2004 SUPPLEMENTAL REPORT OF THE SUPREME COURT CIVIL PRACTICE COMMITTEE

March 1, 2004

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

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

To settle the question of the effective date of service when mail is sent simultaneously by registered or certified mail and by ordinary mail, the Committee recommends an amendment to *R.* 1:5-4 to provide that in such circumstance service shall be deemed complete upon mailing of the ordinary mail.

See Section I.C. of the 2004 Report of the Civil Practice Committee to the Supreme Court for a discussion of other proposed amendments to this rule, which the Committee recommends.

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

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

(a) Service by Ordinary Mail if Registered or Certified Mail Is Required and Is Refused. Where under any rule, provision is made for service by certified or registered mail, service may also be made by ordinary mail simultaneously or thereafter, unless simultaneous service is required under these rules. [If the addressee fails or refuses to claim or to accept delivery of certified or registered mail, the ordinary mailing shall be deemed to constitute service.] If service is simultaneously made by ordinary mail and certified or registered mail, service shall be deemed complete upon mailing of the ordinary mail. If service is not made simultaneously and the addressee accepts the certified or registered mail, service shall be deemed complete upon the date of the acceptance; but if the addressee fails or refuses to claim or to accept delivery of certified or registered mail, service shall be deemed complete upon mailing of the ordinary mail.

(b) …no change.

(c) …no change.

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

B. Proposed Amendments to *Rules* 1:13-3 and 2:9-6 — re: Bail Registry

In conjunction with the Criminal Practice Committee and the Clerk of the Superior Court, the Committee recommends amending *Rules* 1:13-3 and 2:9-6 to clarify the terms and conditions of maintenance of and removal from the Bail Registry, and to conform with and implement the provisions of P.L. 2003, c. 202.

Proposed amendments to Appendix XXI, the "Bail Program Registration Form" referred to in *R.* 1:13-3(d), are in the process of being developed.

The proposed amendments to *Rules* 1:13-3 and 2:9-6 follow.

1:13-3. Approval and Filing of Surety Bond; Judgment Against Principal and Surety

(a) Approval by the Court. Neither the clerk of the court, the sheriff, nor any other person shall accept a surety bond in any action or proceeding pending in the court, other than a bond for costs given by a non-resident claimant, unless the same has been approved as to form and sufficiency by a judge of any court of this State except that a surrogate may approve and accept a bond, and in the absence of a judge the clerk may approve and accept a bail bond. Bonds need not be filed in duplicate.

(b) …no change.

(c) …no change.

(d) [Registry of Licensed Insurance Producers and Limited Insurance Representatives Authorized to Write Bail. Surety bonds for purposes of bail may be accepted only from those licensed insurance producers and limited insurance representatives who are registered by the insurance company for which they are authorized to write bail with the Clerk of the Superior Court. Such registration shall be effected by completing and submitting to the Clerk of the Superior Court an "Insurance Producer/Limited Representative Registration Form" in the form prescribed by Appendix XXI to these rules. The insurance company shall provide written notice to the Clerk of the Superior Court when any licensed insurance producer or limited insurance representative authorized to write bail is terminated.]

Registry of Insurers. No surety bond for purposes of bail shall be accepted by any court unless the insurer has first filed a Bail Program Registration Form in the form prescribed by Appendix XXI to these rules with the Clerk of the Superior Court. Said form shall include the insurer's certification that it is authorized or admitted to transact surety business by the New Jersey Department of Banking and Insurance and shall include the name and address of each of

its bail agents and agencies, any other person or entity who has provided it with a guarantee to satisfy forfeited bail or a bail forfeiture judgment, and any other person or entity authorized by the insurer to administer or manage its bail bond business. The bail agents and agencies so registered by the insurer shall be licensed as insurance producers or limited lines insurance producers. The insurer shall have a continuing obligation to update its Bail Program Registration Form as changes occur in order to assure that the information is complete and accurate.

(e) Removal from Bail Registry. [Any licensed insurance producer or limited insurance representative shall have his or her name removed from an insurance company's listing in the Bail Registry upon any of the following occurrences: (1) notice from an insurance company of the individual's termination; (2) notice from the Insurance Commissioner of the suspension or revocation of any individual's license or registration privileges; and (3) revocation or suspension of an insurance company's authority to do business in this State or of its certificate of authority to write surety instruments. Further, in the event any insurance company has failed to satisfy a judgment entered pursuant to *R.* 7:4-5(c), or to pay a forfeiture or to file a motion to vacate the forfeiture within forty-five (45) days of the date of the notice sent pursuant to *R.* 3:26-6, the names of all of its licensed insurance producers and limited insurance representatives shall be removed from the Bail Registry until such time as the judgment or forfeiture has been satisfied. In that event, the individual licensed insurance producer or limited insurance representative who acted as bail bondsman shall also have his or her name removed from all listings in the Bail Registry until such time as the judgment or forfeiture has been satisfied.]

(1) Licensure. A registered insurer shall be removed from the Bail Registry on 30 days notice if it fails timely to provide complete and accurate information as required by the Bail Program Registration Form. A registered insurer who fails to maintain its authorization or

admission to transact surety business in this State or a registered bail agent or agency, guarantor, or other person administering or managing an insurer's bail bond business if it fails to maintain any license required by the Department of Banking and Insurance shall be forthwith removed from the Bail Registry.

(2) Failure to Satisfy Judgment. If a registered insurer fails to satisfy a judgment entered pursuant to *R.* 3:26-6(c) or 7:4-5(c), the Clerk of the Superior Court shall forthwith send it a notice advising it that if it fails to satisfy the judgment within fifteen days of the notice and until satisfaction is made, it shall be removed from the Bail Registry, and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry. In addition the bail agent or agency, guarantor or other person or entity authorized by the insurer to administer or manage its bail bond business in this State who acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied.

(3) Habitual Noncompliance. Nothing herein shall preclude the Clerk of the Superior Court, on 30 days notice and unless the court orders otherwise, from removing from the Bail Registry any person or entity habitually failing to perform the obligations imposed by the bail bonds.

(4) Notice. All notices required by this rule shall be sent by certified mail, return receipt requested, to the address listed on the Bail Program Registration Form.

Note: Source — *R.R.* 1:4-8(b), 1:4-9, 3:9-7(c) (second, third and fourth sentences), 4:72-2, 4:118-6(a)(b). Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b)

amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; new sections (d) and (e) added July 5, 2000 to be effective September 5, 2000; paragraph (d) amended May 20, 2003 to be effective immediately; paragraph (a) amended, former paragraphs (d) and (e) deleted and new paragraphs (d) and (e) adopted to be effective .

2:9-6. Supersedeas Bond; Exceptions

(a) Supersedeas Bond. Except as otherwise provided in paragraph (c), [T]the supersedeas bond shall be presented for approval to the court or agency from which the appeal is taken, or to the court to which certification is sought, and shall have such surety or sureties as the court requires. Unless the court otherwise orders after notice on good cause shown, the bond shall be conditioned for the satisfaction of the judgment in full, together with interest and trial costs, and to satisfy fully such modification of judgment, additional interest and costs and damages as the appellate court may adjudge. When the judgment determines the disposition of the property in controversy or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court below, the amount of the supersedeas bond shall be fixed at such sum only as will secure the damages recovered for the use and detention of the property, trial and appellate costs, and interest. In all other cases not specifically provided for herein the amount of the supersedeas bond shall be fixed by the court.

(b) …no change.

(c) Bail Forfeiture Appeals. On appeal of a bail forfeiture judgment by or on behalf of an insurer, the appellant, simultaneous with the filing of the notice of appeal, shall deposit the full amount of the judgment in cash or by certified, cashiers or bank check with the Clerk of the Superior Court. The court for good cause shown may allow the posting of a supersedeas bond in lieu of the cash deposit provided, however, that good cause shall not include an application to extend the time to locate the defendant or to stay payment of a forfeited bond, entry of a judgment or preclusion from the bail registry maintained by the Superior Court.

Note Source — *R.R.* 1:4-8(a) (c); paragraph (a) amended and paragraph (c) adopted to be effective .

C. Proposed Amendments to *R.* 4:42-9 — Counsel Fees

In response to the suggestion that the Committee increase the limitation on counsel fees for tax lien foreclosures from $350 to somewhere in the $1300-1500 range, the Committee acknowledged that the last increase, raising the sum from $150 to $300 for *in rem* proceedings, had been approved in 1992 and agreed that a modest increase would be in order. The Committee voted to increase the amount to $500 for attorneys' fees for all tax lien foreclosures.

See Section I.O. of the 2004 Report of the Civil Practice Committee to the Supreme Court for a discussion of other proposed amendments to this rule, which the Committee recommends.

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

4:42-9. Counsel Fees

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

(1) …no change.

(2) …no change.

(3) …no change.

(4) …no change.

(5) *In an action to foreclose a tax certificate or certificates,* the court may award a counsel fee not exceeding [$350] $500 per tax sale certificate in any *in rem* or *in personam* proceeding except for special cause shown by affidavit. If the plaintiff is other than a municipality no counsel fee shall be allowed unless prior to the filing of the complaint the plaintiff shall have given not more than 120 nor fewer than 30 days' written notice to all parties entitled to redeem whose interests appear of record at the time of the tax sale, by registered or certified mail with postage prepaid thereon addressed to their last known addresses, of intention to file such complaint. The notice shall also contain the amount due on the tax lien as of the day of the notice. A copy of the notice shall be filed in the office of the municipal tax collector.

(6) …no change.

(7) *In an action to establish or enforce a right under the New Jersey Constitution*, a reasonable counsel fee and litigation expenses shall be allowed to a prevailing claimant providing that (A) there is no provision in rule, statute or otherwise for an award of counsel fees and litigation expenses to the claimant; (B) the fee is calculated only on those services directly related to the state constitutional issue on which the claimant prevailed; (C) the hourly fee shall not exceed $150 an hour for attorneys and expert witnesses or $50 an hour for paralegals, law

clerks and comparable support staff; (D) the fee shall not be enhanced by the novelty or complexity of the claim; and (E) the extent to which, if any, claimant sought to resolve the constitutional issue prior to and during trial is considered in determining the reasonableness of the time expended by claimant's counsel. The foregoing notwithstanding, the court, in its discretion, may abate the award in full or in part if it finds that the award would otherwise result in substantial and undue financial hardship to the party opponent or, if a public entity, to its taxpayers. This rule shall not apply to eminent domain proceedings.

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

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

(b) …no change.

(c) …no change.

(d) …no change.

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

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

A Superior Court judge questioned whether the rules permit the simultaneous entry of default and default judgment in the Civil Part or whether a default must be entered, and notice of the default provided, before a default judgment can be requested. The Committee's report to the Supreme Court in 1996 regarding the proposed amendments to these rules did not specifically address this question, but stated, "Such notice [of the proof hearing] will encourage defendants to be heard at each stage of the default process thereby reducing subsequent motions to vacate the entry of default or default judgment and expediting the final disposition of these cases." The implication is that the entry of default and of default judgment are the first and final steps, respectively, along a continuum of seriatim, not simultaneous, actions. The Committee members agreed that default must be entered, and the defaulting party provided with notice of the entry, before a default judgment may be sought and entered. They also agreed that *R.* 4:43-2 should be clarified to prevent any further confusion.

See Sections I.G. and III.A. of the 2004 Report of the Civil Practice Committee to the Supreme Court for discussions of other recommendations of the Committee regarding *R.* 4:43-2.

The proposed amendments to *R.* 4:43-2 follow.

4:43–2. Final Judgment by Default

[When] After a default has been entered in accordance with *R.* 4:43–1, except as otherwise provided by *R.* 4:64 (foreclosures), but not simultaneously therewith, a final judgment may be entered in the action as follows:

(a) ...no change.

(b) ...no change.

(c) ...no change.

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

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

(b) amended July 12, 2002 to be effective September 3, 2002; introduction and paragraph (d) amended to be effective .

E. Proposed Amendments to *R.* 4:58 — Offer of Judgment

A subcommittee, chaired by the Honorable Jack Sabatino, was established in the 2000-2002 term to examine whether offers of judgment should be treated differently in cases with unliquidated damages than in cases with liquidated damages and, if so, to make recommendations to the Committee for necessary amendments to *R.* 4:58. The work of the subcommittee was carried over to the 2002-2004 term. The subcommittee studied the rule and considered a number of ancillary issues including the applicability of the rule to class actions, to tax matters, to Special Civil Part actions, to husband and wife plaintiffs whose offer of judgment was rejected, and to chancery or probate actions in which the relief sought is not monetary.

These issues were discussed at length at several meetings. After considering the first report of the subcommittee, the Committee voted overwhelmingly to eliminate the current distinction between liquidated and unliquidated damage cases. On a subsequent vote, the Committee voted to eliminate the $750 minimum recovery provision in unliquidated damage cases and replace it with a provision eliminating fee shifting for no cause verdicts. A majority of the subcommittee had recommended retention of the 20% "fudge factor" in unliquidated damage cases. There was substantial discussion among Committee members on whether the fudge factor should be applied across the board to liquidated damage cases as well and whether the fudge factor should be scaled down to 10% or eliminated entirely. The Committee voted to keep the 20% fudge factor and apply it across the board to liquidated and unliquidated cases equally.

Throughout these lengthy preliminary discussions, varying views were expressed. Some members believed the rule valuable as an incentive to settlement. Others noted that there is no empirical evidence to determine whether the rule is working. A number of Committee members questioned the need for the rule at all. It was suggested that if its purpose is to bring about

settlements, early mediation and other CDR techniques can and do accomplish the same thing with likely greater satisfaction to all parties. If its purpose is to shift costs, numerous statutes already provide for fee shifting in a variety of case types. There was general agreement that the rule as currently constituted is difficult to understand and confusing to apply. The consensus of the Committee was that if the rule were to be retained, it would have to be made easier to understand and to use.

The Committee members discussed four possible approaches: 1) keep the rule unchanged; 2) keep the rule, but recommend changes to address the various issues that had been presented to the subcommittee; 3) conduct an empirical study on the usefulness and applicability of the rule prior to making any recommendations; or 4) discard the rule in its entirety. The Committee voted overwhelmingly in favor of the second approach — that is, to recommend elimination of the distinction between liquidated and unliquidated damages and retention of the 20% fudge factor as applicable to all cases, and adding the provision for a *per quod* claim, and agreed to continue its study of the rule in the next term.

See Section IV.A. of this Report for a discussion of other issues that have been held for further consideration in the next term.

The proposed amendments to *Rules* 4:58-2, 4:58-3, and 4:58-4 follow.

4:58-2. Consequences of Non-Acceptance of Claimant's Offer

If the offer of a claimant is not accepted and the claimant obtains a verdict or determination at least as favorable as the rejected offer[,] or, if a money judgment, in the amount of 120% of the offer or more, excluding prejudgment interest and counsel fees otherwise awardable, the claimant shall be allowed, in addition to costs of suit, (a) all reasonable litigation expenses incurred following non-acceptance; (b) prejudgment interest of eight percent interest on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later[;], but only to the extent that such prejudgment interest exceeds the interest prescribed by *R*. 4:42-11(b), which shall also be allowable; and (c) a reasonable attorney's fee, which shall belong to the client, for such subsequent services as are compelled by the non-acceptance, such fee to be applied for within 20 days following entry of final judgment and in accordance with *R*. 4:42-9(b). [In an action for unliquidated damages, however, no allowances under this rule shall be granted to the offer or unless the amount of the recovery is in excess of 120% of the offer. A claimant entitled to interest under *R*. 4:42-11(b) shall be allowed interest under this rule only to the extent it may exceed the interest allowed under *R*. 4:42-11(b).]

Note: Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1972 to be effective September 5, 1972; amended July 17, 1975 to be effective September 8, 1975; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended to be effective .

4:58-3. Consequences of Non-acceptance of Offer of Party Not a Claimant

If the offer of a party other than the claimant is not accepted and the determination is [at least as] favorable to the offeror [as the offer,] as defined by this rule, the offeror shall be allowed, in addition to costs of suit, [litigation expenses and attorneys fee] the allowances as prescribed by *R*. 4:58-2, [and any such allowances] which shall constitute a prior charge upon the judgment. A favorable determination qualifying for allowances under this rule is a verdict or determination at least as favorable to the offeror as the offer or, if a money judgment, is in an amount, excluding prejudgment interest and counsel fees otherwise awardable, of 80% or less than the offer. No allowances shall, however, be granted if the claimant's claim is dismissed, a verdict of no-cause is returned, or only nominal damages are awarded. [In an action for unliquidated damages, however, no allowances under this rule shall be granted to such offeror unless the amount awarded to the claimant is in excess of $750.00 and is less than 80 per cent of the offer.]

Note: Source *R.R.* 4:73; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended _____ to be effective _____.

4:58-4. Multiple Claims; Multiple [Defendants] Parties

(a) Multiple plaintiffs. If a party joins as plaintiff for the purpose of asserting a *per quod* claim, the claimants may make a single unallocated offer.

(b) Multiple Defendants. If there are multiple defendants against whom a joint and several judgment is sought, and one of the defendants offers in response less than a *pro rata* share, that defendant shall, for purposes of the allowances under *R*. 4:58-2 and -3, be deemed not to have accepted the claimant's offer. If, however, the offer of a single defendant, whether or not intended as the offer of a pro rated share, is at least as favorable to the offeree as the determination of total damages to which the offeree is entitled, the single offering defendant shall be entitled to the allowances prescribed in *R*. 4:58-3, provided, however, that in an action for unliquidated damages the offeree has received at least $750 and that single defendant's offer is at least 80% of the total damages determined.

(c) Multiple Claims. If a claimant asserts multiple claims for relief or if a counterclaim has been asserted against the claimant, the claimant's offer shall include all claims made by or against that claimant. If a party not originally a claimant asserts a counterclaim, that party's offer shall also include all claims by and against that party.

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

F. Proposed New *R.* 4:64-8 — Dismissal of Foreclosure Actions for Lack of Prosecution

The Clerk of the Superior Court proposed a new rule for inclusion in the rules governing foreclosure in Part IV to allow for the dismissal of foreclosure actions after one year for lack of prosecution. The rule would direct the Clerk of the Superior Court to issue the notice of dismissal, and response would be by affidavit or certification. The Committee supports the new rule and recommends that a cross-reference to it be made in *R.* 1:13-7.

The proposed new *R.* 4:64-8 follows.

4:64-8. Dismissal of Foreclosure Actions for Lack of Prosecution

Except as otherwise provided by rule or court order, whenever any foreclosure action shall have been pending for twelve months without any required proceeding having been taken therein, the Clerk of the Superior Court shall issue written notice to the parties advising that the action as to any or all defendants will be dismissed without prejudice 30 days following the date of the notice unless, within said period, proof of service of process has been filed, or an answer or other response by way of motion or acknowledgement has been filed, or an affidavit or certification has been filed with the Clerk of the Superior Court asserting that the failure of filing or taking the next required proceeding is due to exceptional circumstances. If the plaintiff fails to respond as herein prescribed, the court shall enter an order of dismissal without prejudice as to any named party defendant who has not been served or has not answered and shall furnish the plaintiff with a copy thereof. Reinstatement of the action after dismissal may be permitted only on motion for good cause shown. The court may issue the written notice herein prescribed in any action pending on the effective date of this rule amendment, and this rule shall then apply.

Note: Adopted _____ to be effective _____.

G. Proposed Amendments to *R.* 4:69-4 — Filing and Management of Actions in Lieu of Prerogative Writ

Pursuant to *R.* 4:69-4 and to the Civil best practices recommendations, Actions in Lieu of Prerogative Writs are to be assigned to Track 4, to ensure individual judge management. Track 4 cases receive 450 days discovery. During the course of its county visits, the Civil best practices visitation team has heard complaints from attorneys that judges are not allowing the full 450 days for discovery in PW cases. The Court-approved Civil best practices recommendations note that PW cases will be assigned to Track 4 to ensure individual judge management "even though most will not need 450 days' discovery," as such matters are typically heard on the record below. Current *R.* 4:24-1(a) states that cases on Tracks 3 and 4 shall receive 450 days of discovery, "except as provided by *R.* 4:69-4." *Rule* 4:69-4, however, which deals with PW actions, refers to the case management conference that must be conducted within 30 days after joinder, but does not state explicitly that the managing judge may set the discovery period, if any is needed, in the resulting case management order.

The Conference of Civil Presiding Judges discussed this issue and agreed that it never intended that all PW actions be automatically accorded 450 days of discovery. To dispel any confusion on the part of the bar, the Conference unanimously proposed that *R.*4:69-4 be amended to provide that the discovery to be conducted, if any, and the time to complete such discovery, will be determined at the case management conference and memorialized in the case management order. The Judiciary Management and Operations Committee and the Judicial Council approved the proposed amendments in concept. The Supreme Court agreed with the recommendation of the Civil Presiding Judges and asked that the Civil Practice Committee

include the draft rule amendments in its Supplemental Report. The Committee endorsed the proposed amendments.

The proposed amendments to *R*. 4:69-4 follow.

4:69-4. Filing and Management for Actions in Lieu of Prerogative Writs

The filing of the complaint shall be accompanied by a certification that all necessary transcripts of local agency proceedings in the cause have been ordered. All actions in lieu of prerogative writs will be assigned to Track IV. Within 30 days after joinder and in order to expedite the disposition of the action the managing judge shall conduct a conference, in person or by telephone, with all parties to determine the factual and legal disputes, to mark exhibits and to establish a briefing schedule [and, if necessary, a discovery schedule]. The discovery to be conducted, if any, and the time to complete such discovery, will be determined at the case management conference and memorialized in the case management order. At least five days in advance of the conference, each party shall submit to the managing judge a statement of factual and legal issues and an exhibit list.

Note: Former *Rule* 4:69-4 deleted November 27, 1974 to be effective April 1, 1975. New caption and rule adopted July 3, 2000 to be effective September 5, 2000; amended to be effective .

H. Proposed "Housekeeping" Amendments to *Rules* 1:4-1, 1:13-7, 1:21-2, and 1:39-2

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

- *Rules* 1:4-1, 1:21-2, and 1:39-2 —to comport with the recent amendments to *R.* 1:21-1 that eliminated the requirement that, in order to practice law in New Jersey, an attorney must maintain a *bona fide* office in this state.

- *Rule* 1:13-7— to include a cross-reference to new *R.* 4:64-8.

See Section I.G. of the 2004 Report of the Civil Practice Committee to the Supreme Court for a discussion of other proposed amendments to *R.* 1:13-7, which the Committee recommends, and Section II.G. of the 2004 Report of the Civil Practice Committee to the Supreme Court for a discussion of other proposed amendments to *R.* 1:13-7, which the Committee does not recommend.

The proposed "housekeeping" amendments to *Rules* 1:4-1, 1:13-7, 1:21-2, and 1:39-2 follow.

1:4-1. Caption: Name and Addresses of Party and Attorney; Format

(a) no change. .

(b) Format; Addresses. At the top of the first page of each paper filed, a blank space of approximately 3 inches shall be reserved for notations of receipt and filing by the clerk. Above the caption at the left-hand margin of the first sheet of every paper to be filed there shall be printed or typed the name of the attorney filing the paper, office address and telephone number or, if a party is appearing *pro se*, the name of such party, residence address and telephone number. No paper shall bear [an attorney's address out of the State or] an attorney's post office box number in lieu of a street address. An attorney or *pro se* party shall advise the court and all other parties of a change of address or telephone number if such occurs during the pendancy of an action. Papers filed in the trial courts shall have no backer or cover sheet.

Note: Source — *R.R.* 4:5-8, 4:10-1, 5:5-1(e), 7:5-2(a) (first two sentences); paragraph (a) amended December 20, 1983 to be effective December 31, 1983; paragraph (a) redesignated as paragraph (a)(1) and paragraph (a)(2) added November 7, 1988 to be effective January 2, 1989; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(1) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended _____ to be effective _____.

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

(a) Dismissal. Except in receivership and liquidation proceedings[,] and in condemnation and foreclosure actions [as otherwise specified by *R.* 4:43-2(d)] as governed by *R.* 4:64-8 and except as otherwise provided by [rule or court order, whenever any civil action shall have been pending in any court for four months without any required proceeding having been taken therein, the court shall issue written notice to the parties advising that the action as to any or all defendants will be dismissed without prejudice 60 days following the date of the notice unless, within said period, proof of service of process has been filed, or an answer or other response by way of motion or acknowledgment has been filed, or a motion has been filed asserting that the failure of service or the filing of an answer is due to exceptional circumstances. If the plaintiff fails to respond as herein prescribed, the court shall enter an order of dismissal without prejudice as to any named party defendant who has not been served or has not answered and shall furnish the plaintiff with a copy thereof. Reinstatement of the action after dismissal may be permitted only on motion for good cause shown. The court may issue the written notice herein prescribed in any action pending on the effective date of this rule amendment, and this rule shall then apply.] paragraph (c) of this rule, every civil action shall be subject to dismissal four months after the date of filing of the complaint as against a defendant who has not filed an answer or otherwise moved for relief and as to whom neither proof of service nor acknowledgement of service has been filed nor a default or default judgment entered, nor as to whom plaintiff has moved for substituted or constructive service or other relief. In such case, the court shall notify the plaintiff in writing that the action as to that defendant will be dismissed 60 days following the date of the notice unless within said period defendant either files an answer or acknowledgement of service or otherwise moves for relief, or a default or default judgment is

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

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

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

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

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

1:21–2. Appearances *Pro Hac Vice*

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

(1) ...no change.

(2) ...no change.

(3) ...no change.

(b) ...no change.

(c) ...no change.

(d) ...no change.

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

1:39-2. Eligibility

Subject to the specific requirements contained in the Regulations of the Board, an attorney shall be eligible to apply for certification in a designated area of practice on demonstrating to the Board on Attorney Certification the following:

(a) Minimum Admission Period; Practice of Law. Membership in good standing with a plenary license at the bar of the State of New Jersey for at least five years. Applicants for certification must be (1) engaged in the private practice of law, wherein the applicant represents and gives legal advice to clients[, maintains a *bona fide* office in New Jersey pursuant to *Rule* 1:21-1(a)] and maintains the appropriate bank accounts pursuant to *Rule* 1:21-6; or (2) employed by State, county, or municipal government representing and giving legal advice to clients.

(b) …no change.

(c) …no change.

(d) …no change.

Note: Adopted January 29, 1979 to be effective April 1, 1979; paragraph (a) amended, former paragraph (b) deleted and former paragraph (c) redesignated as (b) and amended, former paragraph (d) redesignated as (c) and amended, and new paragraph (d) adopted May 15, 1980 to be effective September 8, 1980; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (d) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b)(2) and (c) amended July 13, 1994 to be effective September 1, 1994; introduction and paragraphs (b), (c), and (d) amended June 28, 1996, to be effective September 1, 1996; corrective amendment to paragraph (c) adopted August 1, 1996 to be effective September 1, 1996; paragraphs (a), (b), (c), and (d) amended and new paragraph (e) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a) amended to be effective .

II. RULES CONSIDERED AND REJECTED

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

A Superior Court judge pointed out the potential for confusion with the proposed amendments to *R.* 4:14-9. Specifically, he noted that while the rule revision shortens the time for noticing the videotaped deposition from 30 to 10 days, it does not alter the provisions of subsection (a) that provide that the testimony of an expert witness "shall not be noticed for taking until 30 days after a written report of that witness has been furnished to all parties" and that discovery depositions of that witness shall be taken within the 30-day period. The judge believed the proposed amendment would appear to limit the time to take a discovery deposition to that 10-day period. The Committee members were of the opinion that wording of the proposed amendments is clear and, consequently, declined to recommend any further amendments to the rule.

See Section I.K. of the 2004 Report of the Civil Practice Committee to the Supreme Court for a discussion of the Committee's prior consideration of proposed amendments to this rule, which the Committee recommends.

B. Proposed Amendments to *R.* 4:74-7 — Civil Commitment — Adults

An attorney who represents the interests of the CFG Health Systems, LLC, a service provider with contracts for Involuntary Civil Commitment evaluations with several hospitals and institutions in New Jersey, requested that *R.* 4:74-4 be amended to permit the production and forwarding of the required physician's certificate in an electronic format. The Committee members questioned how such a signature could be authenticated in light of current technology, and determined not to recommend an amendment permitting an electronic signature in cases in which an individual's liberty is at issue. Upon receipt and consideration of further documentation regarding federal legislation authorizing electronic signatures, the Committee reaffirmed its prior determination.

See Section II.P. of the 2004 Report of the Civil Practice Committee to the Supreme Court for a discussion of the Committee's prior consideration of proposed amendments to this rule, which the Committee does not recommend.

III. OTHER RECOMMENDATIONS

A. Policy Regarding Faxed Communications to the Court

An attorney, noting that there are disparate practices from county to county and even from judge to judge regarding the receipt and acceptance of faxed documents, sought a uniform fax policy. The Committee members acknowledged that the accessibility and availability of fax machines varies greatly, but recognized that attorneys need to know whether and under what conditions faxed material will be accepted. Accordingly, the Committee recommends that an Administrative Directive be issued directing each vicinage to develop and publish a local policy with respect to faxed communications.

IV. MATTERS HELD FOR CONSIDERATION

A. Proposed Amendments to *R.*4:58 — Offer of Judgment

The Offer of Judgment Subcommittee, Hon. Jack Sabatino, chair, has been reconstituted to continue its study of the offer of judgment rule. The subcommittee is to consider, *inter alia*, how the rule should address a fee-shifting case in which an offer of judgment is made which includes attorney's fees

See Section I.D. of this Report for a discussion of proposed amendments to *R.* 4:58, which the Committee recommends.

B. Health Insurance Portability and Accountability Act ("HIPAA") Authorizations

Earlier in the term, the Committee had expressed interest in the development of a universally acceptable HIPAA-compliant form, but had determined to leave the drafting of such a form to the Attorney General's Office. Subsequently, and in response to the frustration experienced by the practitioners on the Committee in obtaining HIPAA authorizations, a Committee member requested that a subcommittee be formed to develop a HIPAA-compliant form to be included in the appendix to the court rules. The Committee endorsed this suggestion and the subcommittee's work will continue into the 2004-2006 term.

See Section IV.F. of the 2004 Report of the Civil Practice Committee to the Supreme Court for a discussion of the Committee's prior consideration of this issue.

Respectfully submitted,

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Dated: March 1, 2004