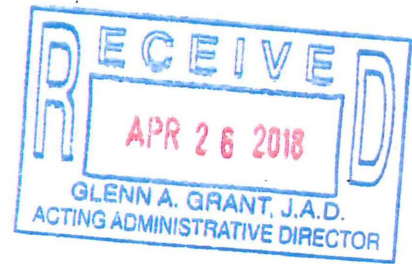


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April 23, 2018

(Comments.Mailbox@njcourts.gov and Regular Mail)

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

Re: Comments on Private Citizen Complaints in the Municipal Court Report dated December 7, 2017

Dear Acting Administrative Director of the Courts:

With all due respect, I believe that I am one of the catalysts for this Supreme Court Working Group Report. I also believe that I am one of the catalysts for Chief Justice Stuart Rabner's April 17, 2018 Memorandum to all Judges of the Municipal and Superior Court Comment: "It is the court's responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures."

I am a local gadfly. I am an anxious jealous guardian of our constitutional form of participatory democracy. I am a change agent. I am also an attorney duly authorized to practice law in this State. I am in-house counsel to three closely-held family businesses located in the City of Orange Township ("Orange"). I am and remain an officer of the court who took a professional oath to uphold the Law. Indeed, for more than eleven years, I have sought to increase local transparency, accountability and adherence to the Rule of Law.

I am no stranger to our Judicial Branch. On February 7, 2018, the Appellate Division (Judges Fuentes, Koblitz and Suter) heard oral argument in eight non-consolidated appeals relating to Orange. In my humble opinion, subsequent to this February 7, 2018 oral argument, the legal playing field shifted. The Appellate Division implicitly admonished our State Executive Branch to perform its constitutional, statutory and common law fiduciary duties and to intervene in the affairs of Orange-a financially distressed "rogue" urban municipality. See, RPM Development LLC v. Jeffrey S. Feld v. City of Orange Township, A-1333-15T3 (App. Div. March 26, 2018) ("RPM II"); Jeffrey S. Feld, Esq. v. The Local Finance Board, A-1013-15T4 (App. Div. March 29, 2018) ("LFB II"); The Four Felds, Inc. v. The City of Orange Township, A-0155-14T4 (App. Div. April 6, 2018) ("Feld XIII"). Also see, In re: Vicinage 13 of the New Jersey Superior Court, \_\_ N.J. Super. \_\_ (App. Div. argued Nov. 29, 2017 decided April 16, 2018) (Judge Alvarez, with Judges Nugent and Geiger, concluding that the Office of the Public Defender had standing and should have been afforded the opportunity to participate in the

declaratory judgment action: “[T]he Court has ‘consistently held that in cases of great public interest, any ‘slight additional private interest’ will be sufficient to afford standing’ . . . “In the overall we have given due weight to the interests of individual justice, along with the public interest, always bearing in mind that throughout our law we have been sweepingly rejecting procedural frustrations in favor of ‘just and expeditious determinations on the ultimate merits.’”); Aletta v. Bergen County Prosecutor’s Office, A-5347-15T2 (App. Div. argued Jan. 10, 2018 decided April 13, 2018) (Judges Koblitz and Manahan sternly reversing trial court and the State: “Given the nature of the cause of action, a dismissal with prejudice was a mistaken exercise of discretion. A lesser remedy was called for. . . . The State has provided no legal precedent for a dismissal with prejudice based on a scandalous complaint.”); LFN 2018-12 “Local Government Ethics Law-2018 Financial Disclosure Statements-Filing Information for Local Government Officers” (April 3, 2018) (“[P]ublic office and employment are a public trust. The annual filing requirement serves as an important reminder to each LGO that the citizens of New Jersey hold you to a high standard of ethical conduct.”); Editorial: “State Courts Under Attack,” The New York Times (April 9, 2018) (“But no matter how judges get on the bench, the important thing is to keep them as insulated as possible from outside political pressures. Instead, many lawmakers in recent years have been doing the opposite, treating judges like political pawns who are, or should be, more beholden to a partisan platform or public pressure than to the law. For those lawmakers to then complain about judges acting like legislators is rich.”); Editorial: “Judicial Independence is Threatened,” New Jersey Law Journal, 224 N.J.L.J. 1046 (April 16, 2018) (“Removing or refusing to elevate, judges because of the substance of their rulings reflects a fundamental misunderstanding of the role of the courts and constitutes a blow to the principal of an independent judiciary. We all need judges to decide cases without fear that unpopular decision will cost them their job.”).

In addition, subsequent to my omnibus and extraordinary February 7, 2018 oral argument, our “new” Attorney General appointed a task force headed by former State Supreme Court Justice Virginia Long to investigate and to examine the actions and inactions of his predecessors.

It is within this context that I respectfully submit this letter.

#### Feld XVII

On October 16, 2017, the local governing body (after another closed executive session of which no minutes have ever been adopted) walked on and adopted an omnibus resolution 333-2016 appointing the mayor’s brother Orange’s new police director without any public comment. Because the mayor and the local governing body arrogantly and brazenly refused to cure this patent error and omission at two subsequent public meetings, I decided not to file another civil prerogative writ action and civil rights act violation complaint against Orange but to try a new novel approach: a private citizens’ criminal complaint.

On November 21, 2016, I filed a private citizen N.J.S.A. 2C:30-2 official misconduct criminal complaint against the mayor and five councilmembers with the Orange municipal court. (“Feld XVII”). Due to an inherent conflict of interest and a \$200.00 indictable official misconduct threshold, Orange’s Municipal Court Administrator transmitted my private citizen

official misconduct criminal complaint to the Essex County Courthouse. (It is still unclear whether my complaint was transmitted to the Essex County Prosecutor's Office for review.) The Essex County Assignment Judge then assigned my matter to Presiding Municipal Judge Anthony J. Frasca who on December 15, 2016 advised me that a **Rule 3:3-2** probable cause hearing would be held on January 4, 2017.

In the interim, on December 20, 2016, the local governing body adopted a new policy and procedure regarding emergent "walk-on" municipal legislation. The local governing body provided notice at the beginning of the meeting and provided all remaining stakeholders an opportunity to be heard during the "New Business" portion of the meeting. The emergent "walk-on" legislation bore a WO prefix.

On January 4, 2017, Judge Frasca denied me "access to justice." Judge Frasca dismissed my private citizen criminal complaint for lack of probable cause. Prior to this probable cause hearing, no professional investigator or prosecutor contacted me. In addition, on January 4, 2017, no professional prosecutor appeared and participated at the probable cause hearing. On January 4, 2017, Judge Frasca denied defendants counsel (Attorney Aldo J. Russo) an opportunity to participate at the probable cause hearing.

On January 5, 2017, I ordered a hearing transcript. On January 5, 2017, I also advised Orange's new City Business Administrator and new City Attorney (a former chief municipal judge, a former State Commission of Investigation Commissioner and civil rights defense attorney) of my impression of the peculiar no probable cause dismissal hearing. I recommended that the local governing body cure its patent statutory errors and omissions by considering a new police director ratification resolution at its January 17, 2017 meeting.

In addition, on January 5, 2017, an editorial appeared in the Record-Transcript entitled: "Public notices belong in newspapers." This editorial supported my watchdog efforts.

The purpose of public notices in a democracy is to prevent official action from occurring in secret, and anything that hinders residents from accessing those notices injures our form of government, plain and simple.

#### **On January 11, 2017, federal authorities raided Orange City Hall.**

On January 17, 2017-the day after the Martin Luther King Jr. legal holiday, I filed a motion (on notice to the State and the Essex County Prosecutors Office) for reconsideration or, in the alternative, designation as a prosecuting attorney in order to perfect an appeal of the lack of probable cause dismissal. This motion was originally returnable February 17, 2017.

By letter dated January 18, 2017, Judge Frasca advised the Orange Municipal Court Administrator of his determination that "no probable cause existed to issue the complaints pursuant to Court Rule 3:3-1." Judge Frasca returned the file to the local municipal court.

On February 15, 2017, defendants (Attorney Russo) filed an objection out of time and without leave of court. Defendants asserted that the trial court lacked the equitable power to

reconsider and to vacate its January 4, 2017 lack of probable cause dismissal order. At the request of Orange's new Business Administrator and new City Attorney, I carried my motion two motion cycles to March 17, 2017.

On March 7, 2017, the local governing body approved on first reading Ordinance 14-2017 amending OAC 4-11 in order to provide additional citizens' comments on all "walk-on" municipal legislation.

On March 17, 2017, Judge Frasca designated me a prosecuting attorney for purposes of perfecting a no probable cause appeal. No State or Essex County Prosecutor appeared at this hearing.

On March 30, 2017, I filed my original lack of probable cause appeal. In my Notice of Appeal, I described two issues on appeal:

Whether the trial court erred as matter of law by dismissing for lack of probable cause a citizen's N.J.S.A. 2C:30-2 "official misconduct" criminal complaint relating to the "walk on" appointment of the mayor's brother as the City's police director after a closed executive session and without any public comments?

Whether the trial court improperly usurped the preliminary "in-take" accusatory investigatory powers and functions of the Executive Branch and the Grand Jury?

The Appellate Division never docketed this appeal. By letter dated April 17, 2017, the Appellate Division Clerk sua sponte and without contacting me returned my "original" Feld XVII No Probable Cause Dismissal Notice of Appeal pleadings to the Law Division. The Appellate Division Clerk deemed the "original" appeal to be of a municipal judgment with original Rule 3:23 appellate jurisdiction being in the Law Division.

On May 1, 2017, the Law Division returned the "original" Feld XVII Notice of Appeal pleadings to me without any written explanation. By letter dated May 1, 2017, I questioned the return of my appellate pleadings by the Law Division.

On May 9, 2017, I received a telephone call from the Law Division requesting the return of my "original" Feld XVII No Probable Cause Dismissal Appellate Pleadings. On May 9, 2017, I personally returned the "original" Feld XVII appellate pleadings to the Law Division. Later that day, I personally delivered copies of the January 4, 2017 and March 17, 2017 hearing transcripts to the Law Division.

By letter dated May 17, 2017, I inquired as to the status of the "original" Feld XVII No Probable Cause Dismissal Appeal. By letter dated May 26, 2017, the Law Division (Criminal Presiding Judge Ronald D. Wigler) scheduled an afternoon hearing for June 30, 2017 at 2:00 pm before Judge Ramona A. Santiago. In its letter, the Law Division cited the wrong controlling

court rule: Rule 3:23 “Appeals from Judgments of Conviction In Courts of Limited Criminal Jurisdiction.”

On June 30, 2017, the Superior Court (Judge Ramona A. Santiago) dismissed my purported municipal appeal for lack of standing. The court prepared and entered a dismissal order. The State Supreme Court Working Group met for the first time shortly thereafter.

On August 17, 2017, I filed my appeal of the July 5, 2017 Feld XVII lack of standing dismissal order. (A-5499-16T1). Due to the radioactive nature of my allegations, I encountered a series of procedural obstacles. I had to amend my Second Notice of Appeal Caption two times. Subsequent to the filing of the State’s appellate pleadings, the Appellate Division suddenly found my initial appellate pleadings to be deficient.

Today, after Justice Barry Albin’s footnote directive in *State v. Burkert*, \_\_ N.J. \_\_ (Dec. 19, 2017) and this Working Group Report, it is outrageous and unconscionable that no professional investigator and prosecutor has contacted me to discuss my official misconduct and nepotism allegations. Indeed, it is outrageous and unconscionable that our “new” Attorney General and the “new” Acting Essex County Prosecutor have rejected my Feld XVII appellate settlement proposals and not commenced an independent investigation of my official misconduct and nepotism allegations.

#### Recommendations

Accordingly, as an officer of the court, I respectfully submit the following recommendations.

1. In all private citizen official misconduct, obstruction of justice and destruction of official record complaints against public officials and employees, copies of all transmittal communications to professional prosecutors and the Superior Court shall be provided the private citizen complainant and the named defendants.
2. Within sixty days of transmittal, professional prosecutors shall notify the court, the private complainant, and defendants of their decision whether to move forward with the matter; to not pursue the matter or to modify the charge.
3. In the event professional prosecutors need additional time to complete their investigation, they shall file a motion for an additional sixty-day extension on notice to the private complainant and defendants.
4. In the event professional prosecutors shall fail to advise the court of their decision with respect to the matter and shall fail to file an extension motion, the court shall deem this omission as an affirmative decision to move forward with the matter.
5. In the event professional prosecutors decide to pursue the matter, the court and professional prosecutors shall provide notice of any probable cause hearing to the private citizen complainant and all named defendants.
6. All named defendants shall be provided a reasonable opportunity to appear and to participate at the probable cause hearing.
7. The probable cause hearing court shall delineate whether it is sitting as a sister municipal court or as a Superior Court.

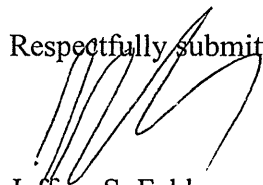
8. In the event professional prosecutors have determined to not pursue the matter or to modify the charge, professional prosecutors shall provide the private complainant and defendants with notice of the public hearing date at which time this decision shall be placed upon the record in open court.
9. In the event that the court or professional prosecutors must stay or hold the matter in abeyance due to a competing known federal or state investigation, this fact shall be disclosed to the private citizen complainant and all defendants in open court.

My objective here is to preserve the integrity of the judicial process. My objective here is to preserve equal access to Justice. My objective here is to remove any appearances of impropriety from the judicial process. My objective here is to remove any thumbs from the scales of justice. My objective here is to encourage local watchdog efforts. My objective here is to compel certain municipal regulators to perform their constitutional, statutory and common law duties and obligations. We must create a uniform system of transparency, accountability and adherence to the Rule of Law. *State v. Sencion*, \_\_ N.J. Super. \_\_ (App. Div. March 15, 2018) (“Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.”)

The disposition of Justice should not depend upon the geographical location of the tribunal. *State of New Jersey In the Interest of T.C.*, \_\_ N.J. Super. \_\_ (App. Div. April 4, 2018). Procedural checks and balances must be imposed upon professional investigators and prosecutors. A clean public record must be created. An intake chain of custody must be established. Matters must be investigated. Matters cannot linger for years. Initial intake decisions must be made and explained within a reasonable period of time. Chapter 3 and Chapter 7 jurisdiction must be clearly delineated. Judges must clearly state and identify whether he or she is sitting as a sister municipal court or as a Superior Court. This will enable all parties to know their appellate rights and to avoid any future sua sponte unilateral appellate jurisdictional decisions by appellate clerks.

Should you require any additional information or documentation, please free to contact me.

Respectfully submitted,



Jeffrey S. Feld

cc: Gurbir Grewal, Esq., State Attorney General  
Robert D. Laurino, Acting Essex County Prosecutor  
James Moss, Orange Municipal Court Administrator  
Chris Hartwyk, Orange Business Administrator  
Eric S. Pennington, Orange City Attorney  
Joyce L. Lanier, Orange City Clerk