2024 REPORT

OF THE SUPREME COURT

CIVIL PRACTICE COMMITTEE

January 2024

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ATTACHMENT

SPECIAL CIVIL PART SUBCOMMITTEE REPORT 2022-2024 RULES CYCLE

I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to *Rule* 1:5-2 – Manner of Service

The Discovery Subcommittee proposed an amendment to *Rule* 1:5-2 to address concerns regarding service by email of discovery demands and motions (not original process). Since the COVID-19 pandemic, practitioners reported having experienced an increase in electronic service of motions and discovery demands, generating the need for a rule amendment to formalize the practice. The proposed amendment provides that counsel are permitted to serve one or all of the email addresses designated in eCourts. This provision eliminates the potential for emails being sent to a general mailbox and helps ensure the email reaches the intended recipient. Finally, the limitation of the rule amendment for service only between attorneys protects self-represented litigants who may otherwise have limited access to technology.

Currently, New Jersey does not have a specific rule permitting service by email while other states have rules explicitly permitting it. A 2016 rule relaxation to *Rules* 1:5-2 and 1:5-3, however, permits electronic service of process by using "an approved electronic filing system pursuant to *Rule* 1:32-2A(a) where an automated notice of filing has been generated and transmitted." The proposed amendments provide an additional avenue of service. That is, the proposed amendment permits service via email to an attorney's permitted eCourts email

address, irrespective of whether a notice of filing in eCourts has been generated and transmitted.

The proposed amendments to *Rule* 1:5-2 follow.

1:5-2 Manner of Service

Service upon an attorney of papers referred to in *R.* 1:5-1 shall be made by mailing a copy to the attorney at his or her office by ordinary mail, by email to the email addresses listed on an approved electronic court system pursuant to Rule 1:32-2A(a), by handing it to the attorney, or by leaving it at the office with a person in the attorney's employ, or, if the office is closed or the attorney has no office, in the same manner as service is made upon a party. Service upon a party of such papers shall be made as provided in *R.* 4:4-4 or by registered or certified mail, return receipt requested, and simultaneously by ordinary mail to the party's last known address. If no address is known, despite diligent effort, the filing of papers with the clerk shall be deemed to satisfy that service requirement and there need be no separate service upon the clerk. Mail may be addressed to a post office box in lieu of a street address only if the sender cannot by diligent effort determine the addressee's street address or if the post office does not make street-address delivery to the addressee. The specific facts underlying the diligent effort required by this rule shall be recited in the proof of service required by *R.* 1:5-3. If, however, proof of diligent inquiry as to a party's whereabouts has already been filed within six months prior to service under this rule, a new diligent inquiry need not be made provided the proof of service required by *R.* 1:5-3 asserts that the party making service has no knowledge of any facts different from those recited in the prior proof of diligent inquiry.

Note: Source – *R.R.* 1:7-12(d), 1:10-10(b), 1:11-2(c), 2:11-2(c), 3:11-1(b), 4:5-2(a) (first four sentences); amended July 16, 1981 to be effective September 14, 1981; amended July 13, 1994 to be effective September 1, 1994; amended July 28, 2004 to be effective September 1, 2004; amended July 23, 2010 to be effective September 1, 2010; amended to be effective .

B. Proposed Amendments to *Rule* 1:11-2 – Withdrawal or Substitution

The Committee considered proposals to amend *Rule* 1:11-2 in two separate respects.

The first proposed amendments to paragraph (a) *Rule* 1:11-2 address missing contact information for non-lawyer parties where an attorney is withdrawing or seeking to be relieved from a matter and a non-lawyer is being substituted into the case. In some instances, when attorneys are relieved as counsel, court staff have difficulty communicating with the self-represented parties because of inadequate or missing contact information, which causes scheduling difficulties. The proposed amendments would require the full name of the party or parties who will be self-represented, the current mailing address(es), and telephone numbers to be included with an application to be relieved as counsel. If the information is not available, an affidavit of diligent inquiry indicating why the information is not available is required. This alternative approach balances the importance of having contact information for parties with the difficulties some attorneys face when clients become unresponsive as a strategy to avoid responsibility for the matter. The Committee does not suggest at this time requiring an email address for the client be supplied until technology can be implemented to restrict public access to the email addresses.

The second proposed amendments to paragraph (c) of *Rule* 1:11-2 codify a prior rule relaxation that aligned the court rules with legislation effective

December 1, 2021. *N.J.S.A*. 2A:42-144 to 2A:42-148 established confidentiality standards for certain landlord tenant (LT) cases arising out of non-payment or habitually late payment of rent owed between March 9, 2020 and August 3, 2021. The Supreme Court relaxed the provisions of *Rule* 1:38-3 ("Public Access to Court and Administrative Records") and expanded the relaxation of *Rule* 1:11-2(c) ("Appearance by Attorney for Client Who Previously Had Appeared *Pro Se*") in conformance with the statute. Due to the confidential nature of these LT cases in addition to certain other LT cases, the proposed amendments permit attorneys to view the court's "case jacket" for a 3-day period prior to undertaking representation to assist parties in LT. The Advisory Committee on Public Access codified the rule relaxation to *Rule* 1:38-3 on February 28, 2022.

The proposed amendments to *Rule* 1:11-2 follow.

1:11-2. Withdrawal or Substitution

(a) Generally. Except as otherwise provided by R. 5:3-5(e) (withdrawal in a civil family action) and *R*. 7:7-9 (withdrawal and substitution in a municipal court action),

(1) …no change.

(2) …no change.

(3) ...no change.

(4) A motion to withdraw as counsel or a substitution or withdrawal indicating the client will proceed as self-represented, shall include the information required by *Rule* 1:4-1(b), or, in the alternative, an affidavit or certification of diligent inquiry indicating why the information is not available.

(b) …no change.

(c) Appearance by Attorney for Client Who Previously Had Appeared *Pro Se*. Where an attorney is seeking to appear representing a client who previously appeared *pro se*, the attorney must file a notice of appearance, not a substitution of attorney, and pay the appropriate notice of appearance fee. In a residential landlord tenant matter, an attorney may enter a limited appearance, which will expire after three days, for the purpose of reviewing a confidential case file before undertaking representation of a party and no appearance fee is required.

Note: Source – *R.R.* 1:12-7A; amended July 16, 1981 to be effective September 14, 1981; amended November 7, 1988 to be effective January 2, 1989; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; amended and paragraph designations and captions added January 21, 1999 to be effective April 5, 1999; paragraphs (a)(1) and (a)(2) amended July 27, 2006 to be effective September 1, 2006; subparagraph (a)(1) amended July 19, 2012 to be effective September 4, 2012; new paragraph (a)(3) adopted December 4, 2012 to be effective January 1, 2013; paragraph (a) amended; new paragraph (c) added July 28, 2017 to be effective September 1, 2017; paragraph (a) amended July 30, 2021 to be effective September 1, 2021; paragraph (a)(4) added and paragraph (c) amended to be effective .

C. Proposed Amendments to *Rule* 2:11-4 – Attorney's Fees on Appeal

In *Hansen v. Rite Aid Corp.*, 253 *N.J.* 191 (2023), the Supreme Court requested the Committee propose an amendment to *Rule* 2:11-4 analogous to the remand provision in Local Rule 39-2 of the Eleventh Circuit. The proposed rule amendment would provide a mechanism by which a party who prevailed on its appeal but is not yet a "prevailing party" entitled to attorney's fees and costs under a relevant fee-shifting statute, to make application for fees and costs after the conclusion of the remanded matter in the trial court.

The Court directed that, "[a]bsent exceptional circumstances, such amendment would apply only in fee-shifting cases in which an appellate court reverses and remands for further proceedings such that the party that has succeeded in the appeal is not yet a prevailing party entitled to an award of fees and costs. In such a setting, a party that later becomes a prevailing party by virtue of a determination on remand should be permitted to seek appellate legal fees directly from the trial court." *Id.* At 225.

The Eleventh Circuit rule imposes a fourteen-day deadline for applications for attorneys' fees for appeals to the Eleventh Circuit. An exception to that deadline exists when an appellate court reverses a district court judgment and orders a remand:

> When a reversal on appeal, in whole or in part, results in a remand to the district court for trial or other further proceedings (*e.g.*, reversal of order granting summary

> judgment, or denying a new trial), a party who may be eligible for attorney's fees on appeal after prevailing on the merits upon remand may, in lieu of filing an application for attorney's fees in this court, request attorney's fees for the appeal in a timely application filed with the district court upon disposition of the matter on remand. Fed. R. App. P. 39.2(e)

The Appellate Division's internal Rules Committee drafted proposed amendments for the Committee's consideration.

Members of the Civil Practice Committee discussed a potential scenario where fees could be incurred after the appellate court enters an order of remand, such as in connection with a motion for reconsideration or an application for certification to the Supreme Court. The Committee determined, however, that in many circumstances it would be inappropriate to leave the issue of fees in abeyance pending further appellate activity. The Court's internal protocols may result in some cases being held beyond the proposed 30 days. Additionally, there is no right to oppose a motion for reconsideration or application for certification. As such, a party would not necessarily be incurring further fees and costs. The Committee agreed with the Appellate Division Rules Committee and recommends amendments to *Rule* 2:11-4.

The proposed amendments to *Rule* 2:11-4 follow.

2:11-4 Attorney's Fees on Appeal

(a) An application for a fee for legal services rendered on appeal shall be made by motion supported by affidavits as prescribed by *R*. 4:42-9(b) and (c)[,]. Except as provided in paragraph (b), a fee application [which] shall be served and filed within 10 days after the determination of the appeal. Although a movant should append statements or invoices sent to the client as supportive of the claim for fees, the supporting affidavit must also list in detail the services rendered, the dates the services were rendered, and the type of service rendered on that date. The application shall also state the amount of fees [how much has been] previously paid to or received by the attorney(s) for legal services both in the trial and appellate courts or otherwise, including any amount received by way of pendente lite allowances, and what arrangements, if any, have been made for the payment of a fee in the future. Fees may be allowed by the appellate court in its discretion:

[(a)] (1) In all actions in which an award of counsel fee is permitted by *R*. 4:42-9(a), except appeals arising out of mortgage or tax certificate foreclosures[.];

[(b)] (2) In a worker's compensation proceeding. Where the determination of the Supreme Court reverses a denial of compensation in the Appellate Division, the Supreme Court shall determine the fees for services rendered in both appellate courts[.]; or

[(c)] (3) As a sanction for violation by the opposing party of the rules for prosecution of appeals.

[In its disposition of a motion or on an order of remand for further trial or administrative agency proceedings, where the award of counsel fees abides the event, the appellate court may refer the issue of attorney's fees for appellate services for disposition by the trial court or, if applicable, by the agency that is serving solely as the forum and that has the authority to award counsel fees against litigants appearing in that forum.]

(b) When the disposition on appeal results in a remand for further proceedings in the trial court or administrative agency, and where the award of counsel fees abides the event, a party who may be eligible for attorney's fees on appeal after prevailing on the merits upon remand shall request any attorney's fees sought for the appeal after completion of the remand. The request shall be made by motion filed with the trial court, or, if applicable, the administrative agency that is serving solely as the forum and that has the authority to award counsel fees against litigants appearing in that forum, upon disposition of the matter on remand. The motion shall be filed no later than 30 days after the completion of the remand proceedings or, if a motion for reconsideration is filed, 10 days after a ruling on the motion for reconsideration.

Note: Source – *R.R.* 1:9-3, 2:9-3, 1:12-9(f), 4:55-7(a)(b)(e), 5:2-5(f). Paragraph (d) amended July 14, 1972 to be effective September 5, 1972; text amended and paragraph (g) and (h) adopted July 29, 1977 to be effective September 6, 1977; paragraphs (a) (b) (c) (e) (g) and (h) deleted, new paragraph (a) adopted, former paragraph (d) redesignated (b) and former paragraph (f) redesignated paragraph (c) November 1, 1985 to be effective January 2, 1986; introductory paragraph amended July 13, 1994 to be effective September 1, 1994; final paragraph added June 28, 1996 to be effective September 1, 1996; final paragraph amended July 27, 2918 to be effective September 1, 2018; introductory paragraph amended August 5, 2022 to be effective September 1, 2022; first paragraph amended and designated as paragraph (a), former paragraphs (a), (b), and (c) redesignated and amended as paragraphs (1), (2) and (3), and new paragraph (b) added to be effective .

D. Proposed Amendments to *Rule* 4:3-1(a)(4)(I) – Divisions of Court; Commencement and Transfer of Actions and *Rule* 4:86-7A – Rights of an Incapacitated Person; Proceedings for Review of Guardianship

The Civil Practice Division proposed amendments to *Rules* 4:3-1(a)(4)(I) and 4:86-7A which would align the rules with amendments to the Termination of Obligation to Pay Child Support Law, *N.J.S.A*. 2A:17-56.67, and *Rule* 5:6-9(g) as well as advance the interests of justice for incapacitated adults. The proposed amendments direct actions for continuation of a child support obligation for an alleged or adjudicated incapacitated person to be filed in the Chancery Division, Family Part, instead of in the Chancery Division, Probate Part as actions for conversion of child support to financial maintenance.

The statute, originally adopted in 2017, required a child support obligation for an individual with a mental or physical disability who has reached the age of 23 to be converted to another form of financial maintenance. *See N.J.S.A*. 2A:17-56.67(f)(2). *Rules* 4:3-1(a)(4)(I) and 4:86-7A were adopted in 2018 to establish procedures for applications under the statute for conversion of child support to financial maintenance for an alleged or adjudicated incapacitated person to be heard in the Probate Part. The statute was amended effective December 1, 2020, to allow the court to order the continuation of child support "for a child with a severe physical or mental incapacity that causes the child to be financially dependent

upon a parent…". N.J.S.A. 2A:17-56.67(f)(3). Subsequently, *Rule* 5:6-9(g) was adopted to establish procedures for such actions in the Family Part.

Critically, an order for continuation of child support is enforceable by Probation Child Support Enforcement, with significant consequences for failure to pay and results in high levels of compliance. A financial maintenance order, on the other hand, may only be enforced via Motion to Enforce Litigants' Rights without the consequences available through probation (*e.g.*, issuance of bench warrant). As a result, requiring the matters to be filed in the Probate Part as actions for conversion to financial maintenance based on the child's status as an alleged or adjudicated incapacitated person leads to disparate treatment of this vulnerable population, places them at risk of financial harm, and unjustly burdens those litigating on their behalf. In short, orders enforceable through Probation are far more effective for those receiving the financial support. Further, *Rule* 4:3-1(a)(4)(I) contains an exception providing that "when . . . either parent remains subject to a Family Part support or financial maintenance order related to other dependents, the support issue for the incapacitated child shall be determined in the . . . Family Part." This magnifies the disparate treatment of incapacitated adult children in actions not involving other dependents, and has caused confusion among attorneys, litigants, judges, and court staff. Finally, Family Part judges are better positioned than Probate Part judges to handle these matters, as they are

equipped with the technology, specialized training, and staff support to properly calculate support.

Finding nothing in the statute would prohibit these cases being heard in the Family Part and acknowledging the significant benefits to both litigants and court processes, the Committee unanimously recommends the adoption of the proposed rule amendments.

The proposed amendments to *Rules* 4:3-1(a)(4)(I) and 4:86-7A follow.

4:3-1 Divisions of Court; Commencement and Transfer of Actions

(a) Where Instituted.

(1) …no change.

(2) …no change.

(3) …no change.

(4) Specific Case Types. The following types of cases shall be filed and heard in the Division and Part as specified:

(A) …no change.

(B) …no change.

(C) …no change.

(D) …no change.

(E) …no change.

(F) …no change.

(G) …no change.

(H) …no change.

(I) Post-Judgment Relief Relating to Incapacitated Adult Child of Parents Subject to Family Part Order. An action seeking to modify or enforce the terms of a Chancery Division, Family Part order addressing custody and/or parenting time/visitation of an unemancipated minor child who was later adjudicated incapacitated as defined in *N.J.S.A*. 3B:1-2 after reaching age 18, shall be filed and heard in the Chancery Division, Probate Part. If the action affects

support [and the incapacitated child has not yet turned age 23], the matter shall be filed and heard in the Chancery Division, Family Part pursuant to *R.* 5:6-9(g). [If the action affects support and the incapacitated child has turned age 23, the matter shall be filed and heard in the Chancery Division, Probate Part pursuant to *R.* 4:86-7A. Notwithstanding the foregoing, when an application is filed relating to support of an incapacitated child over the age of 23 and either parent remains subject to a Family Part support or financial maintenance order related to other dependents, the support issue for the incapacitated child shall be determined in the Chancery Division, Family Part.]

(5) …no change.

(b) …no change.

Note: Source – *R.R.* 4:41-2, 4:41-3, 5:1-2. Paragraphs (a) and (b) amended and caption amended July 22, 1983 to be effective September 12, 1983; new paragraph (a) adopted and paragraph (b) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; subparagraph (a)(1) amended, subparagraph (a)(2) recaptioned and adopted, former subparagraphs (a)(2) and (a)(3) redesignated (a)(3) and (a)(4) respectively, and subparagraph (a)(4) amended June 29, 1990 to be effective September 4, 1990; subparagraphs (a)(1), (a)(2) and (a)(3) amended, new subparagraph (a)(4) adopted, and former subparagraph (a)(4) amended and redesignated as subparagraph (a)(5) July 27, 2018 to be effective September 1, 2018; paragraph (a)(4)(I) amended to be effective .

4:86-7A Application for [Financial Maintenance] Continuation of Child Support for Incapacitated Adults Subject to Prior Chancery Division, Family Part Order

As to a person alleged or adjudicated to be incapacitated as defined in *N.J.S.A.* 3B:1-2 and who has reached the age of 23, an application for [conversion of a child support obligation to another form of financial maintenance] continuation of a child support obligation pursuant to *N.J.S.A.* 2A:17-56.67 *et seq*. may be made [as follows:] in accordance with *R.* 4:3-1(a)(4)(I) and *R*. 5:6-9(g).

[(a) Prior to Adjudication of Incapacity. A plaintiff filing a complaint for adjudication of incapacity and appointment of guardian pursuant to *R.* 4:86-2 may request such conversion in a separate count of the complaint.

(b) After Adjudication of Incapacity. A guardian or custodial parent of an adjudicated incapacitated person may request such conversion by filing a motion on notice to the parent responsible for paying child support and any interested parties setting forth the basis for the relief requested pursuant to *R.* 4:86-7.

(c) Required Materials for Submission. Any action brought pursuant to either paragraph (a) or paragraph (b) shall set forth the exceptional circumstances pursuant to which such conversion to another form of financial maintenance is requested and shall have the following annexed thereto:

(1) Copies of any prior Chancery Division, Family Part orders related to the child support obligation; and

(2) A financial maintenance statement in such form as promulgated by the Administrative Director of the Courts.]

Note: Adopted July 27, 2018 to be effective September 1, 2018; introductory paragraph amended and paragraphs (a), (b), and (c) deleted to be effective .

E. Proposed Amendments to *Rule* 4:14-2 – Notice of Examination; General Requirements

The Discovery Subcommittee suggested amendments to *Rule* 4:14-7 to address issues that arise related to corporate depositions. The proposed amendments are modeled after the recent Federal Rule [30 (b)(6)] amendment on Organizational Depositions (Corporate Designee depositions).

The proposed amendments are designed to curtail problems that can arise where the incorrect individual appears for a deposition as a corporate designee and does not possess relevant information. The proposed amendments require parties to confer in good faith prior to the deposition, and, where the subpoena is directed at a non-party, require that all parties confer. The requirement for all parties to confer acts as a mechanism to prevent gamesmanship. The Committee agreed, noting the proposed amendment would provide greater protections to litigants than the federal rule.

The proposed amendments to *Rule* 4:14-2 follow.

4:14-2 Notice of Examination; General Requirements; Deposition of Organization

(a) …no change.

(b) …no change.

(c) Organizations. [A party may in the notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth for each person designated the matters on which testimony will be given. The persons so designated shall testify as to matters known or reasonably available to the organization.] In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the parties and any nonparty organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with all parties and to designate each person who

will testify. The persons designated must testify about information known or reasonably available to the organization.

(d) Production of Things. The notice to a party deponent may be accompanied by a request made in compliance with and in accordance with the procedure stated in *R*. 4:18-1 for the production of documents and tangible things at the taking of the deposition. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination on notice to all parties and with opportunity for all to participate in that good faith conference.

Note: Source – *R.R.* 4:20-1. Former rule deleted and new R. 4:14-2 adopted July 14, 1972 to be effective September 5, 1972 (formerly in R. 4:10-1 and 4:14-1); paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraphs (a) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (c) and (d) amended to be effective .

F. Proposed Amendments to *Rule* 4:14-7 – Subpoena for Taking Deposition

As a corollary to the proposed amendments to *Rule* 4:14-2, the Committee recommends amending *Rule* 4:14-7 to clarify that a deposition subpoena is subject to the proposed amendments to *Rule* 4:14-2(c) and (d).

The proposed amendments to *Rule* 4:14-7 follow.

4:14-7 Subpoena for Taking Depositions

(a) Form; Contents; Scope. The attendance of a witness at the taking of depositions may be compelled by subpoena, issued and served as prescribed by *R*. 1:9 insofar as applicable, and subject to the protective provisions of *R*. 1:9-2 and *R*. 4:10-3 and the provisions of *R*. 4:14-2(c) and (d), insofar as applicable. The subpoena may command the person to whom it is directed to produce designated books, papers, documents or other objects which constitute or contain evidence relating to all matters within the scope of examination permitted by *R*. 4:10-2.

(b) …no change.

(c) …no change.

Note: Source – *R.R.* 4:20-1 (last sentence), 4:46-4(a)(b). Paragraphs (a) and (b) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) adopted November 5, 1986 to be effective January 1, 1987; paragraph (b) recaptioned paragraph (b)(1) and amended, paragraph (b)(2) adopted and paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b)(1) amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended to be effective .

G. Proposed Amendments to *Rule* 4:19 – Physical and Mental Examination of Persons

In *DiFiore v. Pezic,* 254 *N.J.* 212 (2023), the Court clarified the procedure regarding who may attend a defense independent medical examination (IME) as well as whether and how such examinations may be recorded. The Court referred to the Civil Practice Committee the question of whether to adopt revisions to *Rule* 4:19 to codify the Court's holdings concerning defense IMEs. In addition, the Court referred to the Committee the question of whether defendants should be allowed to observe or record examinations by non-treating doctors arranged by plaintiff's counsel solely for the purpose of litigation.

The Committee considered a proposal drafted by the Discovery Subcommittee. In developing its proposal, the Discovery Subcommittee considered the role of evidence privileges and the mental impressions of the physician and the appropriate time frame for a party receiving notice of the exam to have sufficient time within which to provide notice of the intent to use a third-party observer. The Committee determined that the proposed amendment need not explicitly address privileges because the Rules of Evidence apply without having to be specified. The Committee also agreed to a 14-day timeframe to permit practitioners sufficient time notice their intent to use an observer or to file a motion to seek a court order if necessary.

The proposal is intended to balance considerations of fairness of fairness for

both plaintiffs and defendants. Some members noted the ability of plaintiffs to perform exams prior to litigation thereby circumventing the ability for a defendant to use a third-party observer for the exam. Ultimately, the Committee was not persuaded by these concerns as prelitigation exams are not the norm and otherwise do not unfairly prejudice defendants. Finally, the Committee determined that there should be no requirement of the party attending the exam to produce to the party noticing the exam, unedited notes of the observer as well as unedited audio video recordings. The Committee concluded any such requirement had potential to be problematic regarding the limits of this obligation, the creation of demonstrative evidence, and privileges. After consultation with the Family Practice Division regarding the potential for litigants to use the rule for observations in Family Part cases, the Committee clarified that the rule is applicable only in Civil cases filed in the Law Division.

The proposed amendments, comprised of new *Rules* 4:19-1 and 4:19-2 (eliminating the current *Rule* 4:19), follow.

4:19-1 Physical And Mental Examination Of Persons

In an action in the Law Division, Civil Part, in which a claim is asserted by a party for personal injuries or in which the mental or physical condition of a party is in controversy, the adverse party may require the party whose physical or mental condition is in controversy to submit to a physical or mental examination by a medical or other expert by serving upon that party a notice stating with specificity when, where, and by whom the examination will be conducted and advising, to the extent practicable, as to the nature of the examination and any proposed tests. The time for the examination stated in the notice shall not be scheduled to take place prior to 45 days following the service of the notice, and a party who receives such notice and who seeks a protective order shall file a motion therefor, returnable within said 45-day period. The court may, on motion pursuant to *R*. 4:23-5, either compel the discovery or dismiss the pleading of a party who fails to submit to the examination, to timely move for a protective order, or to reschedule the date of and submit to the examination within a reasonable time following the originally scheduled date. A court order shall, however, be required for a reexamination by the adverse party's expert if the examined party does not consent thereto. This rule shall be applicable to all actions in the Law Division, Civil Part, whenever commenced, in which a physical or mental examination has not yet been conducted.

Note: Source – *R.R.* 4:25-1; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; *R.* 4:19 amended to reflect its designation of *R.* 4:19-1 to be effective _____.

4:19-2 Observation and Recording of Physical and Mental Examination of Persons

Once a notice for exam has been issued pursuant to *Rule* 4:19-1, the receiving party must, within fourteen (14) days, inform the party serving notice of any intent to utilize a third-party observer or to record the examination, set forth the identity and business address of the third-party observer, provide the third-party observer's *curriculum vitae*, advise if the third-party observer will serve as an expert or fact witness and, if any recording will be taken, state the method of recording. If the party serving notice objects, the parties shall confer orally and if they cannot come to an agreement, the party serving notice may move for a protective order under *Rule* 4:10-3.

Note: New *Rule* 4:19-2 proposed to become effective .

H. Proposed Amendments to *Rule* 4:21-5 and -6 – Arbitration Award, Entry of Judgment De Novo

The Civil Practice Committee proposed amending *Rules* 4:21-5 and -6 to clarify that the uploading of the arbitration award into the court's electronic filing system (known presently as "eCourts") constitutes filing and service by the court of the award under the Rule. The time for filing a demand for trial de novo begins on the date the award is uploaded into the eCourts system. The genesis of the rule proposal arises from an Appellate Division decision where a data entry error in processing an arbitration award resulting in the parties not receiving emailed notice of the award.

Pursuant to the April 16, 2020 Notice to the Bar, remote arbitrations require an arbitrator to electronically transmit the completed Report and Award form to the vicinage Arbitration Administrator who is responsible to upload it to eCourts. At that time, it will be considered filed. This practice was intended to elimination any question as to when the 30-day period for requesting a trial de novo begins to run.

The Committee agreed that the rule change would benefit litigants, account for the serious consequence of missing the filing deadline for an appeal of the arbitration award, and conform with the current practice for remote arbitrations.

The proposed amendments to *Rule* 4:21-5 and -6 follow.

4:21A-5. Arbitration Award

No later than ten days after the completion of the arbitration hearing, the arbitrator shall file the written award with the civil division manager. The court shall [provide a copy thereof] upload the award [to the parties who appear at the hearing and] into the court's electronic filing system at which time it shall be deemed filed and provided to the parties. The award shall include a notice of the right to request a trial *de novo* and the consequences of such a request as provided by *R*. 4:21A-6.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c)(1) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) caption deleted and text amended, and paragraphs (b) and (c) deleted July 5, 2000 to be effective September 5, 2000; amended August 1, 2016 to be effective September 1, 2016; amended to be effective .

4:21A-6. Entry of Judgment; Trial *De Novo*

(a) …no change.

(b) Dismissal. An order shall be entered dismissing the action following the filing of the arbitrator's award in the court's electronic filing system unless:

(1) within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the award and demand for a trial de novo and pays a trial *de novo* fee as set forth in paragraph (c) of this rule; or

(2) within 50 days after the filing of the arbitration award, the parties submit a consent order to the court detailing the terms of settlement and providing for dismissal of the action or for entry of judgment; or

(3) within 50 days after the filing of the arbitration award, any party moves for confirmation of the arbitration award and entry of judgment thereon. The judgment of confirmation shall include prejudgment interest pursuant to *R*. 4:42-11(b).

(c) …no change.

(d) …no change.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (b)(1) and (c) amended November 2, 1987 to be effective January 1, 1988; paragraph (c)(5) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b)(1) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended May 3, 1994 to be effective July 1, 1994; paragraph (b)(1) amended July 10, 1998 to be effective September 1, 1998; paragraphs (b) and (c) amended

July 5, 2000 to be effective September 5, 2000; paragraph (c) amended June 7, 2005 to be effective immediately; new paragraph (d) adopted July 19, 2012 to be effective September 4, 2012; paragraph (c) amended May 30, 2017 to be effective immediately; paragraph (b) amended to be effective .

I. Proposed Amendments to *Rule* 4:22-1- Request for Admission

During the 2016-2018 rules cycle, the Committee considered a proposal to amend *Rule* 4:22-1 to mirror Federal Rule of Civil Procedure 36(a), which permits requests for admissions to extend to opinions as well as facts. The Discovery Subcommittee examined the issue and determined that while the rule as currently written was not causing significant problems, an amendment may reduce wasted effort on uncontested issues. The Committee recommended an amendment to add the term "opinion" to the existing Rule. The Court declined to adopt the proposal and referred the issue back to the Committee for further consideration.

During the last rules cycle, the Discovery Subcommittee again examined the issue with reference to federal cases, treatises, and law review articles. Based upon their recommendation, the Committee resubmitted the earlier proposed amendment to the Court to add "or opinion" to the Rule. The basis for the proposal was that it would help eliminate superfluous issues, unnecessary expense, and expedite trial. The addition of the phrase would permit requests for admission to extend to opinions as well as facts. The Court again declined to adopt the recommendation to add the phrase "or opinion" to the Rule. The Court referred the matter back to the Committee again to consider whether the language of the federal rule should be adopted.

This cycle, the Discovery Committee recommended a rule amendment mirroring the language of the federal rule. The Committee agreed with the

recommendation, noting that a lack of federal case law indicated the trial courts had no difficulty with the rule. The Committee concluded that the proposed amendment would fulfill the goal of reducing wasted time on uncontested issues.

The proposed amendments to *Rule* 4:22-1 follow.

4:22-1. Request for Admission

A party may serve upon any other party a written request [for the admission] to admit, for purposes of the pending action only, the truth of any matters within the scope of *R*. 4:10-2 [set forth in the request, including] relating to facts, the application of law to fact, or opinions about either; and the genuineness of any described documents [described in the request]. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after being served with the summons and complaint. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires

that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless stating that a reasonable inquiry was made, and that the information known or readily obtainable is insufficient to enable an admission or denial. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial, may not, on that ground alone, object to the request but may, subject to the provisions of *R*. 4:23-3, deny the matter or set forth reasons for not being able to admit or deny.

Requests for admission and answers thereto shall be served pursuant to *R*. 1:5-1 and shall not be filed unless the court otherwise directs.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The provisions of *R*. 4:23- 1(c) apply to the award of expenses incurred in relation to the motion.

Note: Source – *R.R.* 4:26-1. Former rule deleted and new R. 4:22-1 adopted July 14, 1972 to be effective September 5, 1972; amended November 27, 1974 to be effective April 1, 1975; amended July 24, 1978 to be effective September 11, 1978; amended July 13, 1994 to be effective September 1, 1994; amended _____ to be effective _____.

J. Proposed Amendments to *Rule* 4:58-4(b) – Multiple Claims; Multiple Parties

In its 2022 Omnibus Rule Order, the Supreme Court adopted amendments to *Rule* 4:58, (Offer of Judgment) which were intended to address an ambiguity in the context of a global offer to multiple defendants. This cycle, a private attorney raised a concern that confusion may exist among the provisions of the recently amended R. 4:58-4(b)(1) (applicable to all global offers), *R*. 4:58-4(b)(3) (permits individual offers in multidefendant cases), and *R*. 4:58-4(b)(2) (discusses a claimant's right to serve individual offers on defendants where no joint and several judgment is sought). The attorney contended that the rules could be interpreted providing that a global offer is only permitted in joint and several cases under *R*. 4:58-4(b)(1).

The Committee agreed that paragraph (b) of the Rule should be clarified by eliminating subparagraph (2). To preserve any case law that may have been developed referencing the subparagraph, the Committee recommends indicating "reserved" under subparagraph (2).

The proposed amendments to *Rule* 4:58-4(b) follow.

4:58-4 Multiple Claims; Multiple Parties

(a) …no change.

(b) Multiple Defendants. Where there are multiple defendants, offers shall be made as follows:

(1) …no change.

(2) [Defendants Against Whom No Joint and Several Judgment Is Sought. If there are multiple defendants and there are defendants against whom no joint and several judgment is sought, claimant may file and serve individual offers on those defendants against whom no joint and several judgment is sought as prescribed by this rule. Similarly, those defendants against whom no joint and several judgment is sought may file and serve individual offers as prescribed by *R*. 4:58-1. If such offeror is successful as prescribed by *R*. 4:58-2 or -3, such claimant or defendant shall be entitled to the allowances as prescribed by *R*. 4:58-2 or -3 as the case may be and subject to the provisions of this rule] Reserved.

(3) …no change.

(c) …no change.

Note: Adopted July 5, 2000 to be effective September 5, 2000; caption amended, former text redesignated as paragraph (b) and amended, and new paragraphs (a) and (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended, and paragraph (b) amended August 5, 2022 to be effective September 1, 2022; paragraph (b)(2) amended to be effective .

K. Proposed Amendments to *Rule* 4:86-12 – Special Medical Guardian in General Equity

The Conference of General Equity Presiding Judges suggested an amendment to *Rule* 4:86-12 to specify procedures for appointment of a special medical guardian who may authorize withholding of medical treatment where the patient has a serious irreversible illness or condition. Such procedures are critical in instances where the likely risks or burdens associated with the medical intervention to be withheld or withdrawn may reasonably be judged to outweigh the likely benefits to the patient from such intervention. As a result, these extraordinary cases pose procedural and substantive challenges for General Equity judges.

The proposed rule amendments establish a standard for withdrawing or withholding life-sustaining treatment consistent with the New Jersey Advance Directives for Health Care Act, *N.J.S.A*. 26:2H-67(a)(4) and extend quasi-judicial immunity to the appointed special guardian.

The Committee agrees with the General Equity Presiding Judges Committee's proposal.

The proposed amendments to *Rule* 4:86-12 follow.

4:86-12. Special Medical Guardian in General Equity.

(a) Standards. On the application of a hospital, nursing home, treating physician, relative or other appropriate person under the circumstances, the court may appoint a special guardian of the person of a patient to act for the patient respecting medical [treatment] care consistent with the court's order, if it finds that:

(1) the patient is incapacitated, unconscious, underage or otherwise unable to consent to medical [treatment] care;

(2) no general or natural guardian is immediately available who will consent to the rendering of medical care, or, as the case may be, withholding of medical [treatment] care for a patient with a serious irreversible illness or condition;

(3) the prompt rendering of medical treatment is necessary in order to deal with a substantial threat to the patient's life or health, or, in the case of withholding treatment, where the patient has a serious irreversible illness or condition, and the likely risks or burdens associated with the medical intervention to be withheld or withdrawn may reasonably be judged to outweigh the likely benefits to the patient from such intervention; and

(4) …no change.

(b) …no change.

(c) …no change.

(d) Order. The order granting the application, if orally rendered, shall be reduced to writing as promptly as possible and shall recite the findings on which it is based. Quasi-judicial immunity shall be extended to the appointed special guardian.

Note: Source — *R.R.* 4:102-7; former R. 4:83-7 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; caption and text amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 9, 2008 to be effective September 1, 2008; caption and text of former rule deleted, new caption adopted, new paragraphs (a), (b) and (c) adopted August 1, 2016 to be effective September 1, 2016; paragraphs (a) and (d) amended _____ to be effective _____.

L. Proposed Amendments to *Rule* 6:1-2 Cognizability; *Rule* 6:3-4 Summary Actions for Possession of Premises; and *Rule* 6:4-3 Interrogatories; Admissions; Production

The Special Civil Part Subcommittee proposed amendments to a package of rules intended to clarify the definition of "ejectment" and more closely align the Part IV and Part VI rules regarding ejectments. The proposed amendments create a construct similar to that used in landlord tenant actions in that they provide for a summary action, limit the available relief to possession of the premises, preclude discovery, and require a separate action to be filed for damages sought.

The Committee considered input from members of the Subcommittee who opposed the rule amendments. Some members of the Subcommittee contended that the statutory language regarding ejectments provides for monetary damages and injunctive relief in the same action. In addition, they contended that the requirement of a separate item for money damages presents an inconvenience for practitioners. The Committee considered these positions, but a majority concluded that the proposal would provide much needed clarity, which should generally benefit practitioners and the courts.

The Subcommittee's report detailing the competing positions on the proposed rule amendments is annexed as Attachment 1.

The proposed amendments to *Rules* 6:1-2, 6:3-4, and 6:4-3 follow.

6:1-2. Cognizability

(a) Matters Cognizable in the Special Civil Part. The following matters shall be cognizable in the Special Civil Part, except as otherwise specifically provided in *R*. 4:3- 1(a)(4):

(1) …no change.

(2) …no change.

(3) …no change.

(4) Summary actions for ejectment [the possession of real property] pursuant to *N.J.S.A*. 2A:35-1 *et seq*., where the defendant has no colorable claim of title or possession, or pursuant to N.J.S.A. 2A:39-1 et seq., including an illegal lockout;

(5) …no change.

(b) …no change.

(c) …no change.

Note: Adopted November 7, 1988 to be effective January 2, 1989; caption added to paragraph (a) and paragraph (a) amended July 17, 1991 to be effective immediately; paragraphs (a)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1) and (2) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a)(1) and (a)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (a)(2) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(4) and paragraph (c) amended July 27, 2006 to be effective September 1, 2006; subparagraphs(a)(1) and (a)(2) amended, new subparagraph (a)(4) adopted, former subparagraph (a)(4) redesignated as subparagraph (a)(5), and former subparagraph (a)(5) deleted July 19, 2012 to be effective September 4, 2012; paragraph (a) amended July 27, 2018 to be effective September 1, 2018; subparagraph (a)(1) amended July 31, 2020 to be effective September 1, 2020; subparagraph (a)(1) and subparagraph (a)(2) amended May 10, 2022 to be effective July 1, 2022; paragraph (a)(4) amended _____ to be effective _____.

6:3-4. Summary Actions For Possession of Premises

(a) No Joinder of Actions.

(1) Landlord Tenant Actions. Summary actions between landlord and tenant for the recovery of premises shall not be joined with any other cause of action, nor shall a defendant in such proceedings file a counterclaim or third-party complaint. A party may file a single complaint seeking the possession of a rental unit from a tenant of that party and from another in possession of that unit in a summary action for possession provided that (1) the defendants are separately identified by name or as otherwise permitted by *R*. 4:26-5(c) or (d) and *R*. 4:26-5(e), and (2) each party's interests are separately stated in the complaint.

(2) Ejectment Actions. Summary actions for ejectment shall seek only possession and shall not be joined with any other cause of action, nor shall a defendant in such proceedings file a counterclaim or third-party complaint. A party may file a single complaint seeking the possession of real property from a defendant and from another in possession of that property in a summary action for possession provided that (1) the defendants are separately identified by name or as otherwise permitted by *R*. 4:26-5(c) or (d) and *R*. 4:26-5(e), and (2) each party's interests are separately stated in the complaint.

(b) …no change.

(c) …no change.

(d) …no change.

Note: Source — R.R. 7:5-12. Caption and text amended July 14, 1992 to be effective September 1, 1992; amended July 27, 2006 to be effective September 1, 2006; caption amended, former text allocated into paragraphs (a) and (b), captions to paragraphs (a) and (b) adopted, and new paragraphs (c) and (d) added July 9, 2008 to be effective September 1, 2008; paragraph (a) amended July 19, 2012 to be effective September 4, 2012; new paragraph (a)(2) added to be effective .

6:4-3. Interrogatories; Admissions; Production

(a) Generally. Except as otherwise provided by *R*. 6:4-3(b) interrogatories may be served pursuant to the applicable provisions of *R*. 4:17 in all actions except [forcible entry and detainer actions] summary actions for the possession of real property for ejectment, summary landlord and tenant actions for the recovery of premises, and actions commenced or pending in the Small Claims Section. The 40-day and 60-day periods prescribed by *R*. 4:17-2 and *R*. 4:17-4, respectively, for serving and answering interrogatories shall, however, be each reduced to 30 days in Special Civil Part actions.

(b) …no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) …no change.

Note: Source – R.R. 7:6-4A (a) (b) (c), 7:6-4B, 7:6-4C. Caption amended and paragraph (c) adopted July 7, 1971 to be effective September 13, 1971; caption amended, paragraph (a) amended, and paragraph(d) adopted July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (e) adopted July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 22, 1983 to be effective September 12, 1983; paragraphs (a), (c), (d) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended, paragraph (b) adopted and former paragraphs (b), (c), (d) and (e) redesignated as (c), (d), (e) and (f) respectively, June 29, 1990 to be effective September 4, 1990; paragraph (b) amended August 31, 1990, to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) caption and text amended, and paragraph (f) amended July 12, 2002 to be effective September 3, 2002; former paragraph (b) deleted and paragraphs (c), (d), (e) and (f) redesignated as paragraphs (b), (c), (d) and (e), respectively, July 28, 2004, to be effective September 1, 2004; paragraph (b)

amended, new paragraph (c) adopted, and former paragraphs (c), (d), (e) redesignated as paragraphs (d), (e), (f) July 27, 2006 to be effective September 1, 2006; paragraph (a) amended August 1, 2006 to be effective September 1, 2006; paragraph (f) caption and text amended July 23, 2010 to be effective September 1, 2010; paragraph (a) amended to be effective _____.

M. Proposed Amendments to *Rule* 6:4-6 (a) and (e) – Sanctions and Appendix II-A.

The New Jersey Creditors Bar Committee suggested amendments *Rule* 6:4-6(a) and (e) to align with Appendix II-A, Notice to Client/Pro Se Party Pursuant to *Rule* 4:23-5(a)(1). *Rule* 6:4-6 applies the provisions of *Rule* 4:23-5, (Failure to Make Discovery), with reduced timeframes and fees for Special Civil Part cases. Under the rules, where a party fails to comply timely with a discovery demand, the party entitled to discovery may seek an order dismissing or suppressing the pleading (without prejudice) of the delinquent party.

Once the pleading is suppressed or dismissed, the delinquent party must then act according to specified timeframes in order avoid further consequences and restore the pleading as follows: within 30 days, pay a $25 fee, or after 30 days, pay a $75 fee; within 45 days the non-delinquent party may move to have the pleading suppressed with prejudice; and within 60 days, or the court may order the delinquent party to pay sanctions or attorneys' fees and costs, or both as a condition of restoration.

The rule requires the delinquent party to be served with a notice in the form of Appendix II-A, "specifically explaining the consequences for failure to comply with the discovery obligation and to file and serve a timely motion to restore." The form notice, however, combines the notice of the consequences of imposition of fees and costs (after 60 days) and suppression of the pleading with prejudice (after

45 days) into a single sentence and references only the 45-day timeframe for suppression of the pleading with prejudice. In order to clarify the consequences to litigants as to what will occur at each of the 45-day and 65-day timeframes, the Committee recommends revising the form to include two sentences, addressing each consequence separately.

The proposed amendments to *Rule* 6:4-6 and to Appendix II-A follow.

6:4-6 Sanctions

The provisions of *R*. 4:23 (sanctions for failure to make discovery) shall apply to actions in the Special Civil Part, except that:

(a) …no change.

(b) …no change.

(c) …no change.

(d) …no change.

(e) Notice to Client/*Pro Se* Party Pursuant to *R*. 4:23-5(a)(1). The notice prescribed by Appendix II-A of these rules shall be modified to reflect the time periods and restoration fees set forth in paragraphs (a)[,] and (b) [and (c)] above.

(f) …no change.

Note: Adopted July 29, 1977 to be effective September 6, 1977; amended November 7, 1988 to be effective January 2, 1989; former text amended and new paragraphs (a) through (f) adopted July 28, 2004 to be effective September 1, 2004; paragraphs (c), (e), and (f) amended July 22, 2014 to be effective September 1, 2014; paragraph (e) amended to be effective .

APPENDIX II-A

Notice to Client/Pro Se Party Pursuant to *Rules*[.] 4:23-5(a)(1) and 6:4-6

Enclosed is a copy of the court's order which

_____ dismisses your complaint

_____ strikes your answer and defenses

_____ other (be specific)

This order can be vacated only by a formal motion. You must fully respond to demands for discovery made pursuant to *R*. 4:17, *R*. 4:18-1 or *R*. 4:19 and served on behalf of (name) prior to the filing of such a motion, and you must pay a restoration fee of (\$100.00 (for Civil Part cases) or \$25 (for Special Civil Part (DC) cases)) if the motion to vacate is made within 30 days after entry of this order and in the amount of (\$300.00 (for Civil Part cases) or \$75 (for Special Civil Part (DC) cases)) if the motion is made thereafter.

Failure to file such a motion within (60 days (for Civil Part cases) or 45 days (for Special Civil Part (DC) cases)) after the entry of this order [may result in the imposition of counsel fees and the assessment of costs against you or] may result in an additional order to forever preclude the restoration of the pleading(s) filed on your behalf. Failure to file such a motion within (90 days (for Civil Part cases) or (60 days for Special Civil Part (DC) cases)) after the entry of this order may result in the imposition of counsel fees and the assessment of costs against you.

Please be guided accordingly.

Note: Form F amended July 10, 1998 to be effective September 1, 1998; Form F designated as Appendix II-A and text amended July 9, 2008 to be effective September 1, 2008; amended July 23, 2010 to be effective September 1, 2010; amended to be effective _____.

N. Proposed Amendments to *Rule* 6:5-2(b) – Notice of Trial; Assignment of Trial (Landlord Tenant Actions)

The proposed rule amendment modernizes the rule by using the term "video recording" rather than "videotape." The proposed amendment recognizes the current practice where the landlord-tenant instructions are provided via digital, rather than analog, recording.

The proposed amendments to *Rule* 6:5-2(b) follow.

6:5-2. Notice of Trial; Assignment for Trial

(a) …no change.

(b) Landlord and Tenant Actions. Summary actions between landlord and tenant shall be placed on a separate list on the calendar and shall be heard on the return day unless adjourned by the court, or by consent with the approval of the court. At the beginning of the calendar call and again at the end of the calendar call for latecomers, the judge presiding at the call shall provide instructions substantially conforming with the announcement contained in Appendix XI-S to these rules. Written copies of that announcement also shall be available to litigants in the courtroom. A [videotape] video recording, prepared either by the Administrative Office of the Courts or by the vicinage, may be used for the second reading when the judge deems its use necessary. In those counties having a significant Spanish-speaking population, the announcement also shall be given in Spanish both orally and in writing; the oral presentation may be given by [videotape] video recording or other audio-visual device or by the judge presiding at the call.

(c) …no change.

(d) …no change.

Note: Source – *R.R.* 7:7-3, 7:7-4, 7:7-11, 7:7-12; paragraph (a) amended November 27, 1974 to be effective April 1, 1975; amended July 17, 1975 to be effective September 8, 1975; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (a)

amended July 10, 1998 to be effective September 1, 1998; paragraph (a) caption and text amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 18, 2001 to be effective November 1, 2001; paragraph (a) caption and text amended and new paragraph (d) added July 12, 2002 to be effective September 3, 2002; paragraph (b) amended to be effective .

O. Proposed Amendments to *Rule* 6:6-6 – Post-Judgment Levy Exemption Claims and Applications for Relief in Tenancy Actions

The Special Civil Part Subcommittee proposed amendment *Rule* 6:6-6 to provide the judge with discretion to allow a stay of turnover of funds after a debtor files an objection. In many instances, after default judgment is entered and the creditor files a motion for turnover of funds, a debtor files an objection to the motion which asserts a basis to vacate the default judgment. The litigant can file a motion to vacate the default judgment, but the motion would be returnable after the motion for turnover thereby giving the creditor the opportunity to seize funds to which it may otherwise not be entitled.

Without a mechanism to delay the motion for turnover to give the debtor an opportunity to file a motion, the debtor's funds may be lost to the creditor. The proposed amendments recognize concepts of fundamental fairness for litigants while streamlining the process for the court to determine the rightful positions of the parties. The amendments provide the court with the ability to impose a stay and also release to the debtor any exempt funds pending the hearing on the motions.

The Committee agreed with the proposed amendments.

The proposed amendments to *Rule* 6:6-6 follow.

6:6-6. Post-Judgment Levy Exemption Claims and Applications for Relief in Tenancy Actions

(a) ...no change.

(b) …no change.

(c) …no change.

(d) …no change.

(e) Collateral defense. If the judgment debtor appears in court on an objection to a levy and the court finds that an objection to levy is based upon any ground under *R*. 4:50-1 for vacating judgment, the court shall immediately release all funds that are exempt from levy to the judgment debtor, and may stay turnover of any remaining funds to the judgment creditor from the court officer for 20 days to allow the judgment debtor to file a motion to vacate default judgment. If a motion to vacate default judgment is filed, the stay shall remain in effect until the disposition of the motion.

Note: Adopted July 12, 2002 to be effective September 3, 2002; caption and paragraphs (a), (b), and (c) amended July 27, 2006 to be effective September 1, 2006; former paragraph (c) redesignated as paragraph (d) and new paragraph (c) adopted July 19, 2012 to be effective September 4, 2012; paragraph (b) amended July 22, 2014 to be effective September 1, 2014; new paragraph (e) added to be effective .

P. Proposed Amendments to *Rule* 6:7-2 Orders for Discovery; Information Subpoenas and Appendices XI-L, XI-M, XI-O, XI-P, and XI-Q

During the last rules cycle, the former Special Civil Part Practice Committee proposed amending *Rule* 6:7-2 to establish mandatory time periods when enforcing litigants rights to obtain an arrest warrant after failure to respond to an information subpoena and to address other related procedures. The Court referred this item back to the Committee to clarify the proposed amendments.

The Committee considered the prior proposal and the Court's referral in developing the proposed amendments. The proposed amendments are intended to prevent a party from waiting a significant amount of time before seeking an arrest warrant after not receiving a response to an information subpoena. Such extended delay may be unfair to unsuspecting debtors. The proposed amendment includes specific time limits for filing the application and obtaining an arrest warrant, includes that the court may schedule a motion on notice to the parties, and clarifies language as requested by the Court.

The proposed amendments to *Rule* 6:7-2 and to Appendices XI-L, XI-M, XI-O, XI-P, and XI-Q follow.

6:7-2 Orders for Discovery; Information Subpoenas

(a) …no change.

(b) …no change.

(c) …no change.

(d) Enforcement Against Other Person or Entity. Proceedings to seek relief pursuant to *R.* 1:10-3, when a person who is not a party fails to obey an order for discovery or an information subpoena, may be commenced by order to show cause or notice of motion within 6 months thereof.

(e) Enforcement by Motion. Proceedings to seek relief pursuant to *R.* 1:10-3, when a judgment-debtor fails to obey an order for discovery or an information subpoena, shall be commenced within 6 months thereof by notice of motion supported by affidavit or certification. The notice of motion and certification shall be in the form set forth in Appendices XI-M and N to these Rules. The notice of motion shall contain a return date and shall be served on the judgment-debtor and filed with the clerk of the court not later than 10 days before the time specified for the return date, which can be rescheduled by the court at its discretion on notice to the parties. The moving papers shall be served on the judgment-debtor either in person or simultaneously by regular and certified mail, return receipt requested. The notice of motion shall state that the relief sought will include an order:

(1) adjudicating that the judgment-debtor has violated the litigant's rights of the judgment-creditor by failing to comply with the order for discovery or information subpoena;

(2) compelling the judgment-debtor to immediately furnish answers as required by the order for discovery or information subpoena;

(3) directing that if the judgment-debtor fails to appear in court on the return date or to furnish the required answers, [he or she] the judgment-debtor shall be arrested and [confined to the county jail until he or she has complied with the order for discovery or information subpoena] brought before a Judge of the Superior Court in accordance with *Rule* 6:7-2(g);

(4) directing the judgment-debtor, if [he or she] the judgment-debtor fails to appear in court on the return date, to pay the judgment-creditor's attorney fees, if any, in connection with the motion to enforce litigant's rights; and

(5) granting such other relief as may be appropriate.

The notice of motion shall also state, in the case of an information subpoena, that the court appearance may be avoided by furnishing to the judgment-creditor written answers to the information subpoena and questionnaire at least 3 days before the return date.

(f) …no change.

(g) Warrant for Arrest. Upon the judgment-creditor's certification, in the form set forth in Appendix XI-P to these Rules, that a copy of the signed order to

enforce litigant's rights has been served upon the judgment-debtor as provided in this rule, that 10 days have elapsed and that there has been no compliance with the information subpoena or discovery order, the court may issue an arrest warrant. The judgment-creditor's certification must be filed within 6 months from the date of the order to enforce litigant's rights. If the judgment-debtor is to be arrested in a county other than the one in which the judgment was entered, the warrant shall be issued directly to a Special Civil Part Officer or the Sheriff of the county where the judgment-debtor is to be arrested, and the warrant shall have annexed to it copies of the order to enforce litigant's rights and the certification in support of the application for the warrant. The warrant shall be in the form set forth in Appendix XI-Q to these Rules and, except for good cause shown and upon such other terms as the court may direct, shall be executed by a Special Civil Part Officer or Sheriff only between the hours of 7:30 a.m. and 3:00 p.m. on a day when the court is in session. A judgment-debtor shall not be incarcerated at any time pursuant to the warrant. If the notice of motion and order to enforce litigant's rights were served on the judgment-debtor by mail, the warrant may be executed only at the address to which they were sent. In all cases the arrested judgment-debtor shall promptly be brought before a judge of the Superior Court in the county where the judgment-debtor is arrested and released upon compliance with the order for discovery or information subpoena. When the judgment-debtor has been arrested for failure to answer an information subpoena, the clerk shall furnish the judgment-debtor with a

blank form containing the questions attached to the information subpoena, as set forth in Appendix XI-L to these Rules.

(h) …no change.

(i) …no change.

Note: Source — *R.R.* 7:11-3(a)(b), 7:11-4. Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 17, 1975 to be effective September 8, 1975; amended July 21, 1980 to be effective September 8, 1980; caption amended, paragraph (a) caption and text amended, paragraph (b) adopted and former paragraph (b) amended and redesignated as paragraph (c) June 29, 1990 to be effective September 4, 1990; paragraph (a) amended and paragraphs (d), (e) and (f) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (b), (d), (e) and (f) amended July 13, 1994 to be effective September 1, 1994; former paragraph (b) redesignated as subparagraph (b)(1), subparagraph (b)(2) adopted, paragraph (c) amended, paragraph (d) adopted, former paragraph (d) amended and redesignated as paragraph (e), former paragraphs (e) and (f) redesignated as paragraphs (f) and (g) June 28, 1996 to be effective September 1, 1996; subparagraph (b)(2) and paragraph (g) amended July 10, 1998 to be effective September 1, 1998; paragraph (h) adopted July 5, 2000 to be effective September 5, 2000; new paragraph (h) added, and former paragraph (h) redesignated as paragraph (i) July 12, 2002 to be effective September 3, 2002; paragraphs (f) and (g) amended July 28, 2004 to be effective September 1, 2004; paragraph (g) amended July 19, 2012 to be effective September 4, 2012; paragraph (f) amended July 27, 2018 to be effective September 1, 2018; paragraphs (e)(3) and (g) amended to be effective .

APPENDIX XI-L

IMPORTANT NOTICE - Please Read Carefully

Failure to Comply with this Information Subpoena May Result in Your Arrest and [Incarceration] Mandatory Appearance Before a Judge of the Superior Court in Accordance with *Rule* 6:7-2(g)

Name: _____
Address: _____
_____
Telephone Number: _____

Attorney(s) for:

_____
Plaintiff

-vs-

_____
Defendant

Superior Court of New Jersey
Law Division, Special Civil Part
_____ County
Docket Number: _____

Civil Action
Information Subpoena

THE STATE OF NEW JERSEY, to: _____,

Judgment has been entered against you in the Superior Court of New Jersey, Law Division, Special Civil Part, _____ County, on _____, 20___, in the amount of $_____ plus costs, of which $_____ together with interest from _____, 20___, remains due and unpaid.

Attached to this Information Subpoena is a list of questions that court rules require you to answer within 14 days from the date you receive this subpoena. If you do not answer the attached questions within the time required, the opposing party may ask the court to conduct a hearing in order to determine if you should be held in contempt. You will be compelled to appear at the hearing and explain your reasons for your failure to answer.

If this judgment has resulted from a default, you may have the right to have this default judgment vacated by making an appropriate motion to the court. Contact an attorney or the clerk of the court for information on making such a motion. Even if you dispute the judgment you must answer all of the attached questions.

You must answer each question giving complete answers, attaching additional pages if necessary. False or misleading answers may subject you to punishment by the court. However, you need not provide information concerning the income and assets of others living in your household unless you have a financial interest in the assets or income. Be sure to sign and date your answers and return them to the address in the upper left hand corner within 14 days.

Dated: _____, 20___

_____	_____
Attorney for	Clerk

Questions for Individuals

1. Full Name

2. Address

3. Birth Date	**4.** Social Security Number	**5.** Driver's License Number	Exp. Date	**6.** Telephone Number

7. Full name and address of your employer

(a) Your weekly salary **Gross** $_____ **Net** $_____

(b) If not presently employed, name and address of last employer

8. ..... I ☐ **Yes** ☐ **No**
s there currently a wage execution on your salary?

9. ..... List the names, addresses and account numbers of all bank accounts on which your name appears.

Bank Name	Address	Account Number(s)

10. If you receive money from any of the following sources, list the amount, how often, and the name and address of the source. (check all that apply)

☐ **Alimony**

Amount & Frequency	Name of Source	Address
$		

☐ **Loan Payments**

Amount & Frequency	Name of Source	Address
$		

☐ **Rental Income**

Amount & Frequency	Name of Source	Address
$		

☐ **Pensions**

Amount & Frequency	Name of Source	Address
$		

☐ **Bank Interest**

Amount & Frequency	Name of Source	Address
$		

☐ **Stock Dividends**

Amount & Frequency	Name of Source	Address
$		

☐ **Other**

Amount & Frequency	Name of Source	Address
$		

11. Do you receive any of the following, which are exempt from levy? Any levy on disclosed exempt funds may result in monetary penalties including reimbursement of the debtor's out-of-pocket expenses.

Social Security benefits	☐ **Yes**	☐ **No**	Amount per month $_____
S.S.I. benefits	☐ **Yes**	☐ **No**	Amount per month $_____
Welfare benefits	☐ **Yes**	☐ **No**	Amount per month $_____
V.A. benefits	☐ **Yes**	☐ **No**	Amount per month $_____
Unemployment benefits	☐ **Yes**	☐ **No**	Amount per month $_____
Workers' Compensation benefits	☐ **Yes**	☐ **No**	Amount per month $_____
Child support payments	☐ **Yes**	☐ **No**	Amount per month $_____

Attach copies of the three most recent bank statements for each account listed in Question 9 that contains funds from these sources.

12. Do you own the property where you reside? If yes, state the following: ☐ **Yes** ☐ **No**

(a) Name of the owner or owners	(b) Date property was purchased	(c) Purchase price
		$

(d) Name and address of mortgage holder	(e) Balance due on mortgage
	$

13. Do you own any other real estate? If yes, state the following: ☐ **Yes** ☐ **No**

(a) Address of property	(b) Date property was purchased	(c) Purchase price
		$

(d) Name and address of all owners

(e) Name and address of mortgage holder	(f) Balance due on mortgage
	$

(g) Names and address of all tenants, and monthly rental paid by each tenant

Name	Address	Monthly Rent
		$
		$
		$

14. Does the present value of your personal property, which includes automobiles, furniture, appliances, stocks, bonds, and cash on hand, exceed $1,000? ☐ **Yes** ☐ **No**
If the answer is "yes," you must itemize all personal property owned by you.

Cash on Hand: $_____

Other personal property: If financed, give name and address of party to whom payments are made.

Item (include make, model, serial number)	Date Purchased	Purchase Price	If Financed, Balance Still Due	Present Value
		$	$	$
		$	$	$
		$	$	$

15. Do you own a motor vehicle? If yes, state the following for each vehicle owned: ☐ **Yes** ☐ **No**

(a) Make, model and year of motor vehicle

(b) If there is a lien on the vehicle, state the name and address of the lienholder | Amount due on lien $

(c) License plate Number | (d) Vehicle Identification Number

16. Do you have an ownership interest in a business? If yes, state the following with respect to each business: ☐ **Yes** ☐ **No**

(a) Name and address of the business

(b) Is the business a (select one)

☐ corporation ☐ sole proprietorship ☐ partnership ☐ limited liability company

(c) Name and address of all stockholders, officers, partners or members

Name	Address

(d) The amount of income received by you from the business during the last twelve months **$**_____

17. Set forth all other judgments that you are aware of that have been entered against you and include:

Creditor's Name | Creditor's Attorney | Amount Due $

Name of Court | Docket Number

Creditor's Name | Creditor's Attorney | Amount Due $

Name of Court | Docket Number

Creditor's Name | Creditor's Attorney | Amount Due $

Name of Court | Docket Number

Creditor's Name | Creditor's Attorney | Amount Due $

Name of Court | Docket Number

Creditor's Name | Creditor's Attorney | Amount Due $

Name of Court | Docket Number

Creditor's Name	Creditor's Attorney	Amount Due
		$

Name of Court	Docket #

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date _____ Signature _____

Questions for Business Entity

1. Name of business including all trade names.

2. Address of all business locations.

3. If the judgment-debtor is a corporation, the names and addresses of all stockholders, officers and directors.

Name	Address

4. If a partnership, list the names and addresses of all partners.

Name	Address

5. If a limited partnership, list the names and addresses of all general partners.

Name	Address

6. If the judgment-debtor is a limited liability company, the names and addresses of all members.

Name	Address

7. Set forth in detail the name, address and telephone number of all businesses in which the principals of the judgment-debtor now have an interest and set forth the nature of the interest.

Name	Address	Phone Number

Nature of Interest

Name	Address	Phone Number

Nature of Interest

8. For all bank accounts of the judgment-debtor business entity, list the name of the bank, the bank's address, the account number and the name in which the account is held.

Bank Name	Address
Account Number	**Account Name**
Bank Name	**Address**
Account Number	**Account Name**
Bank Name	**Address**
Account Number	**Account Name**

9. Specifically state the present location of all books and records of the business, including checkbooks.

10. State the name and address of the person, persons, or entities who prepare, maintain and/or control the business records and checkbooks.

Name	Address

11. List all physical assets of the business and their location. If any asset is subject to a lien, state the name and address of the lienholder and the amount due on the lien.

Asset	Location		
Lien	**Lien holder name/address**		**Amount Due**
☐ **Yes** ☐ **No**			$
Asset	**Location**		
Lien	**Lien holder name/address**		**Amount Due**
☐ **Yes** ☐ **No**			$
Asset	**Location**		
Lien	**Lien holder name/address**		**Amount Due**
☐ **Yes** ☐ **No**			$

12. Does the business own any other real estate? If yes, state the following for each property: ☐ **Yes** ☐ **No**

(a) Name(s) in which property is owned

(b) Address of property	(c) Date property was purchased	(d) Purchase price
		$

(e) Name and address of mortgage holder | (f) Balance due on mortgage $

12. (g) The names and addresses of all tenants and monthly rentals paid by each tenant.

Name	Address	Monthly Rent
		$
		$
		$
		$
		$
		$

13. List all motor vehicles owned by the business, stating the following for each vehicle:

(a) Make, model and year | (b) License plate number | (c) Vehicle identification number

(d) If there is a lien on the vehicle, state the name and address of the lienholder | Amount due on lien $

14. List all accounts receivable due to the business, stating the name, address and amount due on each receivable.

Name	Address	Amount Due
		$
		$
		$
		$
		$
		$
		$

15. For any transfer of business assets that has occurred within six months from the date of this subpoena, specifically identify:

(a) The nature of the asset

(b) The date of transfer

(c) Name and address of the person to whom the asset was transferred

(d) The consideration paid for the asset and the form in which it was paid (check, cash, etc.)

(e) Explain in detail what happened to the consideration paid for the asset

16. If the business is alleged to be no longer active, set forth:

(a) The date of cessation

(b) All assets as of the date of cessation

(c) The present location of those assets

(d) If the assets were sold or transferred, set forth:

1. The nature of the assets

2. Date of transfer

3. Name and address of the person to whom the assets were transferred

4. The consideration paid for the assets and the form in which it was paid.

5. Explain in detail what happened to the consideration paid for the assets:

17. Set forth all other judgments that you are aware of that have been entered against you and include:

Creditor's Name	Creditor's Attorney	Amount Due
		$

Name of Court	Docket Number

Creditor's Name	Creditor's Attorney	Amount Due

		$
Name of Court		Docket Number

Creditor's Name	Creditor's Attorney	Amount Due
		$
Name of Court		Docket Number

Creditor's Name	Creditor's Attorney	Amount Due
		$
Name of Court		Docket Number

Creditor's Name	Creditor's Attorney	Amount Due
		$
Name of Court		Docket Number

18. For all litigation in which the business is presently involved, state:

(a) Date litigation commenced

(b) Name of party who started the litigation

(c) Nature of the action

(d) Names of all parties and the names, addresses and telephone numbers of their attorneys

Party Name		
Attorney Name	Attorney Address	Telephone Number
Party Name		
Attorney Name	Attorney Address	Telephone Number
Party Name		
Attorney Name	Attorney Address	Telephone Number

(e) Trial date	(f) Status of case

(g) Name of the court and docket number

19. State the name, address and position of the person answering these questions:

(a) Name

(b) Address

(c) Position

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date

Signature

[Note: Former Appendix XI-K adopted June 29, 1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-L and amended July 13, 1994, effective September 1, 1994; amended July 28, 2004 to be effective September 1, 2004; amended July 22, 2014 to be effective September 1, 2014; amended _____ to be effective _____ .]

APPENDIX XI-M

NOTICE: This is a public document, which means the document as submitted will be available to the public upon request. Therefore, do not enter personal identifiers on it, such as Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, active credit card number or military status.

Plaintiff or Filing Attorney Information:

Name _____

NJ Attorney ID Number _____

Address _____

_____

Email Address _____

Telephone Number _____

Superior Court of New Jersey
Law Division, Special Civil Part
_____ County

_____, Docket Number: _____
Plaintiff

v.

Civil Action

Notice of Motion for Order Enforcing Litigant's Rights

_____,
Defendant

TO: _____, Defendant

PLEASE TAKE NOTICE that on _____, 20__, at _____ ☐ am/☐ pm
I will apply to the above-named court located at
_____, New
Jersey, for an Order:

1. Adjudicating that you have violated the litigant's rights of the plaintiff by failure to comply with the (check one) ☐ order for discovery / ☐ information subpoena served upon you;

2. Compelling you to immediately furnish answers as required by the (check one) ☐ order for discovery / ☐ information subpoena;

3. Directing that, if you fail to appear in court on the date written above, you may be arrested by an Officer of the Special Civil Part or the Sheriff and [confined in the county jail] brought before a Judge of the Superior Court in accordance with *Rule* 6:7-2(g) until you comply with the (check one) ☐ order for discovery / ☐ information subpoena;

4. Directing that, if you fail to appear in court on the date written above, you shall pay the plaintiff's attorney fees in connection with this motion;

5. Granting such other relief as may be appropriate.

If you have been served with an information subpoena, you may avoid having to appear in court by sending written answers to the questions attached to the information subpoena to me no later than three (3) days before the court date.

I will rely on the certification attached hereto.

Dated: _____ Signature: _____

(check one) ☐Attorney for Plaintiff / ☐ Plaintiff Pro Se

Note: Former Appendix XI-L adopted July 14, 1992 effective September 1 1992; redesignated as Appendix XI-M July 13, 1994, effective September 1, 1994; amended August 1, 2016, effective September 1, 2016; amended August 1, 2022, effective retroactive to July 1, 2022; amended _____ to be effective _____.

APPENDIX XI-O

NOTICE: This is a public document, which means the document as submitted will be available to the public upon request. Therefore, do not enter personal identifiers on it, such as Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, active credit card number or military status.

Failure to Comply and Mandatory Appearance Before a Judge of the Superior Court in Accordance With *Rule* 6:7-2(g)with This Order May Result in Your Arrest

Plaintiff or Filing Attorney Information:

Name _____

NJ Attorney ID Number _____

Address _____

_____

Email Address _____

Telephone Number _____

_____, Plaintiff

v.

_____, Defendant

Superior Court of New Jersey
Law Division, Special Civil Part
_____ County
Docket Number _____

Civil Action

Order to Enforce Litigant's Rights

This matter being presented to the court by , on plaintiff's Motion for an Order Enforcing Litigant's Rights, and the defendant having failed to appear on the return date and having failed to comply with the (check one) ☐ Order for Discovery previously entered in this case / ☐ Information Subpoena.

(Do Not Write Below this line – for Court Use Only)

It is on this _____ day of _____, 20___, **ORDERED** and adjudged:

1. Defendant, _____, has violated plaintiff's rights as a litigant:
2. Defendant, _____, shall immediately furnish answers as required by the ☐ Order for Discovery / ☐ Information Subpoena;

3. If Defendant, _____, fails to comply with the
   ☐ Order for Discovery / ☐ Information Subpoena within ten (10) days of the certified date of personal service or mailing of this order, a warrant for the defendant's arrest may issue out of this Court without further notice to have defendant brought before a Judge of the Superior Court in accordance with *Rule* 6:7-2(g).
4. Defendant shall pay plaintiff's attorney fees in connection with this motion in the amount of
   $ _____.

_____
J.S.C.

Proof of Service

On _____, 20___, I served a true copy of this Order on Defendant, _____, (check one) ☐ personally / ☐ by sending it simultaneously by regular and certified mail, return receipt requested to _____,
(set forth address)

_,
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____ Signature: _____

Note: Former Appendix XI-N adopted July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-O July 13, 1994, effective September 1, 1994, amended July 12, 2002 to be effective September 3, 2002; amended July 28, 2004 to be effective September 1, 2004; amended August 1, 2016 to be effective September 1, 2016; amended August 1, 2022, effective retroactive to July 1, 2022; amended _____ to be effective _____ .

APPENDIX XI-P

Plaintiff or Filing Attorney Information:
Name_____
NJ Attorney ID Number _____
Address _____
_____
Email Address _____
Telephone Number _____

Superior Court of New Jersey
Law Division, Special Civil Part
_____ County
_____, Docket Number _____
Plaintiff
Civil Action
v.
_____, **Certification in Support of Application for Arrest Warrant and Mandatory Appearance Before a Judge of the Superior Court in Accordance with *Rule* 6:7-2(g)**
Defendant

The following certification is made in support of plaintiff's application for an arrest warrant and mandatory appearance before a Judge of the Superior Court in accordance with *Rule* 6:7-2(g):

1. I am the (check one) ☐ plaintiff / ☐ plaintiff's attorney in this matter.

2. On _____, 20___, plaintiff obtained a judgment against the defendant, _____, for $_____ damages, plus costs.

Check all applicable information below:

3.a ☐ On _____, 20___, an Order was entered by this Court ordering defendant, _____ to appear at _____, on _____, 20___, at _____ ☐ am/☐ pm and make discovery on oath as to the defendant's property and on _____, 20___, a copy of the Order was served upon _____, (check one) ☐ personally / ☐ by sending it simultaneously by regular and certified mail, return receipt requested to

_____ last known address, as shown on the Discovery Order referenced above.

b. ☐ On _____, 20___, I served an Information Subpoena and attached questions as permitted by Court Rules on the defendant, _____, (check one) ☐ personally / ☐ by sending it simultaneously by regular and certified mail, return receipt requested to defendant's last known address as shown on the accompanying notice of motion.

c. ☐ The regular mail has not been returned by the U.S. Postal Service.

d. ☐ The regular mail has been returned by the U.S. Postal Service with the following notation:

_____

e. ☐ The certified mail return receipt card has been signed for and returned to me.

f. ☐ Though the certified mailing has been returned by the U.S. Postal Service, it was not returned in a manner that would indicate that the defendant's address is not valid. It was not returned with any of the following markings by the U.S. Postal Service: "Moved, unable to forward," "Addressee not known," "No such number/street," "Insufficient address," "Forwarding time expired," or in any other manner to indicate that service was not effected.

4. The defendant, _____, has failed to comply with the (check one) ☐ Order / ☐ Information Subpoena.

5. On _____, 20___, I served a true copy of my Notice of Motion for an Order to Enforce Litigant's Rights on defendant (check one) ☐ personally / ☐ by sending it simultaneously by regular and certified mail, return receipt requested, at the address shown on the Proof of Service at the conclusion of the Order to Enforce Litigant's Rights.

6. Neither the regular mail nor the certified mail containing the Notice of Motion has been returned by the U.S. Postal Service in a manner that would indicate that the defendant's address is not valid. Neither the regular nor certified mail was returned marked "Moved, unable to forward," "Addressee not known," "No such number/street," "Insufficient address," "Forwarding time expired," or in any other manner that would indicate that service was not effected.

7. On _____, 20___, the Court entered an Order to Enforce Litigant's Rights when defendant failed to appear on the return day of my motion for an order enforcing litigant's rights.

8. On _____, 20__, I served a true copy of the Order to Enforce Litigant's Rights on defendant (check one) ☐ personally / ☐ by sending it simultaneously by regular and certified mail, return receipt requested, at the address shown on the Proof of Service at the conclusion of the Order to Enforce Litigant's Rights.

9. Neither the regular mail nor the certified mail has been returned by the U.S. Postal Service in a manner that would indicate that the defendant's address is not valid. Neither the regular nor certified mail was returned marked "Moved, unable to forward," "Addressee not known," "No such number/street," "Insufficient address," "Forwarding time expired," or in any other manner that would indicate that service was not effected.

10. Ten days have passed since I served a copy of the Order to Enforce Litigant's Rights on defendant, and defendant has not complied with the (check one) ☐ Information Subpoena / ☐ Order for Discovery.

11. I request that the Court issue a Warrant for the arrest of the defendant.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____ Signature: _____

Note: Former Appendix XI-O adopted July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-P July 13, 1994, effective September 1, 1994; amended July 10, 1998, to be effective September 1, 1998; amended July 28, 2004 to be effective September 1, 2004; amended September 14, 2018, effective retroactive to September 1, 2018; amended August 1, 2022, effective retroactive to July 1, 2022; amended _____ to be effective _____ .

APPENDIX XI-Q

WARRANT FOR ARREST AND MANDATORY APPEARANCE BEFORE A JUDGE OF THE SUPERIOR COURT IN ACCORDANCE WITH *RULE* 6:7-2(g)

NOTICE: This is a public document, which means the document as submitted will be available to the public upon request. Therefore, do not enter personal identifiers on it, such as Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, active credit card number or military status.

Plaintiff or Filing Attorney Information:

Name _____

NJ Attorney ID Number _____

Address _____

_____

Email Address _____

Telephone Number _____

Superior Court of New Jersey
Law Division, Special Civil Part
_____ County

_____, Docket Number: _____

Plaintiff

v.

Civil Action

_____, **Warrant for Arrest**

Defendant

(Do Not Write Below this line – for Court Use Only)

To: A Court Officer of the Special Civil Part or the Sheriff of _____ County,

You are hereby commanded to arrest _____, at (check one) ☐ any location / ☐ the address set forth in the annexed Order to Enforce Litigant's Rights between the hours of 7:30 a.m. and 3:00 p.m. on a day when the court is in session and bring him or her forthwith before a Judge of the Superior Court to await the further order of the Court in this matter. _____ shall not be incarcerated at any time pursuant to this Warrant.

Local police departments are authorized and directed to provide assistance to the officer executing this warrant.

Date: _____ Witness: _____
Judge of the Superior Court

_____
Clerk of the Superior Court

Note: Former Appendix XI-P adopted July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-Q July 13, 1994, effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 28, 2004 to be effective September 1, 2004; amended September 14, 2018, effective retroactive to September 1, 2018; amended August 1, 2022, effective retroactive to July 1, 2022; amended _____ to be effective _____.

Q. Proposed Amendments to *Rule* 6:8 – Special Actions: Attachment, Capias and Replevin; Return of Orders for Possession

The Special Civil Part (SCP) Subcommittee recommends revising *Rule* 6:8 to clarify that writs of capias ad respondendum are not available in the Special Civil Part. The intention of the rule amendment is to eliminate the potential for issuance of capias writs which are effectively writs for arrest. Arrest warrants are issued by the court pursuant to strict guidelines set forth in *Rule* 6:7-2(g). By eliminating capias writs, the rule amendment ensures that litigants are properly following procedures for arrest warrants provided for in the court rule. The Committee agreed with the proposed amendments to the Rule.

The proposed amendments to *Rule* 6:8 follow.

6:8 Special Actions: Attachment, Capias and Replevin; Return of Orders for Possession

Writs of *capias ad respondendum*, attachment and replevin shall [be issued and proceeded upon in accordance with *R*. 4:51, 4:60 and 4:61, respectively, and in accordance with applicable law. An officer assigned to execute an order for possession in a replevin action shall make return thereof to the clerk within 30 days from the issuance of such order, and the officer shall not thereafter execute such order without the further order of the court] not be filed with the Special Civil Part.

Note: Source – *R.R*. 7:12-7, 7:12-8; amended July 13, 1994 to be effective September 1, 1994; amended _____ to be effective _____.

R. Proposed Amendments to Appendix XI-A(1) – DC Summons and Return of Service

The Civil Practice Division proposed amending Appendix XI-A(1) (DC Summons and Return of Service) to advise litigants of the availability of a complementary dispute resolution/settlement event when an answer is filed. The Committee agreed that the proposed amendments clarify the current process for litigants.

The proposed amendments to Appendix XI-A(1) follow.

APPENDIX XI-A(1)

Court's Address and Phone Number: _____ Special Civil Part _____ _____ _____ Telephone No. _____	**Superior Court of New Jersey** **Law Division, Special Civil Part** _____ County Docket No: DC _____ **Civil Action** **Summons** **Check one** ☐ **Contract** ☐ **Tort**

YOU ARE BEING SUED!

Person or Business Suing You (*Plaintiff*)	**Person or Business Being Sued (*Defendant*)**
_____ _____ _____	_____ _____ _____
(See the following page(s) for additional plaintiffs)	(See the following page(s) for additional defendants)
Plaintiff's Attorney Information _____ _____ _____ _____	**The Person or Business Suing You Claims You Owe the Following:** Demand Amount $ _____ Filing Fee $ _____ Service Fee $ _____ Attorney's Fees $ _____ **TOTAL** $

FOR JUDICIARY USE ONLY

In the attached complaint, the person or business suing you briefly tells the court their version of the facts of the case and how much money he or she claims you owe. **If you do not answer the complaint, you may lose the case automatically and the court may give the plaintiff what the plaintiff is asking for, plus interest and court costs. You have 35 days from the date of service to file your answer or a signed agreement.** If a judgment is entered against you, a Special Civil Part Officer may seize your money, wages or personal property to pay all or part of the judgment. The judgment is valid for 20 years.

IF YOU DISAGREE WITH THE PLAINTIFF'S CLAIMS, A WRITTEN ANSWER OR SIGNED AGREEMENT MUST BE RECEIVED BY THE COURT ABOVE, ON OR BEFORE _____, OR THE COURT MAY RULE AGAINST YOU.

IF YOU <u>DISAGREE</u> WITH THE PLAINTIFF, YOU MUST DO <u>ONE OR BOTH</u> OF THE FOLLOWING:

1. ***Answer the complaint***. An answer form that will explain how to respond to the complaint is available at any of the New Jersey Special Civil Part Offices or on the Judiciary's Internet site njcourts.gov. If you decide to file an answer to the complaint made against you:

- Fill out the Answer form AND pay the applicable filing fee by check or money order payable to: ***Treasurer, State of New Jersey***. Include ***DC*** _____ (your Docket Number) on the check.
- Mail or hand deliver the completed Answer form and the check or money order to the court's address listed above.
- Hand deliver or send by regular mail a copy of the completed Answer form to the plaintiff's attorney. If the plaintiff does not have an attorney, send your completed answer form to the plaintiff by regular and certified mail. This MUST be done at the same time you file your Answer with the court on or before _____.

<u>If you file an Answer, your case will go to a settlement conference with a trained, neutral third person on the day of trial.</u>

2. ***Resolve the dispute.*** Contact the plaintiff's attorney, or contact the plaintiff if the plaintiff does not have an attorney, to resolve this dispute. The plaintiff may agree to accept payment arrangements. If you reach an agreement, mail or hand deliver the **SIGNED** agreement to the court's address listed above on or before _____.

Please Note - You may wish to get an attorney to represent you. If you cannot afford to pay for an attorney, free legal advice may be available by contacting Legal Services at _____. If you can afford to pay an attorney but do not know one, you may call the Lawyer Referral Services of your local County Bar Association at _____. Notify the court now if you need an interpreter or an accommodation for a disability for any future court appearance.

/s/ Name _____
Clerk of the Superior Court

Dirección y teléfono del tribunal: Parte Civil Especial de _____ _____ _____ _____ Número de teléfono: _____	**El Tribunal Superior de Nueva Jersey** **División de Derecho, Parte Civil Especial** Condado de _____ Número del expediente: DC _____ **Demanda de Acción Civil** **Notificación de Demanda** **Marque si es** ☐ **Contrato** ☐ **Ilícito Civil**

¡LE ESTÁN DEMANDANDO!

Persona o entidad comercial que le está demandando *(el demandante)*	**Persona o entidad comercial que está siendo demandada *(el demandado)***
El Demandante: Consigne la información al dorso. (Vea en la(s) página(s) siguiente(s) los demandantes adicionales)	El Demandante: Consigne la información al dorso. (Vea en la(s) página(s) siguiente(s) los demandados adicionales)
Información sobre el abogado del demandante	**La persona o entidad comercial que le está demandando afirma que usted le debe lo siguiente:**
El Demandante: Consigne al dorso la información sobre el abogado del demandante.	Cantidad a la vista $XXXXXXX Tasa judicial $XXXXXXX Cargo del emplazamiento $XXXXXXX Honorarios del abogado $XXXXXXX **TOTAL** $XXXXXXX

PARA USO EXCLUSIVO DEL PODER JUDICIAL

En la demanda adjunta la persona o entidad comercial que le está demandando le informa brevemente al juez su versión de los hechos de la causa y la suma de dinero que afirma que usted le debe. **Si usted no responde a la demanda, puede perder la causa automáticamente y el juez puede dar al demandante lo que está pidiendo más intereses y los costos legales. Usted tiene 35 días a partir de la fecha del emplazamiento para presentar su respuesta o un acuerdo firmado.** Si se dicta un fallo en su contra, un Oficial de la Parte Civil Especial puede embargar su dinero, sueldo o sus bienes muebles (personales) para pagar todo el fallo o una parte del mismo. El fallo es válido por 20 años.

SI USTED NO ESTÁ DE ACUERDO CON LAS ALEGACIONES DEL DEMANDANTE, EL TRIBUNAL TIENE QUE RECIBIR UNA RESPUESTA POR ESCRITO O UN ACUERDO FIRMADO PARA EL _____, O ANTES DE ESA

FECHA, O EL JUEZ PUEDE EMITIR UN FALLO EN SU CONTRA. SI USTED NO ESTÁ DE ACUERDO CON EL DEMANDANTE, DEBE HACER UNA DE LAS SIGUIENTES COSAS O LAS DOS:

1. ***Responder a la demanda***. Un formulario de respuesta que le explicará cómo responder a la demanda está disponible en cualquiera de las Oficinas de la Parte Civil Especial de Nueva Jersey o en el sitio Internet del Poder Judicial njcourts.gov. Si usted decide presentar una respuesta a la demanda que se hizo en su contra:
   - Llene el formulario de Respuesta Y pague la tasa judicial de presentación que corresponda mediante un cheque o giro bancario o postal acreditable al: "***Treasurer, State of New Jersey*** " (Tesorero del Estado de Nueva Jersey). Incluya el número ***DC*** _____ (el número de su expediente) en el cheque.
   - Envíe por correo el formulario de Repuesta llenado y el cheque o giro bancario o postal a la dirección del tribunal que figura más arriba, o entréguelos personalmente en dicha dirección.
   - Entregue personalmente o envíe por correo común una copia del formulario de Repuesta llenado al abogado del demandante. Si el demandante no tiene abogado, envíe su formulario de respuesta llenado al demandante por correo común y por correo certificado. Esto SE TIENE que hacer al mismo tiempo que presente su Respuesta al tribunal a más tardar el _____**.**

2. ***Resolver la disputa.*** Comuníquese con el abogado del demandante, o con el demandante si éste no tiene abogado, para resolver esta disputa. El demandante puede estar de acuerdo con aceptar arreglos de pago. **Si llegara a un acuerdo, envíe por correo el acuerdo FIRMADO** a la dirección del tribunal que figura más arriba, **o entréguelo personalmente** en dicha dirección a más tardar el _____.

Nota - Puede que usted quiera conseguir que un abogado para que lo represente. Si usted no puede pagar un abogado, podría obtener consejos legales gratuitos si se comunica con Legal Services (Servicios Legales) llamando al _____. Si usted puede pagar un abogado, pero no conoce a ninguno, puede llamar al Lawyer Referral Services (Servicios de Recomendación de Abogados) del Colegio de Abogados (Bar Association) de su condado local al _____. Notifique al tribunal ahora si usted necesita un intérprete o un arreglo por una discapacidad para cualquier comparecencia futura en el tribunal.

/s/ Nombre y apellido_____
Secretario del Tribunal Superior

Court's Address and Phone Number: _____ Special Civil Part _____ _____ _____	**Superior Court of New Jersey** **Law Division, Special Civil Part** _____ County Docket No: DC _____ **Civil Action** **Summons** **Check one** ☐ **Contract** ☐ **Tort**
Additional Plaintiffs/demandantes adicionales	**Additional Defendants/demandados adicionales**

S. Housekeeping Amendment

The Committee recommends a "housekeeping" amendment to *Rule* 1:43 correcting two minor errors in the titles of the court's divisions. In the headings above each of two sections of fees, the rule incorrectly reads, "Superior Court, Law Division, Chancery Part Family" where it should read, "Superior Court, Chancery Division, Family Part," and incorrectly reads, "Superior Court, Law Division, Chancery Part General Equity," where it should read, "Superior Court, Chancery Division, General Equity." The Committee approved the proposed changes.

The proposed amendments to *Rule* 1:43 follow.

1:43 Filing and Other Fees Established Pursuant to *N.J.S.A*. 2B:1-7

The following filing fees and other fees payable to the court, revised and supplemented by the Supreme Court in accordance with *N.J.S.A*. 2B:1-7, are established effective November 17, 2014. All other filing fees or other fees not here listed are unchanged by the process set forth in *N.J.S.A*. 2B: 1-7.

All State Courts		
Fee Subject	**Fee**	**Authority**
Affixing Court Seal	$10.00	N.J.S.A. 22A:2-20
Exemplification	$50.00	N.J.S.A. 22A:2-20
Certified Copy of any document	$15.00	N.J.S.A. 22A:2-19
Non-Party Notice of Appearance Fee (except for Special Civil Part)	$50.00	N.J.S.A. 22A:2-37.1
Recording instruments not otherwise provided for	$35.00	N.J.S.A. 22A:2-7

Supreme Court		
Fee Subject	**Fee**	**Authority**
Notice of Appeal or Cross-Appeal; Petition and Cross-Petition for Certification or Review	$250.00	N.J.S.A. 22A:2-1
First paper filed if not in a pending case or if made after judgment entered	$50.00	N.J.S.A. 22A:2-1

Superior Court, Appellate Division		
Fee Subject	**Fee**	**Authority**
Notice of Appeal or Cross Appeal	$250.00	N.J.S.A. 22A:2-5
First paper filed if not in a pending case or if made after judgment entered	$50.00	N.J.S.A. 22A:2-5

Superior Court, Law Division, Civil Part		
Fee Subject	**Fee**	**Authority**
Complaint	$250.00	N.J.S.A. 22A:2-6
Filing of First Paper by Anyone Other than the	$175.00	N.J.S.A. 22A:2-6

Plaintiff		
Motion	$50.00	N.J.S.A. 22A:2-6
Complaint in Multicounty Litigation	$250.00	N.J.S.A. 22A:2-6
Answer in Multicounty Litigation	$175.00	N.J.S.A. 22A:2-6
Motion in Multicounty Litigation	$50.00	N.J.S.A. 22A:2-6
Civil Law Writs	$50.00	N.J.S.A. 22A:2-7
Order to Show Cause	$50.00	N.J.S.A. 22A:2-6
Assignment of Judgment (not an allowable taxed cost)	$35.00	N.J.S.A. 22A:2-7
Warrant to Satisfy Judgment (not an allowable taxed cost)	$50.00	N.J.S.A. 22A:2-7
Wage Garnishment	$35.00	N.J.S.A. 22A:2-7
Warrant for Arrest	$35.00	N.J.S.A. 22A:2-7

Superior Court, Law Division, Special Civil Part

Fee Subject	**Fee**	**Authority**
DC Motion (including Orders to Show Cause)(No Fee for Turnover Motions Satisfying Judgment, per R. 6:3-3(c)(6))	$25.00	---
Small Claims Complaint	$35.00	N.J.S.A. 22A:2-37.1
Tenancy Complaint	$35.00	N.J.S.A. 22A:2-37.1
Initial Pleading for more than $3000	$75.00	N.J.S.A. 22A:2-37.1
Writ of execution or replevin	$35.00	N.J.S.A. 22A:2-37.1
Warrant of Removal	$35.00	N.J.S.A. 22A:2-37.1
Wage Garnishment	$35.00	N.J.S.A. 22A:2-37.1
Warrant for Arrest	$35.00	N.J.S.A. 22A:2-37.1

Superior Court, [Law Division,] Chancery [Part] Division, General Equity

Fee Subject	**Fee**	**Authority**
Filing Complaint	$250.00	N.J.S.A. 22A:2-12 and -13
Filing Answer	$175.00	N.J.S.A. 22A:2-12 and -13
Order to Show Cause (General Equity and Foreclosure)	$50.00	N.J.S.A. 22A:2-12 and -13
Filing Motion	$50.00	N.J.S.A. 22A:2-12 and -13
Foreclosure Complaint	$405.00	N.J.S.A. 22A:2-12; 2B:1-7; 2A:50-80
Foreclosure Answer	$175.00	N.J.S.A. 22A:2-12 and -13
Foreclosure Motion	$50.00	N.J.S.A. 22A:2-12 and -13
Foreclosure Writs	$50.00	---

Foreclosure Assignments	$35.00	N.J.S.A. 22A:2-12 and -13

Superior Court, [Law Division,] Chancery Division, [Part] Family Part		
Fee Subject	**Fee**	**Authority**
Filing Divorce Complaint (all types)	$300.00, $275.00 to court	N.J.S.A. 22A:2-12 and 52:27D-43.24a
Filing First Responsive Pleading in Dissolution Matter	$50.00	N.J.S.A. 22A:2-12
Motions in Dissolution Matters	$15.00	N.J.S.A. 22A:2-12
Order to Show Cause (Dissolution Only)	$50.00	N.J.S.A. 22A:2-6
Post-disposition Application/Motion in Non-Dissolution Matters	$35.00	---

Superior Court, Law Division, Criminal Part		
Fee Subject	**Fee**	**Authority**
Municipal Court Appeal	$100.00	N.J.S.A. 22A:2-27
Appeal of denial of permit to purchase handgun or firearms purchaser ID card	No fee	N.J.S.A. 2C:58-3d
Appeal of denial of permit to carry handgun	No fee	N.J.S.A. 2C:58-4e
Bail/Post/Discharge	$50.00	N.J.S.A. 22A:2-29

Superior Court, Probation Division		
Fee Subject	**Fee**	**Authority**
Probation Out-Of-State Supervision Fee (probationer transferred to NJ from another state/jurisdiction for supervision in NJ)	$25.00per month	Interstate Compact for Adult Offender Supervision (ICAOS), Rule 107(b)(1)

Superior Court Clerk's Office		
Fee Subject	**Fee**	**Authority**
Docketing or recording judgment in the judgment and order docket	$35.00	N.J.S.A. 22A:2-7
Recording assignment, subordination, cancellation, postponement, or release of judgment	$35.00	N.J.S.A. 22A:2-7

Issuing or recording executions	$35.00	N.J.S.A. 22A:2-7
Issuing or recording any other documents	$35.00	N.J.S.A. 22A:2-7
Signing and issuing a subpoena	$50.00	N.J.S.A. 22A:2-7
Filing all papers related to civil bail	$30.00	N.J.S.A. 22A:2-7 ($5) and 22A:2-29 ($35)
Entering judgment by confession	$30.00	N.J.S.A. 22A:2-7

Tax Court		
Fee Subject	**Fee**	**Authority**
Filing motion in non-small claim, local, or state (small claims remains $0)	$50.00	Court Rule 8:12
Filing fee for non-small claims cases	$250.00	N.J.S.A. 22A:5-1(a); Court Rule 8:12
Counterclaim in non-small claims cases for one parcel (non-taxing district)	$250.00	Court Rule 8:12
Filing fee for state and local property small claims cases	$50.00	Court Rule 8:12
Counterclaim in small claims for one parcel (non-taxing district)	$50.00	Court Rule 8:12

Note: Adopted October 31, 2014 to be effective November 17, 2014; amended March 7, 2017 to be effective immediately; Special Civil Part section; amended July 27, 2018 to be effective September 1, 2018; General Equity section and Criminal section; amended December

8, 2020 to be effective immediately; Special Civil Part section amended November 29, 2021 to be effective immediately; Criminal section amended (Permit to Carry Handgun deleted as court action; fee for appeal from denial of handgun purchase permit or firearms ID card changed to "no fee"; fee for appeal from denial of handgun carry permit set as "no fee") January 3, 2023 to be effective immediately; headings for Chancery Part, General Equity and Chancery Part, Family amended to be effective .

II. RULES REJECTED

A. Proposed Amendments to Rule 1:21-7(c)(1) – Contingent Fees

A private attorney suggested that *Rule* 1:21-7(c) and (i) be amended to make clear that paragraph (c) and (i) provisions apply to Multicounty Litigation matters. The attorney noted that in the Olmesartan Federal Multidistrict Litigation (MDL), the award of attorneys' fees in the settlement program exceeded those permitted by *Rule* 1:21-7. The federal district court held that the rules did not apply in state MCL or federal MDL and granted an attorney's fee award in excess of what would otherwise be permitted under the rules. The Third Circuit Court upheld the ruling.

The Committee was not persuaded that a rule change is necessary, noting that the "common benefit fund" is a fund whereby the lead counsel in an MDL or MCL expends money for expert fees and deposition costs which benefit the plaintiffs in all of the actions. As a result, the lead counsel is entitled to an award to offset these expenditures. The award is separate and distinct from an "attorney fee award" which is contemplated by *Rule* 1:21-7 and therefore is not subject to those limitations. MCL and MDL litigation would otherwise be cost prohibitive for firms representing a single or small number of plaintiffs.

The Committee disagreed with the requestor's characterization of the fees as "attorney's fees" under the rule determining that the award complained of was in fact an award to repay the common expenses. Moreover, due to the existence of individuals cases in MCL and MDL litigation, as opposed to a class action which

consist of one action with several plaintiffs, there generally are separate retainers for each case and the attorney is entitled to an attorney fee award in each of the cases subject to the retainer agreement. The court rule is not intended to limit the aggregate sum of the attorney fee awards of each individual case. As such the Committee does not recommend a rule change.

B. Proposed Amendments to *Rule* 4:5-8 – Pleading Special Matters

A Superior Court Judge inquired whether in *Rule* 4:5-8(a) (Fraud, Mistake, Condition of Mind) the term "items" is an error and should instead be "times." Members concluded that while it may appear to be a typo at first glance, careful consideration of the rule text suggests otherwise. Since the Rule requires "particulars of the wrong," the term "items" would be more appropriate to establish those particulars beyond just temporal evidence (as would be implied by the suggested term "times.")

Further the history of the rule and the 1967 volume of Schnitzer & Wildstein's Rules Service suggests that the current rule is correct. Specifically, on page A-IV-175, the treatise states that the precursor to current *Rule* 4:5-8, is former *R.R.* 4:9-1 (Fraud, Mistake, Condition of the Mind), which was lifted from former Chancery Rule 47 including the phrase "…with particulars of the wrong, with dates and items if necessary…". Thus, based on the history of the phrase which dates back over a century, the Committee members determined not to propose any change to the rule.

C. Proposed Amendments to *Rule* 4:10-2 Scope of Discovery; Treating Physician and *Rule* 4:17-4 – Form, Service and Time of Answers

A private attorney suggested amending the Court Rules to preclude inclusion of a preamble setting forth general objections to discovery requests. The attorney contended this is an inappropriate practice, wastes time, protracts discovery, and can lead to motion practice. The Committee members agreed that such practice was routine, not harmful, and a means to protect attorneys from inadvertently waiving any potential defenses. The consensus was that any issues that arise related to this topic can be worked out by the parties on a case-by-case basis and no rule amendment was necessary at this time.

D. Proposed Amendments to *Rule* 4:18-1 – Production of Documents, Electronically Stored Information, and Things

During the 2014-2016 rules cycle, the Committee recommended amending *Rule* 4:18-1 to require a party requesting records under the Freedom of Information Act (FOIA) and the New Jersey Open Public Records Act (OPRA) to provide a copy of the request to all counsel. The notice would allow parties an opportunity to oppose the request. The recommendation was met with opposition from some members of the bar and ultimately rejected by the Court.

Subsequently, the Committee was asked whether a rule governing OPRA or FOIA requests in pending actions is necessary. An attorney suggested adopting a new rule, like *Rule* 4:14-7(c) regarding subpoenas for depositions, that would require parties to provide adverse counsel with any related OPRA requests made upon public agencies and responses thereto.

The matter was referred to the Discovery Subcommittee for consideration. The Discovery Subcommittee perceived no widespread issues or concerns that necessitate a rule change. The appropriate way to ascertain the existence of outstanding information requests would be to use the discovery process in the existing Court Rules. The Committee agreed with the Subcommittee's recommendation not to propose any rule amendments at this time. The Committee recommends against adopting a new rule.

E. Proposed Amendments to *Rule* 4:23-1 – Motion for Order Compelling Discovery

The item was held over from the prior cycle. A member requested that the Committee consider adding a mandatory sanction of filing fees, at a minimum, for motions to compel discovery. The basis for the request is a claim that demands for discovery are often ignored, requiring the time and expense of repeated requests and ultimately motion practice. After consideration, the Committee concluded that no rule amendment is necessary at this time.

F. Proposed Amendments to *Rule* 6:4-3- Interrogatories; Admissions; Production

The Court referred a request from Legal Services of New Jersey (LSNJ) to repeal *Rule* 6:4-3(f) ("Interrogatories; Admissions; Production") to eliminate the discovery limitations for Special Civil Part (DC) actions cognizable in Small Claims (SC). *Rule* 6:4-3(f) limits discovery to five interrogatory questions, without subparts, when an action is filed in the DC docket and falls within SC jurisdictional limits. The Court suggested consideration of options including a defined increase in interrogatories, *e.g*., from 5 to 10 questions, to address the concerns raised by LSNJ. The Court also suggested the Committee consider any potential unintended harms such as the exacerbation of the justice gap for unrepresented parties and difficulties on debtors who would struggle to respond and face motions to dismiss.

Previously, the former Supreme Court Special Civil Part Practice Committee recommended an amendment suggested by the LSNJ members of that committee that eliminated this discovery limitation. The Court in 2020 considered and rejected the proposed elimination of the discovery limitation.

The Special Civil Part Subcommittee took particular note of the common relative lack of sophistication and economic status of litigants in the Special Civil Part, along with the low economic value of the cases. Most members of the Subcommittee agreed that every increase in interrogatory questions would result in

a corresponding increase in the difficulty for self-represented litigants to complete the discovery successfully. LSNJ representatives, on the other hand, contended that more expansive discovery tools are required to enable self-represented litigants to defend cases because critical information is within the sole possession of the plaintiff. A modest increase from ten to five interrogatories will be insufficient to enable litigants to defend creditors' claims successfully.

The Committee reviewed the competing positions presented by the Subcommittee. Some members expressed concern that unlimited discovery had potential for abuse to the disadvantage of debtor defendants. Other members expressed support for a limited increase in interrogatories, viewing it as a potential interim step which could be further increased after experiential data is collected. Most members, however, favored no change at all to the current rule, agreeing that the present discovery limits were sufficient particularly considering the monetary value of the case, the sophistication of the litigants, and the availability to request additional discovery from the court where necessary.

The Subcommittee's report detailing the competing positions on the proposed rule amendments is annexed as Attachment 1.

G. Proposal For New Rule for copy costs of records in an electronic or non-print formal.

A private attorney requested a rule amendment addressing the costs to be charged for providing an adversary with copies of records in an electronic or non-print format. The attorney noted that digital discovery is addressed in the criminal and municipal dockets respectively in *Rules* 3:13-5(a) and 7:7-7(i)(1).

The Committee considered whether an analogous rule should be adopted for civil cases and specifically confined their consideration to medical records only. The Committee considered the fee schedule provided for copies of court records contained in *Rule* 1:38-9 and that the Open Public Records Act ("OPRA") prohibits fees to be charged to the requestor. Additional considerations were that a common practice among attorneys is to condition their client's medical release authorizations on the adversary providing to them a copy of any records they obtain, and that many practitioners routinely provide their adversaries with CDs containing MRI (and similar) records. The Committee decided not to recommend a new rule.

Finally, the Committee considered the existence of recent New Jersey legislation, P.L. 2019, c. 217, that limits the amount a healthcare provider can charge a patient for medical records and the provisions for providing patients with copies of their own records per the federal "Health Insurance Portability and Accountability Act of 1996."

The Committee determined that the current laws and rules in place, as well as the accepted practice among attorneys in exchanging discovery, sufficiently address the issue of copy costs for records and no new rule or rule change is advisable.

H. Proposed New and Revised Rules related to Discovery, Electronically Stored Information, and Third-Party Litigation Funding

During the last rules cycle and again during this cycle, the Committee received proposals by the New Jersey Civil Justice Institute (NJCJI) including to align New Jersey's civil discovery rules more closely with the Federal Rules of Civil Procedure, particularly as to electronically stored information ("ESI"), and a proposed amendment to mandate disclosure of third-party litigation funding (TPLF) agreements in civil matters. The proposals were referred to the Discovery Subcommittee.

Regarding ESI, the Discovery Subcommittee considered whether and how to address ESI within the Court Rules. They considered various aspects including whether or which aspects of meta data should be preserved and what is discoverable, relevancy determinations, and related case law (*Estate of Lasiw v. Pereira*, 475 *N.J. Super*. 378 (App. Div. 2023)). The Discovery Subcommittee noted that regarding proportionality, the issue was already addressed in previous rules cycles in discussions about the Duke Conference and through other methods such as differentiated track assignments, including the Complex Business Litigation Program. The Discovery Subcommittee noted that while ESI discovery rules may be well suited for larger, complex cases, they will not be well suited for modest cases which presents a difficulty with a rule(s) of general application. Moreover, currently the Rules do not address ESI explicitly, but the issue is

handled aptly and efficiently by means of an early case management order. As such, the Discovery Subcommittee concluded that rigid rules may not be appropriate or effective for New Jersey state cases.

Ultimately, despite exhaustive consideration of the issue and its various aspects, the Discovery Subcommittee determined that no rule change would be appropriate at this time. A new rule could also be premature because ESI issues are still evolving, and more experience will be necessary to address the issues properly. The Committee agreed with the subcommittee's recommendation noting that issues related to artificial intelligence (AI) may also emerge soon and could be considered with any future rule proposals on ESI.

Regarding the NJCJI proposal on TPLF, the subcommittee considered two different aspects of TPLF. The first involves lawyers or law firms receiving funding for specific cases often involving significant amounts of money. The money is provided in exchange for contingent interest in the litigation. The second aspect involves individual plaintiffs who use loans as a means of support while their cases are pending. Often, these loans are not disclosed by the client to the attorney and may interfere with settlements of efforts because the plaintiff requires at least the amount of the loan as a settlement amount. A party may reject reasonable settlement offers because they do not exceed the loan amount. NJCI's proposal would require mandatory disclosure of the existence of any TPLF agreement.

The Committee agreed with the suggestion of the Discovery Subcommittee not to adopt any rule change at present. The Committee concluded that there is not sufficient experience to meaningfully develop and recommend a rule change at this time. Rather, if at some point in the future, the issue becomes ripe for consideration, the Committee can consider a rule proposal. Members also agreed that drafting a rule may prove difficult. Often attorneys are unaware of their clients' acceptance of TLPF and requiring disclosure by attorneys of same would prove problematic. While there may be ethical implications where an attorney fails to disclose the existing of TPLF where required, where a client possesses the knowledge, the rule could not be enforced fairly against an attorney.

The Committee also considered whether, without any rule change, opposing counsel could gain access to the information through discovery where the existence of TPLF is not relevant to the issues in the case. For example, the existence of an insurance policy or of a worker's compensation lien may not be relevant to the issues in the case and therefore not otherwise subject to disclosure, but the court rules separately require disclosure of same. Any rule proposal related to TPLF would be analogous in this regard because the existence of third-party funding likely would bear no relevance to the issues in the case.

Finally, the Committee considered the existence of proposed New Jersey legislation S1475, the Consumer Legal Funding Act (the Act), which would require certain disclosures by lenders of litigation funding to consumers and

otherwise prohibit the attorney representing the client to have an ownership interest in the funding entity. The Act would not otherwise require disclosure by parties or counsel in litigation. The Committee does not address here the constitutionality of such proposed legislation under the principles of *Winberry v. Salisbury*, 5 *N.J.* 240 (1950).

On the federal level, New Jersey local Civil Rule 7.1 requires disclosure of litigation funding. However, the Federal Civil Rules do not require disclosure. In fact, when the Judicial Conference Committee on Rules and Regulations considered the issue of TPLF as it relates to multidistrict litigation (MDL), the Committee noted the growing and evolving importance of TPLF but concluded that the issue should be removed from focus because it did not appear to be significant in MDL cases. That committee stated that it will continue to monitor for any issues that arise and may review the issue in the future.

The Committee explored these issues in great depth and agreed that new or revised rules may be appropriate at some future point, but declined to adopt any proposed changes citing, the need for further development through experience in this area.

III. RULE RECOMMENDATIONS ADOPTED OUT OF CYCLE

A. Proposed Amendments to Rule 4:86-7 – Rights of an Incapacitated Person; Proceedings for Review of Guardianship

The Judiciary Working Group on Elder Justice, which was established in 2021 to develop and facilitate implementation of initiatives that will improve legal and intersectional outcomes for older New Jersey residents, recommended an amendment to *Rule* 4:86-7 to clarify procedures related to the return to capacity of a previously adjudicated incapacitated adult. Although the current rule provides a procedure for applications for return to capacity, the vagueness of its provisions results in inconsistent interpretation. The proposed amendments would provide guidance to attorneys and the court to adjudicate these cases in various contexts. Some more frequently occurring situations include a person declared incapacitated due to drug addiction who later becomes sober, or a person who emerges from a coma.

The proposed amendment includes a burden of proof, enumerates the required affidavits, and allows the incapacitated person to be appointed an attorney to advocate on their behalf. The Committee approved the amendment determining that it was appropriate and recognizing the reality that a declaration of incapacity is not a permanent adjudication. The Committee reviewed and endorsed the proposed amendments during the Cycle.

The proposed amendments were published in a June 14, 2023 Notice to the Bar inviting comments on the Recommendations of the Judiciary Working Group on Elder Justice.

The amendments to *Rule* 4:86-7, adopted and effective as of January 1, 2024 by Supreme Court Order dated September 27 2023, follow.

4:86-7. Rights of an Incapacitated Person; Proceedings for Return to Capacity or Review of Guardianship

(a) Rights of an Incapacitated Person. An individual subject to a general or limited guardianship shall retain:

(1) The right to be treated with dignity and respect;

(2) The right to privacy;

(3) The right to equal treatment under the law;

(4) The right to have personal information kept confidential;

(5) The right to communicate privately with an attorney or other advocate;

(6) The right to petition the court to modify or terminate the guardianship, including the right to meet privately with an attorney or other advocate to assist with this legal procedure, as well as the right to petition for access to funds to cover legal fees and costs; and

(7) The right to request the court to review the guardian's actions, request removal and replacement of the guardian, and/or request that the court restore rights as provided in *N.J.S.A*. 3B:12-28.

(b) Proceedings for Return to Capacity.

(1) An incapacitated person, [or] an interested person on [his or her] the incapacitated person's behalf, or the guardian may seek a return to full or partial capacity by commencing a separate summary action by verified complaint. The

complaint shall be supported by a minimum of two affidavits or certifications as described in *Rule* 4:86-2(b)(2), and shall set forth facts evidencing that the previously incapacitated person no longer is incapacitated or has returned to partial capacity.

(2) The court shall, on notice to the persons who would be set forth in a complaint filed pursuant to *Rule* [4:86-1] 4:86-2, set a date for hearing, appoint counsel for the incapacitated person if the incapacitated person is not represented, and take oral testimony in open court with or without a jury. In addition, the court may appoint a guardian *ad litem* to evaluate the best interests of the incapacitated person and to present that evaluation to the court in accordance with *Rule* 4:86-4(d).

(3) On presentation of prima facie evidence for termination or modification of the guardianship, the court may order termination or modification pursuant to subparagraph (4) if no party or interested person objects. Any party or interested person objecting to the termination or modification must provide clear and convincing evidence that a basis for continuation of the guardianship exists.

(4) The court may render judgment that the person no longer is fully or partially incapacitated, that his or her guardianship be modified or discharged subject to the duty to account, and that his or her person and estate be restored to his or her control, or may render judgment that the guardianship be modified but not terminated.

(c) Proceedings for Review of Guardianship. An incapacitated person, or an interested person on [his or her] the incapacitated person's behalf, may seek review of a guardian's conduct and/or review of a guardianship by filing a motion setting forth the basis for the relief requested. On the return date, the court shall inform the incapacitated person of their rights as set forth in paragraph (a) and of the procedures for return to capacity as set forth in paragraph (b).

Note: Source — *R.R.* 4:102-7; former R. 4:83-7 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; caption and text amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 9, 2008 to be effective September 1, 2008; caption and text of former rule deleted, new caption adopted, new paragraphs (a), (b) and (c) adopted August 1, 2016 to be effective September 1, 2016; amended to be effective _____.

Respectfully submitted,

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Dated: January 2024

LMJG

ATTACHMENT

SPECIAL CIVIL PART SUBCOMMITTEE REPORT
2022-2024 RULES CYCLE

1. Proposed Amendments to *Rules* 6:1-2 (Cognizability); 6:3-4 (Summary Actions for the Possession of Premises); and 6:4-3 (Interrogatories; Admissions; Production)

The Special Civil Part subcommittee considered two issues related to ejectment actions. First, was whether and how to define an ejectment action. Second, was whether to align ejectment proceedings to the model for landlord tenant matters by prohibiting any claims for money damages in the action.

An ejectment is generally understood to be a case seeking to remove an occupant from land when there is no landlord tenant relationship. The statutory bases are *N.J.S.A.* 2A:35-1 et seq. (Possession and Title to Real Property) and *N.J.S.A.* 2A:39-1 et seq. (Forcible Entry and Detainer). Discovery is rarely requested in ejectment proceedings. [1]An illegal lockout is a type of ejectment. A tenant that has been illegally locked out of their unit would typically cite only *N.J.S.A.* 2A:39-1 et seq. and seek to eject the owner's unlawful entry into the leasehold. There is a Special Civil Part form packet for this type of application.

Part IV civil rules specifically reference allowing ejectments in Special Civil, *R.* 4:3-1(a)(4)(F), but there is no rule in Part VI that defines or uses the word "ejectment." The subcommittee members agreed that including a definition would serve to clarify and coordinate the Part IV and Part VI rules.

The subcommittee members disagreed, however, about whether to allow an ejectment to be filed with a claim for money damages in the action for possession or whether the rules should require the claims (money and possession) to be filed as two separate cases similar to the landlord tenant construct. In practice some attorneys have argued that a claim for money damages cannot be included in an action seeking an order to show cause for ejectment (possession), while other attorneys have argued that both claims may be filed in the same action.

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[1] And, if discovery was requested, the Court has the discretion, to adjourn the case for a short period to allow the discovery to proceed. This has occurred in landlord tenant cases, which are also summary proceedings. Except in landlord tenant cases, the court rules expressly state no discovery.

Landlord tenant cases are summary cases and require separate actions for money damages (*e.g*., unpaid rent) and for possession. One side of the debate wanted to continue to try to develop a hybrid model for ejectments, and the other side argued to follow the already well-developed landlord tenant model. Both sides of the ejectment debate agreed that the ejectment statutes allow for both possession and monetary damages.

The "hybrid side" argued that since the statute allows for both money and possession, the rules too should allow for both within the same case. This construct allows plaintiffs more easily to settle their cases by offering to reduce or dismiss the claim for money damages in exchange for an occupant agreeing to relinquish possession of the property. This construct also avoids plaintiffs having to try to locate and serve a former occupant after they vacate the property. Ejectment actions are very often brought against squatters and owners do not have their contact information to locate them, especially after ejectment. As a result, plaintiffs often cannot locate them and serve them at a later date for the monetary claim or file for a monetary judgment. Separating the two claims renders the portion of the statute allowing for damages meaningless. However, allowing both claims, this group contended, would facilitate settlements, reduce the potential number of filed cases, promote judicial efficiency, and save plaintiffs unnecessary legal fees. Further, they contend, this approach is contemplated in the ejectment statutes and represents a simple and less expensive litigation model characteristic of the Special Civil Part. Lastly, they believe that since the trial court discretion can currently deny the monetary damages and require the filing of a separate suit, the rule and the practice of including all claims in one lawsuit should not be changed.

On the other hand, the "landlord tenant side" pointed out that discovery is prohibited in illegal lockout cases that rely solely on *N.J.S.A.* 2A:39-1 et seq. per *Rule* 6:4-3(a). A conflict arises however, if the cause of action for ejectment relies on both statutes, *N.J.S.A.* 2A:39-1 et seq. and *N.J.S.A.* 2A:35-1 et seq. Unlike those actions brought pursuant to *N.J.S.A.* 2A:39-1, discovery is not prohibited by the court rules for causes of action brought pursuant to *N.J.S.A.* 2A:35-1 et seq. As such, confusion arises as to whether discovery is allowed where a litigant relies on both statutory bases in the case.

Allowing discovery in ejectments would convert them from summary proceedings – a result which is not contemplated by the court rules nor the practitioners to this debate. Both the current and proposed amended rule defining "ejectment" includes that an ejectment is a summary proceeding brought by order

to show cause. *R*. 6:1-2(a)(4); *R*. 4:67-2(a). In practice, this means that occupants that appear, often on the return date without having filed any papers in support of their position and are given an opportunity to be heard by the court. This is very much like a landlord tenant case where no discovery is permitted. Thus, the potential to have a $20,000 money judgment without an opportunity to engage in discovery undermines the due process for litigants accorded by the discovery rules in these actions. *R*. 6:4-3. As such, conflict exists among the rules resulting in confusion in practice. The rules contemplate only that cases for money judgments in the Small Claims Section to be summary in nature and without discovery. Further, service could be made prior to a lockout, and the viability of a judgment against a "john doe" anonymous defendant was questionable. In addition, many ejectments are against known occupants, such as guests of a deceased owner or former owners from a foreclosure and are not anonymous.

Employing the "landlord tenant model," would resolve the problem of discovery in ejectment cases and a summary and less expensive manner as contemplated by having the Special Civil Part.

2. Proposed Amendments to *Rule* 6:4-3(f)

The Special Civil Part subcommittee was asked to consider if the current rule allowing five interrogatories for cases cognizable in the Small Claims Section, but filed in the Special Civil Part, should be increased to ten interrogatories. The question reflects on the nature and purpose of the Special Civil Part. The current rule allows five questions with an option to request an increase by way of motion. *R*. 6:4-3(f). As to ten questions instead, unanimously, the answer was no. There were substantial opposing reasons.

Both sides relied on the ProPublica report from 2015 that compared Special Civil in Essex County, New Jersey to two other states' courts and discussed racial disparities.

A case involving $5000 in damages or less could be filed in the Small Claims Section, Special Civil Part or Civil Part. The differences relevant here are the pleadings, fees and discovery. The ProPublica report did not compare the Special Civil Part in New Jersey to the Civil Part in New Jersey.

As to the discovery, one side argued for repeal of discovery limitations under *R*. 6:4-3(f), suggesting that the change would result in stronger protections for low-

income defendants and would help facilitate more attorneys becoming involved in these types of cases. At the subcommittee chair's request, LSNJ provided a standard set of discovery requests of the type used by Legal Services attorneys representing and/or advising low-income consumers in Special Civil Part debt collection actions in which full discovery is permitted. Their argument is that attorneys representing consumers in debt collection cases seeking up to $5,000 must be able to promulgate discovery necessary to obtain the information necessary to effectively represent their clients, and that racial disparities in judgments may thereby be reduced. On this point, consideration should be given to whether legal aid organization attorneys have the ability or availability among their competing priorities to engage in motion practice in order to engage in ordinary discovery in debt collection cases under the $5000 jurisdictional limit, particularly where required motion practice may mean the difference between an attorney deciding to take a case for representation and a client having to go unrepresented.

The subcommittee members who argued against any increase in the interrogatories argued that the Special Civil Part had the lowest amount of disparities because of its high levels of access and fairness afforded to litigants. As stated in *Tuckey v. Harleysville*, 236 *N.J. Super.* 221 (1989), the Special Civil Part is geared toward self-represented (pro se, unrepresented) litigants. Procedures are simpler and fees less expensive. The least sophisticated and most impecunious litigants have fare better in the Special Civil Part by virtue of this access and such access girds against racial disparities resulting in higher levels of fairness.

The 2015 ProPublica report suggested blame for disparities was based on factors in society such as wealth distribution and education levels. Unfortunately, the ProPublica report did not compare Civil (Law Division) and Special Civil Part judgments for disparities. Nor did the report reflect on New Jersey's court rules. One of subcommittee member reported that in a settlement program in their county for Track 1 book account cases, had racial disparities in the Civil Part that appeared higher than that reported by ProPublica for the Special Civil Part.

During discussion with the full Civil Practice Committee, a third camp emerged. That camp argued for deference to the New Jersey Supreme Court's suggestion to raise the interrogatory limit to ten questions. The camp suggested that a limited increase may be a helpful way to test the results of an increase to determine what impact, if any, there would be to the members' concerns over racial disparities and fairness to litigants.

Despite thorough debates and discussions, no one has proposed any set of ten questions. With five questions, at a hearing to strike a pleading for failure to provide discovery, *R*. 4:23-5(a)(2); *R*. 6:4-6, a court might allow the five questions to be asked and answered at the hearing. That technique would help avoid a judgment based on discovery and favor a decision on the merits of the case. More questions would proportionately impair that technique.

Another way of looking at the idea of ten questions is that there is nothing more in practice that will be learned in ten questions that cannot be learned in five. The opposing argument could be made that if a litigant is not providing more in ten questions than in five, there is no harm in allowing ten questions. This goes back to the fact that there are unsophisticated and impecunious litigants. Even though ten questions might be argued to be only a small step toward increasing complexity, it is still a step in the wrong direction for the cases that are cognizable in small claims.

As it is, New Jersey's jurisdictional limits in small and intermediate claims ($5,000 and $20,000) are below the national average ($8,802 and $42,182) and national median ($7,500 and $25,000). As one of the more restrictive jurisdictions in that specific aspect, adding complexity and costs would only add an aspect of restrictiveness.

If the goal is to have access and fairness, break down barriers to justice, and eliminate racial disparities, and majority position is to have a court that has simple procedures and proportionately lower fees. Those are reasons for having a Special Civil Part in the first place. As such, *Rule* 6:4-3(f) is recommended to remain as is: five interrogatories with the optional motion for more on a case-by-case basis.

Respectfully submitted,
Special Civil Part Subcommittee of the Civil