NOTICE TO THE BAR

COVID-19 – ADOPTION OF NEW RULE 3:4-7 ("PRE-INDICTMENT HEARING")

In its October 8, 2020 Ninth COVID-19 Omnibus Order, the Supreme Court provisionally adopted new Rule 3:4-7 ("Pre-Indictment Hearing") pending receipt and consideration of any comments. The Court, having considered the comments submitted, has determined to adopt the new rule as modified to require the State at the pre-indictment hearing to produce oral testimony from at least one witness with personal knowledge of the case; that witness may be a law enforcement officer involved in the investigation.

The Court's November 10, 2020 Order adopting new Rule 3:4-7 is attached. The new rule takes effect on January 15, 2021.

The new pre-indictment hearing is an interim measure during the COVID-19 pandemic. Accordingly, the Court will revisit the provisions of Rule 3:4-7 at a later date.

Questions on this notice or Rule 3:4-7 may be directed to the Criminal Practice Division at (609) 815-2900 x55300.

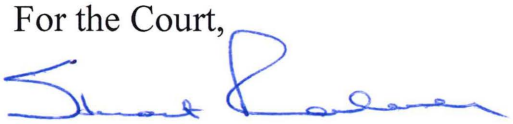
Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: November 10, 2020

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached new Rule 3:4-7 of the Rules Governing the Courts of the State of New Jersey is adopted to be effective January 15, 2021.

For the Court,



Chief Justice

Dated: November 10, 2020

3:4-7. Pre-Indictment Hearing

(a) Eligible Defendant. The court shall conduct a pre-indictment hearing for an eligible defendant, as defined in N.J.S.A. 2A:162-15, who has been charged with an indictable offense, has not been indicted, and is detained.

(b) Scheduling. The court shall schedule the hearing to occur before the expiration of the 90-day period for the return of the indictment pursuant to N.J.S.A. 2A:162-22, adjusted for excludable time, and not earlier than 15 calendar days before that expiration date.

(c) Discovery. Unless previously provided, the prosecutor shall provide to the defendant all available relevant material pursuant to R. 3:13-3(a) no later than three business days prior to the hearing date.

(d) Hearing and Finding. At the hearing, the State must establish probable cause to support the criminal charges. To meet that burden, the State must present oral testimony from at least one witness with personal knowledge of the case; that witness may be a law enforcement officer involved in the investigation. The defendant shall be afforded the right to cross-examine any witness who appears at the hearing, to testify, to present witnesses, and to present information by proffer or otherwise. Hearsay testimony is permissible. The hearing shall be held remotely unless the court finds good cause to conduct the hearing in-person.

(1) Probable Cause. If from the evidence presented by the prosecutor, the court finds probable cause to believe the offense has been committed and the

defendant committed it, the court may allocate an additional period of time, not to exceed 20 days, in which the return of an indictment shall occur.

(2) No Probable Cause. If from the evidence presented by the prosecutor, the court does not find probable cause, the court shall dismiss the complaint and discharge the defendant. A discharge does not preclude the prosecutor from filing a new complaint and prosecuting the defendant for the same offense.

(e) Return of Indictment. The hearing shall not be held if an indictment has been returned against the defendant.

Note: Adopted November 10, 2020 to be effective January 15, 2021.