

NOTICE TO THE BAR

TELEPHONIC REQUESTS FOR SEARCH WARRANTS FOR BLOOD TESTS IN DRIVING WHILE INTOXICATED (DWI) CASES (MISSOURI V. MCNEELY) -- RULE RELAXATION

The attached October 8, 2013 New Jersey Supreme Court order addresses the process for telephonic requests for search warrants for nonconsensual blood tests in certain DWI cases and is in response to the decision of the United States Supreme Court in Missouri v. McNeely, ___ U.S. ___, 133 S.Ct. 1552, 185 L.Ed. 2d 696 (2013). The order has a December 1, 2013 effective date.

In McNeely, the United States Supreme Court held "that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant." 185 L.Ed.2d at 715. Further, "[w]hether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances." Id. at 709.

The New Jersey Supreme Court order published with this notice relaxes and supplements the Part III (Criminal) and Part VII (Municipal Court) Rules so as to authorize certain Municipal Court judges to issue search warrants for nonconsensual blood testing in all driving while intoxicated (DWI) cases where no indictable charge is anticipated, with the Assignment Judge to designate either all of the Municipal Court judges in the county to have this authority or just particular specified judges. Such authorization is not limited to evening or weekend hours. Further, the search warrant may be issued in this limited category of cases by a designated Municipal Court judge in person or by telephone, radio or other means of electronic communication upon sworn oral testimony of a law enforcement officer or prosecuting attorney communicated to the issuing judge, pursuant to the procedures outlined in R. 3:5-3(a) and (b). Superior Court judges will handle search warrants for blood tests in those DWI cases where an indictable charge is anticipated. The Supreme Court order does not affect any current procedures for Municipal Court judges to issue in-person search warrants for other matters.

In accordance with the Supreme Court's holding in State v. Pena-Flores, 198 N.J. 6 (2009), the attached Order also removes the requirement in R. 3:5-3(b) that exigent circumstances must exist in order to issue search warrants by telephone, radio or other means of electronic communication.

Further, the Order also asks the Supreme Court Criminal Practice Committee and Municipal Court Practice Committee to consider and make recommendations regarding the scope of authority for Municipal Court judges to issue telephonic search warrants in all cases.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: November 14, 2013

SUPREME COURT OF NEW JERSEY

It is ORDERED, pursuant to N.J. Const. Art. VI, sec. 2, par.3, that effective December 1, 2013 and until further order, Part III (Criminal) and Part VII (Municipal Court) of the Rules Governing the Court of the State of New Jersey are supplemented and relaxed so as to permit Municipal Court judges, as designated by the Assignment Judge, to issue search warrants for nonconsensual blood testing in all driving-while-intoxicated cases where no indictable charge is anticipated; this authorization is not limited to evening or weekend hours and such search warrants may be issued in-person or by telephone, radio or other means of electronic communication on the sworn oral testimony of a law enforcement officer or prosecuting attorney communicated to the issuing judge, pursuant to the procedures outlined in R. 3:5-3(a) and (b).

It is FURTHER ORDERED that R. 3:5-3(b) is also specifically relaxed so as to remove the requirement that exigent circumstances must exist to issue a search warrant by telephone, radio or other means of electronic communication.

It is FURTHER ORDERED that the Court's Criminal Practice Committee and Municipal Court Practice Committee are asked to consider the scope of authority for Municipal Court judges to issue telephonic/electronic search warrants in all cases and to provide the Court with any proposed rule recommendations.

For the Court,
/s/ Stuart Rabner
Chief Justice

Dated: October 8, 2013