

**REPORT OF THE
SUPREME COURT COMMITTEE ON
MUNICIPAL COURT PRACTICE**

2017 - 2019 TERM



JANUARY 25, 2019

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I. Introduction

The Municipal Court Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendments contained in this report. The Committee also reports on other issues reviewed in which it concluded no rule change was appropriate or in which the issue was continued until a later report. Where rule changes are proposed, deleted text is bracketed [**as such**], and added text is underlined **as such**. No change to a paragraph of the rule is indicated by ". . . **no change**."

II. Proposed Rule Amendments Recommended for Adoption

A. Proposed Technical Amendment to R. 7:2-2 (Issuance of Complaint-Warrant (CDR-2) or Summons)

The Committee proposes a technical amendment to R. 7:2-2(b). The rule sets forth when a Complaint-Warrant (CDR-2) or a summons may be issued. In subsection (b)(2), the various situations in which the municipal court may issue Complaint-Warrant are delineated. Currently, subsection (b)(2) references three subsections as bases for issuance of a warrant: (e)(Grounds for Overcoming the Presumption of Issuance of Complaint-Summons), (f)(Charges Against Corporations, Partnerships, Unincorporated Associations), and (g)(Failure to Appear After Summons). The correct reference should be only to subsection (e)(Grounds for Overcoming the Presumption of Issuance of Complaint-Summons). Therefore, the Committee recommends the following technical amendment.

Rule 7:2-2. Issuance of Complaint-Warrant (CDR-2) or Summons

(a) Authorization for Process . . . no change

(b) Issuance of a Complaint-Warrant (CDR-2) or Summons

(1) Issuance of a Summons. . . no change

(2) Issuance of a Warrant. A Complaint-Warrant (CDR-2) may be issued only if:

(i) a judicial officer finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the Complaint-Warrant (CDR-2); and

(ii) a judicial officer finds that subsection (e)[, (f), or (g)] of this rule allows a Complaint-Warrant (CDR-2) rather than a summons to be issued.

(c) Indictable Offenses. . . no change

(d) Offenses Where Issuance of a Summons is Presumed. . . no change

(e) Grounds for Overcoming the Presumption of Issuance of Complaint-Summons. . . no change

(f) Charges Against Corporations, Partnerships, Unincorporated Associations. . . no change

(g) Failure to Appear After Summons. . . no change

(h) Additional Complaint-Warrants (CDR-2) or Summonses. . . no change

(i) Identification Procedures. . . no change

Note: Source - R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended, new paragraph (b)(5) added, and former paragraph (b)(5) redesignated as paragraph (b)(6) July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended, and paragraph (a)(2) caption and text amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended and new paragraph (a)(3) adopted July 16, 2009 to be effective September 1, 2009; caption amended, paragraph (a)(1) amended, former paragraph (b) deleted, new paragraphs (b), (c), (d), (e), (f) adopted, former paragraph (c) amended and redesignated as paragraph (g), former paragraph (d) caption and text amended and redesignated as paragraph (h), and former paragraph (e) amended and redesignated as paragraph (i) August 30, 2016 to be effective January 1, 2017; subparagraph (b)(2)(ii) amended _____ to be effective _____.

B. Proposed Technical Amendments to R. 7:3-1 (Procedure After Arrest)

The Committee proposed several technical amendments to R. 7:3-1.

1. Reference to Pretrial Detention Motion and Timing of First Appearance

The Committee proposes an amendment to R. 7:3-1(b) (First Appearance; Time; Defendants Committed to Jail). Rule 7:3-1 sets forth the procedure following a defendant's arrest and subsection (b) addresses the timing of a defendant's first appearance. Currently subsection (b) of the rule provides that a defendant detained pretrial shall have a first appearance conducted within 48 hours. However, as per R. 3:4-2 (First Appearance After Filing a Complaint), defendants who are detained pretrial and who have had a motion of pretrial detention filed by the prosecutor prior to the first appearance will not have a first appearance until the pretrial detention hearing. Rule 3:4-2 provides: "the first appearance shall occur within three working days of the date of the filing of the motion and shall be before a Superior Court judge."

Therefore, the Committee proposes the addition to R. 7:3-1(b) of the following clause: "unless a motion for pretrial detention has been filed or granted". This would align the rule with R. 3:4-2.

2. Correction to Reference to R. 7:2-2

The Committee also proposes an amendment to R. 7:3-1(c)(1). Subsection (c) of the rule sets forth procedures for custodial arrest without warrant and preparation of a complaint and summons or warrant. This amendment removes an incorrect cross-reference to R. 7:2-2(b) and replaces it with the correct cross-reference to R. 7:2-2(e). Therefore, the Committee recommends the following technical amendments.

Rule 7:3-1. Procedure After Arrest

(a) First Appearance; Time; Defendants Not in Custody...no change

(b) First Appearance; Time; Defendants Committed to Jail. All defendants who are in custody shall have the first appearance conducted within 48 hours of their commitment to jail, unless a motion for pretrial detention has been filed or granted. For defendants incarcerated on an initial charge, on a Complaint-Warrant (CDR-2) for an indictable or disorderly persons offense, the first appearance shall be conducted at a centralized location and by a judge designated by the Chief Justice, as provided in Rule 3:26. For all other incarcerated defendants within the jurisdiction of the municipal court who require a first appearance, the first appearance shall be conducted by a judge authorized to set bail or other conditions of release; this includes those charged on an initial Complaint-Warrant (CDR-2) for a petty disorderly persons offense.

(c) Custodial Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law enforcement officer making a custodial arrest without a Complaint-Warrant (CDR-2) shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a complaint-summons form (CDR-1 or Special Form of Complaint and Summons), unless the law enforcement officer determines that one or more of the factors in R. 7:2-2[(b)](e) applies. Upon such determination, the law enforcement officer may prepare a Complaint-Warrant (CDR-2) rather than a complaint summons.

(2) Probable Cause; Issuance of Process...no change

(3) Summons...no change

(d) Non-Custodial Arrest...no change

(e) Arrest Following Bench Warrant...no change

Note: Source -- R. (1969) 7:2, 7:3-1, 3:4-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b)(1) and (b)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption amended, paragraphs (b)(1) and (b)(2) amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended, new paragraph (b) adopted, former paragraph (b) amended and redesignated as paragraph (c) , and text amended, former paragraph (c) redesignated as paragraph (d), and new paragraph (e) adopted August 30, 2016 to be effective January 1, 2017; paragraphs (b), (c)(2) and (c)(3) amended November 14, 2016 to be effective January 1, 2017; subparagraphs (b) and (c)(1) amended _____ to be effective _____.

C. Proposed Amendments to R. 7:7-11 (Use of Acting Judges Pursuant to Standing Assignment Judge Order)

1. Reference to Warrants

Rule 7:7-11 (Use of Acting Judges Pursuant to Standing Assignment Judge Order) sets forth actions taken by an acting municipal court judge who handles applications when a court is not in session, when the court’s regular judge is not available.¹ The Committee considered the proposal from the Municipal Court Services Division of the Administrative Office of the Courts (AOC) to remove the term “telephonic” from R. 7:7-11 as the term is unnecessarily limiting regarding actions taken by an acting judge. This rule currently provides:

Rule 7:7-11. Use of Acting Judges Pursuant to Standing Assignment Judge Order

- (a) As to any pretrial application made when court is not in session for the issuance of a **telephonic** arrest warrant, R. 7:2-1(e); for the issuance of a Temporary Restraining Order (TRO), R. 5:7A; for the issuance of a search warrant, R. 3:5-3(a) or R. 7:5-1(a); or for the setting of bail, R. 3:26-2(a) and R. 7:4-2(a), if no judge of that court is able to hear the application, an acting judge may be contacted pursuant to a standing order entered by the Assignment Judge that prescribes the sequence in which resort is made to any such acting judges.
- (b) An acting judge handling an application pursuant to paragraph (a) of this rule should make a record of the reason the application is not being handled by the court to which the application was first submitted. [emphasis added]

In terms of arrest warrants, when a court is not in session, an acting municipal court judge may issue more than merely a “telephonic warrant” as the rule currently provides. A judge may issue a Complaint-Warrant (CDR-2) (on application of law enforcement) which is not necessarily telephonic.

The Committee discussed how the 2014 Criminal Justice Reform legislation necessitated many Court Rule changes, which were adopted by the Court during the 2015 – 2017 rules cycle. One of these changes was the insertion of the terms “Complaint-Warrant

¹ General guidance on the procedures for back-up, acting municipal judges were set forth by the Supreme Court in State v. Broom-Smith, 201 N.J. 229 (2010).

(CDR-2)” (and at times, “bench warrant”) throughout the Part III and Part VII rules to replace the more generic terms “warrant” and “arrest warrant.” The term “Complaint-Warrant (CDR-2)” involves an actual charge against a defendant whereas “bench warrant” pertains to non-CDR-2 warrants issued by the court for compliance-type conduct such as failure to appear. This distinction was designed to eliminate confusion between warrants eligible for Criminal Justice Reform procedures and warrants not so eligible.

The Committee determined that for clarity and completeness, R. 7:7-11 should be amended to provide that an acting judge must respond to *any* warrant application if the regular judge is unavailable, rather than *only* telephonic warrant applications as the rule currently provides. The Committee agreed that the warrant reference in R. 7:7-11 should mirror other references throughout the Part VII rules with the clause “Complaint-Warrant (CDR-2)” replacing the generic “warrant.”

2. Technical Amendments – Cross-References to R. 7:2-1; R. 7:4-2

The Committee proposes technical amendments to R. 7:7-11 to modify several cross-references. The current reference to R. 7:2-1(e) pertains only to warrants issued when an applicant is not present before a judge. Since the recommendation above provides that R. 7:7-11 will refer to an acting judge issuing a Complaint-Warrant (CDR-2), the cross-reference should be corrected to the more general R. 7:2-1. Additionally, the current cross-reference to R. 7:4-2(a) should be corrected to R. 7:4-2(b), which sets forth the authority of a municipal judge to set bail.

3. Technical Amendment – Removal of Reference to R. 3:26-2(a)

The Committee proposes a technical amendment to R. 7:7-11 to remove the reference to R. 3:26-2(a) pertaining to bail on indictable offenses. In accordance with the procedures established pursuant to the Criminal Justice Reform legislation, an acting judge in municipal

court after hours would not be setting bail or other initial conditions of release on an indictable offense governed by the Part III Court Rules. A defendant charged with an indictable offense would have any pretrial release conditions (including bail) set at a Central Judicial Processing/Central First Appearance court event. Central Judicial Processing/Centralized First Appearance judges are appointed by the Chief Justice via order.

Therefore, the Committee recommends the following technical amendments.

Rule 7:7-11. Use of Acting Judges Pursuant to Standing Assignment Judge Order

(a) As to any pretrial application made when court is not in session for the issuance of a [telephonic arrest warrant] Complaint-Warrant (CDR-2), R. 7:2-1[(e)]; for the issuance of a Temporary Restraining Order (TRO), R. 5:7A; for the issuance of a search warrant, R. 3:5-3(a) or R. 7:5-1(a); or for the setting of bail, [R. 3:26-2(a) and] R. 7:4-2[(a)](b), if no judge of that court is able to hear the application, an acting judge may be contacted pursuant to a standing order entered by the Assignment Judge that prescribes the sequence in which resort is made to any such acting judges.

(b) ...no change

Note: Adopted July 21, 2011 to be effective September 1, 2011; subparagraph (a) amended _____ to be effective _____.

D. Proposed Technical Amendment to R. 7:8-9 (Procedures on Failure to Appear)

The Committee proposes a technical amendment to R. 7:8-9 (Procedures on Failure to Appear) in subsections (a)(1) and (a)(2). This amendment removes an incorrect cross-reference to R. 7:2-2(c) and replaces it with the correct cross-reference to R. 7:2-2(g). Subsection (g) pertains to failure to appear after a summons has been issued. Therefore, the Committee recommends the following technical amendments.

Rule 7:8-9. Procedures on Failure to Appear

(a) Warrant or Notice.

(1) Non-Parking Motor Vehicle Cases. If a defendant in any non-parking case before the court fails to appear or answer a complaint, the court may either issue a bench warrant for the defendant's arrest in accordance with R. 7:2-2(g)[(c)] or issue and mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. If a failure to appear notice is mailed to the defendant and the defendant fails to comply with its provisions, a bench warrant may be issued in accordance with R. 7:2-2(g)[(c)].

(2) Parking Cases. If a defendant in any parking case before the court fails to appear or answer a complaint, the court shall mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. Where a defendant has not appeared or otherwise responded to failure to appear notices associated with two or more pending parking tickets within the court's jurisdiction, the court may issue a bench warrant in accordance with R. 7:2-2(g)[(c)]. Such a bench warrant shall not issue when the pending tickets have been issued on the same day or otherwise within the same 24-hour period.

(b) Driving Privileges; Report to Motor Vehicle Commission. . . no change

(c) Unexecuted Bench Warrant. . . no change

(d) Parking Cases; Unserved Notice. . . no change

(e) Reopening. . . no change

(f) Dismissal of Parking Tickets. . . no change

Note: Source – Paragraphs (a), (b), (c), (d), (e): R. (1969) 7:6-3; paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) text deleted, and new paragraphs (a)(1) and (a)(2) adopted July 28, 2004 to be effective September 1, 2004; paragraph (b) caption amended, paragraphs (b)(1), (c), (d) and (f) amended July 16, 2009 to be effective September 1, 2009; paragraphs (a)(1), (a)(2), (b)(1), (b)(2) amended, paragraph (c) caption and text amended, and paragraphs (d) and (f) amended August 30, 2016 to be effective January 1, 2017; Paragraphs (a)(1) and (a)(2) amended _____ to be effective _____.

E. Removal of Pretrial Detention Option When Traffic Case Adjourned – R. 7:12-1 (Trial Date; Adjournment)

The Committee considered the proposal from the Municipal Court Services Division to amend the provisions of R. 7:12-1 (Trial Date; Adjournment) to remove a section allowing the municipal court to “detain the defendant in safe custody” if a hearing on a traffic offense is adjourned or require the defendant to post bail to be released. The rule currently reads as follows:

Rule 7:12-1. Trial Date; Adjournment

The date fixed for the trial of any traffic offense shall be not less than five days from the date of its commission unless the defendant, having been informed of the right to such trial date, waives it and the court in its discretion fixes an earlier date. If a hearing is adjourned, the court may detain the defendant in safe custody, unless the defendant makes a cash deposit or gives a recognizance in accordance with R. 7:4 in an amount not exceeding \$500, or qualifies and justifies in real estate security situated in this State in twice the amount fixed for the bail.

The Committee determined that detaining a defendant on a traffic offense when a hearing is adjourned does not comport with current practice. Judges do not routinely detain defendants when matters are postponed – rather, they are given new court dates. The Committee also concluded that such a procedure would provide no discernable benefit and does not comport with the objectives of Criminal Justice Reform -- to avoid detaining individuals pretrial unless necessary to protect the safety of the public or to ensure the defendant’s appearance. The members unanimously agreed to remove the final sentence of R. 7:12-1 to eliminate this concept from the rule.

The members also agreed that language should be added to the rule to provide that in the event of an adjournment, the defendant should be advised of the upcoming court date as well as the consequences for failure to appear. The Committee noted that while R. 7:8-3

(Adjournment) addresses procedures on this topic, R. 7:8-3 does not include a requirement that the court advise the defendant of potential consequences for failure to appear at the upcoming court date.²

Therefore, the Committee recommends the following amendments.

² Rule 7:8-3 (Adjournment)

On or before the first scheduled trial date, the court may adjourn the trial for not more than fourteen days, except that an adjournment for a longer period or additional adjournments may be granted if the court deems postponement of the trial to be reasonably necessary in the interest of justice. In contested matters, the court shall specify the new trial date in granting the adjournment and shall cause the complaining witness, all defendants, and all other known witnesses to be notified of the adjournment and of the new trial date.

Note: Source-R. (1969) 7:4-2(c). Adopted October 6, 1997 to be effective February 1, 1998

Rule 7:12-1. Trial Date; Adjournment

The date fixed for the trial of any traffic offense shall be not less than five days from the date of its commission unless the defendant, having been informed of the right to such trial date, waives it and the court in its discretion fixes an earlier date. [If a hearing is adjourned, the court may detain the defendant in safe custody, unless the defendant makes a cash deposit or gives a recognizance in accordance with R. 7:4 in an amount not exceeding \$500, or qualifies and justifies in real estate security situated in this State in twice the amount fixed for the bail.] If a hearing is adjourned, the court shall inform the defendant of the adjourned date and of the consequences of failure to appear on that adjourned date.

Note: Source-R.R. (1969) 7:6-4. Adopted October 6, 1997 to be effective February 1, 1998; amended _____ to be effective _____.

III. Rule Amendments Considered and Rejected

A. Opening Statement Videos – R. 7:14-1 (Opening Statement)

The Committee considered a suggestion to modify R. 7:14-1 (Opening Statement) to require that opening statement videos in multiple languages be played for court users prior to all municipal court sessions. It was suggested that video opening statements be played in three languages – Spanish, English, and Hindi.

Rule 7:14-1 currently provides:

(a) Required Opening Statement. The judge shall give an opening statement prior to the commencement of the court session concerning court procedures and rights of defendants. This statement shall not, however, be a substitute for the judge advising individual defendants of their rights prior to their respective hearings.

(b) Notice to Defendant on Guilty Plea. Before accepting a plea of guilty to a traffic offense, other than a parking offense, and as part of the opening statement, the court shall inform the defendant that a record of the conviction will be sent to the Director of the Division of Motor Vehicles of this State or the Commissioner of Motor Vehicles of the state issuing defendant's license to drive, to become a part of the defendant's driving record.

(c) Notification of Right to Appeal. Regardless of whether the defendant pleads guilty or is found guilty after a trial, the court, as part of the opening statement, shall advise each defendant of the right to appeal and, if indigent, of the right to appeal as an indigent.

The AOC created opening statement videos for the municipal courts in 2012 – one for criminal court sessions, one for traffic court sessions, and one for court sessions involving a combination of criminal/traffic. These videos were made available online on the Judiciary's public YouTube channel. In August 2017, the model opening statement (combined criminal/traffic version) was revised to include new language regarding the availability of time payments and sentencing alternatives and also translated into the five non-English languages most commonly requested by New Jersey Judiciary court users — Spanish, Haitian Creole, Korean, Polish and Portuguese. Videos of those opening statements in the six languages are currently available on the Judiciary's public internet page and laminated copies of the opening

statements in six languages were also distributed to municipal courts for use by defendants during court sessions.

Members discussed the fact that when the opening statement videos were first released, municipal court judges were repeatedly instructed that the videos may supplement but should in no way replace an in-person opening statement – this guidance is widely known in the municipal court system. Several members noted that often courts will play a video in the lobby of the courtroom to provide information to those waiting but that other courts do not have the technical capabilities or facilities to accomplish this.

Several Committee members observed that a Court Rule requiring the provision of videos in Spanish, English, and Hindi (as suggested) might not be appropriate for all courts, since in some communities other languages are more frequently used.

However, other members strongly stressed the importance of ensuring that non-English speakers receive the information provided in the opening statement and favored including in the Court Rules a requirement that municipal courts utilize video opening statements in other languages.

It was noted that a defendant in municipal court is advised about his/her rights and sentencing exposure from the judge in the one-on-one interaction during the individual's first appearance – not only from the information provided in the opening statement at the outset of the session.

After a lengthy discussion, the members voted against the proposed addition of language to R. 7:14-1 regarding the use of opening statement videos.

B. Suggestions Regarding Fines and Collections in Municipal Court

The Committee considered several concerns submitted by an attorney regarding the municipal courts' responses to defendants who have failed to pay their court-imposed financial obligations. The attorney provided various suggestions for changes to the municipal court system:

- The process of judges assessing defendants' ability to pay and establishing time payments in open court should be changed; instead, these actions should be performed by court staff at the violations bureau window, to give defendants greater privacy. The members agreed that this proposal was not appropriate for inclusion in the Court Rules.
- The assignment of the public defender should occur in all municipal cases in which a defendant is in custody. Presently, defendants who are indigent and facing a consequence of magnitude may be entitled to the appointment of a municipal public defender. N.J.S.A. 2B:24-7. The members agreed that this proposal was not appropriate for inclusion in the Court Rules.
- Rule 7:14-1 (Opening Statements) should be amended to include a requirement that the judge announce at each court session that any defendant who has been assessed a monetary obligation by the Court is afforded a reasonable period of time to pay the total amount due and that defendants may be asked to complete a confidential financial disclosure form to assess their ability to pay. The members determined that R. 7:14-1 is broad and does not delineate every specific topic required to be covered in judges' opening statements – guidance on the content of opening statements has been conveyed through AOC memoranda to the judges and through judicial training. The members also agreed that including numerous specific components of the opening statement in the Court Rules would make modification of the language far more difficult. Change would

require a formal Court Rule amendment before being implemented. Moreover, as indicated above, the model municipal court opening statements were recently revised to include language advising defendants about the availability of payment alternatives. In sum, the members agreed that R. 7:14-1 need not be amended in the manner suggested.

- Vicinage training should stress the availability of statutory and case law options when dealing with unpaid obligations, including guidance on responses to defendants' failure to pay monetary assessments. The Committee determined that a reference to training of judges would be inappropriate for inclusion in the Court Rules and would therefore fall outside the purview of the rules committee. The Committee members also noted that the AOC has conducted training for new and experienced judges on payment alternatives for several years and continues to do so. Further, in November 2018, a poster entitled *Municipal Court Payment Alternatives* with information for the public on the availability of time payments and other relief permitted by law was distributed by the AOC to the municipal courts (in both paper and digital form) for courts to display.

IV. Matters Held for Future Consideration

A. Proposal Regarding Probable Cause Findings

The Committee considered a comment from an attorney, sent in response to the December 2017 report of the *Supreme Court Working Group on Private Citizen Complaints in the Municipal Courts* and referred to the Committee. The attorney asserted that municipal courts routinely find probable cause on complaints submitted by law enforcement officers and private citizens. The attorney proposed that the Court Rules be modified to provide for an independent court review of a probable cause determination made by a municipal court judicial officer to ensure that the elements of the offense are met by the narrative in support of probable cause. Currently, R. 7:2-1 and R. 7:2-2 address probable cause.

The report of the *Supreme Court Working Group on Private Citizen Complaints in the Municipal Courts* discussed the possible involvement of prosecutors in the citizen complaint process in detail. The Supreme Court is currently reviewing this report and has not yet issued administrative determinations regarding the report recommendations. Therefore, the Committee reserves its recommendations on this issue until a future date.

B. Procedure for Consolidation of Municipal Complaints Arising in Different Counties

The Committee considered a referral from the Conference of Assignment Judges regarding procedures for the consolidation of municipal court complaints arising in different counties. Currently, R. 7:8-4 addresses the consolidation of complaints but does not address procedures for complaints arising in different counties. The Conference of Assignment Judges discussed developing uniform strategies for the handling of such complaints and Administrative Director Glenn A. Grant, J.A.D., asked the Committee to consider whether any rule changes may be necessary.

The Committee engaged in numerous lengthy discussions and developed draft amendments to R. 7:8-4. These proposed amendments were conveyed to the Conference of Assignment Judges, whose members are currently reviewing the proposal. The Committee will consider the feedback from the Conference prior to making final recommendations. Therefore, the Committee reserves its recommendations on this issue until a future date.

V. CONCLUSION

The members of the Committee appreciate the opportunity to serve the Supreme Court in this capacity.

Committee Members and AOC Representatives:

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Respectfully submitted,

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Dated: January 25, 2019