# Procedures to be Followed in Handling Applications for Communications Data Warrants and Communications Information Orders

Directive #9-99     August 2, 1999
(Supersedes Directive #2-98
and #6-99)
Issued by:      Richard J. Williams
         Acting Administrative Director

   This Directive supersedes Directive # 2-98 and is intended as a consolidation of policies regarding applications for communications data warrants and communications information orders.

   As a result of *State v. Hunt,* 91 *N.J.* 338 (1982), and in light of the provisions of the New Jersey Wiretapping and Electronic Surveillance Act, *N.J.S.A.* 2A:156A-1 *et seq.* (the AWiretap Act@), the Chief Justice periodically issues orders designating those Superior Court judges authorized to receive applications and issue communications data warrants and communication information orders (ACommunications Data Warrant Judges@) (as well as orders designating AWiretap Judges@).

   The following provisions shall govern applications for communications data warrants and communications information orders:

I.  <u>Authorization.</u> Only those judges authorized in the Chief Justice=s orders referenced above may handle applications for communications data warrants and communications information orders, and only pursuant to the jurisdictional limitations contained within such order(s).

II.  <u>Informal Communications Data Warrant Vicinages.</u> The Chief Justice has established the following seven informal vicinages for communications data warrant and communications information order purposes:
- Atlantic, Cape May, Cumberland, Ocean, and Salem Counties
- Bergen, Sussex, and Passaic Counties
- Burlington, Hunterdon, Mercer, Somerset, and Warren Counties
- Camden and Gloucester Counties
- Hudson County
- Essex, Morris, and Union Counties
- Middlesex and Monmouth Counties

In the Chief Justice=s Order designating the Wiretap Judges, one or more of the Wiretap Judges has been assigned to supervise each such informal vicinage.

   The authorized Wiretap Judges remain primarily responsible for all communications data warrant and communications information order applications within the listed counties in their respective informal supervisory vicinages. The Communications Data Warrant Judges designated in orders by Chief Justice (other than those who are Wiretap Judges) have been so designated in order to assist the Wiretap Judges by handling communications data warrant and communications information order applications in appropriate cases. For such purposes, those Communications Data Warrant Judges remain under the supervision of their respective Wiretap Judges according to the above informal vicinage configuration.

III.  <u>Identification Numbers.</u> Each Wiretap Judge is to maintain three lists of sequential identification numbers -- one for wiretap applications, a second for

communications data warrant applications, and a third for communications information order applications.

When one of the Wiretap Judges receives an application for a communications data warrant or a communications information order, the judge shall assign that application an identification number in the following standardized format (utilizing, for purposes of this example, an application made to fictional Wiretap Judge Hanley G. Baxendale and originating in Atlantic County):

HGB - ATL - 8CDW - 00

The first group of letters in this example are the initials of the Wiretap Judge judge (here, AHGB@ for Judge Baxendale); the next group of letters are the first three letters in the name of the county in which the application originates (here, AATL@ for Atlantic County); the next combination of numerals and letters represents the next available sequential number one of Judge Baxendale=s lists for the current calendar year (here, number 8 on the judge=s communications data warrant list); the next two digits signify the last two digits of the calendar year (here, A00" for calendar year 2000).   Thus, the above listed example would identify the eighth communications data warrant application received directly by Judge Baxendale in calendar 2000, with this particular application having originated in Atlantic County.   As a second example, the identification number AEAD - BUR - 9CDW - 99" would represent the ninth communications data warrant application received directly by fictional Judge Ellen A. Dwyer in calendar 1999, with that particular application having originated in Burlington County.

When a communications data warrant application or communications information order application is received by a Communications Data Warrant Judge who is not a Wiretap Judge,  that Communications Data Warrant Judge is to telephone his or her respective supervising Wiretap Judge pursuant to the above listed informal vicinage configuration (or another Wiretap Judge if his or her supervising Wiretap Judge is unavailable) to obtain the next sequential number on the Wiretap Judge=s list for the particular type of application and thereafter shall affix that sequential number to the application in the format listed above.  In such instances the identification number so affixed is to utilize the initials of the Wiretap Judge that provided the identification number as well as the initials of the Communications Data Warrant Judge handling the application (with the Wiretap Judge=s initials listed first).   For example, if fictional Communications Data Warrant Judge Mabel S. Douglass received an application for a communications information order originating in Gloucester County and Wiretap Judge Ellen A. Dwyer was the supervising Wiretap Judge for that county, Judge Douglass would telephone Judge Dwyer to obtain the next available sequential number on Judge Dwyer=s list for communications information order applications (e.g., number 9 on the communications information order sequential list) and would affix that number to the application in the following format:

EAD by MSD - GLO - 9CIO- 00

This example would identify the ninth application for a communications information order received by Judge Dwyer (AEAD@) in her supervisory capacity in calendar 2000 (A00"), with this particular application having originated in Gloucester County (AGLO@) and having been made to Judge Douglass (Aby MSD@) (as a designated Communications Data Warrant Judge for Gloucester County).

If an application contains requests for more than one communications data warrant or communications information order, separate identification numbers in the above- described format should be utilized for each warrant or order issued, with cross-

referencing to related identification numbers where appropriate.  Thus, a separate order is required for each set of communications data warrants or communications information orders, although they may be sought in combined applications.

If an application for a communications data warrant or communications information order is made to a Communications Data Warrant Judge during other than normal working hours, *i.e.,* when telephone access to the sequential numbers lists maintained by the Wiretap Judges may not be available, the judge should handle the application in the usual fashion and advise the applicant to contact him or her on the next working day in order to obtain the identification number to be affixed to that application and order (by which time the judge will have obtained the appropriate sequential number from his or her supervising Wiretap Judge).

IV.     Standards.  In accordance with *State v. Hunt* and applicable statutes, the standard to be applied in deciding communications data warrant applications is that of probable cause.  Pursuant to *N.J.S.A.* 2A:156A-29(e) the standard for communications information order applications is Arelevant and material@ articulable facts.

V.     Retention/Storage of Applications.  Once a communications data warrant application has been decided, either favorably or unfavorably, by a Communications Data Warrant Judge who is not a Wiretap Judge, the original papers for that application should be forwarded immediately to the Wiretap Judge from whom that judge received the identification number for the application.  Such papers thereafter are to be maintained by the Wiretap Judge under the same security as is applicable to wiretap applications and orders.

VI.     Use of Law Clerks to Review Applications.   The Chief Justice has recommended that Communications Data Warrant Judges not use law clerks to review applications for these types of warrants or orders because of the highly confidential nature of the applications and the fact that these investigative procedures often lead directly to applications for wiretaps.

VII.     Questions or Problems.   Any questions or problems that arise regarding application of the provisions of this Directive should be referred to the appropriate Wiretap Judge.  Any such questions or problems not resolved at that stage should be placed before an en banc meeting of the Wiretap Judges for their consideration and resolution, with the Chief Justice having the ultimate authority to determine policy and procedures.

## EDITOR=S NOTE

This Directive supersedes Directives #2-98 and #6-99 which have been deleted from this compilation.