

**MEMORANDUM**

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

**FROM:** Hon. Robert T. Zane, III, P.J.M.C., Chair, Municipal Court Practice Committee

**RE:** Responses from the Municipal Court Practice Committee 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 13, 2019

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The Municipal Court Practice Committee (the Committee) appreciates the invitation from Your Honor and the Supreme Court to provide responses to the proposed rule (R. 3:5B, “Extreme Risk Protective Orders”) and rule amendment (R. 7:1, “Scope”) 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 conceptual responses to the draft rule and draft rule amendment.

The Committee endorsed the proposed amendment to the Part VII scope rule (R. 7:1) referring to the Extreme Risk Protective Order (ERPO) Act and indicating (with a cross-reference) that the procedures to implement that law are found in R. 3:5B. This process is how R. 7:1 addresses 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 detailed procedures in this area.

In terms of draft R. 3:5B, it should be noted that Municipal Court judges would only be handling temporary ERPO applications after regular hours (and not handling final ERPO hearings). Consequently, the Committee’s responses are primarily confined to the sections of draft R. 3:5B that pertain to temporary ERPOs. The Committee raised several issues:

- Rule 3:5B(b)(“Issuance of Temporary Extreme Risk Protection Order by Electronic Communication”) requires the judge to take longhand notes, even though the ERPO application is also to be recorded. This was deemed duplicative and unnecessary.
- Rule 3:5B(d)(4)(“Issuance of Search Warrant”) is drafted very broadly – this may lead to confusion in the search warrant process.
- The search warrant section of the draft rule does not reference the firearms purchaser identification card.
- What authority does a municipal court judge have to issue a search warrant for weapons located in a municipality other than one in which the judge sits or is cross-assigned?

- A petitioner or prosecutor may have difficulty obtaining information regarding a respondent's mental health or drug/alcohol or criminal history in order that it may be provided to a court if these records are not within the control of the prosecutor.
- Rule 3:5B(a)(5)("Evidence Supporting Issuance of Temporary Extreme Risk Protective Order") states that discovery must be provided "for the court's consideration." However, there is no mention of whether the respondent is also entitled to receive the same information.
- Which prosecutor (municipal or county) would be involved in an after-hours temporary ERPO application in Municipal Court? While R. 3:5B(a)(5) provides that a "county prosecutor or designee" be involved, there remains a question regarding who – in practice - will most likely be handling these matters.
- There is no timeframe set forth in the draft rule within which discovery must be provided to the court. This could lead to a number of adjournments until discovery is produced.
- Confidentiality should be explicitly referenced in the rule. It was noted that this issue is particularly important since the information involved could include an individual's mental health records, history of drug or alcohol abuse and/or recovery from this abuse, and other sensitive data.
- Rule 3:5B(a)(6)("Emergent Relief") provides that a temporary ERPO may be issued if the court determines that the respondent poses a "significant danger" to self or others. However, N.J.S.A. 2C:58-23 provides that a temporary ERPO should issue if the court finds good cause to believe that the respondent "poses an immediate and present danger of causing bodily injury to the respondent or others..." This discrepancy in standards should be corrected.
- Rule 3:5B(e)(5) provides that the Criminal Rules of Evidence do not apply. Some clarity could be provided as to what rules will govern a final ERPO hearing.
- The draft rule does not specify whether final ERPO hearings will be held in Criminal or Family Court.

Thank you for the opportunity to contribute in this capacity.

c: James Newman, P.J.M.C., Vice-chair  
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