

# SUPERIOR COURT OF NEW JERSEY

SOMERSET, HUNTERDON AND WARREN COUNTIES  
VICINAGE 13

Hany A. Mawla  
Presiding Judge – Family Part



Somerset County Historic Court House  
20 North Bridge Street  
P.O. Box 3000  
Somerville, New Jersey 08876  
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February 1, 2016

Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts  
Attention: Comments on Pre/Post-Indictment Rule Amendments  
Richard J. Hughes Justice Complex  
P.O. Box 037  
Trenton, NJ 08625-0037

Re: Minority Concerns Feedback regarding the Proposed Part 3 Rules Changes

Dear Judge Grant:

The Supreme Court Committee on Minority Concerns (SCCMC) submits the enclosed commentary regarding the proposed pre- and post-indictment rules changes relating to the court-approved recommendations of the Joint Committee on Criminal Justice. The SCCMC recognizes the substantial task of aligning the rules with systems reforms and finds the proposed changes straightforward and comprehensive. As a result of its review of the proposed rules, the SCCMC has several observations to offer for the Court's consideration.

- 1. General Comment-Effective Date:** *Is there any unanticipated conflict or potential issue – legal/constitutional, administrative, or procedural – with the changed court rules taking effect prior to January 1, 2017?* The SCCMC is unclear about the effects of the proposal to enact the rules changes in advance of the January 1, 2017 effective date of the Bail Reform Law (L. 2014, c. 31). The commentary notes that the purpose of enacting the changes in 2016 is to provide for an adequate transition; however, the SCCMC questions whether some of these rules changes will in effect make the reforms effective prior to January 1, 2017 whereas all of the training presentations underscore that the systems reforms apply as of January 1, 2017. The SCCMC is aware that the forthcoming pilot sites will likely benefit from the enactment of rules changes in 2016 so that the pilots are undertaken within the context of rules that reflect the reforms. The SCCMC recognizes that as a consequence of the reform law there will be a period of time when the Courts are processing cases under two different legal frameworks/timelines and believes that the addition of enacting rules changes prior to the effective date of the new reforms may actually cause a greater burden to the Court. Therefore, the SCCMC suggests that, for clarity and equity, the rules changes be effective as of January 1, 2017 and operationalized in the pilot counties at the start of their respective pilots.

2. **General Comment-Speedy Trial Timelines:** In its initial commentary regarding the final report of the Joint Committee on Criminal Justice, the SCCMC expressed strong support for the enactment of speedy trial guarantees. With the specification of fixed timelines for persons who are detained and no timelines for persons released, the SCCMC notes concern that this “dual track” could give rise to constitutional challenges given the lack of speedy trial protections for persons who are released, which under the Bail Reform Law are expected to be the vast majority of defendants. The SCCMC is concerned that in order to meet the required timelines for defendants subject to speedy trial protections the cases of persons released may be extensively delayed.
3. **General Comment-First Appearance/Arraignment:** While it is outside the scope of the prospective rules, the SCCMC recommends that, since the first appearance/arraignment is the Court’s first interaction with the defendant, the Court also ascertain if there are:
  - any limited English proficiency/language access needs;
  - ADA needs; and
  - whether defendants who will be completing a 5A actually can produce in a timely manner the required identification and income verification documents, or if the Court will need to make a qualification determination in the interest of justice to provide counsel for the arraignment in the absence of the standard documentation.
4. **Rule 3:4-2:** Regarding the change from within 72 hours to within 48 hours for first appearances as of January 1, 2017, the SCCMC recommends that the Court additionally consider approving the rule change now with an effective date of January 1, 2017 so that an additional rules change is not needed prior to January 1, 2017.

Regarding **Rule 3:4-2(b)**, the SCCMC recommends that the phrase “...at a centralized location...” be changed to “...within the authority of a centralized processing entity” since as the SCCMC understands the location and format for first appearances may vary from county to county based on factors such as resources, staffing, and technology available at the respective county jails/correctional centers. Further, the SCCMC recommends that the last sentence clarify whether the Court must first ascertain whether the individual qualifies for the services of the Office of the Public Defender or if qualification is assumed for purposes of representation at the first appearance. The commentary suggests qualification is required, but the rule itself is not clear in this regard.

Regarding **Rule 3:4-2(f)(1)-(5)**, the SCCMC notes that in the two prior sections that enumerate points to be covered in the colloquy between the Court and the defendant, this section referencing waivers of first appearance by written statement and the form to be promulgated by the Administrative Director of the Courts that references to knowledge of PTI and Drug Courts are not specified and

in the view of the SCCMC should be, consistent with the discussions and recommendations of the Joint Committee on Criminal Justice. Further, the SCCMC emphasizes the need for the Court to ensure fully informed consent when transacting the forms submitted for waived appearances.

5. **Rule 3:4-6:** The SCCMC has no comment regarding this rule.
6. **Rule 3:6-2:** The SCCMC suggests that there be clarification as to whether the Discretionary Case Disposition Conference (DCDC) is limited to only one and only if needed, or whether in extenuating circumstances the Court may allow more than one DCDC.
7. **Rule 3:8-2:** The SCCMC has no comment regarding this rule.
8. **Rule 3:8-3:** The SCCMC recommends that the phrase “shall determine indigence” be changed to “shall determine if applicants meet the eligibility requirements to receive the services of the Office of the Public Defender.”
9. **Rule 3:9-1(a):** The SCCMC suggests that the phrase “... be electronically notified...” be changed to “... be notified electronically ...”

Regarding **Rule 3:9-1(d)**, the SCCMC recommends that the explanatory note regarding motions reserved for trial not being considered excludable time be incorporated into the language of the rule itself for clarity and consistency.

Regarding **Rule 3:9-1(f)**, the SCCMC recognizes that the Court declined to relax Rule 3:9-3, the plea cutoff rule. In its May 2014 feedback on the report and recommendations of the Joint Committee on Criminal Justice, the SCCMC noted the following, which the Committee offers here, to underscore its belief that ultimately the Court must retain the discretion to waive the plea cutoff rule where the interests of justice require it so long as it does not jeopardize the speedy trial provisions of the law:

The Committee on Minority Concerns agrees that Courts must have control over their calendars and judges must have discretion to manage their caseloads. To that end, the SCCMC supports an express minimum number of status conferences but not an express maximum. The Committee on Minority Concerns is currently of the view that the plea cutoff rule, when followed as a mandatory practice with limited opportunity to waive/override, is a valuable tool to move cases expeditiously and efficiently through the calendar. When exercised appropriately, the rule contributes to the realization of the ideal of speedy trial with minimal adverse impact on access to justice for criminal defendants or victims of crime. Adherence to the plea cutoff rule may also play a role in reducing/eliminating Brady violations. The Committee underscores the Court will need to monitor the application of the rule so that it is not so rigid as to interfere with the role of the defense bar and the rights of the accused but also so that it is not so lenient as to be

meaningless in contributing to the realization of the right to a speedy trial. Judges need to be able to exercise reasonable latitude, as they deem appropriate, to waive the plea cutoff rule.

10. **Rule 3:10-2:** The SCCMC has no comment regarding this rule.

11. **Rule 3:12-1:** The SCCMC has no comment regarding this rule.

12. **Rule 3:13-3:** The SCCMC has no comment regarding this rule.

The SCCMC continues to stand ready to assist the Court in its ongoing work to realize these important criminal justice systems reforms in order to provide a more fair and accessible system of pre-trial release to defendants and to ensure, as noted in the SCCMC's May 2014 comments, that "no unintended consequences affecting racial/ethnic minorities and the economically disadvantaged become embedded by replacing one type of systemic disparity with another." The SCCMC thanks the Court for the opportunity to provide this feedback and looks forward to the ongoing implementation of the criminal justice systems reforms.

Respectfully submitted,



Hany A. Mawla, P.J.F.P.

HM:sp  
Enclosure

cc: SCCMC Executive Board  
Steven D. Bonville, Chief of Staff  
Yolande P. Marlow, Minority Concerns Program Manager  
Lisa R. Burke, Minority Concerns Program Coordinator