

PRELIMINARY CASE MANAGEMENT ORDER

IN THE MATTER OF APPLICATIONS SEEKING RELIEF IN ADJUDICATED MATTERS ALLEGING THAT, KALMALKANT SHAH, FORENSIC SCIENTIST AT THE NEW JERSEY STATE POLICE OFFICE OF FORENSIC SCIENCES, NORTH REGIONAL LABORATORY (LITTLE FALLS) DRUG UNIT, FAILED TO APPROPRIATELY CONDUCT LABORATORY ANALYSES, PEER REVIEW, OR ADMINISTRATIVE REVIEW OF PURPORTED DRUG EVIDENCE

Pursuant to the Supreme Court Order dated April 25, 2016, the following case management procedures are established for the filing and hearing of all motions for relief alleging that Kalmalkant Shah, Forensic Scientist at the New Jersey State Police Office of Forensic Sciences, North Regional Laboratory (Little Falls) Drug Unit, failed to appropriately conduct laboratory analyses, peer review, or administrative review of purported drug evidence before Judge Edward A. Jerejian, Superior Court of New Jersey, Bergen County Courthouse, Hackensack, NJ.

It is on this 29th day of June, 2016

ORDERED THAT

- 1) For adjudicated matters, all motions for relief shall be filed with the local Municipal Court or Superior Court in the vicinage of origin. Such motions shall address allegations that Forensic Scientist Kalmalkant Shah failed to appropriately conduct laboratory analysis, peer review, or administrative review of purported drug evidence. For any other issues, raised a determination will be made by Judge Jerejian as to whether those other issues will be handled through centralized management or be referred to the local Municipal Court or Superior Court in the vicinage of origin.

Motions involving indictable matters disposed of in the Superior Court shall be filed electronically through the eCourts system. All other motions shall be filed by paper. Upon filing, the Municipal, Criminal, or Family Division Manager in the vicinage of origin, or his or her designee, shall immediately forward the motion to Judge Jerejian.

Pursuant to the April 25th Supreme Court Order, motions for relief in pending matters (i.e., a disposition has not yet been entered) should be handled in the local Municipal Court or Superior Court in the vicinage of origin and proceed in the normal course.

- 2) The notice of motion, together with a copy of supporting documents, shall be served by certified or registered mail, return receipt requested, upon the following:

For motions related to a matter that was disposed of in the Superior Court or Municipal Court, the filing party is to provide notice to:

- (a) Michael J. Williams
Assistant Attorney General
Division of Criminal Justice
P.O. Box 085
Trenton, NJ 08625
Phone: 609-984-6500

and

(b) the County Prosecutor in the county of origin; and

(c) if the disposition was made in the Municipal Court, the filing party must also copy the Municipal Prosecutor in the municipality of origin.

3) The moving party in an adjudicated matter shall include a notice of motion and the movant's certification setting forth the following information in support of the motion:

- a) that the case involved drug evidence;
- b) that the case involved or the party believes that the case involved Kalmalkant Shah, Forensic Scientist at the New Jersey State Police Office of Forensic Scientist, North Regional Laboratory (Little Falls) Drug Unit, including a copy of the lab certificate, if available;
- c) the date, docket number and content of the complaint, summons, indictment, accusation or other charging document;
- d) the status or disposition of the matter, including: (1) the date of the conviction, adjudication of delinquency, conditional dismissal, conditional discharge, pretrial intervention, or other adjudication; (2) any sentence that was imposed; (3) a copy of the judgment of conviction or court order; and (4) any fines, penalties, or costs that were imposed;
- e) the municipality and/or county of origin where the matter was filed;
- f) any pending or prior appellate proceedings, including a municipal appeal pursuant to Rule 3:23 brought from the conviction, conditional dismissal, conditional discharge, pretrial intervention or other adjudication, attaching a copy of any opinions;
- g) whether applicant was represented by counsel in any of the proceedings involving this matter, the name of counsel in each such proceeding, and stating whether counsel was in each instance retained or assigned;
- h) whether and where defendant is presently serving a term of imprisonment in state prison or county jail or if the defendant is presently serving a term of probation, parole, conditional dismissal, conditional discharge or pretrial intervention;
- i) the factual details of the case;
- j) a letter of notice from law enforcement or the County Prosecutor, if such notice was provided;
- k) proof of service upon the parties; and
- l) any written documentation the moving party will rely upon to support the application.

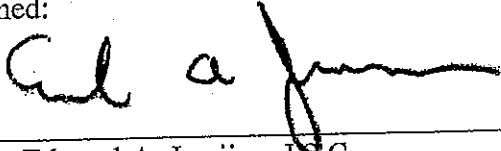
4) Upon receipt of the application, the Attorney General shall file with Judge Jerejian, and providing a copy to the parties, a written appearance which shall include an acknowledgment of service of the motion, pursuant to Rule 4:4.

- 5) Within thirty (30) days of filing that acknowledgment of receipt, the Attorney General shall review the motion, consult with defendant and, if the defendant is represented, with defense counsel, and file a written response with Judge Jerejian and providing a copy to the parties, in accordance with Paragraph 6 of this order, by indicating the following:
 - a) whether Kalmalkant Shah was the primary forensic scientist or conducted peer review or administrative review; and if the Attorney General concludes that Kalmalkant Shah was not the primary forensic scientist or did not conduct peer or administrative review, a copy of the laboratory certificate listing the actual laboratory technician shall be provided;
 - b) whether the case is presently pending or has been adjudicated;
 - c) whether the drug evidence in the case exists or has been destroyed; and
 - d) if the drug evidence exists, whether the evidence has been re-tested or will be re-tested.
- 6) The Attorney General's written response, filed within 30 days as indicated in paragraph 5, shall also indicate one the following:
 - a) If the parties agree that the underlying drug charges, convictions or adjudications should be dismissed, the Attorney General shall file a recommendation for stipulation of dismissal; for the court to order the refund of any fines, penalties and court costs that were imposed; and that the defendant may immediately file a petition for expungement in the local Superior Court, Criminal Division in the vicinage of origin, with such filing fees waived; or
 - b) If the drug evidence exists and the Attorney General determines to re-test the drug sample, the Attorney General shall so advise the court and the parties. The Attorney General shall have the evidence re-tested as expeditious as possible, but not more than 90 days from the date of the State's response, unless the State files a written request establishing good cause for an extension of time for purposes of re-testing. Once the evidence is re-tested, the Attorney General shall file a response indicating the re-testing results, attaching a copy of the laboratory certificate, and indicating the State's position as to the relief requested; or
 - c) If the Attorney General does not agree that the underlying drug charges, convictions or adjudications should be dismissed, or determines not to re-test the drug evidence, the Attorney General shall indicate the State's position as to the relief sought and reasons in support of that position.
- 7) Upon receipt of the State's written response, within 20 days, the defendant shall submit a written response setting forth whether the defendant agrees with the State's position as to the relief sought or whether the matter is contested. If the matter is contested, the defendant shall indicate the contested issues, and include a position as to the relief sought.
- 8) For contested matters, Judge Jerejian will make a determination as to whether the contested issues will be handled through centralized case management, schedule further proceedings, direct the parties to file briefs, or refer the matter to the local Municipal Court or Superior Court in the vicinage of origin for handling.
- 9) Either party may request a hearing. If a hearing is held, a defendant may waive his or her appearance pursuant to Rule 3:16.

10) If a co-defendant is joining in the application for relief, notice of joinder and a statement that the co-defendant is relying upon the statement of facts previously filed shall be filed within 10 (ten) business days of the filing of the original motion, on notice to all parties. If the co-defendant is not relying on the previously filed statement of facts, co-counsel shall attach his/her own statement of facts pursuant to Paragraph 3, at the time the notice of joinder is filed.

11) This Order will be published on the judiciary's website at the following link: http://www.judiciary.state.nj.us/lab_case/index.html

Signed:

A handwritten signature in black ink, appearing to read "Ed A Jerejian", written over a horizontal line.

Hon. Edward A. Jerejian, J.S.C.

EDWARD A. JEREJIAN, J.S.C.