

**Garden State CLE Presents:**



**Civil Reservations**  
**The Rules Have Changed**

**Instructors**



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**Lesson Plan**

# **Introduction**

There are two distinct Rules regulating civil reservations: one for municipal court and one for Superior Court. There are significant procedural differences between the applications for a civil reservation in these venues.

## **Part I** **Municipal Court**

### **1) Rule 7:6-2(a)(1)**

On the request of the defendant, the court may, at the time of the acceptance of a guilty plea, order that the plea shall not be evidential in any civil proceeding.

### **2) Purpose**

Pleas in criminal or quasi-criminal proceedings are evidential in a civil case as a statement by a party under N.J.R.E. 803(b)(1). By far and away, the vast majority of civil reservation orders in municipal court are granted in cases of violations of the Motor Vehicle Code in order to avoid the consequences of the plea in a civil negligence case arising out of a motor vehicle accident. The relative ease with which such reservations are granted promotes pleas in traffic cases while at the same time protecting the interests of the motor vehicle owner and driver and the insurance carriers in the related civil case.

### **3) Admissibility in a Subsequent Civil Proceeding**

A party's admission may be used as affirmative substantive evidence against that party. Consistent with that premise, evidence of a defendant's guilty plea is admissible as an admission in a civil action. In particular, guilty pleas to traffic offenses are admissible in civil suits to establish liability arising from the same occurrence. By contrast, a record of conviction following a trial for a non-indictable offense is inadmissible in such an action. Unlike a party who has pled guilty, one who has unsuccessfully contested an offense has not admitted his or her guilt.

It is important to stress here that a guilty plea is only evidence of negligence and not conclusive proof of the facts underlying the offense. The party who entered the guilty plea may contest the admitted fact because such a plea is entered without litigation of the underlying facts. Furthermore, as with other admissions, the party who has entered the plea may rebut or otherwise explain the circumstances surrounding the admission. Eaton vs. Eaton, 119 N.J. 628(1990).

In other words, absent a properly entered civil reservation, a person who enters a guilty plea to a traffic offense may be confronted with the factual basis for it in a civil action arising from the same occurrence that triggered the issuance of the motor vehicle charge. If a person contested the charge, a conviction following a trial is not admissible because the contesting defendant never admitted his guilt. Similarly, a guilty plea to or a finding of guilt of a non-traffic, non-indictable charge is not admissible in civil proceedings because N.J.R.E. 803(3)(22) only permits, absent a civil reservation, admission of evidence of a final judgment of guilt only to an indictable offense. Maida vs. Kuskin, 221 N.J. 112, 126(2015).

#### **4) Good Cause in Municipal Court**

The concept of “good cause” is particularly relevant in the civil reservations entered in the Superior Court in criminal cases. No decision has yet to define good cause in the context of an objection in municipal court.

Absent a showing of good cause, in the municipal court, the granting of a civil reservation is presumptive. “The non-evidential order should therefore be entered as a matter of course on the request of a defendant, unless the State or a victim who has appeared under N.J.S.A. 39:5-52a shows good cause to the court why the order should not be entered. If the defendant's request was a condition of the plea and is rejected, the defendant should be given an opportunity to withdraw the plea.” State vs. LaResca, 267 N.J.Super 411, 421(1993).

Thus, if the prosecutor or a victim object in municipal court, the burden of demonstrating good cause for denial of the civil reservation is on the objector. Maida vs. Kuskin, 221 N.J. 112, 124(2015).

## **5) Notice and Standing to Object in Municipal Court**

A victim in a traffic accident has statutory standing to object to the entry of a civil reservation. See N.J.S.A. 39:5-52(a)(2):

A victim of a motor vehicle accident as defined in this section shall, upon his request, be provided in writing by the court adjudicating any offense committed during that motor vehicle accident with the following information:

(2) Timely advance notice of the date, time, and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing); State vs. Faunce, 244 N.J.Super 499(App.Div.1990) (Notice of civil reservation should be provided to victims); State vs. LaResca, 267 N.J.Super 411(App.Div.1993).

## **6) Victim's Right to Appeal**

A victim also has the right to appeal as a person aggrieved of a judgment of conviction in municipal court under Rule 3:23-2

## **7) Recap Municipal Court Procedures**

A guilty plea to a traffic offense that occurs in open court must be accompanied by a factual statement given by the defendant. A person who pleads guilty to a traffic offense may request an order that prevents admission of the plea in any civil proceeding arising from the same occurrence that precipitated the motor vehicle charge. That request must occur in open court. The prosecutor or a person injured in the motor vehicle accident may object to such an order and demonstrate good cause to bar entry of such an order. If the prosecutor or the victim demonstrates good cause or the charge to which a defendant pleads guilty does not arise out of the same occurrence that is the subject of the civil proceeding, a civil reservation order may not be entered. Such an order also should not be entered when the conduct encompassed by the traffic offense bears no relation to any issue in the subsequent civil proceeding. Finally, if the guilty plea is entered without a court appearance, as permitted by the Guidelines, a defendant may not pursue a civil reservation order. Such an order would contravene the requirement that a civil

reservation be requested in open court contemporaneously with the entry of the guilty plea. Maida v. Kuskin, 221 N.J. 112, 127-28(2015).

## **8) Ethical Considerations and Malpractice**

The failure by defense counsel to seek a civil reservation in municipal court following a traffic accident may constitute both professional malpractice subjecting him to civil liability and gross neglect in violation of RPC 1.1:

A lawyer shall not:

- (a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.

## Part II Superior Court

### 1) Court Rule for Superior Court Criminal Matters

**Rule 3:9-2** - For good cause shown the court may, in accepting a plea of guilty, order that such plea not be evidential in any civil proceeding.

**Comment:** Note that there is no presumption of a civil reservation in Superior Court criminal matters. In this sense, the Superior Court Rule is the precise opposite of the municipal court procedure. In Superior court, the burden is on the defendant to demonstrate good cause as to the granting of the civil reservation. Whether a civil reservation is supported by good cause is a legal question subject to *de novo* review.

### 2) What is Good Cause For a Defendant in Superior Court?

The existence of a good faith fear - that a civil claimant will later use the guilty plea as an admission of liability in a civil case - triggers the rule. Good cause may be shown to grant a reservation where the civil consequences of a plea may wreak devastating financial havoc on a defendant. At the same time, a reservation may eliminate an obstacle to a plea and avoid an unnecessary criminal trial. *State vs. McIntyre-Caufield*, 455 N.J.Super 1(App.Div.2018) (devastating financial consequences constituted good cause); *State vs. Haulaway, Inc.*, 257 N.J.Super 506(App.Div.1992) (Defendant failed to establish good cause).

### 3) Notice to Victims and Standing to Appeal

A crime victim has a statutory right to be kept informed by the prosecutor as to the relevant developments in the criminal case. N.J.S.A. 52:4B-36(o) requires the prosecutor to consult with a crime victim about plea discussions. Moreover, the granting or the denial of a civil reservation is a civil matter, not criminal. As a result, in the absence of a plea agreement that has a civil reservation as a specific term and condition, the civil reservation issues are not exclusively delegated to the prosecutor but rather to those people who have an economic interest in the case from a civil standpoint. This interest extends standing of victims to appeal. *State vs. Lavrik*, 472 N.J.Super 192(App.Div.2022)

#### **4) Civil Reservation as a Term and Condition of a Plea Agreement**

N.J.S.A. 52:4B-36(o) recognizes the victim's right to be consulted about plea negotiations. That right must yield to the prosecutor's authority and discretion “to enter into any plea agreement which the prosecutor deems appropriate.” Accordingly, had the civil reservation been contemplated during plea negotiations by, for example, an express condition of the plea agreement or the prosecutor's agreement to refrain from taking a position on the defendant's application, the victim would not have standing to contest the entry of the court's order. Stated another way, the victim cannot interfere with the prosecutor's discretion to negotiate plea agreements. State vs. Lavrik, 472 N.J.Super 192, 210(App.Div.2022).

Finally, the civil reservation generally is ordered at sentencing and included in the judgment of conviction. That procedure permits the court to consider the victim's impact statement and the defendant's financial circumstances and other good cause at the time the civil reservation is considered. Thus, the sentencing judge is then in a better position to decide whether a civil reservation should be entered. In those cases where the judge determines the defendant has not satisfied his burden, the defendant should be allowed to rescind the guilty plea – if the civil reservation was a condition thereof. State vs. Lavrik, 472 N.J.Super 192, 216(App.Div.2022).