

#024

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June 1, 2018

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Temporary Sealing of Complaint-Warrants
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

VIA EMAIL: Comments.Mailbox@njcourts.gov

Re: COMMENTS TO PROPOSED R. 1:38-1 and R. 1:38-11
(Due June 1, 2018)

Dear Judge Grant:

At the onset, we would like to thank the judiciary for addressing the concerns expressed by law enforcement regarding the need to install a sealing mechanism for complaint-warrants in the eCDR system. We recognize that this was an undertaking that required technological enhancements, and we appreciate the efforts of all involved.

As for the text of the proposed rules, please accept these comments for consideration.

We believe that good cause is the appropriate standard, but note that a preponderance of evidence burden is not normally associated with good cause standards as found in other portions of the Court Rules. To avoid confusion, we would request that the evidentiary burden be struck from R. 1:38-11(a).

As for R. 1:38-11(e)(2), we observe that the enumerated list of potential scenarios for good cause are more narrow than those circumstances in which law enforcement might, in good faith, seek sealing of a complaint-warrant. These include situations where the investigation of a codefendant or accomplice might be compromised. There should also be a catch-all section as there may be fact patterns that might involve concerns of homeland security or other unique fact patterns that might be good cause.

We would ask that the following subsections be added to the rule, if enacted:

(D) The potential impact on the investigation or apprehension of other codefendant(s) or coconspirator(s).

(E) When sealing would be required by any other law, including, but not limited to, the New Jersey Wiretapping and Electronic Surveillance Control Act. N.J.S.A. 2A:156-1 to -37.

(F) Any other law enforcement interest which might rise to a level of good cause which would support an application to seal.

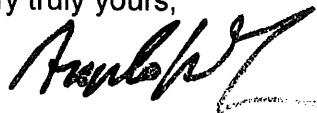
We also request that this Court consider that the current version of the proposed Court Rule is ambiguous as to whether additional 10-day time periods may be granted beyond a single extension. The need for law enforcement to continually make the State to make applications to extend the time frame where good cause has been shown will be a burden. Since a court has presumably found a basis to grant sealing, it would appear that Order can remain in effect, until it is unsealed by the Court. The State would need to make the application to unseal, but the good cause to grant in the first instance should not abate through time elapsing. In many instances, the subject of the complaint-warrant may not yet have been apprehended so it would be impossible to predict when apprehension might occur. It would be a burden to require serial applications every ten (10) days.

We would request that the proposed Court Rule be modified so that it reads:

NEW SECTION R. 1:38-11(e)(3):

An Order to Seal issued pursuant to this Court Rule shall remain in effect until further Order of the Court. Execution of a sealed complaint-warrant shall result in unsealing unless otherwise ordered. Nothing in this Rule shall be construed as to bar a judge from reviewing the status of a sealing Order upon notice to the appropriate prosecutorial agency.

Very truly yours,



ANGELO J. ONOFRI
Mercer County Prosecutor
Chair, County Prosecutors Association of
New Jersey Legislative Committee