



# New Jersey Libertarian Party

Preempted Ordinance Repeal Project

*John Paff, Chairman*

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April 5, 2010

Carole A. Cummings

Municipal Division Manager

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(via e-mail to [Carole.Cummings@judiciary.state.nj.us](mailto:Carole.Cummings@judiciary.state.nj.us))

Dear Ms. Cummings:

Thank you very much for your March 31, 2010 letter. I now understand and agree that it is reasonable to retain the superseded code numbers on the Local Offense List for the limited purpose of properly processing complaints issued prior to the recodification but not disposed of until after recodification. My concern with the Bridgeton Court, however, is that it is still using the superseded offense numbers for violations committed **after** recodification.

The attached complaint and page from Bridgeton's CMC6030 report illustrate my concern. As you can see, a) Officer Smith issued Julio Contrefas complaint SCC-015812 for violating N.J.S.A. 2C:33-14 (Interference with Transportation) on January 1, 2010 for allegedly throwing a book bag at a moving vehicle, and b) the offense was disposed of on January 14, 2010 by a guilty plea to an amended charge of violating City Code § 4:3-2D (Loitering).

Yet, § 4:3-2D relates the version of Bridgeton's loitering code that was in force **prior** to the 2003 recodification. Accordingly, it appears that Bridgeton is using the superseded code numbers in a way that goes beyond the limited purpose for which those superseded numbers are permitted to remain on its Local Offense List.

I view the Local Offense List as a tool that protects citizens from being erroneously convicted of invalid offenses. For example, if I can convince the City Council that § 251-9A, the current loitering code provision, is preempted and invalid and the Council elects to repeal it, the public should be able to feel comfortable that no convictions will be entered under that code provision once it is removed<sup>1</sup> from the Local Offense List.

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<sup>1</sup> I am assuming that we agree that code provisions that are repealed because they are unconstitutional or otherwise invalid need to be treated differently than those that are recodified. As an illustration, suppose that a defendant is cited for violating § 251-9A on June 1, 2010 and the City repeals § 251-9A on June 15, 2010 after finding that it had been preempted by the 1979 Criminal Code. Suppose further that the defendant makes his first appearance on the charge on June 30, 2010. It seems clear to me—and hopefully to you—that this defendant must be acquitted because the offense that he was charged with committing was invalid on

Yet, I am having trouble feeling comfortable with a system that is apparently allowing the Bridgeton Court to enter convictions in 2010 for offenses that occurred in 2010 under a numbering system that has not been in use since 2003. If such an obvious inconsistency can have escaped detection for seven years, it is hard for me to have any confidence that loitering convictions will not continue to be processed—under one number or another—even if I am successful in getting the loitering code repealed and removed from the Local Offense List.

In your March 31, 2010 letter, you state that there is procedure in place that allows municipal courts to monitor and correct invalid entries on a daily basis. What exactly does this procedure do? Is it a computer routine that simply compares the offense numbers entered against the offense numbers listed on the Local Offense List and identifies those that do not match? If so, this would identify keypunching errors such as “25!-9A” being entered instead of “251-9A,” but would not identify or resolve the problem at issue here.

Moreover, I’m not certain whether ensuring entry of valid offense numbers is the Administrator’s, the Judge’s or the Prosecutor’s responsibility. In the enclosed complaint, it was apparently the Judge who allowed the downgrade to the superseded code provision, probably based upon the Prosecutor’s recommendation. If so, is the Administrator and her staff under a duty to call the invalid number to the Court’s attention, or are they simply supposed to enter the invalid offense number into the ACS system without question?

I would like to know more about the procedure that you describe in the final paragraph of your letter. Is this procedure set forth in a manual or directive? If so, would you send me a copy? Also, I would like to know whether you view it as being the Administrator’s duty to invite the Judge’s attention to the fact that he or she is entering convictions for offenses of invalid code provisions. If so, would you ask Bridgeton’s Administrator to invite the Court’s attention to the fact that § 4:3-2D no longer exists in the City’s codebook? If not (i.e. if you believe that the Administrator’s duty is to enter convictions into the ACS under invalid numbers if the Court so instructs), would you please advise me so that I can bring this matter to the attention of the Presiding Judge of the Municipal Court?

Thank you for your time, and I look forward to receiving your response.

Sincerely,



John Paff

cc. Carol Ann Welsch, Esq. (via e-mail only to [Carol.Welsch@judiciary.state.nj.us](mailto:Carol.Welsch@judiciary.state.nj.us))  
Kimberly Hamlyn (via e-mail only to [kimberly.hamlyn@judiciary.state.nj.us](mailto:kimberly.hamlyn@judiciary.state.nj.us))

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June 1, 2010 even though the City Council did not formally repeal it until June 15, 2010. It follow then that there would be no reason to keep § 251-9A on the Local Offense List for any purpose after its repeal. In other words, while it is permissible to keep a valid code provision’s old number on the Local Offense List so that pre-recodification charges can be disposed of post-recodification, it is not permissible to do the same when a code provision is repealed specifically because it was determined to be unconstitutional or otherwise invalid.

**SUPERIOR COURT OF NEW JERSEY**  
CUMBERLAND / GLOUCESTER / SALEM VICINAGE



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May 7, 2010

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RE: Your Letter of April 5

Dear Mr. Paff:

I have reviewed your letter of April 5 which deals with the Bridgeton Municipal Court and their local ordinances. There are several issues you mention in your letter.

First, if the police in the creation of the complaint or the court in the entry of the complaint enter a violation number that does not match the offense table (for example, is missing a subsection when there are multiple subsections or uses a number that is not listed on the table) that case will be flagged and identified on a daily report "Ticket Error Report" which details traffic, criminal and quasi-criminal complaints with invalid violations. It is the responsibility of the Court Director/Administrator to make sure these are corrected daily. Municipal Division staff do spot check reviews that this is done during our visitation process. Municipal court staff also enter any downgrades on the computer based upon the record made by the Judge on the appropriate place on the complaint.

Another concern you mention is that municipal court judges are using invalid offenses and pre-codified offense numbers when they have been replaced by codified numbers. I have discussed this matter with my Presiding Judge. A reminder email was sent to all municipal court judges in this vicinage regarding the use of valid offenses and codified numbers for local offenses when they exist in their municipality. There was also been a suggestion that the Judge discuss this issue with their staff so that they are aware of it.

As you indicate, you mention that the Judge probably allowed the downgrade based upon the prosecutor's recommendation. You may also want to bring your concerns regarding this issue



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to the attention of the County Prosecutors in Cumberland, Gloucester and Salem counties as they provide legal advice and oversight of the municipal prosecutors in the municipal courts.

Please contact me with any questions you may have. Again my apologies for the delay in responding to you.

Sincerely,

/s/

Carole A. Cummings,  
Municipal Division Manager

Cc: Carol Welsch, Esq. (via email)  
Kimberly Hamlyn, Director, Bridgeton Municipal Court (via email)