

Libertarian Party of Somerset and Middlesex Counties

*Howard Schoen, Chair
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Phone: 732-572-0207
September 23, 2003*

Joan C. Cordell, Administrative Specialist
Vicinage 13 Municipal Services Division
P.O. Box 3000
Somerville, NJ 08876-3000

RE: State v. Fumero
Readington Township Municipal Court

Dear Ms. Cordell:

Attached as Exhibit A is a copy of an apparently locally-drafted form employed by Readington Municipal Court which is used only for citizen-initiated complaints. A different form, developed by the Administrative Office of the Courts for statewide use, is used for complaints initiated by law enforcement officers. An example of the latter form is attached as Exhibit B.

We believe that the locally-drafted complaint form violates the Rules of Court and that its use should be discontinued immediately. We are also concerned that the local form's past use has resulted in many citizen-initiated complaints not being recorded in the judiciary's statewide database—the Automated Complaint System (ACS).

As you are aware, the Rules of Court require a municipal court administrator to "accept for filing every complaint made by any person."¹ If the complaint is filed by a law enforcement officer, a summons is issued automatically.² If, however, the complaint is filed by a citizen, a summons will issue only after a judicial officer makes a determination that probable cause exists. If the judicial officer finds no probable cause, then the complaint is dismissed.³

Accordingly, Exhibit A, a form of complaint for assault filed by a citizen against Grace Fumero, a Readington police officer, will remain viable only if Hon. Edward R. Martin, J.M.C. finds that the complaint is supported by probable cause. If Judge Martin finds that probable cause is lacking, the complaint will be dismissed. At the time of this writing, we are informed that Judge Martin is still considering this probable cause question.

During his September 17, 2003 visit with Readington Municipal Court Administrator Linda Bergen, John Paff, one of our members, specifically inquired as to whether the citizen's complaint against

¹ R.7:2-1(a)(1).

² R.7:2-2(a)(2).

³ R.7:2-2(a)(1). If the "judicial officer" is the Administrator or Deputy, the final determination must be made by a judge.

Officer Fumero would be entered into the ACS if Judge Martin found that probable cause was lacking and dismissed the complaint. Ms. Bergen explained that the ACS requires a docket number to be entered for every complaint and that since the local form bears no such number, information on the court's citizen complaint forms cannot be entered into the ACS. Consequently, it appears that if the Fumero complaint is dismissed for want of probable cause, no permanent, indexed record of its filing will be retained.

Since law enforcement initiated complaints are presumed to be based on probable cause, every complaint filed by a police officer is entered into the ACS and a permanent record is kept regardless of the complaint's final disposition. So, if Officer Fumero charged a citizen with assault, an ACS record is retained even if the complaint is eventually dismissed. If, however, the situation is reversed and the citizen files an assault complaint against Officer Fumero, a record of the matter is retained only if the complaint survives the probable cause determination. This recordkeeping double-standard, which we believe is prohibited by the Court Rules, leads to undesirable results.

We suppose that complaints against police officers are almost always initiated by private citizens. Accordingly, most complaints against police officers need to survive a judicial probable cause hearing to remain viable. Those that do not pass the probable cause test are not recorded on the ACS and are, for all practical purposes, hidden from public view and inquiry.

We would like for all complaints, whether initiated by a citizen or a law enforcement officer, to be recorded on the ACS. This way, there would be a permanent, computerized record of the filing of each complaint.

Such would enable citizens like Kevin Teeple, who filed the assault complaint against Officer Fumero, or his attorney, to learn the identities of anyone who may have previously filed charges against that officer, even if those complaints were dismissed for want of probable cause.

Also, such a system would permit interested citizens and groups, such as the Libertarian Party, to determine whether municipal judges are abusing⁴ their authority by finding a lack of probable cause in cases against police officers, and thus dismissing a citizen complaint, when probable cause actually exists.

Under the current system, as it exists in Readington and perhaps many other municipal courts, there is no document trail to identify cases in which police officers and others were defendants in actions brought by citizen complainants and where no probable cause was found. We believe that this situation is inappropriate and should be corrected.

Beyond these policy concerns, we also assert that taking citizen complaints on locally drafted forms violates the Court

⁴ One does not have to be overly cynical to suspect such abuse of authority since municipal judges are appointed and paid by the same municipal entities that employ the defendant police officers.

Rules. Court Rule 7:2-1(a) (1) states in part:

The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. Except as otherwise provided by paragraphs (b) (Traffic Offenses), (c) (Penalty Enforcement Proceedings), and (d) (Special Form of Complaint and Summons), all complaints shall be by certification or on oath before a judge or other person so authorized . . .

Accordingly, unless Exhibit A has been approved by the Administrative Director, either as a general complaint form or as a "special form of complaint" authorized by R.7:2-1(d), the Readington Municipal Court violated the Rules of Court by creating and using it. We ask you to inform the Readington Court of this violation and require it to use an approved form when taking citizen complaints.

Further, we do not know if the use of locally drafted citizen complaint forms is restricted to Readington or if a similar practice exists in other Vicinage 13 municipal courts as well. We would like you to take appropriate action to stop this practice wherever it occurs.

Finally, we would like to know if the citizen complaint forms taken by Readington in the past have been retained, for how long, and if you will require the data from them to be entered into the ACS so that an historical record of previous citizen complaints can be preserved.

Thank you for your attention to these matters. We look forward to your response.

Sincerely,

**LIBERTARIAN PARTY OF
SOMERSET AND MIDDLESEX COUNTIES**

Howard Schoen
Chair

cc. Linda Bergen, Administrator
Readington Township Municipal Court