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May 14, 2025

The Hon. Michael J. Blee, J.A.D
Acting Administrative Director of the Courts
Rules Comments
Via email: Comments.Mailbox@njcourts.gov

Re: Comments on the Supplemental Report of the 2023-2025 Criminal Practice Committee

I appreciate the New Jersey Supreme Court's invitation to provide comments on the recent Criminal Practice Committee Supplemental Report. The Office of the Public Defender (OPD) fully supports the recommendations of the Subcommittee on Access Issues for Incarcerated or Detained Clients. Our Public Defenders are prepared to work with our Criminal Justice Partners to discuss how to implement these recommendations in a way that will ensure the rights of accused persons while also being mindful of our collective responsibility to wisely utilize public resources.

With respect to the other two subcommittees, I understand the difficulties faced in standardizing an entire process across the board, which is an ambitious endeavor. However, OPD is very concerned about delays experienced in the exchange of electronic discovery, and the impact it continues to have on caseloads and processes throughout the state. The system is overburdened with aging matters that could be resolved with more timely exchange of discovery, and the right to a speedy trial is made meaningless by unnecessary delays.

It goes without saying that technology should be used to improve rather than hinder the practice of law, a concept of the utmost importance in the criminal justice system. The New Jersey Courts have been a leader in this area, as demonstrated by our eCourts electronic filing system and the systems that enabled and continue to support Criminal Justice Reform. There would be less confusion related to the usage of Axon and eDiscovery if the Judiciary required the inclusion of specific, readily available data to tag discovery being sent electronically.

More specifically, there are common data used statewide by law enforcement, prosecutors, defense counsel and the Courts that connect information from various systems in a cohesive manner. Efficiencies would gained and processes improved if the following data elements were included with a discovery packet:

- eCDR complaint number, Promis/Gavel case number, Indictment number, or FACTS docket number;
- Accused Person's name and date of birth;
- State Bureau of Identification (SBI) number (if applicable);
- Federal Bureau of Identification (FBI) number (if applicable);
- Originating Agency Identifier (ORI) number

If such data were required by the Judiciary, it could be input into Axon or eDiscovery so that these systems can better organize the information. In addition, Rule 3:13-3(b) already requires a list of the materials provided in discovery. In the paper world, discovery would be itemized by categories, but this is not being done consistently in Axon or eDiscovery. It is therefore recommended that, along with specific data elements, the Judiciary reinforce Rule 3:13-3(b) obligations by setting forth a list of standard "labels" that could include but are not limited to witness statement, Defendant's statement, body worn camera of [Officer name], surveillance video of [description], crime scene photos, autopsy photos, etc.

By labeling the contents in electronic discovery files in a standard manner when uploading into Axon or eDiscovery, prosecutors would be identifying discovery items as had been done prior to the introduction of these technologies. This would be compliant with Rule 3:13-3(b) and make the process more efficient for both prosecutors and defense counsel. Finally, labels align with how evidence may eventually be presented in court proceedings.

These relatively simple suggestions do not fully address the broader complexities the Committee attempted to tackle regarding the exchange of electronic discovery. But, to the extent the Committee identified users' confusion with Axon and eDiscovery, standardizing data tags and labeling discovery would result in quick and meaningful improvements overall.

If you have any questions regarding this commentary, please do not hesitate to contact me.

Respectfully Submitted,

/s/ Jennifer N. Sellitti

PUBLIC DEFENDER