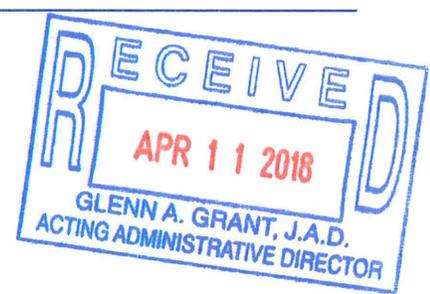


#002

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April 5, 2018



Via fax no. 609-376-3002 and first class mail

Honorable Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Hughes Justice Complex
Trenton, NJ 08625-0037

RE: Report of the Supreme Court Working
Group on Citizen Complaints in the
Municipal Court

Dear Judge Grant:

I have reviewed the report of the Working Group (“the Group”) on Citizen Complaints in the Municipal Court and am submitting these comments for the Court’s consideration.

These rule changes attempt to address a problem that does not exist while jeopardizing citizens’ faith in our criminal justice system.

Whether police misconduct or public corruption, the rights of citizen complainants to have independent judicial review to determine probable cause is essential. To allow the executive branch to close off access to the Courts before even a preliminary inquiry is anathema to our democratic process and a significant step backward for New Jersey.

The charge to the Group appears to arise out of a citizen’s complaint filed by William Brennan against former Governor Chris Christie. That initial impression is reinforced by the example given in the Executive Summary, more particularly, the concern about avoiding “seemingly disparate results such as where a Judge makes a probable cause finding and the prosecutor, exercising lawful authority, declines to prosecute”.

First, what has been described as “a disparate result” is not an infrequent occurrence, and hardly a “disparate result” in a criminal justice system where the standards of proof applicable to a finding of probable cause, as opposed to that necessary to obtain a criminal conviction, are significantly different. Prosecutors frequently downgrade, amend, and/or dismiss charges upon further review and investigation.

Therefore the “problem” referenced in the hypothetical is not a problem at all. Rather it is how the system is designed to work. A defendant is entitled to a finding of probable cause by a judge (or a grand jury acting as an arm of the judiciary) before a prosecution can proceed. This requirement is designed to protect defendants from baseless charges.

Defendants are further protected by prosecutorial review, prosecutors being charged with doing justice rather than seeking convictions. These protections are of constitutional magnitude.

Many would argue that the problem that the citizen complaint brought by William Brennan brought to light is the problem that exists when no prosecuting authority is willing to prosecute, due to an apparent or perceived conflict of interest (or even worse, corrupt influence).

In State v. Storm, 141 N.J. 245 (1995), which is referenced in the report, the New Jersey Supreme Court permitted the appointment of a private prosecutor in cases involving cross-complaints of private citizens. The importance of permitting such prosecutions was clearly stated in New Jersey v. Kinder, 701 F. Supp. 486 (1988), cited in footnote 2 of the report, stating:

“...absent its use, disorderly persons offenses would go unprosecuted, harming not only the state’s interest in enforcing its law, but also the victim’s (if not society’s) interest in obtaining satisfaction for wrongs committed.”
Id. at 488.

Nothing has changed to alter the importance of citizens’ right of access.

For all of these reasons this writer disagrees with the finding of the Group as to the nature of the problem.

Even more troubling, however, is the proposed solution, which is to immunize a certain group of individuals from public scrutiny, ironically enough, those who would be generally classified as “public officials”, including party officials or public servants, a candidate or nominee for public office, or a judicial nominee.

In sharing the Group’s thinking in the section entitled Synopsis of Working Group Discussions, the Group acknowledges that its focus was on the worthiness of private citizen complainants. There was in fact a discussion as to the various “categories” of citizen complainants. There was no comparable discussion as to those types of citizen complaints that might need to be brought directly to the Courts rather than to a prosecuting or law enforcement authority. The operating principle was that private citizen complainants should be more carefully scrutinized while public officials (i.e., those with far more power) should not.

At a time when hundreds of thousands of citizens are taking to the streets across the country on a regular basis to speak out and be heard on issues including police shootings, politicians and public officials beholden to special interests, etc., the recommendations of the Group appear to be tone deaf.

Honorable Glenn A. Grant, J.A.D.

April 4, 2018

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The New Jersey Supreme Court has a reputation for being liberal and expansive in supporting the rights of individuals, including both defendants charged with crimes and victims. That expansive view was adopted and strengthened by the passage of the Constitutional Amendment for Victims Rights (New Jersey Constitution, Article I, Paragraph 22).

Citizens who file their own complaints perceive themselves as victims. Many of them are. The percentage of citizen complaints, however, is very small. Obviously, for most victims, the system appears to be working.

Going back then to the initial hypothetical, there is a problem raised by the Brennan complaint that has not been addressed. However, the airing of a citizen's grievance at a probable cause hearing and a finding by a judge against a sitting Governor **did** serve to instill a level of confidence in the system while simultaneously illuminating a flaw. That was not a bad outcome.

Whatever the solution, the Group's recommendation misreads the problem and offers a "solution" that is dangerous to democracy by constricting the rights of citizen victims while further empowering the already powerful.

Very truly yours,



Sharon B. Ransavage, Esq.

SBR:dc