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To: Glenn A. Grant, J.A.D., Acting Administrative Director

From: Roy F. McGeady, Chair, Municipal Practice Committee RFM (by CAW)

Re: Report of the Municipal Practice Committee on Treating Inmates' Letters as Motions

Date: July 2, 2014

Please accept this off-cycle report of the Municipal Practice Committee ("Committee") recommending an amendment to R. 7:7-2, which would require a municipal court to respond within 45 days to an unrepresented inmate's request for relief, when it is submitted on a form approved by the Administrative Director of the Courts.

Background

In 2009, a prisoner wrote to Judge Grant (letter attached as Appendix A) asking for an amendment to R. 7:8-5 so that an incarcerated defendant could require a municipal court to adjudicate any case in which there is an open detainer or warrant. Judge Grant referred the letter to the Committee. The Committee discussed this letter extensively in the 2009-2011 term, without coming to a decision by the time its report was filed with the Supreme Court on January 24, 2011. Accordingly, in its 2009-2011 report, the Committee listed this matter as held for consideration.

The Committee took up the issue again in its 2011-2013 term. In addressing the prisoner's request, the Committee decided that an amendment to R. 7:8-5, as the prisoner suggested, was not appropriate. Rather, it considered an amendment to R. 7:7-2, "Motions," that would treat as a motion the written communication of an incarcerated, unrepresented defendant and require the municipal court to respond on the record within 45 days. The 2011-2013 proposed rule amendment also provided that if the court did not decide the request contained within the letter within the specified time period, then the request would be deemed to be denied.

After much debate, the Committee rejected the proposed rule and this decision was reflected in the Committee's 2011-2013 report, where the issue was discussed in the section "Rule Amendments and Other Issues Considered and Rejected." (excerpt from the 2011-2013 report attached as Appendix B). In response to the Committee's 2011-2013 report, in a letter dated July 11, 2013 the Supreme Court asked the Committee "to reconsider its decision not to recommend an amendment to R. 7:7-2 that would treat certain letters from inmates as motions." The Court also asked that "the results of the Committee's consideration of this issue be completed on an expedited basis and submitted to the Court off-cycle."

Accordingly, the Committee undertook discussion of this issue in the current term. The Committee carefully considered possible amendments to R. 7:7-2 at the December, January, March, and April meetings of its 2013-2015 term.

Discussion

Every month the municipal courts of New Jersey receive large numbers of letters from incarcerated defendants. A large majority of inmate requests for relief fall into the

following categories: 1) for the court to hear an outstanding pending municipal court matter while the inmate is serving time for an unrelated matter; 2) for forgiveness of fines, penalties and other monetary obligations; 3) for fines, penalties and other monetary obligations to be converted to jail time; 4) for outstanding warrants to be resolved so the inmate may be admitted to half-way houses or other programs; and 5) for medical treatment.

A majority of the members supported the proposed amendment to R. 7:7-2 because they thought that currently some municipal courts may ignore inmate letters, even when the letters contain specific requests for relief that are within the municipal courts' jurisdiction. The majority believed that unrepresented inmates should not have their letters disregarded merely because they failed to put their requests for action in the form of a formal motion. At the same time, they recognized that treating every letter as a formal motion was inappropriate because it would open the flood gates to inappropriate requests. The members believed that the proposed amendment to R. 7:7-2 would ensure that all municipal courts will respond to inmate requests promptly and properly, thereby providing the inmates access to the courts to which they are entitled. These members were also influenced by the Supreme Court's wish that the Committee reconsider its rejection of the rule change during the prior term. It was apparent to these members that the Court favored a rule amendment that guaranteed municipal courts responded to appropriate inmate requests.

A minority of the members thought a rule change was unnecessary. The major reason for the opposition was that these members believed that most municipal courts already respond to inmate requests in an appropriate manner. These members feared

that the rule amendment would place an undue burden on the courts. The members who opposed the rule recognized that inmates deserve to have their issues addressed by the courts, but argued that the courts would lose the flexibility of handling the requests in the most efficient manner. They pointed out that many of the requests are now handled administratively by court staff, whereas the proposed rule would require every inmate request to be handled by a judge on the record.

A representative of the Attorney General's office objected to the rule change, for the reason that there are insufficient resources to allow the State to transport the large numbers of prisoners making such requests to the municipal courts for a hearing. The chair of the Committee responded that most prisoners would not need to be transported to the municipal courts, because for most requests the courts could consider the matter on the papers. When a hearing is necessary, the inmate can appear by video conference through a link with the institution where the defendant is housed, as is the common practice in municipal courts around the State.

A. Time Limit

After a thorough and thoughtful discussion, the Committee decided to include in the rule amendment a time limit of 45 days for the municipal court to respond to the request for relief from an incarcerated defendant. The majority of the members believed that a time limit for the court to respond was appropriate and would avoid the problem of inmate letters languishing for long periods of time. The initial proposal was to give the court only 30 days to respond, but a large majority of the Committee voted to extend the period to 45 days from the date the inmate submits the completed form to the court. The Committee rejected a proposal to give the municipal court 45 days to review an

inmate request rather than respond to it, reasoning that this change would give the municipal court too much flexibility to not respond to an inmate request. The Committee also considered and rejected a suggestion that the 45 day time limit be set forth in an Administrative Directive instead of the court rule. It was felt that placing the time limit in a separate document, such as a directive, would make the provision harder to locate for lawyers and pro se defendants.

A minority of the Committee opposed any time limit on the court's response. It was pointed out that in general the court rules do not give time limits for a court to act on a motion. The minority also argued the time limit would place an undue burden on the municipal court judges and court staff.

B. Notification of Prosecutor

The consensus of the Committee was that the municipal prosecutor should be notified of all inmate requests for relief for possible response. Accordingly, the proposed rule amendment requires the inmate to send a copy of the inmate's relief form to the municipal prosecutor. The Committee rejected the idea that the rule amendment mandate that the municipal prosecutor respond or that it should give a time limit for that response. The Committee favored keeping the process simple. Under the proposed rule amendment, the municipal court judge would have the discretion to decide in what manner, if any, and in what time frame, the municipal prosecutor should respond.

C. Inmate's Request for Relief Form

The Committee debated extensively whether the rule amendment should require an inmate to complete an Administrative Office of the Courts (AOC) promulgated form in

order for the municipal court to consider the inmate's request for relief. The requirement for a form was modeled, in part, on the procedure that is used under the Interstate Detainer Act, N.J.S.A. 2A:159A-1 to -15, which requires an inmate to submit certain forms to the prosecutor and the court to request disposition of charges within 180 days, N.J.S.A. 2A:159A-3.

The majority of the Committee, which favored a form argued that some inmate letters were difficult to understand and the form would assist the inmate in structuring his or her request in a way that the court could decide the matter. In other words, the form would make it easier for the courts to handle inmate requests. Others suggested that if a form was promulgated as part of a pro se packet, no rule change was necessary.

A minority of the Committee who opposed a form argued that most inmate letters were relatively clear in the relief that was requested and that the requests most frequently fell within the five categories listed above. There was also concern that requiring a form would slow down the process, since after the municipal court received an inmate letter, it would be required to send the inmate the AOC form.

The content of a draft form was also the subject of considerable discussion. The most disagreement was over whether the form should contain a checklist of specific kinds of relief that the inmate could request or whether the form should just provide some blank lines in which the inmate could explain the relief he or she sought. A checklist on the form was meant to channel inmates into the types of relief that the municipal courts may grant and steer the inmate away from relief that the municipal court had no authority over, such as mistreatment in jail. Some members feared,

however, that the inmates would simply check all boxes on the checklist, without regard to their relevance to their situation.

The Committee rejected a version of the form that would have provided a checkbox for the defendant to indicate whether he or she wanted to file a municipal appeal or file for post-conviction relief. The members reasoned that inviting the inmate to file for this type of relief would invite too many applications.

Conclusion

After thoughtful consideration, the Committee, by a vote of 14 to 11, approved the following version of a rule amendment to R. 7:7-2, which mandates that the inmate's request be on an AOC approved form. Further, by a vote of 19 to 3, the Committee voted to approve a draft version of a form that included a few checkboxes for the most frequent types of inmate relief, but also some free-form lines to allow the inmate to write in a request. Of course, only the Administrative Director of the Courts may promulgate an AOC Statewide form. The form that the Committee drafted is attached to this report as Appendix C for whatever further action the Administrative Director sees fit.

Recommended Rule Amendment

R. 7:7-2. Motions.

(a) Unchanged.

(b) Unchanged.

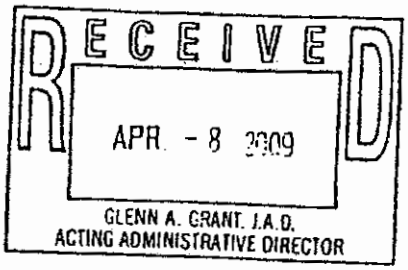
(c) Unchanged.

(d) Relief Requested by Certain Incarcerated Persons. An incarcerated, unrepresented defendant who seeks relief from the municipal court either before or after the entry of a guilty plea or trial, on a matter within the court's jurisdiction, must set forth the relief requested in writing on a form approved by the Administrative Director of the Courts and submit the form to the Municipal Court and send a copy to the Municipal Prosecutor. The court must respond to the request on the record within 45 days of receipt of the form.

Attachments

cc: Steven Bonville, Chief of Staff
Debra Jenkins, Assistant Director
Carol Ann Welsch, Chief

NORTHERN STATE PRISON
168 FRONTAGE RD.
P.O. BOX 2300
NEWARK NJ 07114-0300



Hon. Glenn A. Grant, JAD, Acting Administrator
Administrative Office of the Courts
Rules Comments
P.O. Box 037
Trenton NJ 08625-0037

April 5, 2009

RE: RULES COMMENTS

Honorable Judge Grant:

I read all of the comments for rule proposals, and would like to comment as to the following rules.

R. 3:21-10(b)(5)

This is a fantastic amendment. As it will allow inmates/defendants the ability to challenge there sentence in a manner as not to require the full adversarial process required by a Petition for Post Conviction Relief (PCR).

Specifically, many inmates/defendants have a simple issue that they believe renders there sentence illegal i.e.: failure to award "gap" credit; failure to access ability to pay fines; failure to access ability to pay restitution; amount of restitution already made; failure to award correct jail credit. These are just a sample of typical challenges, that with the proposed rule would allow an inmate/defendant who is not specifically interested in challenging his or her conviction, but rather seek to challenge the legality of there sentence.

As to how to determine what manner the "Petition" should proceed, I suggest the enclosed edited "Petition for Relief" which is a hybrid of the Petition for Relief" that the local Criminal Case Managers provide when a inmate/defendant seek a PCR. The current process after submission of the "Petition for Relief", a Judge awards good cause via a one (1) page order, that appears to by a typical "form" Order. I would also modify the Order, allowing the Court to grant "good cause", an then to determine which rule applies.

I would seek one (1) additional amendment to R. 3:21-10, that would allow an inmate/defendant who is seeking relief via a "program" to also use the "Petition for Relief" that I have submitted.

In my experience as a paralegal in the law library here for a few years, many inmates reach there mandatory minimum; seek a "program"; but never receive the full adversarial process; and, there attempt to seek a program is denied on the"papers".

Because there are many inmate/defendants unable to receive "programs" due to there custody status, or no availability of programs. An example of inmates who are unable to receive a lower custody status, that bars them for a Department of Corrections "program" are: prior convictions for a "sex" offense; prior conviction for "escape"; prior conviction for "arson"; or "homicide".

Additional inmate/defendants unable to receive programs via the Department of Corrections are those in Administrative

segregation (ADSEG). There are inmates serving sanctions on small sentences, i.e. three (3) years flat; four (4) years with a two (2)year mandatory minimum; who are in ADSEG for a "dirty urine", a "zero tolerance" sanction, who cannot get any form of reduced custody status, but would benefit from a Court Ordered program.

In my experience, many inmate/defendants will ask assistance to file a Motion for Reconsideration of Sentence to a Drug Program, be denied, and then upon advice of a fellow inmate seek a PCR as a method of getting counsel, and in an attempt to get before a Judge. When you explain this is the incorrect avenue, they usually become adamant, and find someone who will do it.

However, if the rule was modified as proposed, an inmate/defendant in lieu of there right to an attorney for there first PCR, would be able to seek counsel, and ask for a program more efficiently.

R. 7:8-5

There are many inmate/defendants who are housed in halfway house, who have open municipal detainers, or are released with open detainers/warrants from the Department of Corrections.

Presently, the Department of Corrections does not transport inmate/defendants to municipal court dates. Due to this, municipal detainers do not preclude an inmate from receiving "full minimum" and a "halfway house".

There are inmate/defendants in "halfway houses" who are

working, and traveling to there jobs from the "halfway houses" with open municipal court detainers/warrants. Periodically, the're arrested, transported to a local police station or the county jail, and subsequently fail to return to the "halfway house" were they are charged with escape. This happens reguraly, and consistently.

Recently, our Appellate Division issued a opinion as to an escape of an inmate/defendant charged with escape due to his being late because of transportation problems, his escape was vacated.

Many of the inmate/defendants charged with escape due to arrest for an old municipal warrant are also found not guilty. But they have been removed from a "halfway house", and now must re-start the entire process to return.

R. 7:8-5 requires amendment that would allow any incarcerated inmate/defendant the right to adjudicate a open detainer/warrant, and require that the municipal court respond to the demand to adjudicate.

Presently, many municipal court never respond to any demand at all in writing, or there response is "upon release, appear in court were a hearing may be conducted", or have the institioon contact us for a Video Tele-Conference.

The rule as it is does not hold the municipal courts accountable, and without a written denial, there is no avenue of appeal available. It also denies an inmate/defendant a right to access to the courts.

Excerpt from 2011-13 Municipal Practice Report

B. Proposed Amendments to Rule 7:7-2 – Treating Inmates' Letters as Motions

In 2009, a prisoner wrote to Judge Grant asking for an amendment to R. 7:8-5 so that an incarcerated defendant could require a municipal court to adjudicate any case on which there is an open detainer or warrant. Judge Grant referred the letter to the Committee. The Committee discussed this letter extensively in the 2009-2011 term, without coming to a decision by the time its report was filed with the Supreme Court on January 24, 2011. Accordingly, in its 2009-2011 report, the Committee listed this matter as held for consideration.

In addressing the prisoner's request, the Committee did not think that an amendment to R. 7:8-5 was appropriate. A substantial portion of the Committee, however, thought there was a need for a rule that would require municipal courts to act upon all requests for action that were received from unrepresented inmates. It was proposed that a new subsection (d) be added to R. 7:7-2:

> If the court of jurisdiction receives any written communication from an incarcerated, unrepresented defendant either before or after the entry of a guilty plea or trial seeking relief from the court of any nature, the written communication shall be deemed to be a motion. The court shall respond on the record to the motion seeking relief within 45 days of the receipt of the motion and shall notify the defendant in writing of the court's ruling on the motion. In the event that the court does not decide within 45 days of the receipt of the motion (being the written communication), the motion shall be deemed to be denied.

The Committee engaged in many lively debates on whether it should recommend the above-proposed rule, which would require municipal courts to treat certain letters from unrepresented prisoners as motions. Those supporting the rule change argued that many municipal courts simply ignore prisoner letters that contain specific requests that

should be acted on. They argued that prisoners' letters should not be ignored merely because they do not structure their requests in the form of motions. It was pointed out that since the prisoners are unrepresented, they could not be expected to follow the practice of putting their requests for action in the proper form.

Those opposing the proposed rule argued that it would increase the workload of our already overburdened municipal courts. It was also argued that the problem should be approached not by a rule change but by training municipal court judges or by offering pro se packets to prisoners so that they could file motions in the proper form. Many members thought the rule amendment was unnecessary, since many municipal court judges already address the prisoners' letters in some form, either by sending the prisoner a pro se packet, responding with a letter, or granting the requested relief, where appropriate.

Particularly controversial was the provision that provided that the relief was considered denied if no action was taken after 45 days of receipt. An automatic denial would give the prisoner an automatic right of appeal to the Superior Court, Law Division. Many on the Committee thought that this might flood the Superior Court with problematic municipal court appeals. The appeals would be particularly difficult for the Superior Court to handle, since the prisoner letters would be in an improper form and the municipal court would not have created any record on which the Superior Court could rely.

After considerable debate, a majority of the Committee rejected the rule proposal.

UNREPRESENTED INMATE'S NOTICE OF IMPRISONMENT AND REQUEST FOR RELIEF FROM MUNICIPAL COURT PURSUANT TO RULE 7:7-2(A)

This form is to be used by an unrepresented defendant, either before or after the entry of a guilty plea or trial, to request relief within the jurisdiction of a Municipal Court in New Jersey. If the defendant is incarcerated outside the State of New Jersey, the defendant must comply with all provisions of the Interstate Agreement on Detainers Act, N.J.S.A. 2A:159A-1, et. seq.

TO: Administrator of _____ Municipal Court
Prosecutor of the Municipality of _____

Name	List all Aliases	Date of Birth
Last 4 digits of Social Security Number	US Citizen ___Yes ___No If no, country of Origin	
Place Incarcerated	Inmate Number	Projected Release Date
Address Prior To Incarceration		
Expected Location Upon Release From Incarceration		

I, _____, of full age, do hereby certify as follows.

1. On or about _____, I was charged with _____
_____
The complaint and/or summons number(s) are _____
_____
If convicted of one or more charges, indicate the date of conviction. The date of conviction is _____

2. I am not represented on the charges set forth in paragraph 1.

3. I want to apply for representation by the Municipal Court Public Defender. **If so, the Municipal Court Public Defender application form must be attached to this form.**

4. My charges are not resolved and I request that the court grant the following relief. **Please check all that apply.**

_____ I have an open charge(s) pending before this court and request that my case be scheduled for a hearing to dispose of these charge(s).

_____ Due to incarceration, I failed to appear for court on _____. I request that the warrant issued for my arrest be vacated and that my case be scheduled for a hearing to dispose of this case.

_____ I request that my bail be modified as follows: _____
_____
_____

5. My case was disposed of by the court and I request that the court grant the following relief. **Please check all that apply.**

_____ I pled guilty or was found guilty of one or more of the charges listed above and the court ordered me to pay a fine and/or court costs. I request that the court permit me to serve jail time concurrent to my current sentence in lieu of payment of the monetary obligations.

_____ I pled guilty or was found guilty of one or more of the charges listed above. I believe I am entitled to _____ days additional jail credit because_____
_____

6. I request the following relief _____
_____
_____
_____

7. If jurisdiction over this matter is properly before another court or agency, I request that the court advise me of same.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____ _____
Defendant

FOR COURT USE ONLY

Granted _____ Explanation: _____
Denied _____ _____
Date: _____ Judge _____