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County of Warren

February 1, 2016

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Comments on Pre/Post Indictment Rule Amendments

Dear Judge Grant:

On behalf of the Warren County Prosecutor's Office, I want to thank the members of the Criminal Practice Committee for all the hard work embodied in the Report on Implementing the Recommendations of the Joint Committee on Criminal Justice. In reference to the current recommendations regarding changes to the Pre/Post Indictment Rule Amendments, the Warren County Prosecutor's Office is concerned that the rules as proposed will have a disparate impact on rural communities like Warren County.

Warren County has only one criminal judge. In the last three years, Warren County has seen three different judges serve as the criminal judge. Our first concern is in regard to the timing of the implementation of the rules. We have been hearing that the rules will become effective March 1, 2016. While the time constraints in the proposed changes to the rules will positively impact the time in which new cases move through the criminal justice system, my office is concerned the time constraints will leave insufficient time and resources to address cases already in the system. Currently, Warren County has 15 cases pending trial include a murder case, an aggravated manslaughter case, two vehicular homicide cases, a case involving a 38 count indictment alleging aggravated sexual assault and physical abuse, and two cases of sexual assault. Some of these cases have already been scheduled for trial more than once. In addition, we have three murder cases that are post-indictment but the pre-trial conference has not yet occurred. Furthermore, we have many cases pending motions. Without an effective practical plan to address the backlog of cases in a county like Warren prior to changing the rules, truncating the time frames for new cases may cause a delay in the completion of older cases. Such an outcome would not be fair to the defendants, victims, and victim-survivors in those cases.

In reference to the changes to the rules, the main concern of my office is with Rule 3:9-1 – Post Indictment Procedure. The rule changes the time frame for the arraignment from no later than fifty (50) days after indictment to fourteen (14) days. While my office understands and supports the need to shorten the time frame between indictment and arraignment, the time frame proposed in the rule change is too short. For the new criminal justice system embodied in the Bail Reform Law to be

successful, each court date for a case needs to be meaningful. Fourteen days is not enough time. Such a date is only seven (7) days after discovery is due. The defense needs time to review the matter and meet with their client. The State also needs time to thoughtfully devise a plea bargain and consult with the victim. If the deadline is 14 days, the reality is that the parties will not have time to complete the work envisioned by the rule. The arraignment will become meaningless. In addition, what happens in a county like Warren with one criminal judge if the judge does not reach the case? Furthermore, historically, when the criminal judge is on vacation, our criminal court is closed other than for first appearances or bench warrants which a judge from another division handles. What happens if we do not have a criminal judge available that week? My office would suggest that time frame be changed to no later than 28 days. This time frame will allow for Criminal Case Management to schedule the arraignment on a date when the assigned assistance prosecutor and defense attorney, as well as the criminal judge, are all available. Furthermore, this time frame will hopefully give the parties time to confer as envisioned by the rule.

My office also objects to the limitations on status conferences in the rule. While two or three status conferences are all that the majority of cases will need, complex cases may require more status conferences and more time. My office trusts that the judge handling the case will understand the necessity for moving matters to conclusion and will not grant unnecessary status conferences. Therefore, we suggest that after the second status conference, all future status conference (without limitation) be allowed upon a finding of good cause on the record by the trial judge.

Finally, my office agrees with the dissent filed by Joseph J. Barraco, Esquire. There needs to be a point in the proceedings where both sides must be willing to resolve the matter or try the case. Stricter enforcement will result in fewer cases being placed on the trial list. A plea cut-off exception already exists when there is a good reason to allow a plea after the pre-trial conference. Changing the wording to “may” will have the effect of rendering the plea cut-off rule meaningless. The result will be cases resolving on the day of trial.

The Warren County Prosecutor’s Office would like to thank the Supreme Court and the committee in advance for consideration of these comments.

Respectfully submitted,



RICHARD T. BURKE
Warren County Prosecutor

cc: All County Prosecutors
Criminal Practice Committee