

#008

April 26, 2018

28 Riverview Circle
Little Falls, NJ 07424

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

~ via email

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

Dear Director Grant,

I have reviewed the Report of the Supreme Court Working Group on Private Citizen Complaints in the Municipal Courts as well as Chief Justice Rabner's directive to "All Judges of the Municipal and Superior Courts":

It is the court's responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures

The proposed Rule Changes conflict with Chief Justice Rabner's Directive

Inasmuch as these proposed rule changes appear to be a direct reaction to my having signed criminal complaints against public officials (State v Christie, State v Samson) I hope that you will accept and consider the following comments during your deliberations.

Currently a Judicial finding of Probable Cause results in a Summons or Warrant being issued followed by a court appearance by the alleged perpetrator. Upon issuance of said Summons or Warrant, the accused becomes a defendant with the same rights and protections appertaining to every criminal defendant regardless of status, title or "outside pressures".

There is nothing inefficient, controversial or unfair about a Summons or Warrant being issued against a defendant after a Judge finds probable cause that the defendant committed a crime. The proposed Rule is controversial, however, in that it vests County Prosecutors with unfettered discretion when it comes to haling criminal perpetrators into court.

Recommendations 5 and 6 of the report are particularly offensive proposals in that they that do not serve the interest of justice in any way.

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.

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.

The proposed changes are:

- inefficient in that they add a layer to an already drawn out process. Despite existing hurdles these cases have a higher success rate than the majority of cases presented;
- controversial in that they leave citizen's with but one option when a prosecutor refuses to investigate or charge an offender - to rely on the common law and statutory rights of citizens to make physical arrests and take defendants before a Magistrate when they have probable cause to believe a person committed a crime; and
- unfair in that they carve out "super special" status for a subset of politically connected respondents. Currently probable cause renders all citizens of all walks of life a "defendant". Adopting these rules would place the Supreme court in the position of aiding and abetting the unequal application of law rather than insuring equal access and equal treatment.

A justice system that treats citizens differently based upon who they are is contrary to the democratic principles that make our country great. The report recommends a careful look at who brings a complaint and an even more careful look at who is accused before the facts are evaluated. A justice system that prejudges a matter based upon the status of the participants is a misnamed system. Ensuring that justice is carried out regardless of "outside pressure" is impossible when political appointees (prosecutors) control the right of citizens to access the judicial system.

The Working Group report did not cite a single instance where the existing system failed nor does it identify any actual deficiency to be remedied by the proposed changes. If anyone in this process is honest about why these changes are being proposed they will admit that the intention is to ensure that citizens cannot charge powerful people with crimes unless a politically appointed prosecutor allows it to go forward.

A mere one percent of all Municipal Court filings were citizen complaints. Those citizen complaints had a higher success rate than complaints generated by law enforcement.

Several Working Group members were surprised by the low number of indictable cases initiated by citizen complaints that were dismissed at the Superior Court—out of 10,063 in 2015 and 9,324 in 2016, 707 cases or 7% were dismissed in 2015 and 626 or 6.7% were dismissed in 2016. In other words, the net success rate of no dismissals was high.

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Given this fact, the recommendations are a solution in search of a problem.

After failing to identify a single instance of abuse (that would be curtailed by restricting access to the justice system) the report goes on to ignore the fact that significant safeguards are in place to ensure the criminal process is not abused. **Judges already screen complaints such that nothing happens unless and until probable cause is established. If probable cause is not found, then the complainant is open to civil suit for malicious prosecution.**

Judicial screening via probable cause hearings and civil damages under tort law have eliminated potential abuse of our criminal justice system by vexatious litigants while ensuring that citizens retain a role in their governance. Surely if any such abuse existed, the Working Group would have cited it in their report.

Citizen's rights must not be so easily stripped that a court rule change can nullify statutes and common law.

Model Jury Charge 3.20C provides:

NOTE TO JUDGE

A citizen has the right to arrest without a warrant where it appears that a crime had actually been committed, and that there was probable or reasonable cause to fairly suspect the person arrested to be guilty. *Brown v. State*, 62 N.J.L. 666 (E. & A. 1889), *affirmed* 175 U.S. 172; *Reuck v. McGregor*, 32 N.J.L. 70 (Sup. Ct. 1866).

To supplement the citizen's common law right of arrest, the Legislature has granted additional authority to the individual to make warrantless arrests where a disorderly persons offense has been committed in his/her presence.

N.J.S.A. 2A:169-3 provides:

Whenever an offense is committed in his/her presence any constable or police officer shall, and any other persons may, apprehend without warrant or process any disorderly person, and take him/her before any magistrate of the county where apprehended.

Under statutory and common law, a citizen may arrest anyone who commits a crime and bring that prisoner before a magistrate. Adopting these proposed changes is substantially certain to result in private citizens taking these newly created “super special” criminals into custody in

circumstances where a prosecutor deems said official immune from prosecution. Again, what problem is being addressed by these proposed rule changes?

If the Court is truly interested in seeing justice served it will instruct Courts that standing is not an element of probable cause when it comes to public officials who extort bribes in their official capacity and it will direct Superior Court Judges to appoint a Special prosecutor when the executive Branch is implicated in a crime.

The Working Group recommendations are designed to ensure that citizen activists are unable to charge powerful people in New Jersey. The Court must reject these recommendations and fortify the Rule that requires every Municipal Court to issue a Summons or Warrant where probable cause is found without injecting status as a predicate or succumbing to "outside pressure".

Very truly yours,

A handwritten signature in dark ink, appearing to read "William J. Brennan", with a stylized flourish at the end.

William J. Brennan