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Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

Richard J. Hughes Justice Complex • P.O. Box 037 • Trenton, NJ 08625-0037 njcourts.gov • Tel: 609-376-3000 • Fax: 609-376-3002

Directive #10-20

[Questions or comments may be directed to the Criminal Practice Division at 609-815-2900 ext. 55300]

TO: **Assignment Judges**
Criminal Presiding Judges

FROM: **Glenn A. Grant, J.A.D.**

SUBJ: **Process for Search Warrants and Communications Data Warrants in Response to COVID-19**

DATE: **April 1, 2020**

By Order dated April 1, 2020 (copy attached), the Supreme Court relaxed and supplemented the Court Rules for search warrants to allow procedural modifications necessitated by the COVID-19 public health emergency. This Directive implements the Court's Order.

To adhere to mandatory social distancing measures, the Court has relaxed Rule 3:5-3 to remove the requirement that the applicant for a search warrant either must appear personally or telephonically to provide sworn oral testimony to a Superior Court judge who must record the testimony. That type of in-person interaction is contrary to the public health guidance issued by the New Jersey Department of Health (NJ DOH) and the Centers for Disease Control and Prevention (CDC). Based on this unprecedented public health crisis, the Court's Order permits the applicant for a search warrant to electronically transmit to a Superior Court judge an application that includes a certification in lieu of oath in accordance with Rule 1:4-4(b), and the Superior Court judge may authorize issuance of the warrant electronically. As such, Assignment Judges and Criminal Presiding Judges in each vicinage will make arrangements for applications to be submitted electronically to the judges' Judiciary email address by law enforcement and county prosecutors.

The Court's Order also relaxed Rules 3:5-3, 3:5-5, and 3:5-6 until further order so as to remove the requirements (1) that a search warrant direct that the executed warrant be returned to the issuing judge, (2) that the return and any inventory be delivered to the issuing judge following execution of the search warrant, and (3) that the issuing judge file documents with the Criminal Division Manager's office or, in the case of search warrants described in Rule 3:5-6(b), with the wiretap judge. This temporary elimination of these requirements was done because the exchange and retention of these documents poses public health concerns during the COVID-19

pandemic. Under the Court's order, the county prosecutor of the issuing county shall be responsible for (1) retaining the executed search warrant, any inventory, and any other accompanying documents; (2) complying with any request for a copy of the inventory as authorized by Rule 3:5-5(a); and (3) providing all search warrant information to the defendant as part of discovery pursuant to Rule 3:13-3.

To effectuate the Court's order, search warrants and communications data warrants shall be processed as follows, until further order:

1. Applications submitted electronically to a Superior Court judge must include a certification in lieu of oath completed by the applicant in accordance with Rule 1:4-4(b).

2. Law enforcement officers and prosecutors submitting applications electronically to the judge shall encrypt the email in accordance with procedures promulgated by the Administrative Director of the Courts.

3. Any revisions to the application deemed necessary by the judge shall be incorporated into the application.

4. If the judge decides to authorize issuance of the warrant, an electronic authorization may be sent by encrypted email to the applicant, with instructions to the applicant to affix the judge's electronic signature to the warrant.

5. The judge's email authorization shall be retained by the appropriate county prosecutor for discovery purposes.

6. For communications data warrants, arrangements should be made locally to assign the appropriate number.

7. Law enforcement shall be responsible for delivering the return to the county prosecutor in the issuing county.

8. The county prosecutor in the issuing county shall be responsible for: (a) retaining the executed search warrant, any inventory, and any other accompanying documents, (b) complying with any request for a copy of the inventory as authorized by Rule 3:5-5(a), and (3) providing all search warrant information to the defendant as part of discovery pursuant to Rule 3:13-3.

In those vicinages in which Assignment Judges have authorized Municipal Court judges to hear search warrant applications, effective immediately and until further order only Superior Court Judges should handle such applications. This will continue as long as the protocol set forth in this memorandum is operational. This change does not affect the handling of blood-draw search warrants by Municipal Court judges. Since blood-draw search warrants are handled telephonically and do not involve a direct appearance by law enforcement before the judge, that process will continue with no change.

Any questions regarding Directive #10-20 may be directed to Assistant Director Sue Callaghan (Criminal Practice Division) via email at sue.callaghan@njcourts.gov or by phone at 609-815-2900 ext. 55300.

Attachment (Supreme Court Order)

cc: Chief Justice Stuart Rabner
Attorney General Gurbir S. Grewal
Public Defender Joseph E. Krakora
Criminal Division Judges
Family Division Judges
Municipal Court Judges
Veronica Allende, Director, DCJ
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Courts
Trial Court Administrators
Special Assistants to the Administrative Director
Criminal Division Managers
Family Division Managers
Municipal Division Managers
Julie Higgs, Chief
Maria Pogue, Chief

SUPREME COURT OF NEW JERSEY

In response to the unprecedented public health crisis resulting from the COVID-19 coronavirus, the New Jersey Judiciary continues to implement all possible measures to avoid in-person contact as recommended by the New Jersey Department of Health ("NJ DOH") and the Centers for Disease Control ("CDC").

Accordingly, it is ORDERED, pursuant to N.J. Const. Art. VI, sec. 2., par. 3 that effective immediately, and until further order, Rule 3:5-3 ("Issuance and Contents") of the Rules Governing the Courts of the State of New Jersey is supplemented and relaxed so as to remove the requirement that the applicant for a search warrant either must appear personally before the judge or telephonically to provide sworn oral testimony to a Superior Court judge who must record the testimony and to provide that instead the applicant for a search warrant may transmit to a Superior Court judge electronically an application that includes a certification in lieu of oath in accordance with Rule 1:4-4(b), and the Superior Court judge may authorize issuance of the warrant electronically.

It is FURTHER ORDERED, effective immediately and until further order, that Rules 3:5-3, 3:5-5, and 3:5-6 are specifically supplemented and relaxed to remove the requirements that (1) a search warrant direct that the executed warrant be returned to the issuing judge, (2) the return and any inventory be delivered to the issuing judge following execution of the search warrant, and (3) the issuing judge file documents with the criminal division manager's office or, in the case of search warrants described in Rule 3:5-6(b), the wiretap judge; and instead, for the

duration of the COVID-19 public health crisis and until further order, the county prosecutor of the issuing county shall be responsible for (1) retaining the executed search warrant, any inventory, and any other accompanying documents, (2) complying with any request for a copy of the inventory as authorized by Rule 3:5-5(a), and (3) providing all search warrant information to the defendant as part of discovery pursuant to Rule 3:13-3.

For the Court,

Chief Justice

Dated: April 1, 2020