

Use of *Rule 1:10-1* (Contempt in Presence of Court)

Directive #8-99

Issued by:

June 22, 1999

James J. Ciania

Acting Administrative Director

I have been directed by the Supreme Court to remind all judges of the need to apply carefully the provisions of *Rule 1:10-1* (Contempt in Presence of Court). In 1994, the Supreme Court amended *Rule 1:10-1* to detail the basis for and procedures governing the use of the summary contempt power. The Rule, as amended, provides as follows:

A judge conducting a judicial proceeding may adjudicate contempt summarily without an order to show cause if:

- (a) the conduct has obstructed, or if continued would obstruct the proceeding;
- (b) the conduct occurred in the actual presence of the judge, and was actually seen or heard by the judge;
- (c) the character of the conduct or its continuation after an appropriate warning unmistakably demonstrates its willfulness;
- (d) immediate adjudication is necessary to permit the proceeding to continue in an orderly and proper manner; and
- (e) the judge has afforded the alleged contemnor an immediate opportunity to respond.

The order of contempt shall recite the facts and contain a certification by the judge that he or she saw or heard the conduct constituting the contempt and that the contemnor was willfully contumacious. Punishment may be determined forthwith or deferred. Execution of sentence shall be stayed for five days following imposition and, if an appeal is taken, during the pendency of the appeal, provided, however, that the judge may require bail if reasonably necessary to assure the contemnor's appearance.

All of the requirements of paragraphs (a) through (e) must be met before a judge uses the summary contempt power. In particular, you will note that the conduct must have obstructed the proceeding and have been actually seen or heard by the judge. The Rule also provides for a warning and an opportunity for the party to respond, all of which contemplates that the offending party is actually in the presence of the judge when the conduct occurs.

The significant changes to *Rule 1:10-1* were the result of a report by a special Summary Contempt Subcommittee of the Civil Practice Committee. That Committee's recommendations to the Supreme Court and the Court's adoption of those recommendations make it abundantly clear that it is inappropriate for judges to use the summary contempt power when confronted by offensive comments written in letters, on checks, or on envelopes. If threatening language is used in a written communication, the court should follow the established policy contained in the 1988 A Guidelines on Threats to Members of the Judiciary, @ (copy attached) rather than resorting to the use of *Rule 1:10-1*. (For a discussion of the Supreme Court's concerns that pre-dated the Committee's Report, see *Matter of Daniels*, 118 N.J. 51, 60 (1990).)

Courts and court staff are obliged to process written communications, including negotiable instruments, from litigants who gratuitously include profane and scurrilous comments. This does not mean that such submissions need always go unremarked. In an egregious case, a carefully measured written response may be made. The content of such a response cannot, however, implicate the powers provided under *Rule 1:10-1*.

Please discuss this Directive with your staff to ensure that they respond appropriately to situations covered by it.

EDITOR'S NOTE

No change has been made to the original text.

GUIDELINES ON THREATS TO MEMBERS OF THE JUDICIARY

From time to time members of the State Judiciary receive threats to their safety of varying degrees of seriousness and immediacy. These guidelines set forth uniform procedures, coordinating mechanisms and a means to investigate threats against judges. Justices of the Supreme Court and Judges of the Superior Court and Tax Court should follow the procedures in section A below. Judges of the Municipal Courts should follow the procedures in section B.

The guidelines are intended to be used in addition to each county's court security plan under the supervision of the County Sheriff. They have been developed by the State Police in cooperation with the Administrative Office of the Courts. It is the policy of the State Police Central Security Bureau to offer their services as appropriate to local authorities, to monitor threat situations whether or not they are directly involved in the investigation, and to remain in contact with the judge who has received a threat for the purpose of gathering information that may over time indicate a pattern or the involvement of organized groups.

A. The Chief and Associate Justices of the Supreme Court, Judges of the Superior Court and the Tax Court should follow the Guidelines below.

- I. Upon receipt of a threat that does not present an emergency, a judge should promptly notify the New Jersey State Police either by telephone or mail. Notification by telephone can be made directly to the Central Security Bureau Supervisor or his assistant at 609-530-5710. Written transmittals to the State Police should be directed to the Intelligence Service Section Supervisor, P.O. Box 7068, West Trenton, New Jersey 08625.
- II. If in the opinion of the judge who receives it a threat appears to be emergent, the judge may refer it first to the local police, or to the County Sheriff in a situation where that is called for in the county security plan, and then to the State Police. The judge may also call the County Prosecutor if he or she deems it appropriate. Nothing in these guidelines should be construed to limit a judge in taking any steps to protect his or her safety in the face of an emergent threat.

Outside of normal working hours, the State Police can be reached through the Communications Bureau at State Police Division Headquarters (609-882-2000). The Officer-in-Charge will notify the appropriate State Police personnel.

- III. The State Police will take appropriate steps based upon their evaluation of the nature of the threat. If a clear threat of violence exists or the investigation by the State Police indicates a high probability of violence, the County Prosecutor and/or the Attorney General will be notified as appropriate. The responsibility for developing protective measures will

rest with the local authorities, County Prosecutor and County Sheriff, except that the State Police also will take responsibility for developing protective measures if warranted by a threat to a member of the Supreme Court.

- IV. Threats do not have to be serious or explicit to be reported. The State Police want to be informed of all threats except the most frivolous kind, which the judge may choose to ignore. Reportable threats would include all threats, even those made by defendants at sentencing or overheard by a court officer, if the judge regards them as more than frivolous.
 - V. The State Police will maintain a central file of all threats reported. All evidence of the threat should be retained by the judge and transmitted to the State Police representative investigating the incident. This procedure will ensure fulfillment of proper chain-of-evidence requirements. Evidence will include the original threat letter, the envelope and all other attachments. If the threat is received telephonically, the State Police will be assigned by learning as much detail as possible about the case, including description of caller's voice characteristics, specific language used, etc. Documentation should include the known or suspected reason for the threat and any suspicions with respect to the identify of the suspects.
 - VI. Judges should inform their Assignment Judge or Presiding Judge of threats received and steps they have taken pursuant to these guidelines.
 - VII. The State Police will transmit semiannual reports on threats received and action that has been taken to the Administrative Director of the Courts.
- B. Judges of the Municipal Court should follow the guidelines below.
- I. Any threat received by a judge that does not appear to the judge to be entirely frivolous should be reported promptly to the local Chief of Police or to the State Police Station Commander serving a municipality that does not have its own police department.
 - II. The local chief of police or State Police Station Commander will conduct the investigation and should report initiation of the investigation immediately to the Central Security Bureau at 609-530-5713 or 5712. The Central Security Bureau will maintain the option of entering into the investigation.
 - III. The State Police will maintain a central file of all threats reported. All evidence of the threat should be retained by the judge and transmitted to the investigating agency. This procedure will ensure fulfillment of proper chain-of-evidence requirements. Evidence will include the original threat

letter, the envelope and all other attachments. If the threat is received telephonically, the investigating agency will be assisted by learning as much detail as possible about the case, including description of caller's voice characteristics, specific language used, etc. Documentation should include the known or suspected reason for the threat and any suspicions with respect to the identity of the suspects.

- IV. The State Police will select for in-depth investigation those threats that appear to involve an emerging pattern or have been made by persons or groups known to advocate violence.
- V. Judges should inform their Assignment Judges promptly of all threats received and the steps they have taken pursuant to these guidelines. The Central Security Bureau of the New Jersey State Police will inform the Assignment Judge whenever they become actively involved in the investigation of a threat to a Municipal Court Judge.