



**REPORT OF THE SUPREME COURT
WORKING GROUP ON PRIVATE CITIZEN COMPLAINTS IN THE
MUNICIPAL COURTS**

December 7, 2017

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December 7, 2017

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We are pleased to submit to you the final report of the Supreme Court Working Group on Private Citizen Complaints in the Municipal Courts. The Working Group was charged with examining the following issues: (1) Should private citizen complaints continue to be accepted by the Municipal Courts?; (2) Should limitations be placed on the types of matters for which a private citizen complaint can be filed and/or against whom?; (3) Should some form of screening, either by law enforcement or some other form, be required prior to a judicial officer making a probable cause determination? (Appendix 1)

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The Working Group focused on R. 7:2-1(b) (Acceptance of Complaint) which provides that “The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person.” The Municipal Court Practice Committee has not examined the requirement to accept all citizen complaints pursuant to R. 7:2-1 since the 1988 report of the Supreme Court Committee on the Municipal Courts, where that committee ultimately recommended that the Municipal Courts continue to accept these complaints. The practice committee as well as the Working Group recognized the importance of providing citizens with a forum to air disputes.¹

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To assist the Court in its consideration of the Working Group report, we have adopted the following format: an Executive Summary including a synopsis of our recommendations, a historical perspective of the Rules and Directives regarding citizen complaints, an overview of the Working Group’s deliberative process, statistical information, and an expanded discussion of eight recommendations.

¹ The requirement to accept all citizen complaints pursuant to R. 3:2-1(a) has not been reviewed by the Criminal Practice Committee since 1995 when major amendments were made to the Part III Rules. R. 3:2-1(a) (Complaint) provides, “...The clerk or deputy clerk, municipal court administrator or deputy court administrator shall accept for filing any complaint made by any person.” R. 3:2-1(b) provides that the process of forwarding indictable complaints immediately upon issuance by the Municipal Court to the Criminal Division is automated and those complaints are sent through the Judiciary’s computerized system used to generate complaints (eCDR).

Each recommendation presents the reasoning that formed the basis of the recommendation and references a corresponding appendix containing draft proposed rule amendments and relevant research considered in making the recommendation. Finally, during the course of our discussions, members of the Working Group expressed concern about the necessity of devoting extensive resources to the processing and trial of citizen complaints and proposed the creation of a mediation program to address these concerns. The Working Group determined that the issue of mediation was beyond its charge, but for the benefit of the Court's consideration we have included a summary of the proposals as an addendum to this report.

Executive Summary

The Working Group's charge required a recognition that the New Jersey Judiciary continues to maintain a policy of full access of the citizenry to the court system as the appropriate mechanism for resolution of disputes. The Working Group also recognized that full access carries with it the burden of occasional misuse of this access through the filing of vexatious or meritless complaints. Although these complaints are clearly the exception rather than the rule, they do burden the resources of the court. In fulfilling its charge and responding to the issues raised by the Chief Justice, the Working Group has attempted to propose a procedure that maintains access while at the same time, allocates resources so that citizens' complaints can be considered in a timely, efficient and just manner. The recommendations are designed to achieve that end. Some of the recommendations require substantive changes to existing court rules in practice and procedure as well as incorporating procedures instituted under Criminal Justice Reform. For example, the recommendations provide for new screening procedures to achieve just results and avoid seemingly disparate results such as where a judge makes a probable cause finding and the prosecutor, executing lawful authority, declines to prosecute.

The Working Group focused its discussions on the acceptance of the complaint by the Municipal Court and the process that occurs before the Complaint-Warrant or summons is issued. Given the fact that citizen complaints are a small percentage of all complaints that are filed and the importance of providing access to the courts, the Working Group concluded that every complaint made by any person should continue to be accepted for filing under R. 7:2-1(b) and R. 3:2-1(a).² Historically, not every municipal court was staffed by a municipal prosecutor. The Working Group considered that this has since changed and municipal prosecutors currently exist in every Municipal Court. While that particular historic reason for acceptance of every complaint made by any person may no longer apply, there are other countervailing reasons why this practice should remain in place.³ First, the Judiciary's overarching policy is that the courts

² There were 5,719,650 complaints filed in Municipal Court in 2015 and 5,907,289 filed in 2016. However, in 2015 only 66,195 (1.2%) were ACS private citizen complaints and for 2016, only 59,256 (1.0%) were ACS private citizen complaints. These numbers include all types of complaints (not charges) initiated by police officers—CDR-1, CDR-2, special form of complaint, indictables and non-indictables). ATS (automated traffic system) citizen complaint tickets totaled 6,315 in 2015 and 6,394 in 2016.

³ In New Jersey v. Kinder, 701 F. Supp. 486 (1988), the federal district court of New Jersey noted that R. 7:4-4(b) allows a complaining witness who is the victim of a disorderly persons offense to enforce the criminal law in cases where the state or municipality lacks the resources to do so. R. 7:4-4(b) provided that the Attorney General, county prosecutor, municipal court prosecutor, or municipal attorney may appear in any court on behalf of the state or of the

are open to the public. Second, the Working Group recognized the fundamental importance of providing citizens with the ability to be heard. Third, there is currently a process in place to assist citizens when filing private citizen complaints with the court.

However, the Working Group recommends that there should be county prosecutorial review of: (1) private citizen complaints charging disorderly persons (DP) offenses filed against party officials, public servants, candidates/nominees for public office and judicial nominees and (2) citizen complaints charging indictable offenses against all individuals. Citizen complaints charging ordinance violations, petty disorderly persons (PDP), other non-disorderly offenses filed against any individual and DP offenses against non-public officials will not be subject to prosecutorial review.⁴ Finally, the Working Group recommends that only judges should be permitted to make the probable cause finding for indictables, whereas any judicial officer (judge or authorized court administrators) can continue to make a probable cause finding on DP, PDP, or any other non-disorderly persons offense within the Municipal Court's jurisdiction, including citizen complaints charging DP offenses against public officials. (Appendix 6)

The specific recommendations of the Working Group are as follows:

Recommendation 1 (Substantive Rule Amendment): Every complaint made by any person should continue to be accepted for filing, however R. 7:2-1(b) and R. 3:2-1(a) should be amended to clarify that mere acceptance of the complaint for filing does not mean that a finding of probable cause has been made or that the Complaint-Warrant (CDR-2) or summons has been issued.

Recommendation 2 (Clarifying/Housekeeping Rule Amendments): R. 7:2-2(a)(1) should be amended to remove the reference to dismissing a complaint where a judge finds no probable cause or where the statutory time limitation to issue a Complaint-Warrant (CDR-2) or summons has expired. Instead, the judge should be directed to not issue the Complaint-Warrant (CDR-2) or summons. Where a no probable cause finding is made and a Complaint-Warrant or summons does not issue, the complaint should not be not kept in a held status. In addition, duplicative rule language should be removed and an incorrect cross-reference should be corrected.

Recommendation 3 (Substantive Rule Amendment): New subparagraphs should be created at the beginning of R. 7:2-2 that clearly define probable cause. For purposes of clarity, the rule

municipality and conduct the prosecutions of any action, but if they do not appear, any attorney on behalf of any complaining witness may appear and prosecute the action for and on behalf of the State or the municipality. The court stated that "...absent its use, disorderly persons offenses would go unprosecuted, harming not only the state's interest in enforcing its laws, but also the victim's (if not society's) interest in obtaining satisfaction for wrongs committed." Id. at 488. The court held that it would be unjust to dismiss the prosecution merely because it was removed to federal court; that inadequate resources of municipal prosecutors necessitates the use of private attorneys; and that the rule "facilitates a 'kind of peoples' court wherein citizens may bring their disputes and uphold the laws of the community through the uncomplicated procedures of the municipal court." Id. at 492. (Appendix 3)

⁴ The Working Group noted that currently the prosecutor is contacted for warrants charging a DP offense. Otherwise, citizen complaints charging DP offenses against non-public officials will not be subject to prosecutorial review.

should be restructured so that probable cause is no longer buried in R. 7:2-2(a)(1). In addition, a cross-reference to the current exceptions to finding probable cause (i.e., law enforcement summons on complaint and code enforcement officer summons on a complaint) should be added.

Recommendation 4 (Substantive Rule Amendment): R. 7:2-2(a)(1) should be amended to provide that a judge or authorized municipal court administrator or deputy court administrator (judicial officer) may issue a Complaint-Warrant (CDR-2) or a summons charging a disorderly persons offense, petty disorderly persons offense or any other non-disorderly persons offense within the jurisdiction of the Municipal Court made by a private citizen. In addition, the rule should add a provision that a judge only may issue a CDR-2 or summons charging any indictable offense made by a private citizen.

Recommendation 5 (Substantive Rule Amendment): R. 7:2-2 should be amended to provide that prior to issuance, the Complaint-Warrant or summons must be reviewed by a county prosecutor on private citizen complaints charging disorderly persons offenses against a: (i) party official or public servant as defined in N.J.S.A. 2C:27-1(e) and (g); (ii) a candidate or nominee for public office as defined in N.J.S.A. 19:1-1; or (iii) a judicial nominee. The county prosecutor can either approve (decide to move forward with the matter), disapprove (decide to not pursue charges/prosecute matter), or modify the charge.

Recommendation 6 (Substantive Rule Amendment): R. 7:2-2 should be amended to provide that prior to issuance, the Complaint-Warrant or summons must be reviewed by a county prosecutor on private citizen complaints charging any indictable offense against any individual. The county prosecutor can either approve (decide to move forward with the matter), disapprove (decide to not pursue charges/prosecute matter), or modify the charge. Part III rules should mirror the Part VII proposed rule amendments on indictables.

Recommendation 7 (Clarifying Amendment): R. 7:2-2 should be amended to clarify that a CDR-2 or summons charging any offense made by a private citizen may be issued if it appears from the complaint, affidavit, certification, citizen complaint information form, or testimony that there is probable cause. The finding of probable cause shall be noted on the face of the CDR-2 or summons and confirmed by the judicial officer's signature.

Recommendation 8 (Clarifying Amendment): R. 7:3-1(c)(1) should be amended to correct a cross reference to R. 7:2-2. R. 7:3-1(c)(2) should also be amended to align with the proposed amendment to R. 7:2-2(a)(1) (Recommendation 2) that removes the reference to dismissing the summons or Complaint-Warrant where there is no probable cause. Instead, the summons or Complaint-Warrant (CDR-2) shall not be issued.

Historical Perspective of Citizen Complaints & Overview of Working Group Discussions

The following sections provide an explanation of the origin of accepting for filing every complaint made by any person, an overview of the Working group's discussions in reaching its recommendations, and sets forth statistics considered by the Working Group.

Origin of Accepting for Filing Every Complaint Made by Any Person (Appendices 2 & 3)

A. 1970 Supreme Court Bulletin Letter #170 and Finding of Probable Cause (State v. Ross, 189 N.J. Super. 67 (1983)) (Appendix 2)

Prior to inclusion in the Court Rules, the Court provided direction to Municipal Courts to accept all complaints for filing in the May 1970 Supreme Court Bulletin Letter #170.⁵ Bulletin Letter #170 provides in pertinent part:

The Supreme Court has indicated that when a private citizen wishes to file a formal criminal complaint the complaint should be accepted in every instance. A summons rather than a warrant should be issued when there is no necessity for an arrest and there is reason to believe the defendant will appear in response to a summons, R. 3:3-1(a)...If the complaint is frivolous or the facts alleged do not constitute a violation of the law, the judge may dismiss the complaint on motion or after hearing the matter in open court. If the offense charged may constitute a neighborhood or domestic dispute, but may not violate a statute or ordinance, a notice in lieu of complaint may be issued in accordance with R. 7:3-2." Ibid.

In 1983, the Appellate Division held that there must be a finding of probable cause by an independent judicial official for either a summons or warrant to be issued. State v. Ross, 189 N.J. Super. 67 (1983). In 1984, the concept of courts accepting all citizen complaints was included in the Court Rules. At that time, the Criminal Practice Committee was asked to consider an apparent conflict between the holding in State v. Ross—that there must be probable cause for a summons or a warrant—and the Court's Directive published in Bulletin Letter #170, which mandated acceptance of private citizen complaints in every instance. In its May 1984 Criminal Practice Committee Report, the Committee stated:

Under the Directive, Municipal Court personnel were instructed to accept criminal complaints from private citizens in every instance. According to R. 3:3-1, a warrant must issue when a complaint is filed alleging that certain serious crimes have been committed. Thus, if a private citizen came in off the streets and alleged aggravated assault against a police officer without giving any facts, the clerk would have to take the complaint and then, according to the rule, make out an arrest warrant. (Appendix 2-1984 Criminal Practice Report at p. 22).

⁵ Prior to Administrative Directives, Bulletin letters provided direction from the New Jersey Supreme Court, as well as a summary of case law and other guidance to Municipal Courts.

The Criminal Practice Committee noted that State v. Ross required a probable cause finding for complaint issuance. The Criminal Committee concluded that, “While the Directive states that complaints must be accepted in all instances and that summons shall issue, this is not inconsistent with the present rule or Ross which requires an independent finding of probable cause by a judicial authority.” Ibid.

B. History of Criminal Part III Court Rules (R. 3:2, 3:2-1, and 3:3-1) (Appendix 2)

In 1984, the Criminal Practice Committee recommended the addition to R. 3:2 of the following language: “The clerk or deputy clerk shall accept for filing any complaint made by any person.” (Appendix 2-1984 Criminal Practice Report at p. 25). This amendment was meant to clarify confusion over whether any individual could file a complaint.

In 1994, R. 3:2 was amended by the addition of paragraph (f) requiring judges to review decisions of administrators when the administrators made the initial determination that probable cause did not exist. The Criminal Practice Committee stated: “While unstated in this paragraph, there is no intent to require that the judge hold a hearing on these complaints before dismissing them.” (Appendix 2-1999-2000 Criminal Practice Report at p. 10).

In addition, the Criminal Practice Committee recommended the addition to R. 3:2-1(a): “The municipal court administrator [clerk] or deputy court clerk shall accept for filing any complaint made by any person.” (Appendix 2-1992-94 Criminal Practice Report at p. 3). This was based on the statutory change in title for municipal court staff from clerk to administrator. N.J.S.A. 2B:12-10. The 1992-1994 report also emphasized that citizen complaints could not be issued without a prior judicial determination of probable cause. Id. at 15. The report included a recommendation to amend R. 3:3-1(a) that an arrest warrant “on any complaint or on a complaint charging any offense made by a private citizen [shall] may be issued only by a judge, municipal court administrator or deputy court clerk of a court [having] with jurisdiction in the municipality [in which] where the offense is alleged to have been committed.”⁶ (Appendix 2-1992-1994 Criminal Practice Report at p. 7). This language was adopted by the Court, effective January 1, 1995. (Appendix 2-R. 3:3-1 (1996)).

In 1995, due to major amendments to the Part III Rules, R. 3:2 was redesignated R. 3:2-1, and paragraph (a) of R. 3:2-1 was revised to read: “The clerk or deputy clerk, municipal court administrator or deputy court administrator shall accept for filing any complaint made by any person.”⁷ (Appendix 2-R. 3:2-1 (1996)).

⁶ When R. 3:3-1 was restructured upon the recommendation of the Criminal Practice Committee, the language in paragraph (a) was subsequently deleted. (Appendix 2-1999-2000 Criminal Practice Report at 24-25; R. 3:3-1 (2002)).

⁷ This language in R. 3:2-1(a) has not been reviewed or amended since that date.

In 1999, the Criminal Practice Committee reviewed R. 3:3-1 and the filing of citizen complaints and the initial probable cause finding. The Committee ultimately decided to delete the requirement in paragraph (f) that notice be given to the complainant if the court administrator determines that there is probable cause for the issuance of a summons or warrant and the determination is reviewed by the judge. The Criminal Practice Committee also recommended that Municipal Court judges have discretion to determine the procedures for reviewing probable cause, which could be done on the papers or by requiring a hearing.⁸ (Appendix 2-1999-2000 Criminal Practice Committee Report at pp.10-11).

The Criminal Practice Committee further considered a request to add filing fees for citizen complaints, but ultimately declined recommending the addition of such fees as this would be a deterrent for citizens to file complaints. The Committee noted that filing fees for citizen complaints would be of particular concern in domestic violence cases and that there are no fees imposed on the filing of complaints in criminal court. In addition, at that time, there was a \$30 limit court costs in municipal court. (Appendix 2-1999-2000 Criminal Practice Committee Report at p. 45).

The Criminal Practice Committee also considered a request for the filing of sanctions for frivolous or bad faith complaints. The Criminal Committee noted that the sanction of a payment of court costs by the complainant is permitted by N.J.S.A. 2B:12-24.⁹ Since the statute already provides for a sanction, the Committee declined to recommend imposition of additional sanctions. Regarding complaints heard in Superior Court, the Committee felt that civil remedies were adequate to protect against frivolous and bad faith complaints and recommended against imposing sanctions. (Appendix 2 1999-2000 Criminal Practice Committee Report at p. 45).

C. History of Part VII Municipal Court R. 7:2-1—Acceptance of All Complaints (Appendix 3)

The 1988 Report of the Supreme Court Committee on the Municipal Courts (Municipal Committee) includes an extensive discussion of issues related to the acceptance of citizen complaints.¹⁰ The Municipal Committee evaluated the feasibility of discontinuing the practice of accepting and filing of citizen complaints as well as the steps necessary to implement such a possible change. The Municipal Committee discussed the requirement in R. 3:2 that courts

⁸ In 2000, the Municipal Court Rules were amended to conform to Criminal’s analogous rule removing the notice requirement to the complainant, defendant and prosecutor of probable cause hearings. (Appendix 3-1998-2000 Report of the Supreme Court Committee on Municipal Courts).

⁹ The statute provides, “In cases where the judge of a municipal court dismisses the complaint or acquits the defendant and finds that the charge was false and not made in good faith, the judge may order that the complaining witness pay the costs of court established by law.” (Appendix 2).

¹⁰ Prior to the 1997 comprehensive revision of Part VII to incorporate many components of Part III and to create a separate Part VII Rules governing practice and procedure in all non-indictable matters prosecuted in the Municipal Courts, the Supreme Court Committee on Municipal Courts regularly provided reports and recommendations to the Court on various aspects of municipal practice. (Appendix 3-1958 Report of the New Jersey Supreme Court’s Municipal Court Committee). The 1988 Report was the last time the issue of acceptance of citizen complaints in Municipal Court was examined by the Municipal Division.

accept all complaints for filing, emphasizing that this concept should be read in conjunction with N.J.S.A. 2A:158-4 giving the Attorney General and the County Prosecutor authority over criminal matters. The Municipal Committee ultimately recommended that the Municipal Courts continue to accept these complaints, noting that at the time, municipal prosecutors were not in every municipal court.¹¹ (Appendix 3-1988 Report of Supreme Court Committee on the Municipal Courts at pp. 28-33).

The Committee highlighted the importance of allowing citizens a forum to air disputes as follows:

The Committee respectfully and strongly recommends that the present practice remain in full force and effect until, at least, there are municipal prosecutors assigned to all municipal courts and trained by and/or under the direction of the State Attorney General's Office.... To change the current practice would in effect deny the citizen ready access and prompt resolution of problems which may be deemed to be very minor by others, but which are very real and burdensome to the citizens involved.

Very often, the citizen only wants and needs a forum to air and resolve problems quickly. To be able to appear before a court clothed with judicial responsibility and authority lends credibility and efficacy to, and general acceptance by the citizen of, the outcome. There is no doubt by this Committee that the municipal court is that forum which should remain readily accessible to continue to accomplish that end. (Appendix 3-1988 Municipal Report at pp. 31-33).

In its 1992-1994 Report, the Municipal Committee recommended an amendment to R. 7:2-1(a), which incorporated language in R. 3:2-1 as proposed in the Criminal Committee 1992-94 Report and subsequently adopted, i.e. "The municipal court administrator or deputy court administrator shall accept for filing any complaint made by any person." (Appendix 3-1992-1994 Term Report of the Supreme Court Committee on Municipal Courts).

In its 1998-2000 Report, the Municipal Committee agreed with the Criminal Practice Committee's amendment to R. 3:3-1(f) and recommended an analogous amendment to R. 7:2-2(a)(1) eliminating the requirement that the defendant, complainant, and prosecutor be given

¹¹ In State v. Storm, 141 N.J. 245 (1995), the New Jersey Supreme Court addressed whether R. 7:7-4(b) permits private counsel for a complainant to prosecute a complaint in the municipal court. The Court held that whenever an attorney for a private party applies to prosecute a complaint in municipal court, the court should determine whether to permit the attorney to proceed. In addition, the Court requested that the Committee on Municipal Courts recommend guidelines governing the appointment of private prosecutors. The Court noted that the rule "perpetuates the practice of private prosecutions, which traces its origins to ancient England. Private prosecution derives from the practice of trial by combat, which evolved into the prosecution of criminal charges by private parties." Id. at 250. The Court opined that R. 7:4-4(b) facilitates access to the municipal courts as private citizens can appear pro se or through private counsel. The Court explained that in 1985, the Supreme Court Task Force on Improvement of Municipal Courts recommended that every Municipal Court have a prosecutor charged with the responsibility to prosecute every complaint whether filed by a police officer, private citizen or in a civilian cross-complaint situation. (Note: R. 7:4-4(b) was later renumbered as R. 7:8-7(b) and amended to only permit an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints upon review of the private prosecutor's motion to appear and with a certification on a form approved by the Administrative Director.) (Appendix 3)

notice of probable cause hearings in citizen complaint matters. (Appendix 3-1998-2000 Report of the Supreme Court Committee on Municipal Courts at p. 1).

Synopsis of Working Group Discussions

Over the course of four meetings, the Working Group considered the pros and cons of accepting all citizen complaints.¹² For example, advantages to allowing private citizen complaints to be filed are that it provides a mechanism by which the public can file complaints against corrupt or biased law enforcement officers and it affords citizens a way to easily access the justice system to resolve minor disputes. The Working Group concluded that preserving the principal of access to the justice system outweighed the less desirable attributes of accepting all citizen complaints, i.e., the low threshold required to make a probable cause finding in order to issue process, the potential for citizens to lodge frivolous complaints that can be a drain on administrative resources, and the overcharging or undercharging of offenses.

The Working Group identified five types of citizen complaint filers: (1) serial, vexatious filers; (2) neighborhood dispute filers; (3) casino filers or supermarket filers (corporate filers); (4) “legitimate” citizen complaint filers; and (5) tactical filers who files cross-complaints.¹³ Although the Working Group considered whether complaint screening procedures should be formulated based on the type of filer and whether there was value in distinguishing between them, the Working Group concluded that categorizing types of filers would present challenges, e.g., how would a serial filer be defined; would a legitimate filer with many complaints be categorized as a serial filer; and the inability to screen filers with potential mental health issues without a fact sensitive determination on their mental health.

The Working Group discussed whether there should be any limitations on accepting citizen complaints and considered the practices of other states that have specific procedures in place for the filing of private criminal complaints. While the general rule in the majority of states is that private citizens cannot initiate criminal prosecution, there are exceptions.¹⁴ There are at least 12 additional states that provide for private criminal citizen complaints: New Hampshire, North Carolina, South Carolina, Pennsylvania, Maryland, Ohio, Texas, Virginia, Georgia, Idaho, Kentucky and Rhode Island. The legal authority for permitting a private

¹² The Working Group met on July 19, August 21, September 27, and November 1, 2017.

¹³ The Working Group recognized that some of these frequent filers may have mental health issues. The vast majority of corporate complaints are those filed by casinos and department and grocery stores for shoplifting. Some Working Group members noted that such complaints are likely not a high priority for police to investigate, unless the defendant is escorted to the police department.

¹⁴ For the general rule, see Linda R.S. v. Richard D., 410 U.S. 614 (1973) (a citizen lacks standing to contest the policies of the prosecuting authority when he or she is neither prosecuted nor threatened with prosecution), Leeke v. Timmerman, 454 U.S. 83 (1981) (a private individual does not have a constitutional right to private prosecution; a private person does not have right in federal court to prosecute an offense or hire an attorney to pursue a criminal case on person’s behalf); Smith v. Kreiger, 389 Fed. Appx. 789 (10th Cir. 2010) (prosecutors have the exclusive authority to prosecute crimes and a private citizen has no right to do so in the federal system); Kailey v. Chambers, 261 P.3d 792 (Colo. Ct. App. 2011) (private citizens cannot seek arrest warrants). (Appendix 5).

individual to pursue a criminal case against another also differs in each state and may be pursuant to state common law, statute or court rule.

A few states that allow for private citizen complaints impose an oversight role of some form or screening by the prosecutor prior to a judicial officer making a probable cause determination and/or rely on the prosecutor to make the probable cause determination. Pennsylvania, New Hampshire, Ohio, and Texas require prosecutorial review of the private criminal complaint to determine if it is sufficient to initiate criminal charges. For instance, Pennsylvania provides for prosecutorial (district attorney) review of the complaint for a probable cause determination in misdemeanor and felony offenses.¹⁵ None of the states that allow for private citizen complaints place restrictions on who the complaint can be filed against, although California has a distinct citizen complaint process for filing criminal complaints against law enforcement and public officials.

Some states, such as Pennsylvania, New Hampshire, Virginia, Texas and Rhode Island impose limitations on the types of matters for which a private citizen complaint can be filed or, depending on the type of matter, whether attorney review and approval is required before it is referred to a judge. In Pennsylvania, the prosecutor approves or disapproves of the complaint alleging misdemeanor or felony offenses based on whether probable cause is found, and if found, refers the matter to the district justice to issue process. However, for certain summary offenses, attorney approval is not required and the private citizen can file the complaint directly with the judge who will make the probable cause determination. In New Hampshire, only certain minor offenses that do not carry a possible penalty of imprisonment may be initiated and prosecuted by private citizens. Private citizens do not have to first obtain permission of the state prosecutor, but state prosecutors retain the power to dismiss private criminal complaints. In Texas, the court only accepts citizen complaints alleging Class C misdemeanors, which are offenses within the court's jurisdiction that are punishable by a fine only, not with confinement in jail or prison. A citizen complaint may be refused if a higher level offense is described, as those offenses must be reported to the police. Citizen complaints are reviewed by the prosecutor. In Rhode Island, private citizens can file criminal complaints for misdemeanors only; prosecution of felonies remains limited to the state. In Virginia, attorney review or law enforcement authorization is required in order for a judge to issue an arrest warrant for a felony offense alleged in a private citizen criminal complaint.

The Working Group also explored restricting the filing of citizen complaints to certain offenses, i.e., petty disorderly persons offenses or offenses within the municipal court's jurisdiction that are punishable by fine only and not jail or prison, as well as by degree of offense, e.g., complaints for 1st and 2nd degree charges to be brought by law enforcement only. Finally, the Working Group examined the practice of accepting all citizen complaints under the lens of Criminal Justice Reform and whether the criminal justice reform structure can support our ability to accept all complaints made by any person and whether those complaints should be processed in the same fashion as complaints generated by law enforcement. Pursuant to R. 3:4-1(a)(2), where a Complaint-Warrant (CDR-2) is issued following a citizen complaint, the

¹⁵ Ultimately, the Working Group concluded that Pennsylvania's prosecutorial review procedures were too complicated and that New Jersey could take a simpler approach building off the technological enhancements created to implement Criminal Justice Reform.

defendant would be an eligible defendant under Criminal Justice Reform and transported after arrest to the county jail pending a determination of conditions of pretrial release or a determination regarding pretrial detention if a motion has been filed by the prosecutor. The “release determination” would need to be made within 48 hours.¹⁶

In its discussions on a screening process for citizen complaints, the Working Group considered but ultimately rejected recommending a proposal to have designated court officers “charging officials”, who screen citizen complaints and provide guidance on possible charges. The role of the charging official would be to deter overcharging or undercharging on citizen complaints and to direct the complainant to the appropriate charge. These officers would be trained to solely assist citizen complainants. The charging official could identify common charges instead of simply providing the complainants with a copy of New Jersey’s Criminal Code, which is common practice.¹⁷ The Working Group recognized the enormous amount of resources that would be involved in mandating the designation of a court employee charging official. In smaller courts, it would be impractical to have a charging official where there are fewer citizen complaints being filed as compared to the number of filings in larger municipalities. One other alternative considered was to have the vicinage ombudsman assist in taking citizen complaints.

Another suggestion raised, but not favored, was to train the court administrator to assist the complainant with completing the probable cause certification and the citizen complaint information form. Ultimately, the Working Group acknowledged that additional training beyond the extensive training that is currently provided would not necessarily result in deterring the filing of frivolous complaints and could even result in a complaint being filed against the court administrator. Some members noted that they are aware of instances where a citizen filed a complaint against the Municipal Court administrator after he or she found no probable cause.

Most significantly, the Judiciary has had a longstanding policy that court staff cannot provide legal advice and must remain neutral in providing consistent information to the public and impartial with all parties involved in a matter before the courts. Furthermore, Canon 1 of the Employee Code of Conduct prohibits court personnel from engaging in the unauthorized practice of law. Court employees receive training on the difference between customer service/assistance and providing legal advice. For example, the citizen complainant is advised that if they do not know the exact statute or ordinance to charge, they may ask court staff to provide a copy of the relevant statute book or municipal ordinance book. Court staff is not permitted to select the charge for the complainant, give an opinion about what will happen when the matter is brought to court, recommend a specific lawyer, talk to the judge for the complainant about what will happen in the matter, or provide legal interpretations, procedural advice, legal research or fill out forms. Court staff can provide definitions of legal terms, cites of statutes/court rules/ordinances,

¹⁶ Pursuant to R. 7:4-1(d)(2) and (3), when a Complaint-Warrant (CDR-2) is issued and the most serious charge is a disorderly persons offense, the defendant would be an eligible defendant under Criminal Justice Reform and transported after arrest to the county jail pending a determination of conditions of pretrial release.

¹⁷ The AOC could create a list of commonly charged offenses for citizen complaints in a “bench card” format to be provided to the complainant.

public case information, general information on court operations and procedures, general referrals, legal options, and forms with instructions on how to complete them.

A December 13, 2010 memorandum from Administrative Director Judge Glenn A. Grant promulgated three documents developed by the Conference of Municipal Presiding Judges and Municipal Division Managers to provide Municipal Court Staff with resources to assist citizens who wish to file a complaint in the Municipal Court rather than through the local police department. The document entitled “Filing a Complaint in Municipal Court” is a handout that outlines the process involved in filing a citizen complaint and the role of court staff, which should be provided to all private citizens who wish to file a complaint. The second document is a standardized “Certification in Support of Probable Cause Statement” that supplements the information placed on the complaint. The third document contains two versions of a “Complaint Information Form” (one for complainants filing domestic violence related charges and the other for non-domestic violence related charges). These information forms supplement the complaint generation process by directing the citizen to provide the court with additional information. While the court is required to provide all citizen complaints with copies of the forms, the citizen’s use of the forms is optional. A citizen can complete the formal complaint but is not required to complete the certification or the information form. The memo further notes that many citizen complaints are and should be initially handled by police.

Finally, the Working Group also considered whether the practice of redirecting citizen complainants to the police for handling of the citizen complaint is uniform statewide. Citizen complaints can be filed through the local police department instead of through the courts. The Working Group was of the view that not all police departments are proactive in accepting citizen complaints and there is no statewide consistency of police departments processing citizen complaints. As a result, many are filed with the court and municipal court staff must accept them for filing.

Statistics (Appendix 4)

In making its recommendations, the Working Group considered statistical data prepared by the AOC. That data is set forth here for the Court’s consideration.

During calendar year 2015, 13,550 citizen complaints charging a crime (indictable offense) were filed. Of these, 11,809 (87.2%) were issued following a probable cause finding by a judicial officer. Of those 11,809 complaints for which probable cause was found, 30.7% (3,627) were issued on a Complaint-Warrant (CDR-2), while 69% (8,152) were issued on a Complaint-Summons (CDR-1).

These 11,809 citizen complaints on indictable charges were then transferred to Superior Court. They resulted in 10,063 total Superior Court cases (recorded in PROMISGavel) arising from citizen complaints.¹⁸ Of these, 30.6% (3,083) were issued on a Complaint-Warrant and

¹⁸ Multiple complaints are often associated together in a single PromisGavel case arising from the same factual nexus. PROMIS/Gavel is the computerized case management and information system for the Criminal Division of the Superior Court. PROMIS/Gavel captures information concerning defendants who have been charged with indictable offenses and tracks the processing of those defendants from initial arrest to appellate review.

69% (6,980) were issued on a Complaint-Summons. The breakdown of these 10,063 Superior Court cases is as follows:

7,273 – cases downgraded to a municipal charge and remanded back to municipal court
1,398 – cases brought to Grand Jury and indictment returned
707 – cases dismissed at Superior Court
261 – cases resulting in plea to Accusation
211 – cases resulting in Pretrial Intervention (PTI)
185 – cases brought to Grand Jury and no bill returned
12 – cases still pending
11 – cases resulting in a plea to a disorderly persons offense at Superior Court
5 – cases transferred ‘other’ (this includes transfers to other jurisdictions, to Family Court, to Attorney General, to Casino Prosecution)

It may be concluded from the data in calendar year 2015 that of the 10,063 indictable cases initiated by citizen complaints filed in the Municipal Courts and transferred to Superior Court, prosecutors dismissed 707 (7.0%) and took further action on 9,159 (91.0%).

During calendar year 2016, 9,324 Superior Court cases (recorded in PROMISGavel) arising from citizen complaints charging a crime (indictable offense) were filed. Of these, 6,921 were issued on a Complaint-Summons and 2,403 were issued on a Complaint-Warrant. The breakdown of these 9,324 Superior Court cases is as follows:

7,023 – cases downgraded to a municipal charge and remanded back to municipal court
1,096 – cases brought to Grand Jury and indictment returned
626 – cases dismissed at Superior Court
182 – cases resulting in plea to Accusation
160 – cases resulting in Pretrial Intervention (PTI)
120 – cases brought to Grand Jury and no bill returned
114 – cases still pending
2 – cases resulting in a plea to a disorderly persons offense at Superior Court
1 – cases transferred ‘other’ (this includes transfers to other jurisdictions, to Family Court, to Attorney General, to Casino Prosecution)

It may be concluded from the data in calendar year 2016 that of the 9,324 indictable cases initiated by citizen complaints filed in the Municipal Courts and transferred to Superior Court, prosecutors dismissed 626 (6.7%) and took further action on 8464 (90.8%).

Several Working Group members were surprised by the low number of indictable cases initiated by citizen complaints that were dismissed at the Superior Court—out of 10,063 in 2015 and 9,324 in 2016, 707 cases or 7% were dismissed in 2015 and 626 or 6.7% were dismissed in 2016. In other words, the net success rate of no dismissals was high. Many members also found it significant that approximately 30% of the cases were issued on warrants in 2015 and 2016.

The Working Group also reviewed a statistics handout that provides:

(1) the breakdown of mandatory and presumed warrants cases filed on citizen complaints since January 1, 2017 (Table 1);

(2) the cumulative breakdown for calendar years 2016 and 2017 of all private citizen complaints by degree, 1st-4th degree indictable filings, and all DP, PDP, and other non-traffic filings (e.g., ordinance violations and other lesser offenses, parking and traffic) (Table 2);

(3) 2015 and 2016 citizen complaint dispositions (guilty, not guilty and dismissed) for Complaint-Warrants and Complaint-Summons, for cases that were in the jurisdiction of the Municipal Court and cases that were transferred from Superior Court to Municipal Court (i.e., initially an indictable charge but downgraded to a DP/PDP and disposed of in Municipal) excluding conditional discharges, conditional dismissals, Superior Court and Family Court dispositions (Table 3); and

(4) the number of citizen-initiated complaints and their dispositions (guilty, not guilty and dismissed) compared to police-initiated complaints in 2015 and 2016, excluding conditional discharges, conditional dismissals, Superior Court and Family Court dispositions (Table 4).

The data in Table 1 shows that there were 149 mandatory and presumed warrant charges filed in 2017. The two highest categories were 2nd degree robbery inflicts bodily injury or uses force and 2nd degree unlawful possession of weapon-handguns without permit.

Table 2 shows that there were 64,385 citizen complaints issued in 2016 and 37,447 issued since January 1, 2017. The data shows that most of the citizen complaints charge low-level offenses. For example, in 2016, the number of citizen complaints charging ordinance violations (13,969), DP offenses (27,685), and PDP offenses (9,679) totals 51,333, whereas the number of indictable charges (5,076) and first (70), second (588), third (3,900) and fourth degree (3,047) offenses is only 12,681. In 2016, 80% of citizen complaints charged low-level non-indictable offenses. Since January 1 2017, 83% of the citizen complaints are non-indictable and 97% (17,034) are not 1st or 2nd degree offenses.

Table 3 indicates that in 2015 there were 4,726 (21.6%) citizen complaints with *guilty* dispositions; 472 (2.2%) citizen complaints with *not guilty* dispositions; and 16,637 (76.2%) citizen complaints that were *dismissed*. In 2016, there were 3,492 (17.9%) citizen complaints with *guilty* dispositions; 335 (1.7%) with *not guilty* dispositions; and 15,682 (80.4%) citizen complaints that were *dismissed*. Table 3 also shows the number of cases transferred from Superior Court to Municipal Court by disposition. In 2015, there were 1,319 (19.9%) transferred citizen complaints with *guilty* dispositions; 155 (2.3%) transferred citizen complaints with *not guilty* dispositions; and 5,156 (77.8%) transferred citizen complaints with *dismissed* dispositions. In 2016, there were 1,877 (21.7%) transferred citizen complaints with *guilty* dispositions; 197 (2.3%) transferred citizen complaints with *not guilty* dispositions; and 6,557 (76.0%) transferred citizen complaints with *dismissed* dispositions.

Table 4 shows that in 2015 there were 16,047 (27%) citizen initiated complaints with *guilty* dispositions, 1,104 (1.9%) citizen initiated complaints with *not guilty* dispositions, and 42,198 (71.1%) citizen initiated complaints that were *dismissed*. In 2016, there were 13,741

(25.4%) citizen initiated complaints with *guilty* dispositions, 800 (1.5%) citizen initiated complaints with *not guilty* dispositions, and 39,599 (73.1%) citizen initiated complaints that were *dismissed*. In 2015, there were 129,761 (42.6%) police generated complaints with *guilty* dispositions, 2,856 (.9%) police generated complaints with *not guilty* dispositions, and 171,891 (56.4%) police generated complaints that were *dismissed*. In 2016, there were 127,430 (39.9%) police generated complaints with *guilty* dispositions, 2,567 (.8%) police generated complaints with *not guilty* dispositions, and 189,181 (59.3%) police generated complaints that were *dismissed*.

Recommendations of the Working Group on Private Citizen Complaints in the Municipal Courts (Appendix 6)

Recommendation 1 (Substantive Rule Amendment): Every complaint made by any person should continue to be accepted for filing, however R. 7:2-1(b) and R. 3:2-1(a) should be amended to clarify that mere acceptance of the complaint for filing does not mean that a finding of probable cause has been made or that the Complaint-Warrant (CDR-2) or summons has been issued. (Appendix 6)

The Working Group recommends that every complaint made by any person should continue to be accepted for filing under R. 7:2-1(b) and R. 3:2-1(a). In addition, the ability to file citizen complaints should be unfettered. However, R. 7:2-1(b) and R. 3:2-1(a) should be amended to add the following provision: “Acceptance of the complaint does not mean that a finding of probable cause has been made in accordance with R. 7:2-2(a) or that the Complaint-Warrant (CDR-2) or summons has been issued.” The purpose of this proposed amendment is to address a concern raised by the Working Group that mere acceptance of the complaint could be interpreted by citizen complainants to mean that probable cause has been found and that a CDR-2 or summons will automatically issue. Instead, the rule should be construed to mean that acceptance of the complaint for filing precedes a probable cause determination and process issuance.

Recommendation 2 (Clarifying/Housekeeping Rule Amendments): R. 7:2-2(a)(1) should be amended to remove the reference to dismissing a complaint where a judge finds no probable cause or where the statutory time limitation to issue a Complaint-Warrant (CDR-2) or summons has expired. Instead, the judge should be directed to not issue the Complaint-Warrant (CDR-2) or summons. Where a no probable cause finding is made and a Complaint-Warrant or summons does not issue, the complaint should not be not kept in a held status. In addition, duplicative rule language should be removed and an incorrect cross-reference should be corrected. (Appendix 6)

Current R. 7:2-2(a)(1) provides in pertinent part that: “A judge finding no probable cause to believe that an offense occurred or that the statutory time limitation to issue a Complaint-Warrant (CDR-2) or summons has expired shall dismiss the complaint.” The proposed amendment addresses a concern that was first raised during the CJR rule-related amendment process that the “dismiss the complaint” language is problematic since a complaint cannot be “dismissed” if it has not been issued in the first place. The amended language removes “shall dismiss the complaint” and replaces it with “shall not issue the Complaint-Warrant (CDR-2) or

summons.” The Working Group also raised a concern that a citizen complaint remains in “held status” when a Municipal Court judge determines that there is no probable cause. The finding of no probable cause is entered into eCDR and the court administrator makes an entry in the case notes.¹⁹ The Working Group recommends that where a no probable cause finding is made and a Complaint-Warrant or summons does not issue, that the complaint should not be not kept in a held status. The Working Group is of the view that leaving the complaint in held status raises a due process concern and prevents the defendant from seeking an expungement. In addition, when the complaint remains in held status it is still available to the public.

R. 7:2-2(a)(1) should also be amended to remove duplicative language as follows: “The Complaint-Warrant (CDR-2) or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed; and the defendant committed it.; ~~and a Complaint-Warrant (CDR-2) or summons can be issued.~~”

Finally, R. 7:2-2(b)(2)(ii) appears to contain an incorrect cross-reference to subparagraphs (e) and (g). These subparagraphs should be removed as they are not applicable to instances where a judicial officer allows a CDR-2 rather than a summons to be issued.

Recommendation 3 (Substantive Rule Amendment): New subparagraphs should be created at the beginning of R. 7:2-2 that clearly define probable cause. For purposes of clarity, the rule should be restructured so that probable cause is no longer buried in R. 7:2-2(a)(1). In addition, a cross-reference to the current exceptions to finding probable cause (i.e., law enforcement summons on complaint and code enforcement officer summons on a complaint) should be added. (Appendix 6)

Restructuring R. 7:2-2 so that the definition of probable cause is explained at the beginning of the rule was contemplated during the CJR rule amendment process, but was placed on hold due to time constraints in issuing the new rules. Restructuring the rule to clarify probable cause is also necessary to implement proposed amendments to the authorization for process of citizen complaints discussed in Recommendation 4. The Working Group recommends breaking out probable cause into two paragraphs: (1) Finding of Probable Cause

¹⁹ A different process is followed for special form complaints, which are used for the purpose of complying with the provisions of N.J.S.A. 39:4-139.4 (The Parking Offenses Adjudication Act), and are also prescribed, pursuant to R. 7:2-1(f)(1), as a Uniform Traffic Ticket for use in connection with parking and traffic offenses where a private citizen is the complaining witness. The special form may be used for any of the following non-indictable offenses venued in the municipal courts: disorderly/petty disorderly persons offenses, except for (a) those involving domestic violence and (b) those with a companion indictable matter; local ordinance violations; code enforcement actions; penalty enforcement proceedings; boating offenses; and parking and traffic offenses where a private citizen is the complaining witness. In all other private citizen initiated complaints, either the special form or the appropriate CDR form is to be utilized. Special form complaints are not entered into MACS (Municipal Automated Complaint System) until after a probable cause determination is rendered. If probable cause is found, then it is entered and the summons is issued. If probable cause is not found, it is still entered, issued and then immediately dismissed with a reference to the no probable cause finding listed in the case notes. Unlike warrants and citizen complaints entered into eCDR, there is no separate probable cause finding for special form complaints. As part of CJR, courts are encouraged to enter citizen complaints or complaints that need a probable cause determination into eCDR.

and (2) Finding of no Probable Cause. The majority of the language in these proposed subparagraphs can be found in current R. 7:2-2. Within the proposed subparagraph on “Finding of No Probable Cause”, the Working Group also recommends adding a new cross-reference to the current exceptions to finding probable cause (i.e., law enforcement summons on complaint and code enforcement officer summons on a complaint).

Recommendation 4 (Substantive Rule Amendment): R. 7:2-2(a)(1) should be amended to provide that a judge or authorized municipal court administrator or deputy court administrator (judicial officer) may issue a Complaint-Warrant (CDR-2) or a summons charging a disorderly persons offense, petty disorderly persons offense or any other non-disorderly persons offense within the jurisdiction of the Municipal Court made by a private citizen. In addition, the rule should add a provision that a judge only may issue a CDR-2 or summons charging any indictable offense made by a private citizen. (Appendix 6)

Although private citizens may make and sign complaints, they are not authorized to issue process. Rather, a judicial officer must make a probable cause determination as to the issuance of process, pursuant to R. 7:2-2(a)(1). The purpose of this recommended rule amendment is to make the distinction that while a *judicial officer* can continue to issue a Complaint-Warrant or a summons on a citizen complaint charging a DP, PDP or any other non-disorderly persons offense within the Municipal Court’s jurisdiction (including citizen complaints charging DP offenses against public officials as described in Recommendation 5), a *judge only* can issue a Complaint-Warrant or a summons charging any indictable offense made by a private citizen. Currently, a CDR-2 or summons charging any offense made by a private citizen may be issued by a judge or authorized Municipal Court administrator or deputy court administrator. The proposed amended rule would remove the ability of the Municipal Court administrator to issue citizen complaints charging indictables and instead, leave that decision entirely in the hands of the judge.

Recommendation 5 (Substantive Rule Amendment): R. 7:2-2 should be amended to provide that prior to issuance, the Complaint-Warrant or summons must be reviewed by a county prosecutor on private citizen complaints charging disorderly persons offenses against a: (i) party official or public servant as defined in N.J.S.A. 2C:27-1(e) and (g); (ii) a candidate or nominee for public office as defined in N.J.S.A. 19:1-1; or (iii) a judicial nominee. The county prosecutor can either approve (decide to move forward with the matter), disapprove (decide to not pursue charges/prosecute matter), or modify the charge. (Appendix 6)

The Working Group recommends county prosecutorial review of private citizen complaints charging DP offenses against party officials, public servants, candidates/nominees for public office and judicial nominees only. Citizen complaints charging ordinance violations, PDPs, other non-disorderly offenses filed against any individual and DP offenses against non-public officials will not be subject to prosecutorial review.²⁰ Prosecutorial review of citizen

²⁰ Currently, for law enforcement initiated PDPs and other municipal violations (ordinances), prosecutors (or designee) do not review PDPs for which a warrant may be found to be appropriate (these are not eligible defendants and are subject to bail). A Municipal Court judge or authorized court administrator can make the probable cause finding and warrant determination. For private citizen initiated PDPs and other municipal violations (ordinances),

complaints charging disorderly persons offenses against the aforementioned types of public officials would not be limited to specific disorderly persons offenses. Rather, a private citizen complaint charging *any DP offense* against a public official (not just those in connection or relating to his or her office or with any official act) would be reviewed by the prosecutor.²¹ For these types of citizen complaints, a judicial officer (judge or authorized court administrators) can make the probable cause finding. If an authorized court administrator finds no probable cause, that finding shall be reviewed by the judge.

The Working Group did not support prosecutorial review of citizen complaints filed against *any* individual charging DP, PDP and other non-disorderly persons offenses, but rather only for those filed against public officials charging DP offenses. The Working Group was of the view that the burden on the county prosecutor's office to review citizen complaints charging PDP and other non-disorderly persons offenses would be too great. Therefore, the current process for handling citizen complaints charging DPs for non-public officials and PDPs and other non-disorderly persons offenses against all individuals should remain in place.²²

A concern was raised that prosecutorial screening of a particular category of defendants—public officials—charged with DP offenses may create the perception of law enforcement bias as the majority of citizen complaints against public officials are those filed against a police officer. To address this concern, the Working Group recommends that the prosecutor be required to submit detailed reasons on the record for the denial of the citizen complaint. The county prosecutor's determination to not move forward with the citizen complaint would not be the "last word" in the review process. For example, currently there is an Executive Branch process in place where if a matter involves a citizen complaint against a police officer, the prosecutor's office would contact Internal Affairs.²³ If the prosecutor approves the citizen complaint, the citizen complaint is superseded and will include an official misconduct charge. This supersession process allows for review all the way up the chain of command to the

prosecutors (or designee) do not review PDPs for which a warrant may be found to be appropriate. A Municipal Court judge or authorized court administrator can make the probable cause finding and warrant determination.

²¹ The Working Group recognized that in some situations it may be difficult at the outset to know whether the offense touches upon the public official's office.

²² Currently, for law enforcement initiated DPs on a warrant, prosecutors (or designees) review all DPs on warrant from law enforcement and the Municipal Court judge or authorized court administrator can make the probable cause finding and warrant determination. These are eligible defendants. N.J.S.A. 2A:162-15(1) defines eligible defendant as a person for whom a Complaint-Warrant is issued for an initial charge involving an indictable offense or a disorderly persons offense unless otherwise provided for in other sections of the law. Defendants charged with PDPs are not considered eligible defendants under CJR. For private citizen initiated DP complaints for which a warrant determination may be found to be appropriate, prosecutors (or designee) do not review and the Municipal Court judge or authorized court administrator can make the probable cause finding and warrant determination. Under the Working Group's recommendation, private citizen initiated DP complaints that *do not* charge public officials will continue to not be reviewed by the prosecutor.

²³ The Internal Affairs Policy and Procedures were last revised in July 2014. The policy assists the State's law enforcement agencies with investigating and resolving complaints of police misconduct that originate with private citizens or are generated by the supervisors, officers or employees of a law enforcement agency. It requires that "Every law enforcement agency shall establish a policy providing that all citizen complaints are readily accepted and fully and promptly investigated."

Attorney General's office. If the prosecutor dismisses the citizen complaint, an explanation of reasons is provided. The dismissal form has checkboxes for this purpose. The "other" checkbox is typically checked when the matter involves a public official and the complaint is found to be unsubstantiated.

In addition, the Court should consider requesting that the Attorney General issue guidelines to prosecutors on how to exercise this discretion, address conflicts of interest, and report reasons that are sufficiently detailed to ensure transparency in the exercise of the prosecutorial function. A few members of the Working Group indicated that the Attorney General's Supplemental Law Enforcement Directive 2006-05 (Regarding Uniform Statewide Procedures and Best Practices for Conducting Police-Use-Of-Force Investigations) provides a comprehensive procedure on how prosecutors who face conflicts can ensure that the public confidence in the impartiality and independence of the police use of force investigations is not undermined. Supplemental Directive 2006-05 provides that such investigations are not conducted by police agencies but rather are conducted by the county prosecutors or the Division of Criminal Justice. The directive requires a comprehensive conflicts inquiry to determine whether particular action is needed to ensure the impartiality and independence of the investigation.

The Working Group considered using the broad term "public official" within the rule; however, that term does not include all of the individuals whom a complaint is filed against that should fall under prosecutorial review. For that reason, the Working Group proposes using clearly defined terms under New Jersey's bribery/corruption law (N.J.S.A. 2C:27-1 et seq.). That statute sets forth offenses involving public administration officials. N.J.S.A. 2C:27-1(e) defines **party official** as "a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility." The *party official* definition does not appear to include candidates or nominees for public office; therefore, the Working Group recommends including *candidates or nominees* for public office in the proposed amended rule. New Jersey's election law, N.J.S.A. 19:1-1, defines **public office** as "any office in the government of this State or any of its political subdivisions filled at elections by the electors of the State or political subdivision." N.J.S.A. 2C:27-1(b) defines **government** as "any branch, subdivision or agency of the government of the State or any locality within it."

N.J.S.A. 2C:27-1(f) defines **public servant** as "any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses."²⁴ The public servant definition does not appear to include nominees to the bench; therefore, the Working Group recommends adding judicial nominee in the proposed amended rule.

If the prosecutor approves/decides to move forward with the citizen complaint charging a disorderly persons offense, the prosecutor shall indicate this decision on the complaint and submit it to a judicial officer who will determine if probable cause exists and whether to issue a Complaint-Warrant (CDR-2) or summons in the Judiciary's computerized system used to

²⁴ The Working Group is of the view that the statutory definition of "public servant" is not too broad for purposes of prosecutorial review of citizen complaints.

generate complaints.²⁵ If the prosecutor denies the citizen complaint charging a disorderly persons offense, the prosecutor shall report the denial and the basis therefor to the Assignment Judge on the record and shall notify the citizen complainant and the defendant. The Working Group looked to R. 3:25-1 for guidance on what procedure the prosecutor could follow when the citizen's complaint is denied and the complaint is not issued. R. 3:25-1(a) (Pre-indictment) states that "A complaint may be administratively dismissed by the prosecutor without presentation to the grand jury, in which event said prosecutor shall report the dismissal and the basis therefor to the Assignment Judge and shall notify the defendant." The Comment to R. 3:25-1 provides that the prosecutor's exercise of discretion in administratively dismissing the complaint is reviewable under an abuse of discretion standard and extends to DP offenses.²⁶

The Working Group recommends that the prosecutor's denial of the citizen complaint be on the record in order to be in line with the requirement under Directive #02-08 (Procedures for the Dismissal of Municipal Court Complaints and Voiding Uniform Traffic Tickets and Special Forms of Complaint) that all dismissals of complaints heard in the Municipal Courts shall be made on the record in open court. The reasons for the denial of the complaint would be a public record, and therefore, subject to public scrutiny, which would be in line with the Attorney General's current practice for police use of force investigations as explained in Directive 2006-5. To enhance transparency, Directive 2006-5 requires the county prosecutor or the Director of the Division of Criminal Justice to prepare a public statement where the matter is not presented to the grand jury or is presented to the grand jury but a "no bill" is returned. The statement must include specific findings and statements.

It should be noted that neither Recommendation 5 nor 6 impose limitations on the types of matters for which a private citizen complaint can be filed. The Working Group was not in favor of narrowing the filing of citizen complaints to certain offenses.

Recommendation 6 (Substantive Rule Amendment): R. 7:2-2 should be amended to provide that prior to issuance, the Complaint-Warrant or summons must be reviewed by a county prosecutor on private citizen complaints charging any indictable offense against any individual. The county prosecutor can either approve (decide to move forward with the matter), disapprove (decide to not pursue charges/prosecute matter), or modify the charge. Part III rules should mirror the Part VII proposed rule amendments on indictables. (Appendix 6)

The Working Group recommends county prosecutorial review of private citizen complaints charging indictable offenses against any individual.²⁷ As mentioned in

²⁵The Working Group recommends automation of the citizen complaint process. Citizen complaints could be submitted to the judge's workbasket in eCDR for a probable cause determination after the prosecutorial review/screen is complete.

²⁶ State v. Ward, 303 N.J. Super. 47 (App. Div. 1997); State v. Brown, 362 N.J. Super. 62, 69-70 (App. Div. 2003), rev'd on other grounds 180 N.J. 572 (2004). (Appendix 6)

²⁷Currently, for law enforcement initiated indictables on a warrant, prosecutors (or designee) review all indictables for which a warrant is applied and the Municipal Court judge or authorized court administrator can make the probable cause finding and warrant determination. For private citizen initiated complaints for which a warrant

Recommendation 4, a judge or authorized court administrator would continue to make the probable cause determination on DP offenses, however, only judges would be permitted to make the probable cause finding for citizen complaints charging indictables. The other notable difference between Recommendation 4 and 5 is that the latter recommendation requires prosecutorial review for indictables against any individual. Therefore, prosecutors would review the citizen complaint charging an indictable offense regardless of whether it is filed against a layperson or a public official. In cases where the prosecutor denies the citizen complaint charging an indictable offense, the prosecutor must report the denial without presentation to the grand jury and the basis therefor to the Assignment Judge on the record and shall notify the citizen complainant and the defendant.

Finally, the Working Group recommends that the Part III rules mirror the Part VII proposed amendments on indictables. R. 7:2-2(c) provides that “Complaints involving indictable offenses are governed by the Part III Rules, which address mandatory and presumed warrants for certain indictable offenses in Rule 3:3-1(e), (f).” Alternatively, Part III can be amended to include prosecutorial review of citizen complaints charging indictables and Part VII could simply have a cross-reference that states, “Prosecutor review of citizen complaints charging indictable offenses is governed by the Part III Rules.”

Recommendation 7 (Clarifying Amendment): R. 7:2-2 should be amended to clarify that a CDR-2 or summons charging any offense made by a private citizen may be issued if it appears from the complaint, affidavit, certification, citizen complaint information form, or testimony that there is probable cause. The finding of probable shall be noted on the face of the CDR-2 or summons and confirmed by the judicial officer’s signature. (Appendix 6)

A new subparagraph would be added to emphasize that probable cause is required for citizen complaints and to incorporate that the judicial officer can look to the citizen complaint information form, among other things, in making a probable cause finding. While the Working Group recommends moving the explanation of probable cause to the beginning of the R. 7:2-2 to emphasize its general applicability to all complaints, it is worth emphasizing the probable cause requirement for citizen complaints directly following the proposed citizen complaint prosecutorial review amendments. In addition, this proposed amendment would also highlight that only a judge can issue a CDR-2 or a summons charging any indictable offense made by a private citizen.

Recommendation 8 (Clarifying Amendment): R. 7:3-1(c)(1) should be amended to correct a cross reference to R. 7:2-2. R. 7:3-1(c)(2) should also be amended to align with the proposed amendment to R. 7:2-2(a)(1) (Recommendation 2) that removes the reference to dismissing the summons or Complaint-Warrant where there is no probable cause. Instead, the summons or Complaint-Warrant (CDR-2) shall not be issued. (Appendix 6)

determination may be made, prosecutors (or designee) do not review indictables for which a warrant is found to be appropriate (or required, depending on indictable charge) and the Municipal Court judge or authorized court administrator can make the probable cause finding and warrant determination.

The proposed amendment to R. 7:3-1(c)(1) removes the cross reference to subsection (b) of R. 7:2-2 and replaces it with subsection (f). In addition, R. 7:3-1(c)(2) removes the language that the complaint shall be dismissed by the judge where no probable cause is found. Instead, the judge is directed to not issue the Complaint-Warrant (CDR-2) or summons. This amendment aligns with the proposed amendment to R. 7:2-2(a)(1) in Recommendation 2. (Appendix 6)

Mediation Proposal Discussion

While the Working Group is not recommending an overhaul or expansion of the municipal court's mediation process at this time, it did have lengthy discussions on whether mediation could offer a potential solution to address repeat citizen complaint filers and citizen complaints that are creating backlog in some courts. The Working Group decided that a formal recommendation to expand Municipal's mediation program pursuant to R. 7:8-1 was beyond its charge; however, the group agreed to present the idea in this report for the Court's consideration.²⁸

Mediation of minor disputes in Municipal Court can occur for formally filed complaints, which would be dismissed by the judge if mediated successfully or for notices in lieu complaints, which are not actual filed complaints.²⁹ While any case that is not specifically prohibited under R. 7:8-1 is eligible for mediation, the types of cases that are typically mediated involve general neighborhood disputes, e.g., barking dogs, violations of noise ordinances, and parking in front of a driveway. Minor Title 2C violations (e.g., bad checks) can also be sent to mediation, particularly if they are cross-complaints.

The Working Group discussed whether the AOC should create a more formal Municipal Court mediation structure to amicably resolve minor complaints, much like the programs that the Family and Civil Divisions have developed, e.g., county-based mediation similar to the structure of a fee arbitration panel or juvenile conference committee where attorneys would volunteer their time in exchange for continuing legal education credits or pro bono hours. Another idea is to have certain offenses or classes of offenses (e.g., ordinance violations) to be subject to

²⁸ R. 7:8-1 (Mediation of Minor Disputes in Municipal Court Actions) provides:

If a person seeks to file or has filed a complaint charging an offense that may constitute a minor dispute, the court may issue a notice to the person making the charge and the person charged, requiring their appearance before the court or before a person or program designated by the court and approved by the Assignment Judge pursuant to R. 1:40-8 (Mediation of Minor Disputes in Municipal Court Actions). If on the return date of a summons, it appears to the court that the offense charged may constitute a minor dispute, the court may order the persons involved to participate in mediation in accordance with R. 1:40-8. No referral to mediation shall be made, however, if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, (5) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), (6) a violation of the New Jersey Motor Vehicle Code (Title 39), or (7) matters involving penalty enforcement actions.

²⁹ Notices in lieu of complaints are not filed complaints. A member of the public is diverted to mediation without a formal complaint being filed.

mandatory mediation and all other offenses to be subject to voluntary mediation. Some advantages to mandatory mediation would be resolving cases before they are docketed and rooting out persistent filers who use valuable court resources to air personal grievances. On the other hand, a mandatory mediation program for Municipal would be a huge undertaking.³⁰ Mediation itself can be time-consuming and sometimes a defendant will file a retaliatory cross-complaint. In addition, not every Municipal Court has a mediation panel and it could be difficult to fund as well as train and retain mediators.

CONCLUSION

The Working Group has submitted eight recommendations for the Court's consideration in response to its charge to examine the current rules and procedures involved in filing and issuing private citizen complaints. All of the members of the Working Group engaged in a lengthy review of and spirited conversation on how to maintain open access to the judicial system, while deterring the filing of frivolous and improperly charged citizen complaints. The Working Group strongly believes that prosecutorial screening of private citizen complaints charging DP offenses filed against "public officials" and citizen complaints charging indictable offenses against all individuals offers the best solution.

Very truly yours,

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³⁰ Presently, it takes more effort for the Municipal Court to send a case to mediation than it does to handle it through traditional scheduling because the mediation process has not been embedded into Municipal's computer system. There is no particular status for designating cases that go through mediation, which means all the notices (to the parties, the attorneys, the mediator) have to be manually generated.