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GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

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[Supplements Directive #01-10 as to Nicole's Law Matters; Supplements the May 3, 2002 Administrative Director Memo as to DORA Matters]

TO: **ASSIGNMENT JUDGES**
CRIMINAL DIVISION JUDGES
MUNICIPAL COURT JUDGES

FROM: **GLENN A. GRANT, J.A.D.**

DATE: **MARCH 17, 2011**

SUBJ: **PROCEDURES FOR THE TELEPHONIC ISSUANCE OF ORDERS PURSUANT TO THE DRUG OFFENDER RESTRAINING ACT (DORA) AND NICOLE'S LAW - PRETRIAL**

On March 8, 2011, the Supreme Court issued the attached order relaxing the Rules of Court so as to permit issuance of restraining orders, pursuant to N.J.S.A. 2C:35-5.7 (Drug Offender Restraining Order Act of 1999 or "DORA") and N.J.S.A. 2C:14-12 (Nicole's Law), by telephone, radio or other electronic communication upon sworn oral testimony of a law enforcement officer or prosecuting attorney not physically present. This memorandum promulgates the procedures for issuing such telephonic restraining orders for DORA and Nicole's Law matters. These procedures supplement the guidance provided previously by Directive #01-10, as to Nicole's Law, and the May 3, 2002 Administrative Director memorandum to Assignment Judges, as to DORA.

By way of background, DORA provides in pertinent part as follows:

> when a person is charged with a criminal offense on a warrant and the person is released from custody before trial on bail or personal recognizance, the court, upon application of a law enforcement officer or prosecuting attorney . . . **shall** as a condition of release issue an order prohibiting the person from entering any place defined by [N.J.S.A. 2C:35-5.6], including a buffer zone surrounding the place or modifications as provided by [N.J.S.A. 2C:35-5.7f]. [N.J.S.A. 2C:35-5.7 (emphasis added).]

With regard to Nicole's Law, the statute **permits** the court to issue an order, as a condition of bail, prohibiting a defendant charged with a sex offense from having any contact with a victim, including restraining the defendant from entering the victim's residence, place of employment, business or school and from harassing or stalking the victim or victim's relatives. Nicole's Law restraining orders are similar to domestic violence restraining orders, except that there need not be a domestic relationship between the defendant and the victim for a Nicole's Law restraining order to be entered if a defendant has been charged with certain sex offenses. The law defines "sex offense" by referencing Megan's Law, N.J.S.A. 2C:7-2. Directive #1-10, dated March 2, 2010, issued procedures for the implementation of Nicole's Law in the Criminal and Family Divisions of Superior Court and in the Municipal Courts.

The attached set of procedures covers the telephonic issuance of DORA and Nicole's Law restraining orders by Municipal Court and Superior Court judges. The procedures are applicable to Municipal Judges only at the time that bail is initially being set, while for Superior Court Judges the procedures are applicable up until the time of trial.

It should be emphasized that the procedures for the telephonic issuance of these restraining orders do not alter the current procedures in place that authorize the issuance of domestic violence restraining orders by electronic communication as governed under R. 5:7A(b), the issuance of orders pursuant to DORA in juvenile matters, or the issuance of orders pursuant to DORA or Nicole's Law upon conviction.

Additionally, the Supreme Court has referred this topic to the Municipal Court Practice Committee and the Criminal Practice Committee to draft proposed rule amendments consistent with the rule relaxation order and the procedures appended here.

Any questions or comments regarding these procedures or about either DORA or Nicole's Law may be directed to Assistant Director Joseph J. Barraco (Criminal Practice Division) at 609-292-4638 or Assistant Director Debra Jenkins (Municipal Court Services Division) at 609-984-8241.

G.A.G.

Attachments: (1) March 8, 2011 Supreme Court Order; (2) Procedures

cc: Chief Justice Stuart Rabner
Attorney General Paula T. Dow
Public Defender Yvonne Smith Segars
Criminal Division Judges
Family Division Judges
Municipal Court Judges
Stephen J. Taylor, Director, DCJ
County Prosecutors
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Criminal Division Managers
Family Division Managers
Municipal Division Managers
Assistant Criminal Division Managers
Municipal Court Administrators and Directors
Gurpreet M. Singh, Special Assistant
Joanne M. Dietrich, Chief, Family Practice
John J. Wieck, Chief, Criminal Practice
Carol A. Welsch, Acting Chief, Mun. Ct.
Melaney S. Payne, Criminal Practice

SUPREME COURT OF NEW JERSEY

It is ORDERED, pursuant to N.J. Const.. Art. VI, sec. 2, par. 3, that effective immediately and until further order, the Part III (Criminal) and Part VII (Municipal Court) Rules of the Rules Governing the Courts of the State of New Jersey are supplemented and relaxed so as to permit the issuance of restraining orders, pursuant to (a) N.J.S.A. 2C:35-5.7 (the "Drug Offender Restraining Order Act of 1999" or "DORA"), or (b) N.J.S.A. 2C:14-12 and 2C:44-8 ("Nicole's Law"), by telephone, radio, or other electronic communication upon the sworn oral testimony of a law enforcement officer or prosecuting attorney communicated electronically to the issuing judge, pursuant to procedures approved by the Supreme Court and promulgated by the Administrative Director of the Courts.

For the Court,

Chief Justice

Dated: March 8, 2011

TELEPHONIC ISSUANCE OF ORDERS PURSUANT TO DORA (N.J.S.A. 2C:35-5.7) AND NICOLE'S LAW (N.J.S.A. 2C:14-12) – PRETRIAL

The following procedures are to be followed by Municipal and Superior Court Judges for the telephonic issuance of restraining orders pursuant to N.J.S.A. 2C:35-5.7 (Drug Offender Restraining Order Act of 1999 or "DORA") and N.J.S.A. 2C:14-12 (Nicole's Law). The procedures are applicable for municipal court judges only at the time that bail is initially being set. For Superior Court Judges, the procedures are applicable any time until the start of trial.

Additionally, with specific regard to DORA matters, these procedures are applicable only for those cases where the offense is placed on a warrant. When a summons is issued, pursuant to N.J.S.A. 2C:35-5.7, the court shall consider an application for a DORA order at the defendant's first appearance.

The procedures will be implemented by the Superior Court and the Municipal Courts as follows:

1. A Municipal Court judge or a Superior Court judge may consider an application for a restraining order for matters involving N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law") upon sworn oral testimony of a law enforcement officer or prosecuting attorney who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication.

2. The judge shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise, the judge shall make adequate long-hand notes summarizing what is said.

3. Subsequent to taking the oath, the law enforcement officer or prosecuting attorney must identify himself or herself, specify the purpose of the request, and disclose the basis of the application.

4. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a restraining order.

5. A restraining order may issue if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the law enforcement officer or prosecuting attorney to appear personally and that there has been a showing of sufficient grounds for granting the application.

6. Upon issuance of the restraining order, the judge shall memorialize the specific terms of the order. That memorialization shall be either by means of a tape-recording device, stenographic machine, or by adequate longhand notes.

7. Thereafter, the judge shall direct the law enforcement officer or prosecuting attorney to memorialize the specific terms authorized by the judge on a form, or other appropriate paper, designated as the restraining order.

8. This order shall be deemed a restraining order for purposes of N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law").

9. The judge shall direct the law enforcement officer or prosecuting attorney to print the judge's name on the restraining order.

10. If the defendant is in the presence of the law enforcement officer or prosecuting attorney at the time of application, the defendant shall sign the restraining order and be provided a copy.

11. Within 48 hours the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person or via facsimile transmission, the signed restraining order. The judge shall verify the accuracy of these documents by affixing his or her signature to the restraining order.

12. Distribution of the telephonic restraining order and other administrative procedures followings its issuance shall be done consistent with the procedures set forth in Directive #1-10 as to Nicole's Law restraining orders the May 3, 2002 Administrative Director memorandum to Assignment Judges regarding DORA restraining orders.