2004 REPORT OF THE SUPREME COURT CIVIL PRACTICE COMMITTEE

January 20, 2004

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to *R.* 1:4-8 — Frivolous Litigation

The Conference of Assignment Judges recommended eliminating the requirement of subsection (g) that trial judges submit to the Administrative Director of the Courts copies of frivolous litigation sanction applications and the orders granting or denying the requested sanctions. The Conference noted that the reporting requirement had been inserted six years ago to permit a review of the general experience under the rule. Because no review has been conducted and because the quality of the data may be questionable because of a suspected lack of universal compliance with the rule, the Conference agreed that the reporting requirement is no longer necessary.

The proposed amendments to *R.* 1:4-8 follow.

1:4-8. Frivolous Litigation

(a) …no change.

(b) …no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) …no change.

[(g) Submission to the Administrative Director. In order that the application of this rule may be monitored, a copy of any application made under this rule, and of all papers filed in support thereof, together with a copy of the order granting or denying the application, shall be submitted to the Administrative Director of the Courts. Submission shall be by the judge entering the order, and for this purpose the proponent shall provide the judge with an additional copy of the motion, the papers in support thereof and the order.]

Note: Source — R.R. 4:11 (seventh through tenth sentences); amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (g) deleted to be effective .

B. Proposed Amendments to *R.* 1:5-2— Manner of Service

A Superior Court judge observed that an apparent ambiguity exists in *R.*1:5-2. The rule requires diligent effort to be made and specific facts underlying that diligent effort to be recited if mail service is to be addressed to a post office box in lieu of a street address. The rule does not, however, require the same diligent effort to be made and recited in the proof of service regarding the last known address. Accordingly, the Committee recommends that an affidavit of diligent effort be required for <u>any</u> substituted service.

The Committee also supports a proposal from the Special Civil Part Practice Committee that service upon a party, as opposed to an attorney, shall be made by certified and ordinary mail simultaneously.

The proposed amendments to *R.* 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 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, [to the party's last known address; or if the party refuses to claim or to accept delivery,] and simultaneously by ordinary mail to the party's last known address; or if no address is known, despite diligent effort, by ordinary mail to the clerk of the court. 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. [Where mailed service is made upon a party, the modes of service may be made simultaneously.]

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 _____ to be effective _____.

C. Proposed Amendments to *R.* 1:5-4 — Service by Mail or Courier: When Complete

Pursuant to the Supreme Court's directive in *First Resolution Investment Corp. v. Seker*, 171 *N.J.* 502, 516 (2002), the Special Civil Part Practice Committee recommended amendments to clarify the language in *R.* 1:5-4 regarding the failure to claim or refusal to accept the delivery of certified or registered mail. The Committee supports these recommendations.

The proposed amendments to *R.* 1:5-4 follow.

1:5-4. Service by Mail or Courier: When Complete

(a) Service by Ordinary Mail if Registered or Certified Mail Is Required and Is Refused. Where under any rule, provision is made for service by certified or registered mail, service may also be made by ordinary mail simultaneously or thereafter. If the addressee fails [or refuses] to claim or refuses to accept delivery of certified or registered mail, the ordinary mailing shall be deemed to constitute service.

(b) …no change.

(c) …no change.

Note: Source — *R.R.* 4:5-2(a) (fifth sentence). Paragraph (a) adopted and former rule designated (b) June 29, 1973 to be effective September 10, 1973; amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended and paragraph (c) added July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) amended to be effective .

D. Proposed Amendments to *R.* 1:5-6 — Filing

The Supreme Court Arbitration Advisory Committee and the Conference of Civil Presiding Judges had unanimously recommended that *R*. 1:5-6 be amended to allow the court to reject and return a trial *de novo* request submitted by a party who is in default or whose pleading has been stricken. The stricken or defaulted party must move to restore its pleading and re-enter the litigation before being permitted to file a trial *de novo* request.

The Committee agreed that the rule should be amended as proposed. In practice, the rejected trial *de novo* request will be stamped "Received but not Filed," with reference made to *R*. 1:5-6(c)(3), the *de novo* fee returned, and notice provided to all parties.

The Committee also supports the proposal from the Family Practice Committee that would permit staff to reject for filing in the Family Part a paper not accompanied by the Confidential Litigant Information Sheet as required by *R*. 5:4-2(g). Similarly, the Committee supports the proposal of the Special Civil Part Practice Committee permitting rejection of a paper not signed by an attorney or *pro se* party, provided that a *pro se* appearance is permitted under the rules.

The proposed amendments to ***R.*** 1:5-6 follow.

1:5-6. Filing

(a) … no change.

(b) …no change.

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped "Received but not Filed (date)" if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement as required by *R.* 4:5-1 in the form set forth in Appendix XII to these rules; or

(C) in Family Part actions, the affidavit of insurance coverage required by *R.* 5:4-2(f) [or]; the Parents Education Program registration fee required by *N.J.S.A.* 2A:34-12.2; or the Confidential Litigant Information Sheet as required by *R.* 5:4-2(g) in the form prescribed in Appendix ---; or

(D) the signature of an attorney permitted to practice law in this State pursuant to *R.* 1:21-1 or the signature of a party appearing *pro se*, provided, however, that a *pro se* appearance is provided for by these rules.

If a paper is returned under this rule, it shall be accompanied by a notice advising that if the paper is retransmitted together with the required document or fee, as appropriate, within ten days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(2) Except in mortgage and tax foreclosure actions, if an answer is presented by a defendant against whom default has been entered, the clerk shall return the same stamped "Received but not Filed (date)" with notice that the defendant may move to vacate the default.

(3) A demand for trial de novo may be rejected and returned if not filed within the time prescribed in *R.* 4:21A-6 or if it is submitted for filing by a party in default or whose answer has been suppressed.

(d) …no change.

(e) …no change.

Note: Source — *R.R.* 1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a) (first and second sentence), 4:5-7 (first sentence), 5:5-1(a). Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d) redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2), adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1),(3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (c)(1)(C) amended, (c)(1)(D) adopted, and (c)(3) amended to be effective .

E. Proposed Amendments to *R.* 1:5-7 — Non-Military Affidavit

The Administrative Director of the Courts had directed the Civil, Family and Special Civil Part Practice Committees to undertake an expedited review of *R.* 1:5-7 to determine if it should be amended to provide greater specificity regarding the type of information to be contained in the affidavit of non-military service in accordance with the mandates of the State and Federal Soldiers' and Sailors' Civil Relief Acts. Those statutes require that the affidavit must be based on personal knowledge and must state facts, rather than conclusions, showing that a defendant is not in the military. The Committee considered the draft amendments proposed by both the Family and Special Civil Part Practice Committees and supports those proposed by the latter committee as they are more specific and include the requirement of information to be obtained from the Department of Defense.

See Section II. B. of this Report for a discussion of other proposed amendments to this rule, which the Committee does not recommend.

The proposed amendments to *R.* 1:5-7 follow.

1:5-7. Non-military Affidavit

An affidavit [of non-military service of each defendant, male or female, when required by law,] setting forth facts showing that the defendant is not in military service shall be filed as required by law before entry of judgment by default against such defendant. Such affidavit may be included as part of the affidavit of proof. Unless based on facts admissible in evidence, the affidavit shall have attached to it a statement from the United States Department of Defense that the defendant is not in military service.

Note: Source — *R.R.* 7:9-3; amended _____ to be effective _____.

F. Proposed Amendments to *R*.1:6-2 — Form of Motion; Hearing

A Superior Court judge suggested that *R*. 1:6-2 be amended to require that the discovery end date be included in the notice of motion. The Committee agreed that having this information in the notice of motion would be beneficial to the court and would assure that the proper standard would be applied when the motion is to extend discovery, *i.e*. "good cause" for motions to extend discovery made prior to the discovery end date and "exceptional circumstances" for motions made thereafter.

A Civil Presiding Judge suggested that *R*. 1:6-2 be amended to attempt to address the problem of motion judges being informed on motion days that a particular matter has been settled or that the motion has been withdrawn. The Committee agreed to recommend the inclusion of language urging counsel to notify the court promptly if a matter has been settled or withdrawn.

The proposed amendments to *R*. 1:6-2 follow.

1:6-2. Form of Motion; Hearing

(a) Generally. An application to the court for an order shall be by motion, or in special cases, by order to show cause. A motion, other than for bail pursuant to *R*. 3:26-2(d) or one made during a trial or hearing, shall be by notice of motion in writing unless the court permits it to be made orally. Every motion shall state the time and place when it is to be presented to the court, the grounds upon which it is made and the nature of the relief sought, and the discovery end date or a statement that no such date has been assigned. [and] The motion shall be accompanied by a proposed form of order in accordance with *R*. 3:1-4(a) or *R*. 4:42-1(e), as applicable. The form of order shall note whether the motion was opposed or unopposed. If the motion or response thereto relies on facts not of record or not subject of judicial notice, it shall be supported by affidavit made in compliance with *R*. 1:6-6. The motion shall be deemed uncontested and there shall be no right to argue orally in opposition unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought. Counsel shall forthwith advise the court if the motion is withdrawn or the matter is settled.

(b) …no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) …no change.

Note: Source — *R.R*. 3:11-2, 4:8-5(a) (second sentence). Amended 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; former rule amended and redesignated as paragraph (a) and paragraphs (b), (c), (d), and (e) adopted July 16, 1981 to be effective September 14, 1981; paragraph (c) amended July 15, 1982 to be effective September 13, 1982; paragraph (c) amended July 22, 1983 to be effective September 12, 1983; paragraph

(b) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a) and (c) amended and paragraph (f) adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended and paragraph (d) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 13, 1994 to be effective January 1, 1995; paragraphs (a) and (f) amended January 21, 1999 to be effective April 5, 1999; paragraphs (c) and (d) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended to be effective .

G. Proposed Amendments to *Rules* 1:13-7 and 4:43-2 — re: Involuntary Dismissal

The Supreme Court directed the Committee to prepare "best practices" amendments to the rules governing involuntary dismissals. The Conference of Civil Presiding Judges had recommended that the rules be amended to mirror the current operation of the dismissal process. These recommendations were forwarded to the New Jersey State Bar Association for review and comment (which was favorable), reviewed by the Judiciary Management and Operations Committee and the Judicial Council, and submitted to the Supreme Court, which approved the amendments in concept. The Committee has drafted the clarifying amendments, which include a provision for the consensual vacation of dismissal and reinstatement of the action against the dismissed party. The Committee also proposes amending *R*. 4:43-2 to make reference to the procedures to be followed under *R*.1:13-7.

The proposed amendments to *Rules* 1:13-7 and 4:43-2 follow.

1:13-7. Dismissal of Civil Cases for Lack of Prosecution

(a) Dismissal. Except in receivership and liquidation proceedings[,] and in condemnation and foreclosure actions [as otherwise specified by *R.* 4:43-2(d)] and except as otherwise provided by [rule or court order, whenever any civil action shall have been pending in any court for four months without any required proceeding having been taken therein, the court shall issue written notice to the parties advising that the action as to any or all defendants will be dismissed without prejudice 60 days following the date of the notice unless, within said period, proof of service of process has been filed, or an answer or other response by way of motion or acknowledgment has been filed, or a motion has been filed asserting that the failure of service or the filing of an answer is due to exceptional circumstances. If the plaintiff fails to respond as herein prescribed, the court shall enter an order of dismissal without prejudice as to any named party defendant who has not been served or has not answered and shall furnish the plaintiff with a copy thereof. Reinstatement of the action after dismissal may be permitted only on motion for good cause shown. The court may issue the written notice herein prescribed in any action pending on the effective date of this rule amendment, and this rule shall then apply.] paragraph (c) of this rule, every civil action shall be subject to dismissal four months after the date of filing of the complaint as against a defendant who has not filed an answer or otherwise moved for relief and as to whom neither proof of service nor acknowledgement of service has been filed nor a default or default judgment entered, nor as to whom plaintiff has moved for substituted or constructive service or other relief. In such case, the court shall notify the plaintiff in writing that the action as to that defendant will be dismissed 60 days following the date of the notice unless within said period defendant either files an answer or acknowledgement of service or otherwise moves for relief, or a default or default judgment is entered, or plaintiff moves for

relief. If a motion for relief made either by plaintiff or a defendant who has failed to answer or acknowledge service is denied, the action as to that defendant will be dismissed without further notice. In multiple defendant actions, however, if at least one defendant has filed an answer, the action will not be dismissed as against any other defendant against whom a default has been entered but default judgment as required by *R.* 4:43-2 has not been entered. If a defendant's answer has been suppressed, the action against that defendant will be subject to dismissal in accordance with this rule and on the 60 days notice prescribed herein in the event that the plaintiff takes no further action against the defendant within 120 days following the suppression order.

(b) Reinstatement. [Whenever any civil action filed in the Special Civil Part has not been served within sixty (60) days of the date of filing, the clerk of the court shall dismiss the matter and notify the plaintiff that the matter has been marked "dismissed subject to automatic restoration within one year." The matter shall be restored without motion or further order of the court upon service of the summons and complaint within one (1) year of the date of the dismissal. A case dismissed pursuant to this rule may be restored after one year only by order upon application, which may be made *ex parte*, and a showing of good cause for the delay in making service and due diligence in attempting to serve the summons and complaint. The entry of such an order shall not prejudice any right the defendant has to raise a statute of limitations defense in the restored action.] The action may be reinstated in the court's discretion after dismissal pursuant to paragraph (a) of this rule on filing of a consent order vacating the dismissal provided, however, that the consent order is accompanied by an answer, a case information statement, and the required fee. The court may also, in its discretion, reinstate the action on motion for good cause shown. In permitting reinstatement, the court may direct the defendant to

comply with such procedural requirements as it may impose to ensure that the next required proceeding in the action is timely taken.

(c) Special Civil Part. If original process in an action filed in the Special Civil Part has not been served within 60 days after the date of the filing of the complaint, the clerk of the court shall dismiss the action as to any unserved defendant and notify plaintiff that it has been marked "dismissed subject to automatic reinstatement within one year" as to the non-answering defendant or defendants. The action shall be reinstated without motion or further order of the court if the complaint and summons are served within one year from the date of the dismissal.

Note: Source — *R.R.* 1:30-3(a) (b) (c) (d), 1:30-4. Amended July 7, 1971 to be effective September 13, 1971; former rule redesignated as paragraph (a) and paragraph (b) adopted July 15, 1982 to be effective September 13, 1982; paragraph (b) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; caption and paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (b) amended and paragraph (c) added to be effective .

4:43-2. Final Judgment by Default

When a default has been entered in accordance with *R.* 4:43-1, except as otherwise provided by *R.* 4:64 (foreclosures), a final judgment may be entered in the action as follows:

(a) ...no change.

(b) ...no change.

(c) ...no change.

(d) Failure to Apply for Judgment Within Six Months. If a party entitled to a judgment by default fails to apply therefor within four months after the entry of the default, the court shall issue a written notice [to the party entitled to apply for entry of default judgment advising that the action will be dismissed without prejudice when six months have elapsed following the date of the entry of default unless within said period the party files application for entry of default judgment or by affidavit shows exceptional circumstances for the delay in seeking the judgment. If exceptional circumstances are shown, the court shall issue an order extending the time for entry of the judgment for a specified period, which may be further extended on motion] in accordance with *R.* 1:13-7(a). An application for entry of default judgment made after the expiration of six months following the entry of default shall not be granted except on notice of motion filed and served in accordance with *R.* 1:6.

Note: Source — *R.R.* 4:55-4 (first sentence), 4:56-2(a)(b) (first three sentences) (c), 4:79-4. Paragraph (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 15, 1982 to be effective September 13, 1982; text and paragraph (a) amended January 19, 1989 to be effective February 1, 1989; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraphs (b) and (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (d) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended to be effective .

H. Proposed Amendments to *R.* 1:21-2 — Appearances *Pro Hac Vice*

By Order dated 9/9/02, the Supreme Court supplemented and relaxed *R.* 1:21-2 to require that an attorney granted admission *pro hac vice* include a copy of the order granting such permission when submitting the required fee to the New Jersey Lawyers' Fund for Client Protection. The Committee has developed amendments to *R.* 1:21-2 to reflect the language of the Court's Order.

The Committee also considered a blanket exemption from the Client Protection fee requirement for U.S. Department of Justice attorneys and for attorneys representing other states. The Trustees of the New Jersey Lawyers' Fund for Client Protection objected to this proposed exemption, taking the position that there should be no such exemption for any attorney making use of the New Jersey court system. In recognition of the federal legislation that prohibits a tax on the United States, the Committee reaffirmed its exemption for attorneys representing the United States. Additionally, the Committee accepted the position of the Appellate Division Management and Rules Committees that New Jersey should show the same courtesy to its sovereign sister states as it shows to the United States. Accordingly, the Committee recommends extending the exemption from paying the Client Protection fee to attorneys representing other states, as a matter of comity.

Finally, *Boston University v. UMDNJ*, 176 *N.J.* 141 (2003), held that a licensed New Jersey attorney who was ineligible to practice in-state for failure to pay fees to the Fund for Client Protection could not appear *pro hac vice* without paying the arrearages, even though the attorney was a member of the bar in good standing in another state. The Court referred *R.* 1:21-2 to the Committee for appropriate clarification consistent with its opinion.

In accordance with the Supreme Court's decision, the Committee recommends adding language to reflect that a licensed New Jersey attorney must be a member in good standing of the New Jersey bar before he or she may be admitted *pro hac vice* in this state.

The proposed amendments to *R*. 1:21-2 follow.

1:21–2. Appearances *Pro Hac Vice*

(a) Conditions for Appearance. An attorney of any other jurisdiction, of good standing there, whether practicing law in such other jurisdiction as an individual or a member or employee of a partnership or an employee of a professional corporation or limited liability entity authorized to practice law in such other jurisdiction, or an attorney admitted in this state, of good standing both in this state and such other jurisdiction, who does not maintain in this state a bona fide office for the practice of law, may, at the discretion of the court in which any matter is pending, be permitted, pro hac vice, to speak in such matter in the same manner as an attorney of this state who maintains a bona fide office for the practice of law in this state and who is therefore, pursuant to *R*. 1:21–1(a), authorized to practice in this state. Except for attorneys employed by and representing the United States of America or a sister state, [N] no attorney shall be admitted under this rule without annually complying with *R*. 1:20-1(b), *R*. 1:28-2, and *R*. 1:28B-1(e) during the period of admission. An attorney granted admission *pro hac vice* in accordance with this rule must include a copy of the order granting such permission when submitting to the New Jersey Lawyers' Fund for Client Protection the annual fee provided for by *R.* 1:20-1 and the other rules referred to herein. An application for admission pro hac vice shall be made on motion to all parties in the matter.

(1) ...no change.

(2) ...no change.

(3) ...no change.

(b) ...no change.

(c) ...no change.

(d) ...no change.

Note: Source — *R.R.* 1:12–8. Amended December 16, 1969 effective immediately; caption and text amended November 27, 1974 to be effective April 1, 1975; amended January 10, 1979 to be effective immediately; former rule amended and redesignated as paragraphs (a) and (b) and paragraph (c) adopted July 22, 1983 to be effective September 12, 1983; paragraph (a) amended January 31, 1984 to be effective February 15, 1984; new paragraph (c) adopted and former paragraph (c) redesignated as paragraph (d) November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraphs (b)(2) and (3) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(1)(iv) added June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) amended and redesignated as (a)(1)(A), (a)(1)(B), (a)(1)(C), and (a)(1)(D) July 5, 2000 to be effective September 5, 2000; paragraph (a) amended and subsections of paragraph (a)(3) redesignated from (i) through (vi) to (A) through (F) July 12, 2002 to be effective September 3, 2002; paragraph (a) amended to be effective .

I. Proposed Rule Amendments Relating to the Appellate Division

The Civil Practice Committee recommends amendments to the following rules:

R. 1:17-1 — The Appellate Division Rules Committee proposes to delete the reference to the Appellate Division Administrator because that position no longer exists. The Committee endorses this proposal.

R. 1:34-2 — The Appellate Division Rules Committee proposes that this rule should be amended explicitly to reference the clerk of the Appellate Division and to include the Presiding Judge for Administration to the list of entities with supervisory responsibilities over the clerk of the Appellate Division. The Committee endorses this proposal.

R. 2:5-3 — The Appellate Division Rules Committee proposes to amend *R*. 2:5-3(d) to increase the deposit from $300 to $500 for each day of trial or hearing when a transcript is requested. The Appellate Division Rules Committee also proposes amending *R*. 2:5-3(d) to allocate responsibility for the expense of providing the transcript in criminal and quasi-criminal cases where the defendant is indigent. The Committee endorses these proposals.

R. 2:5-5 — The Appellate Division Rules Committee proposes to amend *R*. 2:5-5(a) to provide an alternative procedure for correcting the record whereby the clerk of the court may review the tape of the transcript on notice to all parties. It also suggests that if a party objects, the motion for correction of the transcript shall be made to the appellate court, rather than to the trial court or agency, if the appeal has already been calendared. The Committee endorses this proposal.

R. 2:6-8 — The Committee supports the proposal of the Appellate Division Rules Committee to amend *R*. 2:6-8 to require the appellant's brief to list, in a footnote to the procedural history, the date of each volume of transcript and its numbered designation.

R. 2:6-11 — The Committee supports the proposal of the Appellate Division Rules Committee to limit the cross-appellant's reply brief to the issues raised on the cross-appeal.

R. 2:7-4 — The Appellate Division Rules Committee proposes to amend *R*. 2:7-4 to provide for a free transcript to an indigent defendant appealing from a judgment of conviction by the Law Division entered on a trial *de novo*, when the indigent defendant had been afforded or had the right to a free transcript of municipal court proceedings pursuant to *R*. 3:23-8(a). The Committee endorses this proposal.

Rules 2:9-3 and 2:9-10 — The Committee supports the proposal of the Appellate Division Rules Committee to amend *Rules* 2:9-3(d) and 2:9-10 to add a reference to *N.J.S.A.* 2C:35-14c.

The proposed amendments to *Rules* 1:17-1, 1:34-2, 2:5-3, 2:5-5, 2:6-8, 2:6-11, 2:7-4, 2:9-3, and 2:9-10 follow.

1:17-1. Persons Prohibited

The following persons in or serving the judicial branch of government shall not hold any elective public office nor be a candidate therefor, nor engage in partisan political activity:

(a) …no change.

(b) The Administrative Director of the Courts, the Clerk of the Supreme Court, the Clerk [and the Administrator] of the Appellate Division of the Superior Court, the Clerk of the Superior Court, the Administrator of the Tax Court, and all employees of their respective offices, and official court reporters;

(c) …no change.

(d) …no change.

(e) …no change.

(f) …no change.

(g) …no change.

(h) …no change.

Note: Source — *R.R.* 1:25C(a); paragraph (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended July 15, 1982 to be effective September 13, 1982; paragraph (g) amended June 15, 1983 to be effective immediately; paragraph (i) amended July 26, 1984 to be effective September 10, 1984; paragraph (g) amended June 29, 1990 to be effective September 4, 1990; caption amended, paragraphs (b) and (c) amended, paragraph (d) deleted, former paragraph (e) redesignated paragraph (d), former paragraph (f) amended and redesignated paragraph (e), former paragraph (g) amended and redesignated paragraph (f), former paragraph (h) redesignated paragraph (g), and former paragraph (i) amended and redesignated paragraph (h) December 7, 1993, to be effective immediately; paragraph (b) amended to be effective .

1:34-2. Clerks of Court

The clerk of every court, except the Supreme Court, the Appellate Division, the Superior Court and the Tax Court, shall be responsible to and under the supervision of the judge or presiding judge of the court which the clerk serves, the Assignment Judge of the county, and the Administrative Director of the Courts. The clerks of the Supreme and Superior Courts shall be responsible to and under the supervision of the Administrative Director of the Courts and the Chief Justice. The clerk of the Appellate Division shall be responsible to and under the supervision of the Administrative Director of the Courts, the Chief Justice, and the Presiding Judge for Administration of the court. The clerk of the Tax Court shall be responsible to and under the supervision of the presiding judge of the court and the Administrative Director of the Courts. Each county shall have one or more deputy clerks of the Superior Court with respect to Superior Court matters filed in that county; deputy clerks may issue writs out of the Superior Court. The Surrogate of the county shall be the deputy clerk of the Superior Court, Chancery Division, Probate Part, with respect to probate matters pending in that county. The Vicinage Chief Probation Officer shall be the deputy clerk of the Superior Court for the purpose of certifying child support judgments and orders as required by *R.* 4:101, and with respect to writs of execution as provided by *R.* 4:59-1(b). All employees serving as deputy clerks of the Superior Court shall be, in that capacity, responsible to the [C]clerk of the Superior Court.

Note: Source — *R.R.* 6:2-7, 7:21-1, 7:21-2, 8:13-4. Amended July 14, 1972 to be effective September 5, 1972; amended June 20, 1979 to be effective July 1, 1979; amended June 29, 1990 to be effective September 4, 1990; amended July 14, 1992 to be effective September 1, 1992; amended June 28, 1996 to be effective June 28, 1996; amended _____ to be effective _____.

2:5-3. Preparation and Filing of Transcript; Statement of Proceedings; Prescribed Transcript Request Form

(a) ...no change

(b) ...no change.

(c) ...no change.

(d) Deposit for Transcript; Payment Completion. The appellant, if not the State or a political subdivision thereof, shall, at the time of making the request for the transcript, deposit with the reporter or the clerk of the court or agency from whom a transcript is ordered, either the estimated cost of the transcript as determined by the court reporter, clerk or agency, or the sum of [$300.00] $500.00 for each day or fraction thereof of trial or hearing. If the appellant is the State or a political subdivision thereof, it shall provide a voucher to the reporter or the clerk or the agency for billing for the cost of the transcript. The reporter, clerk or agency, as the case may be, shall upon completion of the transcript, bill or reimburse the appellant, as appropriate, for any sum due for the preparation of the transcript or overpayment made therefor. If the appellant is indigent and is entitled to have a transcript of the proceedings below furnished without charge for use on appeal, either the trial or the appellate court, on application, may order the transcript prepared at public expense. Unless the indigent defendant is represented by the Public Defender or that office is otherwise obligated by law to provide the transcript to an indigent, the court shall order the transcript of the proceedings below furnished at the county's expense if the appeal involves prosecution for violation of a statute and at the municipality's expense if the appeal involves prosecution for violation of an ordinance.

(e) ...no change.

(f) ...no change.

Note: Source — *R.R.* 1:2–8(e) (first, second, third, fourth, sixth and seventh sentences), 1:2-8(g), 1:6–3, 1:7–1(f) (fifth sentence), 3:7–5 (second sentence), 4:44–2 (second sentence), 4:61–1(c), 4:88–8 (third and fourth sentences), 4:88–10 (sixth sentence). Paragraphs (a)(b)(c) and (d) amended July 7, 1971 to be effective September 13, 1971; paragraphs (b) and (d) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended June 29, 1973 to be effective September 10, 1973; caption amended and paragraph (a) caption and text amended July 24, 1978 to be effective September 11, 1978; paragraphs (c) and (d) amended July 16, 1981 to be effective September 14, 1981; paragraph (e) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended, paragraph (d) caption and text amended, former paragraph (e) redesignated paragraph (f), and paragraph (e) caption and text adopted November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (e) amended July 14, 1992 to be effective September 1, 1992; paragraphs (c), (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (d) amended to be effective .

2:5-5. Correction or Supplementation of Record

(a) Motion to Settle the Record. A party who questions whether the record fully and truly discloses what occurred in the court or agency below shall, except as hereinafter provided, apply on motion to that court or agency to settle the record. The appellate court, on motion, may review such determination or may, on its own motion, order a correction of the record or may direct the court or agency to do so. The making of a motion pursuant to this rule shall toll the time for serving and filing the next brief due, but the remaining time shall again begin to run from the date of entry of an order disposing of such a motion. If the proceedings were sound or video recorded, a party, prior to moving for an order settling the record, may, on notice to all other parties, request the clerk of the court in which the appeal is pending to review the tape thereof to determine whether a particular portion of the transcript accurately transcribed what was said by a participant. The clerk shall notify all parties of the determination, requesting that any objection be submitted in writing within ten days of the notification. If no timely written objection is received, the transcript shall be deemed so corrected, and a copy of the notification shall be filed. If a party timely objects in writing, that party shall move for correction of the transcript in the court or agency from which the appeal is taken; however, if the appeal has already been calendared, the motion shall be made to the court in which the appeal is pending.

(b) ...no change.

Note: Source — *R.R.* 1:6-6, 4:88–9, 4:88–11, 7:13-4. Paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended _____ to be effective _____.

2:6-8. References to Briefs; Appendices; Transcripts

References to a brief or appendix shall be made to the appropriate pages, and references to the stenographic transcript shall be made to the appropriate pages and lines thereof, by the following abbreviations:

"Pb8" for plaintiff's brief, page 8;

"Db8" for defendant's brief, page 8;

"Pa8" for plaintiff's appendix, page 8;

"Da12" for defendant's appendix, page 12;

"Ja15" for joint appendix, page 15;

"Prb8" for plaintiff's reply brief, page 8;

"Pra7" for plaintiff's reply appendix, page 7;

"T8-3" for transcript, page 8, line 3.

If there is more than one plaintiff or defendant, the appropriate party's name or initial or other identifying designation should precede the abbreviation. If there are multiple volumes of transcript, they shall be numbered sequentially by chronology, i.e., 1T, 2T, etc., irrespective of the nature of the proceeding. The procedural history of the appellant's brief shall list in a footnote the date of each volume of transcript and its numbered designation.

Note: Source — *R.R.* 1:7-8; amended July 13, 1994 to be effective September 1, 1994; amended July 12, 2002 to be effective September 3, 2002; amended to be effective .

2:6-11. Time for Serving and Filing Briefs; Appendices; Transcript; Notice of Custodial Status

(a) ...no change.

(b) Time Where Cross Appeal Taken. Except as otherwise provided by *R*. 2:9-11 (sentencing appeals), if a cross appeal has been taken, the party first appealing, who shall be designated the appellant/cross respondent, shall serve and file the first brief and appendix within 30 days after the service of the notice of cross appeal or within the time prescribed for appellants by *R* 2:6-11(a), whichever is later. Within 30 days after the service of such brief and appendix, the respondent/cross appellant shall serve and file an answering brief and appendix, if any, which shall also include therein the points and arguments on the cross appeal. Within 30 days thereafter, the appellant/cross respondent shall serve and file a reply brief, which shall also include the points and arguments answering the cross appeal. Within 10 days thereafter, the respondent/cross appellant may serve and file a reply brief, which shall be limited to the issues raised on the cross appeal. No other briefs shall be served or filed without leave of court. If a cross appeal has been taken, the appellant/cross respondent shall be responsible for ordering and filing the transcript pursuant to *R*. 2:5-3(e) and for serving it pursuant to paragraph (a) of this rule and *R*. 2:6-12(a).

(c) ...no change.

(d) ...no change.

(e) ...no change.

Note: Source ─ *R.R.* 1:7–12(a)(c), 1:10–14(b), 2:7–3. Paragraph (b) amended by order of September 5, 1969 effective September 8, 1969; paragraph (a) amended July 7, 1971 to be effective September 13, 1971; caption and paragraphs (a) and (b) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended May 8, 1975 to be effective immediately;

paragraphs (c), (d) and (e) adopted July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and titles of paragraphs (c)(d) and (e) added November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998, paragraph (b) amended to be effective .

2:7-4. Relief in Subsequent Courts

A person who has been granted relief as an indigent by any court shall be granted relief as an indigent in all subsequent proceedings resulting from the same indictment, accusation or criminal or civil complaint in any court without making application therefor upon filing with the court in the subsequent proceeding a copy of the order granting such relief or a sworn statement to the effect that such relief was previously granted and stating the court and proceeding in which it was granted. The filing of such order or statement shall be accompanied by an affidavit stating that there has been no substantial change in the petitioner's financial circumstances since the date of the entry of the order granting such relief. An indigent defendant appealing from a judgment of conviction by the Law Division entered on a trial *de novo*, who has been afforded or had a right to a transcript at public expense of municipal court proceedings pursuant to *R*. 3:23-8(a), shall be entitled to a transcript of the Law Division proceedings paid for in the same manner as the municipal court transcript.

Note: Amended July 13, 1994 to be effective September 1, 1994; amended to be effective _____.

2:9-3. Stay Pending Review in Criminal Actions

(a) …no change.

(b) …no change.

(c) …no change.

(d) Stay Following Appeal by the State. Notwithstanding paragraphs (b) and (c) of this rule, execution of sentence shall be stayed pending appeal by the State pursuant to *N.J.S.A.* 2C:44-1f(2) or *N.J.S.A.* 2C:35-14c. Whether the sentence is custodial or non-custodial, bail pursuant to *R.* 2:9-4 shall be established as appropriate under the circumstances. A defendant may elect to execute a sentence stayed by the State's appeal but such election shall constitute a waiver of the right to challenge any sentence [increase] on the ground[s] that execution has commenced.

(e) …no change.

(f) …no change.

Note: Source — *R.R.* 1:2-8(a) (sixth sentence), 1:4-3(a) (first sentence) (b)(c)(d); paragraph (c) amended and paragraph (d) deleted July 29, 1977 to be effective September 6, 1977; paragraph (c) caption amended July 24, 1978 to be effective September 11, 1978; paragraph (d) adopted September 10, 1979 to be effective immediately; paragraph (d) amended July 16, 1981 to be effective September 14, 1981; paragraph (e) adopted November 1, 1985 to be effective January 2, 1986; paragraphs (c) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (e) redesignated as paragraph (f) and new paragraph (e) adopted June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended _____ to be effective _____.

2:9-10. Effect of Appeal by the State

An appeal by the State pursuant to *N.J.S.A.* 2C:44-1f(2) or *N.J.S.A.* 2C:35-14c shall not stay the entry of final judgment for purposes of an appeal or cross-appeal by the defendant.

Note: Adopted September 10, 1979 to be effective immediately; amended _____ to be effective _____.

J. Proposed Amendments to *Rules* 4:5B-1 and 4:5B-2, 4:25-1, 4:25-2 and 4:25-5 — Proposals from the Conference of General Equity Presiding Judges

Having approved the proposal developed by the Conference of General Equity Presiding Judges, the Supreme Court directed the Committee to embody in the Court Rules the requirement that an initial case management conference be held in all general equity cases (other than foreclosure and summary actions) no later than 30 days after all defendants have answered. Accordingly, the Committee drafted proposed amendments to *Rules* 4:5B-1 and -2. The Supreme Court forwarded two other proposals from the Conference of General Equity Presiding Judges for the Committee's consideration. Endorsing the proposals so forwarded, the Committee recommends amendments to *R.* 4:25-1 to provide that pretrial conferences in general equity cases are discretionary and that the terms of any pretrial order must be placed on the record. Also in accordance with the recommendations of the Conference of General Equity Presiding Judges, the Committee has drafted amendments to *Rules* 4:25-2 and 4:25-5 to delete references to the mailing of pretrial conference notices in recognition that notice may be provided using means other than mailing.

The proposed amendments to *Rules* 4:5B-1, 4:5B-2, 4:25-1, 4:25-2 and 4:25-5 follow.

4:5B-1. Assignment for Case Management

At the time the complaint is filed, the action shall be assigned to a designated judge, who shall, except as otherwise provided by *R.* 4:24-1(c), preside over all pretrial motions and management conferences in the cause until completion of discovery as provided by *R.* 4:36-2. Any application made to the court thereafter shall be made to the Civil Presiding Judge or designee. In Track 4 and general equity cases, however, the designated managing judge shall, insofar as is practicable and absent exceptional circumstances, also preside at trial.

Note: Adopted July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended to be effective .

4:5B-2. Case Management Conferences

In cases assigned to Tracks I, II, and III, the designated pretrial judge may *sua sponte* or on a party's request conduct a case management conference if it appears that such a conference will assist discovery, narrow or define the issues to be tried, or otherwise promote the orderly and expeditious progress of the case. A case management conference shall not, however, ordinarily be conducted after the case is ready for trial. In Track IV cases, except for actions in lieu of prerogative writs and probate and general equity actions, an initial case management conference shall be conducted as soon as practicable after joinder and, absent exceptional circumstances, within 60 days thereafter. In actions in lieu of prerogative writs, case management conferences shall be held pursuant to *R.* 4:69-4. In probate and general equity actions, case management conferences may be scheduled at the discretion of the judge. In all actions in general equity, except summary actions pursuant to *R*. 4:67 and foreclosure actions, an initial case management conference shall be held within 30 days following the filing of the answers of all defendants initially joined, and the court may hold such additional case management conferences as it deems appropriate. All decisions and directives issued at a case management conference shall be memorialized by order as required by *R.* 1:2-6.

Note: Adopted July 5, 2000 to be effective September 5, 2000; amended _____ to be effective _____.

4:25-1. Pretrial Conferences

(a) Actions to Be Pretried. [Pretrial conferences shall be held in all contested actions in the Chancery Division, General Equity.] Pretrial conferences in [other causes] contested actions may be held in the discretion of the court either on its own motion or upon a party's written request. The request of a party for a pretrial conference shall include a statement of the facts and reasons supporting the request. [The court may also hold a case management conference in any family action and may issue an appropriate case management order at the conclusion thereof.] The pretrial conference shall be recorded verbatim.

(b) Pretrial Order. Immediately upon the conclusion of the conference, [T]the court shall [make] enter a pretrial order [to be dictated in open court upon the conclusion of the conference and signed forthwith by the judge and attorneys, which shall recite] which shall be signed forthwith, reciting specifically:

(1) …no change.

(2) …no change.

(3) …no change.

(4) …no change.

(5) …no change.

(6) …no change.

(7) …no change.

(8) …no change.

(9) …no change.

(10) …no change.

(11) …no change.

(12) …no change.

(13) …no change.

(14) …no change.

(15) …no change.

(16) …no change.

(c) …no change.

(d) …no change.

Note: Source — *R.R.* 4:29-1(a)(b)(d)(e), 4:29-6. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (a), and paragraph (b)(7) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (a) amended December 20, 1983 to be effective December 31, 1983; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (c) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended to be effective .

4:25-2. [Mailing] Notices; Filing of Pretrial Memorandum

(a) Notice of Pretrial Conference. [In all actions to be pretried pursuant to *R.* 4:25-1(a), the court shall give at least 30 days notice by mail of the pretrial conference to all parties or their attorneys.] Thirty days notice of the pretrial conference shall be provided to all parties or their attorneys. The notice shall not be [mailed] given earlier than 150 days after service of the original complaint upon the defendant[;], except that the court may direct [the] earlier [mailing of the] notice, either on its own motion or for good cause on the application of a party, with or without consent of the adverse party[, and except that notice of pretrial conference in actions in lieu of prerogative writ shall be mailed within 10 days after expiration of the time allowed for service of the last permissible responsive pleading].

(b) Filing and Service of Memorandum. [In all actions to be pretried pursuant to *R.* 4:25-1(a), t]The parties shall submit to the court and serve upon all other parties a pretrial memorandum, as prescribed by *R.* 4:25-3(b), at least 3 days prior to the pretrial conference date specified in the notice of pretrial conference.

Note: Source — *R.R.* 4:29-2(a) (b). Caption and paragraph (a) amended, paragraphs (b) and (c) adopted July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (c) amended and paragraph (b) deleted July 14, 1972 to be effective September 5, 1972; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; caption and paragraphs (a) and (b) amended to be effective .

4:25-5. Scheduling of Pretrial Conferences

In cases to be pretried, the court shall schedule pretrial conferences at such times as may be necessary to maintain a full trial calendar. Not more than two actions shall be noticed for pretrial conferences within the same hour before the same judge. The court shall [prepare and mail pretrial conference notices, and to the extent possible, shall] notice all cases of the same attorney or firm before the same judge and consecutively.

Note: Source — *R.R.* 4:29-4(a) (b) (c); amended June 28, 1996 to be effective September 1, 1996; amended July 5, 2000 to be effective September 5, 2000; amended _____ to be effective _____.

K. Proposed Amendments to *R.* 4:14-9 — Videotaped Depositions

A Committee member noted that the apparent reason for the 1980 amendment of *R.* 4:14-9(b), enlarging the time for serving notice of the taking of a videotaped deposition from 10 to 30 days, was the newness of the technology. Because videotaped depositions have become commonplace**,** the attorney suggested that the 30-day notice period be reduced to 10 days, leaving the 30-day notice period for out-of-state depositions only. During the course of the discussion, it was noted that while the *de bene esse* deposition of an expert witness is subject to the 30-day notice requirement, there is no corresponding limitation on *de bene esse* depositions of fact witnesses. The Committee agreed that the same notice periods should apply to the videotaped depositions of fact as well as expert witnesses. The Committee also agreed to shorten the notice period for videotaped depositions from 30 to 10 days. During subsequent discussion, further questions arose with respect to the timing of the notice and objections relating to the videotaping of experts.

The questions were referred to the Videotaped Depositions Subcommittee, chaired by the Hon. Bette E. Uhrmacher, to study all aspects of the taking of *de bene esse* depositions in the context of discovery, including the timing of the notice of and raising objections to both in-state and out-of-state depositions and whether different periods for notice and objections should be applied to depositions of fact as opposed to expert witnesses. The subcommittee members concluded that depositions of expert witnesses should be subject to the same time limitations for notice and objections as fact witnesses. Specifically, the subcommittee recommended reducing the notice requirement from 30 to 10 days and increasing the objection period from 30 to 45 days. It also recommended changes to the text of the rule to place the responsibility for making a copy of the videotaped deposition on the party taking the deposition.

The Committee endorsed the subcommittee's recommendations in their entirety. Further, it agreed to add a phrase to the language of the rule, permitting the court, on its own motion or on the motion of a party, to abbreviate the time period for the taking of a deposition of a treating physician or expert witness.

Subsequent to the preparation of these proposed amendments, a Committee member suggested that, in order to avoid having to respond to motions for protective orders from counsel after receiving notice of a videotaped deposition, *R*. 4:14-9 may need to be amended to clarify that the rule applies to the videotaped depositions of both parties and witnesses. The Committee agreed with the recommendation and expressed the view that the rule should be made applicable to both discovery and *de bene esse* depositions.

The proposed amendments to *R*. 4:14-9 follow.

4:14–9. Videotaped Depositions

Videotaped depositions may be taken [and used] for discovery purposes or for use at trial in accordance with the applicable provisions of these discovery rules subject to the following further requirements and conditions:

(a) …no change.

(b) Notice. A party intending to videotape a deposition shall serve the notice required by *R*. 4:14-2(a) not less than [30] 10 days prior to the date therein fixed for the taking of the deposition. The notice shall further state that the deposition is to be videotaped.

(c) …no change.

(d) Filing, Sealing, Copies. Immediately following the conclusion of the videotaped deposition, the videotape operator shall deliver the tape to the [officer] party taking the deposition who shall take physical custody thereof [for the purpose of arranging] and arrange for the making of one copy [thereof]. [Upon return to the officer of the original and copy of the tape, the officer shall seal and file the original with the deputy clerk of the Superior Court in the county in which the matter is pending and shall deliver the copy to the party taking the deposition.] [That] The party taking the deposition shall then furnish a copy of the tape to an adverse party who shall make it available for copying and inspection to all other parties.

(e) …no change.

(f) Objections. Where a videotaped deposition [of a treating physician or expert witness] is taken for use at trial in lieu of testimony, all evidential objections shall, to the extent practicable, be made during the course of the deposition. Each party making such objection shall, within [30] 45 days following the completion of the deposition, file a motion for rulings thereon and all such motions shall be consolidated for hearing. The court may, however, on its

own motion or the motion of a party, abbreviate the time period if the deposition of a treating physician or expert witness is taken pursuant to *R.* 4:36-3(c) or for other good cause. A copy of the tape shall be edited in accordance with said rulings and the copy so edited shall be [sealed and filed with the clerk after all parties have had the opportunity to view and copy it] made available for copying to all other parties.

(g) …no change.

(h) …no change.

Note: Adopted July 21, 1980 to be effective September 8, 1980; paragraph (e) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (d) amended June 28, 1996 to be effective September 1, 1996; introductory text and paragraphs (b) (d) and (f) amended to be effective _____.

L. Proposed Amendments to *R* 4:17-4 – Form, Service and Time of Answers, and to Appendix XXIII — Pretrial Information Exchange

In the 2000-2002 cycle, the Subcommittee on the Discoverability of Experts' Draft Reports recommended, and the full Committee supported, amending *R*. 4:17-4(e) to specify the contents of an expert's report. The amendments included the following language:

> The report shall contain a complete statement of that person's opinions and the basis therefor; the facts and data considered in forming the opinions; the exhibits proposed to be used at trial as a summary or explanation of, or support for, the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

The proposed amendments generated considerable public comment, the thrust of which was directed at the requirements (1) for a list of proposed exhibits to be used at trial (arguing that the use of exhibits is a trial strategy not to be decided by the expert witness); (2) for stating the amount of the compensation to be paid to the expert; and (3) for a list of other cases in which the expert has testified during the previous four years (positing that the rule, if amended as proposed, would greatly favor the use of professional experts and eliminate the treating physician as a viable witness). The comments were so numerous that, in order to ensure that the remainder of the proposed amendments to *Rules* 4:10-2 and 4:17-4 (concerning the "safe harbor" for experts' draft reports) would be approved, the three controversial elements of the originally proposed amendments were severed and returned to the Committee for further review. The Subcommittee on the Discoverability of Expert's Draft Reports, chaired by the Hon. Charles Walsh, was reconstituted to revisit all three issues.

Upon reconsideration of the three controversial issues, the subcommittee recommended that *R*. 4:17-4 be amended to require the disclosure of the amount of compensation to be paid to the expert, and that the disclosure of the exhibits to be used by the expert be part of the pretrial information exchange, as set forth in Appendix XXIII. The subcommittee did not support the previously proposed requirement that the expert provide a list of all other cases in which he or she has testified during the previous four years, taking the position that such a requirement would be onerous. The Committee endorses the subcommittee's recommendations with respect to *R*. 4:17-4.

The proposed amendments to *R*. 4:17-4 and Appendix XXIII follow.

4:17-4. Form, Service and Time of Answers

(a) ...no change.

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) Expert's or Treating Physician's Names and Reports. If an interrogatory requires a copy of the report of an expert witness or treating or examining physician as set forth in *R.* 4:10-2(d)(1), the answering party shall annex to the interrogatory an exact copy of the entire report or reports rendered by the expert or physician. The report shall contain a complete statement of that person's opinions and the basis therefor; the facts and data considered in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and whether compensation has been or is to be paid for the [study] report and testimony and, if so, the terms of the compensation. If the answer to an interrogatory requesting the name and report of the party's expert or treating physician indicates that the same will be supplied thereafter, the propounder may, on notice, move for an order of the court fixing a day certain for the furnishing of that information by the answering party. Such order may further provide that an expert or treating physician whose name or report is not so furnished shall not be permitted to testify at trial. Except as herein provided, the communications between counsel and expert deemed trial preparation materials pursuant to *R.* 4:10-2(d)(1) may not be inquired into.

Note: Source — *R.R.* 4:23-4, 4:23-5, 4:23-6(a)(b)(c)(d). Paragraph (a) amended and paragraph (d) adopted July 14, 1972 to be effective September 5, 1972; paragraph (a) amended September 13, 1976 to be effective September 13, 1976; paragraph (a) amended and paragraph (e) adopted July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 16,

1981 to be effective September 14, 1981; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 2, 1987 to be effective January 1, 1988; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a), (b) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (e) amended _____ to be effective _____.

APPENDIX XXIII

Pretrial Information Exchange (*R*. 4:25-7(b))

In cases that have not been pretried, attorneys shall confer and exchange the following information seven days prior to the initial trial date, unless such exchange has been waived by written consent of the parties pursuant to *R*. 4:25-7(d):

1. A list of all witnesses (including addresses) to be called in the party's case in chief.

2. A list of all exhibits to be offered in the party's case in chief, including all demonstrative exhibits prepared, prior to trial, by any witness, including an expert witness. All such exhibits shall be premarked for identification and shall be described briefly. Each party shall confer in advance of trial to determine if any such exhibits can be admitted into evidence by agreement or without objection.

3. A list of any proposed deposition or interrogatory reading(s) by page and line number or by question number.

4. Any *in limine* or trial motions intended to be made at the commencement of trial, with supporting memoranda. Such motions shall not go on the regular motion calendar.

   Any objections to the proposed admission into evidence of any exhibit or to any reading by any other party, and any response to an *in limine* or trial motion shall be served on all parties not later than 2 days prior to trial.

5. A listing of all anticipated problems with regard to the introduction of evidence in each party's case in chief, especially, but without limitation, as to any hearsay problems, and legal argument as to all such anticipated evidence problems.

   At trial and prior to opening statements, each party shall submit the following to the trial judge:

   (a) copies of any Pretrial Information Exchange materials that have been exchanged pursuant to this rule, and any objections made thereto; and

   (b) stipulations reached on contested procedural, evidentiary and substantive issues.

   In addition, in jury trials each party shall submit the following materials to the trial judge and, unless exchange of trial information has been waived in writing pursuant to *R*. 4:25-7(d), also to all other parties:

   (a) any special voir dire questions,

(b) a list of proposed jury instructions with specific reference to the Model Civil Jury Charges, if applicable,

(c) any special jury instructions with applicable legal authority, and

(d) a proposed jury verdict form that includes all possible verdicts the jury may return.

Note: Appendix XXIII adopted July 5, 2000 to be effective September 5, 2000; introduction and paragraph 5 amended July 12, 2002 to be effective September 3, 2002; paragraph 2 amended to be effective .

M. Proposed Amendments to *R.* 4:17-7 — Amendment of Answers

Endorsing the suggestion of the State Bar members of the Statewide Civil Bench-Bar Liaison Committee, the Conference of Civil Presiding Judges recommended an amendment to *R.* 4:17-7 to include the consequences for failure to file the required certification of due diligence when seeking to amend answers to interrogatories out of time — namely, the amended answer may be deemed of no effect and may not be relied upon — and to clarify that if the certification is provided, any objection thereto must be made by motion within 20 days following receipt of the amended answers or the objection will be deemed waived.

The Committee agreed with this recommendation.

The proposed amendments to *R.* 4:17-7 follow.

4:17-7. Amendment of Answers

Except as otherwise provided by *R.* 4:17-4(e), if a party who has furnished answers to interrogatories thereafter obtains information that renders such answers incomplete or inaccurate, amended answers shall be served not later than 20 days prior to the end of the discovery period, as fixed by the track assignment or subsequent order. Thereafter amendments may be allowed only if the party seeking to amend certifies therein that the information requiring the amendment was not reasonably available or discoverable by the exercise of due diligence prior to the discovery end date[.], and in the absence of said certification, the late amendment shall be disregarded by the court and adverse parties. Any challenge to the certification of due diligence will be deemed waived unless brought by way of motion on notice filed and served within 20 days after service of the amendment, and objections made thereafter shall not be entertained by the court. All amendments to answers to interrogatories shall be binding upon the party submitting them, and a certification of the amendments shall be furnished promptly to any other party so requesting.

Note: Source — *R.R.* 4:23-12; amended July 29, 1977 to be effective September 6, 1977; amended September 9, 1982 to be effective September 14, 1982; amended July 22, 1983 to be effective September 12, 1983; amended June 29, 1990 to be effective September 4, 1990; amended July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended _____ to be effective _____.

N. Proposed Amendments to R. 4:41-5 —Report

In *St. Joseph's Hospital and Medical Center and Wm. Blanchard Co. v. Muirfield Construction Co., et al.,* 362 *N.J. Super*. 540 (App. Div. 2003), the Appellate Division suggested that the Committee may wish to consider an amendment to *R*. 4:41-5 clarifying that, in order to preserve the right to appeal the findings of fact and conclusions of law contained in a master's report, the objecting party must first raise the issues in the trial court. The Committee overwhelmingly agreed that a party should be foreclosed from raising objections to a master's report in the first instance in the Appellate Division.

The proposed amendments to *R.*4:41-5 follow.

4:41-5. Report

(a) …no change.

(b) In Non-jury Actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless contrary to the weight of the evidence. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties and may move the court for action upon the report and the objections thereto. The court after hearing on the motion may adopt the report, modify or reject it in whole or in part, receive further evidence, or recommit it with instructions. A party failing to object in the trial court to the master's findings shall be precluded from raising objections to the findings on appeal.

(c) … no change.

(d) …no change.

(e) …no change.

Note: Source — *R.R.* 4:54-5(a)(b)(c)(d)(e); paragraphs (a), (c) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended June 28, 1996 to be effective September 1, 1996, paragraph (b) amended _____ to be effective _____.

O. Proposed Amendments to *R.* 4:42-9 — re: Fee Shifting in Public Interest Litigation

In the 1998-2000 term, the Committee established a subcommittee chaired by then-Committee member, the Hon. Amy P. Chambers, to study a proposal to amend the Rules of Court to provide for the award of counsel fees to a prevailing litigant who has vindicated an important right affecting the public interest. The subcommittee recommended that the proposal be rejected. A minority of the subcommittee, however, supported a proposal that would permit fee shifting, within specific limitations, if the plaintiff were successful in pursuing a claim under the New Jersey Constitution.

After considering the majority and minority recommendations of the subcommittee, the full Committee voted against both proposals as a matter of policy, and took the position that if such a proposal were to be adopted, it should be done by legislative fiat rather than by court rule.

Upon consideration of the Committee's recommendations, the Supreme Court returned the matter to the Committee to answer four questions, *i.e.* what is California's cost and actual experience under its fee shifting legislation, what resources does New Jersey now have to bring public interest suits, what types of suits would be brought if fee shifting were permitted, and would a pilot be feasible?

In the 2000-2002 term, the subcommittee reported its answers to the four questions. It found little empirical data about California's costs because California does not break out and separately analyze the cost to the state for litigation under its fee shifting statute. The subcommittee also found that public interest litigation in New Jersey is brought by a wide variety of organizations and individuals. The subcommittee concluded that the number and types of cases now being brought appeared to indicate that New Jersey has a healthy climate for public

interest litigation. Finally, the subcommittee determined that a pilot would not be feasible. The Committee reported to the Supreme Court that it stood by its recommendation of the previous term, namely, that the majority did not favor fee shifting as a matter of policy, but that if such a proposal were to be adopted, it should be done by legislative fiat rather than by court rule.

Upon receipt of the additional information and the reaffirmation of the Committee's position, the Supreme Court determined that the Committee should revisit the position taken in the minority report (permitting fee shifting, within specific limitiations, for a vindication of rights under the New Jersey Constitution) and submit further recommendations to the Court. The Court directed the Committee to hold a public hearing on the issue, which hearing should include participation by the Attorney General's Office and other interested entities, including those that submitted written comments and/or spoke on the issue of fee shifting at the Court's May 2002 rules hearing.

In accordance with the Supreme Court's directive, the Civil Practice Committee conducted a public hearing on fee shifting in public interest litigation on May 13, 2003. Twelve individuals presented oral testimony at the hearing and all but one of those presenters submitted a written statement as well. An additional nine people submitted written comments for the Committee's consideration. All but six comments favored fee shifting.

The Committee reviewed a report of what was presented in oral and written form including the submissions themselves and a transcript of the hearing as well as an editorial printed in the *New Jersey Law Journal* supporting a fee shifting rule. A majority of the Committee (18 members) now supports a rule amendment that would allow for fee shifting, with specific limitations, in cases that establish or enforce a right under the New Jersey Constitution.

A minority (14 members) continues to be of the opinion that, if fee shifting is appropriate, it should be implemented by legislation rather than court rule.

The proposed amendments to *R.*4:42-9 follow.

4:42-9. Counsel Fees

(a) Actions in Which Fee Is Allowable. No fee for legal services shall be allowed in the taxed costs or otherwise, except

(1) …no change.

(2) …no change.

(3) …no change.

(4) …no change.

(5) …no change.

(6) …no change.

(7) *In an action to establish or enforce a right under the New Jersey Constitution*, a reasonable counsel fee and litigation expenses shall be allowed to a prevailing claimant providing that (A) there is no provision in rule, statute or otherwise for an award of counsel fees and litigation expenses to the claimant; (B) the fee is calculated only on those services directly related to the state constitutional issue on which the claimant prevailed; (C) the hourly fee shall not exceed $150 an hour for attorneys and expert witnesses or $50 an hour for paralegals, law clerks and comparable support staff; (D) the fee shall not be enhanced by the novelty or complexity of the claim; and (E) the extent to which, if any, claimant sought to resolve the constitutional issue prior to and during trial is considered in determining the reasonableness of the time expended by claimant's counsel. The foregoing notwithstanding, the court, in its discretion, may abate the award in full or in part if it finds that the award would otherwise result in substantial and undue financial hardship to the party opponent or, if a public entity, to its taxpayers. This rule shall not apply to eminent domain proceedings.

(8) *As expressly provided by these rules with respect to any action*, whether or not there is a fund in court.

(9) *In all cases where counsel fees are permitted by statute.*

(b) …no change.

(c) …no change.

(d) …no change.

Note: Source — *R.R.* 4:55-7(a) (b) (c) (d) (e) (f), 4:55-8, 4:98-4(c). Paragraphs (a) and (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a)(1) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a)(1) and (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended January 19, 1989 to be effective February 1, 1989; paragraph (a)(4) amended June 29, 1990 to be effective September 4, 1990; paragraph (a)(5) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1)(2) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(5) amended June 28, 1996 to be effective September 1, 1996; paragraph (a)(1) amended January 21, 1999 to be effective April 5, 1999; new text to paragraph (a)(7) adopted and former paragraphs (a)(7) and (a)(8) redesignated as (a)(8) and (a)(9) to be effective .

P. Proposed New *R.* 4:44A — Proceedings to Approve Transfer of Structured Settlement Payment Rights, and Proposed Amendments to *R.* 4:3-2 — Venue in Superior Court

Pursuant to the Supreme Court's Order of 6/4/02, which relaxed and supplemented *R.* 4:44 to set forth procedures for any application for the transfer or assignment of settlement rights brought under the Structured Settlement Protection Act, *N.J.S.A.* 2A:16-63 through 2A:16-69, the Committee recommends conforming rule amendments. In response to concerns about venue for such actions expressed by a Committee member, the Committee agreed that venue should lie in the county where the payee/assignor resides, necessitating a cross-reference to *R.* 4:44A-1 in *R.* 4:3-2.

See Section II. O. of this Report for discussion of other proposed amendments to this rule, which the Committee does not recommend.

The proposed language for new *Rules* 4:44A-1 and 4:44A-2, and the proposed amendments to. 4:3-2 follow.

RULE 4:44A. PROCEEDINGS TO APPROVE TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS

4:44A-1 Venue; Complaint; Service

An action seeking approval of a transfer or assignment of structured settlement payment rights shall be brought by the proposed transferee in the county of the payee-transferor's residence by order to show cause and verified complaint to which shall be annexed a copy of the proposed transfer or assignment agreement, a copy of the disclosure statement required by *N.J.S.A.* 2A:16-65, and a list of the names and ages of the payee-transferor's dependents. The order to show cause and complaint shall be served in accordance with *R.* 4:67-3 on the payee-transferor, all persons entitled to support by the payee-transferor, and the issuer of the annuity. The order to show cause shall be returnable not less than 20 days following the date of service and shall advise that interested parties, other than the payee-transferor, may, in lieu of appearing on the return date, file an affidavit or certification in response to the order to show cause at least five days before the return date.

Note: Approved and adopted _____ to be effective _____.

4:44A-2. Hearing

The application shall be heard on the return date of the order to show cause. If the payee-transferor fails to appear, in person or by counsel, the complaint shall be dismissed. The court shall approve the transfer or assignment only if it expressly finds that (a) the payee-transferor either received independent professional advice regarding the transfer or assignment from a person neither affiliated with nor recommended by the assignee or transferee or that the payee-transferor has waived the right to such advice in writing; (b) the proposed transfer does not contravene any applicable statute or court order; (c) the transfer is in the best interests of the payee-transferor, taking into account the welfare and support of the payee-transferor's dependents; and (d) the transferee has complied or ensured compliance with all applicable provisions of *N.J.S.A.* 2A:16-69. The court shall also consider whether there have been any previous transfers and if so, the terms thereof. The judgment approving the transfer or assignment shall incorporate the terms and conditions of *N.J.S.A.* 2A:16-67, which incorporation may be by reference.

Note: Approved and adopted _____ to be effective _____.

4:3–2. Venue in the Superior Court

(a) Where Laid. Venue shall be laid by the plaintiff in Superior Court actions as follows: (1) actions affecting title to real property or a possessory or other interest therein, or for damages thereto, or appeals from assessments for improvements, in the county in which any affected property is situate; (2) actions not affecting real property which are brought by or against municipal corporations, counties, public agencies or officials, in the county in which the cause of action arose; (3) except as otherwise provided by *R.* 4:44A-1 (structured settlements), *R.* 4:53–2 (receivership actions), *R.* 4:60–2 (attachments), *R.* 5:2–1 (family actions), *R.* 4:83–4 (probate actions), and *R.* 6:1–3 (Special Civil Part actions), the venue in all other actions in the Superior Court shall be laid in the county in which the cause of action arose, or in which any party to the action resides at the time of its commencement, or in which the summons was served on a nonresident defendant; and (4) actions on and objections to certificates of debt for motor vehicle surcharges that have been docketed as judgments by the Superior Court Clerk pursuant to *N.J.S.A.* 17:29A–35 shall be brought in the county of residence of the judgment debtor.

(b) ...no change.

(c) ...no change.

Note: Source — *R.R.* 4:3–2. Paragraph (a) amended December 20, 1983 to be effective December 31, 1983. Paragraph (c) adopted January 9, 1984 to be effective immediately; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended _____ to be effective _____.

Q. Proposed Amendments to *Rules* 4:46-1 and 4:36-3 — re: Timing of Summary Judgment Motions

The Conference of Civil Presiding Judges recommended amending *R*. 4:46-1 to require that summary judgment motions be made returnable no later than 30 days before the trial date and, in acknowledgement of the State Bar Association's concern regarding the timing of the summary judgment cutoff, amending *R*. 4: 36-3 to require a minimum of ten weeks notice of trial. The Supreme Court has given its conceptual approval to the proposed amendments. Accordingly, the Committee has drafted the amendatory language.

The proposed amendments to *Rules* 4:46-1 and 4:36-3 follow.

4:46-1. Time for Making, Filing, and Serving Motion

A party seeking any affirmative relief may, [at any time] after the expiration of 35 days from the service of the pleading claiming such relief, move for a summary judgment or order upon all or any part thereof or as to any defense[.]; and [A] a party against whom a claim for such affirmative relief is asserted may move [at any time] for a summary judgment or order as to all or any part thereof at any time after service of process. Unless the court otherwise permits on motion for good cause shown and except in Track 4 and general equity cases, the summary judgment motion shall be made returnable no less than 30 days prior to the actual trial date. Except as otherwise provided by *R*. 6:3-3 (motion practice in Special Civil Part) or unless the court otherwise orders, a motion for summary judgment shall be served and filed not later than 28 days before the time specified for the return date; opposing affidavits, certifications, briefs, and cross-motions for summary judgment, if any, shall be served and filed not later than 10 days before the return date; and answers or responses to such opposing papers or to cross-motions shall be served and filed not later than 4 days before the return date. No other papers may be filed without leave of court.

Note: Source — *R.R.* 4:58-1, 4:58-2. Caption and text amended November 1, 1985 to be effective January 2, 1986; amended November 5, 1986 to be effective January 1, 1987; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; amended _____ to be effective _____.

4:36-3. Trial Calendar

(a) Notice of Trial. The court shall advise all parties of the initial trial date no less than [eight] ten weeks prior thereto. Cases scheduled for trial shall be ready to proceed on the initial trial date. If a case is not reached during the week in which the trial date falls, it shall be forthwith scheduled for a date certain after consultation with counsel provided, however, that no case shall be relisted for trial sooner than four weeks from the initial trial date without agreement by all counsel. The court shall issue written notice confirming the new trial date. This provision shall be applicable to all cases noticed for trial after September 5, 2000.

(b) …no change.

(c) …no change.

Note: Adopted July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (c) adopted September 12, 2000 to be effective immediately; paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended to be effective .

R. Proposed Amendments to *R.* 4:53-7 — Inventory and Account; Audit

An attorney recommended that *R.* 4:53-7(b) be amended to provide that in a receivership matter where there is no countersignatory and an audit is required, the Surrogate, acting in the capacity of the Deputy Clerk of the Superior Court, be permitted to audit the account and the court be authorized to fix a reasonable fee for the audit. Donald Phelan, the Clerk of the Superior Court and a Committee member, informed the Committee that this function had been performed in the Clerk's office when there was centralized filing. He opined that the Surrogate, being the Deputy Clerk of the Superior Court for probate matters only, is not the appropriate individual to be auditing a receivership matter. Rather, he suggested that the auditing function should be returned to his office where there are personnel who are trained in auditing procedures.

The Committee endorsed this suggestion. Accordingly, it rejected the original proposal to permit the Surrogate to audit the account and recommended, instead, that the rule be amended to eliminate the reference to the Deputy Clerk, leaving the audit function with the Clerk.

The proposed amendments to *R.* 4:53-7 follow.

4:53-7. Inventory and Account; Audit

(a) Filing of Inventory and Periodic Accounts. Every receiver and trustee in liquidation appointed by the court shall, within 3 months after appointment, file with the [deputy c]Clerk of the Superior Court [in the county of venue,] a just and true inventory, under oath, of the whole estate committed to the appointee's care, and of the manner in which the funds under the appointee's care, belonging to the estate, are invested, stating the income of the estate, and the debts contracted and expenditures made on account thereof. The appointee shall on each April 1 and October 1 thereafter, so long as any part of the estate, or of the income or proceeds thereof, remains to be accounted for, file with the deputy clerk of the Superior Court in the county of venue an account, under oath, of the amount remaining or invested, and of the manner in which the same is invested. The accountant shall be charged with the balance shown in the last previous account (or with the amount of the inventory in the case of a first accounting) and with all amounts collected in addition thereto; state the expenditures and other credits and the balance remaining and the manner in which the same is invested; and set forth all changes (either by way of addition or diminution or change of form) in the assets with which the accountant is charged which have occurred during the period covered by the account.

(b) …no change.

(c) …no change.

(d) …no change.

Note: Source — *R.R.* 4:68-8(a)(b)(c)(d)(e); paragraph (b) amended July 15, 1982 to be effective September 13, 1982; paragraphs (a), (b) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended to be effective .

S. Proposed Amendments to *R.* 4:59-1 — Execution

As directed by the Supreme Court in *First Resolution Investment Corp. v. Seker,* 171 *N.J.* 502 (2002), the Special Civil Part Practice Committee drafted proposed amendments to *R.* 4:59-1 to add language advising the judgment-debtor of a continuing right to object to the wage execution after it has been issued. At the request of the Committee of Special Civil Part Supervising Judges, language providing an opportunity for the debtor to apply for a reduction in the amount of the wage execution was also proposed.

The Committee supports these recommendations.

The proposed amendments to *R.* 4:59-1 follow.

4:59-1. Execution

(a) …no change.

(b) …no change.

(c) …no change.

(d) Wage Executions; Notice, Order, Hearing. Proceedings for the issuance of an execution against the wages, debts, earnings, salary, income from trust funds or profits of a judgment-debtor shall be on notice to the debtor. The notice of wage execution shall state (1) that the application will be made for an order directing a wage execution to be served upon the defendant's named employer, (2) the limitations prescribed by 15 U.S.C.A. §§ 1671-1677, inclusive and N.J.S. 2A:17-50 et seq. and N.J.S. 2A:17-57 et seq. on the amount of defendant's salary which may be levied upon, (3) that defendant may notify the court and the plaintiff in writing within 10 days after service of the notice of reasons why the order should not be entered, [and] (4) if defendant so notifies the clerk, the application will be set down for hearing of which the parties will receive notice as to time and place, and if defendant fails to give such notice, the order will be entered as of course, and (5) that defendant may object to the wage execution or apply for a reduction in the amount withheld at any time after the order is issued by filing a written statement of the objection or reasons for a reduction with the clerk and sending a copy to the creditor's attorney or directly to the creditor if there is no attorney, and that a hearing will be held within seven days after filing the objection or application for a reduction. The judgment-creditor may waive in writing the right to appear at the hearing on the objection and rely on the papers. The notice of wage execution shall be served on the judgment-debtor in accordance with *R.* 1:5-2. A copy of the notice of application for wage execution, together with proof of service in accordance with *R.* 1:5-3, shall be filed with the clerk at the time the form of order for wage

execution is submitted. No order shall be entered unless the form of order was filed within 45 days of service of the notice or 30 days of the date of the hearing. The order for wage execution shall include a provision directing the employer immediately to give the judgment-debtor a copy thereof and it shall also include a provision that the judgment-debtor may, at any time, notify the clerk and the judgment-creditor in writing of reasons why the levy should be reduced or discontinued. If an objection from the judgment-debtor is received by the clerk after a wage execution has issued, all moneys remitted by the employer shall be held until further order of the court and the matter shall be set down for a hearing to be held within 7 days of receipt of the objection.

(e) …no change.

(f) …no change.

(g) …no change.

Note: Source — *R.R.* 4:74-1, 4:74-2, 4:74-3, 4:74-4. Paragraph (c) amended November 17, 1970 effective immediately; paragraph (d) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended, new paragraph (b) adopted and former paragraphs (b), (c), (d), and (e) redesignated (c), (d), (e) and (f) respectively, July 24, 1978 to be effective September 11, 1978; paragraph (b) amended July 21, 1980 to be effective September 8, 1980; paragraphs (a) and (b) amended July 15, 1982 to be effective September 13, 1982; paragraph (d) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended and paragraph (g) adopted November 1, 1985 to be effective January 2, 1986; paragraph (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (e) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (c), (e), (f), and (g) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended June 28, 1996 to be effective June 28, 1996; paragraph (d) amended June 28, 1996 to be effective September 1, 1996; paragraph (e) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (e), and (g) amended July 5, 2000 to be effective September 5, 2000; paragraph (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended _____ to be effective _____.

T. Proposed Amendments to *R.* 4:70 — Summary Proceedings for Collection of Statutory Penalties

In response to the enactment of the Penalty Enforcement Law of 1999, *N.J.S.A.* 2A:58-12, and to the many questions from practitioners regarding the correct procedure to follow when seeking to enforce a statutory penalty, the Committee proposes substantial revisions to *R*. 4:70. Although there is no inherent conflict between the current rule and the new statute, the Committee members recognize a need for simplification and clarification of the language of the rule. The proposed amendments reflect the statutory mandates in a streamlined procedure.

In preparing the revisions to *R*. 4:70, the Committee considered an attorney's suggestion that the rule be further amended to provide that, where there is a statutory right for appeal to an administrative tribunal, the court shall not hear testimony on any issue that was subject to adjudication by such administrative tribunal, except on appeal under *R*. 4:71. The Committee was reluctant to limit the court's review of an administrative determination to the correctness of the penalty, thereby forestalling the possibility of a trial *de novo*, and so does not incorporate that suggestion into the proposed revisions to the rule.

The proposed amendments to *Rules* 4:70-1 –2, -3, -4, and -5 follow.

4:70-1. [Applicability of Rule] Applicability; Scope

(a) [Any penalty imposed by any statute or ordinance which may be collected or enforced by a summary civil proceeding shall be collected and enforced pursuant to *R.* 4:70 in the Law Division. This rule shall not, however, be applicable if a statute requires a civil penalty to be collected by a plenary action. Proceedings for the confiscation or forfeiture of chattels shall conform, insofar as possible, with the provisions of *R.* 4:70.] Generally. Except as otherwise provided by paragraph (b) of this rule, an action to enforce a civil penalty imposed by any statute or ordinance providing for its collection or enforcement by a civil proceeding shall be brought as a summary action in the Law Division pursuant to *R.* 4:67 unless the statute requires a plenary action. The complaint may include a count for injunctive or other relief based on the same transaction or series of actions or similar violations as those for which the penalty is sought.

(b) [A claim for the recovery of a penalty pursuant to *R.* 4:70 may include a count for injunctive or other relief provided that the claims are authorized by statute or ordinance and are founded upon a single transaction or series of transactions, and provided further that such action be commenced in a court having jurisdiction to grant the injunctive relief.] Administrative Orders. If a state administrative agency has assessed a civil penalty after affording the person assessed an opportunity for a hearing pursuant to the Administrative Procedure Act, *N.J.S.A.* 52:14B-1, *et seq.*, the final order of the agency shall be appealable to the Appellate Division pursuant to *R.* 2:2-3(a)(2). At the agency's request, the order shall be docketed by the Clerk of the Superior Court on the civil docket pursuant to *R.* 4:100 or the civil judgment and order docket, *R.* 4:101, or both, and shall thereafter have the same effect as a docketed judicial judgment or order.

Note: Source — *R.R.* 4:89, 5:2-6(a) (c) (first sentence), 7:13-1, 7:14. Amended July 14, 1972 to be effective September 5, 1972; former rule redesignated paragraph (a) and paragraph (b)

adopted July 24, 1978 to be effective September 11, 1978; paragraph (a) amended July 12, 2002 to be effective September 3, 2002; caption and paragraphs (a) and (b) amended to be effective .

4:70-2. Complaint; Verification

(a) …no change.

(b) Process. The summons, which shall issue upon the filing of the compliant, shall be signed and served by any person so authorized by statute or rule, including a law enforcement officer. A warrant may issue in lieu of a summons if authorized by the statute imposing the penalty, in which case the procedures prescribed by *R*. 3:2-3 and *R*. 3:3-3 shall apply. If the statute imposing the penalty authorizes arrest without a warrant for a violation committed within the view of a law enforcement officer, the officer making the arrest shall follow the procedures prescribed by *R*. 3:4-1(a). The Administrative Director of the Courts may prescribe forms of complaint, summons and warrant for proceedings pursuant to this rule.

Note: Source — *R.R.* 7:13-2; amended July 13, 1994 to be effective September 1, 1994; current rule redesignated as paragraph (a) and paragraph (b) adopted _____ to be effective _____.

4:70-3. [Process] Hearing; Penalties; Payment

[(a) Issuance; Return; Warrant or Summons; Service. Upon the filing of a complaint, a summons specifying the provisions of the statute alleged to have been violated shall issue and shall be returnable in not less than 5, nor more than 15 days, except that if the statute so provides, a warrant may issue in lieu of a summons, without court order, and shall be returnable forthwith. The Administrative Director of the Courts may prescribe special forms of complaints and summonses for use in proceedings under *R*. 4:70, and a law enforcement officer may make and sign any such prescribed complaint and summons, serving the summons upon the defendant and thereafter filing the complaint promptly with the court therein named. Unless so served, process may be served and executed by any person authorized to serve and execute process in the court in which the proceedings are brought or by any other person designated for that purpose by the statute imposing the penalty.

(b) Arrest Without Warrant. If the statute imposing the penalty authorizes arrest without a warrant for a violation committed within the view of a law enforcement officer, for which a penalty is imposed enforceable in a summary manner, the officer shall upon making such arrest for such a violation without a warrant, bring the defendant before a court having jurisdiction of the proceedings and shall forthwith file a complaint. In such case no process for the defendant's appearance shall issue, but upon the filing of the complaint the matter shall proceed as though process had issued and had been there and then duly served and returned.

(c) Authority of Clerk as to Process. The clerk of the court in which the proceedings are instituted or the deputy clerk thereof may sign, seal and issue any process required to be issued under *R.* 4:70, except a warrant of commitment.]

Except as otherwise provided by *R*. 4:71, the court shall try the action pursuant to *R*. 4:67-5 without a jury, unless the statute imposing the penalty otherwise requires, on the return date and without the filing of any other pleadings unless the court otherwise orders. If the court finds that a violation has occurred, it shall enter judgment for plaintiff and impose a penalty as provided by the statute. Unless the statute otherwise requires, the parties may dispose of the charges of the complaint by stipulation, settlement or consent order, in which case payment of a penalty as so provided shall be considered a prior violation for the purpose of determining subsequent offender status. Payment of all penalties shall be made to the court and shall be remitted to the Treasurer of the State of New Jersey unless the statute imposing the penalty requires other disposition.

Note: Source — *R.R.* 7:13-3, 7:13-4, 7:13-5, 7:13-6, 7:13-17; caption amended, paragraphs (a) (b) and (c) deleted and new text adopted _____ to be effective _____.

4:70-4. [Penalties; Payment; Hearing] Commitment

[(a) Payment Upon Plea of Guilty. For violations where the statutory penalty does not exceed $50 for each offense, including where the minimum statutory penalty does not exceed $50 for each offense, the defendant at any time before the hearing date, upon presentation of a signed plea of guilty and waiver of trial endorsed on the summons, may pay the penalty and costs by appearing before the court or violations clerk or by mailing the same to the court or violations clerk subject to the limitations prescribed in *R.* 7:12-4.

(b) Summary Hearing; Judgment Without Filing of Pleadings. On the return of the process or at any time to which the trial has been adjourned, the court in which the proceedings were instituted shall summarily, without the filing of any pleadings except the complaint, hear the testimony and determine and give judgment in the matter, whether for the recovery of a money penalty or costs or both, or otherwise, or for the defendant. Unless otherwise provided in the statute imposing the penalty, such hearing shall be without a jury.

(c) Adjournment of Hearing; Defendant Detained; Bond for Release During Adjournment. If the court in which the proceedings were instituted, adjourns the hearing it shall, except where the first process was a summons, detain the defendant in custody, unless defendant makes deposit in cash, in the amount of the penalty claimed and costs, or enters into a bond with at least one sufficient surety in double the amount of the penalty claimed and costs, or if there is no money penalty, then in such sum, not exceeding $500 as the court fixes, conditioned on defendant's appearance on the adjourned date, and from day to day thereafter until judgment is rendered and further conditioned, unless the court otherwise orders, to abide by the judgment of the court. If the plaintiff is a governmental body or officer, the bond shall run to the plaintiff, and, if forfeited, may be prosecuted by the obligee. If the plaintiff is the State, the

bond shall run to it and, if forfeited, may be prosecuted at the relation of a person authorized by law to prosecute the penalty proceeding.]

If the statute imposing the penalty provides for commitment of the defendant upon the failure to forthwith pay the penalty adjudicated or agreed to, the court may direct defendant's commitment to any institution and for such time as the statute authorizes, unless the judgment is sooner paid. The form of the commitment shall be prescribed by the Administrative Director of the Courts.

Note: Source — *R*. 7:13-6A, 7:13-7, 7:13-8, 7:13-9; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended July 22, 1983 to be effective September 12, 1983; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended January 5, 1998 to be effective February 1, 1998; caption amended, paragraphs (a) (b) and (c) deleted and new text adopted _____ to be effective _____.

[4:70-5. Judgment; Commitment

(a) Form of Judgment. The judgment of conviction in proceedings under *R.* 4:70 shall be signed by the judge or judicial officer rendering it and shall be in the form prescribed by the Administrative Director of the Courts, which form may be modified to include provision for injunctive or other relief in proceedings under *R.* 4:70-1(b).

(b) Commitment of Defendant Failing to Pay Judgment. If the statute imposing the penalty provides for commitment of the defendant upon the failure to pay forthwith the amount of any money judgment rendered in the action, the court shall direct defendant's commitment to any institution and for such time as the statute authorizes, unless the judgment is sooner paid. The form of commitment shall be added beneath the signature to the judgment, signed in duplicate by the judge or other judicial officer, and in the form prescribed by the Administrative Director of the Courts. One of the duplicates shall serve the purpose of a warrant of commitment.

(c) Money Judgment; Execution, Property and Persons Subject to. If a money judgment is rendered against a defendant, execution may issue, in the form prescribed by the Administrative Director of the Courts, against the goods and chattels of the defendant; against defendant's real estate if the judgment is entered in the Civil Judgment and Order Docket; and against the body of an individual defendant provided the court in which the judgment is rendered shall by special order so direct and shall designate in said order the maximum number of days during which the defendant may be detained in custody under such body execution.

(d) Costs. The costs prescribed by the statute imposing the penalty in any proceeding under *R.* 4:70 shall be recovered by the plaintiff if the judgment is rendered against the defendant.]

Note: Source — *R.R.* 7:13-10, 7:13-11, 7:13-12, 7:13-13, 7:13-14, 7:13-16; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; rule deleted to be effective .

U. Proposed Amendments to *Rules* 4:86-2 and 4:86-6 — re: Affidavits and Testimony from Psychologist in Actions to Appoint a Guardian for a Mentally Incapacitated Person

The Guardianship Association of New Jersey, Incorporated (GANJI) and the New Jersey Psychological Association (NJPA) requested that *R.* 4:86-2 be amended to allow the discretionary use of an assessment prepared by a New Jersey licensed psychologist in place of one of the two reports now required to be submitted by New Jersey licensed physicians, and that *R.* 4:86-6 be amended to permit the psychologist to testify at the hearing. The rationale behind the request is that psychologists, trained in the assessment of decision-making or cognitive abilities, are better able to address function, cognition, and risk factors relevant to the alleged mentally incapacitated person and would assist the court in its consideration of least restrictive alternatives. Additionally, the proposed amendments mirror the national trends in assessment practices identified by the American Bar Association in January 2003.

The Committee had considered similar suggested amendments in the rules cycles ending in 2000 and 2002. In both cycles, the suggestion before the Committee was that a report from a psychologist be substituted for one of the physician's reports, presumably in all cases. The Committee did not support the earlier proposals. The Committee's position was that a psychologist's affidavit would be of little value if a cause of the alleged mental incapacity were physiological rather than psychological.

The current proposal allows the judge to determine, in his or her discretion, whether to allow a psychologist's report in place of one prepared by a physician. It has been endorsed by both the Conference of General Equity Presiding Judges and the Judiciary-Surrogates Liaison

Committee. Accordingly, the Committee recommends that the rules be amended to require reports from either two physicians or a physician and a licensed psychologist.

The proposed amendments to *Rules* 4:86-2 and 4:86-6 follow.

4:86-2. Accompanying Affidavits

The allegations of the complaint shall be verified as prescribed by *R.* 1:4-7 and shall have annexed thereto:

(a) …no change.

(b) Affidavits of two reputable physicians, having qualifications set forth in *N.J.S.A.* 30:4-27.2t or the affidavit of one such physician and one licensed practicing psychologist as defined in *N.J.S.A.* 45:14B-2. If an alleged mentally incapacitated person has been committed to a public institution and is confined therein, one of the affidavits shall be that of the chief executive officer, the medical director, or the chief of service providing that person is also the physician with overall responsibility for the professional program of care and treatment in the administrative unit of the institution. However, where an alleged mentally incapacitated person is domiciled within this State but resident elsewhere, the affidavits required by this rule may be those of [physicians] persons who are residents of the state or jurisdiction of the alleged mentally incapacitated person's residence. Each affiant shall have made a personal examination of the alleged mentally incapacitated person not more than 30 days prior to the filing of the complaint, but said time period may be relaxed by the court on an ex parte showing of good cause. To support the complaint, each affiant shall state: (1) the date and place of the examination; (2) whether the [physician is a treating or examining physician] affiant has treated or merely examined the alleged mentally incapacitated individual; (3) whether the [physician] affiant is disqualified under *R.* 4:86-3; (4) the diagnosis and prognosis and factual basis therefor; (5) for purposes of ensuring that the alleged mentally incapacitated person is the same individual who was examined, a physical description of the person examined, including but not limited to sex, age and weight; and (6) the affiant's opinion that the alleged mentally incapacitated person is

unfit and unable to govern himself or herself and to manage his or her affairs and shall set forth with particularity the circumstances and conduct of the alleged mentally incapacitated person upon which this opinion is based, including a history of the alleged mentally incapacitated person's condition. The affidavit should also include an opinion whether the alleged mentally incapacitated person is capable of attending the hearing and if not, the reasons for the individual's inability.

(c) In lieu of the affidavits provided for in paragraph (b), an affidavit of one [reputable physician] affiant having the qualifications as required [by paragraph (b)] therein, stating that he or she has endeavored to make a personal examination of the alleged mentally incapacitated person not more than 30 days prior to the filing of the complaint but that the alleged mentally incapacitated person or those in charge of him or her have refused or are unwilling to have the affiant make such an examination. The time period herein prescribed may be relaxed by the court on an ex parte showing of good cause.

Note: Source — *R.R.* 4:102-2; former *R.* 4:83-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a), (b), and (c) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b) and (c) amended _____ to be effective _____.

4:86-6. Hearing; Judgment

(a) Trial. Unless a trial by jury is demanded by or on behalf of the alleged mentally incapacitated person, or is ordered by the court, the court without a jury shall, after taking testimony in open court, determine the issue of mental incapacity. If there is no jury, the court, with the consent of counsel for the alleged mentally incapacitated person, may take the testimony of a [physician] person who has filed an affidavit pursuant to *R.* 4:86-2(b) by telephone or may dispense with [the physician's] oral testimony and rely on the affidavits submitted [pursuant to *R.* 4:86-2(b)]. Telephone testimony shall be recorded verbatim.

(b) …no change.

(c) …no change.

Note: Source-*R.R.* 4:102-6(a)(b)(c), 4:103-3 (second sentence). Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (c) of former *R.* 4:83-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended to be effective .

V. Proposed Amendments to *R.* 4:94-2 — Complaint; Supporting Affidavits; Notice

In order to eliminate the submission of real property appraisals from uncertified individuals, the Judiciary-Surrogates Liaison Committee recommended that *R.* 4:94-2 be amended to include a reference to *N.J.S.A.* 45:14F-21(c), which provides that appraisals must be performed by a State licensed real estate appraiser, a State certified real estate appraiser or a person who assists in the preparation of an appraisal under the direct supervision of a State licensed or certified appraiser.

The Committee agreed with this recommendation.

The proposed amendments to *R.* 4:94-2 follow.

4:94–2. Complaint; Supporting Affidavits; Notice

The complaint shall state the age and residence of the ward, a description of the property proposed to be sold or otherwise disposed of, a statement of the encumbrances, if any, thereon, and the reasons why the sale or other disposition would be in the ward's best interests. The complaint shall be verified by affidavit made pursuant to *R*. 1:6–6 and have annexed thereto affidavits of at least two persons, stating the situation, assessed value, if any, and fair market value of the property proposed to be sold or otherwise disposed of, and if real estate, of each separate lot or parcel. If the property is real estate located in New Jersey, the affidavits shall be made by a certified real estate appraiser or licensed real estate appraiser as defined by *N.J.S.A.* 45:14F-5 and -6, respectively, and required by *N.J.S.A.* 45:14F-21(c). If the real estate is located outside this state, the affidavits shall be made by a real estate appraiser certified or licensed by the jurisdiction in which the property is located if that jurisdiction has a certification or licensing requirement. If, however, the minor or mentally incapacitated person owns a fractional portion of real estate having a value not in excess of $10,000 as shown by one affidavit, the court may dispense with the requirement of a second affidavit as to value. Unless the court otherwise orders, no notice of the action need be given to the ward.

Note: Source—*R.R.* 4:84–1 (second and third sentences); former *R*. 4:66–2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002; amended to be effective .

W. Proposed Amendments to Appendix II — Interrogatory Forms

A Committee member suggested that the form interrogatories in Appendix II be amended to reflect an earlier change to *R.* 4:10-2(d), essentially doing away with oral reports by expert witnesses. The matter was referred to the Discovery Subcommittee, chaired by S. Robert Allcorn, Esq., which recommended that all references to "oral" expert reports should be eliminated in order to conform the interrogatories to recent rule changes.

The Committee endorsed the recommendation of the subcommittee.

See Section II. R. of this Report for discussion of other proposed amendments to the Uniform Interrogatories, which the Committee does not recommend.

The proposed changes to Uniform Interrogatories Forms A, A(1), C, C(3), as well as to all certification forms follow.

APPENDIX II. INTERROGATORY FORMS

Form A. Uniform Interrogatories to be Answered by Plaintiff in All Personal Injury Cases: Superior Court

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

(Caption)

1. Full name, present address and date of birth.

2. Describe in detail your version of the accident or occurrence setting forth the date, location, time and weather.

3. Detailed description of nature, extent and duration of any and all injuries.

4. Detailed description of injury or condition claimed to be permanent together with all present complaints.

5. If confined to a hospital, state its name and address, and dates of admission and discharge.

6. If any diagnostic tests were performed, state the type of test performed, name and address of place where performed, date each test was performed and what each test disclosed. Attach a copy of the test results.

7. If treated by any health care provider, state the name and present address of each health care provider, the dates and places where treatments were received and the date of last treatment. Attach true copies of all written reports provided to you by any such health care provider whom you propose to have testify in your behalf.

8. If still being treated, the name and address of each doctor or health care provider rendering treatment, where and how often treatment is received and the nature of the treatment.

9. If a previous injury, disease, illness or condition is claimed to have been aggravated, accelerated or exacerbated, specify in detail the nature of each and the name and present address of each health care provider, if any, who ever provided treatment for the condition.

10. If employed at the time of the accident, state: (a) name and address of employer; (b) position held and nature of work performed; (c) average weekly wages for past year; (d) period of time lost from employment, giving dates; and (e) amount of wages lost, if any.

11. If there has been a return to employment or occupation, state: (a) name and address of present employer; (b) position held and nature of work performed; and (c) present weekly wages, earning, income or profit.

12. If other loss of income, profit or earnings is claimed: (a) state total amount of the loss; (b) give a complete detailed computation of the loss; and (c) state the nature and source of the loss of income, profit and earnings, and the dates of the deprivation.

13. Itemize in complete detail any and all moneys expended or expenses incurred for hospitals, doctors, nurses, diagnostic tests or health care providers, x-rays, medicines, care and appliances and state the name and address of each payee and the amount paid and owed each payee.

14. Itemize any and all other losses or expenses incurred not otherwise set forth.

15. Identify all documents that may relate to this action, and attach copies of each such document.

16. State the names and addresses of all eyewitnesses to the accident or occurrence, their relationship to you and their interest in this lawsuit.

17. State the names and addresses of all persons who have knowledge of any facts relating to the case.

18. If any photographs, videotapes, audio tapes or other forms of electronic recording, sketches, reproductions, charts or maps were made with respect to anything that is relevant to the subject matter of the complaint, describe: (a) the number of each; (b) what each shows or contains; (c) the date taken or made; (d) the names and addresses of the persons who made them; (e) in whose possession they are at present; and (f) if in your possession, attach a copy, or if not subject to convenient copying, state the location where inspection and copying may take place.

19. If you claim that the defendant made any admissions as to the subject matter of this lawsuit, state: (a) the date made; (b) the name of the person by whom made; (c) the name and address of the person to whom made; (d) where made; (e) the name and address of each person present at the time the admission was made; (f) the contents of the admission; and (g) if in writing, attach a copy.

20. If you or your representative and the defendant have had any oral communication concerning the subject matter of this lawsuit, state: (a) the date of the communication; (b) the name and address of each participant; (c) the name and address of each person present at the time of such communication; (d) where such communication took place; and (e) a summary of what was said by each party participating in the communication.

21. If you have obtained a statement from any person not a party to this action, state: (a) the name and present address of the person who gave the statement; (b) whether the statement was oral or in writing and if in writing, attach a copy; (c) the date the statement was obtained; (d) if such statement was oral, whether a recording was made, and if so, the nature of the recording and

the name and present address of the person who has custody of it; (e) if the statement was written, whether it was signed by the person making it; (f) the name and address of the person who obtained the statement; and (g) if the statement was oral, a detailed summary of its contents.

22. If you claim that the violation of any statute, rule, regulation or ordinance is a factor in this litigation, state the exact title and section.

23. State the names and addresses of any and all proposed expert witnesses. Set forth in detail the qualifications of each expert named and attach a copy of each expert's current resume. Also attach true copies of all written reports provided to you by any such proposed expert witnesses.

With respect to all expert witnesses, including treating physicians, who are expected to testify at trial and with respect to any person who has conducted an examination pursuant to Rule 4:19, who may testify, state each such witness's name, address and area of expertise and attach a true copy of all written reports provided to you. [If a report is not written, supply a summary of any oral report provided to you.]

State the subject matter on which your experts are expected to testify.

State the substance of the facts and opinions to which your experts are expected to testify and a summary of the grounds for each opinion.

24. State whether you have ever been convicted of a crime. YES (____) or NO (____).

If the answer is "yes", state: (a) date; (b) place; and (c) nature.

To Be Answered Only in Automobile Accident Cases

25. Do you have insurance coverage and/or PIP benefits under an applicable policy or policies of automobile insurance? As to each such policy provide the name and address of the insurance carrier, policy number, the named insured and attach a copy of the declaration sheet.

If you are making a claim for property damage to a motor vehicle, provide answers to the uniform interrogatories contained in Form B, questions 1 through 18.

For Medical Malpractice Cases, Also Answer Form A(1)

For Product Liability Cases (Other than Pharmaceutical and Toxic Tort Cases), Also Answer A(2)

Certification

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

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts[, written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Note: Amended July 17, 1975 to be effective September 8, 1975; entire text deleted and new text added July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; interrogatory 23 and certification amended to be effective .

Form A(1). Uniform Interrogatories to be Answered by Plaintiff in Medical Malpractice Cases Only: Superior Court

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

(Caption)

1. State your full name, address, date and place of birth and Social Security number.

2. State the date on which you first came under the medical care of the defendant(s).

3. State the reason(s) you first consulted the defendant(s).

4. State in detail the medical history you gave the defendant(s).

5. Describe the examination performed by the defendant(s) the first time you came under defendant's medical care.

6. Set forth each date on which you presented yourself to defendant(s) for examination and/or treatment and describe in detail the treatment given to you on each date.

7. State the name of each defendant that you contend was negligent, and state what you contend that each such defendant did that should not have been done and what you contend that each defendant did not do that should have been done, and the dates thereof. Set forth all facts on which you base your contentions. If you are relying on any written documents or records, identify those documents and records, and state the material in each document which you contend demonstrates negligence.

8. State the names and addresses of all persons having knowledge of relevant facts relating to this lawsuit and specify those who are eyewitnesses to any act of negligence.

9. State the names and addresses of any and all proposed expert witnesses. Set forth in detail the qualifications of each expert named and attach a copy of each expert's current resume. Also attach true copies of all written reports provided to you by any such proposed expert witnesses.

With respect to all expert witnesses, including treating physicians, who are expected to testify at trial, and with respect to any person who has conducted an examination pursuant to Rule 4:19, state each such witness's name, address and area of expertise and attach a true copy of all written reports provided to you. [If a report is not written, supply a summary of any oral report provided to you.]

State the subject matter on which your experts are expected to testify.

State the substance of the facts and opinions to which your experts are expected to testify and provide a summary of the factual grounds for each opinion.

10. If you or your expert intend to rely on or use in any way at trial any treatise, identify the treatise by title, author and edition and indicate the pertinent portions to be relied on or used at trial.

11. State whether or not you have been admitted to any hospital or other medical treatment facility in the last ten years and if so, state the name of the hospital or facility, the dates of admission and discharge, the illness, disease or condition that caused such admission and the names and addresses of the doctor(s) who treated you during such admission.

12. State whether you have undergone a physical examination in connection with employment or any application for employment in the last ten years. If so, state the date of any such examination, where it was conducted, who conducted the examination and whether there is a report of such physical examination. If a report was made, attach a true copy. If any such physical examination resulted in action being taken on your behalf or against you, please describe such action.

13. State whether you have ever suffered from any injury or disease other than the condition for which you consulted the defendant(s). If so, specify in detail the nature of each such injury or disease and the name and present address of each health care provider, if any, who ever provided treatment for the condition.

14. State whether you have ever had a family physician and if so, state physician's name, address and telephone number. Specify and describe any illness or injury for which the family physician has treated you during the past ten years.

15. State whether you have consulted any other health care provider in the past ten years. If so, specify in detail the nature of the condition for which you consulted the health care provider and the name and present address of each health care provider who ever provided treatment for the condition.

16. State whether any admissions or statements were made by any party to this action or their agents, servants or employees and if so, state:

(a) whether oral, written or otherwise recorded;

(b) the date, time and place made;

(c) if oral, the words used, or a summary of same;

(d) if written, attach a copy; and

(e) the names and addresses of all persons present at the time and place the statements or admissions were made.

17. State whether you have ever made a claim or filed a lawsuit against anyone arising out of any personal injury and if so, state for each such claim or lawsuit:

(a) the date and place the injury occurred;

(b) the court or place of filing;

(c) the date of filing;

(d) the names and addresses of all parties and their attorneys;
(e) the nature and extent of all injuries;

(f) the docket or claim number; and

(g) the present status of each such lawsuit or claim and if concluded describe the manner in which the lawsuit or claim was concluded and the payment, if any, you received.

18. Describe the injuries you sustained as a result of the negligence claimed in this lawsuit.

19. If you were treated, attended or examined by any physician(s) or others for the injuries identified in response to Question 18, state:

(a) the names and addresses of all such persons;

(b) whether you were admitted to a hospital or other medical treatment facility and if so provide the name and address of the facility and the dates of admission and discharge;

(c) the dates of every treatment or examination and where they took place; and

(d) state the nature of the medical treatment given by each physician or other person.

20. State whether you are still afflicted with or suffering from the effects of any injury, illness or disability as a result of defendant's negligence. If so, describe in detail.

21. Set forth all claims for economic damages against the defendant(s), including lost wages, and itemize the amounts paid or owed, dates incurred, and the names and addresses of each person to whom paid or owed.

Certification

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

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts[, either written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Note: New form interrogatory adopted June 28, 1996 to be effective September 1, 1996; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; interrogatory 9 and certification amended to be effective .

Form A(2). Uniform Interrogatories to be Answered by Plaintiff in Product Liability Cases (Other Than Pharmaceutical and Toxic Tort Cases) Only: Superior Court

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

(Caption)

1. Describe in detail and with specificity the product involved in the incident that is the subject of this lawsuit, including the manufacturer's name, brand name, model number, serial number or other identifying decal or feature on the product.

If the product involved is a motor vehicle or any other product with component parts or systems, describe any part(s) or system(s) claimed to be defective or negligently designed, manufactured or distributed, or otherwise complained of.

2. Do you claim (a) that the product was defectively designed; (b) that the product was defectively manufactured; and/or (c) that the labelings or warnings on, attached to or accompanying the product were inadequate, misleading or insufficient? If so, set forth all facts (not legal conclusions) in support of your contention(s).

3. Do you claim that the defendant was negligent? If so, set forth all facts (not legal conclusions) in support of your contention. Do you claim that the defendant breached a warranty? If so, set forth all facts (not legal conclusions) in support of your contention. Set forth why any claims of negligence or breach of warranty are not subsumed in the product liability claim.

4. Identify all correspondence between plaintiff and the defendant or its representatives, and attach copies.

5. How did plaintiff come into possession of or contact with the product involved in the accident incident?

6. How long had the product involved in this incident been in the possession of or used by the plaintiff before the incident?

7. During the time given in response to the immediately preceding interrogatory, where was the product kept?

8. Where was the product immediately after the incident?

9. With respect to the product involved in the incident, set forth: (a) the name and address of the person presently having custody of the product; (b) the present location of the product; and (c) the last date that the product was in your possession.

10. State whether the product is currently in the same condition as immediately after the incident. If not, fully describe the changes that have occurred, who made them, the reason for such changes and the date they were made.

11. Did the product have any words or symbols on it or its packaging, or any written or pictured warnings attached to it? If so, set forth each writing and describe each symbol or picture.

12. Was an owner's manual or other literature provided with the product? If so, attach such manual or literature or, if a copy is not available, describe the manual or other literature and summarize its contents.

13. Have you ever pursued a workers' compensation claim for injuries sustained as a result of the incident that is the subject of this lawsuit? If so, set forth: (a) the title and venue of every workers' compensation proceeding to which you have been a party; (b) the date upon which each such proceeding was instituted; (c) the date on which each such proceeding was tried and settled; (d) the name and address of each doctor who examined you in connection with each such proceeding; (e) the amount of the award you received from each such proceeding; and (f) the name and address of every employer or insurance company that has actually paid you workers' compensation benefits.

14. Do you contend that the design, labeling and warnings, manufacture or distribution of the product was governed by any governmental and/or industry codes, standards, regulations or advisories? If so: (a) state the name and address of the governmental agency or department, or the industry office; and (b) specifically identify the codes, standards, regulations or advisories by title and numerical, alphabetical or other coded designation.

15. Did you sustain any property damage or other economic loss as a result of the incident that is the subject of this lawsuit? If so, specify all such damages.

16. Do you contend that the product contained a design defect? If so, set forth your contention as to how the product should have been designed in a safer, more appropriate manner.

Certification

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

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts[, written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Note: New form interrogatory adopted July 10, 1998 to be effective September 1, 1998; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; certification amended to be effective .

Form B. Uniform Interrogatories to be Answered by Plaintiff: Property Damage to Motor Vehicle: Superior Court*

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

(Caption)

1. Was the claimant the sole owner of the motor vehicle involved in the alleged accident?

2. State the name and address of the person, firm or corporation, from whom the claimant purchased the motor vehicle and the date of purchase.

3. Was the motor vehicle new or used at the time of purchase?

4. State make, model and year of motor vehicle.

5. State amount paid by claimant for the motor vehicle.

6. State whether the motor vehicle has been repaired since the accident.

7. If so, give name and address of person, firm, or corporation making the repairs.

8. If so, state specifically the part or parts of the motor vehicle alleged to have been damaged in the accident and furnish a copy of the repair bill.

9. State date upon which claimant authorized the repair of the motor vehicle.

10. State date on which repairs were completed.

11. State the market value of this motor vehicle immediately before the accident.

12. State the market value of the motor vehicle in its damaged condition immediately after the accident.

13. State the market value of motor vehicle in its repaired condition.

14. Was the motor vehicle used in connection with claimant's business and, if so, state whether claimant was obliged to hire another motor vehicle for use in connection with that business, giving the name and address of person, firm or corporation from whom claimant hired the motor vehicle, the dates during which it was hired and the amount paid for its hiring.

15. If no repairs have been made, but an estimate of repairs has been obtained, attach a copy of the estimate to the answers to these Interrogatories, stating further the name and address of the person, firm or corporation who made the estimate.

16. Has the claimant sold or otherwise disposed of the motor vehicle?

17. If so, give the name and address of the person, firm or corporation to whom the motor vehicle was transferred, the date of the transfer, and the amount of consideration paid to the claimant therefor.

18. If it is alleged that the claimant incurred any other expenses or losses as a result of the alleged damage to the motor vehicle, set forth these additional alleged losses in detail, giving an itemized statement.

19. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

20. State the names and addresses of any and all proposed expert witnesses and annex true copies of all written reports provided to you by any such proposed expert witnesses.

Certification

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

I hereby certify that the copies of the reports annexed hereto provided by proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said experts[, either written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

[* If Form A is not used, questions 1, 2, 15, 16, 17, 18, 19 and 20 of Form A should be added to Form B.]

Note: Amended July 7, 1971 to be effective September 13, 1971; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; certification amended _____ to be effective _____.

Form C. Uniform Interrogatories to be Answered by Defendant in All Personal Injury Cases: Superior Court

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

(Caption)

1. State: (a) the full name and residence address of each defendant; (b) if a corporation, the exact corporate name; and (c) if a partnership, the exact partnership name and the full name and residence address of each partner.

2. Describe in detail your version of the accident or occurrence setting forth the date, location, time and weather.

3. If you intend to set up or plead or have set up or pleaded negligence or any other separate defense as to the plaintiff or if you have or intend to set up a counterclaim or third-party action, (a) state the facts upon which you intend to predicate such defenses, counterclaim or third-party action; and (b) identify a copy of every document relating to such facts.

4. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

5. State (a) the name and address of any person who has made a statement regarding this lawsuit; (b) whether the statement was oral or in writing; (c) the date the statement was made; (d) the name and address of the person to whom the statement was made; (e) the name and address of each person present when the statement was made; and (f) the name and address of each person who has knowledge of the statement.

Unless subject to a claim of privilege, which must be specified: (g) attach a copy of the statement, if it is in writing; (h) if the statement was oral, state whether a recording was made and, if so, set forth the nature of the recording and the name and address of the person who has custody of it; and (i) if the statement was oral and no recording was made, provide a detailed summary of its contents.

6. If you claim that the plaintiff made any statements or admissions as to the subject matter of this lawsuit, state: (a) the date made; (b) the name of the person by whom made; (c) the name and address of the person to whom made; (d) where made; (e) the name and address of each person present at the time the admission was made; (f) the contents of the admission; and (g) if in writing, attach a copy.

7. If you contend that the plaintiff's damages were caused or contributed to by the negligence of any other person, set forth the name and address of the other person and the facts upon which you will rely in establishing that negligence.

8. State the names and addresses of all eyewitnesses to the accident or occurrence, their relationship to you and their interest in this lawsuit.

9. If any photographs, videotapes, audio tapes or other forms of electronic recording, sketches, reproductions, charts or maps were made with respect to anything that is relevant to the subject matter of the complaint, describe: (a) the number of each; (b) what each shows or contains; (c) the date taken or made; (d) the names and addresses of the persons who made them; (e) in whose

possession they are at present; and (f) if in your possession, attach a copy, or if not subject to convenient copying, state the location where inspection and copying may take place.

10. State the names and addresses of any and all proposed expert witnesses. Set forth in detail the qualifications of each expert named and attach a copy of each expert's current resume. Also attach true copies of all written reports provided to you by any such proposed expert witnesses.

With respect to all expert witnesses, including treating physicians, who are expected to testify at trial, and with respect to any person who has conducted an examination pursuant to Rule 4:19, state each such witness's name, address and area of expertise and attach a true copy of all written reports provided to you. [If a report is not written, supply a summary of any oral report provided to you.]

State the subject matter on which your experts are expected to testify.

State the substance of the facts and opinions to which your experts are expected to testify and provide a summary of the factual grounds for each opinion.

11. If you contend or intend to contend at the time of trial that the plaintiff sustained personal injuries in any prior or subsequent accident, state: (a) the date of said accident; (b) the injuries you contend that plaintiff sustained; (c) the parties involved in said accident; (d) the source from which you obtained the information; and (e) attach a copy of any written documents regarding this information.

12. If you intend to rely on any statute, rule, regulation or ordinance, state the exact title and section.

13. Pursuant to R. 4:10-2(b), state whether there are any insurance agreements including excess policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. YES (____) or NO (____).

If the answer is "yes", attach a copy of each insurance agreement or policy, or in the alternative state: (a) number; (b) name and address of insurer or issuer; (c) inception and expiration dates; (d) names and addresses of all persons insured thereunder; (e) personal injury limits; (f) property damage limits; (g) medical payment limits; (h) name and address of person who has custody and possession thereof; and (i) where and when each policy or agreement can be inspected and copied.

14. Identify all documents that may relate to this action, and attach copies of each such document.

15. State whether you have ever been convicted of a crime. YES (____) or NO (____).

If the answer is "yes", state: (a) date; (b) place; and (c) nature.

For Automobile Cases, Also Answer Form C(1)

For Falldown Cases, Also Answer Form C(2)

For Medical Malpractice Cases, Also Answer Form C(3)

For Product Liability Cases (Other Than Pharmaceutical and Toxic Tort Cases), Also Answer Form C(4)

Certification

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

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts[, either written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Note: Amended July 17, 1975 to be effective September 8, 1975; entire text deleted and new text added July 13, 1994 to be effective September 1, 1994; entire text deleted and new text added June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; interrogatory 10 and certification amended to be effective .

Form C(1). Uniform Interrogatories to be Answered by Defendant in Automobile Accident Cases Only: Superior Court

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

(Caption)

1. With respect to the vehicle involved in the incident referred to in the complaint:

	Underline Answer	
(a) Do you admit ownership?	Yes	No
(b) Do you admit operation?	Yes	No
(c) Do you admit agency?	Yes	No

(d) Do you admit control? Yes No
(e) Do you admit the date and place? Yes No

2. If you do not admit ownership, state: (a) the name and address of the owner; (b) whether you were operating the motor vehicle with permission of the owner; and (c) the registration number, year, make, model and color of each motor vehicle owned by you on the date of the collision as alleged in the complaint.

3. If you do not admit operation, state the name and address of the operator.

4. If you do not admit agency and the owner was not also the operator, state: (a) the circumstances under which the vehicle came into the possession of the operator; (b) the purpose for which the vehicle was being used; and (c) its destination.

5. If you do not admit control: (a) state the name and address of the one in control; and (b) if control was in another by agreement, state the names and addresses of the parties to the agreement, whether the agreement was oral or written and briefly, the terms of the agreement.

6. If you do not admit the date and place of the collision as alleged in the complaint, state the date and place of the collision as you recall it.

7. State whether your vehicle was licensed under an Interstate Commerce Commission permit. YES (_____) or NO (_____).

If the answer is "yes", state: (a) the number of such permit; (b) the name and address of the permittee; and (c) the name and address of the lessee or other person in control, if any.

(Note: The term "your vehicle" in this and other questions herein has reference to the vehicle in which you were an occupant at the time of the collision.)

8. State on what street, highway, road or other place (designate which) and in what general direction (north, south, east or west) your vehicle was proceeding immediately prior to the collision. (You may include a sketch for greater clarity.)

9. With respect to fixed objects at the location of the collision, state as nearly as possible the point of impact. If you included a sketch, place an X thereon to denote the point of impact.

(Note: The term "point of impact" as used in this and other questions has reference to the exact point on the street, highway, road or other place where the vehicles collided.)

10. State whether there were any traffic control devices, signs or police officers at or near the place of the collision. If there were, describe them (i.e., traffic lights, stop sign, police officers, etc.) and state the exact location of each.

11. If you contend that there was a malfunction of a motor vehicle or equipment, state: (a) make, model and year of the motor vehicle and whether or not that vehicle was equipped with power brakes and steering; (b) the nature of the malfunction; (c) the date the motor vehicle was purchased and the name and address of the person from whom the motor vehicle was purchased; (d) the date that that portion of the motor vehicle in which the malfunction occurred was last inspected and the name and address of the person inspecting same; (e) the last date prior to the accident that that portion of the motor vehicle was repaired or replaced, the nature and extent of the repairs, the name and address of the person repairing or replacing same; (f) if the motor vehicle was repaired after the accident, state the name and address of the person repairing same and the nature of the repairs; and (g) attach a copy of any repair bills.

12. If the collision occurred at an uncontrolled intersection, state: (a) which vehicle entered the intersection first; (b) whether your vehicle came to a full stop before entering the intersection; and (c) if your vehicle did not come to a full stop before entering the intersection, state the speed of your vehicle when it entered the intersection.

13. State in terms of feet the distance between: (a) the front of your vehicle and the point of impact at the time you first observed the other vehicle or vehicles collided with, and state your speed at that time; (b) the front of the other vehicle or vehicles collided with and the point of contact at the time you first observed it or them and state its or their speed at that time; and (c) your vehicle and the vehicle or vehicles collided with at the time you first saw it or them.

14. State where each vehicle came to rest after the impact. Include the distance in terms of feet from the point of impact to the point where each vehicle came to rest.

15. State what part of your vehicle came into contact with what part of the other vehicle or vehicles involved.

16. State the following facts with respect to the collision: (a) time; (b) condition of weather; (c) condition of visibility; and (d) condition of roadway.

17. State the names and addresses of all persons occupying your vehicle.

18. Did you observe the plaintiff's vehicle prior to the accident? YES (_____) or NO (_____).

If the answer is "yes", set forth the time that elapsed from the time you first saw the plaintiff's vehicle until the impact occurred.

19. At the time of the impact, state the speeds of all vehicles involved in the collision.

20. Were you charged with a motor vehicle violation as a result of the collision? YES (_____) or NO (_____).

If the answer is "yes", state: (a) charge; (b) plea; and (c) disposition.

Certification

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

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts[, either written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Note: New form interrogatory adopted June 28, 1996 to be effective September 1, 1996; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; certification amended to be effective .

Form C(2). Uniform Interrogatories to be Answered by Defendant in Falldown Cases Only: Superior Court

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

(Caption)

1. If the accident or occurrence took place on or about any particular premises, area or location, or involved the use or presence of any object, thing, vehicle, equipment or property, state the name and address of the owner thereof.

2. If anyone other than the owner had any interest, custody, or possession or was in charge of such premises, area, location, object, thing, vehicle, equipment or property, state: (a) the name and address of such person, firm or corporation; and (b) the nature and extent of such interest, custody, possession or charge.

3. If you were not present at the time of the accident or occurrence, state: (a) whether you had notice or knowledge thereof; (b) when, where, in what manner and from whom such notice or knowledge was received or acquired; and (c) whether there was any person(s) acting on your behalf present on the premises at the time of plaintiff's injury and, if so, include their name(s) and address(es).

4. If prior to the accident or occurrence, you had actual notice or knowledge of the conditions, artificial or natural, alleged by the plaintiff to have caused or resulted in the accident or

occurrence, state: (a) on what date you had such actual notice or first acquired such knowledge; and (b) the manner in which such notice or knowledge was received or acquired.

5. If the complaint or any answers to interrogatories by plaintiff allege that artificial conditions caused or resulted in the accident or occurrence or was causally related thereto, state when and by whom such artificial conditions were created.

6. If you had notice of or were in any manner made aware of any such artificial conditions, state when and what steps you took to eliminate them or make them safe or give any notice of their existence.

7. Do you, or does any person acting on your behalf, have any reports concerning the occurrence of plaintiff's injury? YES ( ) or NO ( ).

If the answer is "yes", state: (a) the full name, present or last known address and telephone number of the person making it; (b) the date made; (c) the purpose of each report, including, but not limited to, investigatory or accident report; (d) the field of expertise and relationship to you of the person making it; (e) whether or not it was made in the regular course of business; (f) the findings; (g) whether it was written or oral; and (h) if written, attach a copy hereto, and if oral, set forth the substance thereof.

8. State whether any repairs were made to the premises or property after plaintiff's injury. YES ( ) or NO ( ).

If the answer is "yes", state: (a) the full name and present or last known address of each person who endeavored to correct the condition; (b) indicate the nature of the work performed; and (c) describe in detail the exact nature and location of the condition as it was found to exist prior to any work performed.

9. Do you claim that plaintiff was not lawfully on said premises at the time of the occurrence of the injury? YES ( ) or NO ( ).

If the answer is "yes", state: (a) what you claim to be the legal status of plaintiff at said time; and (b) the factual basis of your claim.

Certification

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

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts[, either written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Note: New form interrogatory adopted June 28, 1996 to be effective September 1, 1996; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; certification amended to be effective .

Form C(3). Uniform Interrogatories to be Answered by Defendant Physicians in Medical Malpractice Cases Only: Superior Court

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

(Caption)

1. Identify and describe the appearance of each and every person who was present in the vicinity of the alleged occurrence, giving the name, address and occupation of each such person and stating your relationship to each.

2. Describe in detail all aspects of your professional medical relationship with the plaintiff, indicating the date of commencement, the nature and extent of your medical relationship prior to the alleged occurrence, and the date and circumstances of the termination of your professional medical relationship.

3. In reference to the condition that forms the basis of the complaint, set forth:

(a) the date(s) and circumstances under which you saw plaintiff;

(b) any and all medical history given to you;

(c) the examination(s) conducted of the plaintiff;

(d) your findings on each examination;

(e) your prognosis and diagnosis following each examination; and

(f) any treatment or medication prescribed.

4. Attach your Curriculum Vitae or describe in detail your education, training, experience, published materials, service on boards and committees, continuing education and certifications, prior work and hospital affiliations, licenses and specialties.

5. Have your full rights or privileges to practice medicine been suspended, revoked or terminated in any state or hospital since you started to practice medicine? If the answer to this question is in the affirmative, state:

(a) the reason why your full rights or privileges to practice medicine or any hospital association were suspended, revoked or terminated; and

(b) the name of the state or hospital that suspended, revoked or terminated your full rights or privileges to practice medicine.

6. If you have ever been a defendant in a malpractice suit other than the present one, identify the case by name, court and docket number, and summarize the allegations against you and the outcome of the case, including the terms of any settlement.

7. Attach a complete copy of any written records or documents that you have regarding plaintiff, along with a typed transcription of any handwritten records and documents.

8. Attach a copy of all documents that the plaintiff signed consenting to any treatment or procedures performed or prescribed by you, as well as a copy of any literature, material, pamphlets, instructions or other information or documents that you supplied to plaintiff.

9. List all risks that you described to the plaintiff with respect to any treatment or procedures you prescribed or performed.

10. If you contend that the plaintiff's injuries were caused in whole or in part by an inherent defect in a drug, instrument, implement or other type of product or substance, identify each such allegedly defective item, including in your identification:

(a) a complete description of its appearance, and appearance of its container or wrapper, if any;

(b) the name and address of its manufacturer;

(c) the name and address of the dealer or seller who sold it to the person who owned it at the time of the alleged occurrence;

(d) the name, occupation, title, address and professional relationship to you of the person who owned it at the time of the occurrence;

(e) a description of the use to which it is normally put;

(f) its serial number, batch number or other specific identifying characteristics; and

(g) the medical name for this product and a lay description of it and its use.

11. If there were any reviews performed, including investigations undertaken, hearings held or reports prepared, by the hospital, its medical staff or any officer, committee or agency of the hospital or any public body or other person or persons concerning the condition that forms the basis of the complaint, state:

(a) the name and position of the person, persons or committee that performed the review;

(b) the date and time of each review;

(c) the name, address, profession or professional relationship to you of all persons present at each review;

(d) the nature and purpose of each review;

(e) whether the review was recorded; and

(f) the name and address of each person who has any records concerning each review.

12. Did you refer to or rely upon any medical texts or publications in connection with the diagnosis or treatment of plaintiff? If so, identify those items by title, author and publisher.

13. If you or your expert intend to rely on or use in any way at trial any treatise, identify the treatise by title, author and edition and indicate the pertinent portions to be relied on or used at trial.

14. If you claim that the alleged occurrence resulted from the plaintiff's own lack of care, set forth as fully and specifically as you can what acts, conduct or omissions constituted such lack of due care.

15. State the names and addresses of all consultants or other physicians who saw, examined and treated plaintiff at your request for the condition forming the basis of the complaint, and in relation to all such consultations or examinations by other physicians indicate:

(a) the reason you requested consultations or further examination;

(b) when the consultation or examination took place; and

(c) all opinions or reports rendered to you by the consultant or examining physician[, and if the reports were oral,] set forth the contents in detail.

16. The plaintiff in the complaint alleges that while under your care he/she sustained the injury and disability which is the subject matter of this lawsuit. In relation to such injury and disability, indicate in your opinion the cause of that injury and disability.

Certification

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

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts[, either written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Note: New form interrogatory adopted June 28, 1996 to be effective September 1, 1996; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; interrogatory 15(c) and certification amended to be effective .

Form C(4). Uniform Interrogatories to be Answered by Defendant in Product Liability Cases (Other Than Pharmaceutical and Toxic Tort Cases) Only: Superior Court

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

(Caption)

In propounding the interrogatories, plaintiff should provide this information:

(a) A description of the product, as specific as possible.

(b) The date and place of purchase, if known.

(c) The make, model and any serial number or other identifying decal or feature on the product.

(d) Any words printed on the product.

(e) If the product involved is a motor vehicle or has component parts, a description of any part(s) or system(s) claimed to be defective or negligently designed, manufactured or distributed, or otherwise complained of.

(f) A general description of the manner in which plaintiff claims to have been injured.

Answers to these interrogatories should be furnished within the context of the information provided by plaintiff in (a) through (f), above.

1. Did you manufacture the product? If so, state: (a) the date and place of manufacture; (b) the date you sold or otherwise distributed the product; and (c) the name and address of the person or entity that purchased the product from you. If you did not manufacture the product, state the name and address of the person or firm who did so. State the name and address of the person or entity from which you purchased the product.

2. Did you sell or otherwise distribute the product? If so, state: (a) the date on which you sold or otherwise distributed the product; (b) the names and addresses of all persons and entities that sold or otherwise distributed the product; and (c) the dates of sale and distribution for each such person or entity.

3. State the name and address of any person, firm or entity that did the following with respect to the product (if the product is a motor vehicle or has component parts, this question pertains to the subpart(s) or system(s) complained of): (a) designed it; (b) manufactured it; (c) assembled it; (d) packaged it; (e) distributed it, through sale or otherwise; (f) advertised it; (g) installed it; and (h) serviced or otherwise maintained it.

4. Were there any writings or warnings on the product itself, on its packaging, or on anything attached or appended to the product, when it left your control? If so, state specifically and fully the exact words used and their location. If a warning was given in other than words, attach copies of any and all symbols or depictions used.

5. State whether you provided to a distributor, possible user or any person or firm that you expected to come in contact with the product, any form of written material, such as an owner's manual, repair manual, parts manual or any other writing pertaining to the product. If so, attach a copy of any such written material. If you do not have a copy, state specifically what was written or depicted.

6. Have you or any other person or entity repaired, altered, or otherwise changed the design or specifications of the product (in the case of a motor vehicle or a product with component parts, this question refers to the subpart(s) or system(s) complained of) from the date of manufacturing to the date of the incident? If so, state: (a) the name and address of the person or entity who made the repair, alteration or change; (b) the date of each such change; (c) the specific details of the change; (d) the name and address of the officer, managing agent or other person(s) in your organization most involved with such change; and (e) the names and addresses of all your employees or agents who were involved in such change. If the change is displayed on plans, specifications, blueprints or other drawings, or described in any document, attach a legible copy of such plans, specifications, blueprints, drawings or documents.

7. If, from the date the product was manufactured until the date of the incident, any writings or warnings pertaining to the product were added, altered, or otherwise changed, state: (a) the date of each such change; (b) the specific words or symbols used in each such change; (c) the name and address of the officer, managing agent or other person(s) in your organization most involved

with such change; and (d) the names and addresses of all of your employees who were involved in such change.

8. Identify all correspondence between plaintiff and the defendant or its representatives, and attach copies.

9. State whether you intend to assert any defenses at the time of trial.

(a) If so, and the defenses are based upon the common-law, state the principle involved and fully provide the factual basis for any such defense.

(b) If so, and the defenses are based upon a statute, regulation or other written rule, identify each such statute, regulation or rule and fully provide the factual basis for any such defense.

(c) If so, and your defense is based upon an alteration, use, misuse of or other change in the product, indicate each such defense and fully provide the factual basis for any such defense.

10. State whether at any time prior to answering these interrogatories and subsequent to the date of manufacturing or distribution of the product itself or similar products by this defendant any person complained or alleged that he, she or anyone suffered bodily injuries or death as a result of using the product in the manner in which plaintiff claims to have used the product when the injury occurred. If so: (a) identify all such claimants and their attorneys; (b) describe as specifically as possible the product involved, including but not limited to the model and serial numbers; and (c) if a lawsuit was instituted against the defendant, state the names and addresses of the claimants, their attorney(s) and the court in which such claim was instituted.

11. If you allege that any other person or entity or product manufactured by any other person or entity is responsible for the incident, provide the name and address of that person or entity, identify the product, if any, and fully provide the factual basis for the allegation.

12. Are you a member of or affiliated with any trade organization or industry group that promulgates written standards, habits or customs pertaining to the product involved in the accident? If so, provide the address of each such organization or group, and attach a copy of the written standards promulgated.

13. Do you contend that the design, manufacture or distribution of the product was governed by any governmental and/or industry codes, standards, regulations or advisories? If so: (a) state the name and address of the governmental agency or department, or the industry office; and (b) specifically identify the codes, standards, regulations or advisories by title and numerical, alphabetical or other coded designation.

Certification

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

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts[, written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Note: New form interrogatory adopted July 10, 1998 to be effective September 1, 1998; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; certification amended to be effective .

Form D. Uniform Interrogatories by Defendant in Motor Vehicle Collision Case Involving Property Damage: Special Civil Part

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

PLEASE ANSWER THE FOLLOWING QUESTIONS WITH RESPECT TO THE COLLISION DESCRIBED IN THE PLAINTIFF'S COMPLAINT.

1. State the registration number, make, model and year of the plaintiff's vehicle.

2. Specifically describe the condition of the vehicle immediately before the collision.

3. Specifically describe how the vehicle was damaged in the collision.

4. Please state: A) Did you obtain an estimate of repairs for the damage to the vehicle? If so, B) list the estimated cost of each repair and attach a copy of the estimate of repairs including the name and address of the person or company providing the estimate.

5. Please state: A) Has the vehicle been repaired since the collision? If so, B) list each repair; C) the price paid for each repair; D) the date of each repair; E) the name and address of each person or company performing the repairs. Attach copies of all repair bills.

6. If the motor vehicle was declared a total loss, attach all documents relating to the Actual Cash Value of the vehicle, salvage value and any related expenses.

7. Please state: A) Did the plaintiff rent a replacement vehicle? If so, B) list the name of the company; C) the price paid; D) the length of time the rental was required; and E) the reasons the rental was required.

8. Please state: A) Did the plaintiff have any other expenses as a result of the collision? If so, B) give an itemized statement of each such expense; C) the cost of each such expense; and D) an explanation of the reason for the expense.

9. List the names and addresses of anyone who may have direct knowledge of any of the facts relating to the collision or this case. Include in your answer eyewitnesses and experts or other witnesses who may testify. Attach copies of expert reports, if any.

10. Give details of the accident: A) date; B) time; C) weather; D) visibility; and E) road condition.

11. Who was driving your vehicle at the time of the accident? Name and address.

12. List the names and addresses of the occupants of the vehicle and their location in the vehicle.

13. Where did the accident happen? Street and town.

14. Which street was your vehicle on at the time of the accident?

15. Which direction was your vehicle going at the time of the accident?

16. Where on the roadway did the collision take place? You may include a sketch for greater clarity.

17. Please state: A) How did this accident happen? B) Who was at fault and how? C) Any other factors you believe contributed to the accident.

18. Did the other driver break any laws? If so, which laws?

19. Please state: A) Were there traffic lights, signs, or other controls for any of the vehicles involved in the accident? If so, B) What kind of light, sign or control? C) Where were they? D) Who were they for?

20. Please state: A) Did the accident happen in an intersection? B) Who was in the intersection first? C) Did your car stop before it entered the intersection? D) How fast was your vehicle going when it entered the intersection?

21. Please state: A) How far was your vehicle from the other vehicle when it was first seen? B) How fast was your vehicle going when the other vehicle was first seen? C) How fast was the other vehicle going when it was first seen?

22. After the accident where did the vehicle stop?

23. State what part of your vehicle came into contact with what part of the other vehicle or vehicles involved.

Certification

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

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts[, either written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated: Signed:

Note: Amended July 7, 1971 to be effective September 13, 1971; entire text deleted and new text added June 28, 1996 to be effective September 1, 1996; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; certification amended to be effective _____.

Form E. Uniform Interrogatories by Plaintiff in Motor Vehicle Collision Case: Special Civil Part

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b)(3).

PLEASE ANSWER THE FOLLOWING QUESTIONS WITH RESPECT TO THE COLLISION DESCRIBED IN THE PLAINTIFF'S COMPLAINT.

1. Did you own one of the vehicles involved in the accident?

2. Were you driving one of the vehicles involved in the accident?

3. If it was your vehicle, but you were not driving, who was?

4. If it was your vehicle, but you were not driving, what was the driver doing with your vehicle?

5. If you were not the owner of the vehicle you were driving, give the name, address and telephone number of the owner.

6. If you were not the owner of the vehicle you were driving, list the vehicles you owned on the date of the accident.

7. If you were not driving your vehicle, give the name, address and telephone number of the person who was driving.

8. If you were not the driver, how did the driver get your vehicle and what was the driver doing with it?

9. List the names and addresses of the occupants of the vehicle and their location in the vehicle.

10. List the registration number, year, make and model of the vehicles involved in the collision.

11. Give details of the accident: A) date; B) time; C) weather; D) visibility; and E) road condition.

12. Where did the accident happen? Street and town.

13. Which street was your vehicle on at the time of the accident?

14. Which way was your vehicle going at the time of the accident?

15. Where on the roadway did the collision take place? You may include a sketch for greater clarity.

16. Please state: A) How did this accident happen? B) Who was at fault and how? C) Any other factors you believe contributed to the accident.

17. Did the other driver break any laws? If so, which laws?

18. Please state: A) Were there traffic lights, signs, or other controls for any of the vehicles involved in the accident? B) What kind of lights, signs or controls? C) Where were they? D) Who were they for?

19. Please state: A) Did the accident happen in an intersection? B) Who was in the intersection first? C) Did your vehicle stop before it entered the intersection? D) How fast was your vehicle going when it entered the intersection?

20. Please state: A) How far was your vehicle from the other vehicle when it was first seen? B) How fast was your vehicle going when the other vehicle was first seen? C) How fast was the other vehicle going when it was first seen?

21. After the accident where did the vehicles stop?

22. State what part of your vehicle came into contact with what part of the other vehicle or vehicles involved.

23. List the names and addresses of anyone who may have direct knowledge of any facts relating to the collision or case. Include in your answer eyewitnesses and experts or other witnesses who may testify at trial. Attach copies of expert reports, if any.

24. State whether you had insurance at the time of the accident. If yes, state name and address of all insurance companies and policy numbers.

Certification

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

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts[, either written or oral,] are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

DATED: SIGNED:

Note: Amended July 7, 1971 to be effective September 13, 1971; entire text deleted and new text added June 28, 1996 to be effective September 1, 1996; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; certification amended to be effective _____.

Form F. Notice to Client/Pro Se Party Pursuant to R. 4:23-5(a)(1)

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 supply fully responsive and certified answers to the interrogatories served on behalf of (name) prior to the filing of such a motion, and you must pay a restoration fee of $100.00 if the motion to vacate is made

within 30 days after entry of this order and in the amount of $300.00 if the motion is made thereafter.

Failure to file such a motion within 90 days after the entry of this order may result in the imposition of counsel fees and the assessment of costs against you or may forever preclude the restoration of the pleading(s) filed on your behalf.

Please be guided accordingly.

Note: Amended July 10, 1998 to be effective September 1, 1998.

Form G. Notice to Client/Pro Se Party Pursuant to R. 4:23-5(a)(2)

Please be advised that a motion has been filed with the court by _____ (name of party) _____ seeking to dismiss with prejudice the pleading(s) filed on your behalf. This relief is being requested because a previous order of dismissal without prejudice was entered and you have still not furnished fully responsive and certified answers to interrogatories. If this motion is granted, your claim will be dismissed and may not be subject to restoration or your answer will be stricken and judgment by default may be entered against you.

This motion will be heard at the courthouse, _____ (address) _____, New Jersey, on _____ (date) _____, 20__, at 9:00 a.m., before Judge _____.

You have the right to appear before the court and you will be afforded the opportunity to explain any exceptional circumstances that may exist to preclude the court from granting the relief requested. If you are pro se, your appearance before the court on the return date of the motion is mandatory.

Please be guided accordingly.

Note: Adopted July 10, 1998 to be effective September 1, 1998.

X. Proposed "Housekeeping" Amendments to *Rules* 1:3-4, 1:8-8, 1:30-2, 4:74-4 and 4:86-10

The Committee recommends "housekeeping" amendments to the following rules:

R. 1:3-4 — to delete the reference to *R*. 7:9-4 (motion for reduction or change of sentence) which as currently constituted contains no specific time limitation.

R.1:8-8 — to add the words "Juror Questions" to the caption to reflect more accurately the content of the rule.

R. 1:30-2 — to eliminate an outdated reference to "County Court" in the caption of this rule.

R.4:74-4 — to delete an outdated reference to *R*. 4:70 which, as currently constituted, does not govern proceedings for the confiscation or forfeiture of a chattel brought in a municipal court.

R. 4:86-10 — to eliminate an outdated reference to the Public Advocate in paragraph (c).

The proposed "housekeeping" amendments to *Rules* 1:3-4**,** 1:8-8, 1:30-2, 4:74-4 and 4:86-10 follow.

1:3-4. Enlargement of Time

(a) …no change.

(b) …no change.

(c) Enlargements Prohibited. Neither the parties nor the court may, however, enlarge the time specified by *R*. 1:7-4 (motion for amendment of findings); *R*. 3:18-2 (motion for judgment of acquittal after discharge of jury); *R*. 3:20-2, *R*. 4:49-1(b) and (c) and *R*. 7:10-1 (motion for new trial); *R*. 3:21-9 (motion in arrest of judgment); *R*. 3:21-10(a) [and *R*. 7:9-4 (motion for reduction or change of sentence)]; *R*. 3:23-2 (appeals to the Law Division from judgments of conviction in courts of limited criminal jurisdiction); *R*. 3:24 (appeals to the Law Division from interlocutory orders and orders dismissing the complaint entered by courts of limited criminal jurisdiction); *R*. 4:40-2(b) (renewal of motion for judgment); *R*. 4:49-2 (motion to alter or amend a judgment); and *R*. 4:50-2 (motion for relief from judgment or order).

Note: Source — *R.R*. 1:27-(a) (b) (c) (d) (e), 4:6-1, 8:12-5(a)(b). Paragraph (c) amended July 7, 1971, effective September 13, 1971. Paragraph (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended July 22, 1983 to be effective September 12, 1983; paragraph (c) amended July 26, 1984 to be effective September 10, 1984; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended January 5, 1998 to be effective February 1, 1998; paragraph (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended to be effective .

1:8–8. Materials to be Submitted to the Jury; Note-taking; Juror Questions

(a) ...no change.

(b) ...no change.

(c) ...no change.

Note: Source — *R.R.* 4:52–2; caption and text amended July 15, 1982 to be effective September 13, 1982; amended and paragraphs (a) and (b) designated July 10, 1998 to be effective September 1, 1998; new paragraph (c) added July 12, 2002 to be effective September 3, 2002; caption amended to be effective .

1:30-2. Terms of Court; Stated Sessions of Superior [and County] Court

(a) ...no change.

(b) ...no change.

Note: Source — *R.R.* 1:1-3, 1:28A, 2:1-2, 3:1-4, 4:6-2 (second sentence), 4:118-3. Paragraph (a) amended December 21, 1971 to be effective January 31, 1972; amended July 13, 1994 to be effective September 1, 1994; caption amended to be effective .

4:74-4. Appeals From Judgment of a Municipal Court for Confiscation or Forfeiture of a Chattel

Appeals from proceedings in a municipal court for the confiscation or forfeiture of a chattel [brought under *R.* 4:70 in a municipal court] shall be taken to the Superior Court, Law Division, insofar as practicable, in accordance with *R.* 4:74-3.

Note: Source — *R.R.* 5:2-6(c) (second sentence). Amended November 22, 1978 to be effective December 7, 1978; amended to be effective .

4:86–10. Appointment of Guardian for Persons Receiving Services From the Division of Developmental Disabilities

An action pursuant to *N.J.S.A.* 30:4–165.7 *et seq.* for the appointment of a guardian for a person over the age of 18 who is receiving services from the Division of Developmental Disabilities shall be brought pursuant to these rules insofar as applicable, except that:

(a) …no change.

(b) …no change.

(c) If the petition seeks guardianship of the person only, the Office of the Public Defender, if available, shall be appointed as attorney for the alleged mentally incapacitated person, as required by *R.* 4:86–4. If the Office of the Public Defender is unavailable or if the petition seeks guardianship of the person and the estate, the court shall appoint an attorney [other than the Public Advocate] to represent the alleged mentally incapacitated person. The attorney for the alleged mentally incapacitated person may where appropriate retain an independent expert to render an opinion respecting the mental incapacity of the alleged mentally incapacitated person.

(d) …no change.

Note: Adopted July 7, 1971 to be effective September 13, 1971; amended July 24, 1978 to be effective September 11, 1978. Former rule deleted and new rule adopted November 5, 1986 to be effective January 1, 1987; caption amended and paragraphs (b), (c) and (d) of former *R.* 4:83–10 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraphs (b), (c), and (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended _____ to be effective _____.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendments to *R.* 1:5-6 — Filing

In order to protect the party filing on the last day of a limitations period, an attorney requested that *R*. 1:5-6 be amended to include language stating, "For papers required to be filed with any court, the stamped received date shall be deemed to be the date of filing."

The Committee did not endorse such an amendment, reasoning that there is no problem with the rule itself and that any difficulty experienced by the attorney was the result of an administrative problem that should be addressed by the Trial Court Administrators' reminding staff about filing dates.

B. Proposed Amendments to *R.* 1:5-7 — Non-Military Affidavit

The President of Judgment Day Information Services, Inc. sought a revision to *R.* 1:5-7 expressly to permit faxed verification of military status. It had been his experience that some counties would not accept a faxed statement of non-military status from the Department of Defense.

The Committee considered this suggestion along with other proposed amendments to *R.* 1:5-7, but was of the view that no changes to the rule are necessary to address this issue.

See Section I E. of this Report for a discussion of other proposed amendments to this rule, which the Committee recommends.

C. Proposed Amendments to *R*. 1:6-3 — Filing and Service of Motions and Cross Motions, and *R*. 4:46-1 — Time for Making, Filing, and Serving Motion

Two amendments to the motions rules were proposed:

1) The Conference of Civil Presiding Judges recommended that *R*. 1:6-3 be amended to require that certain specific information be provided in a notice of motion directed to a *pro se* litigant because *pro se* litigants may not understand that they are expected to file a timely response if they object to the relief sought, that they have the right to request oral argument, and that they should not appear on the return date unless they are advised by the court that oral argument has been scheduled.

The Committee, having rejected a similar suggestion in the last rules cycle, reaffirmed its prior determination that there was no problem in the Law Division, Civil Part that would warrant the proposed amendment.

2) A Committee member suggested that motions be heard every third Friday instead of every other Friday in order to give judges and staff more time to review motions and to free up additional trial days.

The Committee took the position that current workload and scheduling practices do not support a reduction in the number of motion days and declined to endorse such an amendment.

D. Proposed Amendments to *R.* 1:7-6 — Non-Public Business Record

A retired judge recommended that *R.* 1:7-6 be amended expressly to permit the introduction of a certified copy of a non-public business record if the original has been offered to the adverse party prior to trial for inspection and comparison, thus avoiding the necessity of producing the original at trial.

The Committee determined that the best evidence rule already sanctions this procedure; consequently, no amendment to the rule is necessary.

E. Proposed Amendments to *R.* 1:8-8 — Materials to be Submitted to the Jury; Note-taking

Over the course of the 2002-2004 term, the Committee considered several issues relating to juror participation in the trial process:

1) The Supreme Court requested that the issue of whether written copies of the jury charge should be given to juries in civil or criminal cases, or both, be considered by the Model Charge Committees and the Civil and Criminal Practice Committees. Both Model Charge Committees and the Criminal Practice Committee have considered the issue and decided not to recommend a change to the rules, but to leave to the discretion of the judge, on a case by case basis, the decision of whether to distribute a copy of the charge to the jury.

The Committee agreed with the recommendation of the Model Charge and Criminal Practice Committees not to make provision of written copies of jury charges mandatory, but to leave the decision up to the discretion of the judge. Accordingly, the Committee makes no recommendation for a rule change.

2) The Jury Subcommittee, chaired by the Hon. Edith Payne, was reestablished to review Arizona's innovations respecting jurors, especially those rules addressing juror discussions during civil trials, and to make a recommendation on whether such innovations should be incorporated into New Jersey's court rules. The subcommittee concluded that increased participation did not seem to affect the verdict in a particular case, but it did affect juror satisfaction. The subcommittee, however, was not satisfied with the research to date on the efficacy of juror discussions. It determined that to conduct such research itself was prohibitive in terms of cost and personnel. Therefore, the subcommittee concluded that any marginal gain to be achieved from permitting juror discussions was too small and too unverifiable to warrant a

recommendation of the practice, which appears cumbersome to implement and open to considerable resistance from attorneys and judges alike. Accordingly, the subcommittee recommended no change to the existing court rules to permit juror discussions.

The Committee accepted the conclusions of the subcommittee and does not recommend an amendment permitting juror discussions during a civil trial.

See Section IV. B. of this Report for a discussion of other proposed amendments to this rule, which the Committee has held for consideration in the next term.

F. Proposed Amendments to *R.* 1:9 — Subpoena

Counsel to and a member of the Chester Volunteer Fire Company proposed adoption of new *R.* 1:9-7 to prohibit issuance of subpoenas to any non-party volunteer fire company or first aid squad, or to their members, except on good cause shown.

The Committee voted against recommending this amendment, taking the position that to single out a particular individual or group for exemption is to invite that same consideration for other individuals or groups, thus making the general rule unwieldy with special interest groups requesting similar treatment.

G. Proposed Amendments to *R.* 1:13-7 — Dismissal of Civil Cases for Lack of Prosecution

A retired Deputy Civil Case Manager suggested that *R.* 1:13-7 be amended to change the method of notifying parties of the potential dismissal of defendants from written notice to publishing the docket numbers of cases in the weekly legal publications.

The Committee rejected the suggestion. The current dismissal process targets specific defendants, and written notice allows the plaintiffs (even a *pro se* plaintiff who may not read the weekly legal publications) to know that its case may be dismissed as to the particular defendant.

See Section I. G. of this Report for discussion of other proposed amendments to this rule, which the Committee recommends.

H. Proposed Amendments to *R.* 4:4-7 — Return

The President of the New Jersey Professional Process Servers Association proposed, on behalf of the Association, sweeping changes to the caption and text of *R.* 4:4-7, as well as changes to the prescribed Affidavit of Service. Claiming the prescribed form of affidavit of service is inadequate to report the efforts of private process servers, he requested the rescission of the existing form and the development of new forms "to reflect the reality of service of process when made by the sheriff, or when made by a private process server." Alternatively, he suggested various changes to the format and substance of the existing form, should it be retained. He further proposed changing the current caption of *R.* 4:4-7 from "Return" to "Proof of Service" and to incorporate the suggested changes to the Affidavit of Service into the body of the rule.

The Committee agreed with the view expressed by the Clerk of the Superior Court, specifically, that the form in current use is not generating any problems, and determined that there is no need to change the existing rule and affidavit at this time. Accordingly, the Committee does not endorse the proposed amendments.

I. Proposed Amendments to *Rules* 4:6-2, 4:6-3, and 4:6-7 — re: Failure to State a Claim on Which Relief Can Be Granted

Based on his perception that *Rules* 4:6-2, 4:6-3, and 4:6-7 are not internally consistent, a judge sought clarification as to when and how the defense of failure to state a claim upon which relief can be granted must be presented.

Committee members opined that the language of the rules is clear and internally consistent. Consequently, the Committee determined that no clarifying rule amendments are necessary.

J. Proposed Amendments to *R.* 4:6-4 — Motion for More Definite Statement or to Strike or Dismiss for Impropriety of Pleading

An attorney suggested that *R.* 4:6-4 be amended to define the term "responsive pleading."

The Committee, taking the position that the term speaks for itself and that the rule is sufficiently clear, determined that there is no need to change the current rule.

K. Proposed Amendments to *R.* 4:10-3 — Protective Orders

The Protective Order Subcommittee, chaired by Professor Howard Erichson, was established in the 2000-2002 term to examine additional procedural safeguards for obtaining a protective order of confidentiality relative to documents exchanged in discovery, as suggested in *Estate of Frankl v. Goodyear,* MER-L-3052-99. Specifically, the subcommittee was charged with deciding whether *R.* 4:10-3 should be amended to require that a protective order be issued only when sought by motion and accompanied by an affidavit detailing the need for confidentiality and providing a citation to legal authority if the governing law is in doubt; in some cases, an evidentiary hearing will be necessary. A majority of the subcommittee recommended that *R.* 4:10-3 be amended to clarify that a party seeking a protective order must make a showing of good cause even if the parties stipulate to the order. They recommended the inclusion of language stating, "Good cause is not established merely by stipulation of the parties." A minority of the subcommittee recommended either no change to the rule or the inclusion of language stating, "Good cause is not established merely by stipulation of the parties. Accordingly, a protective order granting confidentiality to discovery materials pursuant to stipulation of the parties remains subject to challenge by non-parties that demonstrate a lack of good cause for the order."

The Committee discussed the proposals thoroughly and voted 18 to 17 against amending the rule. Those who favored a rule change preferred language that would require a specific finding of good cause rather than a compromise position permitting a collateral challenge to a protective order.

The chairperson of the subcommittee reviewed the subsequent opinion of the Appellate Division, *Estate of Frankl v. Goodyear*, Docket No. A-6473-01T3, decided September 11, 2003,

and determined that since the court in that opinion did not address the issue of the protective order, there was no need for the subcommittee to reconvene at this time. The Committee was informed that a petition for certification had been filed. Accordingly, the issue may be revisited should the Supreme Court address the conditions under which a protective order should be granted.

L. Proposed Amendments to *R*. 4:14-3 — Examination and Cross-Examination; Record of Examination; Oath Objections

An attorney had observed that in practice an attorney cannot make any objections to "errors and irregularities" (such as misunderstanding of a long and complex question or misuse of grammar) at a deposition. He suggested that *R*. 4:14-3(c) be amended to add language similar to that present in *R*. 4:16-4 (Effect of Errors and Irregularities in Depositions) to allow any attorney present at a deposition to make any objection, or clarify any error or irregularity if it is a problem "which might be obviated, removed or cured if promptly presented."

The practitioners on the Committee shared their experiences with the deposition process, and concluded that no rule change is needed. Therefore, the Committee does not recommend the proposed amendment.

M. Proposed Amendments to *R.* 4:19 — Physical and Mental Examination of Person

In *Palmer v. Steinmann*, Docket Number A-1790-02T3F, decided April 21, 2003, the court addressed but did not decide the question of whether a plaintiff's attorney may insist on being present during a physical examination of a client, referring the issue to the Civil Practice Committee to develop a statewide policy. After a lengthy discussion regarding the current practice, the Committee determined that the attorney's presence at the physical examination is a matter to be decided on motion by the judge on a case by case basis rather than an issue to resolved by a court rule. Accordingly, the Committee does not support an amendment to *R.* 4:19 that would give blanket permission or permission based on a showing of good cause to plaintiff's attorney to be present at a client's physical examination.

The Committee also declined to recommend an amendment that would require the party being examined to bring for the examining physician's review all original diagnostic films on which the treating physicians or experts relied in forming their opinions. The Committee is of the opinion that authorization to obtain the examining record is adequate.

N. Proposed Amendments to *R.* 4:23-5 — Failure to Make Discovery

The Committee considered and rejected three amendments proposed to *R.* 4:23-5:

1) An attorney suggested that *R.* 4:23-5(a) be amended to allow a party moving to obtain a response to a discovery request to recover from the adversary the cost of filing the motion if the response to the discovery request is provided before the return date of the motion.

The Committee declined to support this amendment, recognizing that such a rule change would implicate the broader policy issue of allowing taxed costs to all prevailing parties on all motions.

2) An attorney suggested that *R.* 4:23-5(c) be amended to cross-reference *R.* 4:17, the interrogatory rule, to include interrogatories in the list of types of discovery for which a motion to compel may be filed.

The Committee determined that such an amendment is not necessary because *R.* 4:23-5(a) already provides a procedure, namely, a motion for an order dismissing or suppressing the pleading of the delinquent party, to obtain relief when answers to interrogatories are unresponsive or are not timely provided.

3) A Committee member suggested that *R.* 4:23-5 be amended to require that an evasive or incomplete answer to an interrogatory be treated as a failure to answer.

The Committee did not believe that such an amendment is necessary under best practices.

O. Proposed Amendments to R. 4:44A — Proceedings to Approve Transfer of Structured Settlement Payment Rights

Pursuant to the Supreme Court's Order of 6/4/02, which relaxed and supplemented *R.* 4:44 to set forth procedures to be followed for any application for the transfer or assignment of settlement rights brought under the Structured Settlement Protection Act, *N.J.S.A.* 2A:16-63 through 2A:16-69, the Committee recommended conforming amendments. It was suggested as part of the amendments that a guardian *ad litem* be appointed to represent the payee/assignor.

The Committee determined that, because the court has the inherent authority to appoint a guardian where needed, there was no need for a rule amendment, especially since appointment of a guardian *ad litem* is not appropriate in every case.

See Section I. P. of this Report for discussion of other proposed amendments to this rule, which the Committee recommends.

P. Proposed Amendments to *R.* 4:74-7 — re: Discovery Prior to Involuntary Commitment Under the Sexually Violent Predator Act

I/M/O the Commitment of G.D., 358 *N.J. Super*. 310 (App. Div. 2003) addressed but did not resolve discovery problems involved in commitments under the Sexually Violent Predator Act. Late submissions of experts' reports appear to be a systemic problem. The court declined to impose a discovery rule to alleviate the situation, finding the topic more appropriate for the Civil Practice Committee to address. The Committee was asked if it wished to recommend a rule amendment to provide specific timing for discovery under the Sexually Violent Predator Act

The Committee acknowledged the problem, but agreed with position taken by the Attorney General's representative to the Committee, *i.e*. the problem of late submissions of experts' reports is one that should be worked out between the Attorney General and the Public Defender. Accordingly, the Committee declined to recommend a rule amendment to specify timing for discovery under the Sexually Violent Predator Act.

An attorney who represents the interests of the CFG Health Systems, LLC, a service provider with contracts for Involuntary Civil Commitment evaluations with several hospitals and institutions in New Jersey, requested that *R.* 4:74-4 be amended to permit the production and forwarding of the required physician's certificate in an electronic format.

The Committee members questioned how such a signature could be authenticated and agreed that technology had not yet advanced to a point where they could recommend a rule amendment to permit an electronic signature in cases in which an individual's liberty is at issue.

Q. Rules Inquiry — Notice of Cross-Motion in Response to Order to Show Cause

Based on his experience with some judges permitting and some judges denying such applications, an attorney inquired whether a notice of cross-motion may be filed in response to an Order to Show Cause. The Committee was asked if it wished to recommend a rule amendment to clarify and standardize the practice regarding the submission of a notice of cross-motion to the "return date relief" of the Order to Show Cause.

The Committee concluded that such a clarifying amendment is not necessary as *R*. 4:67-4 states that a defendant may respond to an order to show cause by filing a motion.

R. Proposed Amendments to Appendix II — Uniform Interrogatories C

Because judges across the state have conflicting positions on what defendant doctors may testify to with respect to issues of proximate cause and standard of care, an attorney proposed that the interrogatories be amended to require a defendant physician in a medical malpractice case to advise if he or she intends to give expert testimony as to causation, prognosis and standard of care and, if so, to provide these opinions. These questions were referred to the Discovery Subcommittee.

The subcommittee determined that no amendments are necessary because information regarding causation is already requested in the form interrogatory at # 16, that a deposition could provide the information regarding the physician's opinion on prognosis and standard of care, and that these issues were not specific to medical malpractice cases and would, therefore, require amendments to all the rules and interrogatories regarding expert reports.

The Committee accepted the recommendation of the subcommittee.

See Section I. W. of this Report for discussion of other proposed amendments to the Uniform Interrogatories, which the Committee recommends.

S. Document Review Subcommittee

In the prior rules cycle, an attorney had sought clarification of a perceived case law conflict regarding the right of a questioning attorney to review documents examined by a deponent prior to a deposition. The trial court in *PS&G Shareholder Litigation*, 320 *N.J. Super*. 112 (Ch. Div. 1998) held, without analysis or discussion, that documents used to refresh a witness's recollection must be produced. This is in apparent conflict with the Third Circuit's decision in *Sporck v. Peil*, 759 *F*.2d 312 (3d Cir. 1985), holding that if the documents reviewed by the witness prior to testimony are selected by the attorney, the identity of the documents is protected from disclosure by the attorney work-product privilege. The Committee considered and rejected the suggestion that a rule be drafted to reconcile the two cases, concluding it was not its function to arbitrate between state and federal law and that case law, as it develops, will resolve any conflicts or confusion.

During this discussion, it was pointed out that the comments to *Evidence Rule* 612 cited *Hannan v. St. Joseph's Hospital*, 318 *N.J. Super*. 22 (App. Div. 1999) for the proposition that there is no waiver of privilege or requirement for documents to be produced when they are used in connection with a deposition. Because the issue in the *Hannan* case concerned documents used in connection with the answering of interrogatories where the witness said he had not referred to the documents prior to his deposition, a Committee member asked that the Committee revisit the issue to determine if the *Hannan* holding applies to depositions, *i.e*. whether document review in preparation for deposition makes the documents discoverable.

A subcommittee was formed to review the current case law and to make a recommendation on whether any change or clarification was needed in the discovery rules regarding documents reviewed in preparation for testimony. The subcommittee concluded that

no change was needed because there was no inconsistency in the holdings of the cases reviewed. Examining attorneys may review and question a witness about documents used to refresh the witness's recollection for the purpose of testifying. Deposition objections to assert and protect claims of privilege are permitted. Therefore, the subcommittee recommended that no changes to the current rules be made.

The Committee endorsed the recommendation of the subcommittee and determined that no changes to the discovery rules were needed.

III. OTHER RECOMMENDATIONS

A. Proposed Amendments to *R.* 4:43-2 — Final Judgment by Default

The Administrative Director of the Courts had asked for an expedited review of and recommendations on the practice in some counties whereby the clerk routinely includes attorneys' fees in judgments, with no review by a judge of the reasonableness of the fees.

After a discussion in which consensus was reached that a rule amendment was not the most appropriate or effective remedy, the Committee recommends that an Administrative Directive be issued stating that if a judgment has a provision for payment of non-statutory attorney's fees, the judgment must be entered by the court, not the clerk.

B. Proposed Amendments to *R.* 4:42-11 — re: Prejudgment Interest on Future Losses

In the 2000-2002 rules cycle, the Committee was asked to consider the issue of prejudgment interest on future lost wages and future damages for pain and suffering. The Committee's discussions of this issue ranged over several meetings. In the end the Committee agreed that the long-standing practice of awarding prejudgment interest on future economic and non-economic losses should continue and proposed an amendment to *R.* 4:42-11 to clarify the issue.

The Supreme Court rejected the Committee's proposal and directed that *R.* 4:42-11 be amended to reflect the position taken by a minority of the Committee, *i.e.* that no prejudgment interest be permitted on any future loss. The Committee drafted a rule in accordance with the Supreme Court's directive. The Committee also submitted to the Court a statement in which it explained its modified position that there should be no prejudgment interest on future economic losses, but that prejudgment interest should be awarded on non-economic damages because they are returned in a lump sum verdict and not separated into pre-judgment and post-judgment amounts. The Supreme Court agreed with the position of the Committee and issued an order dated 4/28/03 adopting an out-of-cycle amendment to *R.* 4:42-11 that prohibits prejudgment interest on any recovery for future economic losses.

C. Proposed Amendments to *R.* 4:72-4 — re: Name Changes

Rule 4:72-4 required a certified copy of a judgment of name change to be filed with the Secretary of State. In 2000, *N.J.S.A.* 52:16-8 was enacted, providing that whenever a law directs a filing to be made with the Secretary of State, "that law shall be construed to mean a filing with... the State's commercial recording program, no matter where the program is assigned as part of any government reorganization plan." Pursuant to *N.J.S.A.* 52:16-8.1(b), the filing requirement applied to "legal name changes" which the Office of Commercial Recording construes to mean all name change judgments, whether pertaining to individuals or commercial entities. As part of Governor Whitman's Reorganization Plan 004-1998, effective 5/29/98, the Office of Commercial Recording was transferred from the Secretary of State to the Department of the Treasury's Division of Revenue. Accordingly, court-ordered name changes of individuals are now being recorded in the Legal Name Change Unit of the Division of Revenue within the Department of the Treasury.

The Committee agreed to eliminate the outdated reference to the Secretary of State in *R.* 4:-72-4 and to substitute language indicating that the certified copy of the judgment should be filed in the appropriate office of the Department of the Treasury. The Committee also recognized an apparent conflict between the New Jersey statutes, *N.J.S.A.* 2A:52-1 and 52-2, which require the inclusion of the applicant's social security number on both the name change application and on the judgment, and the Federal Privacy Act which prohibits disclosure of social security numbers. Accordingly, the Committee recommended amending *R.* 4:72-4 to require that the social security number be redacted from the published name change judgment.

This recommendation was submitted to the Supreme Court out-of-cycle. By Order dated 6/30/03, the Supreme Court adopted the proposed amendments to be effective immediately.

IV. MATTERS HELD FOR CONSIDERATION

A. Proposed Amendments to *R.* 1:8-3 — Examination of Jurors; Challenges

Two attorneys questioned the adequacy of current practices regarding *voir dire*. One suggested that the rule be amended to require each person who is called for jury duty to fill out a form containing ten specific questions and to allow each attorney either to ask an additional ten questions or to conduct up to one-half hour of direct *voir dire*. The second attorney suggested the incorporation of a uniform set of *voir dire* questions in the court rules, similar to the interrogatories now included in the Appendix.

A V*oir Dire* Subcommittee, chaired by the Hon. Edith Payne, was formed to consider the development of (1) a *voir dire* course at the 2003 Judicial College as well as *voir* dire training for the new judge orientation program; (2) a questionnaire for jurors to complete for use by attorneys; (3) standard *voir dire* questions to be included as an appendix to the Rules of Court; and (4) an amendment to *R.*1:8-3 to express a bias in favor of the judge asking all reasonable attorney questions in *voir dire*. The subcommittee developed and presented a course on *voir dire* at the 2003 Judicial College. The remainder of its mandate will likely be subsumed by the soon-to-be-established Supreme Court Special Committee on Peremptory Challenges and Jury *Voir Dire*. The subcommittee, however, stands ready to address any related issues as the Court may direct.

In addition, a Committee member suggested that, in order to bring New Jersey's practice into conformity with other states, *R.* 1:8-3 be amended to require that prospective jurors swear or affirm that the answers they will be giving to the court's questions in *voir dire* are true. After a discussion of some of the advantages and disadvantages of such a requirement, the Committee decided that the issues inherent in this proposal are complex and require more study before a

recommendation can be made. Accordingly, the Committee agreed to table this matter for further deliberation in the 2004-2006 term.

B. Proposed Amendments to *R.* 1:8-8 — Materials to be Submitted to the Jury; Note Taking

A Civil Presiding Judge questioned whether this rule should be amended to address the situation where a juror submitted a question to the judge asking if a witness who had previously testified and been excused could be recalled to respond to further written questions submitted by the juror. The judge noted that, unless directed otherwise, he would handle such situations on a case-by-case basis, taking into account, among other factors, the adversary's position on the request.

Committee members suggested that the issue is broader than that posed by the judge and questioned whether jurors should be permitted to request the recall of and submit written questions for a witness in a taped *de bene esse* deposition and whether jurors could request the recall of a medical expert for questioning after the case had been settled as to that expert. These issues were referred to the Jury Subcommittee, chaired by the Hon. Edith Payne, to develop a proposal for consideration by the full Committee. The work of the subcommittee will continue in the 2004-2006 term.

See Section II. E. of this Report for a discussion of other proposed amendments to this rule, which the Committee does not recommend.

C. Proposed Amendments to *Rules* 4:6-2, 4:6-3, 4:6-6, and 4:6–7 — re: Timely Presentation of Defenses

The Chair of the Committee suggested that amendments to *Rules* 4:6-2, -3, -6, and/or -7 be considered to address the problem presented by a statute of limitations defense that is pled in the answer but not raised by motion or otherwise until the conclusion of discovery and the commencement of trial. Committee members discussed whether it would be more appropriate to compel the raising of such a defense early on or to leave the failure to do so to be addressed by the court on a case-by-case basis. They expanded the issue to include a consideration of whether all defenses should be raised in one dispositive motion, rather than in *seriatim* motions. Because the discussion raised additional issues, a subcommittee, chaired by Marianne Espinosa Murphy, Esq., was formed to study the topic in depth for a presentation of recommendations to the Committee in the 2004-2006 term.

D. Proposed Amendments to *R.* 4:32 — Class Actions

Amendments to the Federal Rule governing class actions, *F.R.Civ.P*. 23, on which New Jersey *Rule* 4:32 is based, became effective on 12/01/03. A subcommittee, chaired by the Hon. Charles Walsh, will study these amendments in the next term and determine whether the New Jersey rule should be revised to comport with the federal changes and, if so, what form the revisions should take.

E. Proposed Amendments to *R.* 4:69 — Actions in Lieu of Prerogative Writs — re: Opportunity to Air Public Interest Issues in Prerogative Writ Actions

A Committee member noted that there is often a "public interest" in the issues underlying the governmental action being challenged in a prerogative writ action, but that the public interest is never fully aired if the parties settle. Reference was made to the opinion in *Dell'Aquila v. Board of Adjustment*, 225 *N.J. Super*. 116, 123 (App. Div. 1988) in which the Appellate Division held that there should be a public hearing of the issues raised in a prerogative writ action for the public's benefit. The question is how such a hearing can be accomplished.

The Committee discussed this issue at length. One of the problems is that not every prerogative writ action implicates the public interest. A subcommittee, chaired by the Hon. Maurice J. Gallipoli, was formed to study if and/or how the rule might be amended to make sure that the public interest is not thwarted when a plaintiff agrees to settle a prerogative writ case. Topics to be considered include the adequacy of the notice to the public that a prerogative writ case has been filed, the discretion to be accorded a judge concerning the settlement of such cases, and what can be done to air public interest issues fully before such a case is settled and dismissed.

The work of the subcommittee will continue into the 2004-2006 term.

F. Health Insurance Portability and Accountability Act ("HIPPA") Authorizations

Because of the variety of idiosyncratic HIPAA forms used by health care providers and the delay in discovery caused by having to obtain the appropriate form, several judges and attorneys suggested that the Civil Practice Committee develop a HIPAA-compliant form acceptable to and for use by medical providers and attorneys alike. The Committee expressed interest in the issue but declined to draft a HIPAA-compliant form as attorneys in the Division of Law are already in the process of doing so. Accordingly, the Committee informed those involved in the drafting that it would be willing to review and provide input to any document that was developed.

G. Pre-Trial Discovery — The Cost of Producing Electronic Documents

The Committee was presented with two questions related to the payment for electronically produced discovery. The first question is, who is to pay for the time and expense incurred by the responding party in sorting through electronic records to retrieve and restore relevant but otherwise inaccessible material? This issue was addressed in a New York case, *Zubulake v. UBS Warburg*, 217 *F.R.D.* 309 (S.D.N.Y. 2003), in which the judge listed seven factors to be considered in determining which party should bear the cost of production of electronic discovery. The second question is, who is to pay for the cost of producing paper copies from discovery material provided to the requesting party in electronic form, *e.g.* cd roms. The Committee referred the questions to the Discovery Subcommittee, chaired by S. Robert Allcorn, Esq., for consideration in the coming (2004-2006) term, when the legal profession will have had the benefit of greater experience with electronic discovery.

V. MISCELLANEOUS MATTERS

A. Proposed Amendments to *R.* 4:53 — re: Compensation of Attorneys in Receivership Actions

A retired judge suggested that *R.* 4:53 be amended to clarify the procedures governing the compensation of attorneys employed by *pendite lite* receivers in mortgage foreclosure or matrimonial proceedings, in aid of executions, or the like. *Rule* 4:53-3 requires the court's approval before any payment may be made to the attorney in such receivership situations. This procedure has generally been applicable to corporate receiverships, but not to discretionary receiverships ancillary to on-going actions where the attorneys have been routinely compensated without the necessity of the pre-approval process. In the alternative, it was suggested that, if the more stringent requirements of *R.* 4:53-3 are to be followed, there should be some provision in the rules to protect attorneys from performing extensive services with no assurance of payment.

Committee members had not found this issue to be a problem. Because the situation arises most often in the Chancery Division, however, the Committee referred the matter to the Conference of General Presiding Judges for its review and recommendations.

B. Proposed Amendments to *R.* 4:65-5 — Sheriff's Sale, Objections

A Committee member submitted the opinion in *Mercury Capital Corp. v. Freehold Office Park, Ltd*., 363 *N.J.Super*. 235 (Ch. Div. 2003) as an illustration of the possible need for clarification of the meaning or the application of *R*. 4:65-5 as to the length of the time period in which to exercise a right of redemption.

From the discussion among the Committee members, it became clear that the practice was not uniform throughout the state. The Committee referred this matter to the Conference of General Equity Presiding Judges for its consideration and possible recommendations for a statewide policy.

Respectfully submitted,

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Dated: January 20, 2004