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### **Video Course Evaluation Form**

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#### **Please Circle the Appropriate Answer**

Instructors: Poor Satisfactory Good Excellent

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**Required:** Secret words that appeared on the screen during the seminar.

1) \_\_\_\_\_ 2) \_\_\_\_\_

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What did you like most about the seminar?

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What criticisms, if any, do you have?

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I certify that I watched, in its entirety, the above-listed CLE Course.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Garden State CLE Presents:**



**New Municipal Court Rules**  
**2021-2022**

**Instructors:**



**Joseph P. Rem, Jr.,  
Certified Criminal Trial Attorney**

**Robert Ramsey**

**Lesson Plan**

## **Part I** **Rules Affecting Municipal Court Practice**

### **Proceedings in Open Court; Robes - Rule 1:2-1(b) and (d)**

(b) Virtual Transmission of Testimony - Upon application in advance of appearance, unless otherwise provided by statute, the court may permit testimony in open court by contemporaneous transmission from a different location for good cause and with appropriate safeguards.

d) Robes - Every judge shall wear judicial robes during proceedings in open court, including those conducted pursuant to paragraph (b).

#### **Commentary**

In the future, the vast majority of municipal court dispositions without trial will be conducted by way of remote, internet-based technology. The amendment to Rule 1:2-1 authorizes the municipal court to consider remote testimony which may come from defendants prior to sentencing, victims or witnesses. Due to confrontation clause concerns, this type of testimony will not occur in matters that are being tried unless the defendant has affirmatively waived his right to personally confront the witnesses against him. Since the use of remote technology implicates a relaxed environment for attorneys and defendants appearing from their offices and homes, the amended Rule goes on to require that judges conduct remote court events garbed in judicial robes in order to maintain an atmosphere of solemnity to the proceedings.

### **Clerks' Offices; Municipal Court Offices – Rule 1:30-4**

The office of the clerk of every court, except the municipal courts, shall be open to the public for the transaction of all business of the court for such hours and on such days as shall be fixed by the Chief Justice. The office [of the clerk] of every municipal court shall be open to the public for the transaction of all business of the court on days and during hours fixed by the municipal court judge thereof, or, in courts where there is a chief judge, the chief judge and the Assignment Judge, subject to the approval of the Administrative Director of the Courts.

#### **Commentary**

This Rule underscores the proposition that the municipal court is a creator of the judiciary, notwithstanding that its operations are funded by local governments and its employees are nominally working for the municipality. Thus, as made clear in this amended Rule, the hours that the municipal court is open for business is a judicial determination and is not dependent upon mayors or other local officials.

## **Court Managerial Structure – Rule 1:33-2(f)**

(f) For each vicinage, the Chief Justice shall designate a municipal court judge to serve as Presiding Judge of the municipal courts for that vicinage, who shall serve in that role at the pleasure of the Chief Justice. The Presiding Judge shall report directly to and be responsible to the Assignment Judge of the vicinage

### **Commentary**

The position of Presiding Judge of the municipal courts was established as a discretionary position by statute in 1994.<sup>1</sup> As then authorized by the legislature, a presiding judge must be named by the Chief Justice and may be either a sitting municipal court judge or a judge of the Superior Court. The provisions of Rule 1:33-2(f) do not follow this statute. The Rule makes the appointment of a Presiding Judge mandatory in each vicinage and eliminates the statutory authority of Superior Court judges to serve in the capacity of Presiding Judge and limit it to municipal court judges. The Chief Justice is responsible for designating Presiding Judges in each vicinage subject to the supervision and control of the vicinage assignment judge.

## **Clerks of Court: Municipal Court Administrators – Rule 1:34-2(b)**

(b) The Municipal Court Administrator in each municipal court shall be responsible to and under the supervision of the Municipal Court Judge or, in those municipal courts where there is a Chief Judge, the Chief Judge, the Vicinage Municipal Court Presiding Judge, the Assignment Judge, the Administrative Director of the Courts, and the Chief Justice.

### **Commentary**

The position of municipal court administrator was created by statute in 1994. The Court administrator is the only employee of the municipal court to have the ability to earn tenure in that position. The intention of Rule 1:34-2(b) is to establish a clear line of supervisory authority over the activities of the court administrator.

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<sup>1</sup>N.J.S.A. 2B:12-9 provides as follows: If the Chief Justice designates a judge of the Superior Court or a judge of one of the municipal courts in a vicinage to serve as presiding judge of the municipal courts for that vicinage, that judge may exercise powers delegated by the Chief Justice or established by the Rules of Court. If the presiding judge is a municipal court judge, the presiding judge shall be paid by the State for the time devoted to duties as Presiding Judge, unless that judge is also assigned duties at the request of a county, in which case compensation, pension and other benefits shall be as determined by the Assignment Judge and the governing body of the county, with the approval of the Chief Justice.

## **Part VII** **Rule Amendments**

### **Filing Appearance: Withdrawal from Representation and Substitution of Attorney – Rule 7:7-9**

- (b) Withdrawal, Substitution Prior to Receipt of Discovery - Prior to the receipt of any discovery, an attorney may withdraw as counsel without leave of court with the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear *pro se*.
- (c) Withdrawal, Substitution Prior to Completion of Discovery and Prior to setting of a trial date. Prior to the completion of discovery and the setting of a trial date, an attorney may withdraw as counsel without leave of court upon the filing of the client's written consent and a substitution of attorney executed by both the withdrawing attorney and the substituted attorney indicating that the withdrawal and substitution will not cause or result in delay. In the substitution of attorney, the withdrawing attorney shall certify that all discovery received from the State has been or will be provided to the substituting attorney within five business days after the filing of the fully executed substitution of attorney with the court.
- (d) Withdrawal, Substitution after Completion of Discovery and after the Setting of a Trial Date - After completion of discovery and the setting of a trial date, an attorney may not withdraw or substitute as counsel without leave of court.
- (e) Motion at Any Stage of Proceedings. Nothing in this rule prohibits an attorney from filing a motion at any stage of the proceedings to be relieved from representing the defendant or be substituted as counsel.
- (f) Requesting discovery at Any Stage of Proceedings - Nothing in this rule prohibits a *pro se* defendant or substituting attorney from requesting discovery at any stage of the proceedings.

### **Commentary**

The addition of paragraphs (b) and (c) to this Rule in 2021 provided, for the first time, an official procedure that attorneys could use to withdraw from cases. The key component of the Rule and its time requirements is the elimination of undue delay in the case disposition and the protection of the defendant from being exposed to a disposition without the opportunity to have the aid of counsel.

## **Guilty Plea by Mail or in an Electronic System in Non-Traffic Offenses – 7:6-3**

(a) Entry of Guilty Plea by Mail or in an Electronic System. In all non-traffic and non-parking offenses, except as limited below, on consideration of a written or electronically submitted application, supported by certification, with notice to the complaining witness and prosecutor, and at the time and place scheduled for trial, the judge may permit the defendant to enter a guilty plea by mail or in an electronic system approved by the Administrative Director of the Courts. The guilty plea by mail form or electronic application may also include a statement for the court to consider when determining the appropriate sentence. Entry of a guilty plea by mail or submitted in the electronic system shall not be available for the following:

(b) Plea Form Submitted by Mail or in the Electronic System - Certification. The guilty plea shall be submitted on a form by mail or in an electronic system approved by the Administrative Director of the Courts.

(c) Plea of Guilty by Mail or in the electronic System: Acknowledgements, waiver and certification.

(1) In those cases in which a defendant may enter a plea of guilty to a non-traffic offense by mail or in the electronic system, the plea shall include:

(A) an acknowledgment that the defendant committed the non-traffic offense to which the defendant is pleading guilty and a factual basis for the plea;

(B) a waiver of the defendant's right to contest the case at a trial, the right to appear personally in court, and, if not represented by an attorney, a waiver of the right to be represented by an attorney; and

(C) an acknowledgment by the defendant that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

(2) In those cases in which an attorney submits a plea of guilty on behalf of the defendant through the electronic system, the plea shall include a certification signed by the defendant that recites the terms of the plea; specifies that the defendant has reviewed such terms; establishes a factual basis for the plea; and establishes that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

(d) Scheduling and Judgment.

(1) For guilty pleas submitted in the electronic system in matters that require review by the municipal prosecutor, the court shall enter the disposition in the electronic system. The matter may be scheduled for disposition on the record in open court at the discretion of the municipal court judge.

(2) For guilty pleas submitted on a manual plea by mail form or in the electronic system that do not involve the municipal prosecutor's review, the court shall schedule the matter to be heard on the record in open court.

(3) The court shall send a copy of its decision by ordinary mail or through the electronic system to the defendant, the complaining witness, and attorneys who have entered an appearance.

**Commentary**

In conformity with the change to remote access to municipal court proceedings, Rule 7:6-3 has been amended to facilitate the use of internet-based technology to resolve quasi-criminal, non-traffic cases. The former requirement that a defendant demonstrate an inability to attend court personally has been removed. Defendants may now enter a plea of guilty to most non-traffic, petty offenses either by way of submitting a paper guilty plea form by mail or through the use of an electronic system to be devised by the Administrative Office of the Courts. The technical requirements for the procedure using the electronic system are intended to make sure that the plea be entered knowingly and voluntarily with a full knowledge of the consequences and the waiver of certain constitutional rights.

**Non-Monetary Procedures on Failure to Appear – Rule 7:8-9**

(a) Warrant or Notice.

(1) Non-Parking Cases.

(i) Except as set forth in subparagraph (ii), if a defendant in any non-parking case before the court fails to appear or answer a complaint, the court shall issue a notice advising the defendant of the rescheduled appearance and that a failure to appear at that rescheduled appearance may result in the issuance of a bench warrant on a form approved by the Administrative Director of the Courts. If the defendant fails to appear for that rescheduled appearance, a bench warrant may

be issued in accordance with Rule 7:2-2(h). When issuing a bench warrant, the court shall simultaneously schedule the defendant to appear at a future court event.

(ii) In the most serious matters involving public safety, including but not limited to driving while intoxicated, domestic violence, defendants being monitored by pre-trial services, or other matters where upon conviction there is a reasonable likelihood of a jail sentence or loss or suspension of license, if a defendant in any non-parking case before the court fails to appear or answer a complaint, the court may issue a bench warrant for the defendant's arrest in accordance with Rule 7:2-2(h), while simultaneously scheduling the defendant to appear at a future court even

## **Commentary**

The amended version of Rule 7:8-9 is consistent with the overall philosophy of New Jersey's criminal justice reform movement which seeks to reduce the number of people being held on a pretrial basis in county jails in default of bail. Under the former procedures, bench warrants would issue as a matter of routine when a defendant failed to appear for any court event, with bails often set at outrageously high amounts. Moreover, it was not unusual for these defendants to remain in custody for weeks in default of bail while waiting for a court date.

Under the new procedure, bench warrants will not be issued initially based upon an initial failure to appear except for cases involving driving while intoxicated, domestic violence, cases involving a likelihood of a jail term or license suspension and other cases wherein there is a threat to public safety. If the defendant fails to appear a second time, a bench warrant may issue but the defendant will also receive a new court date. This will provide the defendant an additional opportunity to resolve the case before the bench warrant has been served by law enforcement.

The same procedure has been adopted for parking tickets, although municipal courts are restricted to issuing arrest warrants on failure to appear for parking tickets until the defendant has accumulated at least two more tickets issued on different days. The court may also suspend the defendant's driving privileges based upon a failure to appear on a parking ticket matter.

**Pleas of Not Guilty and Pleas of Guilty by Mail or in an Electronic System in Certain Traffic or Parking Offenses – Rule 7:12-3**

(b)(1) In those cases in which a defendant may enter a plea of guilty to a traffic offense or parking offense by mail or in the electronic system, the plea shall include:

(A) an acknowledgment [acknowledgement] that the defendant committed the traffic violation or parking offense to which the defendant is pleading guilty and a factual basis for the plea;

(B) ... no change

(C) an acknowledgment [acknowledgement] by the defendant that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea;

(2) In those cases in which an attorney submits a plea of guilty on behalf of the defendant through the electronic system, the plea shall include a certification signed by the defendant that recites the terms of the plea; specifies that the defendant has reviewed those terms; establishes a factual basis for the plea; and establishes that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

(3) A plea of guilty to a traffic offense or parking offense by mail or in the electronic system may also include a statement for the court to consider when determining the appropriate sentence.

(c) Plea of Not Guilty by Mail or in the Electronic system.

(1) In those cases in which a defendant may enter a plea of not guilty to a traffic offense or parking offense and submit any defense to the charge(s) by mail or in the electronic system, the [such] not guilty plea and defense shall include the following:

(2) A defense to a traffic offense or parking offense submitted by mail or in the electronic system may also include a statement for the court to consider when deciding on the appropriate sentence in the event of a finding of guilty.

(e) Scheduling and Judgment.

(1) For guilty pleas submitted in the electronic system in matters that require review by the municipal prosecutor, the court shall enter the disposition in the electronic system. The matter may be scheduled for

disposition on the record in open court at the discretion of the municipal court judge.

- (2) For not guilty pleas submitted in the electronic system in matters that require review by the municipal prosecutor, the court shall schedule the matter to be heard on the record in open court.
- (3) For not guilty and guilty pleas submitted on a manual plea by mail form or in the electronic system that do not involve the municipal prosecutor's review, the court shall schedule the matter to be heard on the record in open court.
- (4) The court shall send a copy of its decision by ordinary mail or through the electronic system to the defendant, the complaining witness, and attorneys who have entered an appearance.

## **Commentary**

Rule 7:12-3 permits defendants to either plead guilty to certain traffic and parking offenses or to submit a defense without appearing. Consistent with the change to remote municipal court proceedings in most cases, there is no longer any requirement that the defendant demonstrate an inability to personally attend court. Now, a defendant may simply plead guilty or submit his defense by to the court for most minor traffic and parking tickets without personally appearing. The defendant may submit his plea or defense by way of a written certification, a procedure that has been available for decades. Alternatively, the Administrative Office of the Courts has developed an electronic system that will enable defendants in traffic and parking cases to submit their pleas of guilty or defenses to traffic and parking offenses electronically. The technical requirements for the procedure using the electronic system are intended to make sure that the plea be entered knowingly and voluntarily with a full knowledge of the consequences and the waiver of certain constitutional rights.

## Part III

### Prosecutor's Responsibilities

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.

### Fine collection procedures - Supreme Court Directive 12-21

a) In general – Over the years, the collection of financial obligations from municipal court defendant has proved to be an intractable problem. For the most part, the fines required to be imposed upon conviction for serious motor vehicle offenses are enormous and are regressive in the sense that there is a disparate, punitive impact on indigent defendants. While the case law has long recognized the need for indigent defendants to be afforded a reasonable opportunity to make time payments of their court obligations, the reality has been that many thousands of municipal court defendants have been arrested on bench warrants and subsequently jailed as a result of unpaid fines.

In an effort to bring a measure of fairness and statewide uniformity to the collection process, the Supreme Court promulgated Directive 12-21. This Directive mandates the payment procedures that must be used by judges to determine payment plans and sanctions for non-payment. The Directive makes no distinction among the various components of a municipal court sentence, grouping together fines, costs and mandatory penalties, most of which exist to raise revenue as opposed to being intended to punish.

b) Text of Directive 12-21 – (April 30, 2021)

<https://www.njcourts.gov/notices/2021/n210503b.pdf>

c) Unresolved issues – The broad sweep of Directive 12-21 and the statutory authority upon which it relies to impose jail sentences in cases of willful non-payment leave several important legal issues unresolved. N.J.S.A. 2B:12-23.1 defines a penalty as, “[A]ny fine, statutorily-mandated assessment, surcharge or other financial penalty imposed by a municipal court, except restitution or a surcharge assessed pursuant to [N.J.S.A. 39:4-97.2].” The problem with this definition is that includes financial obligations that are not imposed for punishment, such as court costs and other revenue-raising assessments. The case law makes it clear that jailing a defendant for non-payment is nothing more than an alternative form of punishment that the imposition of a fine failed to achieve. This is an issue that should be addressed by the Appellate Division or the Supreme Court at some point.

A secondary issue relates to fines imposed for parking offenses. Under the Parking Offenses Adjudication Act, the process for resolving parking tickets is civil. This raises the thorny issue as to whether a defendant can be jailed for what is essentially a civil debt<sup>2</sup> where the burden of proof is by a mere preponderance of the evidence. Once again, this issue must be determined at some future point by the appellate courts.

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<sup>2</sup>New Jersey Constitution of 1947, Article. I, paragraph 13

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**Directive #12-21**

[Questions or comments may be directed to the Municipal Court Services Division at (609) 815-2900, ext. 54850.]

**To:** Assignment Judges  
Trial Court Administrators  
  
**From:** Glenn A. Grant, J.A.D.   
  
**Subj:** Municipal Courts -- Time Payment Plans and Payment Alternatives  
  
**Date:** April 30, 2021

As approved by the Supreme Court, this directive provides an overview and update of policies regarding time payment plans – plans that allow a defendant to make monthly payments towards a legal financial obligation – and payment alternatives in the municipal courts. The goals are to provide greater statewide consistency and efficiency and ensure that time payment plans and alternatives are widely available to defendants when needed and appropriate.

At the time of a guilty plea or verdict in the municipal courts, legal financial obligations – fines, fees, restitution, and surcharges – are expected to be paid in full upon sentencing. However, there are a variety of options available to certain qualifying municipal defendants that allow for a relaxation of this requirement. Those options are broadly grouped into two general categories: time payment plans and payment alternatives.

Historically, defendants were afforded time payment plans in the municipal courts only after first demonstrating either indigency or a logistical inability to access funds at the time of sentencing.<sup>1</sup> Both situations required that the defendant complete

<sup>1</sup> These were required by Administrative Directive #02-10, “Implementation of L. 2009, c. 317, Authorizing Municipal Courts to Provide Payment Alternatives” (March 2, 2010) and Memorandum



the [Financial Questionnaire to Establish Indigency](#) (“financial questionnaire”) and discuss the contents of the completed form in open court. This directive supersedes those prior procedures and policy documents.

These changes will provide greater convenience to court users, standardize policies statewide, and limit the open court discussion of defendant’s finances to only when necessary, which will preserve valuable court session time. Changes include the following:

- Time payments are to be made broadly available to defendants upon request without a detailed inquiry into a defendant’s finances.
- This includes both delayed payments (formerly known as a “short-term time payment plan”) and time payment plans that fall within the structured guidance provided below. This structured guidance is particularly relevant to legal financial obligations totaling less than \$500, which constitute close to 90% of time payment plans.
- Only those defendants who need more individualized time payment plans, due to indigency or otherwise, will be required to complete a financial questionnaire for court review.
- Courts and defendants will be guided through this process by way of a post-sentencing colloquy promulgated under separate cover by the Administrative Director.

The details of these new processes are discussed below.

### I. Time Payment Plans (Available at Sentencing)

Time payment plans give defendants the opportunity to make monthly payments towards a legal financial obligation over a period of time. They are available to defendants unable to pay a fine in full at a court session for a variety of reasons, including indigency. [N.J.S.A. 2B:12-23.1a](#).

To determine whether a time payment plan is appropriate for a defendant, the municipal court judge should engage in a discussion with the defendant, using the post-sentencing colloquy, to establish the appropriate option: to pay in full at the time of sentencing; to pay within 30 days (a delayed payment); payment in accordance with the structured guidance provided below; or an individualized time payment plan. Only

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from Glenn A. Grant, J.A.D., Completion of the Financial Questionnaire to Establish Indigency Form when Authorizing Time Payments, to Municipal Court Judges, Municipal Court Directors and Administrators (May 9, 2011).

the latter, the individualized plan, will require completion of the financial questionnaire. This means fewer defendants will have to complete financial questionnaires.

Therefore, as an initial matter, and as guided by the post-sentencing colloquy, courts should continue to liberally authorize delayed payments when a defendant indicates that they do not have the ability to pay that day but can make full payment within 30 days.

For defendants who indicate that more than 30 days is needed to make payment, judges should continue through the colloquy to determine whether a plan that falls within the structured guidance provided below would be appropriate, and what the specifics of that plan should be.

<b>Range of Financial Obligation</b>	<b>Monthly Installments</b>
\$0 to \$100	3 equal payments
\$100.01 to \$200	Up to 6 equal payments
\$200.01 to \$300	Up to 9 equal payments
\$300.01 to \$400	Up to 12 equal payments
\$400.01 to \$500	Up to 15 equal payments
Greater than \$500	Up to 20 equal payments, whenever possible

Defendants who indicate that they are unable to satisfy either of the above but still desire a time payment plan must complete the [Financial Questionnaire to Establish Indigency](#), if they have not already done so. This, along with a discussion with the defendant, where necessary, will provide the municipal court judge with adequate information to set an appropriate time payment plan that takes into careful consideration the defendant's ability to pay. There are no restrictions as to the length of time for payment or the minimum dollar amount of monthly payments.

For all time payment plans, efforts should be made to place defendants on a balanced payment plan that can be satisfied with minimal court involvement. Judges should remain guided by the maxim to provide payment plans that are reasonable and achievable under the circumstances presented by the defendant, particularly when working with indigent defendants. This must be balanced with courts giving due consideration to establishing a payment plan that ensures satisfaction of an outstanding legal financial obligation while also minimizing defendant involvement with the court. Unnecessarily extending time payments may only set the defendant up to default. Courts should work to strike a careful balance.

Finally, defendants should always be advised that in the event they become unable to satisfy their time payment plan, they should immediately contact the court. Judges should stress with the defendant that the court's role is to work with defendants when issues arise, not to punish those who default. Judges are further reminded that a failure to pay should not trigger issuance of a warrant. Defendants who fail to satisfy their financial obligation are to be scheduled for court, where the judge is to speak with the defendant about their obligation and, as appropriate, commence an ability to pay hearing.

## II. Payment Alternatives (Available After Default)

Payment alternatives are available after sentencing where a defendant defaults on a time payment plan and does not have the ability to pay. For purposes of these alternatives, a default occurs if a failure to pay notice was issued to the defendant. Please note that this definition has been modified from the prior standard promulgated by this office. Previously, a defendant was considered to be in default only if their driver's license was suspended for a failure to pay or if a warrant had been issued for defendant's arrest after a failure to pay.

The ability to pay determination should be informed by the court's review of the defendant's completed [Financial Questionnaire to Establish Indigency](#), and, where necessary, a discussion with the defendant in open court. Judges may use a previously completed questionnaire. However, if the defendant did not complete the questionnaire previously, or if the defendant has indicated that their financial status has changed, the defendant should be asked to complete a new form. It is always within the judge's discretion to determine whether a new questionnaire must be completed. The ability to pay analysis is captured in the [Bench Card – Lawful Collections of Legal Financial Obligations](#).

If a person defaults on any payment and the court finds that the defendant does not have the ability to pay, the court may:

- (1) reduce the penalty, suspend the penalty, or modify the installment plan;
- (2) order that credit be given against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default;
- (3) revoke any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment;

- (4) order the person to perform community service in lieu of payment of the penalty;
- (5) impose any other alternative permitted by law in lieu of payment of the penalty; or
- (6) order community service in lieu of incarceration or other modification of the sentence with the person's consent.

[N.J.S.A. 2B:12-23; N.J.S.A. 2B:12-23.1.]

These payment alternatives may not be used to reduce, revoke, or suspend payment of restitution or of the \$250 surcharge assessed for operating a vehicle in an unsafe manner under N.J.S.A. 39:4-97.2(f). N.J.S.A. 2B:12-23.1. Moreover, when engaging in a colloquy with a defendant regarding payment alternatives, judges should take into consideration the possibility that certain options, such as community service, may be more onerous than a monetary obligation.

In determining whether a payment alternative is appropriate, judges should consider the financial circumstances of the defendant, the defendant's practical ability to pay an assessed amount, and how to meet the interests of justice. The judge must place on the record the basis for modifying or vacating any financial penalties, and all changes of sentence must be made on the record in open court. R. 1:7-4(a), R. 7:9-4.

Finally, judges are strongly urged to use their statutory authority when appropriate to revoke all or a portion of a penalty if continuing payment of even a modest amount would cause a hardship to the defendant or the circumstances warranting the imposition of the sentence have changed, and it is in the interest of justice to do so.

### **III. Modification of Payment Plans and Payment Alternatives**

Courts should work liberally with defendants who provide justification to modify their time payment plan, seek a payment alternative, or seek to modify their payment alternative to ensure that they are reasonable, achievable, and meet the needs of the defendant and the interests of justice. Additionally, pursuant to guidance and approval from their municipal court judge, authorized municipal court administrators may modify time payment plans for the convenience of defendants without the need to schedule a court event.

Any questions regarding this directive should be directed to Assistant Director Steven A. Somogyi, Municipal Court Services, at [steven.somogyi@njcourts.gov](mailto:steven.somogyi@njcourts.gov) or at 609-815-2900, extension 54850.

cc: Chief Justice Stuart Rabner  
Municipal Court Presiding Judges  
Municipal Court Judges  
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