

NOTICE TO THE BAR

PRIVATE CITIZEN COMPLAINTS IN THE MUNICIPAL COURTS – SUPREME COURT ADMINISTRATIVE DETERMINATIONS ON THE WORKING GROUP’S REPORT AND RECOMMENDATIONS; AMENDMENTS TO THE RULES OF COURT

Published with this notice are the Supreme Court’s administrative determinations on the report and recommendations of the Supreme Court Working Group on Private Citizen Complaints in the Municipal Courts. The Working Group’s December 2017 report, which contained eight recommendations, was published for comment by notice dated February 20, 2018. The Court has reviewed and acted on each of those eight recommendations, as set forth in the attached administrative determinations document.

Implementation of the Working Group’s recommendations as approved by the Supreme Court will be accomplished through amendments to the Rules of Court. Those amendments, adopted August 2, 2019 to be effective October 1, 2019, also are published with this notice.

Questions regarding this notice, the administrative determinations on the report and recommendations of the Working Group on Private Citizen Complaints in the Municipal Courts, or the rule amendments may be directed to Steven Somogyi, Assistant Director for Municipal Court Services, at Steven.Somogyi@njcourts.gov or 609-815-2900 ext. 54850.



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

Dated: August 2, 2019

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 3:2-1, 3:3-1, 7:2-1, 7:2-2, and 7:3-1 of the Rules Governing the Courts of the State of New Jersey are adopted to be effective October 1, 2019.

For the Court,

A handwritten signature in blue ink, appearing to read "S. R. G.," is written over a faint horizontal line.

Chief Justice

Dated: August 2, 2019

Rule 3:2-1. Contents of Complaint; Citizen Complaints for Indictable Offenses; Forwarding of Indictable Complaints to Prosecutor and Criminal Division Manager; Forwarding of Investigative Reports to Prosecutor

(a) Complaint.

(1) General. The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. All complaints except complaints for traffic offenses, as defined in R. 7:2-1 where made on Uniform Traffic Tickets and complaints for non-indictable offenses made on the Special Form of Complaint and Summons, shall be by certification or on oath before a judge or other person authorized by N.J.S.A. 2B:12-21 to take complaints. The clerk or deputy clerk, municipal court administrator or deputy court administrator shall accept for filing any complaint made by any person. Acceptance of the complaint does not mean that a finding of probable cause has been made in accordance with R. 3:3-1 or that the Complaint-Warrant (CDR-2) or Complaint-Summons (CDR-1) has been issued.

(2) Issuance of a Citizen Complaint Charging Indictable Offenses. A Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1) charging any indictable offense made by a private citizen may be issued only by a judge.

(3) County Prosecutor Review of Citizen Complaints Charging Indictable Offenses. Prior to a finding of probable cause and issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1) charging any indictable offense made by a private citizen against any individual, the Complaint-Warrant or Complaint-Summons shall be reviewed by a county prosecutor for approval or denial. Prior to approval, the prosecutor has the authority to modify the charge. If the prosecutor approves the citizen complaint charging an indictable offense, the prosecutor shall indicate this decision on the complaint and submit it to a judge who will

determine if probable cause exists and whether to issue a Complaint-Warrant or a Complaint-Summons in accordance with R. 3:3-1 in the Judiciary's computerized system used to generate complaints. If the prosecutor denies the citizen complaint charging an indictable offense, the prosecutor shall report the denial and the basis therefor to the Assignment Judge on the record or in writing and shall notify the citizen complainant and the defendant. The absence of approval or denial within the timeframe set forth in paragraph (a)(4) of this rule shall be deemed as not objecting to the citizen complaint. The citizen complaint charging an indictable offense shall be reviewed by the judge for a probable cause finding and whether to issue a Complaint-Warrant or Complaint-Summons pursuant to R. 3:3-1.

(4) Period of Time for County Prosecutor Review of Citizen Complaints Charging Indictable Offenses. The county prosecutor shall review citizen complaints charging indictable offenses within a period of no more than forty-five calendar days following receipt of the citizen complaint in the Judiciary's computerized system used to generate complaints. The prosecutor may apply to the court to extend the period of review upon a showing of good cause for additional periods of time no greater than ten calendar days each.

(b) ... no change

(c) ... no change

Note: Source--R.R. 3:2-1(a) (b); amended July 26, 1984 to be effective September 10, 1984; main caption amended, caption added, former text amended and redesignated paragraph 3:2-1(a), paragraph (b) adopted July 13, 1994 to be effective January 1, 1995; paragraph (a) amended January 5, 1998 to be effective February 1, 1998; caption amended, paragraph (b) amended, and new paragraph (c) adopted August 30, 2016 to be effective January 1, 2017; caption amended, paragraph (a) amended and redesignated as subparagraph (a)(1) with caption added, new subparagraphs (a)(2), (a)(3), and (a)(4) adopted August 2, 2019 to be effective October 1, 2019.

Rule 3:3-1. Issuance of a Complaint-Warrant (CDR-2) [an Arrest Warrant] or a Complaint-Summons (CDR-1)

(a) Issuance of a Complaint-Warrant (CDR-2) [an Arrest Warrant]. Except for citizen complaints for indictable offenses, which must be issued by a judge pursuant to R. 3:2-1(a)(2), an [An] arrest warrant may be issued on a complaint only if:

(1) a judicial officer finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the warrant; and

(2) a judicial officer finds that paragraphs (d), (e), or (f) of this rule allow a warrant rather than a summons to be issued.

(b) Issuance of a Complaint-Summons (CDR-1). Except for citizen complaints for indictable offenses, which must be issued by a judge pursuant to R. 3:2-1(a)(2), a [A] summons may be issued on a complaint only if:

(1) a judicial officer finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the summons; or

(2) the law enforcement officer who made the complaint, issues the summons.

(c) Offenses Where Issuance of a Complaint-Summons (CDR-1) is Presumed. Unless issuance of a complaint-warrant [an arrest warrant] is authorized pursuant to paragraph (d) of this rule, a complaint-summons rather than a complaint-warrant [an arrest warrant] shall be issued when a defendant is charged with an offense other than one set forth in paragraphs (e) or (f) of this rule.

(d) Grounds for Overcoming the Presumption of Issuance of a Complaint-Summons (CDR-1). Notwithstanding the presumption that a complaint-summons shall be issued when a

defendant is charged with an offense other than one set forth in paragraphs (e) or (f) of this rule, when a law enforcement officer prepares a complaint-warrant rather than a complaint-summons in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16, the judicial officer may issue a complaint-warrant [an arrest warrant] when the judicial officer finds pursuant to paragraph (a) of this rule that there is probable cause to believe that the defendant committed the offense, and has reason to believe, based on one or more of the following factors, that a complaint-warrant is needed to reasonably assure a defendant's appearance in court when required, to protect the safety of any other person or the community, or to assure that the defendant will not obstruct or attempt to obstruct the criminal justice process:

(1) the defendant has been served with a summons for any prior indictable offense and has failed to appear;

(2) there is reason to believe that the defendant is dangerous to self, or will pose a danger to the safety of any other person or the community if released on a summons;

(3) there are one or more outstanding warrants for the defendant;

(4) the defendant's identity or address is not known and a warrant is necessary to subject the defendant to the jurisdiction of the court;

(5) there is reason to believe that the defendant will obstruct or attempt to obstruct the criminal justice process if released on a summons;

(6) there is reason to believe that the defendant will not appear in response to a summons;
or

(7) there is reason to believe that the monitoring of pretrial release conditions by the pretrial services program established pursuant to N.J.S.A. 2A:162-25 is necessary to protect any victim, witness, other specified person, or the community.

When the application for a complaint-warrant [an arrest warrant] is based on reason to believe that the defendant will not appear in response to a summons, will pose a danger to the safety of any other person or the community, or will obstruct or attempt to obstruct the criminal justice process if released on a summons, the judicial officer shall consider the results of any available preliminary public safety assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and shall also consider, when such information is available, whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for escape, a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional relevant information provided by the law enforcement officer or prosecutor applying for the complaint-warrant [an arrest warrant].

(e) Offenses Where Issuance of a Complaint-Warrant (CDR-2) [an Arrest Warrant] Is Required. A complaint-warrant [An arrest warrant] shall be issued when a judicial officer finds pursuant to R. 3:3-1(a) that there is probable cause to believe that the defendant committed murder, aggravated manslaughter, manslaughter, aggravated sexual assault, sexual assault, robbery, carjacking, or escape, or attempted to commit any of the foregoing crimes, or where the defendant has been extradited from another state for the current charge.

(f) Offenses Where Issuance of a Complaint-Warrant (CDR-2) [an Arrest Warrant] is Presumed. Unless issuance of a complaint-summons rather than a complaint-warrant [an arrest warrant] is authorized pursuant to paragraph (g) of this rule, a complaint-warrant [an arrest warrant] shall be issued when a judicial officer finds pursuant to paragraph (a) of this rule that there is probable cause to believe that the defendant committed a violation of Chapter 35 of Title

2C that constitutes a first or second degree crime, a crime involving the possession or use of a firearm, or the following first or second degree crimes subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), vehicular homicide (N.J.S.A. 2C:11-5), aggravated assault (N.J.S.A. 2C:12-1(b)), disarming a law enforcement officer (N.J.S.A. 2C:12-11), kidnapping (N.J.S.A. 2C:13-1), aggravated arson (N.J.S.A. 2C:17-1(a)(1)), burglary (N.J.S.A. 2C:18-2), extortion (N.J.S.A. 2C:20-5), booby traps in manufacturing or distribution facilities (N.J.S.A. 2C:35-4.1(b)), strict liability for drug induced deaths (N.J.S.A. 2C:35-9), terrorism (N.J.S.A. 2C:38-2), producing or possessing chemical weapons, biological agents or nuclear or radiological devices (N.J.S.A. 2C:38-3), racketeering (N.J.S.A. 2C:41-2), firearms trafficking (N.J.S.A. 2C:39-9(i)), causing or permitting a child to engage in a prohibited sexual act knowing that the act may be reproduced or reconstructed in any manner, or be part of an exhibition or performance (N.J.S.A. 2C:24-4(b)(3)) or finds that there is probable cause to believe that the defendant attempted to commit any of the foregoing crimes.

(g) Grounds for Overcoming the Presumption of Issuance of a Complaint-Warrant (CDR-2) [an Arrest Warrant]. Notwithstanding the presumption that a complaint-warrant [an arrest warrant] shall be issued when a defendant is charged with an offense set forth in paragraph (f) of this rule: (1) a judicial officer may authorize issuance of a complaint-summons rather than a complaint-warrant [an arrest warrant] if the judicial officer finds that were the defendant to be released without imposing or monitoring any conditions authorized under N.J.S.A. 2A:162-17, there are reasonable assurances that the defendant will appear in court when required, the safety of any other person or the community will be protected, and the defendant will not obstruct or attempt to obstruct the criminal justice process. The judicial officer shall not make such finding without considering the results of a preliminary public safety assessment using a risk assessment

instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and without also considering whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for escape, a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional information provided by a law enforcement officer or the prosecutor relevant to the pretrial release decision; or (2) a law enforcement officer may issue a summons in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16.

(h) Finding of No Probable Cause. If a judicial officer finds that there is no probable cause to believe that an offense was committed or that the defendant committed it, the officer shall not issue a warrant or summons on the complaint. If the finding is made by an officer other than a judge, the finding shall be reviewed by a judge. If the judge finds no probable cause, the judge shall not issue [dismiss] the complaint.

(i) Additional Warrants or Summonses. ... no change

(j) Process Against Corporations. A complaint-summons (CDR-1) rather than a complaint-warrant (CDR-2) [an arrest warrant] shall issue if the defendant is a corporation. If a corporation fails to appear in response to a summons, the court shall proceed as if the corporation appeared and entered a plea of not guilty.

Note: Source -- R.R. 3:2-2(a) (1) (2) (3) and (4); paragraph (a) amended, new paragraph (b) adopted and former paragraphs (b) and (c) redesignated as (c) and (d) respectively July 21, 1980 to be effective September 8, 1980; paragraph (b) amended and paragraph (e) adopted July 16, 1981 to be effective September 14, 1981; paragraph (b) amended July 22, 1983 to be effective September 12, 1983; caption and paragraph (a) amended and paragraph (f) adopted July 26, 1984 to be effective September 10, 1984; paragraph (b) amended January 5, 1988 to be effective February 1, 1988; captions and text of paragraphs (a), (b), (c), (e) and (f) amended and paragraph (g) adopted July 13, 1994, to be effective January 1, 1995; text of paragraph (a) amended December 9, 1994, to be effective January 1, 1995; paragraphs (a), (c), (e), (f), and (g) deleted,

paragraph (b) amended and redesignated as paragraph (c), paragraph (d) amended and redesignated as paragraph (e), new paragraphs (a), (b), (d), and (f) adopted July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended, former paragraph (c) deleted, caption and text amended, paragraph (b) amended, former paragraph (c) deleted, new paragraphs (c), (d), (e), (f), and (g) adopted, and former paragraphs (d), (e) and (f) redesignated as (h), (i) and (j) August 30, 2016 to be effective January 1, 2017; caption amended, paragraphs (a), (b), (c), (d), (e), (f), and (g) caption and text amended, and paragraphs (h) and (j) amended August 2, 2019 to be effective October 1, 2019.

7:2-1. Contents of Complaint, Complaint-Warrant (CDR-2) and Summons

(a) Complaint: General. ... no change

(b) Acceptance of Complaint. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person. Acceptance of the complaint does not mean that a finding of probable cause has been made in accordance with R. 7:2-2 or that the Complaint-Warrant (CDR-2) or summons has been issued.

(c) Summons: General. ... no change

(d) Complaint-Warrant (CDR-2).

(1) Complaint-Warrant (CDR-2): General. ... no change

(2) Complaint-Warrant (CDR-2): Disorderly Persons Offenses. ... no change

(3) Complaint-Warrant (CDR-2) - Petty Disorderly Persons Offense or Any Other Matter[s] within the Jurisdiction of the Municipal Court. When a Complaint-Warrant (CDR-2) is issued and the most serious charge is a petty disorderly persons offense or any other [offense] matter within the jurisdiction of the Municipal Court, as set forth in N.J.S.A. 2B:12-17 and R. 7:1, the court shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail or release on personal recognizance, consistent with R. 7:4, required for defendant's release.

(e) Issuance of a Complaint-Warrant (CDR-2) When Law Enforcement Applicant is Not Physically Before a Judicial Officer. A judicial officer may issue a Complaint-Warrant (CDR-2) upon sworn oral testimony of a law enforcement applicant who is not physically present. Such sworn oral testimony may be communicated by the applicant to the judicial officer by telephone, radio, or other means of electronic communication.

The judicial officer shall administer the oath to the applicant. After taking the oath, the applicant must identify himself or herself and read verbatim the Complaint-Warrant (CDR-2) and any supplemental affidavit that establishes probable cause for the issuance of a Complaint-Warrant (CDR-2). If the facts necessary to establish probable cause are contained entirely on the Complaint-Warrant (CDR-2) and/or supplemental affidavit, the judicial officer need not make a contemporaneous written or electronic recordation of the facts in support of probable cause. If the law enforcement applicant provides additional sworn oral testimony in support of probable cause, the judicial officer shall contemporaneously record such sworn oral testimony by means of a recording device if available; otherwise, adequate notes summarizing the contents of the law enforcement applicant's testimony shall be made by the judicial officer. This sworn testimony shall be deemed to be an affidavit or a supplemental affidavit for the purposes of issuance of a Complaint-Warrant (CDR-2).

A Complaint-Warrant (CDR-2) may issue if the judicial officer finds that probable cause exists and that there is also justification for the issuance of a Complaint-Warrant (CDR-2) pursuant to the factors identified in Rule 7:2-2(c) [7:2-2(b)]. If a judicial officer does not find justification for a warrant under Rule 7:2-2(c) [7:2-2(b)], the judicial officer shall issue a summons.

If the judicial officer has determined that a warrant shall issue and has the ability to promptly access the Judiciary's computerized system used to generate complaints, the judicial officer shall electronically issue the Complaint-Warrant (CDR-2) in that computer system. If the judicial officer has determined that a warrant shall issue and does not have the ability to promptly access the Judiciary's computerized system used to generate complaints, the judicial

officer shall direct the applicant to complete the required certification and activate the complaint pursuant to procedures prescribed by the Administrative Director of the Courts.

Upon approval of a Complaint-Warrant (CDR-2), the judicial officer shall memorialize the date, time, defendant's name, complaint number, the basis for the probable cause determination, and any other specific terms of the authorization. That memorialization shall be either by means of a recording device or by adequate notes.

A judicial officer authorized for that court shall verify, as soon as practicable, any warrant authorized under this subsection and activated by law enforcement. Remand to the county jail for defendants charged with a disorderly persons offense and a pretrial release decision are not contingent upon completion of this verification.

Procedures authorizing issuance of restraining orders pursuant to 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") by electronic communications are governed by R. 7:4-1(d).

(f) ... no change

(g) ... no change

(h) ... no change

Note: Source – Paragraph (a): R. (1969) 7:2, 7:3-1, 3:2-1; paragraph (b): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-2; paragraph (c): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-3; paragraph (d): R. (1969) 7:6-1; paragraph (e): R. (1969) 4:70-3(a); paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption added, former paragraph (a) amended and redesignated as paragraph (a)(1), former paragraph (b) amended and redesignated as paragraph (a)(2), former paragraph (c) redesignated as paragraph (a)(3), former paragraph (d) redesignated as paragraph (b), former paragraph (e) caption and text amended and redesignated as paragraph (c), and former paragraph (f) redesignated as paragraph (d) July 12, 2002 to be effective September 3, 2002; caption for paragraph (a) deleted, former paragraphs (a)(1) and (a)(2) amended and redesignated as paragraphs (a) and (b), former paragraph (a)(3) redesignated as paragraph (c), new paragraph (d) adopted, former paragraph (b) amended and redesignated as paragraph (e), former paragraph (c) deleted, former paragraph (d) amended and redesignated as paragraph (f), and new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, new paragraph (b) adopted, former paragraphs (b), (c), (d), and (e) amended and

redesignated as paragraphs (c), (d), (e), and (f), former paragraphs (f) and (g) redesignated as paragraphs (g) and (h) July 16, 2009 to be effective September 1, 2009; paragraph (e) caption and text amended July 9, 2013 to be effective September 1, 2013; caption amended, and paragraphs (d) and (e) caption and text amended August 30, 2016 to be effective January 1, 2017; paragraph (d) reallocated as paragraphs (d)(1) and (d)(2), new paragraph (d)(3) added, new paragraph (d) caption added, and paragraph (e) amended November 14, 2016 to be effective January 1, 2017; paragraph (b) amended, subparagraph (d)(3) caption and text amended, and (e) amended August 2, 2019 to be effective October 1, 2019.

7:2-2. Issuance of Complaint-Warrant (CDR-2) or Summons

(a) Probable Cause.

(1) Finding of Probable Cause. A finding of probable cause by a judicial officer that an offense was committed and that the defendant committed it must be made before issuance of a Complaint-Warrant (CDR-2) or a summons except as provided in paragraphs (a)(3) and (a)(4). The Complaint-Warrant (CDR-2) or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed and the defendant committed it. The judicial officer's finding of probable cause shall be noted on the face of the Complaint-Warrant (CDR-2) or summons and shall be confirmed by the judicial officer's signature issuing the Complaint-Warrant (CDR-2) or summons.

(2) Finding of No Probable Cause. If the municipal court administrator or deputy court administrator finds that no probable cause exists to issue a Complaint-Warrant (CDR-2) or summons, or that the applicable statutory time limitation to issue the Complaint-Warrant (CDR-2) or summons has expired, that finding shall be reviewed by the judge. A judge finding no probable cause to believe that an offense occurred or that the statutory time limitation to issue a Complaint-Warrant (CDR-2) or a summons has expired shall not issue the Complaint-Warrant (CDR-2) or summons.

(3) Complaint by Law Enforcement Officer or Other Statutorily Authorized Person. A summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a judicial officer of probable cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.

(4) Complaint by Code Enforcement Officer. A summons on a complaint made by a Code Enforcement Officer charging any offense within the scope of the Code Enforcement Officer's authority and territorial jurisdiction may be issued without a finding by a judicial officer of probable cause for issuance. A Code Enforcement Officer may personally serve the summons on the defendant. Otherwise, service shall be in accordance with these rules. For purposes of this rule, a "Code Enforcement Officer" is a public employee who is responsible for enforcing the provisions of any state, county or municipal law, ordinance or regulation which the public employee is empowered to enforce.

[(a)] (b) Authorization for Process of Citizen Complaints.

(1) [Citizen Complaint] Issuance of a Citizen Complaint Charging Disorderly Persons Offense, Petty Disorderly Persons Offense, or Any Other Matter within the Jurisdiction of the Municipal Court. A Complaint-Warrant (CDR-2) or a summons charging [any offense] a disorderly persons offense, petty disorderly persons offense or any other matter within the jurisdiction of the municipal court, as set forth in N.J.S.A. 2B:12-17 and R. 7:1, made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed within the statutory time limitation. [The Complaint-Warrant (CDR-2) or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed, the defendant committed it, and a Complaint-Warrant (CDR-2) or summons can be issued. The judicial officer's finding of probable cause shall be noted on the face of the Complaint-Warrant (CDR-2) or summons and shall be confirmed by the judicial officer's signature issuing the Complaint-Warrant (CDR-2) or summons. If, however, the

municipal court administrator or deputy court administrator finds that no probable cause exists to issue a Complaint-Warrant (CDR-2) or summons, or that the applicable statutory time limitation to issue the Complaint-Warrant (CDR-2) or summons has expired, that finding shall be reviewed by the judge. A judge finding no probable cause to believe that an offense occurred or that the statutory time limitation to issue a Complaint-Warrant (CDR-2) or summons has expired shall dismiss the complaint.]

[(2) Complaint by Law Enforcement Officer or Other Statutorily Authorized Person. A summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a judicial officer of probable cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.]

[(3) Complaint by Code Enforcement Officer. A summons on a complaint made by a Code Enforcement Officer charging any offense within the scope of the Code Enforcement Officer's authority and territorial jurisdiction may be issued without a finding by a judicial officer of probable cause for issuance. A Code Enforcement Officer may personally serve the summons on the defendant. Otherwise, service shall be in accordance with these rules. For purposes of this rule, a "Code Enforcement Officer" is a public employee who is responsible for enforcing the provisions of any state, county or municipal law, ordinance or regulation which the public employee is empowered to enforce.]

(2) County Prosecutor Review of Citizen Complaints Charging Disorderly Persons Offenses. Prior to a finding of probable cause and issuance of a Complaint-Warrant (CDR-2) or a summons charging a disorderly persons offense made by a private citizen against a candidate or nominee for public office or a person holding public office as defined in N.J.S.A. 19:1-1, the

Complaint-Warrant (CDR-2) or summons shall be reviewed by a county prosecutor for approval or denial. Prior to approval, the prosecutor has the authority to modify the charge. If the prosecutor approves the citizen complaint charging a disorderly persons offense, the prosecutor shall indicate this decision on the complaint and submit it to a judicial officer who will determine if probable cause exists and whether to issue a Complaint-Warrant (CDR-2) or summons in the Judiciary's computerized system used to generate complaints. If the prosecutor denies the citizen complaint charging a disorderly persons offense, the prosecutor shall report the denial and the basis therefor to the Assignment Judge on the record or in writing and shall notify the citizen complainant and the defendant. The absence of approval or denial within the timeframe set forth in R. 7:2-2(b)(6) shall be deemed as not objecting to the citizen complaint. The citizen complaint charging a disorderly persons offense shall be reviewed by the judicial officer for a probable cause finding.

(3) Issuance of a Citizen Complaint Charging Indictable Offenses. A Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1) charging any indictable offense made by a private citizen may be issued only by a judge.

(4) County Prosecutor Review of Citizen Complaints Charging Indictable Offenses. Prior to a finding of probable cause and issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1) charging any indictable offense made by a private citizen against any individual, the Complaint-Warrant (CDR-2) or Complaint-Summons (CDR-1) shall be reviewed by a county prosecutor for approval or denial. Prior to approval, the prosecutor has the authority to modify the charge. If the prosecutor approves the citizen complaint charging an indictable offense, the prosecutor shall indicate this decision on the complaint and submit it to a judge who will determine if probable cause exists and whether to issue a Complaint-Warrant (CDR-2) or a

Complaint-Summons (CDR-1) in the Judiciary's computerized system used to generate complaints. If the prosecutor denies the citizen complaint charging an indictable offense, the prosecutor shall report the denial and the basis therefor to the Assignment Judge on the record or in writing and shall notify the citizen complainant and the defendant. The absence of approval or denial within the timeframe set forth in R. 7:2-2(b)(6) shall be deemed as not objecting to the citizen complaint. The citizen complaint charging an indictable offense shall be reviewed by the judge for a probable cause finding.

(5) Probable Cause Findings – Citizen Complaints. The Complaint-Warrant (CDR-2) or summons charging: (i) a disorderly persons offense, petty disorderly persons offense or any other matter within the jurisdiction of the municipal court, as set forth in N.J.S.A. 2B:12-17 and R. 7:1, made by a private citizen may be issued by a judicial officer pursuant to (b)(1) of this rule, or (ii) any indictable offense made by a private citizen may be issued by a judge pursuant to (b)(3) of this rule, only if it appears from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed and the defendant committed it. The judicial officer's finding of probable cause shall be noted on the face of the Complaint-Warrant (CDR-2) or summons and shall be confirmed by the judicial officer's signature issuing the Complaint-Warrant (CDR-2) or summons.

(6) Period of Time for County Prosecutor Review of Citizen Complaints Charging Disorderly Persons and Indictable Offenses. The county prosecutor shall review citizen complaints pursuant to R. 7:2-2(b)(2), 7:2-2(b)(4), and R. 3:2-1(a)(2) within a period of no more than forty-five calendar days following receipt of the citizen complaint in the Judiciary's computerized system used to generate complaints. The prosecutor may apply to the court to

extend the period of review upon a showing of good cause for additional periods of time no greater than ten calendar days each.

[(b)] (c) Issuance of a Complaint-Warrant (CDR-2) or Summons

(1) Issuance of a summons. A summons may be issued on a complaint only if:

(i) a judge, authorized municipal court administrator or authorized deputy municipal court administrator (judicial officer) finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the summons; or

(ii) the law enforcement officer or code enforcement officer who made the complaint, issues the summons.

(2) Issuance of a Complaint-Warrant (CDR-2). A Complaint-Warrant (CDR-2) may be issued only if:

(i) a judicial officer finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the Complaint-Warrant (CDR-2); and

(ii) a judicial officer finds that subsection [(e),] (f) [, or (g)] of this rule allows a Complaint-Warrant (CDR-2) rather than a summons to be issued.

[(c)] (d) Indictable Offenses. Complaints involving indictable offenses are governed by the Part III Rules, which address mandatory and presumed warrants for certain indictable offenses in Rule 3:3-1(e), (f).

[(d)] (e) Offenses Where Issuance of a Summons is Presumed. A summons rather than a Complaint-Warrant (CDR-2) shall be issued unless issuance of a Complaint-Warrant (CDR-2) is authorized pursuant to paragraph (f) [subsection (e)] of this rule.

[(e)] (f) Grounds for Overcoming the Presumption of Issuance of [Complaint-] Summons.

Regarding a defendant charged on matters in which a summons is presumed, when a law enforcement officer does not issue a summons, but requests, in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16, the issuance of a Complaint-Warrant (CDR-2) [rather than issues a complaint-summons], the judicial officer may issue a Complaint-Warrant (CDR-2) when the judicial officer finds that there is probable cause to believe that the defendant committed the offense, and the judicial officer has reason to believe, based on one or more of the following factors, that a Complaint-Warrant (CDR-2) is needed to reasonably assure a defendant's appearance in court when required, to protect the safety of any other person or the community, or to assure that the defendant will not obstruct or attempt to obstruct the criminal justice process:

- (1) the defendant has been served with a summons for any prior indictable offense and has failed to appear;
- (2) there is reason to believe that the defendant is dangerous to self or will pose a danger to the safety of any other person or the community if released on a summons;
- (3) there is one or more outstanding warrants for the defendant;
- (4) the defendant's identity or address is not known and a warrant is necessary to subject the defendant to the jurisdiction of the court;
- (5) there is reason to believe that the defendant will obstruct or attempt to obstruct the criminal justice process if released on a summons;
- (6) there is reason to believe that the defendant will not appear in response to a summons;

(7) there is reason to believe that the monitoring of pretrial release conditions by the pretrial services program established pursuant to N.J.S.A. 2A:162-25 is necessary to protect any victim, witness, other specified person, or the community.

The judicial officer shall consider the results of any available preliminary public safety assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and shall also consider, when such information is available, whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional relevant information provided by the law enforcement officer or prosecutor applying for a Complaint-Warrant (CDR-2).

[(f)] (g) Charges Against Corporations, Partnerships, Unincorporated Associations. A summons rather than a Complaint-Warrant (CDR-2) shall issue if the defendant is a corporation, partnership, or unincorporated association.

[(g)] (h) Failure to Appear After Summons. If a defendant who has been served with a summons fails to appear on the return date, a bench warrant may issue pursuant to law and Rule 7:8-9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the entity had appeared and entered a plea of not guilty.

[(h)] (i) Additional Complaint-Warrants (CDR-2) or Summonses. More than one Complaint-Warrant (CDR-2) or summons may issue on the same complaint.

[(i)] (i) Identification Procedures. If a summons has been issued or a Complaint-Warrant (CDR-2) executed on a complaint charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1-15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue a Complaint-Warrant (CDR-2).

Note: Source - R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended, new paragraph (b)(5) added, and former paragraph (b)(5) redesignated as paragraph (b)(6) July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended, and paragraph (a)(2) caption and text amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended and new paragraph (a)(3) adopted July 16, 2009 to be effective September 1, 2009; caption amended, paragraph (a)(1) amended, former paragraph (b) deleted, new paragraphs (b), (c), (d), (e), (f) adopted, former paragraph (c) amended and redesignated as paragraph (g), former paragraph (d) caption and text amended and redesignated as paragraph (h), and former paragraph (e) amended and redesignated as paragraph (i) August 30, 2016 to be effective January 1, 2017; new paragraph (a) caption adopted, new subparagraphs (a)(1) and (a)(2) adopted, former paragraph (a) redesignated as paragraph (b) and caption amended, former subparagraph (a)(1) redesignated as subparagraph (b)(1) and caption and text amended, former subparagraphs (a)(2) and (a)(3) redesignated as subparagraphs (a)(3) and (a)(4), new subparagraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) adopted, former paragraph (b) redesignated as paragraph (c) and amended, former paragraph (c) redesignated as paragraph (d), former paragraphs (d) and (e) redesignated as paragraphs (e) and (f) and amended, former paragraphs (f), (g), (h), and (i) redesignated as paragraphs (g), (h), (i), and (j) August 2, 2019 to be effective October 1, 2019.

7:3-1. Procedure After Arrest

(a) First Appearance; Time; Defendants Not in Custody. ... no change

(b) First Appearance; Time; Defendants Committed to Jail. ... no change

(c) Custodial Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law enforcement officer making a custodial arrest without a Complaint-Warrant (CDR-2) shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a Complaint-Summons [complaint-summons] form (CDR-1 or Special Form of Complaint and Summons), unless the law enforcement officer determines that one or more of the factors in R. 7:2-2(f) [7:2-2(b)] applies. Upon such determination, the law enforcement officer may prepare a Complaint-Warrant (CDR-2) rather than a Complaint-Summons [complaint-summons].

(2) Probable Cause; Issuance of Process. If a Complaint-Warrant (CDR-2) is prepared, the law enforcement officer shall, without unnecessary delay, but in no event later than 12 hours after arrest, present the matter to a judge, or in the absence of a judge, to a municipal court administrator or deputy court administrator who has been granted authority to determine whether a Complaint-Warrant (CDR-2) or summons will issue. The judicial officer shall determine whether there is probable cause to believe that an offense was committed and that the defendant committed an offense. If probable cause is found, a summons or Complaint-Warrant (CDR-2) may issue. If the judicial officer determines that the defendant will appear in response to a summons, a summons shall be issued consistent with the standard prescribed by R. 7:2-2. If the judicial officer determines that a warrant should issue, consistent with the standards prescribed by R. 7:2-2 after the Complaint-Warrant (CDR-2) is issued, the defendant charged with a disorderly persons offense shall be remanded to the county jail pending a determination of

conditions of pretrial release. If the defendant is charged on a Complaint-Warrant (CDR-2) with a petty disorderly persons offense or any other [non-disorderly persons offense] matter within the jurisdiction of the municipal court, as set forth in N.J.S.A. 2B:12-17 and R. 7:1, bail shall be set without unnecessary delay, but in no event later than 12 hours after arrest. The finding of probable cause shall be noted on the face of the summons or Complaint-Warrant (CDR-2). If no probable cause is found, the judge shall not issue the summons or Complaint-Warrant (CDR-2) [no process shall issue and the complaint shall be dismissed by the judge].

(3) Summons. If a Complaint-Summons [complaint-summons] form (CDR-1 or Special Form of Complaint and Summons) has been prepared, or if a judicial officer has determined that a summons shall issue, the summons shall be served and the defendant shall be released after completion of post-arrest identification procedures required by law and pursuant to R. 7:2-2(j) [7:2-2(i)].

(d) Non-Custodial Arrest. A law enforcement officer charging any offense may personally serve a Complaint-Summons [complaint-summons] (Special Form of Complaint and Summons) at the scene of the arrest without taking the defendant into custody.

(e) Arrest Following a Bench Warrant. ... no change

Note: Source -- R. (1969) 7:2, 7:3-1, 3:4-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b)(1) and (b)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption amended, paragraphs (b)(1) and (b)(2) amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended, new paragraph (b) adopted, former paragraph (b) amended and redesignated as paragraph (c) , and text amended, former paragraph (c) redesignated as paragraph (d), and new paragraph (e) adopted August 30, 2016 to be effective January 1, 2017; paragraphs (b), (c)(2) and (c)(3) amended November 14, 2016 to be effective January 1, 2017; paragraph (b) amended July 29, 2019 to be effective September 1, 2019; subparagraphs (c)(1), (c)(2), and (c)(3) amended, and paragraph (d) amended August 2, 2019 to be effective October 1, 2019.

**Administrative Determinations by the Supreme Court
On the Recommendations of the Supreme Court Working Group on Private
Citizen Complaints in the Municipal Courts
(Issued August 2, 2019)**

This sets forth the Supreme Court's actions on the report and recommendations of the Working Group on Private Citizen Complaints in the Municipal Courts (Working Group). Chief Justice Stuart Rabner established the Working Group in 2017 and charged it to consider three issues:

- Should private citizen complaints continue to be accepted by the municipal courts?
- Should limitations be placed on the type of matters for which a private citizen complaint can be filed and/or against whom?
- Should some form of screening, either by law enforcement or some other form, be required prior to a judicial officer making a probable cause determination?

The Working Group, led by Hon. Philip S. Carchman, P.J.A.D., retired on recall, engaged in an in-depth review and on December 17, 2017 issued a final report including eight recommendations (five substantive and three clarifying/housekeeping).

The report and recommendations were published for public review and comment. After the close of the comment period, the Supreme Court reviewed each of the eight recommendations and the comments submitted in response to those recommendations and now makes the determinations set forth in this document. The determinations will be implemented through amendments to the Rules of Court, which are issued by the same notice as these determinations to be effective October 1, 2019.

Recommendation 1.

Every complaint made by any person should continue to be accepted for filing, however R. 7:2-1(b) and R. 3:2-1(a) should be amended to clarify that mere acceptance of the complaint for filing does not mean that a finding of probable cause has been made or that the Complaint-Warrant (CDR-2) or summons has been issued.

Administrative Determination: The Court approved this recommendation, which will be implemented through amendments to Rule 7:2-1(b) and Rule 3:2-1(a).

Recommendation 2.

R. 7:2-2(a)(1) should be amended to remove the reference to dismissing a complaint where a judge finds no probable cause or where the statutory time limitation to issue a Complaint-Warrant (CDR-2) or summons has expired. Instead, the judge should be directed to not issue the Complaint-Warrant (CDR-2) or summons. Where a no probable cause finding is made and a Complaint-Warrant or summons does not issue, the complaint should not be kept in a held status. In addition, duplicative rule language should be removed and an incorrect cross-reference should be corrected.

Administrative determination: The Court approved this recommendation, which will be implemented through amendments to Rule 7:2-2(a)(2) and Rule 3:3-1(h).

Recommendation 3.

New subparagraphs should be created at the beginning of R. 7:2-2 that clearly define probable cause. For purposes of clarity, the rule should be restructured so that probable cause is no longer buried in R. 7:2-2(a)(1). In addition, a cross-reference to the current exceptions to finding probable cause should be added.

Administrative Determination: The Court approved this recommendation, which will be implemented through amendments to Rule 7:2-2.

Recommendation 4.

R. 7:2-2 should be amended to provide that a judge or authorized municipal court administrator or deputy court administrator (judicial officer) may issue a Complaint-Warrant (CDR-2) or a summons charging a disorderly persons offense, petty disorderly persons offense or any other non-disorderly persons offense within the jurisdiction of the Municipal Court made by a private citizen. In addition, the rule should add a provision that only a judge may issue a CDR-2 or summons charging any indictable offense made by a private citizen.

Administrative Determination: The Court approved this recommendation, which will be implemented through amendments to Rule 7:2-2(b)(1) (as to the authority of judicial officers) and Rule 7:2-2(b)(3) and Rule 3:2-1(a)(2) (as to the limitation that a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1) charging any indictable offense made by a private citizen may be issued only by a judge). The cross-reference in Rule 7:2-1(e) will be amended to reflect the revisions to Rule 7:2-2, and Rule 3:2-1 also will be amended to conform to the Part 7 Rule changes.

Recommendation 5.

R. 7:2-2 should be amended to provide that prior to issuance, the Complaint-Warrant or summons must be reviewed by a county prosecutor on private citizen complaints charging disorderly persons offenses against a: (i) party official or public servant as defined in N.J.S.A. 2C:27-1(e) and (g); (ii) a candidate or nominee for public office as defined in N.J.S.A. 19:1-1; or (iii) a judicial nominee. The county prosecutor can approve (decide to move forward with the matter) or deny (decide to not pursue charges/prosecute matter). Prior to approval, the prosecutor has the authority to modify the charge.

Administrative Determination: Approved as modified. The Court determined that prior to issuance, the Complaint-Warrant or summons must be reviewed by a county prosecutor on private citizen complaints charging disorderly persons offenses against a candidate or nominee for, or person holding, public office as defined in N.J.S.A. 19:1-1. The county prosecutor can either approve (decide to move forward with the matter) or deny (decide to not pursue charges/prosecute matter). Prior to approval, the prosecutor has the authority to modify the charge. The Court revised the language presented by the Working Group to provide for a 45-day period of review for private citizen complaints charging disorderly persons offenses subject to prosecutorial review and to allow for extensions of up to ten days each on a showing of good cause. The rule amendments further provide that county prosecutor denials of citizen

complaints charging disorderly persons offenses shall be reported to the Assignment Judge. Notice of the denial shall be provided to the citizen complainant and the defendant.

Recommendation 6.

R. 7:2-2 should be amended to provide that prior to issuance, the Complaint-Warrant or summons must be reviewed by a county prosecutor on private citizen complaints charging any indictable offense against any individual. The county prosecutor can either approve (decide to move forward with the matter) or deny (decide not to move forward with the matter) the charge. Prior to approval, the prosecutor has the authority to modify the charge. Part III rules should mirror the Part VII rule amendments on indictables.

Administrative Determination: The Court approved this recommendation, which will be implemented through amendments to Rule 7:2-2 and to Rule 3:2-1. The Court revised the language presented by the Working Group to provide for a 45-day period of review for private citizen complaints charging indictable offenses and to allow for extensions of up to ten days each on a showing of good cause. The Court also approved additional language providing that the absence of county prosecutor approval or denial within the timeframe set forth in Rule 7:2-2(b)(6) and Rule 3:2-1(a)(4) shall be deemed as not objecting to the citizen complaint, which will move forward for judicial review for probable cause. The rule amendments further provide that county prosecutor denials of citizen complaints charging indictable offenses shall be reported to the Assignment Judge. Notice of the denial shall be provided to the citizen complainant and the defendant.

Recommendation 7.

R. 7:2-2 should be amended to clarify that a CDR-2 or summons charging any offense made by a private citizen may be issued if it appears from the complaint, affidavit, certification, citizen complaint information form, or testimony that there is probable cause. The finding of probable cause shall be noted on the face of the CDR-2 or summons and confirmed by the judicial officer's signature.

Administrative Determination: The Court approved this recommendation (as modified to remove the reference to the "citizen complaint information form" from the items considered by the judicial officer), which will be implemented by amendments to Rule 7:2-2.

Recommendation 8.

R. 7:3-1(c)(1) should be amended to correct a cross reference to R. 7:2-2. R. 7:3-1(c)(2) should also be amended to align with the amendment to R. 7:2-2(a)(1) (Recommendation 2) that removes the reference to dismissing the summons or Complaint-Warrant where there is no probable cause. Instead, the summons or Complaint-Warrant (CDR-2) shall not be issued.

Administrative Determination: The Court approved this recommendation as to the corrections of cross-references to Rule 7:2-2 and Rule 7:2-2(a)(1), with an added correction as to a cross-reference to Rule 7:2-2(j). This will be implemented through rule amendments.

The Court extends its appreciation to all of the members of the Working Group. The report and recommendations reflect the collaborative work by everyone involved.