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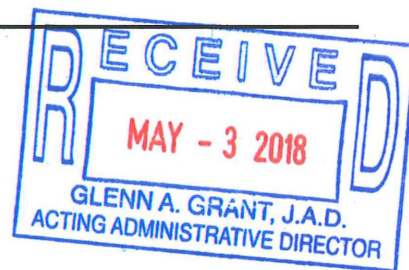
MIDDLESEX COUNTY COURTHOUSE
Municipal Division
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New Brunswick, NJ 08903-0964

HON. CHRISTINE M. HEITMANN
MUNICIPAL PRESIDING JUDGE

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April 27, 2018



Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Private Citizen Complaints
R.J. Hughes Justice Complex, P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Report of the Supreme Court Working Group on Private Citizens Complaints in the Municipal Courts

Dear Judge Grant:

On behalf of the Conference of Municipal Division Managers and the Municipal Presiding Judges, thank you for the opportunity to review and comment on the report and recommendations of the Supreme Court Working Group on Private Citizen Complaints in the municipal courts. The Conference agrees with most of the recommendations, which will serve to better clarify the process laid out in the Rules of Court. However, the Conference had several comments with respect to five of the proposed Rule amendments:

Recommendation 1 (Substantive Rule Amendment):

“Every complaint made by any person should continue to be accepted for filing, however R. 7:2-1(b) and R. 3:2-1(a) should be amended to clarify that mere acceptance of the complaint for filing does not mean that a finding of probable cause has been made or that the Complaint-Warrant (CDR-2) or summons has been issued.”

The report concentrates exclusively on the filing of eCDR-2 and eCDR-1 complaints by private citizens. The Conference respectfully asks that the Court consider expanding the Rule to include the special form of complaint and summons (“special form” R.7:2-1(g)(h)). The special

form is often used when private citizens file complaints charging disorderly/petty disorderly persons offenses, except for those involving domestic violence or a companion indictable matter.

The Conference also recommends the development and adoption of a brochure describing the process for a private citizen who wishes to file a complaint in the municipal court. An example is attached to this correspondence.

Recommendation 2 (Clarifying/Housekeeping Rule Amendments):

“R. 7:2-2(a)(1) should be amended to remove the reference to dismissing a complaint where a judge finds no probable cause or where the statutory time limitation to issue a Complaint-Warrant (CDR-2) or summons has expired. Instead, the judge should be directed to not issue the Complaint-Warrant (CDR-2) or summons. Where a no probable cause finding is made and a Complaint-Warrant or summons does not issue, the complaint should not be not kept in a held status. In addition, duplicative rule language should be removed and an incorrect cross-reference should be corrected.”

The Conference agrees with the proposed Clarifying/Housekeeping Rule Amendment and recommends that ACS be enhanced to include a code to identify complaints where probable cause was not found and no warrant or summons was issued. Complaints with no probable cause are subject to public access and the determination not to issue should be recorded in the system.

The Conference recommends that this section of the Rule also includes a reference to the special form of complaint.

Recommendation 4 (Substantive Rule Amendment):

“R. 7:2-2(a)(1) should be amended to provide that a judge or authorized municipal court administrator or deputy court administrator (judicial officer) may issue a Complaint-Warrant (CDR-2) or a summons charging a disorderly persons offense, petty disorderly persons offense or any other non-disorderly persons offense within the jurisdiction of the Municipal Court made by a private citizen. In addition, the rule should add a provision that a judge only may issue a CDR-2 or summons charging any indictable offense made by a private citizen.”

The Conference recommends against removing the ability to issue an indictable citizen complaint from authorized municipal court administrators and deputy court administrators. These individuals receive extensive, mandatory training before they are able to exercise their quasi-judicial functions. We are not aware of any data supporting a need for this change in the Rule. Also, this decision may prove to be onerous to some judges and inconvenient to the public. Many “routine” indictable citizen’s complaints, such as bad checks in an amount greater than \$200.00, will now have to wait until a judge (a part time judge, in most circumstances) is present to conduct the probable cause review.

Recommendation 5 (Substantive Rule Amendment):

“R. 7:2-2 should be amended to provide that prior to issuance, the Complaint-Warrant or summons must be reviewed by a county prosecutor on private citizen complaints charging disorderly persons offenses against a: (i) party official or public servant as defined in N.J.S.A. 2C:27-1(e) and (g); (ii) a candidate or nominee for public office as defined in N.J.S.A. 19:1-1; or (iii) a judicial nominee. The county prosecutor can either approve (decide to move forward with the matter), disapprove (decide to not pursue charges/prosecute matter), or modify the charge.’

The Conference has concerns that the public at large will view this review as collusion between the Judiciary and Executive branches to shield this class of defendants from prosecution. Indeed, there are many litigants who have expressed their belief that this collusion already exists. The very creation of a distinctive category of defendants by occupation/employer may have an adverse impact. The only distinction the Rules of Court have ever made with defendants has been with juveniles.

While the Conference of Municipal Division Managers welcomes County Prosecutor review of disorderly persons complaints against party officials, public servants, candidates, nominees for public office and judicial nominees, the Conference recommends that this review should occur after the probable cause determination, but before the summons/warrant determination. We also recommend that this review result in a recommendation from the prosecutor to the Judge or judicial officer, rather than an approval or disapproval. This alternative preserves positive public perception, while allowing for law enforcement input which will help safeguard against frivolous or inappropriate complaints.

As the Working Group’s report did not define time limits in which this review must occur, the Conference fears that citizen complainants may be left waiting for weeks or even months for prosecutor review, before their complaints are addressed. These discouraging factors may have a chilling effect on the filing of complaints against this class of defendants, reducing access to justice for the public.

The Conference has additional concerns with the proposed dismissal form, which will be used by the prosecutor to explain the reason(s) for the dismissal of the citizen’s complaint. Rather than simply checking a box that says “other” when the matter involving a public official is found to be unsubstantiated, the Conference recommends that a short narrative indicating the reason(s) offered, instead.

The Conference understands that public officials, generally, have greater exposure to litigation than most people. However, we believe that inserting prosecutorial review between the probable cause and summons/warrant determinations will ensure that the process remains fair and transparent to both public officials and the public at large.

Recommendation 6 (Substantive Rule Amendment):

“R. 7:2-2 should be amended to provide that prior to issuance, the Complaint-Warrant or summons must be reviewed by a county prosecutor on private citizen complaints charging any indictable offense against any individual. The county prosecutor can either approve (decide to move forward with the matter), disapprove (decide to not pursue charges/prosecute matter), or modify the charge. Part III rules should mirror the Part VII proposed rule amendments on indictables.”

Again, while the Conference of Municipal Division Managers supports the early prosecutorial review of indictable complaints, the Conference recommends that the prosecutor’s review of citizens’ complaints continues to be conducted after the probable cause determination, but before the summons/warrant decision. Further, the prosecutor’s review should result in a recommendation to the Judge or judicial officer, rather than a purely executive branch decision whether or not to halt the complaint by disapproving of it.

Allowing a complaint to be quashed by a prosecutor before review by a Judge or other neutral and detached judicial officer may give the public the appearance that the court is no longer the gatekeeper for the filing of complaints and that the Executive branch controls the process. This may threaten the public’s perception of equal justice and fairness. Allowing for prosecutor review between the probable cause determination and the summons/warrant decision will preserve a fair process, while allowing for law enforcement input which will help guard against the issuance of arrest warrants by vexatious and tactical citizen complaint filers.

If the Court were inclined to implement this recommendation, the Conference recommends defining the time limit in which this review must occur.

Thank you for your courtesies in considering these comments. We are grateful for this opportunity and look forward to assisting the municipal courts with the implementation of the Rule amendments.

Very truly yours,

A handwritten signature in cursive script, reading "Cheryl E. Williams".

Cheryl E. Williams
Municipal Division Manager Conference
Chair