, the court may direct that the witness's deposition be taken, and after the deposition has been subscribed the court may discharge the witness.

(b) ... no change.

(c) ... no change.

(d) ... no change.

Note: Source-R.R. 3:5-8(a)(b)(c)(d)(e). Text of former rule deleted and new rule adopted November 5, 1986 to be effective January 1, 1987; caption amended, R. 3:13-2 amended and redesignated as R. 3:13-1(a) and (c) July 13, 1994 to be effective January 1, 1995; Rule redesignation of July 13, 1994 eliminated December 9, 1994, to be effective January 1, 1995; paragraph (a) amended December 4, 2012 to be effective January 1, 2013.

3:13-3. Discovery and Inspection

(a) Pre-Indictment Discovery. Unless the defendant agrees to more limited discovery, [Where] where the prosecutor has made a pre-indictment plea offer, the prosecutor shall, at the time the plea offer is made, [upon request permit] provide defense counsel [to inspect and copy or photograph any] with all available relevant material that [which] would be discoverable at the time of [following an] indictment pursuant to [section (b) or (c)] paragraph (b)(1) of this rule, except that:

(1) where the prosecutor determines that pre-indictment delivery of all discoverable material would hinder or jeopardize a prosecution or investigation, the prosecutor, consistent with the intent of this rule, shall provide to defense counsel at the time the plea offer is made such relevant material as would not hinder or jeopardize the prosecution or investigation and shall advise defense counsel that complete discovery has not been provided; or

(2) where the prosecutor determines that physical or electronic delivery of the discoverable material would impose an unreasonable administrative burden on the prosecutor's office given the nature, format, manner of collation or volume of discoverable material, the prosecutor may in his or her discretion make discovery available by permitting defense

counsel to inspect and copy or photograph such material at the prosecutor's office.

Notwithstanding the exceptions contained in paragraphs (a)(1) and (a)(2) of this rule, the prosecutor shall provide defense counsel with any exculpatory information or material.

(b) Post Indictment Discovery.

[A copy of the prosecutor's discovery shall be delivered to the criminal division manager's office, or shall be available at the prosecutor's office, within 14 days of the return or unsealing of the indictment. Defense counsel shall obtain a copy of the discovery from the criminal division manager's office, or the prosecutor's office, no later than 28 days after the return or unsealing of the indictment. A defendant who does not seek discovery from the State shall so notify the criminal division manager's office and the prosecutor, and the defendant need not provide discovery to the State pursuant to sections (d) or (g), except as required by Rule 3:12-1 or otherwise required by law. Defense counsel will forward a copy of discovery materials to the prosecuting attorney no later than 7 days before the arraignment/status conference.]

(1) [(c)] Discovery by the Defendant. [The prosecutor shall permit defendant to inspect and copy or photograph the following relevant material if not given as part of the discovery package under section (b):] Except for good cause shown, a copy of the indictment, together with the

prosecutor's discovery for each defendant named therein, shall be delivered to the criminal division manager's office, or shall be available through the prosecutor's office, within seven days of the return or unsealing of the indictment. Good cause shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy. In such circumstances, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph discoverable materials at the prosecutor's office, rather than by copying and delivering such materials. The prosecutor shall also provide defense counsel with a listing of the materials that have been supplied in discovery. If any discoverable materials known to the prosecutor have not been supplied, the prosecutor shall also provide defense counsel with a listing of the materials that are missing and explain why they have not been supplied. If the defendant is represented by the public defender, defendant's attorney shall obtain a copy of the discovery from the prosecutor's office or the criminal division manager's office prior to, or at, the pre-arraignment conference. However, if the defendant has retained private counsel, upon written request of counsel submitted along with a copy of counsel's entry of appearance and received by the prosecutor's office prior to the date of the pre-arraignment conference, the prosecutor shall, within three business days, send the discovery to defense counsel

either by U.S. mail at the defendant's cost or by e-mail without charge, with the manner of transmittal at the prosecutor's discretion. Defense counsel shall simultaneously send a copy of the request for mail or e-mail discovery, along with any request for waiver of the pre-arraignment conference under R. 3:9-1(a), to the criminal division manager's office. If the defendant is unrepresented and is seeking to be represented by the public defender, a copy of the discovery shall be provided to defense counsel at the arraignment/status conference which shall occur no later than 28 days after the return or unsealing of the indictment. Discovery shall include exculpatory information or material. It shall also include, but is not limited to, the following relevant material:

(A) [(1)] books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(B) [(2)] records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded[;]. The prosecutor also shall provide the defendant with transcripts of all electronically recorded statements or

confessions by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(C) [(3)] results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of the prosecutor;

(D) [(4)] reports or records of prior convictions of the defendant;

(E) [(5)] books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the prosecutor, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(F) [(6)] names, addresses, and birthdates of any persons whom the prosecutor knows to have relevant evidence or information including a designation by the prosecutor as to which of those persons may be called as witnesses;

(G) [(7)] record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the prosecutor and any relevant record of prior conviction of such persons[;]. The prosecutor also shall provide the defendant with

transcripts of all electronically recorded co-defendant and witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference, but only if the prosecutor intends to call that co-defendant or witness as a witness at trial.

(H) [(8)] police reports that [which] are within the possession, custody, or control of the prosecutor;

(I) [(9)] names and addresses of each person whom the prosecutor expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. [Except in the penalty phase of a capital case if] If this information is [requested and] not furnished 30 days in advance of trial, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(J) [(10)] [All] all records, including notes, reports and electronic recordings relating to an identification procedure, as well as identifications made or attempted to be made.

(2) [(d)] Discovery by the State. Defense counsel shall forward a copy of the discovery materials to the prosecuting attorney no later than seven days before the arraignment/status conference. Defense counsel

shall also provide the prosecuting attorney with a listing of the materials that have been supplied in discovery. If any discoverable materials known to defense counsel have not been supplied, defense counsel also shall provide the prosecuting attorney with a listing of the materials that are missing and explain why they have not been supplied. A defendant shall [permit] provide the State with all [to inspect and copy or photograph the following] relevant material, including, but not limited to, the following: [if not given as part of the discovery package under section (b):]

(A) [(1)] results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of defense counsel;

(B) [(2)] any relevant books, papers, documents or tangible objects, buildings or places or copies thereof, which are within the possession, custody or control of defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(C) [(3)] the names, addresses, and birthdates of those persons known to defendant who may be called as witnesses at trial and their

written statements, if any, including memoranda reporting or summarizing their oral statements;

(D) [(4)] written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the State may call as a witness at trial[;]. The defendant also shall provide the State with transcripts of all electronically recorded witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(E) [(5)] names and address of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. [Except in the penalty phase of a capital case if] If this information is [requested and] not furnished 30 days in advance of trial the expert may, upon application by the prosecutor, be barred from testifying at trial.

(c) Motions for Discovery. No motion for discovery shall be filed unless the moving party certifies that the prosecutor and defense counsel have conferred and attempted to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means.

(d) Discovery Provided through Electronic Means. Unless otherwise ordered by the court, the parties may provide discovery pursuant to paragraphs (a), (b), and (c) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(e) Documents Not Subject to Discovery. ... no change

(f) Protective Orders.

(1) Grounds. Upon motion and for good cause shown the court may at any time order that the discovery [or inspection] sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges; or any other relevant considerations.

(2) Procedure. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone, and if the court thereafter enters a protective order, the entire text of the statement shall be sealed and preserved in the records of the court, to be made available only to the appellate court in the event of an appeal.

(g) Continuing Duty to Disclose; Failure to Comply. [If subsequent to the compliance with a request by the prosecuting attorney or defense counsel or with an order issued pursuant to the within rule and prior to or during trial a party discovers additional material or witnesses previously requested or ordered subject to discovery or inspection, that party shall promptly notify the other party or that party's attorney of the

existence thereof.] There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, it may order such party to permit the discovery [or inspection] of materials not previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

Note: Source-R.R. 3:5-11(a)(b)(c)(d)(e)(f)(g)(h). Paragraphs (b)(c)(f) and (h) deleted; paragraph (a) amended and paragraphs (d)(e)(g) and (i) amended and redesignated June 29, 1973 to be effective September 10, 1973. Paragraph (b) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraphs (a) and (b) amended July 22, 1983 to be effective September 12, 1983; new paragraphs (a) and (b) added, former paragraphs (a), (b), (c), (d) and (f) amended and redesignated paragraphs (c), (d), (e), (f) and (g) respectively and former paragraph (e) deleted July 13, 1994 to be effective January 1, 1995; Rule redesignation of July 13, 1994 eliminated December 9, 1994, to be effective January 1, 1995; paragraphs (c)(6) and (d)(3) amended June 15, 2007 to be effective September 1, 2007; subparagraph (f)(1) amended July 21, 2011 to be effective September 1, 2011; new subparagraph (c)(10) adopted July 19, 2012 to be effective September 4, 2012; paragraph (a) amended, paragraph (b) text deleted, paragraph (c) amended and redesignated as paragraph (b)(1), paragraph (d) amended and redesignated as paragraph (b)(2), new paragraphs (c) and (d) adopted, and paragraphs (f) and (g) amended December 4, 2012 to be effective January 1, 2013.

3:13-5. Discovery Fees

(a) Standard Fees. The prosecutor may charge a fee for a copy or copies of discovery. The fee assessed for discovery embodied in the form of printed matter shall be $0.05 per letter size page or smaller, and $0.07 per legal size page or larger. From time to time, as necessary, these rates may be revised pursuant to a schedule promulgated by the Administrative Director of the Courts. If the prosecutor can demonstrate that the actual costs for copying discovery exceed the foregoing rates, the prosecutor shall be permitted to charge a reasonable amount equal to the actual costs of copying. The actual copying costs shall be the costs of materials and supplies used to copy the discovery, but shall not include the costs of labor or other overhead expenses associated with making the copies, except as provided for in paragraph (b) of this rule. Electronic records and non-printed materials shall be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies such as computer discs.

(b) Special Service Charge for Printed Copies. Whenever the nature, format, manner of collation, or volume of discovery embodied in the form of printed matter to be copied is such that the discovery cannot be reproduced by ordinary document copying equipment in ordinary business size, or is such that it would involve an extraordinary expenditure of time and effort to copy, the prosecutor may charge, in addition to the actual

copying costs, a special service charge that shall be reasonable and shall be based on the actual direct costs of providing the copy or copies. Pursuant to R. 3:10-1, defense counsel shall have the opportunity to review and object to the charge prior to it being incurred.

(c) Special Service Charge for Electronic Records. If defense counsel requests an electronic record: (1) in a medium or format not routinely used by the prosecutor; (2) not routinely developed or maintained by the prosecutor; or (3) requiring a substantial amount of manipulation or programming of information technology, the prosecutor may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on (1) the cost of any extensive use of information technology, or (2) the labor cost of personnel providing the service that is actually incurred by the prosecutor or attributable to the prosecutor for the programming, clerical, and supervisory assistance required, or (3) both. Pursuant to R. 3:10-1, defense counsel shall have the opportunity to review and object to the charge prior to it being incurred.

Note: Adopted December 4, 2012 to be effective January 1, 2013.

7:5-1. Filing

(a) ... no change.

(b) Providing to Defendant; Inspection. All completely executed warrants, together with the supporting papers and recordings described in paragraph (a) of this rule, shall be [available for inspection and copying by] provided to the defendant in discovery pursuant to R. 7:7-7 and, upon notice to the county prosecutor and for good cause shown, available for inspection and copying by any other person claiming to be aggrieved by the search and seizure.

Note: Source-R. (1969) 3:5-6(a), (c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) amended December 4, 2012 to be effective January 1, 2013.

7:7-5. Pretrial Procedure

(a) Pretrial Conference. At any time after the filing of the complaint, the court may order one or more conferences with the parties to consider the results of negotiations between them relating to a proposed plea, discovery, or to other matters that will promote a fair and expeditious disposition or trial. With the consent of the parties or counsel for the parties, the court may permit any pretrial conference to be conducted by means of telephone or video link.

(b) ... no change.

Note: Source-Paragraph (a): new; paragraph (b): R. (1969) 7:4-2(d), 3:9-1(d). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended December 4, 2012 to be effective January 1, 2013.

7:7-6. Depositions

(a) When Authorized. If it appears to the judge of the court in which a complaint is pending that a witness is likely to be unable to testify at trial because of impending death or physical or mental incapacity, the court, upon motion and notice to the parties, and after a showing that such action is necessary to prevent manifest injustice, may order that a deposition of the testimony of that witness be taken and that any designated books, papers, documents or tangible objects that are not privileged, including, but not limited to, writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form [not privileged], be produced at the same time and place.

(b) ... no change.

(c) ... no change.

Note: Source-R. (1969) 7:4-2(h), 3:13-2(a),(b),(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended December 4, 2012 to be effective January 1, 2013.

7:7-7. Discovery and Inspection

(a) ... no change

(b) Discovery by Defendant. Unless the defendant agrees to more limited discovery, in [In] all cases, the defendant, on written notice to the municipal prosecutor or private prosecutor in a cross complaint case, shall be [allowed to inspect, copy, and photograph or to be] provided with copies of [any] all relevant material, including, but not limited to, the following:

(1) books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(2) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded;

(3) grand jury proceedings recorded pursuant to R. 3:6-6;

(4) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or

copies of these results or reports, that are within the possession, custody or control of the prosecuting attorney;

(5) reports or records of defendant's prior convictions;

(6) books, originals or copies of papers and documents, or tangible objects, buildings or places that are within the possession, custody or control of the government, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(7) names and addresses of any persons whom the prosecuting attorney knows to have relevant evidence or information, including a designation by the prosecuting attorney as to which of those persons the prosecuting attorney may call as witnesses;

(8) record of statements, signed or unsigned, by the persons described by subsection (7) of this rule or by co-defendants within the possession, custody or control of the prosecuting attorney, and any relevant record of prior conviction of those persons;

(9) police reports that are within the possession, custody or control of the prosecuting attorney;

(10) warrants, that have been completely executed, and any papers accompanying them, as described by R. 7:5-1(a).

(11) the names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of the expert witness, or if no report was prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(c) Discovery by the State. In all cases, the municipal prosecutor or the private prosecutor in a cross complaint case, on written notice to the defendant, shall be [allowed to inspect, copy, and photograph or to be] provided with copies of [any] all relevant material, including, but not limited to, the following:

(1) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports within the possession, custody or control of the defendant or defense counsel;

(2) any relevant books, originals or copies of papers and other documents or tangible objects, buildings or places within the possession, custody or control of the defendant or defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other

data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(3) the names and addresses of those persons known to defendant who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

(4) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the government may call as a witness at trial; and

(5) the names and addresses of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert may, upon application by the prosecuting attorney, be barred from testifying at trial.

(d) ... no change.

(e) ... no change

(f) Protective Orders.

(1) Grounds. Upon motion and for good cause shown, the court may at any time order that the discovery [or inspection, copying or

photographing] sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; protection of confidential relationships and privileges recognized by law; and any other relevant considerations.

(2) Procedures. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court enters a protective order, the entire text of the statement shall be sealed and preserved in the court's records, to be made available only to the appellate court in the event of an appeal.

(g) Time and Procedure. A defense request for discovery shall be made contemporaneously with the entry of appearance by the defendant's attorney, who shall submit a copy of the appearance and demand for discovery directly to the municipal prosecutor. If the defendant is not represented, any requests for discovery shall be made in writing and submitted by the defendant directly to the municipal prosecutor. The municipal prosecutor shall respond to the discovery request in accordance with paragraph (b) of this rule within 10 days after receiving the request.

Unless otherwise ordered by the judge, the defendant shall provide the prosecutor with discovery, as provided by paragraph (c) of this rule, within 20 days of the prosecuting attorney's compliance with the defendant's discovery request. If any discoverable materials known to a party have not been supplied, the party obligated with providing that discovery shall also provide the opposing party with a listing of the materials that are missing and explain why they have not been supplied. Unless otherwise ordered by the judge, the parties may provide [exchange] discovery pursuant to paragraphs (a), (b), (c), and (f) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in

which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(h) Motions for Discovery. No motion for discovery shall be made unless the prosecutor and defendant have conferred and attempted to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means.

(i) Discovery Fees.

(1) Standard Fees. The municipal prosecutor, or a private prosecutor in a cross-complaint case, may charge a fee for a copy or copies of discovery. The fee assessed for discovery embodied in the form of printed matter shall be $0.05 per letter size page or smaller, and $0.07 per legal size page or larger. From time to time, as necessary, these rates may be revised pursuant to a schedule promulgated by the Administrative Director of the Courts. If the prosecutor can demonstrate that the actual costs for copying discovery exceed the foregoing rates, the prosecutor shall be permitted to charge a reasonable amount equal to the actual costs of copying. The actual copying costs shall be the costs of materials and supplies used to copy the discovery, but shall not include the costs of labor or other overhead expenses associated with making the copies, except as provided for in paragraph (i)(2) of this rule. Electronic records and non-

printed materials shall be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies such as computer discs.

(2) Special Service Charge for Printed Copies. Whenever the nature, format, manner of collation, or volume of discovery embodied in the form of printed matter to be copied is such that the discovery cannot be reproduced by ordinary document copying equipment in ordinary business size, or is such that it would involve an extraordinary expenditure of time and effort to copy, the prosecutor may charge, in addition to the actual copying costs, a special service charge that shall be reasonable and shall be based upon the actual direct costs of providing the copy or copies. Pursuant to R. 7:7-1, the defendant shall have the opportunity to review and object to the charge prior to it being incurred.

(3) Special Service Charge for Electronic Records. If the defendant requests an electronic record: (1) in a medium or format not routinely used by the prosecutor; (2) not routinely developed or maintained by the prosecutor; or (3) requiring a substantial amount of manipulation or programming of information technology, the prosecutor may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on (1) the cost for any extensive use of information technology, or (2) the labor cost of personnel providing the service that is actually incurred by the prosecutor or attributable to the

prosecutor for the programming, clerical, and supervisory assistance required, or (3) both. Pursuant to R. 7:7-1, the defendant shall have the opportunity to review and object to the charge prior to it being incurred.

(j) [(h)] Continuing Duty to Disclose; Failure to Comply. [If a party who has complied with this rule discovers, either before or during trial, additional material or names of witnesses previously requested or ordered subject to discovery or inspection, that party shall promptly notify the other party or that party's attorney of the existence of these additional materials and witnesses.] There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order that party to provide [permit] the discovery [, inspection, copying or photographing] of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems appropriate.

Note: Source-Paragraph (a): new; paragraph (b): R. (1969) 7:4-2(h), 3:13-3(c); paragraph (c): R. (1969) 7:4-2(h), 3:13-3(d); paragraph (d): R. (1969) 7:4-2(h), 3:13-3(e); paragraph (e): R. (1969) 7:4-2(h), 3:13-3(f); paragraph (f) new; paragraph (g): R. (1969) 7:4-2(h), 3:13-3(g). Adopted October 6, 1997 effective February 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 16, 2009 to be effective September 1, 2009; paragraphs (a), (b), and (c) amended, new paragraph (e) caption and text adopted, former paragraphs (e), (f), and (g) redesignated as paragraphs (f), (g), and (h) July 21, 2011 to be

effective September 1, 2011; paragraphs (b), (c), (f), and (g) amended, new paragraphs (h) and (i) adopted, paragraph (h) redesignated as paragraph (j) December 4, 2012 to be effective January 1, 2013.