2014 Report of the Supreme Court Civil Practice Committee

January 27, 2014

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APPENDICES

I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to *R.* 1:4-4 — Affidavits

A practitioner suggests that subsection (c) of *Rule* 1:4-4 be amended to permit attorneys to file and serve affidavits and certifications that are signed remotely and transmitted to the attorney via e-mail. The practitioner states that, under today's common practices, communications between attorneys and clients mainly take place via e-mail or text messaging as opposed to facsimile. The practitioner suggests that the rule could be amended such that the affiant would sign an affidavit before the person authorized to take oaths at a remote location; place the signed document into portable document format (PDF); and then e-mail the PDF document to the attorney. The attorney would then submit the PDF document to the court. The practitioner believes that the proposed amendments would be consistent with federal law requirements for authentication of documents via electronic signature. The Committee agreed that paragraph (c) of *Rule* 1:4-4 should be amended to permit submission of PDF versions of documents to the court.

Additionally, the Committee discussed the requirement of paragraph (c) of the Rule that the attorney or party filing a copy of an affidavit or certification certify that the affiant acknowledged the genuineness of the signature. The Committee determined that the requirement of the attorney/party certification is unnecessary because the act of filing the document should be considered such certification. The attorney or party still would be required to file the original document if requested by the court or a party. The Committee therefore recommends elimination of the attorney/party certification requirement of paragraph (c) of *Rule* 1:4-4.

The proposed amendments to paragraph (c) of *Rule* 1:4-4 follow.

1:4-4. Affidavits

(a) …no change.

(b) …no change.

(c) [Facsimile Signature. If the affiant is not available to sign an affidavit or certification, it may be filed with a facsimile of the original signature provided the attorney offering the document certifies that the affiant acknowledged the genuineness of the signature and that the document or a copy with an original signature affixed] Requirement for Original Signature. Every affidavit or certification shall be filed with an original signature, except that a copy of an affidavit or certification may be filed instead, provided that the affiant signs a document that is sent by facsimile or in Portable Document Format (PDF), or similar format, by the affiant and provided that the attorney or party filing the copy of the affidavit or certification files the original document [will be filed] if requested by the court or a party.

Note: Source — *R.R.* 1:27F, 4:10-4; paragraph (c) adopted June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended _____ to be effective _____.

B. Proposed Amendments to *Rules* 1:13-9 and 2:12-10 re: Amicus Curiae Status in the Supreme Court

A Committee member suggests amending *Rule* 1:13-9 to clarify that a party who has not previously been granted amicus curie status in the Appellate Division may seek to appear as amicus on a motion for leave to appeal and/or a petition for certification in the Supreme Court. He states that paragraph (d) of *Rule* 1:13-9 only addresses filings by parties who already have been granted amicus status, and paragraph (e) speaks to the time for filing following the grant of review. He contends that the time limits in the Rule should be applied to any party seeking amicus status on a petition for certification or a motion for leave to appeal to the Supreme Court. A subcommittee was formed to address this issue. The subcommittee proposes amending *Rule* 1:13-9 to provide that a motion is not required in the Supreme Court for a nonparty not previously granted amicus status to file a brief with respect to a notice of motion for leave to appeal, petition for certification, or an appeal pending in the Supreme Court. The time frames for filing the brief remain in the rule. The subcommittee's proposed amendments to *Rule* 2:12-10 provide that the date of the order granting certification shall be posted on the Judiciary's website so that the time frames for amicus to file the briefs are known.

Some Committee members expressed concern that some members of the public may take advantage of the process by filing baseless or unfounded briefs because they are able to do so. Further, there is a possibility that the Supreme Court might be overly "papered," which could result in denying access and fairness to individuals or organizations with legitimate concerns. The Committee considered that the Supreme Court Clerk's Office is in favor of eliminating the requirement for motions to be filed because the Court routinely grants such motions. Further, the Supreme Court Clerk's Office will have consistent standards to apply when handling such

motions if the rule is clarified. Ultimately, the Committee determined that allowing the filing of briefs without the motions will allow the Supreme Court to consider legitimate concerns that it would not ordinarily have the opportunity to consider. The Committee approved of the subcommittee's rule proposals.

The proposed amendments to *Rules* 1:13-9 and 2:12-10 follow.

1:13-9. Amicus Curiae; Motion; Grounds for Relief; Briefs

(a) Except as provided in paragraphs (e) and (f) of this rule, [A]an application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall define with specificity the permitted extent of participation by the amicus and shall, where appropriate, fix a briefing schedule.

(b) …no change.

(c) …no change.

(d) An amicus curiae who has been granted leave to appear in a cause may, without seeking further leave:

(1) …no change.

(2) …no change.

(3) …no change.

(4) …no change.

(e) An amicus curiae who has not previously been granted [leave to appear in a cause may file a motion for leave to appear in the Supreme Court, provided that the motion is accompanied by the proposed amicus curiae brief. Except as provided in Subsection (f) of this Rule, motions for leave to appear as an amicus curiae in the Supreme Court shall be filed within

seventy-five (75) days of the date when the Supreme Court posts on its public website a notice of:

(1) an order granting certification;

(2) an order granting leave to appeal; or

(3) the filing of a notice of appeal.

Untimely motions may be granted by the Supreme Court only on a showing of good cause demonstrated to the satisfaction of the Court.] such status may file a brief, as of right, in support of, or opposition to, a notice of motion for leave to appeal or petition for certification, provided that the brief is filed on or before the day on which the last brief is due from any party. A responding brief may be filed by a party within 20 days of service.

(f) [In the event that the Supreme Court, or the Appellate Division, has directed the parties to submit briefs in accordance with an accelerated schedule, an amicus curiae shall file its motion for leave to appear, accompanied with its brief, on or before the date fixed for the last brief due from any party.] An amicus curiae who has not previously been granted such status, or who has filed a brief in support of, or opposition to, a notice of motion for leave to appeal or petition for certification, may file a brief as amicus after leave to appeal or certification has been granted, or after an appeal as of right has been filed, provided that it is filed within 75 days of the date on which the Supreme Court posts on its website the notice of an order granting leave to appeal or certification or the filing of a notice of appeal. A response to the brief may be filed by a party within 20 days of its filing.

(g) In the event that the Supreme Court, or the Appellate Division, has directed the parties to submit briefs in accordance with an accelerated schedule, an amicus curiae shall file its

brief on or before the date fixed for the last brief due from any party, and a response to the brief may be filed by any party within 20 days of its filing.

Note: Adopted July 16, 1979 to be effective September 10, 1979; caption and text amended July 13, 1994 to be effective September 1, 1994; former text reallocated as paragraphs (a) and (b), paragraph (a) amended, and new paragraphs (c), (d), (e) and (f) adopted July 23, 2010 to be effective September 1, 2010; paragraph (f) amended March 24, 2011 to be effective immediately; paragraphs (a), (d)(4), (e) and (f) amended, new paragraph (g) added to be effective .

2:12-10. Granting or Denial of Certification

A petition for certification shall be granted on the affirmative vote of 3 or more justices. Upon final determination of a petition for certification, unless the Supreme Court otherwise orders, the clerk shall enter forthwith an order granting or denying the certification in accordance with the Supreme Court's determination and shall mail true copies thereof to the clerk of the court below and to the parties or their attorneys. The date of the order granting certification shall be posted on the Judiciary's website.

Note: Source — *R.R.* 1:10-4(e), 1:10-13; amended to be effective .

C. Proposed Amendments to *Rule* 1:21-7 — Contingent Fees

During the last rules cycle, the Committee declined to recommend proposed amendments to *Rule* 1:21-7 to increase the maximum allowable dollar amount for contingent fees for tort recoveries or to set a presumptive 20% enhancement for any recovery in excess of $3 million. The Conference of Assignment Judges requests that the Committee revisit the issue. The Contingent Fee Subcommittee was reconstituted to reconsider amending the Rule. The subcommittee proposed: (1) amending subparagraphs (c)(1) through (c)(4) of *Rule* 1:21-7 to increase the amounts from $500,000 to $750,000; (2) setting a presumptive 20% contingent fee subject to increase or decrease by application for reasonable fee for recoveries in excess of $3 million; and (3) amending subparagraph (c)(6) of *Rule* 1:21-7 to provide that the contingent fee on an amount received by settlement before empaneling of the jury shall not exceed 25%. The subcommittee reasoned that the dollar amounts in subparagraphs (c)(1) through (c)(4) should be increased because they have not been increased since 1996, and it is fair to adjust the maximum allowable limit as it impacts only those cases in which there has been a substantial recovery. The subcommittee determined that the presumptive 20% enhancement for recoveries in excess of $3 million would be the starting point from which a plaintiff could apply for a lesser amount and the plaintiff's attorney could apply for a greater amount. The court would then use its discretion in determining the actual award amount. With respect to amending subparagraph (c)(6), the subcommittee noted that at the point of empaneling the jury, the plaintiff's risk increases because the plaintiff has already prepared its case.

The Committee approves of the subcommittee's recommendations to increase the dollar amounts set forth in subparagraphs (c)(1) through (c)(4) of the Rule from $500,000 to $750,000,

and to provide that the contingent fee on an amount received by settlement before empaneling of the jury shall not exceed 25% in subparagraph (c)(6) of the Rule.

Initially, the Committee expressed concern with the recommendation for a 20% presumptive enhancement for recoveries in excess of $3 million because such a presumption places the burden on the other party to defeat the presumption, and attorneys will not set forth reasons for increasing or decreasing the presumptive percentage. After further discussion, the Committee voted in favor of the 20% presumption determining that the presumption may reduce the number of applications to the court.

See Sections I.B. and I.C. of this Report for proposed amendments to *Rule* 1:21-7 considered but rejected by the Committee.

The proposed amendments to paragraph (c) of *Rule* 1:21-7 follow.

1:21-7. Contingent Fees

(a) …no change.

(b) …no change.

(c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims and claims among family members that are subject to Part V of these Rules but excluding statutorily based discrimination and employment claims, and the client is not a subrogee, an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits:

(1) 33⅓% on the first [$500,000] $750,000 recovered;

(2) 30% on the next [$500,000] $750,000 recovered;

(3) 25% on the next [$500,000] $750,000 recovered;

(4) 20% on the next [$500,000] $750,000; and

(5) [on all amounts recovered in excess of the above by application for reasonable fee in accordance with the provisions of paragraph (f) hereof;] 20%, subject to increase or decrease by application for reasonable fee in accordance with the provisions of paragraph (f) hereof, on all amounts recovered in excess of $3,000,000; and

(6) where the amount recovered is for the benefit of a client who was a minor or mentally incapacitated when the contingent fee arrangement was made, the foregoing limits shall apply, except that the fee on any amount recovered by settlement [without trial] before empaneling of the jury or, in a bench trial, the earlier to occur of plaintiff's opening statement or the commencement of testimony of the first witness, shall not exceed 25%.

(d) …no change.

(e) …no change.

(f) …no change.

(g) …no change.

(h) …no change.

(i) …no change.

Note: Source — *R*. 1:21-6(f), as adopted July 7, 1971 to be effective September 13, 1971 and deleted December 21, 1971 to be effective January 31, 1972. Adopted December 21, 1971 to be effective January 31, 1972. Amended June 29, 1973 to be effective September 10, 1973. Paragraphs (c) and (e) amended October 13, 1976, effective as to contingent fee arrangements entered into on November 1, 1976 and thereafter. Closing statements on all contingent fee arrangements filed as previously required between January 31, 1972 and January 31, 1973 shall be filed with the Administrative Office of the Courts whenever the case is closed; paragraph (c) amended July 29, 1977 to be effective September 6, 1977; paragraph (d) amended July 24, 1978 to be effective September 11, 1978; paragraph (c) amended and new paragraphs (h) and (i) adopted January 16, 1984, to be effective immediately; paragraph (d) amended July 26, 1984 to be effective September 10, 1984; paragraph (e) amended June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c)(5) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (c) amended January 21, 1999 to be effective April 5, 1999; paragraphs (g) and (h) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraphs (d) and (f) amended July 9, 2008 to be effective September 1, 2008; paragraph (f) amended July 19, 2012 to be effective September 4, 2012; paragraphs (c)(1) through (c)(6) amended to be effective .

D. Proposed Amendments to *R.* 2:5-6(c) – Notice to the Trial Judge or Officer; Findings

Paragraph (c) of *Rule* 2:5-6 provides in part that when a party files a notice of motion for leave to appeal an interlocutory order, the judge or officer shall file with the Appellate Division a written statement of reasons for the disposition within five days after receiving such motion if there is no written statement or verbatim record of the disposition. The Judicial Council suggests amending paragraph (c) of the Rule to extend the time for judges to file the written statement from five days to ten days to provide the judge with sufficient time to submit the written statement. The Committee agrees that ten days to file a written statement of reasons for disposition for both judges and officers is more reasonable than five days, and accordingly recommends amending the rule.

The proposed amendments to paragraph (c) of *Rule* 2:5-6 follow.

2:5-6. Appeals From Interlocutory Orders, Decisions and Actions

(a) …no change.

(b) …no change.

(c) Notice to the Trial Judge or Officer; Findings. A party filing a motion for leave to appeal from an interlocutory order shall serve a copy thereof on the trial judge or officer who entered the order. If the judge or officer has not theretofore filed a written statement of reasons or if no verbatim record was made of any oral statement of reasons, the judge or officer shall, within [5] 10 days after receiving the motion, file and transmit to the clerk of the Appellate Division and the parties a written statement of reasons for the disposition. The statement may also comment on whether the motion for leave to appeal should be granted on the ground, among others, that a controlling question of law not theretofore addressed by an appellate court of this state is involved and that the grant of leave to appeal may materially advance the ultimate resolution of the matter. Any statement of reasons previously made may also be amplified.

Note: Source — *R.R.* 1:2-3(b), 2:2-3(a) (second sentence), 4:53-1 (sixth sentence), 4:61-1(d). Paragraphs (a) and (c) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (c) amended July 16, 1981 to be effective September 14, 1981; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended July 23, 2010 to be effective September 1, 2010; paragraph (c) amended _____ to be effective _____.

E. Proposed Amendments to *R.* 2:6-11 — Time for Serving and Filing Briefs; Appendices; Transcript; Notice of Custodial Status

The Appellate Division Rules Committee suggests amending *Rule* 2:6-11 to add a new paragraph that would provide for the tolling of time for the filing and serving of certain motion briefs and appendices in the Appellate Division. The Committee agrees, determining that the proposed amendments would make the process clearer for the parties, especially self-represented litigants.

The proposed amendments to *Rule* 2:6-11 follow.

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

(a) …no change.

(b) …no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) …no change.

(g) Motions that Toll the Time for Serving and Filing Briefs. Subject to subparagraph (g)(1) of this rule, in addition to the filing of those motions that toll the time for the filing of briefs and appendices as provided by *R.* 2:5-5(a) and *R.* 2:8-3(b), the filing of the following motions in the Appellate Division pursuant to this rule shall toll the time for the filing of briefs and appendices in the Appellate Division:

Motion to supplement the record in trial court or administrative agency proceedings made directly to the Appellate Division by any party or on the court's own motion. If granted, the proceedings, if any, required to supplement the record shall continue to toll the time for the filing of briefs and appendices;

Motion to strike the entirety or portions of a brief or appendix;

Motion to dismiss the appeal;

Motion for final remand;

Motion to stay appellate proceedings; and

Motion to file overlength merits brief.

(1) If the party filing the motion under this section has been granted prior extension(s) of time to file its brief and appendix, the motion will not toll the time and the party should request a further extension by motion.

(2) The making of a motion pursuant to this rule shall toll the time for serving and filing the next brief due, but the remaining time shall again begin to run from the date of entry of an order disposing of such a motion, unless otherwise directed by the court or provided in this section.

Note: Source – *R.R.* 1:7-12(a)(c), 1:10-14(b), 2:7-3. Paragraph (b) amended by order of September 5, 1969 effective September 8, 1969; paragraph (a) amended July 7, 1971 to be effective September 13, 1971; caption and paragraphs (a) and (b) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended May 8, 1975 to be effective immediately; paragraphs (c), (d) and (e) adopted July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and titles of paragraphs (c)(d) and (e) added November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; paragraph (f) adopted July 16, 2009 to be effective September 1, 2009; new paragraph (g) added to be effective .

F. Proposed Amendments to *R.* 2:11-1 — Appellate Calendar; Oral Argument

The Appellate Division Rules Committee suggests amending subparagraph (b)(2) of *Rule* 2:11-1 to provide that in the Appellate Division, if one party files a timely request for oral argument, other parties do not need to file separate requests for oral argument. The Committee agrees and recommends the proposed amendments to the Rule.

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

2:11-1. Appellate Calendar; Oral Argument

(a) …no change.

(b) Oral Argument.

(1) In the Supreme Court, appeals shall be argued orally unless the court dispenses with argument.

(2) In the Appellate Division, appeals shall be submitted for consideration without argument, unless argument is requested by one of the parties within 14 days after service of the respondent's brief or is ordered by the court. Such request shall be made by a separate captioned paper filed with the Clerk in duplicate. The clerk shall notify counsel of the assigned argument date. If one of the parties has filed a timely request for oral argument, the other parties may rely upon that request and need not file their own separate requests for argument. A party may withdraw its request for oral argument only if it has the consent to do so from all other parties participating in the appeal.

(3) Counsel shall not be permitted to argue for a party who has neither filed a brief nor joined in another party's brief. The appellant shall be entitled to open and conclude argument. An appeal and cross appeal shall be argued together, the party first appealing being entitled to open and conclude, unless the court otherwise orders. Each party will be allowed a maximum of 30 minutes for argument in the Supreme Court, unless the Court determines more time is necessary, and 30 minutes in the Appellate Division, but the court may terminate the argument at any time it deems the issues adequately argued. No more than two attorneys will be heard for each party. An attorney will not be permitted to read at length from the briefs, appendices, transcripts or decisions.

Note: Source — *R.R.* 1:8-1(a) (b), 1:8-2(a), 1:8-3, 1:8-4, 2:8-3. Amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended June 29, 1973 to be effective September 10, 1973; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended November 2, 1987 to be effective January 1, 1988; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 19, 2012 to be effective September 4, 2012; paragraph (b) amended to be effective .

G. Proposed Amendments to *R.* 4:5-4 — Affirmative Defenses

In *J.B. Pool Management v. Four Seasons at Smith Homeowners Association*, 431 *N.J. Super*. 233 (App. Div. 2013), the Appellate Division held that the defenses of frustration of purpose and impossibility of performance, when relied upon by a defendant in a breach of contract case, generally should be pled as affirmative defenses. The Appellate Division, in footnote 8 of the opinion, refers to the Committee the issue of whether *Rule* 4:5-4 should be amended to include these defenses. The Committee considered the issue and proposes amending *Rule* 4:5-4, to incorporate the defenses of frustration of purpose and impossibility of performance. The Committee also recommends that the Rule be clarified to provide that the defenses listed in the Rule are not the only defenses that must be pled as affirmative defenses.

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

4:5-4. Affirmative Defenses; Misdesignation of Defense and Counterclaim

A responsive pleading shall set forth specifically and separately a statement of facts constituting an avoidance or affirmative defense [such as] including but not limited to accord and satisfaction, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, frustration of purpose, illegality, impossibility of performance, injury by fellow servant, laches, license, payment, release, *res judicata*, statute of frauds, statute of limitations, and waiver. If a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on terms if the interest of justice requires, shall treat the pleading as if there had been a proper designation.

Note: Source — *R.R.* 4:8-3; amended to be effective .

H. Proposed Amendments to *Rules* 4:11-4 and 4:11-5 re: Uniform Interstate Deposition and Discovery Act

The New Jersey Law Revision Commission issued a Tentative Report on the Uniform Interstate Deposition and Discovery Act (the "Act") in July 2012. The Act sets forth a uniform procedure for subpoenaing the depositions of out-of-state individuals and the production of discoverable materials located outside of the trial state whereby a subpoena issued by a court in the trial state (or forum state) is then enforced by the clerk of a court in the discovery state (or foreign jurisdiction). The tentative report was referred to the Discovery Subcommittee for consideration.

The Discovery Subcommittee determined that provisions of the Act should be incorporated into *Rules* 4:11-4 and 4:11-5. The proposed amendments would permit attorneys or the Clerk's Office of the Superior Court to issue subpoenas, which will make the process more efficient for attorneys and less costly for clients. The Committee agrees that the provisions of the Act should be incorporated in the Court Rules. The Committee notes that the Court Rules have been amended to provide that attorneys do not need a physical office in New Jersey, so procedural uniformity is a benefit for attorneys located outside of New Jersey.

The proposed amendments to *Rules* 4:11-4 and 4:11-5 follow.

4:11-4. Testimony for Use in Foreign Jurisdictions

(a) Testimony for Use in the United States or Another Country. Whenever the deposition of a person is to be taken in this State pursuant to the laws of [another state,] the United States[,] or another country for use in connection with proceedings there, the Superior Court may, on ex parte petition, order the issuance of a subpoena to such person in accordance with *R.* 4:14-7. The petition shall be captioned in the Superior Court, Law Division, shall be designated "petition pursuant to *R.* 4:11-4" and shall be filed in accordance with *R.* 1:5-6(b). It shall be treated as a miscellaneous matter and the fee charged shall be pursuant to *N.J.S.A.* 22A:2-7.

(b) Testimony for Use in a Foreign State.

(1) Whenever the deposition of a person is to be taken in this State pursuant to the laws of a foreign state for use in connection with proceedings there, an out-of-state attorney or party may submit a foreign subpoena along with a New Jersey subpoena which complies with subparagraph (3) to an attorney authorized to practice in this State or to the clerk of the court in the county in which discovery is sought to be conducted in this State. The foreign subpoena must include the following phrase below the case number: "For the Issuance of a New Jersey Subpoena Under New Jersey Rule 4:11-4 (b)" and shall be filed in accordance with *R.* 1:5-6(b). It shall be treated as a miscellaneous matter and the fee charged shall be pursuant to *N.J.S.A.* 22A:2-7.

(2) A request for the issuance of a subpoena does not constitute an appearance in the courts of this State. A request for the issuance of a subpoena does create the necessary jurisdiction in this State to enforce the subpoena; to quash or modify the subpoena; to issue any protective order or resolve any other dispute relating to the subpoena; to impose sanctions on the

attorney or party requesting the issuance of the subpoena for any action which would constitute a violation of the Rules Governing the Courts of the State of New Jersey, including the Rules of Professional Conduct; and to take such other action as may be appropriate.

(3) A subpoena under this subsection shall:

(A) state the name of the New Jersey court issuing it and comply with the requirements of *R.* 4:14-7;

(B) incorporate the terms and conditions used in the foreign subpoena to the extent those terms and conditions do not conflict with *R.* 4:14-7;

(C) advise the person to whom the subpoena is directed of that person's right to move to quash or modify the subpoena or otherwise move under *R.* 4:10-3, *R.* 4:14-4, *R.* 4:23-1 or any other Rules Governing the Courts of the State of New Jersey that are applicable to discovery; and

(D) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(E) bear the caption and case number of the foreign case to which it relates, identifying the foreign jurisdiction and the court where the case is pending.

(4) Service of Subpoena. A subpoena issued by an attorney authorized to practice in this State or by a clerk of the court must be served in compliance with *R.* 1:9-3 and *R.* 1:9-4.

(5) Deposition, Production, and Inspection. The provisions of *R.* 1:9-2 apply to a subpoena issued under this section. As required by *R.* 4:14-7(c), a subpoena commanding a person to produce evidence for discovery purposes may be issued only to a person whose attendance at a designated time and place for the taking of a deposition is simultaneously compelled. The subpoena shall state that the subpoenaed evidence shall not be produced or

released until the date specified for the taking of the deposition and that if the deponent is notified that a motion to quash the subpoena has been filed, the deponent shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by all parties to the action. The subpoena shall be simultaneously served no less than 10 days prior to the date therein scheduled on the witness and on all parties. Depositions and other discovery taken pursuant to the rule shall be conducted consistent with and subject to the limitations in the Rules Governing the Courts of the State of New Jersey, including the Rules of Professional Conduct, and all other applicable laws of this State.

(6) Motion or application to a court. A motion or an application to the court for a protective order or to enforce, quash, or modify a subpoena issued by an attorney authorized to practice in this State or by a clerk of the court under section (b) must comply with the rules and statutes of this State and be submitted to the court in the county in which discovery is to be conducted or the deponent resides, is employed or transacts business. It must be filed as a miscellaneous matter bearing the caption that appears on the subpoena. The following phrase must appear below the case number of the newly filed matter: "Motion or Application Related to a Subpoena Issued Under *R.* 4:11-4(b)." Any later motion or application relating to the same subpoena must be filed in the same matter.

(7) Application to Pending Actions. This section applies to requests for discovery in cases pending on the effective date of this section.

Note: Source — *R.R.* 4:17-4. Amended July 21, 1980 to be effective September 8, 1980; amended to designate paragraph (a) and new paragraph (b) to be effective .

4:11-5. Depositions Outside the State

A deposition for use in an action in this state, whether pending, not yet commenced, or pending appeal, may be taken outside this state either (a) on notice pursuant to *R.* 4:14-2, or, in the case of a foreign country, pursuant to *R.* 4:12-3; (b) in accordance with a commission or letter rogatory issued by a court of this state, which shall be applied for by motion on notice; or (c) pursuant to a subpoena issued to the person to be deposed in accordance with *R.* 4:14-7 and in accordance with the procedures authorized by the foreign state; or (d) in any manner stipulated by the parties. Depositions within the United States taken on notice shall be taken before a person designated by *R.* 4:12-2. Commissions and letters rogatory shall be issued in accordance with *R.* 4:12-3. If the deposition is to be taken by stipulation, the person designated by the stipulation shall have the power by virtue of the designation to administer any necessary oath.

Note: Adopted July 22, 1983 to be effective September 12, 1983; amended July 26, 1984 to be effective September 10, 1984; amended to be effective .

I. Proposed Amendments to *R.* 4:17-4 — Form, Service and Time of Answers

During the last rules cycle, a Civil Presiding Judge suggested amending *Rule* 4:17-4 to require that plaintiffs must serve, with their answers to interrogatories, a form reflecting authorization to release medical records consistent with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") for each named medical provider. The proposed amendments are intended to streamline the process whereby defense counsel, upon receiving a plaintiff's answers to interrogatories, must then prepare and send HIPAA authorizations to plaintiff's counsel, who then sends them to the client for execution; from there, the executed authorizations go back to defense counsel who then sends them to the medical provider. This matter was referred to the Discovery Subcommittee, which determined that the Rule should be amended to require plaintiffs in personal injury actions to provide authorizations for each medical provider. It prepared a HIPAA authorization form to be potentially included as a sample or model in the Appendix to the Rules of Court. The Committee determined that the requirement to provide a form HIPAA authorization for each medical provider should not be limited to personal injury cases, but should be required in any action that, in some respects, seeks damages for personal injuries, whether by complaint or counterclaim. The Committee also determined that authorizations should be provided by plaintiffs or counterclaimants for each "health care" provider who examined or treated them as opposed to each "medical" provider. The Committee majority determined that the rule should provide that plaintiffs or counterclaimants must include authorizations in a form "substantially in accordance with" the proposed form in the Appendix.

The Supreme Court declined to adopt these proposed amendments, but remanded the proposed amendments to the Committee to: (1) revisit the definition of "health care provider" as the Court found the term broad; (2) make clear the distinction between treating health care

providers and non-treating health care providers designated as expert witnesses, and (3) clarify whether an authorization is required for every heath care provider who has ever treated or examined the plaintiff, or every health care provider who examined or treated the plaintiff subsequent to the incident giving rise to the claim, regardless of the cause of the need for treatment. The Court also requested that the Committee revisit the proposed authorization form as the Court found its contents too broad.

During this rules cycle, the Discovery Subcommittee undertook the Supreme Court's remand. The Discovery Subcommittee noted that the proposed amendments to the Rule are to expedite medical discovery. The proposed language makes clear that a HIPAA form must be provided for each health care provider identified in answers to interrogatories. The Discovery Subcommittee did not change the language of the proposed HIPAA form, finding it comprehensive, and suggested that the form not be mandatory. The Committee agrees with the proposed amendments to the Rule and the proposed HIPAA form.

The proposed amendments to *Rule* 4:17-4 and the proposed HIPAA form follow.

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

(a) …no change.

(b) …no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) Release of Medical Records. Subject to the issuance of a protective order for good cause under *R.* 4:10-3, a plaintiff or a counterclaimant in any action in which damages are sought for personal injuries shall serve, contemporaneous with his or her answers to interrogatories, an executed form authorizing disclosure to the opposing party or parties, for purposes of the litigation, of the plaintiff's or counterclaimant's medical records pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 *U.S.C.* §§ 1301 *et seq*., as to each health care provider named in his or her answers to interrogatories excluding expert witnesses. The authorizations shall be substantially in accordance with the form set forth in Appendix ### of the Court Rules, unless the parties consent to an alternative form.

Note: Source — *R.R.* 4:23-4, 4:23-5, 4:23-6(a)(b)(c)(d). Paragraph (a) amended and paragraph (d) adopted July 14, 1972 to be effective September 5, 1972; paragraph (a) amended September 13, 1976 to be effective September 13, 1976; paragraph (a) amended and paragraph (e) adopted July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 2, 1987 to be effective January 1, 1988; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a), (b) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (e) amended July 28, 2004 to be effective September 1, 2004; paragraph (d) amended July 27, 2006 to be effective September 1, 2006; new paragraph (f) added _____ to be effective _____.

Appendix (*R.* 4:17-4)

AUTHORIZATION TO DISCLOSE HEALTH INFORMATION PURSUANT TO HIPAA

Patient Name:_____ **Health Record Number:**_____

Patient Address:_____

Date of Birth:_____ **Social Security Number:** _____

Case Name/Docket No.: _____

1. I authorize the use or disclosure of the above named individual's health information as described below:

2. The following individual or organization is authorized to make the disclosure:

   _____

   Address: _____

   _____

3. The type and amount of information to be used or disclosed is as follows: (include dates where appropriate)

   ☐ entire record (dates) (certified to be a true copy of the original record) _____

   _____

   ☐ billing info _____

   ☐ other (with appropriate dates) _____

   _____

4. This information may be disclosed to and used by the following individual or organization:

   _____

   Address: _____

   for the purpose of:_____

5. I understand I have the right to revoke this authorization at any time. I understand if I revoke this authorization I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization.

6. Unless otherwise revoked, this authorization will expire on the following date, event or condition ____ _____. If I fail to specify an expiration date, event or condition, this authorization will expire in six months.

7. I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. Unless allowed by law, my refusal to sign, will not affect my ability to obtain treatment, receive payment for treatment, or my eligibility to receive benefits. I understand I may inspect or copy the information to be used or disclosed, as provided by federal regulation. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules.

_____

Individual or Personal Representative Date

J. Proposed New Appendix — Notice of Arbitration Hearing Form Pursuant to *R*. 4:21A-9

The Supreme Court adopted *Rule* 4:21A-9, which became effective on September 4, 2012. Paragraph (b) of the Rule requires a party to serve notice of an arbitration hearing in the form set forth in Appendix XXVII. The reference to Appendix XXVII, however, was inaccurate. On November 26, 2012, a Notice to the Bar was issued addressing this inaccurate reference and included the correct Notice of Arbitration Hearing form. The Committee now proposes that the Notice of Arbitration Hearing form be adopted as a new Appendix to the Court Rules and that *Rule* 4:21A-9(b) be amended to reference the new Appendix.

The proposed amendments to *Rule* 4:21A-9(b) and proposed New Appendix follow.

4:21A-9 Parties in Default

(a) If a party against whom an arbitration award is sought in a multiple party action (1) has had default entered against such party pursuant to *R.* 4:43-1 and the said default was entered less than six months prior to the date of the arbitration hearing, or (2) has had default judgment on liability pursuant to *R.* 4:43-2(b) entered against such party, the arbitration shall proceed against such party provided that the notice of hearing and proof of mailing as set forth in paragraph (b) of this rule has been complied with.

(b) If a party against whom an arbitration award is sought has had default or default judgment on liability entered against it as set forth in paragraph (a), notice of the arbitration proceeding shall be provided to that party in the form set forth in Appendix [XXVII] _____ to these Rules no later than 30 days prior to the arbitration hearing by ordinary mail addressed to the same address at which that party was served with process if the process was originally served personally or by certified or ordinary mail, unless the party providing the notice has actual knowledge of a different current address of the defaulting defendant, in which case the notice shall be sent to that address. Proof of service of the notice of arbitration hearing herein shall be filed with the clerk prior to the arbitration hearing and shall certify that the party serving the notice has no actual knowledge that the defaulting party's address has changed subsequent to service of original process, or, if the party has such knowledge, the proof shall certify the underlying facts. A copy of the filed proof of service of the notice provided to the defaulting party shall be provided to the arbitrator at the time of the arbitration hearing and the arbitrator shall indicate same in the arbitration award. In the event the arbitration hearing is adjourned or cancelled, the party providing such notice shall promptly notify the defaulting party of the underlying facts and the new hearing date, if applicable.

(c) If a party against whom an arbitration award is sought has had default or default judgment on liability entered against it and did not appear at the arbitration hearing after notice has been provided in accordance with paragraph (b) of this rule, the party obtaining the arbitration award against such defaulting party shall serve a copy of the arbitration award upon such defaulting party within 10 days of the date of receipt of the arbitration award. Service shall be made by ordinary mail addressed to the same address at which that party was served with service of process if the process was originally served personally or by certified or ordinary mail unless the party serving the arbitration award has actual knowledge of a different current address of the party against whom the award was entered, in which case the copy of the award shall be sent to that address.

(d) If a party who has obtained an arbitration award against the defaulting party moves for confirmation of the arbitration award and entry of judgment pursuant to *R.* 4:21A-6(b)(3), that party shall comply with the provisions of *R.* 4:43-2 and R. 1:5-7 and shall provide sufficient proof of compliance to the court.

Note: Prior rule adopted July 5, 2000 to be effective September 5, 2000; rule deleted July 27, 2006 to be effective September 1, 2006. New rule adopted July 19, 2012 to be effective September 4, 2012; paragraph (b) amended to be effective .

APPENDIX ___

Attorney Name: _____
Address: _____
_____
Telephone: _____
Attorney for: _____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
_____ COUNTY
DOCKET NO: _____

_____
Plaintiff,

v.

_____
Defendants.

CIVIL ACTION
NOTICE OF ARBITRATION HEARING

TO: _____

TAKE NOTICE that a ☐ default ☐ default judgment on liability was entered against you on _____ , 20 ____ , in the above matter. An arbitration hearing in this matter is scheduled for _____ ☐ a.m. ☐ p.m. on _____ , 20 ___ , at _____ .

(location)

You have the right to appear at the arbitration hearing and should take whatever action you deem appropriate with regard to the same.

At the conclusion of the arbitration hearing an award of monetary damages may be entered against you which may then result in a final judgment being entered against you by the court. If the arbitration date is rescheduled or cancelled, you will be notified by separate correspondence. If you have a new address, it is your responsibility to notify the undersigned immediately in writing of your new address.

_____
Attorney for

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

A Committee member contends that *Rule* 4:18-2, which addresses service of documents referred to in pleadings and not otherwise provided, is an orphan and should be included as part of another rule. He suggests that the Rule be included in a paragraph of *Rule* 4:18-1 or in *Rule* 4:23-5. The Committee recommends that reference to *Rule* 4:18 should be made in subparagraph (a)(1) and paragraph (c) of *Rule* 4:23-5 to accomplish the remedy for the failure to provide documents referred to in pleadings.

The proposed amendments to subparagraph (a)(1) and paragraph (c) of *Rule* 4:23-5 follow.

4:23-5. Failure to Make Discovery

(a) Dismissal.

(1) Without Prejudice. If a demand for discovery pursuant to *R.* 4:17, *R.* 4:18[-1], or *R.* 4:19 is not complied with and no timely motion for an extension or a protective order has been made, the party entitled to discovery may, except as otherwise provided by paragraph (c) of this rule, move, on notice, for an order dismissing or suppressing the pleading of the delinquent party. The motion shall be supported by an affidavit reciting the facts of the delinquent party's default and stating that the moving party is not in default in any discovery obligations owed to the delinquent party. Unless good cause for other relief is shown, the court shall enter an order of dismissal or suppression without prejudice. Upon being served with the order of dismissal or suppression without prejudice, counsel for the delinquent party shall forthwith serve a copy of the order on the client by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-A of these rules, specifically explaining the consequences of failure to comply with the discovery obligation and to file and serve a timely motion to restore. If the delinquent party is appearing *pro se*, service of the order and notice hereby required shall be made by counsel for the moving party. The delinquent party may move on notice for vacation of the dismissal or suppression order at any time before the entry of an order of dismissal or suppression with prejudice. The motion shall be supported by affidavit reciting that the discovery asserted to have been withheld has been fully and responsively provided and shall be accompanied by payment of a $100 restoration fee to the Clerk of the Superior Court, made payable to the "Treasurer, State of New Jersey," if the motion to vacate is made within 30 days after entry of the order of dismissal or suppression, or a $300 restoration fee if the motion is made thereafter. If, however, the motion is not made within 90 days after entry

of the order of dismissal or suppression, the court may also order the delinquent party to pay sanctions or attorney's fees and costs, or both, as a condition of restoration.

(2) …no change.

(3) …no change.

(b) …no change.

(c) Motion to Compel. Prior to moving to dismiss pursuant to subparagraph (a)(1) of this rule, a party may move for an order compelling discovery demanded pursuant to *R.* 4:14, *R.* 4:18[-1] or *R.* 4:19. An order granting a motion to compel shall specify the date by which compliance is required. If the delinquent party fails to comply by said date, the aggrieved party may apply for dismissal or suppression pursuant to subparagraph (a)(1) of this rule by promptly filing a motion to which the order to compel shall be annexed, supported by a certification asserting the delinquent party's failure to comply therewith.

Note: Source — *R.R.* 4:23-6(c)(f), 4:25-2 (fourth sentence); paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) caption amended and subparagraphs (a)(1) captioned and amended, and (a)(2) and (3) captioned and adopted, June 29, 1990 to be effective September 4, 1990; paragraph (a)(3) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(1) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; caption amended, paragraphs (a)(1) and (a)(2) amended, and new paragraph (a)(4) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended and new paragraph (c) added July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended and paragraph (a)(4) deleted July 27, 2006 to be effective September 1, 2006; paragraphs (a)(1) and (a)(2) amended July 9, 2008 to be effective September 1, 2008; subparagraphs (a)(1) and (a)(3) amended July 23, 2010 to be effective September 1, 2010; paragraph (c) amended July 19, 2012 to be effective September 4, 2012; paragraphs (a)(1) and (c) amended to be effective .

L. Proposed Amendment to *R.* 4:24-1 — Time for Completion of Discovery

In *Jatczyszyn v. Marcal Paper Mills, Inc*., 422 *N.J. Super*. 123 (App. Div. 2011), a products liability action, the Appellate Division held that the trial court erred in not tolling the discovery period under Track III during the time the action was removed to federal court and under the exclusive jurisdiction of the federal court. In light of this decision, during the last rules cycle, a Committee member proposed that following amendment to *Rule* 4:24-1(a): "On matters removed to Federal Court the discovery period shall be stayed from the date the Notice of Removal is filed to the date an order of remand is entered." This matter was referred to the Discovery Subcommittee for consideration. The Discovery Subcommittee agreed in concept to amending *Rule* 4:24-1; however, it was unable to reach consensus on the proposed language as it was unclear what date should be considered the trigger date for recommencing the discovery period.

The matter was held over for consideration during this rules cycle. The Discovery Subcommittee continued its discussions on this issue and proposed language amending paragraph (d) of the Rule for the Committee's consideration. The Committee agreed with the proposed language, which provides for the computation of the discovery end date for actions on remand from the United States District Court.

The proposed amendments to paragraph (d) of *Rule* 4:24-1 follow.

4:24-1. Time for Completion of Discovery

(a) …no change.

(b) …no change.

(c) …no change.

(d) [Applicability. This rule shall be applicable to all actions commenced on or after September 5, 2000. In all actions commenced prior to said date, the time for completion of discovery shall be 150 days from the date of service of the complaint on each defendant or as otherwise prescribed by the applicable differentiated case management rule in effect when the complaint was filed or by court order. In any pending action, however, the parties may agree and, in appropriate cases, the court may on notice direct sua sponte that further discovery shall be limited or extensions granted consistent with this amended rule.] Remand from the United States District Court. On matters remanded from the United States District Court, the computation of the discovery end date shall exclude the period from the date of the notice of removal to the date the order of remand is filed with the civil division manager in the county of venue in the Superior Court action. The designated pretrial judge shall conduct a case management conference pursuant to *R.* 4:5B-2 within thirty days of the filing of the order of remand.

Note: Source — *R.R.* 4:28(a)(d); amended July 13, 1994 to be effective September 1, 1994; amended January 21, 1999 to be effective April 5, 1999; caption amended, text amended and designated as paragraph (a), new paragraphs (b), (c), and (d) adopted July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (d) adopted February 26, 2001 to be effective immediately; paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 27, 2006 to be effective September 1, 2006; paragraphs (b) and (c) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) amended July 23, 2010 to be effective September 1, 2010; paragraph (d) deleted and new paragraph (d) adopted _____ to be effective _____.

M. Proposed Amendments to *R.* 4:25-4 — Designation of Trial Counsel

During the last rules cycle, the Conference of Civil Presiding Judges recommended that *Rule* 4:25-4 be amended to allow the court to waive designation of trial counsel after two years, for all cases on all tracks, thus advancing trial date certainty and potentially allowing newer attorneys to try cases. Among other things, the Conference found it unfair that plaintiffs in medical malpractice cases must routinely wait well in excess of the 450 day discovery period before having their day in court. Trials are routinely adjourned based on the requirements of *Rule* 4:25-4. Additionally, the limited number of defense counsel permitted to try these cases has had a substantial impact on the newer members of the bar in their quest also to try cases. The Committee rejected the proposed rule amendments in 2012, determining that the rule change is not necessary and would likely lead to substantial opposition from the bar.

After considering the Conference of Civil Presiding Judges' recommendation and the Committee's rejection, the Supreme Court directed the Committee to revisit the recommendation of the Conference and propose amendments to the Rule that include a time frame for the waiver of designation of trial counsel in all cases.

In this rules cycle, a subcommittee was formed to address the Court's directive. In the course of its work, the subcommittee considered statewide data showing that medical malpractice cases, on average, take almost four years to reach a trial date and have the highest frequency of trial date adjournments. The subcommittee recommended that *Rule* 4:25-4 be amended solely to address the delays in medical malpractice cases. The subcommittee proposed amending *Rule* 4:25-4 to allow for the automatic expiration of trial counsel designations in medical malpractice cases that are at least three years old, for reasons distinct from the pendency of a trial counsel designation. The report of the Waiver of Designation of Trial Counsel

Subcommittee is included as Appendix 1 to this Report. The rule proposal was endorsed by the Conference of Civil Presiding Judges.

The Committee agrees with the subcommittee's recommendations. The Committee suggests that this rule should not be effective until January 1, 2015, to provide parties with sufficient time to prepare for the effects of the rule amendment. *See also* Section III.A. below for a non-rule recommendation that is a corollary to this rule proposal.

The proposed amendments to *Rule* 4:25-4 follow.

4:25-4. Designation of Trial Counsel

Counsel shall, either in the first pleading or in a writing filed no later than ten days after the expiration of the discovery period, notify the court that designated counsel is to try the case, and set forth the name specifically. If there has been no such notification to the court, the right to designate trial counsel shall be deemed waived. No change in such designated counsel shall be made without leave of court if such change will interfere with the trial schedule. In Track I or II tort cases pending for more than two years, and in Track III or IV tort cases, other than medical malpractice cases, pending for more than three years, the court, on such notice to the parties as it deems adequate in the circumstances, may disregard the designation if the unavailability of designated counsel will delay trial. If the name of trial counsel is not specifically set forth, the court and opposing counsel shall have the right to expect any partner or associate to proceed with the trial of the case, when reached on the calendar. Designations of trial counsel shall expire in all Track III medical malpractice cases pending for more than three years.

Note: Source — *R.R.* 4:29-3A(a); amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; caption and text amended July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended July 9, 2008 to be effective September 1, 2008; amended _____ to be effective _____.

N. Proposed Amendments to *R*. 4:42-11 — Interest; Rate on Judgments; in Tort Actions

Post judgment interest is governed by *Rule* 4:42-11. Subparagraph (a)(ii) of *Rule* 4:42-11 sets forth the post-judgment annual interest rate for each calendar year. The annual interest rate is set at the nearest whole or half percentage point based on the annual rate of return for the preceding fiscal year as determined by the New Jersey Cash Management Fund. Because that return was only 0.15% for fiscal year 2012, the post-judgment interest rate for calendar year 2013 was initially set at 0%. A Committee member, on behalf of the New Jersey Creditors Bar Association ("NJCBA"), and a practitioner expressed concern with the annual interest rate of 0%. The NJCBA proposed that the annual interest rate be calculated at the prime rate plus 3%. The practitioner suggested that *Rule* 4:42-11 be amended to key the annual interest rate to some other fixed rate, such as the prime rate. The Acting Administrative Director of the Courts directed the Civil Practice Committee and the Special Civil Part Practice Committee to consider whether to retain or revise the current rate-setting method before the end of the calendar year 2012.

A joint subcommittee of the Civil Practice Committee and the Special Civil Part Practice Committee ("Joint Subcommittee") was formed to address this issue. The Joint Subcommittee discussed that the current method for determining the rate may not produce a result (0%) that is commercially reasonable in an economic environment of extremely low interest rates on certificates of deposit, money market accounts and other investments utilized by the Cash Management Fund, and thus began to discuss possible alternatives. Noting the complexities of the possible alternatives, the Joint Subcommittee issued a report recommending that as an interim solution the rate of interest be 1.0% for civil judgments that do not exceed $15,000 and

an additional 2.0% be added to that rate of interest for judgments that exceed $15,000. A majority of the members of the Civil Practice and the Special Civil Part Practice Committees voted in favor of the Joint Subcommittee's recommendation. The Joint Subcommittee's recommendation was presented to the Supreme Court for consideration.

By Order dated January 15, 2013, the Court relaxed and supplemented *Rule* 4:42-11 to adjust the post-judgment interest rate to 0.25% for judgments of $15,000 or less, and 2.25% for judgments that exceed $15,000, retroactive to January 1, 2013. The Court retained the return of the New Jersey Cash Management Fund as the index for the post judgment interest rate.

Thereafter, the Joint Subcommittee continued to study the issue. In its search for an alternative index for setting the post judgment interest rate, the Joint Subcommittee looked at the rates used in other states and the mechanism used by the federal courts for this purpose. The Joint Subcommittee also considered the historical reasons, set forth in the 1985 and 1996 Reports of the Civil Practice Committee to the Supreme Court, behind the choice of the return of the New Jersey Cash Management Fund as the index for determining the rate. The Joint Subcommittee issued a supplemental report, recommending that the Court: (1) amend *Rule* 4:42-11(a)(ii) to set 0.25% as the minimum interest rate on civil judgments in New Jersey and (2) retain the annual return of the New Jersey Cash Management Fund as the index for the post judgment interest rate and the additional two-percent for judgments that exceed the monetary limit of the Special Civil Part. A copy of the supplemental report is included in Appendix 2A. The NJCBA, however, opposed the recommendations of the Joint Subcommittee. A copy of the NJCBA's opposition report is included in Appendix 2B.

The majority of both the Civil Practice and the Special Civil Part Practice Committees agrees with the recommendations of the Joint Subcommittee, finding the recommendations fair.

The proposed amendments to *Rule* 4:42-11(a)(ii) follow.

4:42–11. Interest; Rate on Judgments; in Tort Actions

(a) Post Judgment Interest. Except as otherwise ordered by the court or provided by law, judgments, awards and orders for the payment of money, taxed costs and attorney's fees shall bear simple interest as follows:

(i) …no change.

(ii) For judgments not exceeding the monetary limit of the Special Civil Part at the time of entry, regardless of the court in which the action was filed: commencing January 2, 1986 and for each calendar year thereafter, the annual rate of interest shall equal the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury, but the rate shall be not less than 0.25%.

(iii) …no change.

(b) …no change.

Note: Adopted December 21, 1971 to be effective January 31, 1972. Paragraph (b) amended June 29, 1973 to be effective September 10, 1973; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a) and (b) amended July 29, 1977 to be effective September 6, 1977; paragraphs (a) and (b) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 2, 1987 to be effective January 1, 1988; paragraph (a)(ii) amended and paragraph (a)(iii) added June 28, 1996 to be effective September 1, 1996; paragraph (b) amended April 28, 2003 to be effective July 1, 2003; paragraph (a) amended July 23, 2010 to be effective September 1, 2010; paragraph (a)(ii) amended _____ to be effective _____.

O. Proposed Amendments to *R.* 4:57-2 — Procedure for Deposit and Withdrawal of Moneys

The Superior Court Trust Fund Unit proposes an amendment to *Rule* 4:57-2 to formalize a verification procedure for a withdrawal of funds process that has been in place since at least the 1990s. On May 28, 2009, a Notice to the Bar was published outlining this procedure. While the Notice has been helpful, many attorneys apparently do not follow the procedure. The Trust Fund Unit suggests that motions to withdraw deposited funds and proposed orders be submitted to the Trust Fund Unit for review and verification of the amount on deposit before they are submitted to the court. The proposed rule amendment will ensure that proposed orders are compliant with the Court Rules, which in turn will decrease the number of amended orders and will lead to more efficient processing of the withdrawals. The Committee agrees, and recommends that *Rule* 4:57-2 be amended to set forth the verification procedure for the withdrawal of funds.

The proposed amendments to *Rule* 4:57-2 follow.

4:57-2. Procedure for Deposit and Withdrawal of Moneys

(a) Superior Court. Deposits with the Superior Court shall be made by check to the order of "Superior Court of New Jersey," and sent to the Clerk, who shall forthwith deposit it in an interest-bearing account in a depository designated by the Chief Justice, to the credit of the "Superior Court of New Jersey;" unless otherwise ordered by the Court as to a specified deposit or deposits, all estate and other funds so deposited with the Court shall be intermingled. No moneys on deposit under this rule shall be drawn, except by a draft or check of the Clerk, countersigned by a judge of the court or person designated by the Chief Justice.

All proposed orders to pay out along with any accompanying motion shall be submitted to the Superior Court Trust Fund Unit for review and verification of the amount on deposit prior to submission to the court.

Orders to pay out shall be reviewed by the Clerk, or other person designated by the Chief Justice, prior to payment. No draft or check shall be drawn until the reviewing party has established that:

(1) the order is consistent with the account records as to the amount involved;

(2) all interested parties have received notice of, or have consented to, the application to have the money paid out; and

(3) the order correctly identifies affected parties and those to whom payments are to be made.

Payment pursuant to the order shall be withheld pending the curing of any deficiencies.

Orders to pay out may be made under such terms and conditions as the trial court may, in its discretion, deem appropriate, subject to the above. Such orders may be stayed pending appeal upon application pursuant to *R.* 2:9-5 or, where necessary, *R.* 2:9-8.

(b) …no change.

(c) …no change.

Note: Source – *R.R.* 4:72-3, 4:72-5 (first sentence), 5:5-5(a) (b) (c) (e); paragraph (a) amended July 17, 1975 to be effective September 8, 1975; paragraph (b) amended December 26, 1979 to be effective January 1, 1980; paragraphs (a) and (b) amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended June 28, 1996 to be effective September 1, 1996; new paragraph (c) adopted July 27, 2006 to be effective September 1, 2006; paragraph (a) amended to be effective .

P. Proposed Amendments to *R.* 4:64-1 — Foreclosure Complaint, Uncontested Judgment Other Than in Rem Tax Foreclosures

On April 29, 2013, the Supreme Court issued an order relaxing and supplementing *Rule* 4:64-1 to allow for the summary of foreclosure proceedings for vacant and abandoned residential properties pursuant to *N.J.S.A.* 2A:50-73. The Court asked the Committee to develop proposed conforming rule amendments.

The proposed amendments to *Rule* 4:64-1 follow.

4:64-1. Foreclosure Complaint, Uncontested Judgment Other Than *In Rem* Tax Foreclosures

(a) …no change.

(b) …no change.

(c) Vacant and Abandoned Residential Property. In addition to the content required by *R.* 4:64-1(a) and (b), a complaint for foreclosure of vacant and abandoned residential property as established by *N.J.S.A.* 2A:50-73 shall set out facts that the plaintiff alleges demonstrate that the property is vacant and abandoned. The complaint shall incorporate the *R.* 4:64-2(b) affidavit or certification of amount due that the plaintiff will rely upon to establish the judgment amount.

[(c)](d) Procedure to Enter Judgment.

(1) …no change.

(A) …no change.

(B) …no change.

(2) …no change.

(3) Procedure to Enter Judgment for Vacant and Abandoned Residential Property.

(A) Notwithstanding the procedure for judgment set forth in *R.* 4:64-1(d)(1)(A), where residential property is vacant and abandoned as established by N.J.S.A. 2A:50-73, a notice of motion for entry of judgment and the notice of tenants' rights during foreclosure in the form prescribed by Appendix XII-K of the rules of court are not required to be served. A copy of the *R.* 4:64-2(b) affidavit or certification of amount due shall be served with the *R.* 4:67-1 order to show cause or the *R.* 4:67-2 notice of motion to proceed summarily.

(B) Notwithstanding the application for judgment procedure set forth in *Rule* 4:64-1(d)(2), if the court determines that residential property is vacant and abandoned as established by *N.J.S.A.* 2A:50-73, the court on the return date of the order to show cause or the order to

proceed summarily may enter final judgment provided an application is accompanied by proofs as required by *R.* 4:64-2. In lieu of the filing otherwise required by *R.* 1:6-4, the application shall be filed with the Office of Foreclosure in the Administrative Office of the Courts. The Office of Foreclosure may recommend entry of final judgment pursuant to *R.* 1:34-6.

[(d)](e) … no change.

[(e)](f) …no change.

[(f)](g) … no change.

[(g)](h) …no change.

[(h)](i) …no change.

[(i)](j) …no change.

Note: Source — *R.R.* 4:82-1, 4:82-2. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; text of paragraph (d) deleted, new subparagraphs (d)(1) and (d)(2) captions and text adopted, and paragraph (f) amended July 23, 2010 to be effective September 1, 2010; caption amended, paragraph (a) caption amended, text of former paragraph (a) renumbered as paragraph (a)(1), and new subparagraphs (a)(2) and (a)(3) added December 20, 2010 to be effective immediately; subparagraph (a)(2) amended June 9, 2011 to be effective immediately; new paragraph (c) and redesignated (d)(3)(A) and (B) added and former paragraphs (c), (d), (e), (f), (g), (h), (i) redesignated as paragraphs (d), (e), (f), (g), (h), (i), and (j) to be effective .

Q. Proposed Amendments to *Rules* 4:64-1, 4:64-2 and 4:64-9 — re: Foreclosure

The Conference of General Equity Presiding Judges proposes the following amendments to several rules governing foreclosure practice:

- *Rule* 4:64-1(d)(1)(A) — to clarify that the affidavit referred to in the Rule is the affidavit of amount due accompanying the motion for entry of final judgment.
- *Rule* 4:64-2(c) — adopting the rule relaxation extending the time from 60 days to 90 days to file the affidavit of amount due.
- *Rule* 4:64-9 — to make clear that a defendant's objection to a motion for entry of final judgment in foreclosure must be specific and must regard the calculation of the amount due; defenses to the foreclosure properly brought in an answer cannot be raised in an objection.

The Committee approves of the proposed amendments to the Rules.

The proposed amendments to *Rules* 4:64-1, 4:64-2 and 4:64-9 follow.

4:64-1. Foreclosure Complaint, Uncontested Judgment Other Than In Rem Tax Foreclosures

(a) …no change.

(b) …no change.

(c) …no change.

(d) Procedure to Enter Judgment.

(1) Prejudgment notices; responses.

(A) Notice of motion for entry of judgment shall be served within the time prescribed by subparagraph (d)(2) of this rule on mortgagors and all other named parties obligated on the debt and all parties who have appeared in the action including defendants whose answers have been stricken or rendered noncontesting. The notice shall have annexed a copy of the affidavit of amount due filed with the court. If the premises are residential, the notice shall be served on each tenant, by personal service or registered or certified mail, return receipt requested, accompanied by the notice of tenants' rights during foreclosure in the form prescribed by Appendix XII-K of the rules of court. Said notice of tenants' rights shall be contained in an envelope with the following text in bold and in at least 14 point type: "Important Notice about Tenants Rights." If the name of the tenant is unknown, the notice may be addressed to Tenant. Any party having the right of redemption who disputes the correctness of the affidavit of amount due may file an objection stating with specificity the basis of the dispute and asking the court to fix the amount due. On receipt of a specific objection to the calculation of the amount due, the Office of Foreclosure shall refer the matter to the judge in the county of venue, who shall schedule such further proceedings and notify the parties or their attorneys of the time and place thereof.

(B) …no change.

(2) …no change.

(e) …no change.

(f) …no change.

(g) …no change.

(h) …no change.

(i) …no change.

Note: Source — *R.R.* 4:82-1, 4:82-2. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; text of paragraph (d) deleted, new subparagraphs (d)(1) and (d)(2) captions and text adopted, and paragraph (f) amended July 23, 2010 to be effective September 1, 2010; caption amended, paragraph (a) caption amended, text of former paragraph (a) renumbered as paragraph (a)(1), and new subparagraphs (a)(2) and (a)(3) added December 20, 2010 to be effective immediately; subparagraph (a)(2) amended June 9, 2011 to be effective immediately; paragraph (d)(1)(A) amended to be effective _____.

4:64-2. Proof; Affidavit

(a) ...no change.

(b) ...no change.

(c) Time; signatory. The affidavit prescribed by this rule shall be sworn to not more than [60] 90 days prior to its presentation to the court or the Office of Foreclosure. The affidavit shall be made either by an employee of the plaintiff, if the plaintiff services the mortgage, on the affiant's knowledge of the plaintiff's business records kept in the regular course of business, or by an employee of the plaintiff's mortgage loan servicer, on the affiant's knowledge of the mortgage loan servicer's business records kept in the regular course of business. In the affidavit the affiant shall confirm:

(1) that he or she is authorized to make the affidavit on behalf of the plaintiff or the plaintiff's mortgage loan servicer;

(2) that the affidavit is made based on a personal review of business records of the plaintiff or the plaintiff's mortgage loan servicer, which records are maintained in the regular course of business;

(3) that the financial information contained in the affidavit is accurate; and

(4) that the default remains uncured.

The affidavit shall also include the name, title, and responsibilities of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the affidavit shall provide a description of the relationship between the plaintiff and the employer.

(d) …no change.

Note: Source — *R.R.* 4:82-3. Caption amended and paragraph (b) deleted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975;

amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; text amended and designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2008 to be effective September 1, 2008; caption amended and new paragraph (d) added December 20, 2010 to be effective immediately; paragraphs (c) and (d) amended June 9, 2011 to be effective immediately; paragraph (c) amended to be effective .

4:64-9. Motions in Uncontested Matters

A notice of motion filed with the Office of Foreclosure shall not state a time and place for its resolution. The notice of motion shall state the address of the Office of Foreclosure and that the order sought will be entered in the discretion of the court unless the attorney or *pro se* party on whom it has been served notifies in writing the Office of Foreclosure and the attorney for the moving party or the *pro se* party within ten days after the date of service of the motion that the responding party objects to the entry of the order. On receipt of a specific objection [or at the direction of the court] to the calculation of the amount due pursuant to *R.* 4:64-1(d)(1)(A), the Office of Foreclosure shall [deliver the foreclosure case file] refer the matter to the judge in the county of venue, who shall schedule such further proceedings and notify the parties or their attorneys of the time and place thereof.

Every notice of motion in a foreclosure action shall include the following language:

"IF YOU WANT TO OBJECT TO THIS MOTION YOU MUST DO SO IN WRITING WITHIN 10 DAYS AFTER THE DAY YOU RECEIVED THIS MOTION. ANY OBJECTION TO THE CALCULATION OF THE AMOUNT DUE MUST ADDRESS THE SUBJECT OF THE MOTION AND DETAIL WITH SPECIFICITY THE BASIS OF THE OBJECTION. YOU MUST FILE YOUR OBJECTION WITH THE OFFICE OF FORECLOSURE, P.O. BOX 971, 25 MARKET STREET, TRENTON, NEW JERSEY 08625, AND SERVE A COPY ON THE MOVING PARTY. THE OFFICE OF FORECLOSURE DOES NOT CONDUCT HEARINGS. YOUR PERSONAL APPEARANCE AT THE OFFICE WILL NOT QUALIFY AS AN OBJECTION. IF YOU FILE A SPECIFIC OBJECTION TO THE CALCULATION OF THE AMOUNT DUE, THE CASE WILL BE SENT TO A JUDGE FOR RESOLUTION. YOU

WILL BE INFORMED BY THE JUDGE OF THE TIME AND PLACE OF THE HEARING ON THE MOTION."

Note: Adopted July 9, 2008 to be effective September 1, 2008; amended July 23, 2010 to be effective September 1, 2010; amended _____ to be effective _____.

R. Proposed Amendments to *R*. 4:86-10 — Appointment of Guardian for Persons Receiving Services From the Division of Developmental Disabilities

Paragraph (c) of *Rule* 4:86-10 provides in part: "If the petition seeks guardianship of the person only, the Division of Advocacy for the Developmentally Disabled, in the Department of the Public Advocate, if available, shall be appointed as attorney for the alleged incapacitated person, as required by *R*. 4:86-4." In 2011, the Department of the Public Advocate was eliminated and is now part of the Office of the Public Defender. The Civil Practice Division requests that *Rule* 4:86-10 be amended to replace reference to the Department of the Public Advocate with reference to the Office of the Public Defender. The Committee agrees, and accordingly recommends that paragraph (c) of *Rule* 4:86-10 be so amended.

The proposed amendments to *Rule* 4:86-10(c) follow.

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

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

(a) …no change.

(b) …no change.

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

(d) …no change.

Note: Adopted July 7, 1971 to be effective September 13, 1971; amended July 24, 1978 to be effective September 11, 1978. Former rule deleted and new rule adopted November 5, 1986 to be effective January 1, 1987; caption amended and paragraphs (b), (c) and (d) of former R. 4:83B10 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraphs (b), (c), and (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 9, 2008 to be effective September 1, 2008; amended _____ to be effective _____ .

S. Proposed Amendments to Appendix II – Form Interrogatories C(1)

During the last rules cycle, an attorney who represents plaintiffs in personal injury cases, some of which involve pedestrian knockdown incidents, noted that Form C(1) interrogatories 13, 15, 18 and 19 do not use the word "pedestrian," which gives defense counsel "wiggle room" to answer these particular interrogatories as "not applicable." This results in the propounder of the interrogatories to file, and the court to decide, motions to compel answers to these interrogatories. This issue was referred to the Discovery Subcommittee for consideration. The Discovery Subcommittee agreed with the suggestions of the attorney and proposed amendments to interrogatories 13, 15 and 18, which the Committee endorsed. While the Supreme Court agreed in concept with the proposed amendments to interrogatories 13, 15 and 18, the Court remanded the proposed amendments for the Committee to consider adding language to the interrogatories (specifically interrogatory 13) to address areas of the vehicle that may be involved in an accident.

In this rules cycle, the Discovery Subcommittee reconsidered the proposed amendments to interrogatories 13, 15, and 18 to include areas of the vehicle that may be involved in the accident. The Subcommittee also proposed amendments to interrogatory 9 to include where the pedestrian was struck. The Committee agrees with the Discovery Subcommittee's proposed amendments, and recommends that Form C(1) interrogatories 9, 13, 15 and 18 be amended accordingly.

The proposed amendments to Appendix II - Form C(1) interrogatories 9, 13, 15 and 18 follow.

APPENDIX II. — INTERROGATORY FORMS

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

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

(Caption)

1. …no change.

2. …no change.

3. …no change.

4. …no change.

5. …no change.

6. …no change.

7. …no change.

8. …no change.

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

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

10. …no change.

11. …no change.

13. [State in terms of feet the distance between: (a) the front of your vehicle and the point of impact at the time you first observed the other vehicle or vehicles collided with, and

state your speed at that time; (b) the front of the other vehicle or vehicles collided with and the point of contact at the time you first observed it or them and state its or their speed at that time; and (c) your vehicle and the vehicle or vehicles collided with at the time you first saw it or them] For each other vehicle or pedestrian collided with, state, at the time you first observed the other vehicle or pedestrian, (a) your speed and (b) the speed of the other vehicle or the movement, if any, of the pedestrian, and the distance in feet between (c) the front of your vehicle and the point of impact; (d) the front of the other vehicle or pedestrian and the point of impact, and (e) the front of your vehicle and the other vehicle or pedestrian.

14. …no change.

15. [State what part of your vehicle came into contact with what part of the other vehicle or vehicles involved] For each other vehicle or pedestrian involved, state (a) which part of your vehicle; and (b) which part of the other vehicle or pedestrian came into contact.

16. …no change.

17. …no change.

18. [Did you observe the plaintiff's vehicle prior to the accident? YES ( ) or NO ( ). If the answer is “yes”, set forth the time that elapsed from the time you first saw the plaintiff's vehicle until the impact occurred] For each other vehicle or pedestrian involved, state whether you observed the vehicle or pedestrian prior to the accident? YES ( ) or NO ( ). If the answer is “yes,” set forth the time that elapsed from the time you first saw the vehicle or pedestrian until the impact occurred.

19. …no change.

20. …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; certification amended July 28, 2004 to be effective September 1, 2004; interrogatories 9, 13, 15, and 18 amended to be effective .

II. RULE AMENDMENTS CONSIDERED AND REJECTED

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

An attorney suggests amending *Rule* 1:13-7 to allow for dismissal with prejudice of a matter that has been dismissed for lack of prosecution. The attorney suggests that a defendant be permitted to file a motion to dismiss a complaint with prejudice if the case has been dismissed for lack of prosecution for 60 days. Alternatively, the court should be authorized to *sua sponte* dismiss with prejudice a case that has been dismissed for lack of prosecution for six months.

After discussion and in light of the withdrawal of proposed amendments to *Rule* 1:13-7, see Section IV.B. of the Report, this Committee does not recommend an amendment to *Rule* 1:13-7.

B. Proposed Amendments to *R.* 1:21-7 re: Partial Settlements

An attorney has suggested amending *Rule* 1:21-7 to clarify that attorney's fees from partial settlements should be fixed and taken at the time of recovery, not at the conclusion of the case. In a particular case, the attorney states that attorney's fees on the first $2 million of a partial settlement were in accordance with subparagraphs (c)(1) – (c)(4) of the Rule, and an application was filed in accordance with paragraph (f) of *Rule* 1:21-7 requesting 20% of the remaining part of the recovery. The application was deemed premature because such applications must wait until the "conclusion" of the case. The attorney states that as a result of the ruling, the 20% of the recovery had been placed in escrow pending the conclusion of the case. The attorney contends that the fee is earned or triggered by recovery, not the conclusion of the entire matter.

After discussing the rule proposal, the Committee determined that its recommendations to amend *Rule* 1:21-7, see Section I.C. of this Report, should address the attorney's concerns. The Committee does not recommend the proposed amendments to *Rule* 1:21-7.

C. Proposed Amendments to *R.* 1:21-7 — Contingent Fees

In the unpublished opinion, *Estate of Mendonca v. DaSilva*, Docket No. A-3515-11T2 (App. Div. Feb. 22, 2013), the question presented was whether the contingent fee was presumptively capped by the 25% rate for matters involving a minor client under *Rule* 1:21-7(c), or whether the fee cap was instead 33.3% under *Rule* 1:21-7(c)(1) because the recovery was payable to an estate. The trial court held that the 25% cap applied under these circumstances, and the Appellate Division affirmed.

The Contingent Fee Subcommittee considered whether the apparent ambiguity of which contingency fee rate should apply in these particular circumstances should be clarified in *Rule* 1:21-7(c). The subcommittee determined no rule change was necessary to address the discrete issue raised, particularly given the longstanding nature of the Rule's existing text and the lack of any indication that the wording of the Rule has produced widespread or recurring problems. The Committee agreed, and accordingly declines to recommend any such amendment to *Rule* 1:21-7(c).

See Section I.C. of this Report for the Committee's proposed amendments to *Rule* 1:21-7(c).

D. Proposed Amendments to *R.* 1:36 — Opinions; Filing; Publication

A non-attorney proposes that *Rule* 1:36 be amended to clarify when parties may be identified by initials as opposed to their full names in court opinions. He suggests that the rule provide uniform standards for the use of initials in court opinions.

The Committee discussed that whether a party is identified by initials is a matter of appropriate discretion for the court, apart from when it is mandated by statute or court rule. The Committee determined that amendments to *Rule* 1:36 are unwarranted at this time.

E. Proposed Amendments to *R.* 2:2-1 (Appeals to the Supreme Court from Final Judgments) and *R.* 2:13-2(b) (Quorum; Temporary Assessment)

During the last rules cycle, a former litigant wrote to the Chief Justice raising objections and suggesting changes to (1) the use of two-judge panels to decide cases in the Appellate Division pursuant to *Rule* 2:13-2(b), and (2) the wording of *Rule* 2:2-1(a) regarding the scope of an appeal to the Supreme Court as of right based upon a dissent in the Appellate Division. The writer suggested that two-judge appellate panels be eliminated because they allegedly increase confirmation bias, decrease diversity and decrease expertise. The writer also suggested that *Rule* 2:2-1(a)(2) should be reworded to allow the Supreme Court to undertake a complete review of the majority ruling in a 2-1 Appellate Division decision and not just the discrete issue that prompted the dissent.

The long-standing use of two-judge Appellate Division panels to hear many appeals derives from recommendations set forth in the *Report on Appellate Division Reforms*, 102 *N.J.L.J.* Index page 41 (July 20, 1978), by a Committee appointed by Chief Justice Hughes, consisting of Justices Pashman, Schreiber, and Handler. In 1978, *Rule* 2:13-2(b) was amended as a measure to increase the efficiency of the disposition of appeals in the Appellate Division. The provision states that appeals are presumptively to be decided by two-judge panels, unless the presiding judge on the panel determines that three judges should decide a particular appeal because of its complexity or other factors. After some initial discussion by the Committee, this issue was held over for further consideration.

During this rules cycle, the Appellate Division Rules Committee weighed in on this issue. With respect to the proposed amendments to *Rule* 2:13-2, the Appellate Division Rules Committee concluded that the present procedure of three-judge panels addressing, among other

things, questions of public importance and of special difficulty, and two-judge panels considering all other matters, is fair, just and an efficient method of handling the Appellate Division caseload. The Appellate Division Rules Committee also found an amendment to *Rule* 2:2-1(a)(2) unwarranted as a party may seek certification for review of issues outside of the dissent.

The Committee agreed with the conclusions of the Appellate Division Rules Committee, and therefore does not recommend amendments to *Rules* 2:2-1 and 2:13-2(b).

F. Proposed Amendments to *R.* 2:6-12 – Number of Briefs, Appendices and Transcripts to Be Served and Filed

An attorney has suggested amending paragraph (a) of *Rule* 2:6-12 to provide that only one copy of the brief and appendix needs to be served on each party to the appeal when service is made by ordinary and registered or certified mail. He contends that the Rule can be read to require two copies to be served by each method, resulting in the mailing of four copies of the brief and appendix.

After discussion, the Committee determined that no rule amendment is warranted at this time.

G. Proposed Amendments to *R.* 4:4-2 and Appendix XII-A re: Summons

An attorney has suggested that *Rule* 4:4-2 and Appendix XII-A be amended to change "in the name of" the Clerk to "signed by authority of the Superior Court Clerk." He contends that the change would eliminate having to ascertain the name of the current Superior Court Clerk. He notes that it is the Office of the Clerk within which the authority to issue the Summons lies, not the individual holding the title.

The Committee determined that no amendment to *Rule* 4:4-2 or Appendix XII-A is necessary at this time.

H. Proposed Amendments to *R.* 4:6 — re: Return Dates for Motions to Dismiss in Lieu of an Answer

A Committee member proposes amending *Rule* 4:6 to indicate that a party seeking to file a motion to dismiss in lieu of an answer must make the motion returnable on the next available motion date. The Committee member states that in a particular case, opposing counsel filed a motion to dismiss a complaint in lieu of an answer with a return date several months in the future in a Track I case (in which there are only 150 days of discovery, unless extended by the court). The judge in the case ruled that there is no Court Rule prohibiting the attorney from selecting any return date the attorney so chooses. The Committee member notes that if an answer was filed instead of a motion to dismiss, the answer would have to be filed within 35 days of being served with the complaint.

The Committee determined that *Rule* 4:6 should be flexible and not so rigid as to require that the attorney select the next motion date available. The Committee concluded that an amendment to *Rule* 4:6 is unwarranted at this time.

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

In *A&M Farm & Garden Center v. American Sprinkler Mechanical, LLC*, 423 *N.J. Super*. 528, 539 (App. Div. 2012), the Appellate Division held:

> … when a court considers a motion to dismiss or suppress a pleading with prejudice, and there is nothing before the court showing that a litigant has received notice of its exposure to the ultimate sanction, the court must take some action to obtain compliance with the requirements of the rule before entering an order of dismissal or suppression with prejudice. Further, the court must set forth what effort was made to secure compliance on the record or on the order.

A trial court judge seeks guidance as to what "action" other than an order to show cause the trial court must take to obtain compliance with the requirements of *Rule* 4:23-5(a)(3). The judge states that the suggestion in the Rule for the court to file an order to show cause is unlikely given the sheer volume of paper motions. Further, the Rule is unclear how other alternative action would work.

The Committee determined that the *A&M Farm* opinion lays out options for the judge other than an order to show cause, such as the law clerk making a phone call to the delinquent party's attorney to advise that the court has not received the affidavit required by *Rule* 4:23-5(a)(2) seven days prior to the return date. *See A & M Farm*, 413 *N.J. Super*. at 538. The Committee, therefore, does not recommend amendments to *Rule* 4:23-5(a).

J. Proposed Amendments to *R.* 4:24-1 — Time for Completion of Discovery

A Committee member suggests amending paragraph (b) of *Rule* 4:24-1 to make clear that a dismissed defendant should be considered an "added party" when the dismissed defendant is brought back into the case by the filing of a third party complaint. In a particular case, the Committee member, on behalf of his client, filed an answer to a third party complaint and then requested the 60-day extension of discovery provided for added parties pursuant to *Rule* 4:24-1(b). The Committee member was advised that since his client was an originally-named defendant, it could not be considered an added party for purposes of gaining a discovery extension as of right. The Committee member was required to file a motion to extend discovery, which was granted. The Committee member contends that having to file a motion to extend discovery seems contrary to the intent of the rule to allow an expeditious initial extension.

After discussion, the Committee determined that adding language to the effect that "previously dismissed party is considered as a new party" to *Rule* 4:24-1(b) could lead to, among other things, the court revisiting the circumstances surrounding the dismissal of the since-reinstated party and other collateral concerns. The Committee therefore does not recommend amendments to *Rule* 4:24-1(b).

K. Proposed Amendments to *R.* 4:42-9 — Attorney's Fees

A practitioner suggests amending subparagraph (a)(4) of *Rule* 4:42-9 to address attorney's fees and costs charged to defaulting borrowers in foreclosure actions. He contends that the Rule does not address federal regulations and current industry practices. He states the Rule fails to require a lender or its attorney to disclose that it is accepting a fee less than the amount allowed by the Rule. The practitioner claims that in cases in which the foreclosure is in excess of $115,000, the attorney's fees being included in the judgment amount are in excess of that being incurred by the lender, which results in an "illegal windfall" to the lenders. The practitioner suggests a Rule amendment that would require affirmative disclosure of the fee rate being charged and that the lesser of the actual fee or the rule be the fee included.

This item was referred to the Conference of General Equity Presiding Judges for consideration. The Conference consulted representatives of the plaintiffs' foreclosure bar, who indicated that, in actuality, the rate that they receive is not comparable to the work performed on foreclosure cases. The Conference did not endorse the rule proposal.

As a result, the Committee does not recommend amendments to *Rule* 4:42-9(a)(4).

L. Proposed Amendments to *R.* 4:46-1 — Time for Making, Filing, and Serving Motion

A litigant requests that the phrase "or after the filing of a responsive pleading" be added to the first sentence of *Rule* 4:46-1 such that a party seeking affirmative relief may move for summary judgment after the filing of a responsive pleading. He contends that once a defendant has filed a response, it signals that it is ready to engage in further proceedings, and the 35 days from service requirement is unwarranted.

After considering this item, the Committee determined that no amendments to *Rule* 4:46-1 are necessary at this time.

M. Proposed Amendments to *R.* 4:58-4 — Multiple Claims; Multiple Parties

An attorney suggests amending paragraph (b) of *Rule* 4:58-4 to make clear that if there are joint tortfeasor defendants in an action, the plaintiff may serve an offer of judgment as to one of the defendants, which is less than the entire amount that the plaintiff is claiming. The attorney contends the Rule is not clear if one of the two defendants can be targeted and a demand can be made to the other, which is substantially less than the entire value of the claimed damages. The attorney suggests that the plaintiff should be able to file an offer of judgment as to one defendant for damages and not run the risk of having the target defendant agree to pay the lower amount.

The Committee discussed that there is nothing in the Rule that precludes a party from making an offer to one defendant and not the other defendants.

The Committee determined that no amendments to *Rule* 4:58-4(b) are necessary at this time.

N. Proposed Amendments to Appendix II – Form Interrogatories A(1) and C(3) re: Learned Treatises

A member of the Supreme Court Committee on Evidence has requested that the Committee reconsider the amendments to Form Interrogatories A(1), Question 10 and C(3), Question 13, which include an impeachment limitation on identification of learned treatises. The Discovery Subcommittee considered this issue. The Discovery Subcommittee was evenly divided on whether the phrase "unless for purposes of impeachment" should be removed from the Form Interrogatories. The subcommittee members in favor of retaining the phrase in the Form Interrogatories contend that there is no requirement in discovery to make available materials that will be used solely for impeachment. Such a requirement would take away the element of surprise in the cross examination of a witness and thereby diminish the effectiveness of cross examination and the role that it plays in the truth finding process. Subcommittee members in favor of removing the phrase believe that the phrase approves a return to "trial by ambush," and learned treatises should not be exempt from pretrial discovery. The Committee discussed that in addition to the parties, judges are also surprised with use of the impeachment material and are put in a difficult position of having to make an ad hoc ruling on whether the learned treatise meets the requirements of the Evidence Rules.

A majority of the Committee voted in favor of retaining the current language in the Form Interrogatories. As a result, the Committee does not recommend amendments to Appendix II – Form Interrogatories A(1), Question 10 and C(3), Question 13.

O. Proposed Amendments to Bar Admission Rules re: Military Spouse Attorneys

The Military Spouse J.D. Network has submitted a rule proposal to the Chief Justice requesting a change to the New Jersey bar admission rules to permit, on certain conditions, admission without examination of qualified attorneys who are spouses of active duty servicemembers stationed in New Jersey. While the bar admission rules normally are not within the ambit of the Committee's responsibilities, the Chief Justice specifically requested that the Committee review the rule proposal and make recommendations as to whether there should be a bar admission waiver process for spouses of active duty servicemembers stationed in New Jersey.

The Military Spouse Attorney Bar Admission Subcommittee, which included representatives of the Civil, Criminal, Family and Municipal Court Practice Committees, was formed to address this issue. The subcommittee rejected the rule proposal submitted by the Military Spouse J.D. Network. A majority of the subcommittee, however, concluded that there should be a provision in the Court Rules for the temporary admission of military spouse attorneys to the New Jersey bar. The provision would serve a salutary purpose for spouse-attorneys resident in our state. The subcommittee proposes in part that the temporary admission be two years with a "sunset" provision. As part of the temporary admission, the temporarily admitted attorney would be supervised by an attorney admitted to the New Jersey bar. A minority of the subcommittee opposed providing for temporary admission to the bar because there is no empirical data that a significant number of people would be affected by this change.

Committee members raised numerous questions and concerns regarding the subcommittee's rule proposal. A majority of the Committee opposed amending the Court Rules

to provide for temporary admission of military spouse attorneys to the New Jersey bar. While recognizing that families and spouses of military personnel deserve the Judiciary's support, the majority of the Committee noted that there is no estimate on how many military spouse attorneys are actually living in New Jersey due to military assignments. Moreover, it is unclear the number of people who might benefit from the Rule or attorneys willing to take on the responsibility of supervising the temporary attorney. Importantly, there is no reciprocity in New Jersey, and if an exception is made for military spouses it would create, in effect, a precedent for other individuals with special circumstances to petition for alternative paths to bar admission. Lastly, the majority has concern in part for New Jersey residents who would hire temporarily admitted attorneys because their admissions may expire before the cases are completed. A copy of the majority report is included as Appendix 3A to this Report. A copy of the report of the minority of the Committee is also included in Appendix 3B to this Report.

The Committee does not recommend amending the Court Rules to provide for temporary admission of military spouse attorneys stationed in New Jersey to the New Jersey bar.

P. Proposed Amendments re: Counsel Fee Applications in Probate Part Cases

In two opinions, *In re Macool*, 416 *N.J. Super*. 298 (App. Div. 2010) and *IMO Estate of Krzeminski*, Dkt. No. A-3182-10T1, Unpub., (App. Div. December 19, 2012), the Appellate Division notes concerns about judges applying individual (or local county) standards in approving hourly rates on counsel fee applications. Committee members discussed whether a rule change is necessary to address what are perceived at times to be varying standards applied by vicinages or individual judges. Some members, while noting there is inconsistency in fee awards around the state, stated that the issue should not be addressed through a revision to the Court Rules. Other members stated that a rule change is necessary because there needs to be a better mechanism to alert parties in advance of potential general guidelines for acceptable hourly rates in the county. This item was referred to the Conference of General Equity Presiding Judges and the Conference of Civil Presiding Judges for comment. The Conference of Civil Presiding Judges determined that a rule or directive is not warranted for these counsel fee applications, and judges need to continue to have substantial discretion with respect to approving counsel fee awards. The Conference of General Equity Presiding Judges agreed, noting that judges strive to be consistent and reasonable in light of the circumstances of each case. Geographical differences must be considered in order to set reasonable and fair awards.

Committee members noted that it would be difficult to craft a rule flexible enough to cover all factors and circumstances. Considering the input of the two Conferences, the Committee determined that no rule amendments or administrative directives are warranted at this time.

Q. Proposed Amendments re: Expert Qualifications/Affidavit of Merit

In *Camacho-Garnder v. Rubenstein*, Docket No. HUD-L-6541-10, Unpub. (Law Div. Sept. 19, 2013), after the discovery end date expired, a trial date had been set, and the plaintiffs' expert had been deposed, the defendants filed a motion that challenged the sufficiency of the qualifications of the plaintiffs' expert pursuant to the New Jersey Medical Care and Access and Responsibility and Patients First Act ("Patients First Act"), *N.J.S.A.* 2A:53-41 *et seq.*, and moved to bar him from testifying at trial or for summary judgment. The plaintiffs opposed the motion arguing that the defendants were estopped from making the argument and their expert met the requirements of the Patients First Act. The trial court found that the defendants were put on notice to inquire into the plaintiffs' expert's qualifications early in the case, but the plaintiffs' expert did not meet the requirements of the Patients First Act. The trial court barred the plaintiffs' expert from testifying at the time of trial and dismissed the case without prejudice. The plaintiffs were granted leave to move to vacate the dismissal and extend discovery end date to procure a new expert. In footnote 15 of the opinion, the trial court notes that the Affidavit of Merit statute, *N.J.S.A.* 2A:53-26 *et seq.*, and the Patients First Act require plaintiff experts in medical malpractice actions to meet certain qualifications to either give expert testimony or execute an affidavit of merit. The trial court suggests the development of a protocol or procedure to have these issues or lack of qualifications presented to the court earlier on in the pretrial proceedings.

Committee members noted that effective case management techniques should address the issue of expert qualifications. Further, changes to the Patients First Act would be the appropriate mechanism to address such issues, not the Court Rules.

The Committee determined that changes to the Court Rules regarding expert qualifications are unwarranted at this time.

III. NON-RULE RECOMMENDATIONS

A. Proposed Notice re: *R.* 4:25-4 Proposed Amendments

In the unpublished opinion *Hernandez v. North Jersey Neurosurgical Associates*, Dkt. No. A-0890-12T2 (App. Div. May 14, 2013), the Appellate Division reversed a Civil Presiding Judge's denial of a continuance to a defendant in a medical malpractice case. The Appellate Division panel found "there was insufficient notice to counsel that the seventh trial date was inflexible and would not be subject to the availability of counsel." The Appellate Division panel noted that this Committee "may wish to consider the circumstances of this case, especially as they may be relevant to the manner and timing of enforcing the 'disregard' provision of the attorney designation rule and giving notice to counsel of an inflexible trial date."

The Committee discussed the proposed amendments to *Rule* 4:25-4, *see* Section I.M. above, and recommends that a court notice be issued to attorneys advising that the trial designation will expire as of a specified date.

IV. RULES WITHDRAWN FROM CONSIDERATION

A. Proposed Amendments to *R*. 1:4-1 — Caption: Name and Addresses of Party and Attorney; Form

In the last rules cycle, a practitioner inquired whether the phrase "office address" in *Rule* 1:4-1 is limited to the attorney's *bona fide* office or whether the attorney may list the address and telephone number of a secondary or satellite office on letterhead. If the rule is intended to limit the "office address" to the *bona fide* office, he suggested that the rule be amended to so specify. The Committee determined that the rule should be clarified to indicate that an attorney will have to include his or her *bona fide* office address on papers filed with the court. Accordingly, the Committee had recommended including the term "bona fide" in the rule such that the second sentence of paragraph (b) of the rule would read: "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, the attorney's bona fide office address, as defined in *R*. 1:21-1(a), and telephone number or, if a party is appearing pro se, the name of such party, residence address and telephone number." The Supreme Court held this recommendation pending its consideration of recommendations by the Professional Responsibility Rules Committee to amend *Rule* 1:21-1 relating to the *bona fide* office requirement. In its January 15, 2013 Order, the Court adopted amendments to *Rule* 1:21-1 that essentially eliminates the requirement that an attorney has a physical office in New Jersey.

As a result, the Committee withdraws its proposed amendments to *Rule* 1:4-1.

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

The Conference of Civil Presiding Judges had proposed that paragraph (a) of *Rule* 1:13-7 be amended to address what becomes of a case or complaint that is not restored and there is no opportunity for the plaintiff to re-file under a new docket number (*i.e.*, in a multi-defendant case outside of 90 days of the dismissal, the plaintiff fails to show exceptional circumstances to reinstate the case). The Conference initially recommended that a procedural vehicle — whether it be a motion to dismiss with prejudice or an automatic dismissal with prejudice — be set forth in the rule to address this issue. Upon further consideration, the Conference determined that the Rule should not be revised because the suggested change may make the rule more complicated.

The Conference has withdrawn its rule proposal.

C. Proposed Amendments to *R.* 2:11-1 – Appellate Calendar; Oral Argument

A Committee member suggests that subsection (b) of *Rule* 2:11-1 be amended to incorporate a "three-minute rule" for oral argument in the Appellate Division as well as to codify the "five-minute rule" for oral argument in the Supreme Court. The Committee member notes that the Supreme Court has an internal rule, which permits parties five minutes to make their argument without interruption. He suggests that the five-minute rule has improved the quality of oral argument, and should be extended to the Appellate Division. A three-minute rule applicable would permit each party to have three minutes to present his or her argument without interruption. The proposal treats self-represented litigants the same as counsel.

This item was referred to the Appellate Division Management Committee ("ADMC") for consideration. The ADMC was not in favor of a three-minute rule for oral argument in the Appellate Division, finding it unnecessary and too rigid because judges presiding at oral argument generally accommodate attorneys presenting their arguments.

In light of the ADMC's position, this rule proposal is withdrawn.

V. MATTERS HELD FOR CONSIDERATION

A. Proposed Amendments to *R*. 1:11-2 — Withdrawal or Substitution

An attorney has suggested that *Rule* 1:11-2 be amended to include a requirement that the form of substitution include the mailing address and telephone number of a self-represented litigant who is substituting in a case. The attorney states that there is nothing in the rule that ensures that the contact information is available from pleadings or other sources. The attorney also suggests that the Committee consider whether the Rule should explicitly require self-represented litigants to agree to accept service of documents by regular mail at the address set forth in the substitution.

The Committee agreed in concept that the Rule should be amended to require that the form of substitution include the mailing address and telephone number of a self-represented litigant substituting into a case. The proposed amendments, however, may have impact on other rule proposals that have been held over for consideration. Thus, the Committee has deferred its recommendation on this item to the next rules cycle.

B. Proposed Amendments to *R.* 1:36-2 — Publication

A Committee member has suggested that paragraph (a) or (c) of *Rule* 1:36-2 be amended to prohibit the publication of two-judge opinions unless by directive of the Supreme Court. The Judiciary's current policy is that two-judge opinions are not eligible for publication. During initial discussions, some Committee members felt that two-judge opinions should be approved as precedential and therefore eligible for publication. In light of the discussion and to provide the Appellate Division Rules Committee with an opportunity to comment on the proposal, this item will be held over for further consideration in the next rules cycle.

C. Proposed Amendments to *R.* 2:5-1(b) — Notice to Trial Judge or Agency

The Judicial Council has suggested amending paragraph (b) of *Rule* 2:5-1 to extend the time from 15 days to 30 days for a judge, agency or officer to amplify a prior statement, opinion or memorandum. The Committee discussed extending the time for amplification of trial court decisions versus agency decisions, and the effect on the parties' ability to brief the issues. It was noted that there is a pending legislative bill (S-2555) that may reform the Office of Administrative Law and may limit agency decisions. As a result, this item will be held over for consideration in the next rules cycle.

D. Proposed Amendments to *Rules* 2:2-3, 2:2-3 and 2:9-5 re: Class Certification

The New Jersey Lawsuit Reform Alliance (the "NJLRA") suggests amending *Rules* 2:2-2, 2:2-3 and 2:9-5 to permit litigants to contest judicial determinations as to certification or decertification of class action lawsuits by appealing the rulings to the Appellate Division as of right. The NJLRA contends that the proposed amendments would ensure that plaintiffs and defendants have an effective opportunity to correct errors in class certification, and would facilitate the development of case law on requirements for class certification. It asserts that decisions on motions to certify a class are not final decisions within the meaning of the Court Rules, but often lead to settlements and therefore are final. The NJLRA contends that when class certification is reviewable only after litigation to final judgment, it is effectively unreviewable. A bill permitting such interlocutory appeals has been approved by the Assembly Judiciary Committee, but no action has taken place thus far in the Senate.

A subcommittee has been formed to review this issue. This item will be held over for consideration in the next rules cycle.

E. Proposed Amendments to *R.* 4:16-1

In a *New Jersey Law Journal* article, the author discusses the use of deposition testimony for an out-of-state witness at trial and the perceived ambiguity of paragraph (c) of *Rule* 4:16-1. The author contends that although *Rule* 4:16-1(c) generally follows Federal Rule of Civil Procedure 32(a)(4)(D), the language of the Rule creates ambiguity when the witness is "out of state" and also is unclear regarding the "exercise of reasonable diligence" that must be shown in trying to procure the witness's attendance by subpoena. The author suggested a simplification of *Rule* 4:16 to permit use of such deposition testimony at trial when the party offering the testimony does not "control" the witness. The author contends that the simplification will reduce unnecessary motion practice and avoid the harm to a party that takes an out-of-state deposition on the belief that testimony will be admissible at trial. On a related aspect, a Committee member has inquired whether paragraph (c) of the Rule should be clarified to state that the admissibility and the deposition testimony should still be subject to the limitations of the evidence rules on relevance, hearsay, written hearsay, undue prejudice, character, and so forth.

This item has been referred to the Discovery Subcommittee for consideration in the next rules cycle.

F. Proposed Amendments to *R.* 4:42-9(d) — Prohibiting Separate Orders for the Allowance of Fees

A Committee member has inquired whether the Committee should explore amending paragraph (d) of *Rule* 4:42-9 to conform it to case law and what he perceives to be common practice. The Rule has the inflexible-sounding title "Prohibiting Separate Orders for the Allowance of Fees" and the perception is that the simultaneous-inclusion requirement of the Rule is impractical, particularly in cases in which a fee application is contested. The Committee member suggests that paragraph (d) of the Rule be reworded to provide that the fee application be made either at the time of judgment or within 20 days of the entry of judgment, unless the court finds that exceptional circumstances justify a longer time period.

A subcommittee has been formed to consider this issue in the next rules cycle.

G. Proposed Amendments re: FOIA and OPRA Requests for Information

An attorney suggests a rule amendment to require the propounder of Freedom of Information Act ("FOIA") and New Jersey Open Public Records Act ("OPRA") requests to provide copies of the FOIA and OPRA requests to all counsel in the pending litigation. The attorney analogizes this situation to the propounder of subpoena on a nonparty being required to provide notice and copies of the subpoena to all counsel in pending litigation. The attorney contends that release of certain public records could affect a pending matter because a party in pending litigation may have a confidentiality interest in the public records and the lack of notice of the request could prejudice that party. The attorney contends that it is insufficient for counsel to include a standing request for notice of such FOIA or OPRA requests in his or her interrogatories or requests to produce documents, because opposing parties frequently ignore such standing requests or respond to them belatedly.

Initially, Committee members expressed opposing views regarding placing restrictions on FOIA or OPRA requests in the Court Rules. This issue has been referred to the Discovery Subcommittee for consideration in the next rules cycle.

H. Proposed Amendments — re: Anonymously Filing Complaints involving OPRA

A non-attorney who has been involved in several New Jersey Open Public Records Act ("OPRA") cases requests that the Court Rules be amended to resolve a perceived conflict between the Court Rules and a provision of OPRA that permits citizens to request records anonymously. In an unpublished opinion, *Anonymous v. Borough of Longport*, Dkt. No. ATL-L-9552-11 (Law Div. Aug. 17, 2012), the court noted that while OPRA allows a person to request records anonymously, the statute is silent as to whether a lawsuit may be brought anonymously for a violation of OPRA. The court further noted that the Court Rules require that parties be identified. The litigant believes that because an OPRA provision provides that the Supreme Court may adopt rules necessary to effectuate OPRA's purposes, the Committee should consider amending the Court Rules to permit anonymous filings of complaints to enforce OPRA. This item will be held over for consideration in the next rules cycle.

I. Proposal re: Service of Subpoenas

The Administrative Director of the Constables Office of New Jersey's Bureau of Process Service and president of a private process service company contends that subpoenas are being improperly served by mail in violation of *Rule* 1:9-3. The Committee discussed that contention and whether *Rule* 1:9-3 should be amended to clarify that service of subpoenas can be made by mail. This item will be held over for consideration by a subcommittee in the next rules cycle.

VI. MISCELLANEOUS MATTERS

A. Proposed Amendments to *R.* 2:7 — Appeals by Indigent Persons

In the last rules cycle, the Committee considered the Criminal Practice Committee's proposed revisions to *Rule* 2:7 regarding appeals by indigent persons. The Committee discussed the Criminal Practice Committee's proposal to eliminate the last sentence of *Rule* 2:7-2(d), which currently provides, "An attorney filing a notice of appeal shall be deemed the attorney of record for the appeal unless the attorney files with the notice of appeal an application for the assignment of counsel on appeal." The Committee also evaluated the recommendation of the Appellate Division Rules Committee ("ADRC") that the last sentence remain in the rule and be revised to provide that the attorney must submit a motion to be relieved as counsel with the filing of the notice of appeal. The Committee had determined that it should not offer a view on the merits of the amendments until the Criminal Practice Committee reviewed the revisions to the proposal recommended by the ADRC.

During this rules cycle, the Chair of the Criminal Practice Committee advised that that committee and the ADRC attempted to reach a compromise on this issue, but were unable to do so. The Chair of the Criminal Practice Committee requested that the Civil Practice Committee consider the proposed rule amendments and the views of the Criminal Practice Committee and the ADRC and provide endorsement or objection thereto.

After reviewing both rule proposals, the majority of the Committee favored the ADRC's rule proposal that the last sentence remain in *Rule* 2:7-2(d) and be revised to provide that the attorney must submit a motion to be relieved as counsel with the filing of the notice of appeal. The Committee determined that, ethically, an attorney should continue with a case and file a notice of appeal unless relieved by motion. Without formal removal of counsel of record, a case

may be lost in the system. The Committee has advised the Criminal Practice Committee of its objection to the Criminal Practice Committee's rule recommendation, and endorsement of the ADRC's rule recommendation.

Respectfully submitted,

Hon. Jack M. Sabatino, J.A.D., Chair
Justice Peter G. Verniero, Ret., Vice-Chair
Hon. Allison E. Accurso, P.J.Ch.
Hon. Peter F. Bariso, Jr., P.J.Cv.
Professor John S. Beckerman
Anne J. Cralle, Esq. (designee of Melville D. Miller, Esq.)
Hon. Heidi W. Currier, J.S.C.
Philip J. Espinosa, Esq., DAG
Hon. Douglas M. Fasciale, J.A.D.
Stacy A. Fols, Esq.
Holly Barbera Freed, Esq.
Amos Gern, Esq.
William S. Greenberg, Esq.
Hon. Jamie D. Happas, P.J.Cv.
Hon. Carol Higbee, P.J.Cv.
Robert B. Hille, Esq.
Craig S. Hilliard, Esq.
Hon. Deborah Silverman Katz, J.S.C.
Hon. John C. Kennedy, J.A.D.
Linda Lashbrook, Esq.
Hon. Anne McDonnell, P.J.Ch.
Hon. Margaret Mary McVeigh, P.J.Ch.
Vincent J. Nolan, III, Esq.
John R. Parker, Esq.
Elizabeth A. Pascal, Esq.
A. Ross Pearlson, Esq.
Hon. Robert L. Polifroni, P.J.Cv.
Arthur J. Raimon, Esq.
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Hon. Laura Sanders, Acting Chief A.L.J.
Neal L. Schonhaut, Esq.
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Nina Thomas, Civil Division Manager
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Kevin M. Wolfe, Esq., Staff
Taironda E. Phoenix, Esq., Staff

Dated: January 27, 2014

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APPENDIX 1

MEMORANDUM

To: Civil Practice Committee

From: Trial Counsel Designation Subcommittee

Re: Subcommittee's report on proposed changes to Rule 4:25-4.

Date: February 5, 2013

Our Subcommittee unanimously recommends that Rule 4:25-4 be amended to allow for automatic expiration of trial counsel designations in medical malpractice cases that are at least three years old. The main difference between the current rule and our recommended change is that the designation would automatically expire, rather than requiring the parties to file motions.

Last year, the CPC rejected a proposal by the Conference of Civil Presiding Judges (Civil PJs) that the rule be amended to allow waiver of trial counsel designations in all cases that are at least two years old. The Supreme Court then directed the CPC to re-visit the Civil PJs' proposal. Judge Sabatino created our subcommittee for that purpose.

The Civil PJs remain concerned that adjournments due to designated trial counsel's unavailability cause excessive delay.

We reviewed statewide data[1] compiled by the Administrative Office of the Courts (AOC) and discovered that medical malpractice cases take almost four years to reach a trial date and have the highest number of trial date adjournments. As a result, we focused on recommending a narrowly proposed rule change solely to address the delays in medical malpractice cases.

In reaching our recommendation, the subcommittee considered the views of the Civil PJs, the New Jersey State Bar Association (NJSBA), the New Jersey Association for Justice (NJAJ), and insurance defense counsel. We are satisfied that our recommendation would (1) address the Civil PJs' concern that designated trial counsel unavailability causes unreasonable delay; (2) afford medical malpractice plaintiffs greater likelihood of trial date certainty; and (3) maintain choice of trial counsel by defendants and insurance companies.[2]

Automatic expiration of designations would avoid protracted motion practice. Of course, any judge will continue to have the discretion to adjourn medical malpractice cases that are three or more years old.

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1 Judge Sabatino distributed the data at our January 15, 2013 CPC meeting, and we have attached a duplicate copy to our memorandum.

[2] The subcommittee also discussed asking the Civil PJs to explore a statewide centralized case management approach to handling medical malpractice cases, similar to the way the court manages cases involving multi-county litigation.

Average Number of Days From Case Filed to Trial Start Date

Court Year 2012

	Medical Malpractice	Assault & Battery	Civil Rights	Complex Commercial	Condemnation	Lieu of Prerogative Writ	Product Liability	Professional Malpractice	Toxic Tort
ATL	1,355.4	633.0	1,158.0	NA	810.0	NA	NA	NA	NA
BER	1,055.8	872.7	1,754.0	NA	NA	350.9	1,024.0	863.8	NA
BUR	1,252.7	1,287.0	NA	NA	NA	NA	1,295.5	1,600.0	NA
CAM	1,473.9	NA	NA	631.0	845.0	297.7	1,565.0	1,445.0	NA
CPM	1,086.5	NA	NA	NA	NA	NA	NA	1,529.0	NA
CUM	2,063.5	NA	NA	NA	NA	NA	1,552.0	NA	NA
ESX	1,737.8	NA	1,169.3	NA	NA	518.5	1,672.0	948.0	NA
GLO	2,150.0	NA	NA	NA	NA	139.5	3,030.0	NA	NA
HNT	NA	NA	NA	NA	NA	NA	NA	NA	NA
HUD	1,040.5	NA	881.3	NA	526.0	163.4	983.5	962.6	NA
MER	1,138.0	NA	1,679.0	NA	712.0	NA	NA	1,596.0	NA
MID	1,403.4	1,050.0	NA	NA	295.0	503.4	1,195.0	NA	NA
MON	2,240.0	1,201.0	NA	NA	2,360.5	354.7	NA	2,250.5	NA
MRS	1,314.8	1,196.0	NA	1,545.0	NA	NA	1,382.0	788.0	NA
OCN	883.4	896.0	NA	NA	874.0	317.1	637.0	566.0	1,733.0
PAS	998.0	NA	NA	NA	1,000.0	NA	NA	NA	NA
SLM	1,599.0	NA	NA	NA	NA	NA	NA	NA	NA
SOM	1,268.5	1,529.0	NA	NA	NA	436.5	NA	833.0	NA
SSX	1,763.5	NA	NA	NA	NA	454.0	NA	1,736.0	NA
UNN	1,281.3	NA	NA	NA	1,018.0	NA	1,109.0	1,069.0	NA
WRN	NA	NA	NA	NA	NA	NA	NA	NA	NA
	1,387.0	1,041.0	1,193.7	1,240.3	1,035.1	328.8	1,276.3	1,184.7	1,733.0

Average Number of Days From Trial Start Date to Case Disposition Date

Court Year 2012

	Medical Malpractice	Assault & Battery	Civil Rights	Complex Commercial	Condemnation	Lieu of Prerogative Writ	Product Liability	Professional Malpractice	Toxic Tort
ATL	9.6	2.0	6.0	NA	12.0	NA	NA	NA	NA
BER	15.2	3.3	30.0	NA	NA	7.1	15.2	5.3	NA
BUR	13.2	35.0	NA	NA	NA	NA	10.5	29.0	NA
CAM	14.8	NA	NA	1.0	2.0	11.2	42.0	45.0	NA
CPM	13.0	NA	NA	NA	NA	NA	NA	14.0	NA
CUM	16.5	NA	NA	NA	NA	NA	14.0	NA	NA
ESX	16.8	NA	9.3	NA	NA	0.5	11.0	10.0	NA
GLO	13.0	NA	NA	NA	NA	1.0	51.0	NA	NA
HNT	NA	NA	NA	NA	NA	NA	NA	NA	NA
HUD	14.8	NA	12.3	NA	23.0	13.3	6.5	6.0	NA
MER	21.0	NA	18.0	NA	1.0	NA	NA	13.0	NA
MID	24.2	8.0	NA	NA	8.0	3.0	9.5	NA	NA
MON	15.2	2.0	NA	NA	15.0	21.4	NA	9.5	NA
MRS	0.0	0.0	NA	52.0	NA	NA	0.0	0.0	NA
OCN	8.4	2.0	NA	NA	8.0	54.0	4.0	2.0	9.0
PAS	21.3	NA	NA	NA	10.0	NA	NA	NA	NA
SLM	21.0	NA	NA	NA	NA	NA	NA	NA	NA
SOM	15.5	10.0	NA	NA	NA	43.0	NA	10.0	NA
SSX	18.0	NA	NA	NA	NA	10.0	NA	16.0	NA
UNN	16.0	NA	NA	NA	8.0	NA	10.0	3.0	NA
WRN	NA	NA	NA	NA	NA	NA	NA	NA	NA
	14.0	6.9	13.2	35.0	10.5	24.3	13.1	10.1	9.0

Average Number of Trial Adjournments

Court Year 2012

	Medical Malpractice	Assault & Battery	Civil Rights	Complex Commercial	Condemnation	Lieu of Prerogative Writ	Product Liability	Professional Malpractice	Toxic Tort
ATL	5.4	5.0	6.0	NA	2.7	NA	NA	NA	NA
BER	2.3	1.3	2.0	NA	NA	0.1	0.0	0.8	NA
BUR	7.0	5.0	NA	NA	NA	NA	2.5	9.0	NA
CAM	11.4	NA	NA	1.0	0.0	0.5	8.0	3.0	NA
CPM	3.5	NA	NA	NA	NA	NA	NA	2.0	NA
CUM	14.0	NA	NA	NA	NA	NA	3.0	NA	NA
ESX	6.9	NA	5.3	NA	NA	0.0	14.0	1.0	NA
GLO	10.3	NA	NA	NA	NA	0.0	3.0	NA	NA
HNT	NA	NA	NA	NA	NA	NA	NA	NA	NA
HUD	3.5	NA	3.0	NA	1.0	0.0	3.5	4.8	NA
MER	5.0	NA	2.0	NA	1.0	NA	NA	8.0	NA
MID	6.6	4.0	NA	NA	2.0	0.2	5.5	NA	NA
MON	5.0	3.0	NA	NA	0.0	0.2	NA	4.5	NA
MRS	4.9	3.0	NA	3.0	NA	NA	4.0	1.0	NA
OCN	2.6	0.0	NA	NA	3.0	1.2	1.0	0.0	0.0
PAS	1.8	NA	NA	NA	2.0	NA	NA	NA	NA
SLM	9.0	NA	NA	NA	NA	NA	NA	NA	NA
SOM	3.5	9.0	NA	NA	NA	0.0	NA	2.0	NA
SSX	6.5	NA	NA	NA	NA	1.0	NA	0.0	NA
UNN	3.3	NA	NA	NA	5.0	NA	0.0	4.0	NA
WRN	NA	NA	NA	NA	NA	NA	NA	NA	NA
	5.8	3.3	3.9	2.3	1.8	0.5	3.0	3.1	0.0

APPENDIX 2A.

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TO: Civil and Special Civil Part Practice Committees

FROM: Robert D. Pitt, Chief, Special Civil Part Services

RE: Supplemental Report of the Joint Subcommittee on Post Judgment Interest

DATE: October 31, 2013

Introduction

This Supplemental Report is submitted to the Supreme Court Committee on Civil Practice and the Supreme Court Committee on Special Civil Part Practice on behalf of the Joint Subcommittee on Post Judgment Interest established by the two rules committees. It sets forth a history of the activity by the committees and the Supreme Court during 2012 and 2013 and the recommendation of the Joint Subcommittee for a proposed amendment to R. 4:42-11(a)(ii). The amendment would, if adopted by the Supreme Court, retain the annual return of the New Jersey Cash Management Fund as the index for the post judgment interest rate, but would also set a floor of 0.25% as the minimum interest rate on judgments.

History

The mechanism set forth in R. 4:42-11(a)(ii) bases the post-judgment interest rate on the rate of return earned by the New Jersey Cash Management Fund for the previous fiscal year, rounded to the nearest half or whole percent. A copy of the rule is attached. Since that return was only 0.15% for fiscal 2012, the post-judgment interest rate for calendar 2013 was initially set at 0%.

In its November 14, 2012 Report the Joint Subcommittee of the Civil and Special Civil Part Practice Committees proposed the adoption of an Order by the Supreme Court that would retain the current return of the N. J. Cash Management Fund as the index for the post judgment interest rate, but would relax and supplement the rule to include a provision that the rate will not go below 1% per annum. The Subcommittee's Report also recommended retention of the current provision in subparagraph (iii) of the rule that adds 2% to the base rate on judgments that exceed the monetary limit of the Special Civil Part, currently set by court rule at $15,000.

On November 28, 2012, the two Practice Committees held a joint meeting and decided by a combined vote of 24 in favor and 17 opposed to endorse the recommendation of the Joint Subcommittee. The vote of the Civil Practice Committee members was 12 in favor and 10 opposed and the vote of the Special Civil Part Practice Committee members was 12 in favor and 7 opposed. On December 3 Legal Services of New Jersey, Inc. (LSNJ) submitted a minority report opposing the recommendation.

Additional information was subsequently provided by the AOC to the Supreme Court regarding the mechanism by which the post judgment interest rate is determined for civil judgments in the federal courts and a summary of the variations in that rate over the previous two years. Basically, the rate is the weekly average of the nominal yield for 1-year constant maturity Treasury bonds, as published by the Federal Reserve System. The rate is determined on the last day of the week preceding the week in which it will be applied and thus fluctuates from week to week. It was reported to the Supreme Court that the Civil and Special Civil Part Practice Committees decided not to recommend use of the federal mechanism for determining New Jersey's rate of post judgment interest because the weekly changes would unnecessarily complicate the task of calculating accrued interest over a long period of time in hundreds of thousands of cases.

It was also reported to the Court, however, that an examination of the federal rate on a monthly basis over a two-year period, as reported on the Federal Reserve System's website, indicated that the federal post judgment interest rate had not exceeded 0.25% for over a year and a half. To the extent that consistency between the federal rate and New Jersey's rate is desirable, this fact suggested that the floor for New Jersey's rate should be set at 0.25%, rather than the 1% proposed by the Civil and Special Civil Part Practice Committees. The lower rate would more accurately reflect current economic conditions, as measured by the 0.15% return reported by the N.J. Cash Management Fund for the fiscal year ending June 30, 2012. It was this 0.15% return, rounded to the nearest whole or half percent, as required by R. 4:42-11, that led to the 0% rate for calendar 2013. It was noted that if the rounding factor were removed from the rule, a rate of 0.15% for all of 2013 would be somewhat lower than the average federal rate for 2012. For this reason, supplementing the rule to set a floor of 0.25% was perceived to be preferable to removing the rounding factor. It was also noted that a floor of 0.50% would be closer to the 1% floor recommended by the two Practice Committees.

With all of this information at hand, the Supreme Court decided, as an interim measure pending further recommendations by the Civil and Special Civil Part Practice Committees, to issue an Order, retroactive to January 1, 2013, that retains the return of the N.J. Cash Management Fund as the index for the post judgment interest rate, but relaxes and supplements R. 4:42-11(a)(ii) to include a provision that the rate will not go below 0.25% per annum. The Court concurred with the recommendation of the Civil and Special Civil Part

Practice Committees for retention of the current provision in subparagraph (iii) of the rule that adds 2% to the base rate on judgments that exceed the monetary limit of the Special Civil Part. The interest rate for those judgments is thus 2.25% per annum. Copies of the Supreme Court's Order and the Notice to the Bar on this subject are attached.

The Joint Subcommittee on Post Judgment Interest reconvened on September 9, 2013, to consider what steps should be taken next. Additional material considered by the Joint Subcommittee consisted of a 31-page Microsoft Word file which contains a table provided by Dean Andrew Rothman's research assistant showing interest rate data for each of the other 49 states. The file is labeled "Interest Rates in USA" and a copy is attached to this report. The result of the meeting was a recommendation by the majority that the return of the New Jersey Cash Management Fund should be retained as the index for the post judgment interest rate, but the rule should be amended to set a floor of 0.25% as the minimum interest rate on judgments. The rationale for this recommendation is set forth below in this report. The Subcommittee agreed, however, that those who primarily represent creditor and debtor interests should be given the opportunity to present their views to the two Rules Committees at a joint meeting to be held on December 10, 2013. Their minority reports will be submitted to staff by November 15 for circulation to the membership of both Committees in advance of the joint meeting.

Rationale

In addressing the question of what is an appropriate rate of interest on civil judgments, the Joint Subcommittee was mindful of the purposes of post judgment interest as articulated by the Civil Practice Committee in its 1985 and 1996 Reports to the Supreme Court. These two reports proposed the two key elements of the current rule for setting the rate, namely that there should be a fluctuating rate pegged to the annual rate of return on the Cash Management Fund and that an additional 2% should be added to the rate for judgments that exceed the monetary limit of the Special Civil Part. In those reports the Civil Practice Committee stated and reiterated that the rate should be high enough to encourage debtors (particularly insurance companies in tort cases) to satisfy judgments against them, while at the same time low enough to compel creditors to pursue their remedies of levy and execution so that the judgments would be satisfied of record. The Committee also stated in those reports that the rate should be neutral in that it would favor neither debtors nor creditors, that it should be commercially reasonable without providing an attractive investment and that it should not penalize either the average creditor who is unable to collect a judgment, or the average debtor who is unable to pay it. The Supreme Court presumably adopted the Committee's rationale in accepting its recommendations.

The Joint Subcommittee had concluded in its November 14, 2012 Report that the current method for determining the rate may not produce a result (0%) that is commercially reasonable in an economic environment of extremely low interest rates on certificates of deposit, money market accounts and other investments utilized by the Cash Management

Fund and thus began to discuss possible alternatives. The complexity of the alternatives led the Subcommittee to recommend, as an interim solution, retention of the Cash Management Fund as the index for setting the post judgment interest rate, but with an added proviso that the rate thus calculated should not fall below 1% per annum. The Supreme Court, as noted above, agreed that a rate of 0% is too low, but set the floor at 0.25%, rather than 1%.

In its search for an alternative index for setting the post judgment interest rate, the Joint Subcommittee looked at the rates used in other states, as set forth in the above-mentioned "Interest Rates in USA" report. The results of that study indicated that in nearly all of the other states the post judgment interest rate is set by statute and many of them have rates of 5 to 7% per year. Seventeen (17) of the states utilize an approach similar in concept to New Jersey's, in that an external index, such as the federal discount rate or the rate on 6-month, 1-year, 5-year or 10-year U.S. Treasury notes, serves as a fluctuating base rate and an additional 1% to 4% is added to the base. In 6 of these states the rate thus calculated yields a result that is close to New Jersey's when the 2% is added for judgments that exceed the $15,000 limit of the Special Civil Part. In short, the Joint Subcommittee found that there was no compelling reason to choose a base index other than the Cash Management Fund's rate of return, since they all reflect the current state of the economy and thus yield a comparable result, depending on the amount that is added to the base.

Having decided to recommend retention of the Cash Management Fund's rate of return as the base index, the Joint Subcommittee turned to the question of what floor to recommend as the level below which the post judgment interest rate should not descend. The 0.25% minimum rate chosen by the Supreme Court on an interim basis in January, 2013, is reflective of current economic conditions in New Jersey, as measured by the return of the Cash Management Fund, and would keep the New Jersey rate in line with the federal post judgment interest rate. It is also consistent, in the view of the Subcommittee, with the purposes of post judgment interest articulated in the 1985 and 1996 reports of the Civil Practice Committee. to the Supreme Court.

Conclusion

For the reasons set forth above in this report, the Joint Subcommittee on Post Judgment Interest recommends that R. 4:42-11(a)(ii) be amended to set 0.25% as the minimum interest rate on civil judgments in New Jersey. The Subcommittee also recommends that the Cash Management Fund's rate of return for the preceding fiscal year be retained as the base index and that the additional 2% for judgments that exceed the monetary limit of the Special Civil Part (currently $15,000) also be retained. The proposed amendment follows.

Proposed Amendment to Rule 4:42-11(a) --- Interest Rate on Judgments

4:42–11. Interest; Rate on Judgments; in Tort Actions

(a) Post Judgment Interest. Except as otherwise ordered by the court or provided by law, judgments, awards and orders for the payment of money, taxed costs and attorney's fees shall bear simple interest as follows:

(i) For periods prior to January 2, 1986, the annual rate of return shall be as heretofore provided by this rule, namely, 6% for the period prior to April 1, 1975; 8% for the period between April 1, 1975 and September 13, 1981; and 12% for the period between September 14, 1981 and January 1, 1986.

(ii) For judgments not exceeding the monetary limit of the Special Civil Part at the time of entry, regardless of the court in which the action was filed: commencing January 2, 1986 and for each calendar year thereafter, the annual rate of interest shall equal the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury, but the rate shall be not be less than 0.25%.

(iii) For judgments exceeding the monetary limit of the Special Civil Part at the time of entry: in the manner provided for in subparagraph (a)(ii) of this Rule until September 1, 1996; thereafter, at the rate provided in subparagraph (a)(ii) plus 2% per annum.

Post-judgment interest may be included in the calculation of an attorney's contingency fee.

(b) Tort Actions. … no change

Note: Adopted December 21, 1971 to be effective January 31, 1972. Paragraph (b) amended June 29, 1973 to be effective September 10, 1973; paragraphs (a) and (b) amended November 27, 1974 to be

effective April 1, 1975; paragraphs (a) and (b) amended July 29, 1977 to be effective September 6, 1977; paragraphs (a) and (b) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 2, 1987 to be effective January 1, 1988; paragraph (a)(ii) amended and paragraph (a)(iii) added June 28, 1996 to be effective September 1, 1996; paragraph (b) amended April 28, 2003 to be effective July 1, 2003; paragraph (a) amended July 23, 2010 to be effective September 1, 2010; paragraph (a)(ii) amended , 2014 to be effective September 1, 2014.

CURRENT RULE 4:42-11

4:42–11. Interest; Rate on Judgments; in Tort Actions

(a) Post Judgment Interest. Except as otherwise ordered by the court or provided by law, judgments, awards and orders for the payment of money, taxed costs and attorney's fees shall bear simple interest as follows:

(i) For periods prior to January 2, 1986, the annual rate of return shall be as heretofore provided by this rule, namely, 6% for the period prior to April 1, 1975; 8% for the period between April 1, 1975 and September 13, 1981; and 12% for the period between September 14, 1981 and January 1, 1986.

(ii) For judgments not exceeding the monetary limit of the Special Civil Part at the time of entry, regardless of the court in which the action was filed: commencing January 2, 1986 and for each calendar year thereafter, the annual rate of interest shall equal the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury.

(iii) For judgments exceeding the monetary limit of the Special Civil Part at the time of entry: in the manner provided for in subparagraph (a)(ii) of this Rule until September 1, 1996; thereafter, at the rate provided in subparagraph (a)(ii) plus 2% per annum.

Post-judgment interest may be included in the calculation of an attorney's contingency fee.

(b) Tort Actions. Except where provided by statute with respect to a public entity or employee, and except as otherwise provided by law, the court shall, in tort actions, including products liability actions, include in the judgment simple interest, calculated as hereafter provided, from the date of the institution of the action or from a date 6 months after the date the cause of action arises, whichever is later, provided that in exceptional cases the court may suspend the running of such prejudgment interest. Prejudgment interest shall not, however, be allowed on any recovery for future economic losses. Prejudgment interest shall be calculated in the same amount and manner provided for by paragraph (a) of this rule except that for all periods prior to January 1, 1988 interest shall be calculated at 12% per annum. The contingent fee of an attorney shall not be computed on the interest so included in the judgment.

Note: Adopted December 21, 1971 to be effective January 31, 1972. Paragraph (b) amended June 29, 1973 to be effective September 10, 1973; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a) and (b) amended July 29, 1977 to be effective September 6, 1977; paragraphs (a) and (b) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 2, 1987 to be effective January 1, 1988; paragraph (a)(ii) amended and paragraph (a)(iii) added June 28, 1996 to be effective September 1, 1996; paragraph (b) amended April 28, 2003 to be effective July 1, 2003; paragraph (a) amended July 23, 2010 to be effective September 1, 2010.

NOTICE TO THE BAR

POST-JUDGMENT INTEREST RATE ESTABLISHED FOR CALENDAR YEAR 2013 (RULE 4:42-11(a)(ii))

The purpose of this notice is to clarify the effect of the previously published January 15, 2013 Supreme Court order (copy appended) regarding the post-judgment interest rate for calendar 2013.

The Supreme Court entered the January 15, 2013 order as an interim measure to adjust the 0% rate of post-judgment interest that was previously announced in a July 24, 2012 notice to the bar. The January 15, 2013 order relaxed and supplemented Court Rule 4:42-11(a)(ii) so as to revise the base 2013 post-judgment interest rate from 0% to 0.25%, retroactive to January 1, 2013. Thus, the 2013 post-judgment interest rate for judgments of $15,000 or less is 0.25% and, pursuant to paragraph (a)(iii) of the rule, for judgments over $15,000 the 2013 post-judgment interest rate is 2.25%.

The formula for determining the annual post-judgment interest rate set forth in R. 4:42-11(a)(ii) is based on the rate of return for the New Jersey Cash Management Fund for the previous fiscal year (that rate of return was 0.15% for fiscal 2012), rounded to the nearest half or whole percent (which resulted in the now superseded 0% rate). The Supreme Court Civil Practice Committee and Special Civil Part Practice Committee continue to study the rule and will make recommendations as to possible revisions to the formula in the rule for the Court to consider during the Committees' current rules cycle (2012-2014).

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: February 11, 2013

SUPREME COURT OF NEW JERSEY

Whereas Rule 4:42-11(a)(ii) of the Rules Governing the Courts of the State of New Jersey provides that the annual rate of interest on judgments that do not exceed the monetary limit of the Special Civil Part, regardless of the court in which the action was filed, shall equal the average rate of return of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury for the preceding fiscal year terminating on June 30, to the nearest whole or one-half percent; and whereas based on that calculation the post-judgment interest rate for such judgments for calendar year 2013 was established and announced as zero percent (0%);

Pursuant to N.J. Const. (1947), Art. VI, § 2, par. 3, it is ORDERED that Rule 4:42-11 is relaxed and supplemented, retroactive to January 1, 2013, so as to provide that effective January 1, 2013 and until further order, the annual rate of interest on judgments that do not exceed the monetary limit of the Special Civil Part calculated pursuant to paragraph (a)(ii) of the Rule shall be not be less than 0.25%, and that, as currently provided by paragraph (a)(iii) of the Rule, an additional 2% per annum shall be added to the rate of interest on judgments that exceed the monetary limit of the Special Civil Part at the time of entry;

This supersedes the July 24, 2012 Notice to the Bar that established the 2013 post-judgment interest rate.

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: January 15, 2013

Interest Rates in U.S.A.

Post Judgment Interest In States Other Than New Jersey

5/11/2013

State	Interest rate	Source	Note
Alabama,AL	7.5% or contract	ALA CODE § 8-8-10	
Alaska,AK	3.75% or contract	AK ST § 09.30.070	The rate of interest on judgments and decrees for the payment of money is calculated as three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered. Federal Reserve Discount Rate on January 2, 2013 is 0.75%.
Arizona,AZ	10% or contract	A.R.S. § 44-1201	
Arkansas,AR	10% or contract whichever is greater	AR ST § 16-65-114	
California,CA	10% or contract	CA CIV PRO § 685.01	
Colorado,CO	Contract - 8% compounded annually or contract Personal injury - 9% compounded annually	CO ST § 5-12-102; CRS § 13-21-101(1)	If a judgment debtor appeals the judgment, the interest rate is calculated as 2 percentage point above the current discount rate, including the compounding interest annually from the date that the suit was filed.
Connecticut,CT	10% debt arising out of services provided at a hospital - 5%.	CT ST § 37-3a	If the judgment is appealed than the interest is tolled while appeal is pending.
Delaware,DE	5% over the Federal Discount rate or contract, whichever is greater	DEL CODE ANN. 6 § 2301	
DC	70% of the rate of interest set by the Secretary of the Treasury for underpayments of tax to the Internal Revenue Service.	DC CODE § 28-3302	The rate is not fixed but is variable.

Florida,FL	4%+average the discount rate of the Federal Reserve Bank of New York for the preceding 12 months	FL ST § 55.03	The rate is adjusted quarterly. The current rate is 4.75%.
Georgia,GA	3.75% or contract	GA ST § 7-4-12	Only the principal amount recovered accrues interest. PJIR is 3% plus prime rate.
Hawaii,HI	10% or contract 4% against State	HI ST § 478-3	
Idaho,ID	5.25% or contract	ID ST § 28-22-104	PJIR is 5% plus the base rate in effect at the time of entry of the judgment. The base rate shall be the weekly average yield on United States treasury securities as adjusted to a constant maturity of one (1) year. The current base rate is 0.25%.
Illinois,IL	Judgment against govt entity - 9% Other - 6%	735 ILCS 5/2-1303	
Indiana,IN	8% or contract, whatever is greater, but not to exceed 8%.	IC 24-4.6-1-101	
Iowa,IA	Contract and Tort (not under comparative fault) - 5% or contract, not to exceed 2% over monthly average ten-year constant maturity interest rate of the U.S. government notes and bonds. Comparative fault - 2.16%.	I.C.A. § 535.2 IA ST § 668.13	Rate of interest for Comparative Fault is calculated as of the date of judgment at a rate equal to the one-year treasury constant maturity index published by Federal Reserve in H.15 Report settled immediately prior to date of judgment, plus 2%. The current constant maturity index is 0.16%.
Kansas,KS	4.75% or contract	KS ST 16-204	PJIR is 4% plus federal discount rate, which is currently 4.75%
Kentucky,KY	12% compounded annually or rate specified in contract	KY ST § 360.040	

Louisiana,LA	4% or contract (not to exceed 12%).	LA R.S. 13:4202	PJIR is 3.25% plus the discount rate on October 1 of each year
Maine,ME	6.16% or contract, whichever is greater.	14 M.R.S.A. § 1602-C	For non-contracts - one-year United States Treasury bill rate plus 6%. For contracts, rate is the rate set forth in the contract or one-year United States Treasury bill rate plus 6%, whichever is greater.
Maryland,MD	10%	MD CTS & JUD PRO § 11-107	
Massachusetts,MA	Contract and Tort - 12%	M.G.L.A. 231 § 6B M.G.L.A. 231 § 6C	
Michigan,MI	1.687% (compounded) or contract	MI ST 600.6013	PJIR is 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1and compounded annually. If offer of judgment of at least 110% of the ultimate recovery is offered but declined, then the interest rate is increased by 2%.
Minnesota,MN	Under $50,000 or against government - 4% Above $50,000 - 10%	Minn. Stat. §549.09	Like in New Jersey, there is a higher post-judgment interest rate for a bigger judgment
Mississippi,MS	Reasonable interest or contract	MS ST § 75-17-7	The only state where the interest rate is set by judge
Missouri,MO	9%	MO ST 408.040	
Montana,MT	10% or contract	MT ST 25-9-205	
Nebraska,NE	2.09% or contract	Neb.Rev. St. § 45-103	PJIR is 2% plus auction price for first auction of each annual quarter of the 26-week U.S. Treasury bills in effect on date of judgment.
Nevada,NV	5.25% or contract	NV ST 17.130	PJIR is 2% plus prime rate at the largest bank in Nevada adjusted on Jan 1 and July 1 each year (which is currently 3.25%)
New Hampshire,NH	2.1%	NH ST § 336:1	PJIR is 2% plus discount rate for the 26-week U.S. Treasury bills

New Mexico,NM	Contract – 8.75%, or rate provided in the contract. Tortious conduct, bad faith or intentional and willful acts – 15%. State and its political subdivisions are exempt unless law provides otherwise.	NM ST § 56-8-4	The highest PJIR in the nation
New York,NY	9%	CPLR § 5004	Unless otherwise prescribed by statute
North Carolina,NC	6%	N.C.G.S.A. § 40A-53	
North Dakota,ND	6.5%	ND ST 28-20-34	PJIR is 3% plus the prime rate published in the Wall Street Journal on the first Monday in December of each year, rounded up to the next one half percentage point
Ohio,OH	3%	R.C. § 1343.03	PJIR is rate set annually by the state tax commissioner plus 3%
Oklahoma,OK	5.35%	OK ST T. 12 § 727.1	2% plus the prime interest rate
Oregon,OR	General - 9% or contract. Professional negligence - the lesser of 5% per annum or 3% in excess of the discount rate in effect at the Federal Reserve Bank in the Federal Reserve District where the injuries occurred.	OR ST § 82.010	
Pennsylvania,PA	6% or contract	41 P.S. § 202	
Rhode Island,RI	12%	RI ST § 9-21-8	
South Carolina,SC	7.25% (compounded yearly)	SC ST § 34-31-20	4% plus the prime rate for each year
South Dakota,SD	10%	SDCL § 54-3-5.1	

Tennessee,TN	5.25%	TN ST § 47-14-121	PJIR is formula determined by Tennessee Department of Financial Institutions. minus 2%, unless there is a statute, note or contract that fixes the rate of interest at a specific rate. The current formula is 7.25%
Texas,TX	Contract - contract rate but up to 18% Other 5%	V.T.C.A., Finance Code § 304.002 V.T.C.A., Finance Code § 304.003	The PJIR is the prime rate as published by the Board of Governors of the Federal Reserve System on the date of computation, 5% a year if the prime rate is less than 5%, or15% a year if the prime rate is more than 15%
Utah,UT	0.15% or contract	U.C.A. 1953 § 15-1-4	PJIR is federal rate in 28 U.S.C. § 1961
Vermont,VT	12%	VT ST T. 12 § 2903	
Virginia,VA	6% or contract	VA ST § 6.1-330.54	
Washington,WA	Contract - 12% or contract Tort - 2.09%	RCWA 4.56.110	Tort PJIT is 2% plus average bill rate for 26-week treasury bills
West Virginia,WV	7%	WV ST § 56-6-31	PJIR is 3% plus the Fifth Federal Reserve District secondary discount rate in effect on the second day of January of the year in which the judgment or decree is entered. However, not less than 7%, and not more than 11%
Wisconsin,WI	4.25%	Wis. Stat. § 815.05(8)	PJIR is 1% plus the prime rate of the year
Wyoming,WY	10% or contract	WY ST § 1-16-102	

1. Alabama,AL

ALA CODE § 8-8-10

(a) Judgments for the payment of money, other than costs, if based upon a contract action, bear interest from the day of the cause of action, at the same rate of interest as stated in the contract; all other judgments shall bear interest at the rate of 7.5 percent per annum, the provisions of Section 8-8-1 to the contrary notwithstanding; provided, that fees allowed a trustee, executor, administrator, or attorney and taxed as a part of the cost of the proceeding shall bear interest at a like rate from the day of entry.

(b) This section shall apply to all judgments entered on and after September 1, 2011.

2. Alaska,AK

AS § 09.30.070

(a) Notwithstanding AS 45.45.010, the rate of interest on judgments and decrees for the payment of money, including prejudgment interest, is three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

3. Arizona,AZ

A.R.S. § 44-1201

A. Interest on any loan, indebtedness or other obligation shall be at the rate of ten per cent per annum, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to. Interest on any judgment that is based on a written agreement evidencing a loan, indebtedness or obligation that bears a rate of interest not in excess of the maximum permitted by law shall be at the rate of interest provided in the agreement and shall be specified in the judgment.

4. Arkansas,AR

AR ST § 16-65-114

(a) Interest on a judgment entered by a circuit court on a contract shall bear interest at the rate provided by the contract or ten percent (10%) per annum, whichever is greater, and on any other judgment at ten percent (10%) per annum, but not more than the maximum rate permitted by the Arkansas Constitution, Article 19, § 13, as amended.

5. California,CA

CA CIV PRO § 685.010

(a) Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied.

6. Colorado,CO

CO ST § 5-12-102

If there is no agreement or provision of law for a different rate, the interest on money shall be at the rate of eight percent per annum, compounded annually.

7. C.R.S.A. § 13-21-101

(1) In all actions brought to recover damages for personal injuries sustained by any person resulting from or occasioned by the tort of any other person, corporation, association, or partnership, whether by negligence or by willful intent of such other person, corporation, association, or partnership and whether such injury has resulted fatally or otherwise, it is lawful for the plaintiff in the complaint to claim interest on the damages alleged from the date said suit is filed; and, on and after July 1, 1979, it is lawful for the plaintiff in the complaint to claim interest on the damages claimed from the date the action accrued. When such interest is so claimed, it is the duty of the court in entering judgment for the plaintiff in such action to add to the amount of damages assessed by the verdict of the jury, or found by the court, interest on such amount calculated at the rate of nine percent per annum on actions filed on or after July 1, 1975, and at the legal rate on actions filed prior to such date, and calculated from the date such suit was filed to the date of satisfying the judgment and to include the same in said judgment as a part thereof. On actions filed on or after July 1, 1979, the calculation shall include compounding of interest annually from the date such suit was filed. On and after January 1, 1983, if a judgment for money in an action brought to recover damages for personal injuries is appealed by the judgment debtor, interest, whether prejudgment or postjudgment, shall be calculated on such sum at the rate set forth in subsections (3) and (4) of this section from the date the action accrued and shall include compounding of interest annually from the date such suit was filed.

(2)(a) If a judgment for money in an action brought to recover damages for personal injuries is appealed by a judgment debtor and the judgment is affirmed, interest, as set out in subsections (3) and (4) of this section, shall be payable from the date the action accrued until satisfaction of the judgment.

(b) If a judgment for money in an action to recover damages for personal injuries is appealed by a judgment debtor and the judgment is modified or reversed with a direction

that a judgment for money be entered in the trial court, interest, as set out in subsections (3) and (4) of this section, shall be payable from the date the action accrued until the judgment is satisfied. This interest shall be payable on the amount of the final judgment.

(3) The rate of interest shall be certified on each January 1 by the secretary of state to be two percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent. Such annual rate of interest shall be so established as of December 31, 1982, to become effective January 1, 1983. Thereafter, as of December 31 of each year, the annual rate of interest shall be established in the same manner, to become effective on January 1 of the following year.

8. Connecticut,CT

CT ST § 37-3a

(a) Except as provided in sections 37-3b, 37-3c and 52-192a, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions or arbitration proceedings under chapter 909,1 including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable. Judgment may be given for the recovery of taxes assessed and paid upon the loan, and the insurance upon the estate mortgaged to secure the loan, whenever the borrower has agreed in writing to pay such taxes or insurance or both. Whenever the maker of any contract is a resident of another state or the mortgage security is located in another state, any obligee or holder of such contract, residing in this state, may lawfully recover any agreed rate of interest or damages on such contract until it is fully performed, not exceeding the legal rate of interest in the state where such contract purports to have been made or such mortgage security is located.

(b) In the case of a debt arising out of services provided at a hospital, prejudgment and postjudgment interest shall be no more than five per cent per year. The awarding of interest in such cases is discretionary.

9. Delaware,DE

DEL CODE ANN. 6 § 2301

(a) Any lender may charge and collect from a borrower interest at any rate agreed upon in writing not in excess of 5% over the Federal Reserve discount rate including any surcharge thereon. Where there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which

interest is due; provided, that where the time from which interest is due predates April 18, 1980, the legal rate shall remain as it was at such time. Except as otherwise provided in this Code, any judgment entered on agreements governed by this subsection, whether the contract rate is expressed or not, shall, from the date of the judgment, bear post-judgment interest of 5% over the Federal Reserve discount rate including any surcharge thereon or the contract rate, whichever is less.

10. District of Columbia

DC CODE § 28-3302

(c) The rate of interest on judgments and decrees, where the judgment or decree is not against the District of Columbia, or its officers, or its employees acting within the scope of their employment or where the rate of interest is not fixed by contract, shall be 70% of the rate of interest set by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2744; 26 U.S.C. § 6621), for underpayments of tax to the Internal Revenue Service, rounded to the nearest full percent, or if exactly 1/2 of 1%, increased to the next highest full percent; provided, that a court of competent jurisdiction may lower the rate of interest under this subsection for good cause shown or upon a showing that the judgment debtor in good faith is unable to pay the judgment. In the case of the judgments entered prior to the effective date of the Consumer Credit Interest Rate Amendment Act of 1981, that are not satisfied until after the effective date of the Consumer Credit Interest Rate Amendment Act of 1981, the rate of interest thereon shall be the rate of interest prescribed in this subsection from the effective date of the Consumer Credit Interest Rate Amendment Act of 1981, until the date of satisfaction.

11. Florida,FL

FL ST § 55.03

(1) On December 1, March 1, June 1, and September 1 of each year, the Chief Financial Officer shall set the rate of interest that shall be payable on judgments or decrees for the calendar quarter beginning January 1 and adjust the rate quarterly on April 1, July 1, and October 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate. The Chief Financial Officer shall inform the clerk of the courts and chief judge for each judicial circuit of the rate that has been established for the upcoming quarter. The interest rate established by the Chief Financial Officer shall take effect on the first day of each following calendar quarter. Judgments obtained on or after January 1, 1995, shall use the previous statutory rate for time periods before January 1, 1995, for which interest is due and shall apply the rate set by the Chief Financial Officer for time periods after January 1,

1995, for which interest is due. Nothing contained herein shall affect a rate of interest established by written contract or obligation.

12. Georgia,GA

GA ST § 7-4-12

(a) All judgments in this state shall bear annual interest upon the principal amount recovered at a rate equal to the prime rate as published by the Board of Governors of the Federal Reserve System, as published in statistical release H. 15 or any publication that may supersede it, on the day the judgment is entered plus 3 percent.

(b) If the judgment is rendered on a written contract or obligation providing for interest at a specified rate, the judgment shall bear interest at the rate specified in the contract or obligation.

(c) The postjudgment interest provided for in this Code section shall apply automatically to all judgments in this state and the interest shall be collectable as a part of each judgment whether or not the judgment specifically reflects the entitlement to postjudgment interest.

13. Hawaii,HI

HI ST § 478-3

Interest at the rate of ten per cent a year, and no more, shall be allowed on any judgment recovered before any court in the State, in any civil suit.

14. Idaho,ID

ID ST § 28-22-104

(1) When there is no express contract in writing fixing a different rate of interest, interest is allowed at the rate of twelve cents (12¢) on the hundred by the year on:

1. Money due by express contract.

2. Money after the same becomes due.

3. Money lent.

4. Money received to the use of another and retained beyond a reasonable time without the owner's consent, express or implied.

5. Money due on the settlement of mutual accounts from the date the balance is ascertained.

6. Money due upon open accounts after three (3) months from the date of the last item.

(2) The legal rate of interest on money due on the judgment of any competent court or tribunal shall be the rate of five percent (5%) plus the base rate in effect at the time of entry of the judgment. The base rate shall be determined on July 1 of each year by the Idaho state treasurer and shall be the weekly average yield on United States treasury securities as adjusted to a constant maturity of one (1) year and rounded up to the nearest one-eighth percent (⅛ %). The base rate shall be determined by the Idaho state treasurer utilizing the published interest rates during the second week in June of the year in which such interest is being calculated. The legal rate of interest as announced by the treasurer on July 1 of each year shall operate as the rate applying for the succeeding twelve (12) months to all judgments declared during such succeeding twelve (12) month period. The payment of interest and principal on each judgment shall be calculated according to a three hundred sixty-five (365) day year.

15. Illinois,IL

735 ILCS 5/2-1303

Interest on judgment. Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied or 6% per annum when the judgment debtor is a unit of local government, as defined in Section 1 of Article VII of the Constitution, a school district, a community college district, or any other governmental entity. When judgment is entered upon any award, report or verdict, interest shall be computed at the above rate, from the time when made or rendered to the time of entering judgment upon the same, and included in the judgment. Interest shall be computed and charged only on the unsatisfied portion of the judgment as it exists from time to time. The judgment debtor may by tender of payment of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment.

16. Indiana,IN

IC 24-4.6-1-101

Sec. 101. Except as otherwise provided by statute, interest on judgments for money whenever rendered shall be from the date of the return of the verdict or finding of the court until satisfaction at:

(1) the rate agreed upon in the original contract sued upon, which shall not exceed an annual rate of eight percent (8%) even though a higher rate of interest may properly have been charged according to the contract prior to judgment; or

(2) an annual rate of eight percent (8%) if there was no contract by the parties.

17. Iowa,IA

I.C.A. § 535.2 (Rate of interest)

1. Except as provided in subsection 2 hereof, the rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest at a rate not exceeding the rate permitted by subsection 3:

a. Money due by express contract.

b. Money after the same becomes due.

c. Money loaned.

d. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.

e. Money due on the settlement of accounts from the day the balance is ascertained.

f. Money due upon open accounts after six months from the date of the last item.

g. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated.

IA ST § 668.13 (Comparative fault)

Interest shall be allowed on all money due on judgments and decrees on actions brought pursuant to this chapter, subject to the following:

1. Interest, except interest awarded for future damages, shall accrue from the date of the commencement of the action.

2. If the interest rate is fixed by a contract on which the judgment or decree is rendered, the interest allowed shall be at the rate expressed in the contract, not exceeding the maximum rate permitted under section 535.2.

3. Interest shall be calculated as of the date of judgment at a rate equal to the one-year treasury constant maturity published by the federal reserve in the H15 report settled immediately prior to the date of the judgment plus two percent. The state court administrator shall distribute notice monthly of that rate and any changes to that rate to all district courts.

4. Interest awarded for future damages shall not begin to accrue until the date of the entry of the judgment.

5. Interest shall be computed daily to the date of the payment, except as may otherwise be ordered by the court pursuant to a structured judgment under section 668.3, subsection 7.

6. Structured, periodic, or other nonlump-sum payments ordered pursuant to section 668.3, subsection 7, shall reflect interest in accordance with annuity principles.

18. Kansas,KS

KS ST 16-204 Interest on judgments

(e)(1) Except as otherwise provided in this subsection, on and after July 1, 1996, the rate of interest on judgments rendered by courts of this state pursuant to the code of civil procedure shall be at a rate per annum: (A) Which shall change effective July 1 of each year for both judgments rendered prior to such July 1 and judgments rendered during the twelve-month period beginning such July 1; and (B) which is equal to an amount that is four percentage points above the discount rate (the charge on loans to depository institutions by the New York federal reserve bank as reported in the money rates column of the Wall Street Journal) as of July 1 preceding the date the judgment was rendered. The secretary of state shall publish notice of the interest rate provided by this subsection (e)(1) not later than the second issue of the Kansas register published in July of each year.

19. Kentucky,KY

KY ST § 360.040Interest on judgment

A judgment shall bear twelve percent (12%) interest compounded annually from its date. A judgment may be for the principal and accrued interest; but if rendered for accruing interest on a written obligation, it shall bear interest in accordance with the instrument reporting such accruals, whether higher or lower than twelve percent (12%). Provided, that when a claim for unliquidated damages is reduced to judgment, such judgment may bear less interest than twelve percent (12%) if the court rendering such judgment, after a hearing on that question, is satisfied that the rate of interest should be less than twelve percent (12%). All interested parties must have due notice of said hearing.

20. Louisiana,LA

LA R.S. 13:4202 Rates of judicial interest

B. (1) On and after January 1, 2002, the rate shall be equal to the rate as published annually, as set forth below, by the commissioner of financial institutions. The commissioner of financial institutions shall ascertain, on the first business day of October of each year, the

Federal Reserve Board of Governors approved “discount rate” published daily in the Wall Street Journal. The effective judicial interest rate for the calendar year following the calculation date shall be three and one-quarter percentage points above the discount rate as ascertained by the commissioner.

21. Maine,ME

14 M.R.S.A. § 1602-C (Interest after judgment)

1. Rate. In all civil and small claims actions, post-judgment interest is allowed at a rate equal to:

A. In actions involving a contract or note that contains a provision relating to interest, the rate set forth in the contract or note or the rate in paragraph B, whichever is greater; and

B. In all other actions, the one-year United States Treasury bill rate plus 6%.

(1) For purposes of this paragraph, “one-year United States Treasury bill rate” means the weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last full week of the calendar year immediately prior to the year in whichpost-judgment interest begins to accrue.

(2) If the Board of Governors of the Federal Reserve System ceases to publish the weekly average one-year constant maturity Treasury yield or it is otherwise unavailable, then the Supreme Judicial Court shall annually establish by rule a rate that most closely approximates the rate established in this paragraph.

The applicable post-judgment interest rate must be stated in the judgment, except for judgments in small claims actions.

22. Maryland,MD

MD CTS & JUD PRO § 11-107 (Rate of interest on judgments)

(a) Except as provided in § 11-106 of this subtitle, the legal rate of interest on a judgment shall be at the rate of 10 percent per annum on the amount of judgment.

23. Massachusetts,MA

M.G.L.A. 231 § 6B Interest added to damages in tort actions

In any action in which a verdict is rendered or a finding made or an order for judgment made for pecuniary damages for personal injuries to the plaintiff or for consequential damages, or for damage to property, there shall be added by the clerk of court to the

amount of damages interest thereon at the rate of twelve per cent per annum from the date of commencement of the action even though such interest brings the amount of the verdict or finding beyond the maximum liability imposed by law.

M.G.L.A. 231 § 6C Interest added to damages in contract actions

In all actions based on contractual obligations, upon a verdict, finding or order for judgment for pecuniary damages, interest shall be added by the clerk of the court to the amount of damages, at the contract rate, if established, or at the rate of twelve per cent per annum from the date of the breach or demand. If the date of the breach or demand is not established, interest shall be added by the clerk of the court, at such contractual rate, or at the rate of twelve per cent per annum from the date of the commencement of the action, provided, however, that in all actions based on contractual obligations, upon a verdict, finding or order for judgment against the commonwealth for pecuniary damages, interest shall be added by the clerk of the court to the amount of damages, at the contract rate, if established, or at a rate calculated pursuant to the provisions of section six I from the date of the breach or demand. If the date of the breach or demand is not established, such interest shall be added by the clerk of the court from the date of the commencement of the action.

24. Michigan,MI

MI ST 600.6013 Interest rate on judgment; settlement

(8) Except as otherwise provided in subsections (5) and (7) and subject to subsection (13), for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action is calculated at 6-month intervals from the date of filing the complaint at a rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, according to this section. Interest under this subsection is calculated on the entire amount of the money judgment, including attorney fees and other costs. In an action for medical malpractice, interest under this subsection on costs or attorney fees awarded under a statute or court rule is not calculated for any period before the entry of the judgment. The amount of interest attributable to that part of the money judgment from which attorney fees are paid is retained by the plaintiff, and not paid to the plaintiff's attorney.

(13) Except as otherwise provided in subsection (1), if a bona fide, reasonable written offer of settlement in a civil action based on tort is made by a plaintiff for whom the judgment is subsequently rendered and that offer is rejected and the offer is filed with the court, the court shall order that interest be calculated from the date of the rejection of the offer to the

date of satisfaction of the judgment at a rate of interest equal to 2% plus the rate of interest calculated under subsection (8).

25. Minnesota,MN

Minn. Stat. §549.09 Interest on verdicts, awards, and judgments

(c)(1) For a judgment or award of $50,000 or less or a judgment or award for or against the state or a political subdivision of the state, regardless of the amount, the interest shall be computed as simple interest per annum. The rate of interest shall be based on the secondary market yield of one year United States Treasury bills, calculated on a bank discount basis as provided in this section.

On or before the 20th day of December of each year the state court administrator shall determine the rate from the one-year constant maturity treasury yield for the most recent calendar month, reported on a monthly basis in the latest statistical release of the board of governors of the Federal Reserve System. This yield, rounded to the nearest one percent, or four percent, whichever is greater, shall be the annual interest rate during the succeeding calendar year. The state court administrator shall communicate the interest rates to the court administrators and sheriffs for use in computing the interest on verdicts and shall make the interest rates available to arbitrators.

26. Mississippi,MS

MS ST § 75-17-7 Rate of interest on judgments and decrees

All judgments or decrees founded on any sale or contract shall bear interest at the same rate as the contract evidencing the debt on which the judgment or decree was rendered. All other judgments or decrees shall bear interest at a per annum rate set by the judge hearing the complaint from a date determined by such judge to be fair but in no event prior to the filing of the complaint.

27. Missouri,MO

MO ST 408.040Interest on judgments, how regulated--prejudgment interest allowed when, procedure

1. In all nontort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than nine percent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear nine percent per annum until satisfaction made as aforesaid.

28. Montana,MT

MT ST 25-9-205 Amount of interest

(1) Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state and on the cost incurred to obtain or enforce a judgment at the rate of 10% per year. The interest may not be compounded.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation.

29. Nebraska,NE (Interest; judgments; decrees; rate; exceptions)

Neb.Rev.St. § 45-103

For decrees and judgments rendered before July 20, 2002, interest on decrees and judgments for the payment of money shall be fixed at a rate equal to one percentage point above the bond equivalent yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the last auction of fifty-two-week United States Treasury bills in effect on the date of entry of the judgment. For decrees and judgments rendered on and after July 20, 2002, interest on decrees and judgments for the payment of money shall be fixed at a rate equal to two percentage points above the bond investment yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the first auction of each annual quarter of the twenty-six-week United States Treasury bills in effect on the date of entry of the judgment. The State Court Administrator shall distribute notice of such rate and any changes to it to all Nebraska judges to be in effect two weeks after the date the auction price is published by the Secretary of the Treasury of the United States. This interest rate shall not apply to:

(1) An action in which the interest rate is specifically provided by law; or

(2) An action founded upon an oral or written contract in which the parties have agreed to a rate of interest other than that specified in this section.

30. Nevada,NV (Computation of amount of judgment; interest)

NV ST 17.130

1. In all judgments and decrees, rendered by any court of justice, for any debt, damages or costs, and in all executions issued thereon, the amount must be computed, as near as may be, in dollars and cents, rejecting smaller fractions, and no judgment, or other proceedings, may be considered erroneous for that omission.

2. When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest from the time of service of the summons and complaint until satisfied, except for any amount representing future damages, which draws interest only from the time of the entry of the judgment until satisfied, at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

31. New Hampshire,NH

NH ST § 336:1 (Rate of Interest.)

II. The annual simple rate of interest on judgments, including prejudgment interest, shall be a rate determined by the state treasurer as the prevailing discount rate of interest on 26-week United States Treasury bills at the last auction thereof preceding the last day of September in each year, plus 2 percentage points, rounded to the nearest tenth of a percentage point. On or before the first day of December in each year, the state treasurer shall determine the rate and transmit it to the director of the administrative office of the courts. As established, the rate shall be in effect beginning the first day of the following January through the last day of December in each year.

32. New Mexico,NM

NM ST § 56-8-4 (Judgments and decrees; basis of computing interest).

A. Interest shall be allowed on judgments and decrees for the payment of money from entry and shall be calculated at the rate of eight and three-fourths percent per year, unless:

(1) the judgment is rendered on a written instrument having a different rate of interest, in which case interest shall be computed at a rate no higher than specified in the instrument; or

(2) the judgment is based on tortious conduct, bad faith or intentional or willful acts, in which case interest shall be computed at the rate of fifteen percent.

B. Unless the judgment is based on unpaid child support, the court in its discretion may allow interest of up to ten percent from the date the complaint is served upon the defendant after considering, among other things:

(1) if the plaintiff was the cause of unreasonable delay in the adjudication of the plaintiff's claims; and

(2) if the defendant had previously made a reasonable and timely offer of settlement to the plaintiff.

C. Nothing contained in this section shall affect the award of interest or the time from which interest is computed as otherwise permitted by statute or common law.

D. The state and its political subdivisions are exempt from the provisions of this section except as otherwise provided by statute or common law.

33. New York,NY

CPLR § 5004 Rate of interest

Interest shall be at the rate of nine per centum per annum, except where otherwise provided by statute.

34. North Carolina,NC

N.C.G.S.A. § 40A-53 (Interest as a part of just compensation)

To the amount awarded as compensation by the commissioners or a jury or judge, the judge shall add interest at the rate of six percent (6%) per annum on said amount from the date of taking to the date of judgment. Interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article

35. North Dakota,ND

ND ST 28-20-34 Interest rate on judgments

Interest is payable on judgments entered in the courts of this state at the same rate as is provided in the original instrument upon which the action resulting in the judgment is based, which rate may not exceed the maximum rate provided in section 47-14-09. If such original instrument contains no provision as to an interest rate, or if the action resulting in the judgment was not based upon an instrument, interest is payable at the rate of twelve percent per annum through December 31, 2005. Beginning January 1, 2006, the interest is payable at a rate equal to the prime rate published in the Wall Street Journal on the first Monday in December of each year plus three percentage points rounded up to the next one-half percentage point and may not be compounded in any manner or form. On or before the twentieth day of December each year, the state court administrator shall determine the rate and shall transmit notice of that rate to all clerks of court and to the state bar association of North Dakota. As established, the rate shall be in effect beginning the first day of the following January through the last day of December in each year. Except as otherwise provided in this section, interest on all judgments entered in the courts of this

state before January 1, 2006, must remain at the rate per annum which was legally prescribed at the time the judgments were entered, and such interest may not be compounded in any manner or form. Interest on unpaid child support obligations must be calculated under section 14-09-25 according to the rate currently in effect under this section regardless of the date the obligations first became due and unpaid.

36. Ohio,OH

R.C. § 5703.47 (Interest calculated at federal short-term rate; notice to county auditor)

A) As used in this section, "federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1274, for July of the current year.

(B) On the fifteenth day of October of each year, the tax commissioner shall determine the federal short-term rate. For purposes of any section of the Revised Code requiring interest to be computed at the rate per annum required by this section, the rate determined by the commissioner under this section, rounded to the nearest whole number per cent, plus three per cent, shall be the interest rate per annum used in making the computation for interest that accrues during the following calendar year. For the purposes of sections 5719.041 and 5731.23 of the Revised Code, references to the "federal short-term rate" are references to the federal short-term rate as determined by the tax commissioner under this section rounded to the nearest whole number per cent.

(C) Within ten days after the interest rate per annum is determined under this section, the tax commissioner shall notify the auditor of each county of that rate of interest.

OH ST § 1343.03 (Rate of interest on contracts, book accounts and judgments; commencement of interest on judgments)

(A) In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract. Notification of the interest rate per annum shall be provided pursuant to sections 319.19, 1901.313, 1907.202, 2303.25, and 5703.47 of the Revised Code.

(B) Except as provided in divisions (C) and (D) of this section and subject to section 2325.18 of the Revised Code, interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct or a contract or other transaction, including, but not limited to a civil action based on tortious conduct or a contract or other transaction that has been settled by agreement of the parties, shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid and shall be at the rate determined pursuant to section 5703.47 of the Revised Code that is in effect on the date the judgment, decree, or order is rendered. That rate shall remain in effect until the judgment, decree, or order is satisfied.

(C)(1) If, upon motion of any party to a civil action that is based on tortious conduct, that has not been settled by agreement of the parties, and in which the court has rendered a judgment, decree, or order for the payment of money, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case, interest on the judgment, decree, or order shall be computed as follows:

(a) In an action in which the party required to pay the money has admitted liability in a pleading, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered;

(b) In an action in which the party required to pay the money engaged in the conduct resulting in liability with the deliberate purpose of causing harm to the party to whom the money is to be paid, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered;

(c) In all other actions, for the longer of the following periods:

(i) From the date on which the party to whom the money is to be paid gave the first notice described in division (C)(1)(c)(i) of this section to the date on which the judgment, order, or decree was rendered. The period described in division (C)(1)(c)(i) of this section shall apply only if the party to whom the money is to be paid made a reasonable attempt to determine if the party required to pay had insurance coverage for liability for the tortious conduct and gave to the party required to pay and to any identified insurer, as nearly simultaneously as practicable, written notice in person or by certified mail that the cause of action had accrued.

(ii) From the date on which the party to whom the money is to be paid filed the pleading on which the judgment, decree, or order was based to the date on which the judgment, decree, or order was rendered.

(2) No court shall award interest under division (C)(1) of this section on future damages, as defined in section 2323.56 of the Revised Code, that are found by the trier of fact.

(D) Division (B) of this section does not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct or a contract or other transaction, and division (C) of this section does not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct, if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the court of claims, or in an action under Chapter 4123. of the Revised Code.

37. Oklahoma,OK

OK ST T. 12 § 727.1 (Interest on judgments rendered on or after January 1, 2005)

I. For purposes of computing postjudgment interest as authorized by this section, interest shall be the prime rate, as listed in the first edition of the Wall Street Journal published for each calendar year and as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day following publication in January of each year, plus two percent (2%). For purposes of computing prejudgment interest as authorized by this section, interest shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year.

38. Oregon,OR

OR ST § 82.010 (Rate of interest, violation)

1) The rate of interest for the following transactions, if the parties have not otherwise agreed to a rate of interest, is nine percent per annum and is payable on:

(a) All moneys after they become due; but open accounts bear interest from the date of the last item thereof.

(b) Money received to the use of another and retained beyond a reasonable time without the owner's express or implied consent.

(c) Money due or to become due where there is a contract to pay interest and no rate specified.

(2) Except as provided in this subsection, the rate of interest on judgments for the payment of money is nine percent per annum. The following apply as described:

(a) Interest on a judgment under this subsection accrues from the date of the entry of the judgment unless the judgment specifies another date.

(b) Interest on a judgment under this subsection is simple interest, unless otherwise provided by contract.

(c) Interest accruing from the date of the entry of a judgment shall also accrue on interest that accrued before the date of entry of a judgment.

(d) Interest under this subsection shall also accrue on attorney fees and costs entered as part of the judgment.

(e) A judgment on a contract bearing more than nine percent interest shall bear interest at the same rate provided in the contract as of the date of entry of the judgment.

(f) The rate of interest on a judgment rendered in favor of a plaintiff in a civil action to recover damages for injuries resulting from the professional negligence of a person licensed by the Oregon Medical Board under ORS chapter 677 or the Oregon State Board of Nursing under ORS 678.010 to 678.410 is the lesser of five percent per annum or three percent in excess of the discount rate in effect at the Federal Reserve Bank in the Federal Reserve district where the injuries occurred.

(3) Except as provided in ORS 82.025, no person shall:

(a) Make a business or agricultural loan of $50,000 or less at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate, including any surcharge on the discount rate, on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the person making the loan is located, on the date the loan or the initial advance of funds under the loan is made; or

(b) Make a loan of $50,000 or less, except a loan made under paragraph (a) of this subsection, at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the person making the loan is located, on the date the loan or the initial advance of funds under the loan is made.

(4) Any person who violates subsection (3) of this section shall forfeit the right to collect or receive any interest upon any loan for which a greater rate of interest or consideration than is permitted by subsection (3) of this section has been charged, contracted for or received. The borrower upon such loan shall be required to repay only the principal amount borrowed.

39. Pennsylvania,PA

41 P.S. § 202 (Legal rate of interest)

Reference in any law or document enacted or executed heretofore or hereafter to "legal rate of interest" and reference in any document to an obligation to pay a sum of money "with interest" without specification of the applicable rate shall be construed to refer to the rate of interest of six per cent per annum.

40. Rhode Island,RI

RI ST § 9-21-8 (Interest on judgment for money)

Every judgment for money shall draw interest at the rate of twelve per cent (12%) per annum to the time of its discharge.

41. South Carolina,SC

SC ST § 34-31-20 (Legal rate of interest.)

(A) In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum.

(B) A money decree or judgment of a court enrolled or entered must draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

42. South Dakota,SD

SDCL § 54-3-5.1 (Interest on judgments, statutory liens and inverse condemnations)

Interest is payable on all judgments and statutory liens, exclusive of real estate mortgages and security agreements under Title 57A, and exclusive of support debts or judgments under § 25-7A-14, at the Category B rate of interest as established in § 54-3-16 from and after the date of judgment and date of filing statutory lien. On all judgments arising from inverse condemnation actions, interest is payable at the Category A rate of interest as established by § 54-3-16.

SDCL § 54-3-16 (Official state interest rates)

The official state interest rates, as referenced throughout the South Dakota Codified Laws, are as follows:

(1) Category A rate of interest is four and one-half percent per year;

(2) Category B rate of interest is ten percent per year;

(3) Category C rate of interest is twelve percent per year;

(4) Category D rate of interest is one percent per month or fraction thereof;

(5) Category E rate of interest is four percent per year;

(6) Category F rate of interest is fifteen percent per year; and

(7) Category G rate of interest is five-sixth percent per month or fraction thereof.

43. Tennessee,TN

TN ST § 47-14-121 (Interest on judgments and decrees)

(a) Except as set forth in subsection (c), the interest rate on judgments per annum in all courts, including decrees, shall:

(1) For any judgment entered between July 1 and December 31, be equal to two percent (2%) less than the formula rate per annum published by the commissioner of financial institutions, as required by § 47-14-105, for June of the same year; or

(2) For any judgment entered between January 1 and June 30, be equal to two percent (2%) less than the formula rate per annum published by the commissioner of financial institutions, as required by § 47-14-105, for December of the prior year.

(b) To assist parties and the courts in determining and applying the interest rate on judgments set forth in subsection (a) for the six-month period in which a judgment is entered, before or at the beginning of each six-month period the administrative office of the courts:

(1) Shall calculate the interest rate on judgments that shall apply for the new six-month period pursuant to subsection (a);

(2) Shall publish that rate on the administrative office of the courts' website; and

(3) Shall maintain and publish on that website the judgment interest rates for each prior six-month period going back to the rate in effect for the six-month period beginning July 1, 2012.

(c) Notwithstanding subsection (a) or (b), where a judgment is based on a statute, note, contract, or other writing that fixes a rate of interest within the limits provided in § 47-14-103 for particular categories of creditors, lenders or transactions, the judgment shall bear interest at the rate so fixed.

T. C. A. § 47-14-105 (Formula rates)

(a) Upon the publication by the board of governors of the Federal Reserve System of the average prime loan rate, as described in § 47-14-102, the commissioner of financial institutions shall:

(1) Promptly make an official announcement of the formula rate;

(2) Cause the dissemination of such announcement to the news media in such manner as the commissioner deems appropriate; and

(3) Cause to be published in the Tennessee Administrative Register the formula rate as determined by the average prime loan rate first published during each calendar month.

(b) In contracting for interest pursuant to the provisions of § 47-14-103(2), any person shall be entitled to rely upon the formula rate thus announced or published by the commissioner; provided, that a formula rate shall not be deemed to have been published until seven (7) days have elapsed following the publication date stated in the issue of the Tennessee Administrative Register containing the announcement of such formula rate.

(c) The determination by the commissioner as provided for herein, for the sole purpose of an announcement under this section, shall not be deemed a "rule" within the meaning of § 4-5-102 and such action of the commissioner shall be exempt from the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

44. Texas,TX

V.T.C.A., Finance Code § 304.002 (Judgment Interest Rate: Interest Rate or Time Price Differential in Contract)

A money judgment of a court of this state on a contract that provides for interest or time price differential earns postjudgment interest at a rate equal to the lesser of:

(1) the rate specified in the contract, which may be a variable rate; or

(2) 18 percent a year.

V.T.C.A., Finance Code § 304.003 (Judgment Interest Rate: Interest Rate or Time Price Differential Not in Contract)

(a) A money judgment of a court of this state to which Section 304.002 does not apply, including court costs awarded in the judgment and prejudgment interest, if any, earns postjudgment interest at the rate determined under this section.

(b) On the 15th day of each month, the consumer credit commissioner shall determine the postjudgment interest rate to be applied to a money judgment rendered during the succeeding calendar month.

(c) The postjudgment interest rate is:

(1) the prime rate as published by the Board of Governors of the Federal Reserve System on the date of computation;

(2) five percent a year if the prime rate as published by the Board of Governors of the Federal Reserve System described by Subdivision (1) is less than five percent; or

(3) 15 percent a year if the prime rate as published by the Board of Governors of the Federal Reserve System described by Subdivision (1) is more than 15 percent.

45. Utah,UT

U.C.A. 1953 § 15-1-4 (Interest on judgments)

(1) As used in this section, “federal postjudgment interest rate” means the interest rate established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

(2)(a) Except as provided in Subsection (2)(b), a judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment.

(b) A judgment rendered on a deferred deposit loan subject to Title 7, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act, shall bear interest at the rate imposed under Subsection (3) on an amount not exceeding the sum of:

(i) the total of the principal balance of the deferred deposit loan;

(ii) interest at the rate imposed by the deferred deposit loan agreement for a period not exceeding 10 weeks as provided in Subsection 7-23-401(4);

(iii) costs;

(iv) attorney fees; and

(v) other amounts allowed by law and ordered by the court.

(3)(a) Except as otherwise provided by law, other civil and criminal judgments of the district court and justice court shall bear interest at the federal postjudgment interest rate as of January 1 of each year, plus 2%.

(b) The postjudgment interest rate in effect at the time of the judgment shall remain the interest rate for the duration of the judgment.

(c) The interest on criminal judgments shall be calculated on the total amount of the judgment.

(d) Interest paid on state revenue shall be deposited in accordance with Section 63A-3-505.

(e) Interest paid on revenue to a county or municipality shall be paid to the general fund of the county or municipality.

46. Vermont,VT

VT ST T. 12 § 2903 (Duration and effectiveness)

(c) Interest on a judgment lien shall accrue at the rate of 12 percent per annum.

47. Virginia,VA

VA ST § 6.1-330.54 (Judgment rate of interest)

A. The judgment rate of interest shall be an annual rate of six percent, except that a money judgment entered in an action arising from a contract shall carry interest at the rate lawfully charged on such contract, or at six percent annually, whichever is higher.

B. If the contract or other instrument does not fix an interest rate, the court shall apply the judgment rate of six percent to calculate prejudgment interest pursuant to § 8.01-382 and to calculate post-judgment interest.

C. The rate of interest for a judgment shall be the judgment rate of interest in effect at the time of entry of the judgment on any amounts for which judgment is entered and shall not be affected by any subsequent changes to the rate of interest stated in this section.

48. Washington,WA

RCWA 4.56.110 (Interest on judgments)

Interest on judgments shall accrue as follows:

(1) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: PROVIDED, That said interest rate is set forth in the judgment.

(2) All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.

(3)(a) Judgments founded on the tortious conduct of a "public agency" as defined in RCW 42.30.020 shall bear interest from the date of entry at two percentage points above the equivalent coupon issue yield, as published by the board of governors of the federal reserve system, of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

(b) Except as provided in (a) of this subsection, judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear interest from the date of entry at two percentage points above the prime rate, as published by the board of governors of the federal reserve system on the first business day of the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

(4) Except as provided under subsections (1), (2), and (3) of this section, judgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. The method for determining an interest rate prescribed by this subsection is also the method for determining the "rate applicable to civil judgments" for purposes of RCW 10.82.090.

49. West Virginia,WV

WV ST § 56-6-31 (Interest on judgment or decree)

(a) Except where it is otherwise provided by law, every judgment or decree for the payment of money, whether in an action sounding in tort, contract or otherwise, entered by any court of this state shall bear interest from the date thereof, whether it be so stated in the judgment or decree or not: Provided, That if the judgment or decree, or any part thereof, is for special damages, as defined below, or for liquidated damages, the amount of special or liquidated damages shall bear interest at the rate in effect for the calendar year in which the right to bring the same shall have accrued, as determined by the court and that established rate shall remain constant from that date until the date of the judgment or decree, notwithstanding changes in the federal reserve district discount rate in effect in subsequent years prior to the date of the judgment or decree. Special damages includes lost wages and income, medical expenses, damages to tangible personal property and similar out-of-pocket expenditures, as determined by the court. If an obligation is based upon a written agreement, the obligation shall bear a prejudgment interest at the rate set forth in the written agreement until the date the judgment or decree is entered and, thereafter, the judgment interest rate shall be the same rate as provided for in this section.

(b) Notwithstanding the provisions of section five, article six, chapter forty-seven of this code, the rate of interest on judgments and decrees for the payment of money, including prejudgment interest, is three percentage points above the Fifth Federal Reserve District secondary discount rate in effect on the second day of January of the year in which the judgment or decree is entered:Provided, That the rate of prejudgment and post-judgment interest shall not exceed eleven percent per annum or be less than seven percent per annum. The administrative office of the Supreme Court of Appeals shall annually determine the interest rate to be paid upon judgments or decrees for the payment of money and shall take appropriate measures to promptly notify the courts and members of the West Virginia State Bar of the rate of interest in effect for the calendar year in question. Once the rate of interest is established by a judgment or decree as provided in this section, that established rate shall thereafter remain constant for that particular judgment or decree, notwithstanding changes in the Federal Reserve District discount rate in effect in subsequent years.

(c) Amendments to this section enacted by the Legislature during the year two thousand six regular session shall become effective the first day of January, two thousand seven.

50. Wisconsin,WI

Wis. Stat. § 815.05(8) (Execution, how issued; contents)

(8) Except as provided in s. 807.01(4), every execution upon a judgment for the recovery of money shall direct the collection of interest at an annual rate equal to 1 percent plus the prime rate in effect on January 1 of the year in which the judgment is entered if the

judgment is entered on or before June 30 of that year or in effect on July 1 of the year in which the judgment is entered if the judgment is entered after June 30 of that year, as reported by the federal reserve board in federal reserve statistical release H. 15, on the amount recovered from the date of the entry of the judgment until it is paid.

51. Wyoming,WY

WY ST § 1-16-102 (Interest on judgments)

(a) Except as provided in subsections (b) and (c) of this section, all decrees and judgments for the payment of money shall bear interest at ten percent (10%) per year from the date of rendition until paid.

(b) If the decree or judgment is founded on a contract and all parties to the contract agreed to interest at a certain rate, the rate of interest on the decree or judgment shall correspond to the terms of the contract.

(c) A periodic payment or installment for child support or maintenance which is unpaid on the date due and which on or after July 1, 1990, becomes a judgment by operation of law pursuant to W.S. 14-2-204 shall not bear interest.

APPENDIX 2B.

THE NEW JERSEY CREDITORS BAR ASSOCIATION
PO Box 5873
Parsippany, N.J. 07054
Off: (973) 753-5100
Fax: (973) 753-5353

November 12, 2011

Mr. Robert D. Pitt, Esq.
Administrative Office of the Court
P.O. Box 037
Trenton, NJ 08625-0037

Re: Revision to Rule 4:42-11 (a)

Dear Bob:

Enclosed is the position paper on behalf of the New Jersey Creditors Bar Association with regard to a proposed revision to Rule 4:42-11(a). Please present same to the members of the Civil Practice and Special Civil Part Practice Rules Committees.

Very truly yours,

Arthur J. Raimon

STATEMENT ON THE SUPPPLMENTAL REPORT OF THE
JOINT COMMITTEE ON POST JUDGMENT INTEREST

This statement is being presented to Supreme Court Committees on Civil Practice and Special Civil Part Practice in support of a revision to Rule 4:42-11 (a) (ii) regarding the method of calculating both pre and post judgment interest rate. The current rule now in existence proves that the method of calculating the interest rate must be changed because such method would end up with a zero percent base rate.

The purpose of pre-judgment interest is to compensate the harmed party, usually the plaintiff in a law suit, for the loss of the use of the money not paid by the defendant. Meier v. New Jersey Life Ins. Co.195 N.J. Super. 478, 388 (App. Div. 1984) aff'd. 101 N.J. 597, 622 (1986). The same holds true for post-judgment interest. How are plaintiffs in cases where the award is less than $15,000.00 to be compensated for the loss of the use of the money owed when the base interest rate is zero? Without an interest rate on judgments, there will be no incentive to pay a debt. To have a zero percent rate is tantamount to giving judgment debtors an interest free loan.

The fact that the New Jersey Cash Management Fund is receiving little or no interest on deposits in State Accounts should not be the methodology used to calculate pre and post judgment. This is especially true for businesses seeking to collect uncollected debts when those businesses have loans on which they have to pay interest to the lender. The current prime rate is 3.25% and the current discount rate is .075%. Businesses with outstanding loans or lines of credit usually pay a certain percentage over prime and thus would losing more money than they are now on uncollected debts should the zero percent rate become effective.

As stated above, a low or nonexistence rate is a disincentive to payment of a debt. As stated in the 1984 report of the Civil Practice Committee, ". . . the purpose of pre-judgment interest in tort cases is to encourage settlements. The rate must be sufficiently high to provide impetus to defendants, mostly insurance carriers to settle." Further in the report it was stated "That purpose was identified as establishing a rate which would be

high enough to encourage judgment debtors to satisfy judgments against them while at the same time being low enough to compel judgment creditors to pursue their remedies of levy execution so that those judgments would be satisfied of record."

A complete list of interest rates throughout the United States has been provided to the Committees. No jurisdiction has a rate of zero percent per year.

New Jersey's interest rate should not be based upon what a party would receive on deposits in some form of savings account. It should have some relationship to what businesses creditors pay on its loans owed to lending institutions. In addition is the fact that when it is said that interest is awarded because the creditor has been denied the use of the money owed it does not mean that the creditor would be putting the money in a savings account. Businesses use their accounts receivable to pay their business expenses, such as salaries, rent, utilities, interest on loans and other overhead costs. And yes another expense is the distribution of profits to owners of the business.

As for tort plaintiffs, they have expenses to meet as well. Such expenses beyond the usual living expenses of food, shelter and clothing could include medical expenses not covered by their own insurance. It would also include interest on loans for home mortgages, motor vehicles and credit card debts not in default.

It has been claimed that a majority of judgment debtors are individuals who are at below the poverty line. First of all, no evidence has been produced to support such a claim and it is submitted that no such evidence exists. Secondly, it is irrelevant as the rate of interest to be assessed should not depend on whether or not a person or entity can pay the interest just like it is not a valid defense to a suit that a debtor cannot pay the debt.

With regard to the possibility that the rate received by the New Jersey Cash Management Fund would increase, there is no evidence to support such a proposition. Any review of interest rates on accounts shows that they are either going down or are stagnant. Creditors in New Jersey should not be required to rely on speculation to receive a recovery of interest on their judgments and claims.

The New Jersey Creditors Bar Association proposes that the interest rate pursuant to Rule 4:42-11 be calculated at the prime rate plus three percent (3%) to be calculated as of the 30th of June of each year effective the 2nd of January of the next year. This would allow businesses to be entitled to at least a portion of the interest that they pay to their lenders and would allow them recovery of funds in order to pay their business expenses and allow individuals to recover funds for their living expenses.

APPENDIX 3A.

Majority Report of the Civil Practice Committee as to Temporary Admission of Military Spouses to the New Jersey State Bar

Background & History

In February 2013, the Civil Practice Committee received a letter from Judge Grant requesting, on behalf of the Chief Justice, that the Committee review a proposal submitted to him on behalf of the Military Spouse J.D. network. Under Rule 1:27-1, an individual may only be admitted to the New Jersey Bar by passing the bar examination, submitting a certification of good character, and meeting the professional ethics requirements. The proposal was for a Rule change to allow qualified attorneys who were spouses of active duty service members stationed in New Jersey to be admitted to the New Jersey bar during the time of the military assignment without passing the New Jersey State Bar exam. The purpose of the proposed rule change would be to allow military spouses who are attorneys to pursue their careers as attorneys when they and their families moved temporarily to New Jersey because of the military assignment of their spouse to an active duty station in New Jersey.

The empanelled subcommittee unanimously rejected the proposed rule change as submitted by the Military Spouse Network. The subcommittee believed the proposed rule was too broad and not sufficiently protective of prospective clients in this State. The subcommittee, by a vote of six to two, favored the concept of providing assistance to military spouses and families stationed in New Jersey so it drafted a proposed rule with added protections. These protections included limiting the term to two years, reviewable for a second term, and requiring the attorney who was temporarily admitted to associate with a New Jersey attorney. The New Jersey attorney, who is designated in the Rule as the responsible attorney, must be identified on all pleadings filed by the Temporary attorney and is “responsible” for all services provided. The

Temporary attorney must be covered by the New Jersey attorney's malpractice insurance and deposit all client funds in the New Jersey attorney's trust account.

The full committee agreed with the subcommittee that the Rule as originally proposed was unacceptable. The full committee agreed that the proposed Rule as drafted by the subcommittee was far superior to the original proposal and that if the Supreme Court were to adopt a Rule change, the subcommittee additions were necessary. After a review and discussion of the proposed Rule, the full committee voted 13 to 10 to recommend that the Supreme Court deny the request and not adopt either proposed rule.

Reasons for Majority Recommendation Not to Adopt the Rule on Military Spouse

Although the majority on the committee recognizes that the families and spouses of United States military personnel deserve our gratitude and our support, the actual benefit that would be conveyed by adopting the Rule is unknown. There is no available estimate on how many military spouse attorneys are actually living in New Jersey due to military assignments. It is simply unclear as to the number of people who might benefit from the Rule. The practicality of the Rule is of concern as there is no information on how many attorneys would be willing to take on the responsibility of supervising a Temporary attorney. We also have no information on what, if any, impact licensure of this nature would have on our State Bar members.

The uncertainty of the effects of the proposed Rule is a reflection of the fact that as far as the subcommittee was able to determine, only two states out of fifty have adopted such a Rule, and those two states already have rules allowing reciprocity. In New Jersey, passing the New Jersey bar exam has always been a prerequisite for admission to the bar. We have no reciprocity. Combat veterans, for example, receive no special consideration. If we make this exception, we are creating a precedent allowing other individuals with special circumstances to petition for

alternative paths to bar admission. Reciprocity and alternative paths to bar admission may be something that should be examined in the future, but a much more in depth analysis would be needed to consider these significant changes in our system. The proposed Rule could be viewed as a first step towards reciprocity which has always been rejected in New Jersey.

The last and the primary concern of the majority was for the New Jersey residents who would hire these Temporary attorneys. Prospective clients would be advised the attorney has a temporary license, but might not understand that since the attorney did not pass the New Jersey bar exam, they may be less qualified and less knowledgeable of New Jersey rules and procedures than attorneys who have passed the New Jersey exam. The fact that litigation and/or transactions started for a client may often not be completed when the Temporary attorney must relocate to another service area is a fact that is recognized by the proposed Rule. Therefore, the short time the attorney may be in our state would likely have a negative impact on the client and on the justice system in terms of delay and additional expense when a client's litigation moves to the sole control of the responsible attorney or another attorney the client chooses.

After careful consideration, the majority of the Committee voted not to recommend the proposed change in the Rules because of the uncertainty surrounding the negative and unintended consequences. There is uncertainty of the actual benefits despite the understanding that spouses of military personnel are forced to make sacrifices along with the active service person to serve our country.

APPENDIX 3B.

Minority Report of the Civil Practice Committee as to Temporary Admission of Military Spouses to the New Jersey State Bar – 6/10/13

In February of 2013, the Civil Practice Committee empanelled a sub-Committee to review the possibility of developing a special admissions process for spouses of military servicemembers stationed in New Jersey seeking to practice law in this State while their families are located here.

The Subcommittee generally favored the concept (six members in favor, two opposed), but uniformly rejected the rule proposed by the Military Spouse JD Network, as too broad in the licensure it proposed and not sufficiently protective of the prospective clients within this State. In particular, the sub-Committee viewed the duration of licensure as too extensive under the proposed rule, and voted to limit the temporary licensure to two years, renewable for a second two year period. The sub-Committee also had real concerns about protecting clients' assets in the temporary attorneys' trust accounts after expiration of a temporary license, and resolved that a temporary attorney under this rule should be required to associate with a New Jersey attorney in good standing, working under that local attorney's malpractice insurance policy and using that attorney's client trust account. Further, the members of the sub-Committee agreed that all prospective clients of the temporary attorney should be informed of the temporary nature of the licensure, and should be required to consent to the representation by the local counsel should the temporary attorney be unable to continue the representation, and that the local counsel should have the right to reject the representation as well.

With these fundamental differences from the proposed rule in mind, the sub-Committee set about crafting its own proposed rule. Drawing heavily on the Idaho rule as the most similar to what it had voted to adopt, the sub-Committee crafted its own rule, which it circulated to the full Civil Practice Committee at its June 4, 2013.

By a vote of 13 – 10, the full Committee voted to deny the petition of the Military Spouse JD Network, and not to recommend adoption of a rules change. The Committee further recommended that if the Supreme Court were to adopt a rule change notwithstanding the Committee's vote, that the Court have the sub-Committee's proposed rule as a model to consider, with certain changes. The full Committee voted that the proposed rule of the sub-Committee be amended 1) to broaden the definition of "Spouse" to include civil union and domestic partners, and 2) to specify the power of the local client to reject a prospective client at the time of the formation of attorney client relationship with the temporary attorney. The sub-Committee adopted these changes, and made further minor technical adjustments to the proposed rule, which is included with this minority report.

Respectfully submitted,

Dean Andrew J. Rothman – Subcommittee Chair
Hon. Allison E. Accurso, J.A.D.
Hon. Margaret Mary McVeigh, P.J.Ch.
Hon. Edwin H. Stern, Ret.
Linda Lashbrook, Esq.
Ahmed M. Soliman, Esq.
Kevin D. Walsh, Esq.
Jonathan D. Weiner, Esq.

1:21-11 Temporary Practice in New Jersey as a Military Dependent During the Military Assignment in New Jersey of the Dependent's Spouse.

(a) Qualifications.

In order to be admitted to practice law without taking the New Jersey bar examination, an applicant for temporary admission to the New Jersey bar as a military spouse (an "Applicant") must show to the satisfaction of the Supreme Court that he/she:

(1) Has passed a written bar examination and is currently admitted as an active attorney in good standing by the highest court in any state or territory of the United States or in the District of Columbia;

(2) Possesses the moral character and fitness required of all New Jersey applicants for admission;

(3) Has paid all required application fees and costs;

(4) Has not failed the New Jersey bar examination in the five (5) years immediately preceding the Application;

(5) Possesses plenary licenses to practice law in each state in which the Applicant is admitted;

(6) Is the spouse (as that term is broadly defined under R.1:1-2(b)) of an active member of the United States Uniformed Services, assigned to service in the State of New Jersey (a "Servicemember");

(7) Shall associate with a specific lawyer admitted to practice law in New Jersey who is currently actively practicing in this state; and

(8) Resides in New Jersey due to the Servicemember's military orders.

(b) Procedure.

To apply for such temporary admission, an Applicant must file with the Clerk of the Supreme Court:

(1) An application for such temporary admission along with an application fee of $xxx;

(2) A copy of the Servicemember's military orders to a military installation in New Jersey which lists the Applicant as a dependent authorized to accompany the Servicemember to New Jersey;

(3) A certificate of good standing from each jurisdiction in which the Applicant maintains a license to practice law;

(4) An affidavit in which the Applicant:

(A) Designates the New Jersey lawyer with whom the Applicant will be associating and the address and telephone number of that New Jersey lawyer (the "Responsible Attorney"); and

(B) Provides the written consent and agreement of the Responsible Attorney to have the Applicant associate with her/him in accordance with these rules.

(c) Duration and Renewal.

A temporary license to practice law will be issued to the successful Applicant (upon issuance, the "Temporary Attorney")

that will be valid for a maximum of two (2) years from the date of issuance, unless it is terminated by the occurrence of such situation as provided for below in Section (j) and provided that:

(1) A temporary license may be renewed at the end of the two-year period once only, for an additional period of two (2) years, upon:

(A) Filing by the Temporary Attorney of a written request for renewal with the Clerk of the Supreme Court;

(B) Submitting an affidavit of the Responsible Attorney that certifies:

(i) The Applicant's continuing association with the Responsible Attorney; and

(ii) The Responsible Attorney's continuing adherence to the association requirements of these rules; and

(C) Payment by the Temporary Attorney of a $xxx application fee.

(d) Continuing Legal Education.

The Temporary Attorney shall be subject pursuant to Rule 1:42 to all requirements for completion of continuing legal education that apply to lawyers newly admitted to the New Jersey bar.

(e) Association.

The Temporary Attorney shall at all times continue to be associated with a Responsible Attorney.

(1) Responsible Attorney.

(A) As used in this rule, a Responsible Attorney means an active plenary member in good standing of the New Jersey Bar with whom the court and opposing counsel may readily communicate regarding the conduct of the case.

(B) A Responsible Attorney is responsible to the Supreme Court and clients for all services of the Temporary Attorney provided pursuant to this rule and shall include the Temporary Attorney on her/his or the firm's professional malpractice insurance policy (-ies).

(C) The Temporary Attorney is required to use the Attorney Business Account and the Attorney Trust Account of the Responsible Attorney throughout the period of temporary licensure for all services provided pursuant to this rule, and the Responsible Attorney will be responsible for ensuring that the Temporary Attorney uses his/her the Attorney Business Account and the Attorney Trust Account during temporary licensure and after its termination until all funds generated or placed therein, as the case may be, by the Temporary Attorney shall have been distributed.

(f) Consent.

The Temporary Attorney shall be subject to the disciplinary jurisdiction of the Supreme Court.

(g) Pleadings.

All court filings in which the Temporary Attorney files shall bear the name, address and attorney identification number of the Responsible Attorney. All court proceedings in which the Temporary Attorney appears shall, at the outset of the appearance, have placed upon the record the name, address and attorney identification number of the Responsible Attorney.

(h) Disclosure.

Before entering any engagement agreement with a prospective client, the Temporary Attorney shall provide the prospective client with written disclosure as to the temporary nature of his/her license and shall disclose the date on which the temporary

license is expected to terminate. Said written disclosure shall inform the client, and shall require the client's signature and the Responsible Attorneys signature as the acknowledgment, that, if the engagement of the Temporary Attorney goes beyond the termination of the Temporary Attorney's temporary license, the Responsible Attorney shall become the client's attorney of record unless the client opts for different counsel altogether.

(i) Termination.

(1) A Temporary Attorney shall immediately cease all work on all matters upon the termination of the temporary license pursuant to subparagraph (c) of this rule or upon:

(A) The Servicemember's death or separation or retirement from the United States Uniformed Services; or

(B) The Temporary Attorney's failure to meet any licensing requirements applicable to all active attorneys possessing plenary licenses to practice law in this state: or

(C) Upon the request of the Temporary Attorney; or

(D) Upon the issuance to the Temporary Attorney of a plenary license to practice law in New Jersey pursuant to these rules; or

(E) Upon the receipt by the Temporary Attorney of a failing score on the New Jersey Bar Examination; or

(F) The cessation of the Temporary Attorney's association with the Responsible Attorney; or

(G) The permanent relocation of the Temporary Attorney or the Servicemember outside of New Jersey; or

(H) The termination of the Temporary Attorney's spousal relationship to the Servicemember; or

(I) Upon the determination by the Supreme Court that the Temporary Attorney has violated a Rule of Professional Conduct; or

(J) By order of the Supreme Court for any reason, at any time, provided that the Clerk of the Supreme Court shall mail a copy of the notice of such termination to the Temporary Attorney and the Responsible Attorney

(2) Not later than 30 days before the expiration of the temporary license pursuant to subparagraph (c) of this rule, or immediately upon termination of the temporary license for any other reason, the Temporary Attorney shall:

(A) File in each matter pending before any court or tribunal a notice that the Temporary Attorney will no longer appear in the case and that the Responsible Attorney will be the attorney of record going forward; and

(B) Give written notice to each client represented by the Temporary Attorney that the Temporary Attorney shall no longer represent the client and that Responsible Attorney shall continue the representation unless the client exercises his/her right to seek counsel from another attorney.