2020 REPORT

OF THE SUPREME COURT

CIVIL PRACTICE COMMITTEE

January 2020

Table of Contents

APPENDICES

I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to *Rules* 1:40-12(c) and 4:21A-2 re: Civil Arbitration

The Supreme Court Arbitration Advisory Committee proposes amending paragraph (c) of *Rule* 1:40-12 to remove general reference to the recommendation and approval of arbitrators for inclusion on the Civil Arbitrator roster, in lieu of reference to *Rule* 4:21A-2, which lists the specific qualifications for inclusion on the Civil Arbitration program roster.

The Arbitration Advisory Committee also proposes amending *Rule* 4:21A-2 to: (1) streamline existing language in the Rule regarding necessary qualifications for inclusion on the Civil Arbitrator roster, the appointment and duties of the local arbitrator selection committee, and assignment from the roster; (2) explicitly reference the required initial training and continuing education requirements pursuant to *Rule* 1:40-12(c); and (3) permit a designee of the Assignment Judge to approve recommendations for inclusion on the roster and assignments to arbitration matters, allowing for flexibility of process at the vicinage level.

The Committee unanimously agrees with the proposed rule amendments as they will streamline and clarify the rules regarding arbitrator qualifications, requirements and appointments.

The proposed amendments to *Rules* 1:40-12(c) and 4:21A-2 follow.

1:40-12. Mediators and Arbitrators in Court-Annexed Programs

(a) …no change.

(b) …no change.

(c) Arbitrator Qualification and Training. Arbitrators serving in judicial arbitration programs shall have the minimum qualifications prescribed by *Rule* 4:21A-2 [and must be annually recommended for inclusion on the approved roster by the local arbitrator selection committee and approved by the Assignment Judge or designee]. All arbitrators shall attend initial training of at least three classroom hours and continuing training of at least two hours in courses approved by the Administrative Office of the Courts.

(1) …no change.

(2) …no change.

(3) …no change.

(4) …no change.

(d) …no change.

Note: Adopted July 14, 1992 as Rule 1:40-10 to be effective September 1, 1992; caption amended, former text redesignated as paragraphs (a) and (b), paragraphs (a)3.1 and (b)4.1 amended June 28, 1996 to be effective September 1, 1996; redesignated as Rule 1:40-12, caption amended and first sentence deleted, paragraph (a)1.1 amended and redesignated as paragraph (a)(1), paragraph (a)2.1 amended and redesignated as paragraph (a)(2), paragraph (a)2.2 amended and redesignated as paragraph (b)(5), new paragraphs (a)(3) and (a)(4) adopted, paragraph (a)3.1 redesignated as paragraph (a)(5), paragraph (a)3.2 amended and incorporated in paragraph (b)(1), paragraph (a)4.1 amended and redesignated as

paragraph (b)(6), paragraph (b)1.1 amended and redesignated as paragraph (b)(1), paragraphs (b)2.1 and (b)3.1 amended and redesignated as paragraphs (b)(2) and (b)(3), paragraph (b)4.1 redesignated as paragraph (b)(4) with caption amended, paragraph (b)5.1 amended and redesignated as paragraph (b)(7) with caption amended, new section (c) adopted, and paragraph (b)5.1(d) amended and redesignated as new section (d) with caption amended July 5, 2000 to be effective September 5, 2000; paragraphs (a)(3) and (b)(1) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b)(1), (b)(3), and (c) amended July 28, 2004 to be effective September 1, 2004; caption amended and paragraph (a)(4) caption and text amended June 15, 2007 to be effective September 1, 2007; new paragraph (a)(6) caption and text adopted, paragraph (b)(1) amended, paragraph (b)(2) deleted, paragraphs (b)(3) and (b)(4) redesignated as paragraphs (b)(2) and (b)(3), paragraph (b)(5) amended and redesignated as paragraph (b)(4), and paragraphs (b)(6) and (b)(7) redesignated as paragraphs (b)(5) and (b)(6) July 16, 2009 to be effective September 1, 2009; subparagraphs (b)(2) and (b)(4) amended July 21, 2011 to be effective September 1, 2011; subparagraph (a)(3) caption and text amended, subparagraphs (a)(4), (a)(6), (b)(1), (b)(2) and (b)(4) amended, former subparagraph (b)(5) redesignated as subparagraph (b)(6), former subparagraph (b)(6) redesignated as subparagraph (b)(7), new subparagraphs (b)(5) and (b)(8) adopted July 27, 2015 to be effective September 1, 2015; subparagraphs (a)(3) text, (a)(5) caption and text, and (b)(1) text and paragraph (c) amended July 28, 2017 to be effective September 1, 2017; paragraph (c) amended to be effective .

4:21A-2. Qualification, Selection, Assignment and Compensation of Arbitrators

(a) Inclusion on Roster

(1) Qualifications. An applicant for inclusion on a roster of arbitrators maintained by the Administrative Office of the Courts shall be either: (1) a retired judge of any court of this State who is not on recall; or (2) an attorney admitted to practice in this State having at least ten years of consistent and extensive experience in New Jersey in any of the substantive areas of law subject to arbitration under these rules.

(2) Arbitrator Training Requirements. To be listed on the approved roster of arbitrators, the applicant must have completed the initial training and continuing education required by *R*. 1:40-12(c).

(3) Certified Civil Trial Attorneys. A Certified Civil Trial Attorney with the requisite experience, who has also completed the training and continuing education required by *R*. 1:40-12(c), will be entitled to automatic inclusion on the roster.

(4) Local Arbitrator Selection Committee

(A) Generally. The arbitrator selection committee, which shall meet at least once annually, shall be appointed by the county bar association and shall consist of at least: one attorney regularly representing plaintiffs in each of the substantive areas of law subject to arbitration under these rules, one attorney regularly representing defendants in each of the substantive areas of law subject to

arbitration under these rules, and one member of the bar who does not regularly represent either plaintiff or defendant in each of the substantive areas of law subject to arbitration under these rules. The members of the arbitrator selection committee shall be eligible for inclusion in the roster of arbitrators.

(B) Screening Process. The local arbitrator selection committee will submit recommendations for the roster to the Assignment Judge or designee for final approval. The committee shall review the roster of arbitrators annually and, when appropriate, shall make recommendations to the Assignment Judge to remove arbitrators from the roster.

[(a)] (b) Assignment By Stipulation. All parties to the action may stipulate in writing to the number and names of the arbitrators. The stipulation shall be filed with the civil division manager within 14 days after the date of the notice of arbitration. The stipulated arbitrators shall be subject to the approval of the Assignment Judge or designee and may be approved whether or not they met the requirements of paragraph (b) of this rule if the Assignment Judge or designee is satisfied that they are otherwise qualified and that their service would not prejudice the interest of any of the parties.

[(b)] (c) [Appointment] Assignment From Roster. If the parties fail to stipulate to the arbitrators pursuant to paragraph [(a)] (b) of this rule, the arbitrator shall be designated by the civil division manager from the roster of arbitrators maintained by the Assignment Judge. [on recommendation of the arbitrator

selection committee of the county bar association. Inclusion on the roster shall be limited to retired judges of any court of this State who are not on recall and attorneys admitted to practice in this State having at least ten years of consistent and extensive experience in New Jersey in any of the substantive areas of law subject to arbitration under these rules, and who have completed the training and continuing education required by *R*. 1:40-12(c). A Certified Civil Trial Attorney with the requisite experience, who has also completed the training and continuing education required by *R*. 1:40-12(c), will be entitled to automatic inclusion on the roster. The arbitrator selection committee, which shall meet at least once annually, shall be appointed by the county bar association and shall consist of one attorney regularly representing plaintiffs in each of the substantive areas of law subject to arbitration under these rules, one attorney regularly representing defendants in each of the substantive areas of law subject to arbitration under these rules, and one member of the bar who does not regularly represent either plaintiff or defendant in each of the substantive areas of law subject to arbitration under these rules. The arbitrator selection committee shall review the roster of arbitrators annually and, when appropriate, shall make recommendations to the Assignment Judge to remove arbitrators from the roster. The members of the arbitrator selection committee shall be eligible for inclusion in the roster of arbitrators.] The Assignment Judge shall file the roster with the Administrative Director of the

Courts. A motion to disqualify [a designated] an assigned arbitrator shall be made to the Assignment Judge or designee on the date of the hearing.

[(c)] (d) Number of Arbitrators. All arbitration proceedings in each vicinage in which the number and names of the arbitrators are not stipulated by the parties pursuant to paragraph (a) of this rule shall be conducted by either a single arbitrator or by a two arbitrator panel, as determined by the Assignment Judge or designee.

[(d)] (e) Compensation of Arbitrators.

(1) [Designated] Assigned Arbitrators. Except as provided by subparagraph (2) hereof, a single arbitrator designated by the civil division manager, including a retired judge not on recall, shall be paid a per diem fee of $350. Two-arbitrator panels shall be paid a total per diem fee of $450, to be divided evenly between the panel members.

(2) …no change.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 10, 1998 to be effective September 1, 1998; caption amended, paragraph (c) amended, and new paragraph (d) adopted July 5, 2000 to be effective September 5, 2000; paragraphs (b) and (d)(1) amended, and former paragraph (d)(3) deleted July 12, 2002 to be effective September 3, 2002; paragraphs (b), (c), (d)(1), and (d)(2) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) amended July 28, 2017 to be effective September 1, 2017; paragraph (b) amended July 27, 2018 to be effective September 1, 2018; new paragraph (a) adopted, former paragraph (a) caption and text amended and redesignated as

paragraph (b), former paragraph (b) caption and text amended and redesignated as paragraph (c), former paragraph (c) amended and redesignated paragraph as (d), former paragraph (d) amended and redesignated paragraph as (e) to be effective .

B. Proposed Amendments to *Rule* 2:4-3 – Tolling of Time for Appeal and Certification

The Appellate Division Rules and Management Committees propose amending *Rule* 2:4-3 to provide that the filing of a motion for reconsideration of an order granting pretrial detention pursuant to *Rule* 2:9-13 is a tolling event with respect to the defendant's time to appeal. *Rule* 2:9-13 provides seven days from entry of an order granting pretrial detention to file an appeal. As a result, those defendants who elect to first file motions for reconsideration with the trial court often miss the seven-day deadline.

The Committee agrees with the proposed amendments noting it is not infrequent that defendants are in this situation without an attorney or public defender and may risk losing the right to appeal if they move for reconsideration.

The proposed amendments to *Rule* 2:4-3 follow.

2:4-3. Tolling of Time for Appeal and Certification

The running of the time for taking an appeal and for the service and filing of a notice of petition for certification shall be tolled:

(a) …no change.

(b) …no change.

(c) In criminal actions on an appeal to the Appellate Division by the timely filing and service of a motion to the trial court for judgment pursuant to *R.* 3:18-2, or for a new trial pursuant to *R.* 3:20, or in arrest of judgment pursuant to *R.* 3:21-9, or for reconsideration of an order granting pretrial detention pursuant to *R.* 2:9-13, or for rehearing or to amend or make additional findings of fact pursuant to *R.* 1:7-4. The remaining time shall again begin to run from the date of the entry of an order denying or disposing of such a motion; or

(d) …no change.

(e) …no change.

Note: Source – *R.R.* 1:3-3(a) (c) (d) (e) (f) (g), 1:10-4(b); paragraph (e) amended November 5, 1986 to be effective January 1, 1987; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (c) and (e) amended July 27, 2006, to be effective September 1, 2006; paragraph (c) amended to be effective .

C. Proposed Amendments to *Rules* 1:6-3 and 4:6-2 re: Motion Cycles

1. The Conference of Civil Presiding Judges proposes that the time provisions of a motion to dismiss for failure to state a claim upon which relief can be granted be amended to provide for a 28-day cycle rather than the 16-day cycle. The Conference suggests that the motion timing provisions should be extended, as these motions to dismiss are often complex and routinely adjourned.

The Committee unanimously agrees with the Conference's suggestion to provide for a 28-day cycle for motions to dismiss as the complexity and importance of these types of motions require more than a 16-day cycle.

2. As a corollary to the proposed amendments to *Rule* 4:6-2 to provide for a 28-day cycle for motions to dismiss, the Committee recommends that *Rule* 1:6-3 be amended to address the change in cycle for motions to dismiss.

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

1:6-3. Filing and Service of Motions and Cross-Motions

(a) Motions Generally. Other than an ex parte motion and except as otherwise provided by *R*. 4:6-2(e) (dismissal for failure to state a claim), *R*. 4:46-1 (summary judgment) and *R*. 5:5-4(c) (post judgment motions), a notice of motion shall be filed and served not later than 16 days before the specified return date unless otherwise provided by court order, which may be applied for *ex parte*. Thus, for example, if the return date of the motion is a Friday, the motion must be filed and served not later than the Wednesday, 16 days prior. If a motion is supported by affidavit or certification, the affidavit or certification shall be filed and served with the motion. Except as provided by *R*. 4:49-1(b) (motion for new trial), any opposing affidavits, certifications or objections filed pursuant to *R*. 1:6-2 shall be filed and served not later than 8 days before the return date unless the court relaxes that time. Thus, for example, if the return date is on a Friday, any response must be filed and served no later than Thursday of the prior week. Reply papers responding to opposing affidavits or certifications shall be filed and served not later than 4 days before the return date unless the court otherwise orders. Thus, for example, such papers must be filed and served on Monday for a return date of the following Friday. No other papers may be filed without leave of court.

(b) …no change.

(c) …no change.

Note: Source – *R.R.* 3:11-1, 4:6-3(a); amended July 24, 1978 to be effective September 11, 1978; amended July 16, 1979 to be effective September 10, 1979; amended July 16, 1981 to be effective September 14, 1981; amended November 1, 1985 to be effective January 2, 1986; amended June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994; amended and paragraphs (a), (b) and (c) designated July 10, 1998 to be effective September 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; paragraph (b) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended to be effective .

4:6-2. How Presented

Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by *R.* 4:6-3, may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, (f) failure to join a party without whom the action cannot proceed, as provided by *R.* 4:28-1. If a motion is made raising any of these defenses, it shall be made before pleading if a further pleading is to be made. No defense or objection is waived by being joined with one or more other defenses in an answer or motion. Special appearances are superseded. A motion to dismiss based on defense (e), and any opposition thereto, shall be filed and served in accordance with the time frames set forth in *R.* 4:46-1. If, on a motion to dismiss based on [the] defense [numbered] (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by *R.* 4:46, and all parties shall be given reasonable notice of the court's intention to treat the motion as one for summary judgment and a reasonable opportunity to present all material pertinent to such a motion.

Note: Source — *R.R.* 4:12-2 (first, second and fourth sentences); amended July 23, 2010 to be effective September 1, 2010; amended July 27, 2018 to be effective September 1, 2018; amended to be effective .

D. Proposed Amendments to *Rule* 4:22-1 – Requests for Admission

During the last rules cycle, a practitioner suggested that that *Rule* 4:22-1 be amended to mirror *Federal Rule of Civil Procedure* 36(a), which permits requests for admission to extend to opinions as well as facts. The attorney contended that changing the Rule to allow requests for admission of opinions will result in a reduction of disputed issues to be decided by the trier of fact. This item was held over from last rules cycle to provide the Committee with sufficient time to address members' concerns.

During this rules cycle, the Discovery Subcommittee looked into how federal courts have handled opinion requests for admissions and whether such requests have posed a problem. While there is not a significant amount of published case law on this issue, the Subcommittee concluded that allowing opinion requests for admission has not caused any significant problems since the Federal Rule was amended in 1970.

The Subcommittee also determined the Rule amendment could help reduce wasted effort on truly uncontested issues. Case law provides a mechanism for separating proper requests to admit in matters of opinion from improper requests to admit matters for ultimate resolution by a trier of fact.

The Subcommittee proposes that the term "or opinion" be added to the existing Rule rather than trying to narrow the Rule further with limiting language. The Committee agrees with the Subcommittee's proposal. Allowing the Rule to

extend to the admission of appropriate opinions will help eliminate superfluous issues, unnecessary expense, and expedite trials.

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

4:22-1. Request for Admission

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

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

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

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

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

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

1978; amended July 13, 1994 to be effective September 1, 1994; first paragraph amended to be effective .

E. Proposed New *Rule* 4:25-8 re: Motions *in Limine*

In the last rules cycle, the Committee recommended a new rule governing motions *in limine*. The proposal was prompted by *Cho v. Trinitas Reg'l Med. Ctr.*, 443 *N.J. Super*. 461 (App. Div. 2015), *certif. denied*, 224 *N.J*. 529 (2016). That case held that it was impermissible for a party to serve a "motion *in limine*" on the eve of trial when the motion sought dismissal of the action.

The Supreme Court declined to act on the proposal, returning the issue to the Committee for further study and review. As part of that review, the Subcommittee on Motions *in Limine* considered comments of the New Jersey State Bar Association, which had objected to the prior proposal.

In so doing, the Subcommittee crafted a proposed rule blending some of the Bar's suggestions with language from the earlier proposal. More broadly, the Subcommittee reaffirmed its support for a rule essentially for the same reasons as expressed previously. Those reasons include maintaining uniformity in the system, avoiding the late filing of motions that might have a dispositive effect and encouraging prompt resolution of admissibility questions.

The new proposal retains the current practice of including motions *in limine* as part of the pretrial exchange of information required under *Rule* 4:25-7(b). This differs from the prior proposal, which had setup a separate motion schedule. In maintaining the pretrial exchange architecture, the new proposal would eliminate

the need to charge a separate filing fee, a factor important to the State Bar and other stakeholders.

The new proposal also requires, to the extent practical, that each motion *in limine* shall embrace one issue. The Committee's earlier proposal did not contain that requirement.

Another feature of the new proposal is that it would limit briefs to five pages per single-issue motion. If more than one motion is filed, there would be a collective page limit per party of 50 pages. The prior proposal required a 20-page limit on briefs, without specifying single-issue motions or providing any collective page limit.

The new proposal retains the flexibility of the earlier one, such as allowing the trial court to reconsider or modify any prior *in limine* ruling on its own or at the request of a party based on later developments at trial. It also allows a party to seek the admission or rejection of evidence at trial, notwithstanding any failure to seek an earlier *in limine* ruling.

The Committee unanimously approves this revised Motion *in Limine* proposal, which also had been recommended unanimously by the Subcommittee. The Subcommittee's Report is included as Appendix 1.

The proposed new *Rule* 4:25-8 follows.

4:25-8. Motions in Limine

(a) Definition; Procedures; Timeframes.

(1) Definition. In general terms and subject to particular circumstances of a given claim or defense, a motion in limine is defined as an application returnable at trial for a ruling regarding the conduct of the trial, including admissibility of evidence, which motion, if granted, would not have a dispositive impact on a litigant's case. A dispositive motion falling outside the purview of this rule would include, but not be limited to, an application to bar an expert's testimony in a matter in which such testimony is required as a matter of law to sustain a party's burden of proof. A motion in limine shall be part of the pretrial exchange under *R*. 4:25-7(b). As a result, the filing of such motions shall not trigger any filing fee.

(2) Motion Deadlines. Unless otherwise ordered or permitted by the court, the parties shall submit, serve and respond to all motions in limine for which pretrial rulings are sought pursuant to the timeframes found under *R*. 4:25-7(b) and paragraph 4 of Appendix XXIII. Such motions shall be attached as exhibits to the pretrial exchange.

(3) Briefs. To the extent practicable, each motion in limine shall embrace one issue. The respective briefs of the movant and respondent shall comply with the line and type-point requirements of *R*. 1:6-5, except that the page limitation shall be 5 pages, exclusive of any tables of contents or authorities. No reply briefs by movant shall be permitted unless requested by the court. If more than one

motion is submitted, the collective page limit for all motions by a single party shall not exceed 50 pages, exclusive of any tables of contents or authorities. A party may apply to the court to submit an over-length brief or seek relief from the collective page limit in the same manner described under *R*. 1:6-5.

(4) Rulings. The court shall rule on all motions submitted under this rule in a timely manner based on the issue raised in the particular motion. In the event the motion is not decided before opening statements, the court shall direct the litigants on whether or to what extent they may refer to the disputed evidence or other issue raised in the motion in the opening statements or otherwise, until such time as the motion is decided.

(b) Non-compliance. Motions not submitted in accordance with paragraph (a) (2) need not be decided pursuant to paragraph (a)(4), unless good cause is shown for the non-compliance, with an opportunity for any party opposing the late submission to be heard. Good cause may include but not be limited to the circumstance under which a party receives information as part of the pretrial exchange and such information forms a good faith basis regarding the admissibility of evidence.

(c) Preservation of rights. The failure to submit a motion in limine under this rule shall not preclude a party from seeking to admit evidence, or objecting to the admission of evidence, during trial.

(d) Preservation of rulings. A trial court's ruling on a motion in limine shall not preclude the court from reconsidering or modifying that ruling, sua sponte or at the request of a party, based on later developments at trial.

Note: New *Rule* 4:25-8 adopted to be effective .

F. Proposed Amendments to *Rule* 4:59-1(e) re: Wage Executions

The Supreme Court Special Civil Part (SCP) Practice Committee proposes amending *Rule* 4:59-1(e) to: (1) eliminate the requirements that a moving party submit an additional proof of service of the Notice of Application of Wage and a proposed form of order in Special Civil Part matters; (2) clarify which document triggers the 45-day time period within which the Notice of Application must be filed; and (3) explicitly reference the required submission of the certification of amount due for SCP wages applications only pursuant to *Rule* 6:7-1(a).

The SCP Practice Committee determined the requirement to submit an additional proof of service for SCP wage applications is duplicative because the mandated Notice of Application for Wage (Appendix XI-I) contains the required certification of service upon the judgment debtor. Further, the wage execution order form (Appendix XI-J) is auto-generated and issued by the SCP Office. The SCP Practice Committee found that is it is unnecessary for the moving party in SCP matters to submit the form of order. Pursuant to *Rule* 6:7-1(a), a certification of amount due is required for wage applications. Currently, *Rule* 4:59-1(i) does not reference this additional requirement so the SCP Practice Committee believes the Rule should explicitly set forth the requirement.

In essence, the proposed Rule reflects the current practice. The Committee unanimously agrees with the SCP Practice Committee and recommends the Rule amendment as proposed.

The proposed amendments to *Rule* 4:59-1(e) follow.

4:59-1. Execution

(a) …no change.

(b) …no change.

(c) …no change.

(d) … no change.

(e) 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 comply with the requirements of paragraph (a) of this rule and 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 on the defendant's named employer, (2) the limitations prescribed by 15 U.S.C. §§ 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 ten days after service of the notice of reasons why the order should not be entered, (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 application for 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 except in the Special Civil Part no order is required to be submitted. In the Special Civil Part, the copy of the notice of application for wage execution along with the certification of amount due in accordance with R. 6:7-1(a) shall be filed with the clerk. No wage execution order shall be [entered] issued unless the [form of order] notice of application was filed within 45 days of service of the notice upon the judgment debtor or 30 days of the date of the hearing. The [writ] 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 seven days of receipt of the objection.

(f) …no change.

(g) …no change.

(h) …no change.

(i) …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 July 28, 2004 to be effective September 1, 2004; paragraphs (a) and (d) amended, and new paragraph (h) adopted July 27, 2006 to be effective September 1, 2006; paragraphs (a) and (f) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) redesignated as subparagraph (c)(2), new paragraph (c) caption adopted, new subparagraph (c)(1) caption and text adopted, and paragraph (g) amended July 23, 2010 to be effective September 1, 2010; paragraph (a) amended, former paragraphs (b) through (h) redesignated as paragraphs (c) through (i), new paragraph (b) adopted, redesignated paragraph (h) amended, and caption added to redesignated paragraph (i) July 19, 2012 to be effective September 4, 2012; paragraph (i) amended July 22, 2014 to be effective September 1, 2014; paragraph (c) amended July 27, 2015 to be effective September 1, 2015; paragraph (e) amended to be effective .

G. Proposed Amendments to *Rule* 4:74-7

An ad hoc committee was formed by the Acting Administrative Director of the Courts to review the civil commitment process. The ad hoc committee recommends that paragraph (c) of *Rule* 4:74-7 be amended to remove the reference to the term "good cause" with respect to the adjournment of a civil commitment hearing. Subparagraph (c)(1) specifically requires that the order of temporary commitment include a date certain for the hearing, which "shall not be subject to adjournment except that in exceptional circumstances and for good cause shown...." In practice, courts generally consider only whether there are exceptional circumstances to justify adjournment of the commitment hearing, without separately requiring proof of "good cause."

The Committee unanimously agrees with the ad hoc committee and recommends the Rule amendment as proposed.

The proposed amendments to *Rule* 4:74-7 follow.

4:74-7. Civil Commitment – Adults

(a) …no change.

(b) …no change.

(c) Temporary Commitment. The court may enter an order of temporary commitment to treatment authorizing the assignment of a person to an outpatient treatment provider or the admission to or retention of custody by a facility pending final hearing if it finds probable cause, based on the documents filed in accordance with paragraph (b) of this rule, to believe that the person is in need of involuntary commitment to treatment. The order of temporary commitment shall include the following terms:

(1) A place and day certain for the commitment hearing, which shall be within 20 days from the initial commitment to treatment. The date shall not be subject to adjournment except that in exceptional circumstances [and for good cause] shown in open court and on the record the hearing may be adjourned for a period of not more than 14 days.

(2) Assignment of counsel to present the case for involuntary commitment as required by statute.

(3) Assignment of counsel to represent an unrepresented patient, whose fees shall be fixed by the court after hearing and paid pursuant to paragraph (i) of this rule.

(4) The persons to be notified by the county adjuster of the admitting county of the time and place of hearing, the mode of service of the notice, and the time within which notice must be served. Notice shall be served not less than 10 days prior to the date of the hearing, nor shall any mode of service of the notice on the patient be permitted other than personal service. In addition to the patient, the patient's counsel, and the patient's guardian or guardian ad litem, if any, notice shall also be given to the county counsel, the nearest relatives of the patient, the county adjuster of the county in which the patient has legal settlement, and the director or chief executive officer of the inpatient facility or hospital or outpatient treatment provider. The court may order notice to be served on any other person. The form of notice served upon the patient and the patient's counsel or guardian ad litem shall include a copy of the temporary court order, a statement of the patient's rights at the hearing and the screening or clinical certificates and supporting documents.

(d) …no change.

(e) …no change.

(f) …no change.

(g) …no change.

(h) …no change.

(i) …no change.

(j) …no change.

Note: Source – paragraphs (a) (b) (c) (d) (e) (f) and (g), captions and text deleted and new text adopted July 17, 1975 to be effective September 8, 1975; paragraphs (a), (b), (c), (e), (f) amended and (j) caption and text deleted and new caption and text adopted September 13, 1976, to be effective September 13, 1976; paragraphs (b), (d), and (f) amended July 24, 1978, to be effective September 11, 1978; paragraph (f) amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended July 22, 1983 to be effective September 12, 1983; paragraphs (e) and (f) amended and paragraphs (g) and (h) caption and text amended November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (b) amended, subparagraphs (b)(1) and (2) adopted, paragraphs (c), (d) and (e) amended, caption and text of paragraph (f) amended, and caption and text of subparagraphs (g)(1) and (2) amended November 7, 1988 to be effective immediately; November 7, 1988 amendments rescinded February 21, 1989 retroactive to November 7, 1988; November 7, 1988 amendments reinstated June 6, 1989 to be effective June 7, 1989; subparagraph (c)(2) amended June 6, 1989 to be effective June 7, 1989; paragraph (g) recaptioned and text adopted and paragraphs (g) (h) (i) and (j) redesignated (h) (i) (j) and (k) June 29, 1990 to be effective September 4, 1990; paragraphs (c), (e) and (g) amended July 14, 1992 to be effective September 1, 1992; paragraphs (b)(2), (c)(1) and (4), (e), (f), (h)(2), (i)(1) and (2)and (k) amended July 13, 1994 to be effective September 1, 1994; amended January 22, 1997 to be effective March 1, 1997; paragraph (f)(2) amended July 27, 2006 to be effective September 1, 2006; paragraph (f)(2) amended July 9, 2008 to be effective September 1, 2008; paragraphs (a), (b), (c), (e), and (h) amended, paragraph (f) caption and text amended, new subparagraphs (f)(3) and (f)(4) adopted, and paragraph (i) caption and text amended July 10, 2012 to be effective August 1, 2012; paragraph (c)(1) amended to be effective .

H. Proposed Amendments to *Rule* 4:80-1 re: Voluntary Discharge of Personal Representatives

The Civil Practice Division suggests amending *Rule* 4:80-1 to address the voluntary discharge of a personal representative of an estate. Pursuant to *N.J.S.A*. 3B:10-30.1, whenever a personal representative for an estate appointed by the Surrogate's Court is unwilling or unable to perform the duties and powers of the office, the representative may be voluntarily discharged upon consent of all interested parties and the filing for voluntary discharge with the Surrogate's Court in the county that granted the personal representative's appointment. The proposed new paragraph (e) sets forth the procedures to apply for a voluntary discharge of a personal representative.

The proposed new rule language was endorsed by the Judiciary-Surrogates Liaison Committee, as well as the Conference of General Equity Presiding Judges. The Committee unanimously recommends the Rule amendment as proposed.

The proposed amendments to *Rule* 4:80-1 follow.

4:80-1. Application

(a) …no change.

(b) …no change.

(c) …no change.

(d) …no change.

(e) Voluntary Discharge. A personal representative for an estate who is unwilling or unable to perform the duties and powers of the office may file for voluntary discharge with the Surrogate's Court of the county that granted the personal representative's letters.

(1) A voluntary discharge filing shall include the following:

(A) A Request for Voluntary Discharge of Personal Representative form, in such form as promulgated by the Administrative Director of the Courts, containing the following information:

(i) The name of the personal representative seeking to be discharged, and the representative's address where future pleadings involving the estate can be served;

(ii) The name and address of every party in interest to the estate, and a description of that party's interest;

(iii) A statement by the personal representative that every party in interest to the estate as listed pursuant to subparagraph (ii) above, or the guardian or other legal representative of any minor or incapacitated party in interest, has consented

to the voluntary discharge of the personal representative, as well as to a waiver of the additional requirement that the personal representative file a verified final account with the Chancery Division, Probate Part for adjudication, showing the true condition of the estate, in order to release any sureties on the personal representative's bond; and

(iv) A statement that the personal representative's voluntary discharge is not intended to impair the rights of any party in interest or creditor of the estate.

(B) The written, notarized consent of every party in interest as listed pursuant to subparagraph (A)(ii) above, or that of any minor or incapacitated party's guardian or other legal representative, to the voluntary discharge of the personal representative and to the waiver of the filing of a verified final account with the Chancery Division, Probate Part for adjudication, showing the true condition of the estate, in order to release any sureties on the personal representative's bond.

(2) A voluntary discharge filing shall be accompanied by an application completed by another person to be appointed as a successor or substitute personal representative for the estate.

(3) If all parties in interest to the estate do not consent to waiving the additional requirement that the personal representative file a verified final account showing the true condition of the estate pursuant to paragraph (1) above, a verified final account shall be filed with the Chancery Division, Probate Part for

adjudication. Any sureties on the bond of the personal representative shall not be released until a final judgment has been rendered on the verified final account of the estate.

(4) Notwithstanding any consent by every party in interest to waive the requirement of a verified final account of an estate, a creditor of that estate whose interest has not been satisfied may petition the Superior Court for an accounting of the estate.

(5) A personal representative shall be discharged from the further performance of the duties and powers of the office, and the personal representative's letters revoked, upon the approval of the personal representative's voluntary discharge filing by the Surrogate's Court. The personal representative shall account for and pay over the money and assets with which the personal representative is chargeable by virtue of the office to the successor or substitute personal representative.

(6) A personal representative who is voluntarily discharged from the office pursuant to an approved voluntary discharge filing shall not be entitled to any statutory commissions relating to the performance of the duties and powers of that office.

Note: Source – *R.R.* 4:99-1, 5:3-2; caption of rule, and text of paragraphs (a) and (b) amended, new paragraph (c) adopted, and former paragraph (c) redesignated as paragraph (d) and amended June 29, 1990 to be effective

September 4, 1990; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; new paragraph (e) adopted to be effective .

I. Proposed Amendments to Appendix II

1. Request for Place of Birth in Form A(1) (Medical Malpractice) Interrogatories

The Judiciary has undertaken a review of all Judiciary forms in order to remove references to immigration and citizenship status of a litigant when such information does not serve a legitimate court-related need. This review process revealed that Form A(1) Uniform Interrogatories for medical malpractice cases, as presented in Appendix II of the Rules of Court, ask for the plaintiff's place of birth. This is the only form interrogatory that seeks this information.

In *Serrano v. Underground Utils. Corp*., 407 *N.J. Super*. 253 (App. Div. 2009), a case involving claims of unpaid wages, defense counsel attempted to probe into plaintiffs' immigration status and other related matters during depositions of the plaintiffs, contending that such inquiries were relevant to plaintiffs' credibility. Plaintiffs asserted the inquiries were improper and designed to intimidate them. On leave granted, the Appellate Division affirmed, with certain modifications and conditions, the trial court's protective order restricting the discovery of information relating to plaintiffs' immigration and residency status.

The Committee considered whether the inquiry into a plaintiff's place of birth serves a legitimate court-related need in medical malpractice cases. The Committee concluded that requesting a plaintiff's place of birth does not serve a legitimate court-related need and thus unanimously recommends striking that

portion of Interrogatory No. 1 of Form A(1) Interrogatories. The Committee noted that removing the request should not be construed as preventing a litigant from requesting this information in a supplemental interrogatory in the event there is a case-specific need to delve into a particular plaintiff's immigration or residency status. If posed as a supplemental interrogatory, such a request would be subject to the plaintiff's right to object and seek a protective order.

2. Request for SSN in Form A (Personal Injury) and A(1) (Medical Malpractice) Interrogatories

In review of Form A (Personal Injury – Non Medical Malpractice) and Form A(1) (Medical Malpractice) Interrogatories, the Committee considered whether it is appropriate to include a standard request for plaintiff's Social Security number.

The Committee determined the uniform request for a plaintiff's Social Security number does not serve a legitimate court-related need and should be removed from the form interrogatories. If a party determines that it is relevant to the matter, the inquiry can be posed in supplemental interrogatories, subject to a plaintiff's right to move for a protective order, if appropriate.

The proposed amendments to Form A and A(1) Uniform Interrogatories of Appendix II follow.

APPENDIX II. - INTERROGATORY FORMS

Form A. Uniform Interrogatories to be Answered by Plaintiff in All Personal Injury Cases (Except Medical Malpractice 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, date of birth, [Social Security number,] and Medicare number, if applicable. If Medicare number is applicable, attach a copy of the Medicare card.

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.

17. …no change.

18. …no change.

19. …no change.

20. …no change.

21. …no change.

22. …no change.

23. …no change.

24. …no change.

TO BE ANSWERED ONLY IN AUTOMOBILE ACCIDENT CASES

25. …no change.

26. …no change.

27. …no change.

28. …no change.

29. …no change.

30. …no change.

31. …no change.

32. …no change.

33. …no change.

34. …no change.

35. …no change.

36. …no change.

37. …no change.

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 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 Effective 09/01/2016, 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 July 28, 2004 to be effective September 1, 2004; caption and final instruction amended July 23, 2010 to be effective September 1, 2010; interrogatory 1 amended July 19, 2012 to be effective September 4, 2012; former number 25 renumbered as 37, and new numbers 25 through 36 added August 1,

2016 to become effective September 1, 2016; interrogatory 1 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, and date [and place] of birth[, and Social Security number].

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.

17. …no change.

18. …no change.

19. …no change.

20. …no change.

21. …no change.

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 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 July 28, 2004 to be effective September 1, 2004; new paragraph 19 added July 23, 2010 to be effective September 1, 2010; interrogatory 10 amended July 19, 2012 to be effective September 4, 2012; interrogatory 1 amended to be effective .

J. Proposal for a Track V in Law Division – Civil Part

The Committee proposes creation of a new Track V in Law Division, Civil Part matters. In discussing, among other things, concerns raised by the New Jersey State Bar Association (NJSBA) regarding the application of discovery deadlines in Tracks I through IV and the disposition of civil cases, the Discovery Subcommittee developed the concept of an additional case track in the Civil Part.

The Subcommittee acknowledges that the reforms of Best Practices have promoted efficient handling of civil cases, but notes a new Track V could address particular cases which have complexities or nuances that present difficulties in the cases being resolved within the standardized time constraints and procedures of the existing tracks. The proposed new track would address such cases without completely eliminating court oversight and allow for a more collaborative case management option.

The proposed Track V, if endorsed by the Court, would include the following concepts:

- Parties would file a motion for inclusion or removal from Track V with the Civil Presiding Judge.
- Civil Presiding Judges would be the "gatekeepers" for inclusion or removal from the track.

- Consent of the parties, in addition to counsel, would be required to ensure that the parties understand the potential consequences of being included in the Track V process.
- Cases in Track V would not be subject to discovery time constraints.
- Counsel would be required to report to the Civil Presiding Judge on the status of the case twice per year.
- Once the parties are ready for trial, counsel would advise the court. Placement on the trial list would be at the discretion of the Civil Presiding Judge.
- If the Civil Presiding Judge removes a case from Track V, it will be returned to its original track assignment and, a case management conference would be scheduled within 45 days of removal.

The Chair referred this item to the Conference of Civil Presiding Judges for consideration. Although the Conference expressed some concerns regarding the process and procedure for cases in the proposed new track, it supported the concept of the "Track V" proposal.

The Committee conceptually recommends creation of the new Track V. Should the Court approve of this proposal in concept, a formal rule proposal and more detailed procedures to implement it will be developed and presented for the Court's consideration.

K. Housekeeping Amendments

The Committee recommends the following "housekeeping" amendments:

- *Rules* 2:2-3, 2:9-3, and 2:9-10 – to address changes as a result of new Pretrial Intervention Rules and to remove references to a deleted statute.

- *Rule* 4:24-2(b) – to address an inconsistency with *Rule* 4:5B-4 regarding applicability of affidavit of merit procedures for counterclaimants.

- *Rule* 4:86-6 –to correct the informal spelling of "thru" and replace it with the appropriate spelling of "through."

- *Rules* 4:102-4, 4:102-5, 4:103-2 and 4:105-5 – to clarify and correct typographical errors recommended by the Committee of Complex Business Litigation Judges.

The proposed amendments follow.

2:2-3. Appeals to the Appellate Division From Final Judgments, Decisions, Actions and From Rules; Tax Court

(a) As of Right. Except as otherwise provided by *R*. 2:2-1(a)(3) (final judgments appealable directly to the Supreme Court), and except for appeals from a denial by the State Police of an application to make a gun purchase under a previously issued gun purchaser card, which appeals shall be taken to the designated gun permit judge in the vicinage, appeals may be taken to the Appellate Division as of right

(1) from final judgments of the Superior Court trial divisions, or the judges thereof sitting as statutory agents; the Tax Court; and in summary contempt proceedings in all trial courts except municipal courts;

(2) to review final decisions or actions of any state administrative agency or officer, and to review the validity of any rule promulgated by such agency or officer excepting matters prescribed by *R*. 8:2 (tax matters) and matters governed by *R*. 4:74-8 (Wage Collection Section appeals), except that review pursuant to this subparagraph shall not be maintainable so long as there is available a right of review before any administrative agency or officer, unless the interest of justice requires otherwise;

(3) in such cases as are provided by law.

Final judgments of a court, for appeal purposes, shall also include those referred to by *R*. 3:28[(f)] -6(c) (order enrolling defendant into the pretrial

intervention program over the objection of the prosecutor), *R*. 3:26-3 (material witness order), *R*. 4:42-2 (certification of interlocutory order), *R*. 4:53-1 (order appointing statutory or liquidating receiver), *R*. 5:8-6 (final custody determination in bifurcated family action), and *R*. 5:10-9 (order on preliminary hearing in adoption action). An order granting or denying a motion to extend the time to file a notice of tort claim pursuant to *N.J.S.A*. 59:8-9, whether entered in the cause or by a separate action, and any order either compelling arbitration, whether the action is dismissed or stayed, or denying arbitration shall also be deemed a final judgment of the court for appeal purposes.

(b) …no change.

Note: Source — *R.R*. 2:2-1(a) (b) (c) (d) (f) (g), 2:2-4, 2:12-1, 3:10-11, 4:88-7, 4:88-8(a) (first sentence), 4:88-10 (first sentence), 4:88-14, 6:3-11(a). Paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (b) amended November 27, 1974 to be effective April 1, 1975; caption and paragraph (a) amended June 20, 1979 to be effective July 1, 1979; paragraph (a) amended July 8, 1980 to be effective July 15, 1980; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a)(1) amended July 22, 1983 to be effective September 12, 1983; paragraph (a) amended December 20, 1983 to be effective December 31, 1983; paragraph (b) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (a)(3) amended July 23, 2010 to be effective September 1, 2010; paragraph (a) amended July 21, 2011 to be effective September 1, 2011; paragraph (a) amended July 19, 2012 to be effective September 4, 2012; paragraph (a)(3) amended to be effective .

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

(a) …no change.

(b) …no change.

(c) Stay Following Appeal by the State. Notwithstanding paragraphs (a) and (b) of this rule, execution of sentence shall be stayed pending appeal by the State pursuant to *N.J.S.A*. 2C:44-1(f)(2) [or *N.J.S.A*. 2C:35-14(c)]. Whether the sentence is custodial or noncustodial, 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 on the ground that execution has commenced.

(d) …no change.

(e) …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 July 28, 2004 to be effective September 1, 2004; paragraph (a) deleted, former paragraphs (b) and (c) redesignated as paragraphs (a) and (b), former paragraph (d) amended and redesignated as paragraph (c), and former paragraphs (e) and (f) redesignated as paragraphs (d) and (e) July 27, 2018 to be effective September 1, 2018; paragraph (c) 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:44-1(f)(2) [or *N.J.S.A*. 2C:35-14(c)] 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 July 28, 2004 to be effective September 1, 2004; amended to be effective .

4:24-2. Motions Required to Be Made During Discovery Period

(a) …no change.

(b) Disputes Regarding the Credentials of Experts in Medical Malpractice Actions. Any party challenging the credentials of an expert, other than the affiant whose credentials have been the subject of a case management conference in accordance with *R*. 4:5B-4 in a medical malpractice action pursuant to the Patients First Act, *N.J.S.A*. 2A:53A-41, shall file a motion [in accordance with the following requirements:

(1) If the defendant seeks to challenge the credentials of plaintiff's expert who is someone other than the affiant whose credentials have been the subject of a case management conference in accordance with *R*. 4:5B-4, defendant's motion shall be filed] not later than thirty (30) days from the service of that expert's report. The motion shall be accompanied by a certification setting forth the [defendant's] movant's alleged area of specialty and qualifications that form the basis for the challenge of the expert's qualifications under the Patients First Act and a copy of the [defendant's] movant's curriculum vitae.

[(2) If the plaintiff seeks to challenge the credentials of a defendant's expert, the plaintiff's motion shall be filed not later than thirty (30) days from the service of that expert's report. The motion shall be accompanied by a certification setting forth the plaintiff's alleged area of specialty and qualifications that form the

basis for the challenge of the expert's qualifications under the Patients First Act and a copy of the plaintiff's curriculum vitae.]

Note: Source – R.R. 4:28(b); amended June 7, 2005 to be effective immediately; amended December 6, 2005 to be effective immediately; prior text designated as paragraph (a) with new caption added and new paragraph (b) caption and text added July 27, 2018 to be effective September 1, 2018, paragraph (b) amended to be effective .

4:86-6. Hearing; Judgment

(a) …no change.

(b) ...no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) Duties of Surrogate.

(1) The Surrogate shall provide the entire complete guardianship file to the court for review no later than seven days before the hearing.

(2) At the time of qualification and issuance of letters of guardianship, the Surrogate shall review the acceptance of appointment and letters of guardianship with the guardian in such form as promulgated by the Administrative Director of the Courts.

(3) The Surrogate shall issue letters of guardianship following the guardian's qualification. The Surrogate shall record issuance of all letters of guardianship. Letters of guardianship shall accurately reflect the provisions of the judgment.

(4) The Surrogate shall record receipt of all inventories, reports of financial accounting, and reports of well-being filed pursuant to paragraphs (e)(3) [thru] through (e)(5) above.

(5) The Surrogate shall notify the court, and shall issue notices to the guardian in such form as promulgated by the Administrative Director of the Courts, in the event that:

(A) the guardian fails to qualify and accept the appointment within 30 days after entry of the judgment of legal incapacity and appointment of guardian in accordance with paragraph (e)(1) above; or

(B) the guardian fails to timely file inventories, reports of financial accounting, and/or reports of well-being filed in accordance with paragraphs (e)(3) [thru] through (e)(5) above.

(6) The Surrogate shall immediately notify the court if they are informed through oral or written communication, or become aware by other means, of emergent allegations of substantial harm to the physical or mental health, safety and well-being, and/or the property or business affairs, of an alleged or adjudicated incapacitated person. However, the Surrogate shall have no obligation to review inventories, periodic reports of well-being, informal accountings, or other documents filed by guardians, except for formal accountings subject to audit by the Surrogate.

(7) The Surrogate shall record the death of the incapacitated person.

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 July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, text of paragraph (c) redesignated as paragraphs (c) and (d) and amended, paragraph (c) caption amended, and paragraph (d) caption adopted July 9, 2008 to be effective September 1, 2008; paragraphs (a) and (c) amended, new paragraph (d) added, former paragraph (d) amended and redesignated as paragraph (e), and new paragraph (f) added August 1, 2016 to be effective September 1, 2016; by order dated August 25, 2016 effective date of paragraph (f)(5) extended to March 1, 2017; paragraphs (f)(4) and (f)(5)(B) amended to be effective .

4:102-4. Admittance to or Removal from the CBLP

(a) …no change.

(b) Review of Cases in CBLP. The Assignment Judge or the CBLP judge may conduct an initial review of a case to determine if it is appropriate for the CBLP. The judge may, *sua sponte*, assign it to the CBLP or remove it from the CBLP. If the case is removed from the CBLP it will be reassigned to the appropriate track for case management based upon the case type designated on the Civil Case Information Statement.

Note: Adopted July 27, 2018 to be effective September 1, 2018; paragraph (b) amended _____ to be effective _____.

4:102-5. General Principles

The CBLP is designed to streamline and expedite service to litigants in complex business litigation. Cases are generally assigned either to the complex commercial case type or the complex construction case type, and are individually managed by a CBLP judge with specialized training on business issues. The Supreme Court established the Program, which became effective on January 1, 2015, to resolve complex business, commercial, and construction cases.

Note: Adopted July 27, 2018 to be effective September 1, 2018; amended to be effective .

4:103-2. Initial Conference of the Parties

(a) Conference Timing. Except in a proceeding exempted from initial disclosure under *R*. 4:103-1[(a)(1)(B)](b)(1) or when the court orders otherwise, the parties must confer as soon as practicable – and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under *R*. 4:103-3(a). Such conference shall take place notwithstanding any dispositive motion that may be pending.

(b) …no change.

(c) …no change.

Note: Adopted July 27, 2018 to be effective September 1, 2018; paragraph (a) amended _____ to be effective _____.

4:105-5. Process Applicable to Summary Judgment Motions

This rule applies to any motion brought pursuant to *R*. 4:46, which shall continue to apply to the extent not inconsistent with this rule.

(a) …no change.

(b) …no change.

(c) An original of all opposition papers are then to be filed with the clerk in accordance with the agreed-upon schedule of the parties. [Two copies of] All opposition papers are to be served on the movant and all other parties.

(d) An original of all reply papers are then to be filed with the clerk in accordance with the agreed-upon schedule of the parties. [Copies of] All reply papers are to be served on all other parties.

(e) …no change.

(f) …no change.

Note: Adopted July 27, 2018 to be effective September 1, 2018; paragraphs (c) and (d) amended _____ to be effective _____.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendments to *Rule* 1:38-12

A self-represented litigant suggests that *Rule* 1:38-12 be amended to clarify whether a trial court's denial of a motion to unseal court records is interlocutory or final. In a particular case, he filed a motion under the Rule to partially unseal the record of a civil case. The motion was denied, and he filed an appeal. The Appellate Division held that a trial court's denial of a *Rule* 1:38-12 motion was interlocutory and not final. He argued, unsuccessfully, that the motion denial was analogous to a denial of a motion to intervene as of right under *Rule* 4:33-1.

The Appellate Division's internal Rules Committee and its Presiding Judges reviewed this request and concluded that no rule amendment was necessary, as a trial court's ruling on sealing is inherently interlocutory in nature. Such a ruling does not resolve all issues as to all parties in the case. A litigant may file a motion for leave to appeal, but it is not appealable as of right. The appellate court would then evaluate whether the circumstances of the particular matter warrant the exercise of interlocutory jurisdiction.

The Committee agreed and concluded that a rule amendment is unwarranted at this time.

B. Proposed Amendments to *Rule* 4:4-4(c) – Personal Service

A practitioner suggests amending paragraph (c) of *Rule* 4:4-4 to provide a cross-reference to *Rule* 6:2-3(d)(4) in order to avoid potential confusion with regard to the ability to effectuate service by mail.

Rule 4:4-4(c) provides that service by mail is only effective for obtaining *in personam* jurisdiction if the defendant answers or appears in response to the complaint. *Rule* 4:4-4(c) further states that default may not be entered against a defendant who fails to answer or appear in response to a complaint served by mail.

To the contrary, *Rule* 6:2-3(d) provides that service by mail in Special Civil Part matters has the same effect as personal service and default may be entered if the defendant does not respond to the complaint. The practitioner asserts that while *Rule* 4:4-4(c) states, "[t]his prohibition against entry of default shall not apply to mailed service authorized by any other provision of these Rules[,]" specific reference to *Rule* 6:2-3(d)(4) is not made within *Rule* 4:4.

The unanimous consensus of the Committee is that there is no need for a cross reference. Litigants should be reviewing the rule(s) applicable to the type of action they are filing. Paragraph (c) of *Rule* 4:4-4 is sufficiently clear as to its applicability.

C. Proposed Amendments to *Rule* 4:6-2 – How Presented

A judge suggests amending *Rule* 4:6-2 to require the movant to attach a copy of the pleading the movant seeks to dismiss based on the defense (e) failure to state a claim upon which relief can be granted. Case law generally requires the court to examine the "four corners" of the pleading in question; however, the pleading is not always attached to the moving papers.

The Committee concluded that no rule amendment is necessary at this time. Implementation of eCourts, the Judiciary's approved electronic filing and record keeping system pursuant to *Rule* 1:32-2A, provides ready access to pleadings in the case jacket. Thus, attaching the pleading is not necessary.

D. Proposed Amendments to *Rule* 4:17-4(d) – Production of Records

In *Brugaletta v. Garcia*, 234 *N.J.* 225, (2018), the Supreme Court noted that circumstances may arise when a party could have an obligation to supply an adversary with a "narrative" or "roadmap" explaining the significance of certain voluminous documents turned over in discovery. The Court provided direction on how the trial court should have addressed in *Brugaletta*, through the discovery rules, the proper balancing of interests between the requesting party and the responding party.

Although the Court in *Brugaletta* did not direct the Committee to take any action, the Committee discussed whether the roadmap concept set forth in the opinion should be codified in the Rules. While noting that requiring a roadmap concept may be an available remedy to judges, depending on the circumstances of the case, the Committee concluded it should not be required in all cases. The Committee consequently declined to recommend amendments to *Rule* 4:17-4(d), allowing the potential remedy to be raised and considered instead on a case-by-case basis.

E. Proposed Amendments to *Rule* 4:17-4(e) – Expert's or Treating Physician's Names and Reports

During the last rules cycle, a judge requested that the Committee consider amending paragraph (e) of *Rule* 4:17-4 to address an apparent conflict with *New Jersey Rule of Evidence* 703. Currently, *Rule* 4:17-4(e) provides that the expert's report "shall contain a complete statement of that person's opinion and the basis therefore." (Emphasis added). On the other hand, *New Jersey Rule of Evidence* 703 states, "[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing." (Emphasis added).

Previously, the Committee discussed whether the Court Rule should conform to the standard of the Evidence Rule. The issue was referred to the Discovery Subcommittee, which proposed that, instead of a rule amendment, an explanatory comment be added to the Rule to the effect that an amendment of an expert's report to include additional facts or data relied upon by the expert is governed by *Rule* 4:17-7.

After careful consideration, the Committee determined no change to *Rule* 4:17-4(e) is necessary at this time.

F. Proposed Amendments to *Rule* 4:24-1

The New Jersey State Bar Association (NJSBA) proposed two amendments to *Rule* 4:24-1 regarding extensions of discovery end dates.

The first proposal would require the court to grant a requested discovery extension on affidavit of the litigating parties, not just the parties' attorneys, affirming that the extension is warranted. The NJSBA's proposal would apply to all cases regardless of complexity.

After discussion, the Committee declined to endorse the proposal. Requiring extensions of discovery in all cases based on party consent may result in more disadvantages and further delay resolution of cases. For discussion of the Committee's related proposal for a new Track V, see Section I. J. of this report.

The NJSBA's second proposal was to eliminate the need to show "exceptional circumstances" to extend discovery after an arbitration date is set. The Committee considered this issue but declined to adopt it.

G. Proposed Amendments to *Rule* 4:36-3

The New Jersey State Bar Association (NJSBA) suggested amending *Rule* 4:36-3 to restrict the courts from issuing trial notices before a certain time, depending on the case type, to ensure trial dates are issued uniformly statewide and not prematurely.

The Committee considered the NJSBA's suggestion as well as a related unpublished Appellate Division opinion, *Technology Dynamics, Inc. v. Anwar Master, et al.*, 2019 *N.J. Super. Unpub*. LEXIS 445 (App. Div. Feb. 26, 2019), which addressed the standards for extensions of discovery in relation to the establishment of a trial date. The trial court in *Technology Dynamics* was reversed, among other things, for declining to grant an unopposed first discovery extension request. The trial date had been established before the discovery end date had run, thereby changing the test for a party gaining an extension from mere "good cause" to the more rigorous standard of "exceptional circumstances."

Counsel for appellant in *Technology* cited and relied upon this passage from The Practitioner's Guide to New Jersey's Civil Court Procedures (Practitioner's Guide):

> Notice of Trial
>
> > At least 10 weeks' notice of trial must be provided by the court. The ten-week period is counted from the date of the receipt of the trial notice. **The notice may not be sent prior to the discovery end date.** (Emphasis added).

Notwithstanding this language, the Practitioner's Guide is neither authoritative nor binding. The publication was removed from the Judiciary's website several years ago for other reasons, pending revision by Civil Practice staff.

Given this context, the Committee considered whether *Rule* 4:36-3(a) should be amended to address under what circumstances a notice of trial can be issued in advance of the discovery end date. After considerable discussion about trial date notices and their impact on discovery and discovery extensions, the Committee concluded there was no need for any rule revisions. However, the Committee suggested that Civil Practice staff consider replacing the original language in the Practitioner's Guide with the following proposed language when updating and revising the publication:

> Ordinarily the initial trial date should not be established until after the Discovery End Date (DED) has occurred, unless the DED has already been extended one or more times by court order, or the parties request or consent to have the court set the trial date before discovery has been completed.

This language also was endorsed by the Conference of Civil Presiding Judges.

H. Proposed Amendments to *Rule* 4:42-9(a)(5)

The Acting Administrative Director of the Courts referred to the Committee several letters from practitioners seeking amendments to *Rule* 4:42-9(a)(5) to increase the attorney fee for plaintiffs who are foreclosing a tax sale certificate.

After discussion, the Committee concluded that the Rule allows for attorneys to apply for additional fees "for special cause shown by affidavit" and attorneys foreclosing on tax sale certificates could apply for additional fees. The Committee determined no amendments to the Rule are necessary at this time.

I. Proposed Amendments to *Rule* 4:48-1 re: Recordation of Warrants of Satisfaction

New Jersey Land Title Association suggests that the implementation of eCourts has resulted in a barrier to the recordation of Warrants of Satisfaction, causing defects in title. The Association requested that this barrier be rectified through an amendment to *Rule* 4:48-1.

Pursuant to *Rule* 1:4-1, any attorney filing a pleading must have their name and bar ID number in the top left corner of the caption. This information deems that attorney is the filing party, not necessarily the preparer of the document. A Warrant of Satisfaction (Warrant) is currently the only document that can be prepared and signed by a creditor or a creditor's attorney, but is not filed by that creditor or a creditor's attorney. Per the Superior Court Clerk, title companies may file the Warrant on paper, provided that the document does not contain any information or heading in the top left of the caption or signature of the creditor's attorney where the filer is not an attorney. This is a short-term problem as self-represented litigants and non-attorneys will eventually be able to file electronically.

A Subcommittee was formed to review and consider revising *Rule* 4:48-1 to address issues raised regarding recouping costs of filing a Warrant incurred by creditors in filing and non-attorneys filing Warrants. The Subcommittee proposed amending *Rule* 4:48-1 to require that judgment creditors issue and file a Warrant after payment of the related debt. In addition, the proposal would authorize

creditors to collect the filing fee for the Warrant from the debtor as an allowable taxable cost but also would amend the Notice of Debtor (Notice) form (Appendix VI) to inform debtors of their right to apply for a fee waiver.

The Subcommittee noted that under the current Rule and practice, the onus is on the debtor to file the Warrant to clear the related lien from the record after receiving the Warrant from the creditor. Data suggests that a large number of debtors that have paid their judgments in full never file the Warrant. The likely reason is that judgment debtors, many of whom are self-represented individuals with low incomes, either are unaware of the process or do not have the financial means to incur the filing fee.

The Subcommittee's proposal, therefore, intended to address both issues. The lack of filing by debtors was intended to be addressed by requiring judgment creditors to file the Warrant, and the amended notice was intended to alert debtors to the possibility of fee relief.

The Committee discussed that in 1951, the Legislature adopted *N.J.S.A.* 2A:16-46 governing Warrants. The statute provides that after satisfaction of the debt, a judgment creditor has the option of either entering "an acknowledgment of satisfaction on the record of the judgment," or delivering a Warrant to the debtor for the latter to file with the court. The statute does not require a creditor to file the Warrant itself.

After extended discussion, the full Committee rejected the Subcommittee's proposal, but by an extremely close vote. Many of those who voted against the proposed rule supported its policy underpinnings but were concerned about a Rule of Court that seemingly would eliminate an option to creditors that has been provided by statute for the last several decades.

There was also a concern that authorizing a creditor to charge the filing fee on the debtor as a taxable cost could risk liability to the creditor under the Fair Debt Collection Practices Act (FDCPA), 15 *U.S.C.* §§ 1692.

In contrast, many members who supported the proposal believe the fair collection issues could be addressed based on the timing on when the fee would be collected or charged or by noticing the debtor in a certain point in the process about the filing fee cost.

More broadly, supporters believe our state Constitution authorizes the state Supreme Court to regulate in this area and as proposed, notwithstanding the statute. See *Winberry v. Salisbury*, 5 *N.J.* 240, 255 (1950) (holding "that the rule-making power of the Supreme Court is not subject to overriding legislation, but that it is confined to practice, procedure and administration as such.")

On balance, the majority of the full Committee thought it was best left to the Supreme Court to determine its authority to override the statute if the Court is so inclined to act. Also, there was a sentiment that this is an issue that the Legislature might wish to consider in possibly amending the statute. Lastly, some members

suggested that, if the current Rule remains, the Judiciary should consider a mandatory Warrant of Satisfaction form, comparable to the Notice to Debtor, as well as a process for reducing or eliminating the filing fees associated with Warrants, especially those filed in the Special Civil Part.

J. Proposed Amendments to *Rule* 4:50-1 – Final Orders

The Supreme Court requested that the Committee review *Brandecker v. E&B Mill Supply Co.*, 2018 *N.J. Super. Unpub*. LEXIS 437 (App. Div. Feb. 26, 2018), *certif. denied*, 234 *N.J.* 120 (2018), and consider whether an amendment to *Rule* 4:50-1 is warranted to extend its applicability to motions for relief from interlocutory orders such as the *in limine* and summary judgment orders successfully challenged by the plaintiff in the *Brandecker* appeal.

In *Brandecker*, the trial court granted one defendant's motions *in limine* excluding and limiting plaintiffs' experts' reports and testimony on January 10, 2014, which led to summary judgment being granted as to that defendant on the same date. The case proceeded and final judgment was entered on July 10, 2015. Nine days later, plaintiffs filed a motion under *Rule* 4:50-1 to vacate the orders granting the *in limine* and summary judgment motions which was denied. The trial court found that *Rule* 4:50-1 only applied to final orders and judgments, not to the January 10, 2014 interlocutory orders.

On appeal, the Appellate Division held that, while plaintiffs could have challenged the 2014 orders under *Rule* 4:49-2 at any time before final judgment, their failure to do so did not bar them from filing a timely motion to vacate a final judgment under *Rule* 4:50-1. In fact, once final judgment was entered, plaintiffs were required to proceed under *Rule* 4:50-1.

The Committee discussed that, by operation of law, once a final order is entered, all interlocutory orders merge into and become part of the final order. Therefore, the interlocutory orders the plaintiffs challenged in *Brandecker* were part of the final order and were properly challenged in the trial court within 20 days after the final order's entry, based on the factors set forth in *Rule* 4:50-1. It was also noted that if *Rule* 4:50-1 is revised to expand on the term "final order," it would have the potential to cause significant confusion.

The Committee determined no amendment to *Rule* 4:50-1 is necessary at this time.

K. Public Employment Relations Commission's Request for Guidance

In *Belleville Educ. Ass'n v. Belleville Bd. of Educ.*, 455 *N.J. Super*. 387, 405-410 (App. Div. 2018), the Appellate Division held that prevailing parties may not seek to enforce Public Employment Relations Commission (PERC) orders pursuant to *Rule* 4:67-6, and that only PERC may seek enforcement of its orders in the Appellate Division pursuant to *N.J.S.A*. 34:13A-5.4f. PERC requested guidance from the Committee in resolving a perceived conflict between a statute and a Court Rule as to whether prevailing parties may continue to seek enforcement of a PERC order in the Law Division and whether the Law Division even has jurisdiction to enforce PERC orders pursuant to *Rule* 4:67-6.

Historically, the Committee has been careful about invoking the Judiciary's constitutional authority under *Winberry v Salisbury*, 5 *N.J*. 240 (1950) or recommending an amendment to a Court Rule that would be contrary to a statute. Ultimately, the Committee respectfully declined to recommend a rule change, perceiving it would be more appropriate for the Legislature to consider revising the statute to address the optimal mechanism for the enforcement of PERC orders.

L. Use of Special Masters in Civil Litigation

The Middlesex County Bar Association adopted a resolution recommending that the Supreme Court adopt the guidelines of the American Bar Association (ABA) regarding the use of special masters in civil litigation as part of the New Jersey's Rules of Court. The Acting Administrative Director of the Courts referred this item to the Committee for consideration.

While members of the Committee agreed that special masters are beneficial in particular cases, they also expressed concerns that masters should not be assigned excessively. Notably, the New Jersey State Bar Association has not taken a position on the ABA Guidelines.

The consensus of the Committee is that no rule amendments are warranted at this time.

M. Duke Conference Proposals

In 2010, the Duke Conference recommended changes to the Federal Rules of Civil Procedure. The Discovery Subcommittee was tasked with examining whether any changes should be incorporated into the Rules of Court. The Subcommittee has had continued discussions of these recommendations over the years, but felt that the New Jersey Supreme Court has always taken pro-active means through the Court Rules and administrative practices to control discovery and expedite the resolution of cases. Some examples include the following:

- Commercial litigation was addressed with the adoption of the Complex Business Litigation Program in 2014 – 2015; and
- The implementation of the Best Practices has resulted in greater case management and disposition by assigning cases to tracks based on complexity and greater judicial control within designated guidelines.

The Subcommittee concluded that there is no need to take further action regarding the Duke Conference recommendations, as New Jersey has long been at the forefront of and a leader in case management. The Committee agrees with this recommendation and does not believe any further action is warranted.

III. RULES HELD FOR CONSIDERATION

A. Proposed Amendments to *Rule* 4:42-8

A Committee member, on behalf of the New Jersey Creditors Bar Association, suggests amending *Rule* 4:42-8 in order to make it clear what costs are to be taxed as there are instances when these costs do not appear on the notice from the Special Civil Part Clerk's Office and the Law Division – Civil Part taxed bill of costs. According to the member, many such instances relate to motions filed pre-judgment, such as summary judgment and discovery motions.

Committee members discussed what fees are permissible taxed costs under *Rules* 1:43 and 4:42-8 and debated whether a party must prevail in order to be entitled to certain costs and fees. Ultimately, the Committee determined that more research is needed regarding fees for prevailing parties.

This item has been deferred until the next rules cycle.

B. Proposed Amendments to *Rule* 4:42-11

A Committee member suggests amending *Rule* 4:42-11 to address the judgment interest rate where a foreign judgment has been domesticated in New Jersey. The member notes the judgment interest rate of the forwarding state is usually higher than the rate in New Jersey such that a domesticated judgment may not be fully satisfied. The Committee member suggests that in order to provide full faith and credit to foreign judgments, the following new paragraph (c) be added to *Rule* 4:42-11:

> (c) Interest on judgments from foreign jurisdictions that are domesticated in the State of New Jersey shall be calculated at the rate provided for in the foreign jurisdiction or the rates in effect in the State of New Jersey, whichever one is greater.

In *Auto. Innovations, Inc. v. J.P. Morgan Chase Bank, N.A.*, 2015 *N.J. Super. Unpub*. LEXIS 204 (App. Div. Feb. 5, 2015), the Appellate Division considered whether the full faith and credit clause required that New York's higher post-judgment interest rate be applicable instead of the rate provided by the New Jersey Rules of Court. The panel affirmed the trial court's entry of judgment as to incorporation of New Jersey's prejudgment interest rate, not the rate of the other jurisdiction, stating the following:

> In the absence of compelling New Jersey precedent to the contrary, we reject defendants' argument. *N.J.S.A*. 2A:49A-27, which is part of the Uniform Enforcement of Foreign Judgments Act

> (UEFJA), *N.J.S.A*. 2A:49A-25 to -33, provides that a foreign judgment docketed in New Jersey "*has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the Superior Court of this State and may be enforced in the same manner*." (Emphasis added). The UEFJA is this State's selected means for discharging its Full Faith and Credit obligations. *N.J.S.A*. 2A:49A-26. Accordingly, once the New York judgment was domesticated, it became enforceable in New Jersey in the manner provided by New Jersey law, and the trial judge's entry of judgment that incorporated pre-judgment interest in accordance with *Rule* 4:42-11(a) was proper.

Committee members debated whether full faith and credit should be accorded to the interest rates and damages embodied in foreign judgments under *Rule* 4:101-1. Ultimately, this item was tabled in order to accomplish a comprehensive internal review of the relevant rules, statutes, processes and procedures.

C. Proposed Amendments to *Rule* 4:74-7 re: Sexually Violent Predator Act

A judge requests that the Committee consider amending *Rule* 4:74-7 to specifically address civil commitment hearings under the Sexually Violent Predator Act (SVPA) *N.J.S.A*. 30:4-27.24-38. On at least two occasions, the Appellate Division has declined to apply the Rule to SVPA hearings because the Rule predates the enactment of the SVPA. See, *e.g., In re Commitment of S.M*., 2019 *N.J. Super. Unpub*. LEXIS 808, at *15 (App. Div. April 8, 2019) (declining to apply *Rule* 4:74-7 to SVPA proceedings "because the rule predates the SVPA and by its terms it applies to civil commitments generally, incorporating the definitions in *N.J.S.A*. 30:4-27.2." (citing *In re Commitment of G.D*., 358 *N.J. Super*. 310, 316 (App. Div. 2003)).

While the Attorney General's Office, Division of Law agreed with this recommendation, the Office of the Public Defender (OPD), Division of Mental Health Advocacy, opposed such a rule amendment. The OPD notes that the scope of discovery in these hearings is currently a contested issue pending before the New Jersey Supreme Court. See *IMO Civil Commitment of P.D*., 238 *N.J. LEXIS* 503 (2019) (granting leave to appeal). As a result, this item has been tabled pending the Court's forthcoming decision in *IMO Civil Commitment of P.D*.

D. Proposed Amendments to *Rule* 4:86-4 re: Background Checks for Proposed Guardians

The Committee of Probate Part Judges has recommended, as a first step in developing a proposal for background checks for proposed guardians, amending *Rule* 4:86-4(b) to require court-appointed counsel for an alleged incapacitated person to make inquiry of the proposed guardian(s) regarding their criminal conviction history. The Conference of General Equity Presiding Judges and the Supreme Court Judiciary-Surrogates Liaison Committee endorsed the proposed rule amendments.

Several members expressed concern that requiring attorneys to conduct background checks on proposed guardians or make inquiries into their backgrounds could subject attorneys to malpractice and liability claims if something is missed. It was also noted that potential guardians should not be automatically disqualified for every past criminal offense, only those that could affect their ability to be a guardian, such as embezzlement.

This rule proposal was returned to the Committee of Probate Part Judges for further review, including consideration of potential malpractice and liability concerns.

E. Potential Rule Amendments re: Technology and Social Media

The Acting Administrative Director of the Courts shared a New Jersey Law Journal article, "How the Internet Has Impacted the Procedural Practice of Family Law," which discusses the evolution on family law due to technological advances. In light of this article, the Committee and other court committees have been asked to review and possibly recommend any rule amendments deemed appropriate in order to account for technological and social media advances, not just in family cases but in civil and other contexts.

The Chair formed a subcommittee to discuss whether social media may be used to serve process and to what extent it may be used for service of civil discovery. In addition to members of this Committee, the Subcommittee also includes representatives from the Tax Court, Family Practice, and Special Civil Part Practice Committees. The Subcommittee's work will carry over to the next rules cycle.

IV. OTHER MATTERS CONSIDERED

A. Service of Summons and Complaint on a Postal Box

The president of a private process service company suggested a directive or opinion be adopted to declare that service upon a UPS postal box, located at a UPS store, is a form of permissible personal service and should not fall under the category of "optional mailed service".

The Committee disagreed that service upon a UPS postal box is a form of personal service and declined to recommend a directive or rule amendment at this time.

Respectfully submitted,

Hon. Jack M. Sabatino, P.J.A.D., Chair
Justice Peter G. Verniero (Ret.), Vice-Chair
Hon. Jeffrey B. Beacham, J.S.C.
Hon. Karen M. Cassidy, A.J.S.C.
Hon. Jean S. Chetney, J.S.C.
Melina Colon-Cox, Esq.
Clifford D. Dawkins, Jr., Esq.
Hon. Patrick DeAlmeida, J.A.D.
Michael G. Donahue, Esq.
Hon. Paula T. Dow, P.J.Ch.
Philip J. Espinosa, Esq., DAG
Hon. Clarkson S. Fisher, Jr., P.J.A.D.
Amos Gern, Esq.
Professor Edward A. Hartnett
Robert B. Hille, Esq.
Hon. Paul Innes, P.J.Ch.
Herbert Kruttschnitt, III, Esq.
Brooks H. Leonard, Esq.
Professor J. C. Lore, III
Deborah L. Mains, Esq.
Hon. Jessica R. Mayer, J.A.D.
Vera McCoy, Esq.
Renita McKinney, Civil Division Manager
Mary McManus-Smith, Esq.
Barry J. Muller, Esq.
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Hon. Elia A. Pelios, ALJ
Taironda E. Phoenix, Esq.
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Hon. Robert L. Polifroni, P.J.Cv.
Hon. Joseph P. Quinn, P.J.Cv.
Arthur J. Raimon, Esq.
Hon. Rosemary E. Ramsay, P.J.Cv.
Dean Andrew J. Rothman
Thomas Shebell, III, Esq.
Willard C. Shih, Esq.
Asaad K. Siddiqi, Esq.
Michelle M. Smith, Superior Court Clerk
Diane G. Lanza, Esq., Staff

Dated: January 2020

LMJG

APPENDIX 1

MEMORANDUM

TO: Hon. Jack M. Sabatino, P.J.A.D.
Chair, Civil Practice Committee

FROM: Hon. Peter G. Verniero (Ret.)
Chair, Subcommittee on Motions in Limine

DATE: July 29, 2019

RE: Revised Rule Proposal/Motions in Limine

As you know, in a previous rules cycle, the Subcommittee on Motions in Limine (Subcommittee) was formed to consider whether New Jersey should join those jurisdictions that offer a detailed framework governing such motions. The Subcommittee recommended that New Jersey should have such a rule to maintain uniformity in the system, avoid the late filing of motions that might have a dispositive effect and encourage prompt resolution of admissibility questions.

The full Civil Practice Committee (Committee) agreed, submitting a proposed rule for the Supreme Court's consideration. The Court declined to adopt the Committee's proposal, returning the subject to us for further review. In response, the Subcommittee was reconstituted with new members, in addition to some members who previously had served. As with the prior membership, the membership of the reconstituted Subcommittee includes appellate and trial judges as well as practitioners with considerable litigation experience.

As part of its review, the Subcommittee considered proposals and materials, including comments by the New Jersey State Bar Association objecting to certain parts of the prior proposal. After several conference calls, the Subcommittee affirmed its support for a detailed rule essentially for the same reasons as expressed previously. Our revised proposal retains certain language from our prior proposal but with significant modifications to the timeframe and briefing provisions.

As you will see, the proposal retains the current practice of including motions in limine as part of the pretrial exchange of information required under Rule 4:25-7(b). In that regard, some members reported that the 7-day deadline for such exchanges is not always followed with little or no consequence (at least one member observed that it appeared to be common practice for attorneys to serve motions in limine on the day of trial). The Subcommittee hopes that our proposal here will prompt greater compliance with the 7-day deadline for information exchanges.

The proposal also makes clear that, inasmuch as a motion in limine would remain as part of the pretrial exchange, such motions should not trigger any filing fees.

Also, I wish to note one member's belief that greater use of Rule 4:25-1 (pretrial conferences) would obviate the need for a specific rule on motions in limine. That is so, in the member's view, because such motions would be fully addressed in the pretrial order described under Rule 4:25-1(b).

Further, another member described individual circumstances under which a late filing of a dispositive motion might be justified in the interest of justice. Rather than attempt to address those circumstances in the current proposal, the Subcommittee would rely on existing Rule 1:1-2 authorizing the relaxation of any rule "if adherence to it would result in an injustice."

The Subcommittee also discussed the interplay, if any, between the rules governing summary judgment motions and this current proposal regarding motions in limine. Rather than attempt to address whether any changes to the summary judgment rules would be advisable in light of this current proposal, we leave that question for another day.

The Subcommittee's proposal is attached for the full Committee's consideration. Thank you for the opportunity to submit this proposal for the next level of vetting.

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