

## MEMORANDUM

TO: Hon. Glenn A. Grant, J.A.D., Acting Administrative Director

FROM: Hon. James Newman, P.J.M.C., Chair, Conference of Municipal Presiding Judges

RE: Responses from the Conference of Municipal Presiding Judges to the proposed new Court Rule and amended Court Rule implementing the Extreme Risk Protective Order Act (N.J.S.A. 2C:58-20 et seq.)

DATE: May 7, 2019

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The Conference of Municipal Court Presiding Judges (the Conference) appreciates the invitation from Your Honor and the Supreme Court to provide feedback on the proposed rule (R. 3:5B) and rule amendment (R. 7:1) setting forth procedures to implement the Extreme Risk Protective Order Act, N.J.S.A. 2C:58-20 et seq., effective September 1, 2019. This memorandum provides some general, conceptual responses to the draft rule and draft rule amendment.

The procedures set forth in proposed R. 3:5B and the amendment to R. 7:1 mirror to a degree the procedures for temporary and final domestic violence restraining orders, which are set forth substantively in R. 5:7A and cross-referenced in R. 7:1. This similarity makes sense, as there are parallels between the statutes that govern both, and applications for both types of temporary orders are to be heard after regular business hours by municipal court judges.

Cognizant of those similarities, the Conference agrees with the structure proposed in relation to the Part III and Part VII rules - namely, to include a simple cross-reference in the Part VII scope rule (R. 7:1) referring to the Extreme Risk Protective Order (ERPO) Act and to indicate (with a cross-reference in R. 7:1) that the procedures to implement that law are found in R. 3:5B. This cross-reference parallels how R. 7:1 has addressed the Municipal Court's handling of temporary domestic violence restraining orders - by referencing the Prevention of Domestic Violence Act in R. 7:1 and cross-referencing R. 5:7A for substantive procedures in this area.

In terms of the proposed R. 3:5B, the Conference highlighted several general issues:

- Proposed R. 3:5B does not contain a clear standard for the issuance of a search warrant. The Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, provides that a judge may issue a warrant ordering the search for and seizure of any firearm or other weapon at any location where the judge has “reasonable cause” to believe the weapon is located. By contrast, Article I, paragraph 7 of the New Jersey Constitution and the Fourth Amendment of the United States Constitution, require “probable cause” to issue a warrant to search a home. Although the ERPO Act does not set forth an explicit standard for a search (N.J.S.A. 2C:58-26), this is an area that might benefit from clarification in the rule.
- A jurisdictional question arises if an application for a search warrant is requested of a municipal judge pursuant to the ERPO Act but the firearms are located in a municipality other than the one(s) in which the judge sits or is cross-assigned.
- There was also some concern expressed by Conference members that law enforcement may take an unduly broad reading of the search warrant section of the rule and that more specific and tailored language could better inform the parameters of such searches.
- Some Conference members noted that there would likely be functional overlap between situations involving domestic violence and situations giving rise to applications for ERPOs. Consequently, it was questioned whether there should be some reference/clarity on that overlap in the rule (or, alternatively in any complementary Administrative Directive that may issue later).
- The Conference members noted that R. 3:5B should perhaps clarify whether a person who seeks an ERPO may be a family member only or whether a non-family member can contact law enforcement to request that the law enforcement officer petition the court for a temporary ERPO.
- The Conference members wondered whether there was adequate guidance in the rule to ensure that the judge hearing the temporary ERPO petition had sufficient information to make a reasoned determination on the petition.
- The Conference members also believed the rule should specify that handwritten notes do not have to be taken if the testimony is on a recorded line.

The Conference has also been advised that the proposed R. 3:5B as set forth in the March 15, 2019 Notice to the Bar is currently under review and proposed revisions may be crafted by the Criminal Practice Committee. It is our hope that the preliminary conceptual comments from the Municipal Court perspective provided herein may provide some assistance. I respectfully request that the Conference also be permitted to review any proposed revisions to R. 3:5B that might be developed by the Criminal Practice Committee and to submit that feedback to Your Honor and the Court.

Thank you for the opportunity to contribute in this capacity.

c: Andrew Wubbenhorst, P.J.M.C., Vice-chair  
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