NOTICE TO THE BAR

SUPREME COURT RULES COMMITTEE REPORTS – PUBLICATION FOR COMMENT

The Supreme Court invites written comments on the 2008-2010 reports of the Supreme Court rules and program committees published with this notice. In those reports, the committees (as listed below) make numerous recommendations to the Supreme Court for rule amendments and other non-rule administrative actions. As set forth in an earlier notice, the Court has staggered the reporting cycles of its rules committees, such that approximately half submit their respective reports each year.

The committees whose 2008-2010 reports are here published for comment are as follows: (1) Civil Practice Committee, (2) Professional Responsibility Rules Committee, (3) Special Civil Part Practice Committee, and (4) Committee on the Tax Court.

Some of the appendices referenced in the reports may not be included in this publication; copies of any omitted appendices are available on request. The reports are also available for downloading on the Judiciary's Internet web site at http://www.judiciary.state.nj.us/reports2010/index.htm.

Please send any comments on the Committees' proposed rule amendments or other recommendations in writing by Wednesday, April 14, 2010 to:

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Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex; P.O. Box 037
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Comments on the Committee reports and recommendations may also be submitted via Internet e-mail to the following address: Comments.Mailbox@judiciary.state.nj.us.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). However, comments submitted in response to this notice will be maintained in confidence if the author specifically requests confidentiality. In the absence of such a request, the author's identity and his or her comments may be subject to public disclosure after the Court has acted on the Committee reports and supplemental reports.

The Supreme Court will be acting on these reports and recommendations in June 2010, with any rule amendments likely to become effective September 1, 2010.

/s/ Glenn A. Grant

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

Dated: March 5, 2010

2010 Report of the Supreme Court Civil Practice Committee

January 25, 2010

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to *Rules* 1:5-2, 4:4-7, 4:64-1, and 4:65-2

The Supreme Court issued an order relaxing and supplementing *Rules* 1:5-2, 4:4-7, 4:64-1, and 4:65-2 and asked the Committee to develop proposed conforming rule amendments. The specifics of the order are as follows:

- *Rule* 1:5-2 — to provide that filing of papers with the clerk shall be deemed to satisfy the service requirement of *R*. 1:5-1 and that there need be no separate service upon the clerk.

- *Rule* 4:47 — to permit the filed printout of the electronic return receipt provided by the U.S. Post Office to act as proof of service. **N.B**.: This rule relaxation is intended to apply only to Law Division — Civil Part matters and does not extend to Special Civil Part or General Equity.

- *Rule* 4:64-1 — to require that prior to entry of judgment in uncontested foreclosure matters (other than in rem tax foreclosures), the plaintiff must serve on all residential tenants the Notice to Residential Tenants of Rights During Foreclosure as set forth in newly adopted Appendix XII-K.

- *Rule* 4:65-2 — to require that a notice of sale posted on foreclosed premises be accompanied by the Notice to Residential Tenants of Rights During Foreclosure as set forth in newly adopted Appendix XII-K.

The conforming amendments were developed by the Committee. In doing so, the Committee also proposes a restructuring of *R*. 4:64-1.

See Section I.V. of this Report for a housekeeping amendment to *R*. 4:64-1 that the Committee recommends.

The proposed amendments to *Rules* 1:5-2, 4:4-7, 4:64-1 and 4:65-2 follow.

1:5-2. Manner of Service

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

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

4:4-7. Return

The person serving the process shall make proof of service thereof on the original process and on the copy. Proof of service shall be promptly filed with the court within the time during which the person served must respond thereto either by the person making service or by the party on whose behalf service is made. The proof of service, which shall be in a form prescribed by the Administrative Director of the Courts, shall state the name of the person served and the place, mode and date of service, and a copy thereof shall be forthwith furnished plaintiff's attorney by the person serving process. If service is made upon a member of the household pursuant to *R*. 4:4-4 that person's name shall be stated in the proof or, if such name cannot be ascertained, the proof shall contain a description of the person upon whom service was made. If service is made by a person other than a sheriff or a court appointee, proof of service shall be by similar affidavit which shall include the facts of the affiant's diligent inquiry regarding defendant's place of abode, business or employment. If service is made by mail, the party making service shall make proof thereof by affidavit which shall also include the facts of the failure to effect personal service and the facts of the affiant's diligent inquiry to determine defendant's place of abode, business or employment. With the proof shall be filed the affidavit or affidavits of inquiry, if any, required by *R*. 4:4-4 and *R*. 4:4-5. Where service is made by registered or certified mail and simultaneously by regular mail, the return receipt card, or the printout of the electronic confirmation of delivery provided by the U.S. Postal Service, or the unclaimed registered or certified mail shall be filed as part of the proof. Failure to make proof of service does not affect the validity of service.

Note: Source — *R.R*. 4:4-7. Amended July 14, 1972 to be effective September 5, 1972; amended June 29, 1990 to be effective September 4, 1990; amended July 14, 1992 to be effective

September 1, 1992; amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; amended July 12, 2002 to be effective September 3, 2002; amended to be effective .

4:64-1. Uncontested Judgment: Foreclosures 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 may file an objection stating with specificity the basis of the dispute and asking the court to fix the amount due.

(B) Defaulting parties shall be noticed only if application for final judgment is not made within six months of the entry of default.

(2) Application for judgment; entry.

If the action is uncontested as defined by paragraph (c) the court, on motion on 10 days notice if there are no other encumbrancers and on 30 days notice if there are other encumbrancers, and subject to paragraph (h) of this rule, may enter final judgment upon proof establishing the amount due. The application for entry of judgment shall be accompanied by proofs as required by *R*. 4:64-2 and in lieu of the filing otherwise required by *R*. 1:6-4 shall be only 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.

(e) …no change.

(f) Tax Sale Foreclosure; Strict Mortgage Foreclosures. If an action to foreclose or reforeclose a tax sale certificate in personam or to strictly foreclose a mortgage where provided by law is uncontested as defined by paragraph (c), the court, subject to paragraph (h) of this rule, shall enter an order fixing the amount, time and place for redemption upon proof establishing the amount due. The order of redemption in tax foreclosure actions shall conform to the requirements of *N.J.S.A*. 54:5-98 and *R*. 4:64-6(b). The order for redemption or notice of the terms thereof shall be served by ordinary mail on each defendant whose address is known at least 10 days prior to the date fixed for redemption. Notice of the entry of the order of redemption, directed to each defendant whose address is unknown, shall be published in accordance with *R*. 4:4-5(c) at least 10 days prior to the redemption date and, in the case of an unknown owner in a tax foreclosure action joined pursuant to *R*. 4:26-5, a copy of the order or notice shall be posted on the subject premises at least 20 days prior to the redemption date in accordance with *N.J.S.A*. 54:5-90. The court, on its own motion and on notice to all appearing parties including parties whose answers have been stricken, may enter final judgment upon proof of service of the order of redemption as herein required and the filing by plaintiff of an affidavit of non-

redemption. The Office of Foreclosure may, pursuant to *R* 1:34-6, recommend the entry of both the order for redemption and final judgment.

(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; paragraph (d) amended and restructured and (f) amended to be effective .

4:65-2. Notice of Sale; Posting and Mailing

If real or personal property is authorized by court order or writ of execution to be sold at public sale, notice of the sale shall be posted in the office of the sheriff of the county or counties where the property is located, and also, in the case of real property, on the premises to be sold, but need not be posted in any other place. If the premises are residential, the notice of sale shall have annexed thereto, in bold type of at least 14-point, the notice of tenants' rights during foreclosure in the form prescribed by Appendix XII-K of the rules of court. The party who obtained the order or writ shall, at least 10 days prior to the date set for sale, serve a notice of sale by registered or certified mail, return receipt requested, upon (1) every party who has appeared in the action giving rise to the order or writ and (2) the owner of record of the property as of the date of commencement of the action whether or not appearing in the action, and (3) except in mortgage foreclosure actions, every other person having an ownership or lien interest that is to be divested by the sale and is recorded in the office of the Superior Court Clerk, the United States District Court Clerk or the county recording officer, and in the case of personal property, recorded or filed in pertinent public records of security interests, provided, however, that the name and address of the person in interest is reasonably ascertainable from the public record in which the interest is noted. The notice of sale shall include notice that there may be surplus money and the procedure for claiming it. The party obtaining the order or writ may also file the notice of sale with the county recording officer in the county in which the real estate is situate, pursuant to *N.J.S.A*. 46:16A-1 et seq., and such filing shall have the effect of the notice of settlement as therein provided.

Note: Source — *R.R.* 4:83-2; caption and rule amended July 13, 1994 to be effective September 1, 1994; amended July 3, 1995, to be effective immediately; amended July 9, 2008 to be effective September 1, 2008; amended to be effective .

B. Proposed Amendments to *R*. 1:6-2 — re: Requests to Extend Discovery

Rule 4:24-1(c) was amended in the last rules cycle to require the attachment of "copies of all previous orders granting or denying an extension of discovery" with a motion to extend the time for discovery. For the sake of consistency, it was suggested that the language of *R*. 1:6-2(c) be amended to mirror the requirement of *R*. 4:24-1(c). The Committee agreed with this suggestion and recommends the rule amendment as proposed.

See Section II.A. of this Report for proposed amendments to *R*. 1:6-2 that the Committee does not recommend.

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

1:6-2. Form of Motion; Hearing

(a) …no change.

(b) …no change.

(c) Civil and Family Part Discovery and Calendar Motions. Every motion in a civil case or a case in the Chancery Division, Family Part, not governed by paragraph (b), involving any aspect of pretrial discovery or the calendar, shall be listed for disposition only if accompanied by a certification stating that the attorney for the moving party has either (1) personally conferred orally or has made a specifically described good faith attempt to confer orally with the attorney for the opposing party in order to resolve the issues raised by the motion by agreement or consent order and that such effort at resolution has been unsuccessful, or (2) advised the attorney for the opposing party by letter, after the default has occurred, that continued non-compliance with a discovery obligation will result in an appropriate motion being made without further attempt to resolve the matter. A motion to extend the time for discovery shall have annexed thereto either a copy of all prior orders [extending] granting or denying an extension of the discovery period or a certification that there have been no such prior orders. The moving papers shall also set forth the date of any scheduled pretrial conference, arbitration proceeding scheduled pursuant to *R*. 4:21A, calendar call or trial, or state that no such dates have been fixed. Discovery and calendar motions shall be disposed of on the papers unless, on at least two days notice, the court specifically directs oral argument on its own motion or, in its discretion, on a party's request. A movant's request for oral argument shall be made either in the moving papers or reply; a respondent's request for oral argument shall be made in the answering papers.

(d) …no change.

(e) …no change.

(f) …no change.

Note: Source — *R.R.* 3:11-2, 4:8-5(a) (second sentence). Amended July 14, 1972 to be effective September 5, 1972; amended November 27, 1974 to be effective April 1, 1975; amended July 24, 1978 to be effective September 11, 1978; former rule amended and redesignated as paragraph (a) and paragraphs (b), (c), (d), and (e) adopted July 16, 1981 to be effective September 14, 1981; paragraph (c) amended July 15, 1982 to be effective September 13, 1982; paragraph (c) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a) and (c) amended and paragraph (f) adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended and paragraph (d) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 13, 1994 to be effective January 1, 1995; paragraphs (a) and (f) amended January 21, 1999 to be effective April 5, 1999; paragraphs (c) and (d) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraphs (b), (c), and (f) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) caption amended, former text of paragraph (b) captioned and redesignated as subparagraph (b)(1), and new subparagraph (b)(2) adopted July 9, 2008 to be effective September 1, 2008; paragraph (c) amended to become effective .

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

The Committee considered two proposed amendments to *R.* 1:13-7:

1. In the 2006-2008 rules cycle, the Committee recommended and the Supreme Court approved an amendment to subsection (a) of *R.* 1:13-7 to provide for General Equity cases to receive dismissal notices after 60 days of inactivity, and for the court to dismiss them 30 days thereafter if none of the required actions listed in subsection (c) have been taken. Paragraph (c), however, in its introductory sentence, refers to specific time periods that are applicable Civil Part cases only (60 days in which to take one of the required actions). These time periods, however, are not applicable to General Equity cases.

To remediate this drafting problem, the Committee determined that paragraph (c) of *R.* 1:13-7 should be amended to eliminate the references to specific time periods. The Committee agreed to the following language: "The order for dismissal required by paragraph (a) shall not be entered if, during the period following the notice of dismissal as therein prescribed, one of the following actions is taken."

2. A practitioner representing plaintiffs in personal injury cases pointed out a situation that she has encountered with *R.* 1:13-7. In two separate cases in which there were multiple defendants, the answers of one defendant were stricken based on a motion by a co-defendant for failure to comply with discovery. The Order striking the answer triggered a dismissal notice in each case for plaintiff's failure to prosecute, requiring the plaintiff's attorney to file a motion to remove the case

from the dismissal list or to strike the defendant's answer with prejudice. She asked the Committee to review this issue as she does not believe that *R.* 1:13-7 was designed to penalize the plaintiff by placing the case on the dismissal list as a result of co-defendants' motion practice against each other.

The Committee was made aware that the automated docketing system is not equipped to distinguish where a plaintiff in one case is a defendant in another case that has been consolidated with the first case. The judges on the Committee agreed that where it is clear that a case has been placed on the dismissal list in error, a letter to the Presiding Judge should be sufficient and an ACMS error could be corrected by an order reinstating the case. The Committee members speculated that practitioners might not be aware of this procedure unless it was captured in a court rule. The consensus was to add a provision to the rule, being careful to draft it in such a way to avoid its being abused by those whose cases are properly on the dismissal list.

The proposed amendments to *R.* 1:13-7 follow.

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

(a) …no change.

(b) …no change.

(c) [An] The order of dismissal [will enter 60 days from the date of the notice referred to in subsection (a) unless one of the following actions is taken within said 60-day period] required by paragraph (a) shall not be entered if, during the period following the notice of dismissal as therein prescribed, one of the following actions is taken:

(1) a proof of service or acknowledgment of service is filed, if the required action not timely taken was failure to file proof of service or acknowledgment of service with the court;

(2) an answer is filed or a default is requested, if the required action not timely taken was failure to answer or enter default;

(3) a default judgment is obtained, if the required action not timely taken was failure to convert a default request into a default judgment;

(4) a motion is filed by or with respect to a defendant noticed for dismissal. If a motion to remove the defendant from the dismissal list is denied, the defendant will be dismissed without further notice.

(d) …no change.

(e) Dismissal in error. A party who reasonably believes that the order of dismissal was entered in error and who has either completed service of process on the dismissed defendant or taken other steps of record to protect the viability of the action against that defendant may seek an order of vacation of the dismissal by letter to the presiding judge of the vicinage in which venue is laid explaining the circumstances and enclosing a form of order of vacation. All parties

shall be copied, and if there is no objection to the order of vacation, it shall be entered within 10 days after its receipt by the court.

Note: Source — *R.R.* 1:30-3(a) (b) (c) (d), 1:30-4. Amended July 7, 1971 to be effective September 13, 1971; former rule redesignated as paragraph (a) and paragraph (b) adopted July 15, 1982 to be effective September 13, 1982; paragraph (b) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; caption and paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended, former paragraph (b) deleted, and new paragraphs (b), (c), and (d) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) amended and new paragraph (e) added to be effective .

D. Proposed Amendments to *R*. 1:21-1 — Who May Practice; Appearance in Court

A Civil Division Manager asked whether a member of a church can file papers on behalf of the church or if an attorney is required. With limited exceptions, *R*. 1:21-1(c) prohibits a business entity from appearing or filing any paper in any court of this State except through an attorney licensed to practice in New Jersey. The Committee determined that a church is an entity for which representation by an attorney is required. The Committee agreed that the rule should be amended to clarify that any entity regardless of its purpose or organization must be represented in court by an attorney.

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

1:21-1. Who May Practice; Appearance in Court

(a) …no change.

(b) …no change.

(c) Prohibition on [Business] Entities. Except as otherwise provided by paragraph (d) of this rule and by *R*. 1:21-1A (professional corporations), *R*. 1:21-1B (limited liability companies), *R*. 1:21-1C (limited liability partnerships), *R*. 6:10 (appearances in landlord-tenant actions), *R*. 6:11 (appearances in small claims actions), *R*. 7:6-2(a) (pleas in municipal court), *R*. 7:8-7(a) (presence of defendant in municipal court) and by *R*. 7:12-4(d) (municipal court violations bureau), an [business] entity, however formed and for whatever purpose, other than a sole proprietorship shall neither appear nor file any paper in any action in any court of this State except through an attorney authorized to practice in this State.

(d) …no change.

(e) …no change.

(f) …no change.

Note: Source — *R.R.* 1:12-4(a) (b) (c) (d) (e) (f). Paragraph (c) amended by order of December 16, 1969 effective immediately; paragraphs (a) and (c) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (a) amended September 21, 1981 to be effective immediately; paragraph (c) amended and paragraph (d) adopted July 15, 1982 to be effective September 13, 1982; paragraph (a) amended August 13, 1982 to be effective immediately; paragraph (e) adopted July 22, 1983 to be effective September 12, 1983; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended and paragraph (d) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended and paragraph (e)(8) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (c), (e), and (e)(7) amended, and paragraph (e)(9) added July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (e) amended June 28, 1996 to be effective September 1, 1996; paragraph (c) amended November 18, 1996 to be effective January 1, 1997; paragraph (c) amended January 5, 1998 to be effective February 1, 1998; paragraph (a) amended, former paragraphs (d) and (e) redesignated as paragraphs (e) and (f), and new

paragraph (d) adopted July 10, 1998 to be effective September 1, 1998; closing paragraph amended July 5, 2000 to be effective September 5, 2000; paragraph (f) amended and new paragraph (f)(11) added July 12, 2002 to be effective September 3, 2002; paragraph (a) amended November 17, 2003 to be effective January 1, 2004; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (e) caption and text amended July 27, 2006 to be effective September 1, 2006; paragraph (c) amended to become effective _____.

E. Proposed Amendments to *R*. 1:36-3 — Unpublished Opinions

Two practitioners requested an amendment to *R*. 1:36-3 to limit the circumstances in which unpublished opinions can be cited to a court. They asserted that the current requirement of having to supply copies of an unpublished opinion and "of all other relevant unpublished opinions known to counsel including those adverse to the position of the client" is unwieldy and not reflective of the current world of unlimited Internet access to unpublished opinions. It was suggested that the citation of unpublished opinions be limited to those situations where the citation is absolutely necessary, such as those cases dealing with *res judicata*, the law of the case, the single controversy doctrine, or the like. The Committee rejected this proposal, reasoning that there were a great number of worthwhile unpublished opinions that can and should be cited to the court. They did agree, however, that having to supply copies of all other relevant opinions could be onerous. Accordingly, the Committee recommends that "relevant" should be replaced with "contrary," leaving the last sentence of the rule to read, "No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

The proposed amendments to *R*. 1:36-3 follow.

1:36-3 Unpublished Opinions

No unpublished opinion shall constitute precedent or be binding upon any court. Except for appellate opinions not approved for publication that have been reported in an authorized administrative law reporter, and except to the extent required by *res judicata*, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all [other relevant] contrary unpublished opinions known to counsel [including those adverse to the position of the client].

Note: Adopted July 16, 1981 to be effective September 14, 1981; caption and rule amended July 13, 1994 to be effective September 1, 1994; amended July 12, 2002 to be effective September 3, 2002; amended _____ to be effective _____.

F. Proposed Amendments to *R*. 2:2-3 — Appeals to the Appellate Division from Final Judgments, Decisions, Actions and from Rules; Tax Court

In *Wein v. Morris*, 194 *N.J*. 364 (2008), the Supreme Court held that an order compelling arbitration is a final order appealable as of right, regardless of whether the judge stays the underlying suit or dismisses it. The Court referred the matter to the Committee to prepare the amendatory language necessary to bring *R*. 2:2-3 in line with the holding in *Wein*. Pursuant to the Court's direction the Committee recommends amendatory language to *R*. 2:2-3 to add an order of the court compelling arbitration to the list of orders that shall be deemed final judgments for appeal purposes. This proposed amendment was endorsed by the Appellate Rules Committee.

See Section II.C. of this Report for proposed amendments to *R.* 2:2-3 that the Committee does not recommend.

The proposed amendments to *R*. 2:2-3 follow.

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

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

(1) …no change.

(2) …no change.

(3) in such cases as are provided by law. Final judgments of a court, for appeal purposes, shall also include those referred to by *R*. 3:28(f) (order enrolling defendant into the pretrial intervention program over the objection of the prosecutor), *R*. 3:26-3 (material witness order), *R*. 4:42-2 (certification of interlocutory order), *R*. 4:53-1 (order appointing statutory or liquidating receiver), R. 5:8-6 (final custody determination in bifurcated matrimonial action), and *R*. 5:10-6 (order on preliminary hearing in adoption action). An order granting or denying a motion to extend the time to file a notice of tort claim pursuant to *N.J.S.A*. 59:8-9, whether entered in the cause or by a separate action, and an order compelling arbitration, whether the action is dismissed or stayed, shall also be deemed a final judgment of the court for appeal purposes.

(b) …no change.

Note: Source — *R.R*. 2:2-1(a) (b) (c) (d) (f) (g), 2:2-4, 2:12-1, 3:10-11, 4:88-7, 4:88-8(a) (first sentence), 4:88-10 (first sentence), 4:88-14, 6:3-11(a). Paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (b) amended November 27, 1974 to be effective April 1, 1975; caption and paragraph (a) amended June 20, 1979 to be effective July 1,

1979; paragraph (a) amended July 8, 1980 to be effective July 15, 1980; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a)(1) amended July 22, 1983 to be effective September 12, 1983; paragraph (a) amended December 20, 1983 to be effective December 31, 1983; paragraph (b) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (a)(3) amended to be effective .

G. Proposed Amendments to *R*. 2:5-6 — Appeals from Interlocutory Orders, Decisions and Actions

A practitioner suggested that New Jersey adopt a rule similar to the Pennsylvania statute that allows a court or agency to state in an interlocutory order that the appeal "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of the matter." This suggestion was referred to the Appellate Division Rules Committee (ADRC) for its consideration. The ADRC noted that *R*. 2:5-6(c) already permits a trial court or agency to comment on whether a motion for leave to appeal should be granted, thus obviating the need for a rule amendment. However, the ADRC opined that it would not be averse to adding the specific language from the Pennsylvania statute, if the Committee was inclined to recommend its inclusion. The Committee concluded that adding the language would provide additional clarity to the rule, but suggested that, where the Pennsylvania statute refers to "termination" of the matter, the language of the proposed rule amendment should refer instead to "resolution."

The proposed amendments to *R*. 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 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 [and may also, within said time, comment on whether the motion for leave to appeal should be granted]. 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 to be effective .

H. Proposed Amendments to *R*. 4:3-2 — Venue in the Superior Court

In *Rutgers v. Fogel*, 403 *N.J. Super*. 389 (App. Div. 2008), the Appellate Division held that the state court rule governing venue in the Superior Court, *R*. 4:3-2, was preempted by the venue provision of the federal Fair Debt Collection Practices Act (the Act), 15 *U.S.C.S*. §1692i, to the extent that actions subject to the Act must be brought in either the county of the defendant's residence or the county in which the contract was signed. The Committee discussed whether *R*. 4:3-2 should be amended to include this provision. It recognized that there may be other federal laws that preempt New Jersey's rule governing venue and agreed accordingly to recommend adding the following prefatory language to the rule — "Subject to contrary provisions of federal law,.."

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

4:3-2. Venue in the Superior Court

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

(b) …no change

(c) …no change.

Note: Source — *R.R.* 4:3-2. Paragraph (a) amended December 20, 1983 to be effective December 31, 1983. Paragraph (c) adopted January 9, 1984 to be effective immediately; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended to be effective .

I. Proposed Amendments to *R*. 4:4-2 and Appendix XII-A — re: Legal Services Hotline

At the request of Legal Services of New Jersey (LSNJ), the Committee recommends the inclusion of LSNJ's Hotline number 1-888-LSNJ-LAW (1-888-576-5529) in the information regarding the form of the summons in *R*. 4:4-2 and on the summons form itself, Appendix XII-A. LSNJ proposed this amendment to provide more information to individuals needing their services, especially to those facing foreclosure, as the hotline directs access to LSNJ's Statewide Anti-Predatory Lending Project, which provides a foreclosure defense to qualified victims of predatory lending practices.

The proposed amendments to *R*. 4:4-2 and Appendix XII-A follow.

4:4-2. Summons: Form

Except as otherwise provided by *R*. 5:4-1(b) (summary proceedings in family actions), the face of the summons shall be in the form prescribed by Appendix XII-A to these Rules. It shall be in the name of the State, signed in the name of the Superior Court Clerk and directed to the defendant. It shall contain the name of the court and the plaintiff and the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to serve an answer upon the plaintiff or plaintiff's attorney, and shall notify the defendant that if he or she fails to answer, judgment by default may be rendered for the relief demanded in the complaint. It shall also inform the defendant of the necessity to file an answer and proof of service thereof with the deputy clerk of the Superior Court in the county of venue, except in mortgage and tax foreclosure actions an answer shall be filed with the Clerk of the Superior Court in Trenton unless and until the action is deemed contested and the papers have been sent by the Clerk to the county of venue in which event an answer shall be filed with the deputy clerk of the Superior Court in the county of venue. If the defendant is an individual resident in this state, the summons shall advise that if he or she is unable to obtain an attorney, he or she may communicate with the Lawyer Referral Service of the county of his or her residence, or the county in which the action is pending, or, if there is none in either county, the Lawyer Referral Service of an adjacent county. The summons shall also advise defendant that if he or she cannot afford an attorney, he or she may communicate with the Legal Services Office of the county of his or her residence or the county in which the action is pending or the Legal Services of New Jersey statewide toll free hotline at 1-888-LSNJ-LAW (1-888-576-5529). If the defendant is an individual not resident in this State, the summons shall similarly advise

him or her, directing the defendant, however, to the appropriate agency in the county in which the action is pending. The reverse side or second page of the summons shall contain a current listing, by county, of telephone numbers of the Legal Services Office and the Lawyer Referral Office serving each county and the Legal Services of New Jersey statewide toll free hotline at 1-888-LSNJ-LAW (1-888-576-5529), which list shall be updated regularly by the Administrative Office of the Courts and made available to legal forms publishers and to any person requesting such list.

Note: Source — *R.R.* 4:4-2; amended November 27, 1974 to be effective April 1, 1975; amended July 29, 1977 to be effective September 6, 1977; amended July 21, 1980 to be effective September 8, 1980; amended July 16, 1981 to be effective September 14, 1981; amended December 20, 1983 to be effective December 31, 1983; amended June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994; amended June28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; amended to be effective .

APPENDIX XII-A. SUMMONS

Attorney(s):
Office Address & Tel. No.:
Attorney(s) for Plaintiff(s)

SUPERIOR COURT OF NEW JERSEY
_____COUNTY
_____DIVISION

Plaintiff(s) Docket No._____

vs. CIVIL ACTION

Defendant(s) SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

_____
Clerk of the Superior Court

DATED:
Name of Defendant to Be Served:
Address of Defendant to Be Served:

ATLANTIC COUNTY:
Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:
Deputy Clerk of the Superior Court
Case Processing Section, Room 119
Justice Center, 10 Main St.
Hackensack, NJ 07601-0769
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:
Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(800) 496-4570

CAMDEN COUNTY:
Deputy Clerk of the Superior Court
Civil Processing Office
1st Fl., Hall of Records
101 S. Fifth St.
Camden, NJ 08103
LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:
Deputy Clerk of the Superior Court
9 N. Main Street
Box DN-209
Cape May Court House, NJ 08210
LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:
Deputy Clerk of the Superior Court

Civil Case Management Office
Broad & Fayette Sts., P.O. Box 615
Bridgeton, NJ 08302
LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY:
Deputy Clerk of the Superior Court
50 West Market Street
Room 131
Newark, NJ 07102
LAWYER REFERRAL
(973) 622-6207
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:
Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street, P.O. Box 750
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY:
Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House--1st Floor
583 Newark Ave.
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:
Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822
LAWYER REFERRAL
(908) 263-6109
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:
Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 S. Broad Street, P.O. Box 8068
Trenton, NJ 08650

LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:
Deputy Clerk of the Superior Court
Administration Building
Third Floor
1 Kennedy Sq., P.O. Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:
Deputy Clerk of the Superior Court
Court House
71 Monument Park
P.O. Box 1269
Freehold, NJ 07728-1269
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:
Deputy Clerk of the Superior Court
Civil Division
30 Schuyler Pl., P.O. Box 910
Morristown, NJ 07960-0910
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:
Deputy Clerk of the Superior Court
Court House, Room 119
118 Washington Street
Toms River, NJ 08754
LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:
Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton St.
Paterson, NJ 07505
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES

(973) 523-2900

SALEM COUNTY:
Deputy Clerk of the Superior Court
92 Market St., P.O. Box 18
Salem, NJ 08079
LAWYER REFERRAL
(856) 678-8363
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:
Deputy Clerk of the Superior Court
Civil Division Office
New Court House, 3rd Fl.
P.O. Box 3000
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:
Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:
Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073
LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:
Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(908) 387-1835
LEGAL SERVICES
(908) 475-2010

Note: Adopted July 13, 1994, effective September 1, 1994; amended June 28, 1996, effective September 1, 1996; address/phone information updated July 1, 1999, effective September 1, 1999; amended July 12, 2002 to be effective September 3, 2002; amended July 27, 2006 to be effective September 1, 2006; address/phone information updated October 10, 2006 to be effective immediately; address/phone information updated November 1, 2006 to be effective immediately; address/phone information updated November 17, 2006 to be effective immediately; amended to be effective .

J. Proposed Amendments to *R.* 4:4-3 — By Whom Served; Copies

Rule 4:4-3 states, "Summonses shall be served, together with a copy of the complaint, by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation." A practitioner questioned whether this language gives a sheriff the authority to delegate his/her service of a summons and complaint to a private process server. Reportedly, this practice is becoming widespread. The Committee agreed that a practitioner should be able to choose whether the sheriff or a private process server should be used. If a practitioner chooses to have the sheriff serve a summons in a case, it is generally because it is less expensive than a private process server and because the practitioner wants the authority of the sheriff's office behind the case. The Committee recognized that time constraints and staffing inadequacies may make it difficult for the sheriff to attend to the service of process requests, but was adamant that the practitioner's choice should be honored. Accordingly, the Committee recommends that the rule be amended to prohibit a sheriff from delegating the service of process to a private process server.

The proposed amendments to *R.* 4:4-3 follow.

4:4-3. By Whom Served; Copies

(a) Summons and Complaint. Summonses shall be served, together with a copy of the complaint, by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation. If a party opts for service by the sheriff, service shall be made by a sheriff's officer, but if such service is not effected within 30 days, the party may request the return of process and then elect private service. If personal service cannot be effected after a reasonable and good faith attempt, which shall be described with specificity in the proof of service required by *R.* 4:4-7, service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the usual place of abode of the defendant or a person authorized by rule of law to accept service for the defendant or, with postal instructions to deliver to addressee only, to defendant's place of business or employment. If the addressee refuses to claim or accept delivery of registered or certified mail, service may be made by ordinary mail addressed to the defendant's usual place of abode. The party making service may, at the party's option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee refuses to claim or accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service. Mail may be addressed to a post office box in lieu of a street address only as provided by *R.* 1:5-2. Return of service shall be made as provided by *R.* 4:4-7.

(b) …no change.

(c) …no change.

Note: Source — *R.R.* 4:4-3, 5:5-1(c), 5:2-2; amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994;

captions and text of paragraphs (a) and (b) deleted and replaced with new captions and text July 5, 2000 to be effective September 5, 2000; paragraph (c) added July 12, 2002 to be effective September 3, 2002; paragraph (a) amended to be effective .

K. Proposed Amendments to *R*. 4:12-4 — Disqualification for Interest

At its June 2009 meeting, the Committee rejected a proposal to amend *R*. 4:12-4 expressly to permit the use of in-house, rather than third-party, videographers to record video depositions. The Committee was subsequently asked if the rule should be amended to expressly prohibit this practice. The Committee agreed that the general prohibition against recording a deposition by a certified shorthand reporter "who is a relative, employee or attorney of a party or relative or employee of such attorney or is financially interested in the action" should apply to videographers as well. Therefore, the Committee recommends adding the word "videographed" to the opening sentence of the rule to accomplish this purpose.

See Section II.H. of this Report for proposed amendments to *R*. 4:12-4 that the Committee does not recommend.

The proposed amendments to *R*. 4:12-4 follow.

4:12-4 Disqualification for Interest

No deposition shall be taken before or videographed or recorded by a person, whether or not a certified shorthand reporter, who is a relative, employee or attorney of a party or a relative or employee of such attorney or is financially interested in the action. Any regulations of the State Board of Shorthand Reporters respecting disqualification of certified shorthand reporters shall apply to all persons taking or recording a deposition.

Note: Source — *R.R.* 4:18-4. Amended July 17, 1975 to be effective September 8, 1975; amended July 12, 2002 to be effective September 3, 2002; amended to be effective .

L. Proposed Amendments to *R*. 4:17-5 ─ Objections to Interrogatories

A plaintiff's attorney had suggested that the discovery rules be amended to add a section addressing the general objections found in the preamble to the answers to most interrogatories. The practitioners on the Committee agreed overwhelmingly that the rule governing the manner in which objections to interrogatory questions should be made is abused all the time. Because the practice of stating boilerplate general objections is widespread and in seeming contradiction to *R*. 4:17-4, which appears to contemplate that there should be nothing in the answers to interrogatories but answers, not disclaimers, the matter was referred to the Discovery Subcommittee. A majority of the subcommittee concluded that the routine practice of prefacing all answers to interrogatories with a lengthy list of general objections that do not identify to which of the numbered interrogatories they apply is implicitly prohibited by *R*. 4:17-5(a). They agreed that this implicit prohibition is inadequate to address the problem and recommended that the rule be amended to state that general objections are not permitted and that specific objections to each question should be stated. The subcommittee further recommended that the provisions of *R*. 4:23-1(c) (award of expenses of a motion for an order compelling discovery) should be made applicable to *R*. 4:17-5 to complement the "good-faith effort to resolve" requirement of *R*. 1:6-2(c) by providing an incentive for parties to thoroughly evaluate the merits of their positions before resorting to motion practice. Such a rule change would provide an award of reasonable expenses, including attorney's fees, to a party prevailing on such a motion, unless the court finds that the party's conduct in making or opposing the motion was substantially justified or that an award would be unjust in the circumstances presented. The Committee supported both recommendations and further suggested that the rule be restructured to distinguish among the

three concepts — the prohibition against general objections, grounds for specific objections and the award of expenses under *R*. 4:23-6(c).

The Sanctions Subcommittee, charged with making recommendations as to whether attorney's fees should be included as a sanction, also reviewed *R*. 4:17-5(d). It recommended that the provisions of *R*. 4:23-1(c) apply to the award of expenses incurred in relation to motions made pursuant to this rule — namely, that if the motion is granted, the court shall, after opportunity for a hearing, require the party or defendant whose conduct necessitated the motion to pay the moving party's reasonable expenses, including attorney's fee, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust; similarly, if the motion is denied, the objecting party would be awarded expenses. Such an amendment would be consistent with other rules, specifically *R*. 4:10-3, *R*. 4:14-4 and *R*. 4:22-1, which already incorporate the sanction provisions of *R*. 4:23-1(c). The full Committee endorsed the recommendations of the Discovery and Sanctions Subcommittee.

The proposed amendments to *R*. 4:17-5 follow.

4:17-5. Objections to Interrogatories

(a) [Objections to Questions; Motions. A party upon whom interrogatories are served who objects to any questions propounded therein may either answer the question by stating, "The question is improper" or may, within 20 days after being served with the interrogatories, serve a notice of motion, to be brought on for hearing at the earliest possible time, to strike any question, setting out the grounds of objection. The answering party shall make timely answer, however, to all questions to which no objection is made. Interrogatories not stricken shall be answered within such unexpired period of the 60 days prescribed by *R*. 4:17-4(b) as remained when the notice of motion was served or within such time as the court directs. The propounder of a question answered by a statement that it is improper may, within 20 days after being served with the answers, serve a notice of motion to compel an answer to the question, and, if granted, the question shall be answered within such time as the court directs.]

General Objections. General objections to the interrogatories as a whole are not permitted and shall be disregarded by the court and adverse parties.

(b) Specific Objections. A party served with interrogatories who objects to any specific question propounded therein may either state with specificity the ground of objection and answer the question subject to the stated objection, or, within 20 days after being served with the interrogatories, serve a notice of motion returnable at the earliest possible time to strike any question setting forth the grounds of the objection. The answering party shall, however, answer all questions not objected to as herein provided. The propounder of the question objected to may, within 20 days after service of the answer, move to strike the objection and compel an answer. Questions not stricken or to which an answer is compelled shall be answered within the time fixed by the court.

[(b)](c) …no change.

[(c)](d) …no change.

[(d)](e) [Costs and Fees] Award of Expenses on Motion. [If the court finds that a motion made pursuant to this rule was made frivolously or for the purpose of delay or was necessitated by action of the adverse party that was frivolous or taken for the purpose of delay, the court may order the offending party to pay the amount of reasonable expenses, including attorney's fees, incurred by the other party in making or resisting the motion.] The provisions of *R*. 4:23-1(c) apply to expenses incurred on motions made pursuant to this rule.

Note: Source — *R.R.* 4:23-8 (first, second, third, fourth and seventh sentences). Paragraph (c) adopted July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended, new paragraph (b) added, former paragraph (b) becomes new paragraph (c), former paragraph (c) becomes new paragraph (d), and former paragraph (d) becomes new paragraph (e) as amended to be effective .

M. Proposed Amendments to *R*. 4:18-1 ─ Production of Documents

In conjunction with its recommendation to recommend a prohibition against general objections to interrogatories in *R*. 4:17-5, the Committee also agreed that the prohibition should be included in *R*. 4:18-1 and that the rule should require a certification that all documents relevant to the request were produced. This matter had been initially considered by the Discovery Subcommittee, which unanimously recommended that *R*. 4:18-1(b) be restructured to address four aspects of the procedure for production of documents: (1) the procedure for the request; (2) the procedure for response to the request; (3) the continuing obligation with respect to the request; and (4) the procedure for dealing with objections and the failure to respond. The restructuring is intended to clarify and segregate the specific subparts of the rule. The Committee endorsed this proposal. Additionally, the subcommittee drafted a form certification to be completed by the person fulfilling the document request. The Committee rejected the proposed form certification as being overly complicated. The Committee agreed that it would be sufficient for the individual to certify that, as of that date, the production is complete and accurate to the best of his/her knowledge and information, based on either personal knowledge or information provided by others. The Committee proposes that the language of the certification be included in the rule.

The proposed amendments to *R*. 4:18-1 follow.

4:18-1 Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes; Pre-Litigation Discovery

(a) …no change.

(b) Procedure; Continuing Obligation; Failure to Respond; Objections; Motions.

(1) Procedure for Request. The request may, without leave of court, be served on the plaintiff after commencement of the action and on any other party with or after service of the summons and complaint on that party. A copy of the request shall also be simultaneously served on all other parties to the action. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

(2) Procedure for Response. The party on whom the request is served shall serve a written response within 35 days after the service of the request, except that a defendant may serve a response within 50 days after service of the summons and complaint on that defendant. On motion, the court may allow a shorter or longer time. The written response[, without documentation annexed but which shall be made available to all parties on request, shall be served by the party to whom the request was made on all other parties to the action. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for objection. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms

for producing electronically stored information or if no form was specified in the request, the responding party shall state the form or forms it intends to use. The party submitting the request may move for an order of dismissal or suppression or an order to compel pursuant to *R*. 4:23-5 with respect to any objection to or other failure to respond to the request or any part thereof or any failure to permit inspection as requested. If a party who has furnished a written response to a request to produce or who has supplied documents in response to a request to produce thereafter obtains additional documents that are responsive to the request, an amended written response and production of such documents, as appropriate, shall be served promptly.] shall be made by the party upon whom it is served if an individual, or, if a governmental, commercial, or charitable entity, by an officer or agent thereof. The person making the response shall swear or certify in the form prescribed by paragraph (c) of this rule that it is complete and accurate based on personal knowledge and/or upon information if provided by others, whose identity and source of knowledge shall be disclosed. The written response shall be served on the requesting party and a copy on all other parties. The written response shall either include the requested documents or other material or state, with respect to each item or category, that inspection and related activities will be permitted as requested. If the written response provides documents to the requesting party, those documents shall be provided to or made available to any other party upon request.

Unless the parties otherwise agree, or the court otherwise orders:

[(1)](A) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;

[(2)](B) if a request does not specify the form or forms for producing electronically stored information, a responding party shall produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

[(3)](C) a party need not produce the same electronically stored information in more than one form.

(3) Continuing Obligation. If a party who has furnished a written response to a request to produce or who has supplied documents in response to a request to produce thereafter obtains additional documents that are responsive to the request, a supplemental written response and production of such documents, as appropriate, shall be served promptly.

(4) Objections; Failure to Respond; Motions. General objections to the request as a whole are not permitted and shall be disregarded by the court and adverse parties. The party upon whom the request is served may, however, object to a request on specific grounds and, if on the ground of privilege or accessibility of electronically stored information, the objection shall be made in accordance with *R*. 4:10-2(e) and (f) respectively. The requesting party may move for an order of dismissal or suppression or an order to compel pursuant to *R*. 4:23-5 with respect to any objection to or other failure to respond to the request or any part thereof or any failure to permit inspection as requested. The provisions of *R*. 4:23-1(c) apply to the award of expenses incurred in relation to motions made pursuant to this rule.

(c) Certification or Affidavit of Completeness. The person responding to the request shall submit with the response a certification stating or affidavit averring as follows:

I hereby certify (or aver) that I have reviewed the document production request and that I have made or caused to be made a good faith search for documents responsive to the request. I further certify (or aver) that as of this date, to the best of my knowledge and information, the

production is complete and accurate based on ( ) my personal knowledge and/or ( ) information provided by others. The following is a list of the identity and source of knowledge of those who provided information to me:

(d) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. Pre-litigation discovery within the scope of this rule may also be sought by petition pursuant to *R*. 4:11-1.

Note: Source — *R.R.* 4:24-1. Former rule deleted and new *R.* 4:18-1 adopted July 14, 1972 to be effective September 5, 1972; rule caption and paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 12, 2002 to be effective September 3, 2002; caption and paragraphs (a) and (b) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) amended, new paragraph (c) added, and former paragraph (c) becomes new paragraph (d) to be effective .

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

The Civil Presiding Judges and Civil Division Managers raised two issues concerning rule amendments recommended and adopted during the last rules cycle:

1. In a prior iteration, *R.* 4:24-1(c) mandated that orders for an extension of discovery describe the discovery to be completed. In the last rules cycle, the Discovery Subcommittee recommended, the Committee endorsed and the Supreme Court adopted an amendment to *R.* 4:24-1(c) to require the court to enter an order extending discovery for good cause shown upon the restoration of a pleading dismissed or suppressed pursuant to *R.* 1:13-7 or *R.* 4:23-5(a)(1), with the order specifying the discovery to be completed and the time for completion. As part of that rule amendment, the requirement that the order describe the discovery to be completed was changed from the mandatory "shall" to the permissive "may." The Civil Presiding Judges and Civil Division Managers requested that the language be changed back to mandate the inclusion of a description of the discovery to be completed.

2. The amendments to *R.* 4:24-1(c) that were adopted in the last rules cycle address the entry of an order extending discovery when a pleading has been restored. As the rule currently reads, it appears that the last two sentences of subsection (c), addressing the extension order and the prohibition of a further extension of discovery unless exceptional circumstances are shown, apply only when a pleading has been restored. It was requested that the rule be amended to clarify that the contents of the extension order and the limitation on further extensions apply to all cases, not just those where a pleading has been restored.

The Committee agreed with the suggestions but recognized that the drafting issue had to address two situations — one in which the pleading is restored following a dismissal under *R*. 1:13-7 or *R.* 4:23-5(a)(1) and where the extent and degree of outstanding discovery may not be known by the restored party, and the other in which the pleading is restored following a showing of good cause and where the outstanding discovery is known. In the first case, the Committee agreed that the order extending discovery may specify the discovery to be completed. In the second situation, the Committee determined that the order extending discovery must specify the discovery to be completed. Accordingly, the Committee proposes amendments to *R*. 4:24-1(c) to clarify what may and what must be contained in the order extending discovery in both these situations.

The Committee further proposes to amend the rule to allow motions to extend discovery to be filed and served prior to the discovery end date rather than to require such motions to be made returnable before that date, as now.

See Section II.K. of this Report for proposed amendments to *R*. 4:24-1 that the Committee does not recommend.

The proposed amendments to *R*. 4:24-1 follow.

4:24-1. Time for Completion of Discovery

(a) …no change

(b) …no change

(c) Extensions of Time. The parties may consent to extend the time for discovery for an additional 60 days by stipulation filed prior to the expiration of the discovery period. If the parties do not agree or a longer extension is sought, a motion for relief shall be filed with the Civil Presiding Judge or designee in Track I, II, and III cases and with the designated managing judge in Track IV cases, and [made returnable] filed and served prior to the conclusion of the applicable discovery period. The movant shall append to such motion copies of all previous orders granting or denying an extension of discovery or a certification stating that there are none. On restoration of a pleading dismissed pursuant to *R.[ule]* 1:13-7 or *R.[ule]* 4:23-5(a)(1) [or if good cause is otherwise shown,] the court shall enter an order extending discovery and specifying the date by which discovery shall be completed and may describe the discovery to be completed. If the time for discovery is extended for other good cause, [T]the [extension] court's order [may] shall specify the date by which discovery shall be completed and describe the discovery to be completed. Any order of extension may include [and] such other terms and conditions as may be appropriate. No extension of the discovery period may be permitted after an arbitration or trial date is fixed, unless exceptional circumstances are shown.

(d) … no change.

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 to be effective .

O. Proposed Amendments to *R.* 4:36-3 — Trial Calendar

An Assignment Judge pointed out that there may be some confusion with regard to how this rule is read and applied. Subsection (b) — Adjournments, Generally — deals with an initial request for an adjournment to accommodate a scheduling conflict or the unavailability of an attorney, a party or a witness. Presumably, "witness" includes expert witnesses. Subsection (c) — Adjournments, Expert Unavailability— deals only with expert witnesses. It states, "[i]f the reason stated for the initial request for an adjournment was the unavailability of an expert witness…", and seems to imply that if the initial request for an adjournment was based on something other than the unavailability of a witness, the rest of the sentence does not apply. Thus, one could make a subsequent request for an adjournment, this time based on the unavailability of a witness, and the exceptional circumstances standard as well as the requirement that the expert appear would not apply. He suggested that the first sentence of (c) be amended to read, "If the reason stated for a prior request for an adjournment was the unavailability of an expert witness…" Such an amendment would then make any request for an adjournment based on witness unavailability, not just the initial one, subject to the requirements of subsection (c).

The Committee agreed with the proposal to change "initial" request to "prior" request for an adjournment, thus eliminating an unintended loophole that would have allowed a party to make subsequent requests for adjournments based on the unavailability of an expert witness and circumvent the exceptional circumstances standard and the requirement that the witness appear if the initial request for an adjournment was not based on the witness's unavailability.

The proposed amendments to *R.* 4:36-3 follow.

4:36-3. Trial Calendar

(a) …no change.

(b) …no change.

(c) Adjournments, Expert Unavailability. If the reason stated for [the initial] a prior request for an adjournment was the unavailability of an expert witness, no further adjournment request based on that expert's unavailability shall be granted, except upon a showing of exceptional circumstances, but rather that expert shall be required to appear in person or by videotaped testimony taken pursuant to *R*. 4:14-9 or, provided all parties consent, the expert's *de bene esse* deposition shall be read to the jury in lieu of the expert's appearance. If appropriate, given the circumstances of the particular case, the court may order that no further adjournments will be granted for the failure of any expert to appear.

Note: Adopted July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (c) adopted September 12, 2000 to be effective immediately; paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (c) amended to be effective .

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

Judge Pressler brought the question of counsel fees for protesters in strategic litigation against public participation (SLAPP) suits to the Committee's attention. SLAPP suits are employed by businesses to stifle the exercise by protesting citizens of First Amendment rights to free speech and to petition government for redress. The lawsuits against protesters allege causes of action sounding in defamation, various business torts, conspiracy and nuisance. Although SLAPP suits are often dismissed on the ground that the activities of the protesters are protected by the First Amendment, such suits are nonetheless effective to the extent that they typically require the protester-defendants to incur very substantial counsel fees. Recently, the Supreme Court held that SLAPP plaintiffs are protected if they brought the suit on advice of counsel and that counsel giving the advice is protected unless proved to have been actuated by malice. *See LoBiondo v. Schwartz* (*LoBiondoII*), 199 *N.J*. 62 (2009). The protester-defendants were vindicated on the merits, but were left without a remedy for the litigation expenses and other damages. Judge Pressler suggested that *R*. 4:49-9(a) be amended to provide that if a suit against SLAPP defendants is dismissed on First Amendment grounds, the protesters will be entitled to an award of all costs of suit, including attorney's fees. The Committee agreed with the proposal.

See Section I.V. of this Report for a housekeeping amendment to *R*. 4:64-1 that the Committee recommends.

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

4:42-9 [Counsel] Attorney's Fees

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

(1) …no change.

(2) …no change.

(3) …no change.

(4) …no change.

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

(6) …no change.

(7) …no change.

(8) In all cases where [counsel] attorney's fees are permitted by statute.

(9) In a SLAPP suit (strategic litigation against public participation) which terminates in favor of the defendant on the ground that the activity complained of is protected by the free

speech clause or the right to petition clause of the First Amendment of the federal and state constitutions.

(b) …no change.

(c) …no change.

(d) …no change.

Note: Source — *R.R.* 4:55-7(a) (b) (c) (d) (e) (f), 4:55-8, 4:98-4(c). Paragraphs (a) and (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a)(1) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a)(1) and (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended January 19, 1989 to be effective February 1, 1989; paragraph (a)(4) amended June 29, 1990 to be effective September 4, 1990; paragraph (a)(5) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1), (2) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(5) amended June 28, 1996 to be effective September 1, 1996; paragraph (a)(1) amended January 21, 1999 to be effective April 5, 1999; paragraph (a)(5) amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(3) amended July 27, 2006 to be effective September 1, 2006; paragraphs (a)(5) and (8) amended, and new paragraph (a)(9) added to be effective .

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

The Offer of Judgment Subcommittee was reconstituted to consider several issues regarding offer of judgment procedures:

1. The Committee asked the subcommittee to review the offer of judgment rule as it applies to the situation where the offer meets the standard for relief when compared to the jury verdict, but is less than the 120% threshold of the final judgment when molded to the limit of an insurance policy. The subcommittee determined that the issue arises most frequently in connection with UM/UIM cases, and then only when the insured has made an offer of judgment at or below policy limits. If the rule applies to the judgment, and not to the jury's verdict, the insurer has little incentive for settlement since its exposure cannot exceed the molded judgment. The subcommittee agreed that the rule should be amended to permit comparison of the jury award to the offer of judgment, but that the remaining conditions for recovery of attorney's fees set forth in *R*. 4:58-2 should remain the same, including the 20% spread contained in that rule.

The Committee endorsed the recommendation of the subcommittee to amend *R*. 4:58-2.

2. The subcommittee reviewed a proposal from a practitioner to clarify the language of *R*. 4:58-2(a)(3) which requires, under specified circumstances, an award of "a reasonable attorney's fee, which shall belong to the client, for such subsequent services as are compelled by the non-acceptance" of the offer of judgment (emphasis added). Research revealed no reason for the phrase and the subcommittee proposed to eliminate it, leaving the disposition of the funds up to

the discretion of the court or to negotiations between the parties and their attorneys.

The Committee agreed with the subcommittee's position.

3. The subcommittee discussed the issue raised in *Negron v. Melchiorre*, 389 *N.J. Super*. 70 (2006), *certif. denied*, 190 *N.J*. 256 (2007) regarding the application/survival of the offer of judgment when mistrials have occurred. In that case, the Appellate Division held that the offer of judgment survived two mistrials. A majority of the subcommittee was of the opinion that the rule should be amended to require renewal of the offer in the event of a retrial and proposed a rule amendment so requiring.

The Committee recognized that the passage of time and intervening events between trials warrant the refiling of an offer to put parties on notice that an offer extended but was not accepted. The Committee took the position that the onus should be on the offeror to refile the offer with notice to the parties. The Committee considered the situation where two offers were made and both met the 20% "fudge" factor when the final judgment was entered. It determined that, in such a case, the award of fees should be retroactive to the first offer. Accordingly the Committee proposes a new section to the rule to detail the effect of a new trial on a previously tendered offer of judgment. Inserting the provisions relating to a new trial requires the redesignation of current *R*. 4:58-5 as *R*. 4:58-6.

The proposed amendments to *R*. 4:58-2, new rule *R*. 4:58-5, and redesignated *R*. 4:58-6 follow.

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

(a) If the offer of a claimant is not accepted and the claimant obtains a money judgment, in an amount that is 120% of the offer or more, excluding allowable prejudgment interest and counsel fees, the claimant shall be allowed, in addition to costs of suit: (1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by *R*. 4:42-11(b), which also shall be allowable; and (3) a reasonable attorney's fee[, which shall belong to the client,] for such subsequent services as are compelled by the non-acceptance.

(b) …no change.

(c) In cases in which recovery, in the absence of bad faith, cannot exceed insurance policy limits, including but not limited to UM/UIM disputes, recovery by the claimant as set forth in paragraph (a) shall be measured by considering the difference between the jury's verdict and the claimant's offer.

Note: Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1972 to be effective September 5, 1972; amended July 17, 1975 to be effective September 8, 1975; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004; text amended and designated as paragraph (a), new paragraph (b) adopted July 27, 2006 to be effective September 1, 2006; paragraph (a) amended and new paragraph (c) added to be effective .

4:58-5. New Trial

If an action is required to be retried, a party who made a rejected offer of judgment in the original trial may, within 10 days after the fixing of the first date for the retrial, serve a notice on the offeree that the offer then made is renewed and, if the offeror prevails, the renewed offer will be effective as of the date of the original offer. If the offeror elects not to so renew the original offer, a new offer may be made under this rule, which will be effective as of the date of the new offer.

Note: Adopted July 27, 2006 to be effective September 1, 2006; new caption and text to *R*. 4:58-5 adopted to be effective .

4:58-[5]6. Application for Fee; Limitations

Applications for allowances pursuant to *R*. 4:58 shall be made in accordance with the provisions of *R*. 4:42-9(b) within 20 days after entry of final judgment. A party who is awarded counsel fees, costs, or interest as a prevailing party pursuant to a fee-shifting statute, rule of court, contractual provision, or decisional law shall not be allowed to recover duplicative fees, costs, or interest under this rule.

Note: Adopted July 27, 2006 to be effective September 1, 2006; former *R*. 4:58-5 redesignated as *R*. 4:58-6 to be effective .

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

The Committee considered several proposals to amend this rule:

1. In the last rules cycle, the Committee had recommended an amendment to *R*. 4:59-1 to indicate that the Notice to Debtor should be mailed to the debtor's residence or, if the debtor is an entity, to the debtor's principal place of business. The purpose of this proposed amendment was to clarify to whom the Notice to Debtor should be mailed when the debtor is a corporation. During the comment period, it was pointed out that, although the due process concerns of *Finberg v. Sullivan*, 634 *F.2d* 93 (3d Cir. 1981) regarding notice and an opportunity to be heard must be considered, the exemptions identified with the Notice to Debtor are not applicable to corporate entities pursuant to *N.J.S.A*. 2A:17-19. The proposed amendment was withdrawn from consideration by the Supreme Court and referred back to both this Committee and the Special Civil Part Practice Committee for further review.

The Committee revisited the issue and reiterated its concern that all debtors should be noticed of a pending execution, regardless of whether they were entitled to an exemption or not. Accordingly, the Committee recommends the inclusion of language so stating in *R*. 4:59-1.

2. A judge reported that she was receiving motions in which a judgment creditor seeks an Order that will compel a judgment debtor to permit a sheriff's officer to enter the debtor's residence to conduct an inventory of non-exempt personal property that might be available to satisfy the judgment. The judge asserted that *R*. 4:59-1 does not authorize this practice and that it is contrary to the procedure

identified in *Spiegel, Inc. v. Taylor*, 148 *N.J. Super*. 79 (Cty. Ct. 1977) that imposes a burden on the judgment creditor to identify property subject to the levy and to establish a reasonable basis for the belief that such property is actually present before an order allowing an inventory will issue. *N.J.S.A*. 2A: 17-1 requires that personal property must be levied upon before the judgment creditor can look to real estate to satisfy a judgment. The problem arises when the judgment debtor has failed to cooperate with discovery requests and the creditor needs to know what non-exempt personal property may be available before going after real estate.

The Committee members agreed that there is no authority for the sheriff to enter a debtor's residence merely to see if there is any personal property that might be sold to satisfy the judgment. On the other hand, they realized that if the debtor refuses to cooperate with discovery, it becomes impossible for the creditor to determine what property might be available to satisfy the judgment. They were of the opinion that the debtor's lack of cooperation with the post-judgment discovery process should have a consequence.

Initially, the Committee considered whether the lack of cooperation could itself be deemed a waiver of *N.J.S.A*. 2A: 17-1. Legal Services of New Jersey objected strongly to this, asserting that there is no authority that would allow a court rule to provide a waiver to a statutory provision requiring judgment creditors to exhaust the personalty of judgment debtors before executing on real estate. Legal Services alleged that virtually every other state has a statutory homestead exemption that applies to judgment executions and that *N.J.S.A*.

2A:17-1 has functioned as a *de facto* homestead exemption from collection in New Jersey. The Committee agreed with arguments advanced by Legal Services.

In considering the same issue, the Conference of Civil Presiding Judges had suggested that *R*. 4:59-1 be amended to require a motion to execute on real property accompanied by a certification listing in detail the steps taken to satisfy the debt by other means. The Committee endorsed this proposal, reasoning that such a procedure would act as an incentive to encourage the debtor's cooperation while providing a measure of protection against having a home sold for the payment of what might well be a relatively small credit card debt. Legal Services requested that the notice of motion be required to include a statement that failure to respond to the motion may result in the loss of a home and a listing of Legal Services Offices and Lawyer Referral Offices, as required by *R*. 4:4-2. The Committee supported this position and recommends that the rule be amended accordingly.

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

4:59-1. Execution

(a) …no change.

(b) …no change.

(c) [Execution First Made Out of Property of Party Primarily Liable] Order of Property Subject to Execution; Required Motion.

(1) Execution First Made Out of Personal Property; Motion. The execution shall be made out of the judgment debtor's personal property before the judgment creditor may have recourse to the debtor's real property. If the debtor's personal property is insufficient or cannot be located, the judgment creditor shall file a motion, on notice, for an order permitting execution to be made out of real property. The motion, which shall not be joined with any other application for relief, shall be supported by a certification specifying in detail the actions taken by the judgment creditor to locate and proceed against personal property. The notice of motion shall state that if the motion is not successfully defended, the judgment debtor's real property will be subject to execution and sale. The notice shall have annexed the listing of Legal Services Offices and Lawyer Referral Offices as required by *R*. 4:4-2. No execution out of real property shall proceed unless an order granting the motion has been entered.

(2) Execution First Made Out of Property of Party Primarily Liable. If a writ of execution is issued against several parties, some liable after the others, the court before or after the levy may, on application of any of them and on notice to the others and the execution creditor, direct the sheriff or other officer that, after levying upon the property liable to execution, he or she raise the money, if possible, out of the property of the parties in a designated sequence.

(d) …no change.

(e) …no change.

(f) …no change.

(g) Notice to Debtor. Every court officer or other person levying on a debtor's property shall, on the day the levy is made, mail a notice to the last known address of the person whose assets are to be levied on stating that a levy has been made and describing exemptions from levy and how such exemptions may be claimed. The notice shall be in the form prescribed by Appendix VI to these rules and copies thereof shall be promptly filed by the levying officer with the clerk of the court and mailed to the person who requested the levy. If the clerk or the court receives a claim of exemption, whether formal or informal, it shall hold a hearing thereon within 7 days after the claim is made. If an exemption claim is made to the levying officer, it shall be forthwith forwarded to the clerk of the court and no further action shall be taken with respect to the levy pending the outcome of the exemption hearing. No turnover of funds or sale of assets may be made, in any case, until 20 days after the date of the levy and the court has received a copy of the properly completed notice to debtor.

(h) …no change.

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

2002; paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a) and (d) amended, and new paragraph (h) adopted July 27, 2006 to be effective September 1, 2006; paragraphs (a) and (f) amended July 9, 2008 to be effective September 1, 2008; paragraphs (c) and (g) amended to be effective .

S. Proposed Amendments to *R.* 4:74-3 — Appeals from Penalties Imposed by Municipal Courts

The Committee was asked to consider whether the provision of *R*. 4:74-3 requiring, on appeal from a penalty imposed by the municipal court, the posting of cash or a bond in double the amount of the penalty was penal in nature. The Committee agreed that it appeared to be an onerous requirement. Research disclosed that the doubling requirement was in the rule (*R*. 5:2-6) at the time it was originally adopted in 1948 and, at that time, derived from a statute, *R.S*. 2:72A-25, part of the penalty enforcement statute. The doubling provision was not, however, carried over into the 2A revision, which replaced the Title 2 penalty enforcement act with *N.J.S.A*. 2A:58-1 *et seq*. That statute was repealed in 1999 and was in turn replaced by *N.J.S.A*. 2A: 58-10 to -12, which also makes no reference to a double deposit. Accordingly, there being no statutory impediment and it appearing that the doubling provision is both unfair and unnecessary, the Committee voted unanimously to replace that provision with the requirement of a deposit on appeal in the amount of the municipal court judgment plus costs.

The proposed amendments to *R*. 4:74-3 follow.

4:74-3. Appeals From Penalties Imposed by Municipal Courts

(a) Notice of Appeal; Bond or Deposit. A party appealing from a judgment of a municipal court imposing a penalty shall file a notice of appeal with the clerk of the municipal court describing the judgment, stating that an appeal is being taken therefrom to the Law Division of the Superior Court in the county of venue and stating whether or not a verbatim record was made in the municipal court. A copy of the notice of appeal shall be served upon the opposing party, and a copy filed with the deputy clerk of the Superior Court in the county of venue. On appeal from a judgment imposing a penalty, appellant shall deliver to the municipal court a deposit in cash or a bond with at least one sufficient surety, [in double the amount of the judgment;] in the amount of the judgment plus costs or if the judgment imposes no money penalty or imposes imprisonment with a money penalty, then in such sum as the court fixes, conditioned upon the prosecution of the appeal and compliance with such further order or judgment as may be entered. If the bond is forfeited, it may be prosecuted by the obligee, and if the obligee is the State, then by the State at the relation of the person authorized by law to prosecute the penalty proceeding. The appeal shall be deemed perfected upon service and filing of the notice of appeal and the delivery of the cash deposit or bond.

(b) …no change.

(c) …no change.

(d) …no change.

(e) ...no change.

(f) …no change.

(g) …no change.

Note: Source — *R.R.* 5:2-6(b). Paragraphs (a) and (d) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a)(c)(e) and (g) amended November 22, 1978 to be effective December 7, 1978; paragraphs (a) (c) and (e) amended July 11, 1979 to be effective September 10, 1979; paragraphs (a) (b) and (g) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) (c) and (d) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended to be effective .

T. Proposed Amendments to Appendix II Interrogatory Forms A and A(1)

A practitioner alleged that the requirements of Uniform Interrogatories A and A(1)are duplicative and unnecessary relative to medical malpractice cases. He noted that the introductory heading to Appendix II provides that Form A uniform interrogatories are to answered by plaintiffs in all personal injury cases. At the conclusion of Form A is a statement that for medical malpractice cases, Form A(1) interrogatories must also be answered, thus requiring plaintiffs in medical malpractice cases to answer both Form A and A(1), despite the fact that all the information sought in Form A is included in A(1). The only area where there is a difference is in Form A, No.6, which asks for diagnostic tests while Form A(1) asks in question No. 19 for the dates of every treatment and examination and the nature of the medical treatment. He suggested that Form A(1) Interrogatory No. 19 could be amended to include diagnostic tests, thus eliminating the only item in Form A that is not in Form A(1). The Discovery Subcommittee considered this suggestion, agreed with the proposal and recommended amendments to the Interrogatory forms. The Committee endorsed the proposed changes. Accordingly, it is recommended that Appendix A be amended to exempt medical malpractice cases from the requirement to complete Form A currently applicable to all personal injury actions. Additionally, it is recommended that Form A(1) Interrogatory No. 19 be amended to include a new subpart regarding diagnostic tests. With that change, medical malpractice plaintiffs would be required to answer only Form A(1) interrogatories.

Proposed amendments to Appendix II Interrogatory Forms A and A(1) follow.

APPENDIX II. — INTERROGATORY FORMS

Form A. Uniform Interrogatories to be Answered by Plaintiff in All Personal Injury Cases (Except Medical Malpractice Cases): Superior Court

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

(Caption)

1. …no change.

2. …no change.

3. …no change.

5. …no change.

6. …no change.

7. …no change.

8. …no change.

9. …no change.

10. …no change.

11. …no change.

12. …no change.

13. …no change.

14. …no change.

15. …no change.

16. …no change.

17. …no change.

18. …no change.

19. …no change.

20. …no change.

21. …no change.

22. …no change.

23. …no change.

24. …no change.

TO BE ANSWERED ONLY IN AUTOMOBILE ACCIDENT CASES

25. …no change.

[FOR MEDICAL MALPRACTICE CASES, ALSO ANSWER FORM A(1)]

FOR PRODUCT LIABILITY CASES (OTHER THAN PHARMACEUTICAL AND TOXIC TORT CASES), ALSO ANSWER A(2)

CERTIFICATION

…no change.

Note: Amended July 17, 1975 to be effective September 8, 1975; entire text deleted and new text added July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; interrogatory 23 and certification amended July 28, 2004 to be effective September 1, 2004; caption and final instruction amended to be effective .

APPENDIX II. — INTERROGATORY FORMS

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

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

(Caption)

1. …no change.

2. …no change.

3. …no change.

4. …no change.

5. …no change.

6. …no change.

7. …no change.

8. …no change.

9. …no change.

10. …no change.

11. …no change.

12. …no change.

13. …no change.

14. …no change.

15. …no change.

16. …no change.

17. …no change.

18. …no change.

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

(a) …no change.

(b) …no change.

(c) …no change.

(d) …no change.

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

20. …no change.

21. …no change.

CERTIFICATION

…no change.

Note: New form interrogatory adopted June 28, 1996 to be effective September 1, 1996; new introductory paragraph added July 5, 2000 to be effective September 5, 2000; interrogatory 9 and certification amended July 28, 2004 to be effective September 1, 2004; new paragraph 19. (e) added to be effective .

U. Proposed Amendments to Appendix XI-M ─ Notice of Motion Enforcing Litigant's Rights; and Appendix XI-O ─ Order to Enforce Litigant's Rights

A practitioner reported to the Committee that judges were changing the mandatory "shall" to the permissive "may" with respect to the issuance of an arrest warrant in the Order in Aid of Litigant's Rights in Appendix XI─O. This appeared to violate *R*. 6:7-2(f) which mandates that the Order be in the form set forth in the Appendix. *Rule* 4:59-1(e) states, however, that "[t]he court may make any appropriate order in aid of execution," appearing to give judges discretion to change the form orders in the Appendix. It was the consensus of the Committee that "may" is more appropriate than "shall," as there were situations in which mandatory issuance of an arrest warrant would be inappropriate, such as if the defendant were in the hospital and unable to comply with the discovery request. Accordingly, the Committee voted overwhelmingly in favor of changing the language of the Order in Appendix XI-O and also in the Notice of Motion for Order Enforcing Litigant's Rights in Appendix XI-M. Proposed changes were drafted and endorsed and forwarded to the Special Civil Part (SCP) Practice Committee for its review.

In considering the Civil Practice Committee's recommendations, the SCP Practice Committee recognized that although there may be times when substitution of the word "may" for "shall" is appropriate, a change in the verbiage for every case would weaken the court's position that answers to the Information Subpoena must be provided and would result in inconsistent practices from county to county. It was pointed out that a battery of protections for the judgment-debtor were built into the process so that by the time the arrest warrant is actually issued it is the last resort to force compliance with the information subpoena and the court's order to enforce it. These protections include:

- A statement in the required form of the Information Subpoena itself (Appendix XI-L) warning the judgment-debtor that failure to comply with it "may result in your arrest and incarceration."

- A requirement in *R*. 6:7-2 that the Information Subpoena be served personally or simultaneously by regular and certified mail return-receipt requested.

- Requirements in *R*. 6:7-2(e) that the notice of motion to enforce litigant's rights (a) be in the form set forth in Appendix XI-M, (b) warn the debtor that s/he may be arrested and held until s/he has complied with the Information Subpoena, (c) state that a court appearance can be avoided by compliance with the Information Subpoena and (d) be served either personally or simultaneously by regular and certified mail return-receipt-requested.

- Requirements in *R*. 6:7-2 that the order to enforce litigant's rights be in the form set forth in Appendix XI-O, be served personally or simultaneously by regular and certified mail return-receipt-requested and warn the debtor that upon failure to comply with the Information Subpoena within 10 days, "the court will issue an arrest warrant."

- Requirements in *R*. 6:7-2(g) that in order to get an arrest warrant, the judgment-creditor must certify that the debtor has not complied with the order to enforce litigant's rights, that the warrant be executed only between the hours of 7:30 and 3:00 p.m. on a day when court is in session, that if the debtor was served with the notice of motion and order by mail the warrant must be executed only at the address to which they were sent and that the debtor be brought before a judge forthwith and released immediately upon the completion of the Information Subpoena. The SCP Practice Committee voted overwhelmingly <u>not</u> to support the Civil Practice Committee's recommendations and to leave the forms as currently constituted.

The Committee discussed this issue at length. The judges on the Committee were unanimously in favor of the change to the permissive "may." Several judges indicated that they routinely change the "shall" to "may" in an exercise of their discretion under *R*. 1:1-2. The judges felt that use of the mandatory "shall" was a clear impingement on their judicial discretion. Practitioners noted that not every post-judgment effort to collect a debt begins with the Information Subpoena. Some creditors already have information about bank accounts and go

right for the bank levy. In so doing, many of the protections cited by the SCP Practice Committee would not come into play. The Committee members, with few exceptions, agreed to reaffirm their recommendation to change the language from mandatory to permissive in both appendices.

The proposed recommendations to Appendices XI-M and XI-O follow.

Appendix XI-M

NOTICE OF MOTION FOR ORDER ENFORCING LITIGANT'S RIGHTS

Name:
Address:

Telephone No.:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SPECIAL CIVIL PART

_____ COUNTY

DOCKET NO _____

Plaintiff,
_____v.
Defendant.

CIVIL ACTION
Notice of Motion for Order Enforcing Litigant's Rights

TO: _____. Defendant

PLEASE TAKE NOTICE that on _____. 19___ at _____ __.m, I will apply to the above-named court, located at _____, New Jersey, for and Order:

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

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

(3) Directing that, if you fail to appear in court on the date written above, you [shall] may be arrested by an Officer of the Special Civil Part or the Sheriff and confined in the county jail until you comply with the (check one) □ order for discovery, □ information subpoena;

(4) Directing that, if you fail to appear in court on the date written above, you [shall] may be held liable to pay the plaintiff's attorney fees in connection with this motion;

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

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

I will rely on the certification attached hereto.

Date:_____

_____
Attorney for Plaintiff or Plaintiff, Pro Se

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

APPENDIX XI-O

ORDER TO ENFORCE LITIGANT'S RIGHTS

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN YOUR ARREST
Name: _____

Address: _____
Telephone No. _____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART

County
Docket No. _____

_____, Plaintiff

v.

CIVIL ACTION
ORDER TO ENFORCE LITIGANT'S RIGHTS

_____, Defendant

This matter being opened to the court by _____ on plaintiff's motion for an order enforcing litigant's rights and the defendant having failed to appear on the return date and having failed to comply with the (check one) G order for discovery previously entered in this case, G information subpoena;

It is on the _____ day of _____, 20_____, ORDERED and adjudged:

1. Defendant _____ has violated plaintiff's rights as a litigant;

2. Defendant _____ shall immediately furnish answers as required by the (check one) G order for discovery, G information subpoena;

3. If defendant _____ fails to comply with the (check one) G order for discovery, G information subpoena within ten (10) days of the certified date of personal service or mailing of this order, a warrant for the defendant's arrest [shall] may issue out of this Court without further notice;

4. Defendant shall pay plaintiff's attorney fees in connection with this motion, in the amount of $ _____.

_____, J.S.C.

PROOF OF SERVICE

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

_____

_____

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

Date: _____

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

V. Housekeeping Amendments

R. 4:4-4 — to correct an incorrect citation to the rule referencing the affidavit of diligent inquiry.

R. 4:4-5 — to correct the internal numbering of the subsections of the rule.

R. 4:6-2 — to clarify that some defenses must first be asserted in an answer before they can be raised in a motion.

R. 4:64-1(f) — to clarify that the notice to parties must be in the form of a notice of motion.

Appendix XII-D — Writ of Execution — to replace outdated references to "CR" with current court rule citations.

Rules 4:21A-4(f), 4:23-5(a)(1), 4:23-5(a)(3), 4:32-2(h), 4:42-9(a)(5), 4:42-9(a)(8) and 4:42-11(a) to replace the terms "counsel fees" with "attorney's fees" for clarity and uniformity and to mirror the federal rules, as recommended by the Sanctions Subcommittee.

The proposed amendments to *Rules* 4:4-4, 4:4-5, 4:6-2, 4:64-1(f) and Appendix XII-D, and to *Rules* 4:21A-4(f), 4:23-5(a)(1), 4:23-5(a)(3), 4:32-2(h), 4:42-9(a)(5), 4:42-9(a)(8), and 4:42-11(a) follow.

4:4-4. Summons; Personal Service; *In Personam* Jurisdiction

Service of summons, writs and complaints shall be made as follows:

(a) …no change.

(b) Obtaining *In Personam* Jurisdiction by Substituted or Constructive Service.

(1) By Mail or Personal Service Outside the State. If it appears by affidavit satisfying the requirements of *R*. 4:4-5[(c)(2)](b) that despite diligent effort and inquiry personal service cannot be made in accordance with paragraph (a) of this rule, then, consistent with due process of law, *in personam* jurisdiction may be obtained over any defendant as follows:

(A) …no change.

(B) …no change.

(C) …no change.

(2) … no change.

(3) …no change.

(c) …no change.

Note: Source — *R.R*. 4:4-4. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended July 14, 1972 to be effective September 5, 1972; paragraph (f) amended July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a), (f) and (g) amended November 5, 1986 to be effective January 1, 1987; paragraph (i) amended November 2, 1987 to be effective January 1, 1988; paragraph (e) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; text deleted and new text substituted July 13, 1994 to be effective September 1, 1994; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a)(3), (b)(1)(A), (b)(1)(C), and (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 9, 2008 to be effective September 1, 2008; paragraph (b)(1) amended to be effective .

4:4-5. Summons; Service on Absent Defendants; *In Rem* or Quasi *In Rem* Jurisdiction

(a) Methods of Obtaining *In Rem* Jurisdiction. Whenever, in actions affecting specific property, or any interest therein, or any res within the jurisdiction of the court, or in matrimonial actions over which the court has jurisdiction, wherein it shall appear by affidavit of the plaintiff's attorney or other person having knowledge of the facts, that a defendant cannot, after diligent inquiry as required by this rule, be served within the State, service may, consistent with due process of law, be made by any of the following four methods:

[(a)](1) personal service outside this State as prescribed by *R*. 4:4-4(b)(1)(A) and (B); or

[(b)](2) service by mail as prescribed by *R*. 4:4-4(b)(1)(C); or

[(c)](3) by publication of a notice to absent defendants once in a newspaper published or of general circulation in the county in which the venue is laid; and also by mailing, within 7 days after publication, a copy of the notice as herein provided and the complaint to the defendant, prepaid, to the defendant's residence or the place where the defendant usually receives mail, unless it shall appear by affidavit that such residence or place is unknown, and cannot be ascertained after inquiry as herein provided or unless the defendants are proceeded against as unknown owners or claimants pursuant to *R*. 4:26-5(c). If defendants are proceeded against pursuant to *R*. 4:26-5(c), a copy of the notice shall be posted upon the lands affected by the action within 7 days after publication. The notice of publication to absent defendants required by this rule shall be in the form of a summons, without a caption. The top of the notice shall include the docket number of the action, the court, and county of venue. The notice shall state briefly:

[(1)](A) the object of the action the name of the plaintiff and defendant followed by *et al*., if there are additional parties, the name of the person or persons to whom the notice is addressed, and the basis for joining such person as a defendant; and

[(2)](B) if the action concerns real estate, the municipality in which the property is located, its street address, if improved, or the street on which it is located, if unimproved, and its tax map lot and block numbers; and

[(3)](C) if the action is to foreclose a mortgage, tax sale certificate, or lien of a condominium or homeowners association, the parties to the instrument and the date thereof, and the recording date and book and page of a recorded instrument; and

[(4)](D) the information required by *R.* 4:4-2 regarding the availability of Legal Services and Lawyer Referral Services together with telephone numbers of the pertinent offices in the vicinage in which the action is pending or the property is located; or

[(d)](4) as may be provided by court order.

(b) Contents of Affidavit of Inquiry. The inquiry required by this rule shall be made by the plaintiff, plaintiff's attorney actually entrusted with the conduct of the action, or by the agent of the attorney; it shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the defendant's residence or address or the matter inquired of; the inquiry shall be undertaken in person or by letter enclosing sufficient postage for the return of an answer; and the inquirer shall state that an action has been or is about to be commenced against the person inquired for, and that the object of the inquiry is to give notice of the action in order that the person may appear and defend it. The affidavit of inquiry shall be made by the inquirer fully specifying the inquiry made, of what persons and in what manner, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

Note: Source — *R.R.* 4:4-5(a)(b)(c)(d), 4:30-4(b) (second sentence). Paragraph (c) amended July 7, 1971 to be effective September 13, 1971; paragraph (c) amended July 14, 1972

to be effective September 5, 1972; amended July 24, 1978 to be effective September 11, 1978; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) (b) (c) (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; introductory paragraph amended, paragraph (c) amended, and portion of paragraph (c) relocated as closing paragraph of rule July 9, 2008 to be effective September 1, 2008; text reorganized and new captions given to be effective _____.

4:6-2. How Presented

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

Note: Source — *R.R.* 4:12-2 (first, second and fourth sentences); amended _____ to be effective _____.

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

(a) …no change.

(b) …no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) Tax Sale Foreclosure; Strict Mortgage Foreclosures. If an action to foreclose or reforeclose a tax sale certificate in personam or to strictly foreclose a mortgage where provided by law is uncontested as defined by paragraph (c), the court, subject to paragraph (h) of this rule, shall enter an order fixing the amount, time and place for redemption upon proof establishing the amount due. The order of redemption in tax foreclosure actions shall conform to the requirements of *N.J.S.A*. 54:5-98 and *R*. 4:64-6(b). The order for redemption or notice of the terms thereof shall be served by ordinary mail on each defendant whose address is known at least 10 days prior to the date fixed for redemption. Notice of the entry of the order of redemption, directed to each defendant whose address is unknown, shall be published in accordance with *R*. 4:4-5(c) at least 10 days prior to the redemption date and, in the case of an unknown owner in a tax foreclosure action joined pursuant to *R*. 4:26-5, a copy of the order or notice shall be posted on the subject premises at least 20 days prior to the redemption date in accordance with *N.J.S.A*. 54:5-90. The court, on notice of motion to all appearing parties including parties whose answers have been stricken, may enter final judgment upon proof of service of the order of redemption as herein required and the filing by plaintiff of an affidavit of non-redemption. The Office of Foreclosure may, pursuant to *R* 1:34-6, recommend the entry of both the order for redemption and final judgment.

(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; paragraph (f) amended to be effective .

Appendix XII-D

Attorney for Plaintiff

_____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

_____ **COUNTY**

_____ Plaintiff

DOCKET NO: _____

Vs

WRIT OF EXECUTION

_____ Defendant

THE STATE OF NEW JERSEY

TO THE SHERIFF OF _____

WHEREAS, on the _____ day of _____ judgment was recovered by Plaintiff, _____ in an action in the Superior Court of New Jersey, Law Division, _____ County, against Defendant, for damages of $ _____ and costs of $ _____ ; and

WHEREAS, on _____ , the judgment was entered in the civil docket of the Clerk of the Superior Court, and there remains due thereon $_____.

THEREFORE, WE COMMAND YOU that you satisfy the said Judgment out of the personal property of the said Judgment debtor within your County; and if sufficient personal property cannot be found then out of the real property in your County belonging to the judgment debtor(s) at the time when the judgment was entered or docketed in the office of the Clerk of this Court or at any time thereafter, in whosesoever hands the same may be, and you pay the said monies realized by you from such property to _____, Esq., attorney in this action; and that within twenty-four months after the date of its issuance you return this execution and your proceedings thereon to the Clerk of the Superior Court of New Jersey at Trenton.

WE FURTHER COMMAND YOU, that in case of a sale, you make your return of this Writ with your proceedings thereon before this Court and you pay to the Clerk thereof any surplus in your hands within thirty days after the sale.

WITNESS, HONORABLE _____ a Judge of the Superior Court, at _____ this _____ day of _____ , 20___.

_____,CLERK

ENDORSEMENT

Judgment Amount*:	$_____
Additional Costs:	$_____
Interest thereon:	$_____
Credits:	$_____
Sheriff's Fees:	$_____
Sheriff's Commissions:	$_____
TOTAL	$_____

*"Judgment Amount" includes amount of verdict or settlement, plus pre-judgment court costs, plus any applicable statutory attorney's fee.

Post Judgment Interest applied pursuant to *R* 4:42-11 has been calculated as **simple interest**. As required by *R* 4:59-1, attached is the method by which interest has been calculated, taking into account all partial payments made by the defendant.

_____
Attorney for Plaintiff

Dated: _____ , 200__

Note: Form adopted as Appendix XII-D July 27, 2006 to be effective September 1, 2006; amended September 11, 2006 to be effective immediately; amended July 9, 2008 to be effective September 1, 2008; amended _____ to be effective _____.

4:21A-4 Conduct of Hearing

(a) ...no change.

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) ...no change.

(f) Failure to Appear. An appearance on behalf of each party is required at the arbitration hearing. If the party claiming damages does not appear, that party's pleading shall be dismissed. If a party defending against a claim of damages does not appear, that party's pleading shall be stricken, the arbitration shall proceed and the non-appearing party shall be deemed to have waived the right to demand a trial de novo. Relief from any order entered pursuant to this rule shall be granted only on motion showing good cause and on such terms as the court may deem appropriate, including litigation expenses and [counsel] attorney's fees incurred for services directly related to the non-appearance.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (b) amended, and new paragraph (f) adopted July 5, 2000 to be effective September 5, 2000; paragraph (f) amended to be effective .

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 [counsel] attorney's fees and costs, or both, as a condition of restoration.

(2) …no change.

(3) General Requirements. All motions made pursuant to this rule shall be accompanied by an appropriate form of order. All affidavits in support of relief under paragraph (a)(1) shall include a representation of prior consultation with or notice to opposing counsel or pro se party as required by *R*. 1:6-2(c). If the attorney for the delinquent party fails to timely serve the client with the original order of dismissal or suppression without prejudice, fails to file and serve the affidavit and the notifications required by this rule, or fails to appear on the return date of the motion to dismiss or suppress with prejudice, the court shall, unless exceptional circumstances are demonstrated, proceed by order to show cause or take such other appropriate action as may be necessary to obtain compliance with the requirements of this rule. If the court is required to take action to ensure compliance or the motion for dismissal or suppression with prejudice is denied because of extraordinary circumstances, the court may order sanctions or [counsel] attorney's fees and costs, or both. An order of dismissal or suppression shall be entered only in favor of the moving party.

(b) …no change.

(c) …no change.

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; paragraphs (a)(1) and (3) amended to be effective .

4:32-2 Determining by Order Whether to Certify a Class Action; Appointing Class Counsel; Notice and Membership in the Class; Multiple Classes and Subclasses

(a) …no change.

(b) …no change.

(c) …no change.

(d) …no change.

(f) …no change.

(g) …no change.

(h) [Counsel] Attorney's Fees and Litigation Expenses. In an action certified as a class action, an application for the award of [counsel] attorney's fees and litigation expenses, if fees and costs are authorized by law, rule, or the parties' agreement, shall be made in accordance with *R*. 4:42-9. Notice of the motion shall be served on all parties. A motion by class counsel shall be directed to class members in a reasonable manner. A party from whom payment is sought as well as any class member may object to the motion.

Note: Effective September 8, 1969; paragraphs (b) and (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; caption amended, paragraphs (a) and (d) caption and text amended, paragraph (b) amended, former R. 4:32-4 deleted and readopted as amended as new paragraph (e), former R. 4:32-3 deleted and adopted as reformatted as new paragraph (f), and new paragraphs (g) and (h) adopted July 27, 2006 to be effective September 1, 2006, paragraph (a) amended October 9, 2007, to be effective immediately; paragraph (e)(4) amended July 9, 2008 to be effective September 1, 2008; paragraph (h) amended to be effective .

4:42-9 [Counsel] Attorney's Fees

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

(1) …no change.

(2) …no change.

(3) …no change.

(4) …no change.

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

(6) …no change.

(7) …no change.

(8) In all cases where [counsel] attorney's fees are permitted by statute.

(9) In a SLAPP suit (strategic litigation against public participation) which terminates in favor of the defendant on the ground that the activity complained of is protected by the free speech clause or the right to petition clause of the First Amendment of the Constitution.

(b) …no change.

(c) …no change.

(d) …no change.

Note: Source — *R.R.* 4:55-7(a) (b) (c) (d) (e) (f), 4:55-8, 4:98-4(c). Paragraphs (a) and (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a)(1) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a)(1) and (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended January 19, 1989 to be effective February 1, 1989; paragraph (a)(4) amended June 29, 1990 to be effective September 4, 1990; paragraph (a)(5) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1), (2) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(5) amended June 28, 1996 to be effective September 1, 1996; paragraph (a)(1) amended January 21, 1999 to be effective April 5, 1999; paragraph (a)(5) amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(3) amended July 27, 2006 to be effective September 1, 2006; paragraphs (a)(5) and (8) amended, and new paragraph (a)(9) added to be effective .

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 [counsel] attorney's fees shall bear simple interest as follows:

(i) …no change.

(ii) …no change.

(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 to be effective .

II. RULE AMENDMENTS CONSIDERED AND REJECTED

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

An attorney noted that judges often add clauses or otherwise change the language of proposed forms of order submitted with an uncontested motion. He suggested that language be added to *R*. 1:6-2 to prohibit judges from adding additional relief to the order either absent extraordinary circumstances or on notice to the parties that additional relief is being contemplated, thereby providing the non-moving party an opportunity to oppose the motion and/or to be heard at oral argument. The Committee acknowledged that, while many of the additions or alterations to a proposed form of order are innocuous, the non-moving party nonetheless might object to the terms of an order as changed by the court. The members agreed that if such an amendment were to be proposed, it should be limited to substantive changes to the proposed form of order. In further discussions, however, the Committee recognized that the problem of a changed form of order occurs almost exclusively in discovery motions, suggesting that the issue is idiosyncratic rather than systemic, and concluded that a rule amendment was not the most appropriate way to address the issue.

See Section IV.B. of this Report for a discussion of the Committee's alternate recommendation.

See Section I.B. of this Report for proposed amendments to *R*. 1:6-2 that the Committee recommends.

B. Proposed Amendments to *R*. 1:11-2 ─ Withdrawal or Substitution

A practitioner requested that *R*. 1:11-2(a) be amended to eliminate the requirement of filing a substitution of attorney for post-judgment applications that are handled by an attorney other than the one who handled the matter to judgment. He noted that parties often change attorneys subsequent to final judgment for purposes of post-judgment applications or responses, especially in family matters and probate situations. He suggested that a new subsection be added to the rule eliminating the requirement of filing a substitution of attorney after the time for filing an appeal from the final judgment had passed or a post-judgment order in the matter had expired. The Committee declined to endorse this proposal, noting that the automated docketing system could not enter the name of the new attorney without a filed substitution and that the rule as currently constituted does not impose an onerous obligation on attorneys by requiring the filing of a substitution.

C. Proposed Amendments to *Rules* 2:2-3 and 2:2-4 — re: Interlocutory Appeals

A practitioner requested that *R*. 2:2-3 be amended to add a standard for granting leave to appeal from an interlocutory order in order to provide uniformity and guard against decisions that cause the parties to incur increased costs and waste of judicial resources as a result of duplicative and unnecessary trials. He suggested that language be added to permit appeals "from interlocutory orders or judgments of the Superior Court trial divisions where decision on an issue presented may substantially assist in the processing or termination of the case." He further suggested that the language of *R*. 2:2-4 be incorporated into *R*. 2:2-3. This matter was referred to the Appellate Division Rules Committee (ADRC) which concluded that there was no need to deviate from the long standing "interests of justice" standard of review, especially since that standard has been interpreted in a substantial body of case law. The Committee endorsed the position of the ADRC. No amendments to *Rules* 2:2-3 and 2:2-4 are recommended.

See Section I.F. of this report for proposed amendments to *R*. 2:2-3 that the Committee recommends.

D. Proposed Amendments to *R*. 2:6-2 — Contents of Appellant's Brief

In footnote 7 of *Grow Company, Inc v. Chokshi*, 403 *N.J. Super*. 443, 463(App. Div. 2008), the Appellate Division asked the Civil Practice Committee to consider a mechanism by which attorneys would be obligated to bring to the appellate court's attention any questions or uncertainties about its jurisdiction over a matter currently on appeal. In the *Chokshi* case, the trial judge had granted partial summary judgment to the defendants and held that the defendant was entitled to attorney's fees. He did not quantify the amount due, however, and dismissed the claim without prejudice to its being renewed at a subsequent proceeding. Both parties appealed. The Appellate Division concluded that the disposition of the claim for attorney's fees was an interlocutory, not final, order and commented that the circumstances of the case should have been brought to its attention. In the footnote, the court notes that as officers of the court attorneys are obligated to inform the court of any jurisdictional irregularities and suggests that it might be beneficial to amend the rules to require litigants to provide a statement of appellate jurisdiction, mirroring the provisions of the Federal Rules of Appellate Procedure, *R*. 2:8(a)(4). This issue was referred to the Appellate Division Rules Committee (ADRC). The ADRC expressed its ongoing concern with litigants' attempts to pursue appeals from orders which are not final without seeking leave. It concluded, however, that this issue was being adequately addressed by the revised Appellate Division Case Information Statement and by the internal review procedures by the Appellate Division clerk's office. The Committee agreed with the ADRC's position and, accordingly, does not recommend an amendment to *R*. 2:6-2.

E. Proposed Amendments to *R*. 2:9-6 — Supersedeas Bond; Exceptions

The Committee was presented with several issues regarding supersedeas bonds:

1. An attorney posed two questions on the rules governing supersedeas bonds. First, he asked if *R*. 2:9-6 should be amended to state the purpose of a supersedeas bond, *i.e*. to stay proceedings during the pendency of an appeal. He asserted that clarification is needed to explain that the stay, especially of collection processes, is to protect judgment-creditors from situations in which, during the period of appellate review, a judgment-debtor may transfer assets or grant a security interest in its assets or in which another of the judgment-debtor's creditors secures an attachment, execution, or judgment lien on the judgment-debtor's property that outranks that of the judgment-creditor. The Committee considered this proposition, but determined it to be unnecessary. The Committee looked to *R*. 2:9-5 which states clearly that a supersedeas bond, pursuant to *R*. 2:9-6, acts to stay the judgment or order in a civil action adjudicating liability for a specified sum of money during appeal proceedings. Accordingly, it found there was no need to further amend *R*. 2:9-6 to include this provision.

The attorney's second question was whether the requirement of *R*. 2:9-6 to condition the supersedeas bond on satisfaction of the judgment in full, including post-judgment interest, is too harsh, possibly forestalling some legitimate appeals because the cash amount or surety bond premium is too costly. He suggested that some flexibility should be built into the supersedeas bond amounts. In considering this suggestion, the Committee noted that the rule already provides the court with discretion to fix the amount of the bond after notice on good cause

shown. Furthermore, an appellant always has the option to move to be relieved from the full amount of the bond. The Committee concluded that there was sufficient discretion built into the current rule to allow for flexibility in the fixing of the amount of the bond. The Committee took the position that a plaintiff clearly is entitled to have the judgment protected during the appeal process by the posting of a supersedeas bond, but concluded that the rule, as currently constituted, is sufficiently clear and contains adequate protections. Accordingly, no amendment is recommend.

2. The Committee was asked to review proposed bill S-2116 and provide comments on an expedited basis. S-2116 was designed to limit the amount of an appeal bond in civil actions. The Committee members expressed concern that the proposed legislation intruded on the exclusive rule-making authority of the Court to dictate its practices and procedures, in violation of *Winberry v. Salisbury*, 5 *N.J*. 240, 255 (1950), *cert. denied* 340 *U.S*. 877(1950). The Committee further noted that such a cap is unnecessary as the court rules already give a judge the discretion to fix the amount of the supersedeas bond.

Subsequent to the Committee's stated opposition to the proposed legislation, Judge Grant, Acting Director of the AOC, requested the Committee to revisit a proposal to amend *R*. 2:9-6 in order to provide more guidance as to when and how the judge's discretion might be applied in setting a bond amount and also to specify what forms of security may be presented to protect the interests of the judgment creditor during appeal. Illinois has a court rule embodying these concepts. Judge Grant asked the Committee to consider amending *R*. 2:9-6 to

incorporate some of the provisions of the Illinois rule. The Committee discussed this issue thoroughly and concluded that because the rule as currently constituted vests sufficient discretion with the court, there is no need to include the issues specifically detailed in the Illinois rule. Recognizing that the intent of a proposed rule amendment was to protect a litigant from having to forego an appeal because of the high cost of the supersedeas bond, the Committee nonetheless took the position that adequate relief is available under the language of the current rule to address issues of acceptable forms and amounts of security. Further, the Committee took the position that it is both unnecessary and unwise to attempt to delineate the judge's discretion with specificity. Additionally, the members agreed that it would be difficult to draft a rule amendment that would address all the situations in which discretion could or should be exercised. It was also noted that the interest in capping the amount of a supersedeas bond was driven by large entities such as the tobacco companies facing large judgments and the Committee was opposed to drafting a court rule in response to verdicts in specific lawsuits. The Committee was unanimous in its opposition to proposing an amendment to *R*. 2:9-6.

See Section IV.D. of this Report for a discussion of the Committee's review of S-2116.

F. Proposed Amendments to *R.* 2:12-10 — Granting or Denial of Certification

In the last rules cycle, the Committee considered a submission from a practitioner questioning why more justices were required to grant a motion for reconsideration of a denial of a petition for certification than were required to grant the petition in the first place. He pointed out that *R.* 2:12-10 allows a petition for certification to be granted on the affirmative vote of three or more justices, whereas *R.* 2:11-6 provides that a majority of the Court must agree to grant a motion for reconsideration of a denial of a petition for certification. The Committee took the position that it is intellectually consistent to require more justices to approve a motion for reconsideration of a denial of a petition for certification than to grant a petition for certification, reasoning that if three justices voted to grant the petition on a motion for reconsideration, those same three justices would have voted to grant the petition in the first place. The Committee also found it logical to require more votes to overturn a matter than to grant it. Accordingly, the Committee declined to amend the rule.

The same practitioner, taking exception to the Committee's decision not to recommend the proposed amendment and to the reasoning behind that position, requested the Committee to revisit the issue. He suggested that the Committee's statement that the same three judges would have voted to grant the petition in the first place does not take into consideration that a justice may change his or her mind either on further reflection or because the facts and law of the case are cast in a new light. He also objected to the Committee's finding it logical to require more votes to overturn a matter than to grant it. He asserted that the requirement has no basis in logic and lacks consistency. Consequently, he asked the Committee to consider the issue anew.

The Committee revisited the question, acknowledging that there were merits to both sides of the argument. The rule requires only three votes to grant a petition for certification and that is

the only situation in the rules where less than a majority vote is required. A majority is required to deny a motion for reconsideration. The thought was expressed that if three votes were good enough to grant the petition, only three votes should be required to grant the motion for reconsideration. On the other hand, the Committee recognized that motions for reconsideration are generally disapproved of and are to be discouraged. Making it easier for a petitioner to succeed on a second try for certification on a motion for reconsideration does not make sense. The Committee was also of the opinion that lessening the requirement to pursue a motion for reconsideration would encourage petitioners to file a motion automatically if their petitions were denied. In consideration of these points and in deference to the Court's preference for the rule as currently constituted, the Committee reaffirmed its prior decision not to recommend an amendment to *R*. 2:12-10.

G. Proposed Amendments to *Rules* 4:10-3, 4:14-4, 4:22-1, 4:23-1, 4:23-2, 4:23-3, 4:23-4 and 4:37-4 — re: Sanctions

As part of its mandate, the Sanctions Subcommittee reviewed each of the Part IV Rules that provide for attorney's fees or sanctions. *Rules* 4:10-3, 4:14-4, 4:22-1, 4:23-1, 4:23-2, 4:23-3, 4:23-4 and 4:37-4 contain provisions for the award of reasonable expenses to the prevailing party. The subcommittee determined, and the full Committee agreed, that these rules contain adequate provisions for recompense and that no changes are necessary.

H. Proposed Amendments to *R*. 4:12-4 — Disqualification for Interest

An attorney proposed amendments to *R*. 4:12-4 expressly to permit what he characterized as a growing practice among attorneys to record video depositions themselves, *i.e*. without a third-party videographer. He indicated that the presence of a certified court reporter to take the deposition precludes any question of the veracity or accuracy of the video. He further claimed that the use of the video is cost-efficient and simple and any objection to the video can be resolved by motion to edit or bar the video, similar to *de bene esse* testimony on video. The Committee was divided on this issue. Some members felt that requiring a third-party videographer was an antiquated provision that failed to recognize the technological advances made since the rule was adopted. Similarly, members in favor of attorneys' videoing the proceeding cited the cost advantages of doing it in-house. They also claimed that having the transcript made by a certified shorthand reporter is a safeguard against any mischaracterization of the proceeding and that with ten days notice the adversary could produce a videographer of its own as well. On the other side, some members claimed that using in-house videoing presents a greater risk leading to problems and objections as to accuracy and veracity, and saw no reason to change the rule. They suggested that in-house videographers would have a built-in bias and could (even if inadvertently) film in such a way that would adversely prejudice the party being deposed. Further, they noted that the current rule is working well and that there is no need to amend it. Moreover, if it were to be amended, they feared there would be an onslaught of motions on the admissibility, veracity, prejudicial value, etc. of the videotapes. On the question of whether the rule should be amended to permit attorneys to use in-house personnel to videotape, the Committee voted 8 in favor and 13 against. Accordingly, the Committee does not recommend amending *R*. 4:12-4 at this time.

See Section I.K. of this Report for proposed amendments to *R*. 4:12-4 that the Committee recommends.

I. Proposed Amendments to *R.* 4:14-6 — Certification and Filing by Officer; Exhibits; Copies

An attorney requested on behalf of a New Jersey based court reporting service that *R.* 4:14-6(c) be amended to provide that each party pay for its own copy of a deposition transcript. The rule, as currently constituted, states that the party taking the deposition must furnish a copy of the transcript to the witness or adverse party. This provision, as asserted by the attorney, is contrary to the federal rule [*F.R. Civ.P.* 30(f)(3)] and to the rules of other states, which provide that any party ordering a copy of the transcript shall pay for that copy. The attorney cited several reasons why the rule should be amended:

- The rule dates back to 1948 and, while originally proposed to conform to the federal rule, was revised without apparent explanation or rationale for the change.
- There is no good reason to diverge from federal practice; allocation of costs of depositions should not depend upon whether an action was filed at the federal courthouse or the state courthouse.
- Modern litigation with its multiplicity of lengthy depositions can represent a huge expense and a huge burden on the party seeking the discovery.
- New Jersey is in a small minority of states that place the burden on the party taking the deposition.
- The rule is inequitable when one side takes more depositions than the other and superfluous if both sides take approximately the same number of depositions.
- The rule encourages waste because, even if the deposition yields nothing relevant or worthwhile, the adversary is not likely to decline a free copy.
- The rule is not a fair or effective means of controlling litigation cost because the "free" copy is reflected either in direct billing, absorbed by the court reporter, or incorporated in the per page rate that court reporters charge their clients.

The attorney suggested that *R.* 4:14-6(c) be amended to mirror the federal rule, *i.e.* "When paid reasonable charges, the officer must furnish a copy of the transcript or recording to

any party or the deponent." Appended to the letter requesting the change were letters from out-of-state court reporting services submitted in support of the proposed rule amendment.

In discussing this suggestion, the Committee acknowledged that New Jersey's rule differed from the federal rule but expressed concern that the proposed amendment would create an imbalance of power in that a party with deeper pockets could order many depositions thus burdening the poorer party with the financial obligation of obtaining the transcripts at its own expense. The Committee was of the opinion that it was fairer to make the party ordering the depositions pay for them and provide a copy to the adversary at no cost. It was recognized that the court reporters were being paid to provide the adversary's copy and thus were not being adversely affected financially. The Committee further acknowledged that there is a variation in the practice of providing a copy of the transcript of a deposition to the party deposed. Some attorneys provide the copy themselves; others have the transcriber send the copy directly to the individual deposed. In either case, the copy provided to the person deposed is paid for and is thus "provided" by the party requesting the deposition. As long as the transcriber is being paid for the copies it provides by the party taking the deposition and the deposed party is being provided with a copy of the transcript at no expense to him/her, the rule is being complied with. Practitioners on the Committee saw no reason to change the current practice, which is working well. On the question of whether the rule should be changed to mirror the federal rule, the Committee voted overwhelmingly in favor of keeping the rule as is.

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

Two issues were considered:

1. The Sanctions Subcommittee recommended that *R*. 4:23-5 be amended to require the payment of reasonable expenses, including attorney's fees, to compensate the party who engages in motion practice to obtain discovery to which it is entitled under the rules, even if the sought-after discovery is provided before the date on which opposition to the motion is due. The subcommittee reasoned that non-compliance with the rules to the point where the adversary is compelled to make a motion increases the cost of litigation both in time and money. As a precondition to filing a motion, a party must make a good-faith effort to resolve the dispute. Often, *R*. 4:23-5(a)(1) motions are unopposed and a pleading is dismissed or stricken without prejudice. Frequently, a delinquent party responds to the motion by serving the requested discovery a day before the return date of the motion. Then, before the requesting party has the opportunity to determine whether the discovery produced is fully responsive, the producing party seeks to have the motion withdrawn or denied, based on the fact that the discovery request has (finally) been complied with. The moving party has incurred additional expense and fees on the motion. The subcommittee was of the opinion that it was better practice to award reasonable expenses, including fees, to the moving party when discovery is provided after the motion has been filed.

The Committee rejected this recommendation, adopting the reasoning of a minority of the subcommittee, namely, that *R*. 4:23-5 motions are a routine part of litigation practice and to shift the expenses and fees of such motions is not fair or

practical. There was concern that a single practitioner with a lower hourly rate than a lawyer with a large firm may be forced to pay the expenses of a large firm if the larger firm files a discovery motion. Furthermore, it was noted that the proposed amendments would be likely to decrease civility among practitioners and increase judicial workload on non-substantive matters, while not improving the practice of law to any significant degree.

2. A Committee member suggested that *R*. 4:23-5(a)(2) be amended to provide that a plaintiff be permitted to enter default judgment at the same time the motion to strike an answer is filed, similar to the procedure wherein a complaint is dismissed with prejudice for failure to answer interrogatories and the entry of the order granting the motion ends the case. Such an amendment would avoid the necessity of having to file additional motion or other papers to enter default judgment, but would be limited to cases where the sum due and owing is liquidated. The Committee rejected this proposal, explaining that a motion to strike an answer is the first step in obtaining a default judgment. Pursuant to *R*. 4:43-1, if an answer is stricken with prejudice, the clerk shall enter a default against the delinquent party. A final judgment by default cannot be entered simultaneously, *R*. 4:43-2. The Committee recognized that the existing court rules have contemplated the situation where an answer is stricken and have provided the process whereby a final judgment may be entered. Accordingly, the Committee does not endorse the proposal.

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

An attorney proposed that all discovery end dates be consistent with motion days. Such a change, he argued, would benefit both the bar and the Judiciary. He claimed that under his proposal, the longest a discovery end date would be extended would be 13 days, but most extensions would not be more than a day or two. The Committee discussed this issue, noting that the different tracks for discovery may complicate what the attorney characterized as a simple calculation and that if this suggestion were adopted many cases actually be getting longer discovery periods than now provided for. The members agreed that the current system is working well and should not be altered. Accordingly, they rejected the proposal to make all discovery end dates consistent with motion days.

See Section I.N. of this Report for proposed amendments to *R*. 4:24-1 that the Committee recommends.

L. Proposed Amendments to *R*. 4:38-1 — Consolidation

The Conference of Civil Presiding Judges proposed that *R*. 4:38-1 be amended to make it clear that when cases are consolidated, the docket numbers of all the individual cases (not just the one number denoting the consolidation) should appear on all pleadings so that the court can track all the cases. In response, the Committee noted that paragraph (c) requires that, unless otherwise directed in the order for consolidation, all papers filed in the consolidated action shall include the caption and docket number of each separate action, with the earliest instituted action to be listed first. Accordingly, the Committee determined that no amendment to the rules is needed.

III. MATTERS HELD FOR CONSIDERATION

A. Proposed Amendments to *Rules* 4:74-7 and 4:74-7A — re: Civil Commitments

The Public Advocate had asked for an in-depth review and revision of the existing court rules governing the commitment of adults and children and for the development of rules governing the commitment of individuals designated as sexually violent predators. He noted that the rules have not been revised comprehensively since 1988 and that there have been case law and statutory developments since that time that should be incorporated into the court rules. He also suggested certain procedural issues that should be addressed, such as the procedures for review hearings for patients on Conditional Extension Pending Placement (CEPP). A subcommittee, chaired by Judge Allison Accurso, was established in March 2009. It is composed of Committee members and representatives from the Office of the Public Advocate, the County Adjusters, the Division of Mental Health, the Office of the Attorney General, the Division of Criminal Justice and other interested parties. The subcommittee met and began to address the issues raised by the Public Advocate.

Two events subsequently occurred that have caused the subcommittee to pause in its deliberations. The first is the signing of a settlement agreement between Disability Rights of New Jersey, Inc. (formerly, New Jersey Protection and Advocacy, Inc.) and Jennifer Velez, Commissioner of the Department of Human Services. The settlement agreement aims to ensure that individuals who are on CEPP status will be placed in the community within a defined time period. The goal is that, at the end of five years, 93% of the individuals placed on CEPP will be in that status for four months or less. The settlement was designed with the current court rule, *R*. 4:74-7, in place. The consensus was that there is no need to recommend rule changes to

incorporate the terms of the settlement agreement, although the hope is that with the changes to CEPP status, the time values in the court rule will become meaningless.

The second event was the signing into law of S-735, now P.L. 2009, c. 112, creating a new commitment status, namely, involuntary commitment to outpatient treatment. This law will go into effect incrementally, with seven as yet unidentified counties piloting the new, as yet undeveloped procedures, in August 2010. The legislation does not contemplate any changes to the hearing process, but substantial changes to the regulations, especially those dealing with the screening centers, will have to be made. These will, of necessity, affect the judicial hearing process. The Division of Mental Health is responsible for drafting regulations to implement the new law. The subcommittee determined that there is nothing in the legislation that would necessitate an immediate rule change and recognized that the process of drafting and adopting new regulations must precede any rule changes. Accordingly, it was agreed that no amendments to *R*. 4:74-7 should be proposed during this rules cycle. Instead, the matter should be carried forward and, if necessary, any future proposed rule amendments could be presented to the Supreme Court out-of-cycle.

The subcommittee will continue to work on a recommendation regarding rules governing the commitment of Sexually Violent Predators, as neither the settlement agreement nor the new legislation affects this issue. The subcommittee will also address the question of whether the electronic transfer of commitment papers to a judge should be permitted in lieu of the current requirement of *R*. 4:74-7 that originals of the application and clinical certificates be filed with the court.

IV. MISCELLANEOUS MATTERS

A. Proposed Amendments to *R.* 1:1-2 — Construction and Relaxation

In the last rules cycle, the Committee proposed amendments to Part I, Part II and Part IV rules to take into account the existence of civil unions and domestic partnerships. The Committee recommended use of the term "statutory union" to reflect those two statutorily authorized relationships and "statutory partner" to refer to an individual in such a relationship. The Committee intended that these terms would be used in conjunction with the words "marriage" and "spouse" when those words appear in the rules. The Professional Responsibility Rules Committee made a similar recommendation in its report for amendments to RPC 1.8.

The Supreme Court in discussing the proposed amendments considered whether it might be preferable to have one definitional rule in Part I of the Rules, rather than having to amend every rule that uses the terms "marriage" or "spouse." The Court determined to defer any action on these particular recommendations until the next rules cycle, since the Family Practice Committee was in the process of amending its rules to address civil unions and domestic partnerships.

In a memo dated 7/15/08, Judge Carchman directed staff to all the rules committees "to advise those committees of the Court's desire to address any and all such amendments to their rules at one time as part of the 2009 rules cycle." Pursuant to that mandate, staff to the various rules committees met and developed a proposed amendment to *R.* 1:1-2 and presented it to their respective rules committees. This Committee endorsed the proposed amendment overwhelmingly. This result was reported to the Family Practice Committee which presented their proposed rule amendment to the Supreme Court. The Court adopted the proposed rule amendment on July 16, 2009 and it became effective September 1, 2009.

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

The Committee had rejected a proposal to amend *R*. 1:6-2 to prohibit judges from amending attorneys' proposed form orders so as to provide additional relief, absent extraordinary circumstances or on notice to the parties that additional relief is being contemplated. The Committee recognized that the problem of a changed form of order occurs almost exclusively in discovery motions, suggesting that the issue is idiosyncratic rather than systemic, and concluded that a rule amendment may not be the most appropriate way to address the issue. Judge Pressler indicated that she would address the issue in her comments to *R*. 1:6-2. The Committee endorsed this approach.

See Section I.B. of this Report for proposed amendments to *R*. 1:6-2 that the Committee recommends.

See Section II.A. of this Report for proposed amendments to *R*. 1:6-2 that the Committee does not recommend.

C. Proposed Amendments to *R.* 7:7-8 — Form of Subpoena

The Municipal Court Practice Committee proposed amendments to *R*. 7:7-8 to provide a degree of uniformity in the process of issuing subpoenas from municipal courts. That Committee asked the Civil Practice Committee to review and comment on the proposed amendments. The Committee recognized that the proposed amendments generally track *R*. 1:9-1 and were a direct consequence of the Court's decision in *State v. Reid*, 389 *N.J. Super*. 563 (App. Div. 207), *aff'd* in part, *modified* in part, 194 *N.J*. 386 (2008). Judge Pressler forwarded the comments of the Committee to the Municipal Court Practice Committee. The proposed amendments were subsequently adopted by the Supreme Court and became effective September 1, 2009.

D. Proposed Legislation — S-2116— Limits Amount of Supersedeas Bond in Civil Actions

At the request of the Administrative Office of the Courts, the Committee reviewed proposed legislation intended to limit the total amount of an appeal bond or other form of security required of all appellants collectively in a civil action to the lesser of the total value of the monetary judgment or $50 million, in addition to trial costs. The bill also provided that it shall not be construed to eliminate the discretion of the court to lower the amount of the appeal bond, after notice and hearing and upon a showing of good cause. Further, the bill also provided that if the judgment creditor proves by a preponderance of the evidence that an appellant is concealing assets or is dissipating or diverting assets outside the ordinary course of business to avoid payment of the judgment, a court may enter orders to protect the respondent and require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment. The Committee members expressed concern that the proposed legislation intruded on the exclusive rule-making authority of the Court to dictate its practices and procedures, in violation of *Winberry v. Salisbury*, 5 *N.J*. 240, 255(1950), *cert. denied* 340 *U.S*. 877(1950). The Committee further noted that such a cap was unnecessary as the court rules already give a judge the discretion to fix the amount of the supersedeas bond. *Rule* 2:9-6, as currently constituted, provides that with few exceptions the amount of the supersedeas bond shall be fixed by the court and shall be presented for approval to the court or agency from which the appeal is taken.

The Committee was unanimous in its strong opposition to this proposed legislation.

See Section II.E. of this Report for proposed amendments to *R*. 2:9-6 regarding supersedeas bonds that the Committee rejected.

Respectfully submitted,

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Hon. Stephen Skillman, P.J.A.D., Vice-Chair
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Dated: January 25, 2010

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2008 – 2010 Rules Cycle Report

of the

New Jersey Supreme Court
Professional Responsibility Rules Committee

December 16, 2009

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INTRODUCTION

The Professional Responsibility Rules Committee (the "PRRC" or the "Committee") recommends the proposed amendments and new rules contained in this report. Part I contains proposed rule amendments. Part II summarizes proposals considered but not recommended for adoption. The Committee's "non-rule recommendations" are contained in Part III. Part IV summarizes recommendations previously presented to the Court during this 2008-2010 rules cycle, and, as applicable, the actions taken thereon by the Court. Part IV also includes technical changes that the Court made to the Rules of Professional Conduct since the Committee's last cycle report.

In the proposed rule amendments, added text is underlined. Deleted text is [bracketed]. Because existing paragraph designations and captions are indicated by underscoring, proposed new paragraph designations and captions are indicated by double underscoring. No change in the text is indicated by ". . . no change."

I. PROPOSED RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. RPC 5.5 – Multijurisdictional Practice Involving Arbitration, Mediation or Other Alternate Dispute Resolution Program

In its 2006-2008 report, the Committee proposed several amendments to the provisions of RPC 5.5 relating to multijurisdictional (cross-border) practice by attorneys licensed to practice in a jurisdiction other than New Jersey. Those proposals remain pending before the Court. In the meantime, the Committee was asked to consider the implications raised by a cross-border attorney's inquiry about representing an existing New Jersey client who was a party to a dispute that arose in New Jersey, in a New Jersey arbitration, mediation or other alternate or complementary dispute resolution program (collectively, ADR).

Under current RPC 5.5(b)(3)(ii), a cross-border attorney may represent a party to a dispute by participating in ADR when the "representation is on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, and the dispute originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice." Thus, the proposed representation by an out-of-state attorney of a New Jersey client in connection with a New Jersey dispute would not be permitted under current RPC 5.5.

In its 2006-2008 report, the Committee proposed a new subparagraph to allow a cross-border attorney to "associate" in a matter with a New Jersey lawyer "who shall be held responsible for the conduct of the out-of-State lawyer in the matter." The proposal does not contain requirements relating to client locale or the place the dispute arose. Thus, if the previously-proposed safe harbor is adopted, a cross-border attorney would be permitted to represent a New Jersey client, who is a party to a dispute that arose in New Jersey, in an ADR process in New Jersey, provided that the cross-border attorney associates with local counsel. In

addition, the attorney must comply with the Rules regarding registration and payment of the attorney assessment, as provided in current RPC 5.5(c)(6) for all forms of cross-border practice.

Another amendment proposed in the 2006-2008 report brings an anomaly to light. To remove obstacles and encourage ADR in New Jersey, the Committee recommended eliminating the registration and assessment requirements for cross-border practice involving ADR under current RPC 5.5(b)(3)(ii). If the Court adopts such an amendment and the previously-proposed safe harbor discussed above, cross-border attorneys may permissibly represent clients in ADR processes in New Jersey without completing a registration statement, paying the assessment, or incurring the expense of associating with local counsel, only if the client is from a jurisdiction in which the attorney in licensed and the dispute originates in or relates to such a jurisdiction – that is, by definition, somewhere other than New Jersey. If, however, the client is from New Jersey or the dispute arose in or relates only to New Jersey, while all other variables remain the same, then the cross-border attorney may engage in the representation only if those additional burdens are satisfied. Stated differently, when a party to a dispute being resolved through a New Jersey ADR process desires representation by a cross-border attorney, the cost of the process will be greater when the client is from New Jersey or the matter concerns a New Jersey dispute.

The Committee recognizes the policy of encouraging ADR, and that imposing additional requirements on cross-border attorneys seeking to engage in ADR processes on behalf of their clients will deter them from selecting New Jersey as their ADR forum. Although the previously proposed new safe harbor would allow cross-border representation in a matter involving a New Jersey client or a dispute that originated in New Jersey, the required prerequisites – association with local counsel, registration, and payment of the annual assessment – may prove to be too cost prohibitive for many clients. In addition, the justification for regulating the practice of law is

more attenuated in the context of ADR than it is in a pure litigation setting. For example, in a private mediation conducted pursuant to a private agreement between private individuals, there is no regulation or oversight by the courts. Even laypersons may assist parties under Section 10 of the Uniform Mediation Act, N.J.S.A. 2A:23C-10.

Commenters previously argued that an attorney's involvement in ADR may not even constitute the "practice of law," such as when they are acting as "neutrals" in a purely private mediation or arbitration. Answering the complicated question of what constitutes the practice of law is beyond the charge of the Committee. It is sufficient to note that the restrictions imposed on cross-border attorneys by RPC 5.5(b) apply, by the terms of the rule, only to the "practice of law in New Jersey." If, as commenters contend, a particular ADR-related activity does not constitute the "practice of law," however that may be defined, then RPC 5.5(b) does not apply to impose any restrictions on that activity.

The Committee proposes a narrow rule expansion to allow a cross-border attorney to provide representation in a New Jersey ADR process without regard to the location of the client or the place the dispute originated, and without requiring the cross-border attorney to register and pay the annual assessment, provided that the attorney: (1) remains subject to the RPCs and the disciplinary authority of the New Jersey Supreme Court, as stated in current RPC 5.5(c)(2); and (2) does not expand the scope of the permitted representation by engaging in conduct for which pro hac vice admission is required. The Committee recommends an amendment to RPC 5.5(b)(3)(ii) that is consistent with ABA Model RPC 5.5(c)(3) (which focuses on the relationship between the representation and the lawyer's practice, not the location of the client or the dispute):

> (ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program[, the representation is on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, and the dispute originates in or is

otherwise related to a jurisdiction in which the lawyer is admitted to practice**] and the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission pursuant to R. 1:21-2 is required**;

That proposed amendment, as it would appear with the other provisions of RPC 5.5, follows below. To illustrate this new proposal, together with the RPC 5.5 amendments previously proposed in the 2006-2008 report that the Court has not acted upon, the following formatting is used: Additional text proposed in the prior report is underscored; new text proposed by this report is further indicated in **bold**. Text previously recommended for deletion is [bracketed], while additional text recommended for deletion in this report is further indicated with **[**bold brackets**]**. Current paragraph designations and captions are underscored, and a previously proposed new paragraph identifier is double underscored. This report does not propose any additional new subparagraph identifiers.

PROPOSED AMENDMENTS TO RPC 5.5 (AS RECOMMENDED IN 2006-2008 REPORT AND 2008-2010 REPORT, COLLECTIVELY)

RPC 5.5. Lawyers not admitted to the bar of this state and the lawful practice of law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) A lawyer not admitted to the Bar of this State who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may engage in the lawful practice of law in New Jersey only if:

(1) the lawyer is admitted to practice pro hac vice pursuant to R. 1:21-2 or is preparing for a proceeding in which the lawyer reasonably expects to be so admitted and is associated in that preparation with a lawyer admitted to practice in this jurisdiction; or

(2) the lawyer is an in-house counsel and complies with R. 1:27-2; or

(3) under any of the following circumstances:

(i) the lawyer engages in the negotiation of the terms of a transaction in furtherance of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice and the transaction originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice;

(ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program**[**, the representation is on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, and the dispute originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice**]** **and the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission pursuant to R. 1:21-2 is required**;

(iii) the lawyer investigates, engages in discovery, interviews witnesses or deposes witnesses in this jurisdiction for a proceeding pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice; [or]

(iv) the lawyer associates in a matter with a lawyer admitted to the Bar of this State who shall be held responsible for the conduct of the out-of-State lawyer in the matter; or

(v) [(iv)] the lawyer practices under circumstances other than (i) through [(iii)] (iv) above, with respect to a matter where the practice activity arises directly out of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice in this jurisdiction is occasional and is undertaken only when the lawyer's disengagement would result in substantial inefficiency, impracticality or detriment to the client.

(c) A lawyer admitted to practice in another jurisdiction who acts in this jurisdiction pursuant to [sub-]paragraph (b) above shall:

(1) be licensed and in good standing in all jurisdictions of admission and not be the subject of any pending disciplinary proceedings, nor a current or pending license suspension or disbarment;

(2) be subject to the Rules of Professional Conduct and the disciplinary authority of the Supreme Court of this jurisdiction;

(3) consent in writing on a form approved by the Supreme Court to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction, except that a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above shall be deemed to have consented to such appointment without completing the form;

(4) not hold himself or herself out as being admitted to practice in this jurisdiction;

(5) maintain a bona fide office in conformance with R. 1:21-1(a), except that, when admitted pro hac vice, the lawyer may maintain the bona fide office within the bona fide law office of the associated New Jersey attorney pursuant to R. 1:21-2(a)(1)(B); and

(6) except for a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above, annually register with the New Jersey Lawyers' Fund for Client Protection and comply [complies] with R. 1:20-1(b) and (c), R. 1:28-2, and R. 1:28B-1(e) during the period of practice.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, former text designated as paragraph (a), and new paragraphs (b) and (c) adopted November 17, 2003 to be effective January 1, 2004; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; subparagraph (b)(3)(iii) amended, former subparagraph (b)(3)(iv) designated as subparagraph (b)(3)(v) and new subparagraph (b)(3)(iv) adopted, and paragraph (c) and subparagraphs (c)(3) and (c)(6) amended to be effective , 2010.

B. Rule 1:20-1, Rule 1:28-2(a), Rule 1:28-3(a), and Rule 1:28B-1(e) – "Rule 1:21-3(c) Attorneys" and Other Non-New Jersey Attorneys

The Court referred to the Committee a question raised by Legal Services of New Jersey: whether an attorney not admitted to the New Jersey bar who is permitted to practice in New Jersey in a limited manner pursuant to Rule 1:21-3(c) (employed or associated with or doing pro bono work for an approved legal services organization) is required to complete New Jersey's annual attorney registration and pay the annual assessment. In response to a simultaneous referral, the Lawyers' Fund for Client Protection (Lawyers' Fund or Fund) submitted a petition for certain amendments to explicitly provide for such registration and payment; to make it clear that claims arising out of the dishonest conduct of Rule 1:21-3(c) attorneys are subject to compensation by the Fund; and to make various housekeeping amendments, discussed below. That petition was also referred to the Committee.

The Committee recommends the Fund's proposed amendments. As the Fund noted, imposing registration and assessment requirements on Rule 1:21-3(c) attorneys is consistent with the current treatment of other non-New Jersey attorneys given limited permission to practice here: those holding limited licenses as in-house counsel pursuant to Rule 1:27-2, those permitted to appear pro hac vice pursuant to Rule 1:21-1, those certified as foreign legal consultants pursuant to Rule 1:21-9, and multi-jurisdictional practitioners under RPC 5.5(b).[1] All such persons are prohibited from holding themselves out as members of the New Jersey bar, yet each must pay the assessment. Also, pro hac vice attorneys, similar to Rule 1:21-3(c) attorneys, must

[1] In its 2006-2008 report, the Committee proposed amendments to RPC 5.5 to eliminate the registration and payment of assessment obligations for two types of multi-jurisdictional attorneys: those engaged in alternative dispute resolution pursuant to RPC 5.5(b)(3)(ii), and those engaged in preparation for non-New Jersey proceedings pursuant to RPC 5.5(b)(3)(iii). Those recommendations remain pending before the Court. In Part I.A., *supra*, the PRRC is recommending additional amendments to RPC 5.5, relating to the permitted scope of practice.

practice under a sponsoring New Jersey attorney, yet they too must pay. The Fund observed that the practice of law in New Jersey is a privilege, and that one of the broad purposes of the annual assessment is to protect law clients. Seen from that perspective, the payment of the annual assessment, regardless of the limited nature of one's practice, is minimally burdensome. With respect to Fund coverage, and the registration and payment of the assessment by Rule 1:21-3(c) attorneys, the proposed amendments affect Rule 1:20-1(b) and (c), Rule 1:28-2(a), Rule 1:28-3(a), and Rule 1:28B-1(e).

The recommended amendments to Rule 1:28-3(a) and Rule 1:28B-1(e) include "housekeeping" aspects. The first would make clear that the Fund has the authority to pay claims arising from the dishonest conduct of all attorneys permitted to practice here – not merely New Jersey attorneys and attorneys appearing pro hac vice, as the current rule provides. That is consistent with the requirement that all of them are required to pay the annual assessment. Similarly, the amendment to Rule 1:28B-1(e) would provide that all attorneys permitted to practice here – not merely admitted attorneys and those appearing pro hac vice – must pay the component of the annual assessment that represents the fee to the Lawyers' Assistance Program. That is consistent with the obligations imposed on such attorneys to pay the other two components of the annual assessment. *See* Rule 1:20-1 (annual fee to Disciplinary Oversight Committee); Rule 1:28-2(a) (annual fee to Lawyers' Fund).

The proposed amendments follow.

1:20-1. Disciplinary Jurisdiction; Annual Fee and Registration

(a) Generally. . . . no change.

(b) Annual Fee. Every attorney admitted to practice law in the State of New Jersey, including all persons holding a plenary license, those admitted pro hac vice in accordance with Rule 1:21-2, those holding a limited license as in-house counsel under Rule 1:27-2, those registered as multijurisdictional practitioners under RPC 5.5(b), [and] those certified as Foreign Legal Consultants under Rule 1:21-9, and those permitted to practice under Rule 1:21-3(c) shall pay annually to the Oversight Committee a sum that shall be determined each year by the Supreme Court. The names of all persons failing to comply with the provisions of this Rule shall be reported to the Supreme Court for inclusion on its Ineligible to Practice Law List.

(c) Annual Registration Statement. To facilitate the collection of the annual fee provided for in paragraph (b), every attorney admitted to practice law in this state, including all persons holding a plenary license, those admitted pro hac vice, those holding a limited license as in-house counsel, those registered as multijurisdictional practitioners, [and] those certified as Foreign Legal Consultants, and those permitted to practice under Rule 1:21-3(c) shall, on or before February 1 of every year, or such other date as the Court may determine, pay the annual fee and file a registration statement with the New Jersey Lawyers' Fund for Client Protection (hereinafter referred to as the Fund). The registration statement shall be in a form prescribed by the Administrative Director of the Courts with the approval of the Supreme Court. As part of the annual registration process, each attorney shall certify compliance with Rule 1:28A. All registration statements shall be filed by the Fund with the Office of Attorney Ethics, which may destroy the registration statements after one year. Each lawyer shall file with the Fund a supplemental statement of any change in the attorney's billing address and shall file with the Office of Attorney Ethics a supplemental statement of any change in the home and primary bona fide law office addresses, as well as the main law office telephone number previously submitted and the financial institution or the account numbers for the primary trust and business accounts, either prior to such change or within thirty days thereafter. All persons first becoming subject to this rule shall file the statement required by this rule prior to or within thirty days of the date of admission.

The information provided on the registration statement shall be confidential except as otherwise directed by the Supreme Court.

(d) Remedies for Failure to Pay or File. . . . no change.

Note: Adopted February 23, 1978, to be effective April 1, 1978. Any matter pending unheard before a County Ethics Committee as of April 1, 1978 shall be transferred, as appropriate, to the District Ethics Committee or the District Fee Arbitration Committee having jurisdiction. Any matter heard or partially heard by a County Ethics Committee by April 1, 1978 shall be concluded by such Ethics Committee and shall be reported on in accordance with these rules; amended July 16, 1981 to be effective September 14, 1981. Caption amended and first two paragraphs amended and redesignated as paragraph (a); new paragraphs (b), (c) and (d) adopted

January 31, 1984 to be effective February 15, 1984; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraph (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended September 15, 1992, to be effective January 1, 1993; caption added to all paragraphs and paragraphs (a), (b), (c), and (d) amended February 8, 1993 to be effective immediately; paragraphs (a), (b) and (c) amended January 31, 1995, to be effective March 1, 1995; paragraph (a) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a), (b), (c) and (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 9, 2008 to be effective September 1, 2008; paragraphs (b) and (c) amended to be effective , 2010.

* * * * *

1:28-2. Payment to the Fund; Enforcement

(a) Generally. . . . no change to first paragraph.

All persons admitted pro hac vice in accordance with Rule 1:21-2, those holding limited licenses as in-house counsel under R. 1:27-2, those registered as multijurisdictional practitioners under RPC 5.5(b), [and] those certified as Foreign Legal Consultants under R. 1:21-9, and those permitted to practice under R. 1:21-3(c) shall also make the same annual payment described above subject to the same late fees and reinstatement from ineligible list fees. However, such persons shall not be entitled to the exemptions provided hereinafter.

For the purpose of annual assessment all members of the Bar, including those admitted pro hac vice, those holding limited licenses as in-house counsel, those registered as multijurisdictional practitioners, [and] those certified as Foreign Legal Consultants, and those permitted to practice under R. 1:21-3(c) shall report changes of address as they occur and thus keep their billing address current with the Fund at all times.

Any member of the Bar who receives a billing notice addressed to another member of the Bar shall either forward the notice to the intended recipient or return it to the Fund.

(b) . . . no change.

(c) . . . no change.

Note: Source-R.R. 1:22A-2; amended July 17, 1975 to be effective September 8, 1975; amended January 31, 1984 to be effective February 15, 1984; amended June 29, 1990 to be effective September 4, 1990; redesignated paragraph (a) amended and paragraph (b) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (b) amended February 8, 1993, to be

effective immediately; paragraph (a) amended and new paragraph (c) added July 28, 2004 to be effective September 1, 2004; paragraph (a) amended to be effective , 2010.

* * * * *

1:28-3. Payment of Claims

(a) Eligible Claims. The Trustees may consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state or an attorney (1) admitted pro hac vice, (2) holding limited license as in-house counsel, (3) registered as multijurisdictional practitioner, (4) certified as a foreign legal consultant or (5) permitted to practice under Rule 1:21-3(c), if the attorney was acting either as an attorney or fiduciary, provided that:

(1) to (5) . . . no change.

(b) to (f) . . . no change.

Note: Source-R.R. 1:22A-3(a) (b) (c) (d) (e) (f). Paragraph (a)(2) amended June 24, 1974 to be effective immediately; paragraph (a) amended and paragraph (a)(5) adopted January 31, 1984 to be effective February 15, 1984; paragraph (a)(1), (2), and (5) amended, former paragraph (a)(4) deleted, paragraph (a)(3) redesignated as paragraph (a)(4), new paragraph (a)(3) adopted; paragraph (b) amended and paragraph (b)(5) adopted June 29, 1990 to be effective September 4, 1990; paragraphs (a) and (a)(1) amended July 14, 1992 to be effective September 1, 1992; introductory paragraph and paragraphs (a)(4) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended to be effective , 2010.

* * * * *

1:28B-1. Board of Trustees; Purpose; Administration; Annual Assessment

(a) . . . no change.

(b) . . . no change.

(c) . . . no change.

(d) . . . no change.

(e) Annual Assessment. Every attorney admitted to practice law in the State of New Jersey, including those holding a plenary license, [and] those admitted pro hac vice in accordance with Rule 1:21-2, those holding a limited license as in-house counsel under Rule 1:27-2, those registered as multijurisdictional practitioners under RPC 5.5(b), those certified as Foreign Legal Consultants under Rule 1:21-9, and those permitted to practice under Rule 1:21-3(c), shall be assessed and shall pay annually to the Lawyers Assistance Program a fee in a sum that shall be determined each year by the Supreme Court. All fees so paid shall be used for the administration of the Lawyers Assistance Program. This assessment shall be collected administratively in the same manner as and subject to the same exemptions as provided under Rule 1:28-2, except that no such fee shall be assessed to attorneys during the first calendar year of their admission. The fee shall be assessed to all attorneys in their second through forty-ninth calendar year of admission. The names of any and all attorneys failing to comply with the provisions of this rule shall be reported to the Supreme Court for inclusion on its Ineligible to Practice Law List. Any attorney who fails to pay the annual assessment for seven consecutive years shall be subject to the license revocation procedures contained in Rule 1:28-2(c).

Note: Adopted July 15, 1999, to be effective September 1, 1999; caption amended and new paragraph (e) added July 12, 2002 to be effective September 3, 2002; paragraph (b) amended February 4, 2003 to be effective immediately; paragraph (e) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended December 5, 2006 to be effective immediately; paragraph (e) amended November 27, 2007 to be effective immediately; paragraph (e) amended _____ to be effective _____, 2010.

II. PROPOSED RULE AMENDMENTS CONSIDERED BUT NOT RECOMMENDED

A. Request for Technical Amendments to Rules 1:20-1(b) & (c) and 1:28-2(a) Regarding Collection and Due Date for Payment of Annual Attorney Assessment

The Civil Practice Committee referred to the PRRC a letter from an attorney requesting amendments to certain rules relating to the method of collection of the discipline part of the annual attorney assessment, and to the deadline for payment for the annual assessment. The PRRC asked the Lawyers' Fund for Client Protection for its recommendations on the issues. The Fund's position, explained below, is that the requested rule changes are unnecessary because existing rules adequately address the concerns raised by the requestor. The PRRC agrees.

First, the attorney noted that lawyers do not receive a separate bill for the disciplinary oversight portion of the annual assessment. Instead, that charge is included in the total annual assessment collected by the Lawyers' Fund. The requesting attorney asked that this procedure be reflected in Rule 1:20-1(b) by adding the following after the first sentence of the rule: "This assessment shall be collected in the same bill rendered by the Client Security Fund, subject to the same exceptions in Rule 1:28-2." As the Lawyers' Fund correctly observed, that point is already covered in the third sentence of Rule 1:20-1(b), which states: "This assessment shall be collected administratively in the same manner as and subject to the same exemptions provided under Rule 1:28-2, except that plenary-licensed attorneys who are in their second calendar year of admission shall pay a partial fee, as determined by the Supreme Court."

The attorney's second concerns relates to the Fund's historical practice of mailing annual billing notices in late March, which set a payment deadline of April 30. Because Rule 1:20-1(c) and Rule 1:28-2 refer to a February 1 deadline, the attorney expressed concern that lawyers who pay by the April 30 deadline stated in the billing notice "are in technical violation of those rules." The Fund found that the stated concern is misplaced. After mentioning February 1, each of the

cited rules goes on to state "or such other date as the Court may determine," which the Fund view as the operative language. As the Fund explained, each year the Court delegates the setting of the deadline to the Fund, and the Fund chooses a deadline to provide lawyers with four to six weeks to respond to the billing notice. The Committee agrees with the Fund's conclusion that, in the absence of a clear advantage in a proposed change, a rule should not be amended. If it is determined that an amendment is desirable, then the specific February 1 reference should be deleted (rather than replaced with May 1, as suggested) to preserve flexibility in the event of unanticipated circumstances.

III. NON-RULE RECOMMENDATIONS

A. Guidelines for Media Coverage of District Ethics Committee Hearings

In its 2006-2008 report, the Committee recommended that the Court's *Guidelines for Still and Television Camera and Audio Coverage of Proceedings in the Courts of New Jersey* apply to media requests to cover District Ethics Committee (DEC) hearings, with variations that take into account unique features of the disciplinary system. Following its review of the 2006-2008 report and public comments, the Court asked the Committee for further consideration of certain issues. This report contains the Committee's revised recommendations.

- Summary of Recommendations in 2006-2008 Report

In its 2006-2008 report, the Committee recommended the following overlay on the *Guidelines* in the context of DEC hearings. The first two are central to the issues addressed here:

(1) Media members planning to attend DEC hearings should provide reasonable advance notice (ten business days' was suggested) so that ethics authorities can find alternative accommodations if needed. The concerns were that most hearings are held in volunteers' offices and few DECs have ready access to courtrooms for hearings.

(2) Audio recordings, but not still photography or video recordings, should be allowed. Cameras may distract or intimidate in the typically small hearing rooms, and the host lawyer has a legitimate interest in protecting confidential information in the office from visual recording.

(3) No coverage should be permitted of proceedings deemed non-public under R. 1:20-9(c) (proceedings subject to protective order or alleging disability).

(4) Initial decisions on media coverage should be made by the DEC Chair, with a right to appeal to the DRB Chair. Further review may be sought pursuant to R. 1:20-16(f).

(5) A press kit should explain the disciplinary process and volunteer system, as well as any notice requirements and restrictions on coverage.

- Summary of Public Comments to 2006-2008 Report.

Following publication of the 2006-2008 report, comments were received from one individual and one press group. Both commenters objected specifically to the recommendations summarized in (1) and (2) above. With respect to the recommended ten business days' advance notice, the commenters noted that the *Guidelines* allow the general public to attend proceedings without notice. They argued that members of the press (with or without small audio recording devices) should likewise be permitted to attend without providing any advance notice. The press group commented that if the Court were to require advance notice, the group would support the *Guidelines*' undefined concept of "reasonable advance notice" because the media may not learn of a hearing until a few days beforehand. The individual commenter stated that a ten-day notice of attendance requirement would be acceptable if the Court also requires that the ethics system provide meaningful advance notice of hearing dates to the public, such as by posting notice of scheduled hearing dates on the Judiciary's website at least fifteen to twenty days in advance.

The commenters also objected to a ban on visual recording equipment. They suggested that concerns about confidentiality can be addressed by moving the hearing out of private law offices and by removing confidential material from the hearing room. They also noted that the *Guidelines* minimize concerns about intrusiveness by limiting the number of camera operators, disallowing sound and light distractions, and requiring certain positioning of equipment.

- The Committee's Further Review.

Following publication of the 2006-2008 report and receipt of public comments, the Court referred the matter back to the Committee, asking it to consider: (1) the issue of providing adequate advance public notice of DEC hearing dates; and (2) whether video and photographic coverage should be permitted, consistent with the *Guidelines*, if DEC hearings were conducted in more public venues, such as a courtroom. As the backdrop to consideration of those issues, the

Committee considered the current administrative procedures for posting information about pending ethics matters (detailed below), the volunteer nature of the ethics system, the rarity of press coverage and public attendance at hearings, the difficulties involved in rescheduling ethics hearings, and the fact that not all DECs have ready access to courtrooms.

1. Summary of New Recommendations by Committee

Ultimately, the Committee has determined to make the following recommendations, with the goal being to reasonably accommodate those interested in attending and covering hearings:

- The ethics system should be encouraged to plan in advance for anticipated outside interest in hearings, to consider the importance of public notice and the current posting procedures when scheduling hearings, and to make reasonably frequent updates to the posted notice of hearing dates on the Judiciary's website. Strict requirements are not recommended due to staffing considerations and the volunteer nature of the ethics system.

- At the same time, members of the public and the press should be encouraged, but not required (other than as may be provided in the existing *Guidelines*), to provide advance notice of their attendance or, with respect to the media, of their use of visual recording equipment. By encouraging reasonable advance notice of attendance or press coverage, the ethics system will have an opportunity to take reasonable steps to address possible accommodations issues.

2. Background on Current Procedures for Posting Statewide Public Hearing List

As the Committee understands the process, an updated *Statewide Public Hearing List* (List) is posted on the Judiciary's website every month.[2] The List describes pending public

[2] To access the List from the Judiciary's website, go to www.njcourtsonline.com. In the left-side frame, under the heading "Attorney and Judicial Regulations," click the link Office of Attorney Ethics. At the third bullet point on the OAE page, click Public Charges. Then, in the

charges (matters in which formal ethics complaints were filed) and includes hearing dates. Compilation of the List begins with the DECs, which gather information from their respective hearing panels and special masters on the status of matters pending in their districts. Each DEC, usually through the Vice Chair, compiles that data and provides a status report to the Office of Attorney Ethics, generally by the 25th of each month. The OAE compiles the data received from the districts (there are nineteen in all, including the sub-districts and the OAE) and generates the List, generally by the 1st of the following month. The OAE then sends the List to the Administrative Office of the Courts. The AOC, in turn, posts the List on the Judiciary's website, generally within three of four days of receipt. Thus, under current procedures, an updated Statewide Public Hearing List is posted once monthly, usually by the 4th or 5th of each month, and it includes data about hearings that the DECs provided near the 25th of the previous month.

In many instances, hearings are planned far in advance and, under the current compilation and posting procedures, those hearing dates are contained in a posted List well in advance. Sometimes, however, hearings are scheduled with the minimum required notice to the parties. *See* R. 1:20-6(c)(2)(A) (requiring that notice of hearing be served on presenter, respondent, and counsel at least 25 days before hearing). That may occur when the matter is getting close to "goal," and the DEC is striving to keep it moving through the process. *See* R. 1:20-8(b) (encouraging disciplinary system to meet 6-month time goal between due date of answer and completion of formal hearings and filing of report with OAE). In some such instances, a hearing date may be imminent or may have passed by the time that information about that date makes its way from the hearing panel and, ultimately, onto a posted List. That may occur, for example, when on the first of the month, the parties schedule a hearing to occur at the end of that month.

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first section entitled "Generally," go to the third paragraph, and find this sentence: "To see charges for the latest month, CLICK HERE."

Other reasons may cause the posted Statewide Public Hearing List to be incomplete or somewhat stale, including: limited manpower and busy schedules of the volunteer panels and special masters, who may be unable to transmit complete hearing information to their District Vice Chair in time for the Vice Chair to provide a complete current report to the OAE; a Vice Chair's report may reach the OAE after the new List is generated; or due to unanticipated OAE or AOC staffing issues, the List may be posted on the Judiciary's website later than usual.

3. Two Possible Approaches to Ensuring Minimum Advance Public Notice

The Committee considered the possibility of requiring certain protocols for scheduling hearings and for processing and posting the List to ensure that every hearing date is publicly posted on the Internet in advance. For example, by keeping in mind the length of time it takes the system to compile data and update the List, panels and special masters could be required to schedule hearings in a manner that ensures the hearing dates are on a published List at least a specified number of days in advance.

Alternatively, additional administrative duties could be imposed on the DEC volunteers and on the OAE and AOC staff responsible for processing the data and posting the List. For example, hearing panels and special masters could be required to continually inform their Vice Chairs as hearing dates are added or changed during the month, particularly when inclusion of the dates on the next List will not provide at least a certain amount (e.g., 20 days) of advance public notice. The Vice Chairs could be required to provide frequent interim reports to the OAE; the OAE could be required to continually revise the List or generate supplemental updates to provide to the AOC; and the AOC, in turn, could be required to post the updated information on the Judiciary's website as soon as it arrives from the OAE.

One consequence of the first approach, requiring that hearings always be scheduled in a manner that ensures advance inclusion on a List, is extending the overall length of time to complete disciplinary proceedings. That could push some matters beyond their goal dates and, although less likely, could cause the loss of witness and volunteer hearing panel members, the latter of which may have terms that expire during the pendency of the proceedings. Both approaches would put additional strain on the 500-plus volunteer ethics system. Training on new scheduling and reporting requirements would be necessary. Moreover, the second approach, mandating continuous rolling updates to the List, would impose additional duties on OAE and AOC staff.

In light of the volunteer nature of the ethics system and Judiciary staffing concerns, the Committee does not recommend strict rules for scheduling or posting hearing dates. Rather, the system should be encouraged to make reasonable efforts to ensure reasonable advance public notice. Both when scheduling hearings and when compiling and reporting data for inclusion on the List, volunteers and staff should keep in mind the importance of advance public notice and the posting process timeframes. (In the rare event there is outside interest in a hearing and an individual feels aggrieved by insufficient notice, that individual can seek a stay.)

4. *Permitting Visual Recording Equipment Consistent with the Guidelines and Encouraging Advance Notice of Attendance and Press Coverage*

The Committee has also determined not to require advance notice of attendance, and that press coverage should be permitted consistent with the *Courtroom Guidelines* to the extent reasonably possible. To address possible accommodations issues, however, the public and the press should be encouraged to provide reasonable advance notice. That way, the ethics system will have a reasonable opportunity to resolve any issues in advance.

As previously noted, not all DECs have ready access to courtrooms for hearing sites. Some county courthouses may need several months' advance notice to accommodate requests to use a courtroom. If the interest is in mere attendance by one or a few individuals, or a member of the press with a small audio recorder, generally there should not be an issue. When there is great interest in attendance, or when extensive media coverage is contemplated, advance notice will allow DECs to assess, on a case-by-case basis, whether the hearing location is an issue and, if so, whether it is feasible to reschedule the hearing in a different location. DECs should exercise reasonable efforts to accommodate increased attendance and press coverage. The more notice a DEC has, the better opportunity it will have to address venue issues. In sum, the goal is to encourage advance notice so that interested members of the public and media can optimize their chances of being accommodated.

The Committee notes again that public attendance and press coverage at DEC hearings historically has been rare. The DEC usually will be aware when a particular matter will generate attention and should consider that when scheduling hearing locations in the first instance. Also, individuals interested in attending a particular disciplinary hearings always have the option of being placed on an advance notice list by completing a "Request for Notice of Hearings" form and returning it to the DEC Secretary. That request form, which has been in use since at least 2000, provides for the interested individual to receive advance written notice of hearings.

B. Alternative Form of "Certification of Retirement" for Retired New Jersey Attorneys Providing *Pro Bono* Services to the Poor by Volunteering for Legal Services of New Jersey or Volunteer Public Interest Legal Services Organizations

As the Committee considered the Lawyers' Fund petition for rule amendments relating to annual registration and payment of the assessment by non-New Jersey attorneys permitted to practice here in a limited manner (addressed *supra,* Part I.B), the Committee asked the Fund for its position on a payment exemption for New Jersey lawyers who are otherwise retired and who wish to volunteer to represent the poor *pro bono* through Legal Services of New Jersey.

By way of background, an attorney can request the "retired completely" exemption from payment of the annual assessment by submitting a "Certification of Retirement," completed without alteration. (See Appendix A for a copy of the form that has been used for many years.)

The Fund responded that it is willing to recommend a slight loosening of the definition of the "retired" exemption for (1) New Jersey lawyers (2) otherwise "completely retired from the practice of law" who (3) represent the poor (4) without pay (5) under the direction and auspices of Legal Services of New Jersey. To accomplish this, the Fund suggested a second form of Certification of Retirement for such an attorney, which adds the following statement that the attorney must be able to certify: "My only participation in any aspect of legal practice is as a volunteer for Legal Services of New Jersey, for which services I receive no remuneration."

The Committee has determined to recommend a slightly revised version of the second Certification form suggested by the Fund. The Committee agrees that otherwise-retired attorneys who provide uncompensated legal services to the poor – pure *pro bono* work – should not be required to pay the annual assessment. The Committee recommends loosening the retirement exemption to include attorneys whose practice is limited to volunteering through Legal Services of New Jersey or with "an organization identified in R. 1:21-1(e) that engages in

the volunteer public interest legal services described in RPC 6.1." The second Certification of Retirement form recommend by the Committee is attached as Appendix B to this report.

The Committee also noted concerns with some policies embodied in the current Certification, which the Committee wishes to call to the Court's attention. The current Certification of Retirement form has been used by the Fund for decades. The Fund understands that the form was long ago approved by the Court. The Certification form explicitly provides that for purposes of the retirement exemption from payment of the annual assessment, a retired attorney cannot "teach law, or serve in a court system in any capacity, in any jurisdiction." The Committee views lecturing, teaching, and serving the judicial system in an unpaid, non-judge capacity (for example, by membership on a committee of the Court) as activities that may be considered as something other than the "practice of law." From a policy standpoint, the Court may wish to consider allowing otherwise-retired attorneys who engage in such activities to claim an exemption from attorney assessment and registration requirements.

C. Establishing an Ad Hoc Committee on Malpractice Insurance

The ABA Model Court Rule on Insurance Disclosure requires lawyers to disclose on their annual registration statements whether they maintain professional liability insurance. The stated purpose of the Model Rule is "to provide a potential client with access to relevant information related to a lawyer's representation in order to make an informed decision about whether to retain a particular lawyer." ABA Standing Committee on Client Protection, Report to House of Delegates (2004), *available at* www.abanet.org/cpr/clientpro/malprac_disc_report.pdf. The Model Rule does not mandate that attorneys maintain malpractice insurance.

The Committee briefly addressed the Model Rule in its 2006-2008 report to the Court. As noted, individual New Jersey lawyers are not obligated to maintain professional liability insurance or to inform clients or the Court whether they carry such insurance.[3] As of November 2009, eighteen states require disclosure on annual attorney registration statements; seven states require disclosure directly to clients; four states are considering a reporting requirement; four states have voted not to adopt a disclosure rule; and Oregon remains the only state that requires attorneys to maintain professional liability insurance. *See* ABA Standing Committee on Client Protection, State Implementation of ABA Model Court Rule on Insurance Disclosure (Nov. 16, 2009), *available at* www.abanet.org/cpr/clientpro/malprac_disc_chart.pdf.

As the Committee previously observed, a potential disclosure requirement raises several issues that warrant consideration. Those issues include: whether disclosure should be required only on the annual registration statement or also to clients at the inception of the representation; whether it would be misleading to require disclosure of the fact of insurance to clients without

[3] Law firms organized as professional corporations, limited liability companies, and limited liability partnerships are required to maintain professional liability insurance pursuant to Rule 1:21-1A, Rule 1:21-1B, and Rule 1:21-1C.

also requiring disclosure of the amount of insurance; whether a disclosure rule would encourage more attorneys to obtain insurance; whether a disclosure requirement would unfairly burden small firms and solo practitioners; and whether a disclosure requirement serves any substantial purpose if there is not also a mandate to maintain insurance.

The Committee's resumed discussion of the Model Rule also touched upon the related issue of compulsory professional liability insurance. At first glance, mandatory insurance seems worthwhile because it would close the claims circle by providing coverage for attorney negligence, which is not covered by the Lawyers Fund for Client Protection. *See* R. 1:28-3(a) (allowing Fund to consider claims resulting from attorneys' dishonest conduct). As with an insurance disclosure requirement, however, the prospect of mandatory insurance raises many questions, including: whether there is some great unmet need that would be satisfied by a mandate to carry professional liability insurance; whether such a mandate would unfairly burden small firms and solo practitioners, who may have more difficulty than larger firms finding affordable coverage; and if it were determined that compulsory insurance is justified, what would be the required minimum policy limits and terms of coverage.

The Committee ultimately concluded that it is necessary to have data from various sources to accurately gauge the practical implications – the potential benefits and burdens – that realistically may flow from an insurance disclosure requirement or a mandate to maintain insurance coverage. The Committee recommends that the Court appoint a special commission (perhaps an "Ad Hoc Committee on Lawyers' Professional Liability Insurance"), which may include representatives from the Bar, the lawyers' professional liability insurance industry, and other affected groups, to carefully study the issues.

IV. OUT-OF-CYCLE ACTIVITY

A. Pro Bono Services by In-House Counsel

In an out-of-cycle report, the Committee made an administrative recommendation to the Court concerning in-house counsel and the voluntary provision of pro bono services. The Committee proposed an amendment to the Court's Supplemental Administrative Determinations to state that in-house counsel licensed pursuant to Rule 1:27-2 are permitted to provide pro bono services not only through Legal Services of New Jersey, but also with other pro bono organizations described in Rule 1:21-1(e). The Committee viewed that amendment as consistent with the Court's 2006 amendment to Rule 1:21-3(c), which provides that out-of-state attorneys "employed by, associated with, or serving as a volunteer pro bono attorney with an organization described in R. 1:21-1(e) and approved by the Supreme Court, shall be permitted to practice, under the supervision of a member of the bar of the State, before all courts of this State in all causes in which the attorney is associated or serving pro bono with such legal services program."

By Notice to the Bar dated June 3, 2009, available at www.judiciary.state.nj.us/notices, the Court amended its Supplemental Administrative Determinations to clarify that in-house counsel may volunteer for pro bono work with Legal Services of New Jersey or with other approved Rule 1:21-1(e) legal services organizations provided that the requirements of Rule 1:21-3(c) are satisfied. At the same time, the Court made other changes (not initiated by the PRRC) regarding part-time contract work and the time period within which in-house counsel must secure new employment without having to reapply for a limited license.

B. Referral to PRRC, CAA and ACPE from the Decision of the Court in In re Opinion 39 of the Committee on Attorney Advertising

In an out-of-cycle report, the PRRC reported to the Court its recommendations on referral from the decision of the Court in In re Opinion 39 of the Committee on Attorney Advertising,

197 N.J. 66 (2008), concerning comparative attorney advertising and amendments to RPC 7.1. A joint report of the Committee on Attorney Advertising and Advisory Committee on Professional Ethics was included as an appendix to that report. By Notice dated May 1, 2009, *see* www.judiciary.state.nj.us/notices/2009/n090504a.pdf, the Court published the reports and solicited the submission of comments by June 1, 2009. A public hearing was held on September 30, 2009. *See* www.judiciary.state.nj.us/notices/2009/n090707b.pdf. In November 2009, the Court amended RPC 7.1 to provide that a communication is false or misleading if it compares the lawyer's services with other lawyers' services, "unless (i) the name of the comparing organization is stated, (ii) the basis for the comparison can be substantiated, and (iii) the communication includes the following disclaimer in a readily discernable manner: 'No aspect of this advertisement has been approved by the Supreme Court of New Jersey[.]'" The Court also adopted an Official Comment that provides guidance concerning communications about receipt of an honor or accolade. *See* www.judiciary.state.nj.us/notices/2009/n091104g.pdf.

C. Requests to Amend RPC 7.3 to Ban Direct Solicitation Letters

In another out-of-cycle report, the Committee reported on its review of referred requests for amendments to RPC 7.3 to ban attorneys' direct solicitation letters to potential clients. The Committee found that the First Amendment precludes a complete ban of all solicitation letters. The Committee recommended extending the existing thirty-day waiting period, which currently applies to communications sent after a mass-disaster event, to solicitations concerning events causing personal injury or death, unless the person contacted has a family, close personal, or prior professional relationship with the lawyer. By Notices to the Bar dated July 1, 2009, *see* www.judiciary.state.nj.us/notices/2009/n090707c.pdf, and July 17, 2009, *see* www.judiciary.state.nj.us/notices/2009/n090720a.htm, the Court directed the publication of RPC

7.3 report and invited the submission of comments through October 5, 2009. As of the date of this report, the matter is pending before the Court.

D. Technical Corrections to RPC 7.1(b) and RPC 7.5(a)

Effective January 5, 2009, the Court sua sponte corrected the reference in RPC 7.1(b) to Rule 1:19A-3(d), which for twenty years had erroneously been shown as Rule 1:19-3(d). The Court also corrected the reference in RPC 7.5(a) to Rule 1:21-1(e), which since 1998 had been erroneously shown as Rule 1:21-1(d). (In 1998, an amendment to Rule 1:21-1 resulted in a paragraph redesignation, but a conforming amendment to RPC 7.5(a) was not made. The January 2009 amendment corrected that oversight.) Those RPC corrections were made by the Court during this PRRC reporting cycle and are simply noted here for the sake of completeness.

V. HELD MATTERS

A. Post-Retirement Employment Discussions by Sitting Judges

In DeNike v. Cupo, 196 N.J. 502 (2008), the Court held that negotiations between a trial judge and an attorney concerning the judge's post-retirement employment created an appearance of impropriety and required a new trial under the circumstances. The Court also set forth guidance for retiring judges seeking post-retirement employment, and it asked the PRRC and the Advisory Committee on Extrajudicial Activities (ACEA) for additional recommendations. The PRRC asked the ACEA to make initial proposals to the PRRC. The PRRC recently received the ACEA recommendation. After considering and discussing it with the ACEA, the PRRC will return to the Court with a recommendation.

B. Confidentiality of Judicial Disciplinary System (Rule 2:15-20)

The Court asked the PRRC to work with the Advisory Committee on Judicial Conduct (ACJC) to review the confidentiality provisions governing the operation of the judicial disciplinary system, in light of R.M. v. Supreme Court of New Jersey, 185 N.J. 208 (2005), and other relevant considerations. The ACJC has undertaken the task of preparing a first draft of recommendations. Upon receipt of an inter-committee report from the ACJC, the PRRC will resume consideration of this referral.

C. Settlement of Aggregate (Non-class Action) Litigation (RPC 1.8(g))

In the 2006-2008 Rules Cycle Report of the Professional Responsibility Rules Committee, at 91, *available at* www.judiciary.state.nj.us/reports2008/prrc.pdf, the PRRC reported its preliminary discussions on the referral of the Court in its decision in Tax Authority v. Jackson Hewitt, 187 N.J. 4 (2006). The PRRC noted that there was no immediate need to amend RPC 1.8(g), and that it would await further information on the subject. Specifically, the

PRRC noted that the American Law Institute was conducting a civil procedure study project, "Principles of the Law of Aggregate Litigation," which was addressing the issue. At the ALI's May 2009 annual meeting, the ALI approved a proposed final draft report, subject to corrections and editing revisions. *See* ALI, *Current Projects: Principles of the Law of Aggregate Litigation*, at http://www.ali.org/index.cfm?fuseaction=projects.proj_ip&projectid=7. Upon the ALI's publication of the official text of its project (anticipated mid-2010), the PRRC will resume consideration of this referral.

Respectfully submitted,

PROFESSIONAL RESPONSIBILITY RULES COMMITTEE[4]

Honorable Peter G. Verniero, Former Associate Justice, Chair, PRRC

Honorable Alan B. Handler, Associate Justice (ret.), Chair, Advisory Comm. on Judicial Conduct

Honorable John E. Keefe, Sr., P.J.A.D. (ret.), Chair, IOLTA Fund of the Bar of New Jersey

Kenneth J. Bossong, Esquire, Director and Counsel, Lawyers Fund for Client Protection

Joseph A. Bottitta, Esquire, New Jersey State Bar Association

Cynthia A. Cappell, Esquire, Chair, Committee on Attorney Advertising

Charles M. Lizza, Esquire, Chair, Committee on the Unauthorized Practice of Law

Steven C. Mannion, Esquire, Chair, Advisory Committee on Professional Ethics

Louis Pashman, Esquire, Chair, Disciplinary Review Board

Sherilyn Pastor, Esquire, Appointed Member

Melville D. Lide, Esquire, Appointed Member

(Staff: Holly Barbera Freed, Staff Attorney, Supreme Court Clerk's Office)

[4] This report is the result of deliberations that spanned the 2008-2010 rules cycle. In addition to the members listed here, the Committee is indebted to retired Supreme Court Associate Justice Stewart G. Pollock, who stepped down effective August 31, 2009, after nine years of service as its Chair. Many thanks are also due to Michael S. Stein, Esq., who served as an appointed member from September 2000 through August 2009, and to former *ex officio* members Melville D. Miller, Jr., Esq., ACPE Chair, 1994 through December 2008; Raymond S. Londa, Esq., CUPL Chair, 2001 through December 2008; and Mary Lou Parker, Esq., IOLTA Chair, March 2008 through February 2009.

C E R T I F I C A T I O N O F R E T I R E M E N T

FOR THE CALENDAR YEAR(S) _____

The retired exemption from payment is as defined, without alteration. We cannot grant the exemption if the language of this certification is altered or if "January 31" is deleted and a later date substituted.

I, _____, Esq., of full age, say:
Printed Name

1. I am an attorney at law licensed to practice in the State of New Jersey;

2. I hereby request exemption from payment to the New Jersey Lawyers' Fund for Client Protection for the calendar year(s) indicated pursuant to *Rule* 1:28-2 because I am "retired completely from the practice of law" in every jurisdiction. I understand that attorneys are not exempt from payment solely by virtue of being out-of-state or exempt from *pro bono* assignment;

3. I am either unemployed or the employment in which I engage is not in any way related to the practice of law. I do not draft or review legal documents, render advice on the law or legal assistance, teach law, or serve in a court system in any capacity, **in any jurisdiction**. This is an accurate description of my activities at least since January 31 of the year for which exemption is sought;

4. I understand that I have an ongoing duty to immediately inform the Fund if I no longer qualify for the exemption granted;

5. I understand that I will remain officially retired until I inform the Fund otherwise;

6. I understand that it is my obligation to keep my address current with the Fund and respond to the Annual Attorney Registration Statement and *Pro Bono* Assignment Questionnaire.

I hereby certify that these statements regarding my entitlement to the exemption are true and correct. If such statements are willfully false, I am subject to punishment.

_____ _____
(Date) (Signature)

C E R T I F I C A T I O N O F R E T I R E M E N T
(LEGAL SERVICES VOLUNTEER)

FOR THE CALENDAR YEAR(S) _____

The retired exemption from payment is as defined, without alteration. We cannot grant the exemption if the language of this certification is altered or if "January 31" is deleted and a later date substituted.

I, _____, Esq., of full age, say:
Printed Name

1. I am an attorney at law licensed to practice in the State of New Jersey;

2. I hereby request exemption from payment to the New Jersey Lawyers' Fund for Client Protection for the calendar year(s) indicated pursuant to *Rule* 1:28-2 because I am "retired completely from the practice of law" in every jurisdiction. I understand that attorneys are not exempt from payment solely by virtue of being out-of-state or exempt from *pro bono* assignment;

3. My only participation in any aspect of legal practice is as a volunteer for Legal Services of New Jersey or for an organization identified in *R.* 1:21-1(e) that engages in the volunteer public interest legal services described in *RPC* 6.1, for which practice I receive no remuneration.

4. [3.] Other than as stated in paragraph 3, I am either unemployed or the employment in which I engage is not in any way related to the practice of law. I do not draft or review legal documents, render advice on the law or legal assistance, teach law, or serve in a court system in any capacity, **in any jurisdiction**. This is an accurate description of my activities at least since January 31 of the year for which exemption is sought;

5. [4.] I understand that I have an ongoing duty to immediately inform the Fund if I no longer qualify for the exemption granted;

6. [5.] I understand that I will remain officially retired until I inform the Fund otherwise;

7. [6.] I understand that it is my obligation to keep my address current with the Fund and respond to the Annual Attorney Registration Statement and *Pro Bono* Assignment Questionnaire.

I hereby certify that these statements regarding my entitlement to the exemption are true and correct. If such statements are willfully false, I am subject to punishment.

Date: _____ Signature: _____

2010 REPORT

OF THE SUPREME COURT COMMITTEE

ON SPECIAL CIVIL PART PRACTICE

JANUARY 21, 2010

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendment to R. 6:2-3(b) – Service of Original Process in Tenancy Actions

During the 2006-2008 Committee term a member had proposed to amend R. 6:2-3(b) so as to resolve a perceived discrepancy between the statute and the rule regarding service in tenancy actions. N.J.S.A. 2A:18-54 provides for service of the summons and complaint by posting in those situations where admission to the subject premises is refused or no person above the age of 14 is present. Rule 6:2-3(b), on the other hand, requires service by mail and by either personal delivery or posting. In other words, there is no requirement in the rule that the Special Civil Part Officer first attempt personal service before posting. The Committee decided, by a vote of 16-4, to recommend amending the rule so as to require personal service, but permit attachment to the door of the defendant's unit if the Officer is unable to personally deliver it to the defendant or a member of the defendant's household over the age of 14 years. Note that, if adopted, this rule change will require a modification of the Officer's return of service on the summons and this is addressed in the next section of the Report. The text of the proposed amendment to the rule follows.

6:2-3. Service of Process

(a) By Whom Served. ... no change.

(b) Manner of Service. Service of process within this State shall be made in accordance with R. 6:2-3(d) or as otherwise provided by court order consistent with due process of law, or in accordance with R. 4:4-5. Substituted service within this State shall be made pursuant to R. 6:2-3(d). Substituted or constructive service outside this State may be made pursuant to the applicable provisions in R. 4:4-4 or R. 4:4-5.

In summary actions for the recovery of premises [landlord and tenant actions], service of process shall be by ordinary mail and by [either] delivery personally pursuant to R. 4:4-4. When the person serving process is unable to effectuate service by delivering process personally, service may be effectuated [or] by affixing a copy of the summons and complaint on the door of the unit occupied by the defendant [subject premises]. When the plaintiff-landlord has reason to believe that service may not be made at the subject premises, the landlord shall also request service at an address, by certified and regular mail addressed to the tenant, where the landlord believes that service will be effectuated. The landlord shall furnish to the clerk two additional copies of the summons and complaint for each defendant for this purpose.

(c) Notice of Service. ... no change.

(d) Service by Mail Program. ... no change.

(e) General Appearance; Acknowledgement of Service. ... no change.

Note: Source--*R.R.* 7:4-6(a)(b) (first three sentences), 7:4-7. Paragraph (a) amended July 7, 1971 effective September 13, 1971; paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a)(b) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and paragraph (d) adopted November 5,

1986 to be effective January 1, 1987; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended July 17, 1991 to be effective immediately; paragraph (e) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (d)(4) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a), (b), (d), (d)(2), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b), d(4) and (5) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended_____, 2010 to be effective_____,2010.

B. Proposed Amendment to Appendix XI-B – Return of Service on Tenancy Summons

Having agreed to recommend amending R. 6:2-1, as described above in Section I.A. of this Report, the Committee turned its attention to the Special Civil Part Officer's return of service on the summons, which is a mandated form set forth in Appendix XI-B to the court rules. Members of the Committee debated the degree of detail that should be required if the officer is unsuccessful in making personal service. Concerns ranged from fear of imposing unreasonable requirements on the officers when they are unable to gain access to the door of the tenant's unit in a large apartment building, on the one hand, to a need for specifics when service of process is challenged by the defendant, on the other. Included was the thought that the court officers should have a clear understanding of what is expected of them by the court. Ultimately, the Committee decided (by a vote of 9 in favor and 7 opposed) to recommend amending the return of service on the summons by adding a line for the court officer to describe the efforts made to personally serve the defendant, if that effort was unsuccessful, and to retain the current line for the officer to describe the premises when the summons has been posted. It will be up to the judge to determine the adequacy of service if that issue is raised in the litigation. The proposed amendments to Appendix XI-B follow.

APPENDIX XI-B. TENANCY SUMMONS AND RETURN OF SERVICE (R. 6:2-1)

Plaintiff or Plaintiff's Attorney Information:
Name: _____
Address: _____
_____
Phone: (___)_____

Superior Court of New Jersey
Law Division, Special Civil Part
_____ **County**
_____
_____
(____)_____

_____, **Plaintiff(s)**

Docket Number: LT - _____
(to be provided by the court)

versus

_____, **Defendant(s)**

Civil Action
SUMMONS
LANDLORD/TENANT

Defendant Information:
Name: _____
Address: _____
_____
Phone:(___)_____

___Nonpayment
___Other

NOTICE TO TENANT: The purpose of the attached complaint is to permanently remove you and your belongings from the premises. If you want the court to hear your side of the case you must appear in court on this date and time: _____ at _____ a.m./p.m., or the court may rule against you. REPORT TO: _____

If you cannot afford to pay for a lawyer, free legal advice may be available by contacting Legal Services at _____. If you can afford to pay a lawyer but do not know one, you may call the Lawyer Referral Services of your local county Bar Association at _____.

You may be eligible for housing assistance. To determine your eligibility, you must immediately contact the welfare agency in your county at _____, telephone number _____.

If you need an interpreter or an accommodation for a disability, you must notify the court immediately.

Si Ud. no tiene dinero para pagar a un abogado, es posible que pueda recibir consejos legales gratuitos si se comunica con Servicios Legales (Legal Services) al _____. Si tiene dinero para pagar a un abogado pero no conoce ninguno puede llamar a Servicios de Recomendación de Abogados (Lawyer Referral Services) del Colegio de Abogados (Bar Association) de su condado local al_____.

Es posible que pueda recibir asistencia con la vivienda si se comunica con la agencia de asistencia publica (welfare agency) de su condado al _____, telefono _____.

Si necesita un interprete o alguna acomodación para un impedimento fisico, tiene que notificárselo inmediatamente al tribunal.

Date: _____ **_____**
Clerk of the Special Civil Part

COURT OFFICER'S RETURN OF SERVICE (FOR COURT USE ONLY)

Docket Number: _____Date: _____Time: _____
WM ___ WF ___ BM ___ BF__ OTHER _____ HT ____ WT _____ AGE ___ MUSTACHE ___ BEARD ___ GLASSES___ NAME: _____RELATIONSHIP: _____

Efforts Made to Personally Serve _____

_____

Description of Premises if Posted _____

_____

I hereby certify the above to be true and accurate: _____
Special Civil Part Officer

[Note: Former Appendix XI-B, consisting of model tenancy complaint and summons forms, deleted, and new tenancy summons and return of service form adopted July 12, 2002 to be effective September 3, 2002; amended July 27, 2006 to be effective September 1, 2006: amended_____, 2010 to be effective_____, 2010.]

C. Proposed Amendments to R. 6:7-1 – Protection of Exempt Funds From Levy

The Committee stated in its 2008 report to the Supreme Court that it was holding for further consideration the idea of going beyond the provision of a speedy remedy when bank accounts are levied upon that contain funds that are exempt from levy under federal or state law to find a mechanism that can prevent it from happening in the first place. The funds in question come from a variety of sources, such as Social Security, S.S.I., V.A., unemployment, workers' compensation, welfare and child support payments. The Committee noted that in 2006 the Supreme Court accepted the its recommendation to provide a speedy mechanism in the court rules for recipients of exempt funds to seek their release from levy (see, R. 6:6-6(a)), but concluded that more should be done to prevent such levies in the first place because it is often difficult to undo the damage they cause to those members of society least able to afford it. These consequences include bank fees for checks that have bounced, bank fees for freezing the debtor's account pursuant to the levy, evictions for nonpayment of rent and deprivation of life's necessities.

The Committee was well aware of the danger of intruding on the legislative realm if it sought to create new substantive rights, but it became clear that the rights in question had already been defined in both federal and state legislation and the question is one of how best to implement those legislative determinations in the judicial context. The mechanism recommended by the Committee consists of limiting the scope of any levy on bank accounts so that it conforms to established law and so that it can be easily implemented by the third-party garnishee banks. The Committee was informed that several large banks are already doing this voluntarily and that other jurisdictions have pursued similar efforts along these lines.

The easiest scenario to address is one in which the deposits into a judgment-debtor's account have been made electronically on a recurring basis and have come exclusively from an exempt source. This is not difficult for banks to discern from their electronic records. Some accounts, however, have been in existence for many years and it could be difficult to determine which funds are exempt when they have been commingled with non-exempt funds if the bank has to look at the entire deposit history of an account. As a practical matter the Committee concluded, as most judges have when called upon to rule in these matters, that if nothing but exempt funds have been electronically deposited into an account for 90 days, the account almost certainly consists exclusively of those exempt funds and the entire amount should be protected from levy. It is also the period of time that is of most interest to judgment-creditors, as reflected in Question #11 in the mandatory form for the Information Subpoena contained in Appendix XI-L to the court rules. Question #11 asks the judgment-debtor for copies of the three most recent bank statements for any accounts containing funds from seven exempt sources.

With regard to situations where funds from exempt and non-exempt sources have been commingled within the 90 days preceding the levy, the Committee concluded that funds deposited electronically on a recurring basis by exempt sources within the last 45 days should be presumed by the garnishee bank to be exempt from levy. Again, this should be easily discernable by the bank from its electronic records.

These recommendations have been incorporated into proposed amendments to R. 6:7-1, as set forth infra. They will comprise a new paragraph (b), divided into two parts that address the situations described above. The implementation of the rule amendments would be accomplished by corresponding modifications to the form of the writ of execution against goods and chattels contained in Appendix XI-H to the rules (see Section I.D. of this Report, below).

Note that the addition of a new paragraph (b) will require the redesignation of the current (b), (c), and (d) as paragraphs (c), (d) and (e), respectively.

It should be noted that the Committee was divided on the question of whether to include the statutory $1,000 exemption (regardless of source) in the rule amendments. Some members felt that doing so would effectively preclude the judgment-debtor from choosing to exempt $1,000 worth of tangible property or cash from levy rather than the $1,000 in the bank account when the debtor might prefer to use the money in the account to pay the judgment. Others thought that funds necessary to meet immediate basic needs (an amount at least equal to the $1000 general exemption) can and must be protected from judicial restraint in all consumers' bank accounts in order to achieve a minimum level of basic fairness --- and protection from extreme hardship --- for low-income New Jerseyans. Ultimately the Committee decided to leave to the debtor the choice of which funds to protect by using the statutory $1,000 exemption and focus instead on protecting the funds that are exempt by statute in their entirety. The proposed amendments follow.

6:7-1. Requests for Issuance of Writs of Execution; Contents of Writs of Execution and Other Process for the Enforcement of Judgments; Notice to Debtor; Claim for Exemption; Warrant of Removal; Enforcement of Consent Judgments and Stipulations of Settlement in Tenancy Actions

(a) Requests for Issuance; Intention to Return. ... no change.

(b) Contents of Writs of Execution and Other Process for the Enforcement of Judgments. All writs of execution and other process for the enforcement of judgments shall provide that any levy pursuant thereto shall exclude:

(1) all funds in an account of the debtor with a bank or other financial institution, if all deposits into the account during the 90 days immediately prior to service of the writ were electronic deposits, made on a recurring basis, of funds identifiable by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey or federal law, and

(2) all funds deposited electronically in an account of the debtor with a bank or other financial institution during the 45 days immediately prior to service of the writ that are identifiable by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey or federal law.

(c) [(b)] Notice to Debtor. ... no change to text.

(d) [(c)] Warrant of Removal; Issuance, Execution. ... no change to text.

(e) [(d)] Enforcement of Consent Judgments and Stipulations of Settlement in Tenancy Actions. ... no change to text.

Note: Source – R.R. 7:11□1; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; caption amended and paragraph (c) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; caption and paragraph (c), caption and text, amended July 13, 1994 to be effective September 1, 1994; paragraph (a) caption and text amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (d) adopted July 18, 2001 to be effective November 1, 2001; paragraph (c) amended September 14, 2004 to be effective immediately; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) adopted and former paragraphs (b), (c), and (d) redesignated as (c), (d), and (e) respectively _____, 2010 to be effective _____, 2010.

D. Proposed Amendments to Appendix XI-H to Protect Exempt Funds From Levy – Execution Against Goods and Chattels

To effectuate the protection of exempt funds from levy as set forth in the proposed amendments to R. 6:7-1 in Section I.C. of this Report, above, the Committee recommends that the form for the writ of execution against goods and chattels set forth in Appendix XI-H to the court rules be amended accordingly. All the writs issued by the Special Civil Part statewide will contain these provisions since the form is generated by the Automated Case Management System (ACMS). It is important for the garnishee bank to know that the levy pursuant to the writ should not include those funds in the judgment-debtor's account that the bank can identify as being exempt under federal or state law and so the amended form of the writ would be explicit in this regard. As noted in the previous section of this Report, several banks are already doing this voluntarily, utilizing their electronic record keeping capability to identify the exempt funds. The proposed amendments to Appendix XI-H follow.

APPENDIX XI-H EXECUTION AGAINST GOODS AND CHATTELS

DOCKET NO.: ___ DC-_____-__
JUDGMENT NO.: ___ VJ-_____-__
WRIT NUMBER: ____

SUPERIOR COURT OF NEW JERSEY
SPECIAL CIVIL PART
_____ COUNTY
STATE OF NEW JERSEY
EXECUTION AGAINST GOODS AND CHATTELS

PLAINTIFF(S)

VS.

DEBTORS: _____
_____

DEFENDANT(S)

ADDRESS OF FIRST DEBTOR:
STREET ADDRESS
CITY NJ ZIP

TO: _____
COURT OFFICER OF THE SPECIAL CIVIL PART

YOU ARE ORDERED to levy on the property of any of the debtors designated herein; your actions may include, but are not limited to, taking into possession any motor vehicle(s) owned by any of the debtors, taking possession of any inventory and/or machinery, cash, bank accounts, jewelry, electronic devices, fur coats, musical instruments, stock certificates, securities, notes, rents, accounts receivable, or any item(s) which may be sold pursuant to statute to satisfy this execution in full or in part. Any levy pursuant to this writ shall exclude (1) all funds in an account of the debtor with a bank or other financial institution, if all deposits into the account during the 90 days immediately prior to service of the writ were electronic deposits, made on a recurring basis, of funds identifiable by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey or federal law, and (2) all funds deposited electronically in an account of the debtor with a bank or other financial institution during the 45 days immediately prior to service of the writ that are identifiable by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey or federal law. All proceeds are to be paid to the court officer who shall pay them to the creditor or the attorney for the creditor, or, if this is not possible, to the court. This order for execution shall be valid for two years from this date.

Local police departments are authorized and requested to provide assistance, if needed, to the officer executing this writ. This does not authorize entry to a residence by force unless specifically directed by court order.

Judgment Date	_____
Judgment Amount	$_____
Costs and Atty. Fees	$_____
Subsequent Costs	$_____
Total	$_____
Credits, if any	$_____
Subtotal A	$_____
Interest	$_____
Execution costs and mileage	$_____
Subtotal B	$_____
Court officer fee	$_____
Total due this date	$_____
Date: _____	

Property to be Levied
Upon and Location of Same:

_____
_____
_____
CITY ST ZIP

CREDITOR'S ATTORNEY AND ADDRESS:
_____
_____
_____
CITY NJ ZIP
Telephone: ___-_____

Date: _____

_____
Judge

_____
Clerk of the Special Civil Part

I RETURN this execution to the Court

( ) Unsatisfied _____
( ) Satisfied ( ) Partly Satisfied
Amount Collected. . _____

Fee Deducted. . . . . _____

Amount Paid to Atty._____

Date: _____

_____
Court Officer

E. Proposed Amendment to R. 6:7-1(b) – Filing Notice to Debtor With the Clerk

Rule 4:59-1(g) requires a levying officer (Sheriff's Officer for writs emanating from the Civil Part of the Law Division; Special Civil Part Officer for writs issued by the Special Civil Part of the Law Division) to mail copies of the Notice to Debtor (as set forth in Appendix VI to the rules) to the judgment-debtor and judgment-creditor and to file a copy with the clerk. Rule 6:7-1(b) makes R. 4:59-1(g) applicable to actions in the Special Civil Part. The vast majority of the 140,000 writs of execution against goods and chattels issued by the Special Civil Part each year are used to levy against bank accounts owned by judgment-debtors and the clerks thus receive two separate copies of the Notice to Debtor: the first one from the levying officer and the second with the supporting papers submitted by the judgment-creditor when moving for a turnover order. A member of the Committee explained, on behalf of the Civil Division Managers and Assistant Managers, that the volume of these documents has become impossible to keep up with and the Conference of Civil Division Managers thus recommended in its Report on Workload Reduction Through Operational Efficiencies that the rule be amended to eliminate the requirement that the officer file a copy when making a bank levy since the creditor is required to submit a copy with the motion for a turnover order.

The provision in question was adopted by the Supreme Court in 1985 on the joint recommendation of the Civil and Special Civil Part Practice Committees. The rationale for requiring the Court Officer to file a copy of the Notice to Debtor with the clerk, however, was not discussed in either committee's 1985 report to the Supreme Court.

This Committee decided to recommend an amendment to R. 6:7-1(b) that would require filing of a copy of the Notice to Debtor by the Special Civil Part Officer only in cases involving a levy on tangible physical property; a copy of the Notice would still be required with the

judgment-creditor's motion for a turnover order in cases involving a bank levy. The purpose of the amendment is to eliminate the duplicative filings in connection with executions on bank accounts. The Committee proposes that R. 6:7-1(b) be amended, rather than R. 4:59-1(g), because the number of bank levies is so much greater in the Special Civil Part and the Committee is not aware of a comparable problem in Civil Part actions. The text of the proposed rule amendment follows. Please note that paragraph (b) will become paragraph (c) if the Supreme Court approves the amendment to the rule for the purpose of protecting exempt funds from levy, as proposed in section I.C. of this Report, above.

6:7-1. Requests for Issuance of Writs of Execution; Notice to Debtor; Claim for Exemption; Warrant of Removal; Enforcement of Consent Judgments and Stipulations of Settlement in Tenancy Actions

(a) Requests for Issuance; Intention to Return. ... no change.

(b) Notice to Debtor. The provisions of R. 4:59-1(g) respecting notice to debtor, exemption claims and deferment of turnover and sales of assets shall apply to all writs of execution issued by the Law Division, Special Civil Part, except that a copy of the Notice to Debtor shall not be filed by the levying officer with the clerk of the court after a levy on a bank account. The notice to debtor shall be in the form prescribed by Appendix VI to these rules.

(c) Warrant of Removal; Issuance, Execution. ... no change.

(d) Enforcement of Consent Judgments and Stipulations of Settlement in Tenancy Actions. ... no change.

Note: Source – R.R. 7:11□1; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; caption amended and paragraph (c) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; caption and paragraph (c), caption and text, amended July 13, 1994 to be effective September 1, 1994; paragraph (a) caption and text amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (d) adopted July 18, 2001 to be effective November 1, 2001; paragraph (c) amended September 14, 2004 to be effective immediately; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) amended_____, 2010 to be effective_____, 2010.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendment to R. 6:1-2 – Monetary Limits Increase

During the 2006-2008 term, the Committee discussed the possibility of raising the monetary limits for small claims and regular Special Civil Part cases. At the request of the Chair, staff had researched the effect of inflation on those limits and reported back to the Committee. The results of that research are set forth below in an excerpt taken from the Committee's 2008 Report to the Supreme Court (pages 40-41). In 2008 the Committee concluded that there should be no increase in the limits at that time because of the recent large increases in the volume of collection cases and the fact that the current monetary limits were still within the boundaries set in 1994 when adjusted for inflation.

Those two factors retain their validity today. In fact, contract filings increased from Court Year 2007 to 2008 by an even greater margin than had been predicted in the Committee's 2008 Report; the projection was for a 20% increase, from 299,438 to 361,647, while the actual number of filings for 2008 turned out to be 383,154, which represents an increase of 28% over 2007. The number of contract filings in Court Year 2009 came to 378,068, which is 1% less than 2008, but still a 26% increase over 2007. This indicates that the higher level of contract filings will be sustained and was not a one-time phenomenon. After a lengthy discussion this Committee decided, by a vote of 14-5, with one abstention, not to recommend any increase in the current monetary limits. The excerpt from the Committee's 2008 Report follows.

EXCERPT FROM 2008 REPORT OF THE SPECIAL CIVIL PART PRACTICE COMMITTEE TO THE SUPREME COURT – PAGES 40-41

The Committee discussed the possibility of raising the monetary limits for small claims and regular Special Civil Part cases. The Chair asked staff to research the effect of inflation on those limits and report back to the Committee.

A history of the Special Civil Part monetary limits over the last quarter century shows the following progression:

Year	Regular SCP Limit	Small Claims Limit
1981	$5,000.00	$1,000.00
1992	$7,500.00	$1,500.00
1994	$10,000.00	$2,000.00
2002	$15,000.00	$3,000.00

Note that the ratio of the two limits has always been maintained at 5 to 1.

Taking into account changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers, published by U.S. Department of Labor's Bureau of Labor Statistics for New York City and Northeastern New Jersey, the cost of living increased by 17.8% between September 2002 (the last time the Special Civil Part monetary limits were raised) and September 2007. This would appear to justify an increase in the monetary limits from $15,000.00 to $17,600.00 and from $3,000.00 to $3,534.00 for regular Special Civil Part cases and small claims, respectively.

Taking a look at inflation from a longer perspective, however, raises the question of whether such a change would be appropriate at this time. The value of the 1994 limits ($10,000.00 and $2,000.00) was $12, 030.00 and $2,406.00 in 2002, and those values projected to September 2007 come out at $14,171.00 and $2874.00, respectively. This indicates that we have not yet exceeded the 1994 limits when they are adjusted for inflation.

An examination of changes in the contracts caseload since 2002 suggests a need for caution when considering another increase in the monetary limits. The chart below indicates that the contracts caseload increased by 20% in Court year 2003, which is when the last monetary limit increase took effect. Between Court Year 2003 and Court Year 2007 there was another 20% increase in the caseload, despite a 12% decline in 2005. For Court Year 2008 the AOC has figures for the first 5 months and when they are projected for the entire year we can expect another 20% increase in the contacts caseload. Note: When that 5 month period is compared to the same period in Court Year 2006, we see an increase of almost 27%.

The most recent contract caseload increase may be due to the confluence of an economic slowdown and changes in the bankruptcy laws that preclude discharge of the debts that now appear in the contracts caseload. Whatever the cause, we know from past experience that an increase in the Special Civil Part monetary limits results in a significant increase in the caseload.

This, coupled with the fact that we have not yet exceeded the 1994 monetary limits (when adjusted for inflation) suggests that this would not be a good time to raise the monetary limits again. Note that while the volume of tenancy actions and small claims has remained relatively static over the years, these cases and the greatly increased number of contract cases are being handled by 30% fewer staff than the Special Civil Part had in 1994. During the next Term, the Committee plans to explore the possibility of raising the limits for collection actions and small claims, neither of which involves the extent of discovery required for tort actions.

Court Year	Contract Filings	% Increase
2002	208,259	---
2003	249,934	20%
2004	269,989	8%
2005	236,670	-12%
2006	270,692	14%
2007	299,438	11%
2008	361,647*	20%*

*Projections based on contract filings during the first 5 months of Court Year 2008

B. Proposed Amendment to Appendix XI-X – Verified Tenancy Complaint

The Committee considered correspondence between AOC Staff and an attorney regarding the clarity (or asserted lack thereof) in paragraph 9A and a problem with paragraph 9B of the Verified Complaint – Non payment of Rent form contained in Appendix XI-X to the Rules. It was noted during the discussion of this item that the language of the Verified Complaint had been crafted through a lengthy process of discussion that included this Committee, the Committee of Special Civil Part Supervising Judges and the Special Civil Part Management Committee. It was also noted that the request for more clarity was not specific as to what changes should be made to achieve that goal. The Committee decided to take no further action on the matter.

C. Proposed Amendments to Appendix XI-J – Wage Execution

The Committee considered correspondence between the Acting Administrative Director of the Courts, and an attorney who proposed amending the model Wage Execution form, set forth in Appendix XI-J to the Rules, to make clear that the judge has discretion to order that an amount less than 10% be withheld from the judgment-debtor's earnings. In his view, the current form implies that the court has no discretion to order an amount less than 10% and he pointed out that there is no such provision in N.J.S.A. 2A:17-56, the statute that authorizes wage withholding to satisfy civil judgments. In discussing the question, the Committee had before it copies of the Wage Execution form and the statute. Some members favored the proposal, while others opposed it. Ultimately the Committee decided to recommend no further action, principally because both the Notice of Application for Wage Execution and the Execution itself make clear that the judgment-debtor has a continuing right to object to the execution and request a reduction, even after the judge has signed the order. Moreover, there simply was no basis to conclude that the judges who handle these matters are not familiar with the law that governs them.

D. Proposed Amendment to R. 6:6-6 - Provision of Notice to Judgment Creditors of Applications for Post-Judgment Relief From Levies

A member of the Committee complained that judgment-creditors often do not get adequate notice of applications for relief from levies to be able to appear and protect their clients' rights. The attorney suggested that there should be a requirement of 48 hours notice or that a hearing be held on the judgment-debtor's application at 3:00 p.m. on the date of application. This would require an amendment to R. 6:6-6 which governs post-judgment applications for relief in tenancy actions and to claims of exemption from levy in other Special Civil Part actions. Because applications brought pursuant to the rule are emergent in nature, the Committee felt that there should be no time barrier to immediate relief, assuming that the rights of all parties to the litigation are protected, and decided to refer the matter to the Committee of Special Civil Part Supervising Judges for further discussion.

E. Proposed Amendment to R. 6:7-2(a) – Elimination of Requirement to Show Good Cause for Issuance of Order to Take Post Judgment Discovery

The Committee considered a request from a member of the Civil Practice Committee for an amendment to R. 6:7-2(a) that would either remove any "good cause" requirement from the rule or set forth in the rule that the existence of an unpaid judgment is sufficient "good cause" for the court to order supplementary proceedings to discover assets that could be used to satisfy a judgment. The Committee concluded that it is up to the judge to decide on a case by case basis what set of circumstances constitute good cause to warrant entry of an order for supplementary proceedings and thus rejected the proposed amendments.

F. Proposed Amendments to Rule 6:7-2 and Appendices XI-M and XI-O - "Shall" vs. "May"

This Committee considered correspondence from one of its mambers and a member of the Supreme Court Civil Practice Committee on behalf of the New Jersey Creditors Bar Association, complaining that some judges routinely modify orders to enforce litigant's rights by changing the word "shall" to "may," in reference to the issuance of a warrant for arrest if the target of a post-judgment information subpoena fails to obey the court's order. They pointed out that R. 6:7-2(f) mandates the use of the form of order set forth in Appendix XI-O and that the form uses the term "shall." The end result, they said, is the development of local practices and they proposed the addition of a paragraph (j) to the rule that would make the relaxation rule (R. 1:1-2) inapplicable to R. 6:7-2(d) through (i) and the forms set forth in Appendices XI-M through XI-Q.

This Committee was advised that the Civil Practice Committee had tentatively approved proposed amendments to Appendices XI-M (Notice of Motion for Order Enforcing Litigant's Rights) and XI-O (Order to Enforce Litigant's Rights) that would change the word "shall" to "may" in reference to whether a warrant will issue and attorney's fees be awarded if the respondent fails to comply with the order. The Civil Practice Committee was waiting for advice from this Committee before deciding whether to recommend the changes to the Supreme Court. This Committee had before it copies of the proposed amendments being considered by the Civil Practice Committee.

During this Committee's discussion it was pointed out that while the form of the order set forth in Appendix XI-O uses the word "shall," and while use of the form is mandatory under R. 6:7-2(f), there are occasions on which a judge would, in the exercise of his or her discretion, substitute the word "may" for "shall" as, for example, when the target of the order is known to be

an 85-year old with a heart condition. It was thus clear that the rule should not be modified so as to preclude the court's ability to relax the rule pursuant to R. 1:1-2. On the other hand, it was also apparent to the Committee that such a change to the form of the order in every case or on a regular and routine basis would both (1) weaken the perception of the court's determination to compel answers to the questions in the information subpoena and (2) lead to inconsistent practices from county to county. It should also be clear that the use of the word "shall" in the prescribed form of the Notice of Motion for Order Enforcing Litigant's Rights (Appendix XI-M) simply tells the judgment-debtor what relief the creditor is seeking. The Order to Enforce Litigant's Rights (Appendix XI-O) tells the judgment-debtor what ultimately will happen if s/he continues to defy the subpoena and the court's order to comply with it. In no way does use of the word "shall" in the two Appendices impair the discretion of the judge to refuse to sign the arrest warrant when asked to do so.

One of the members of this Committee, who is a judge, stated that in the past he had often substituted the word "may" for the imperative "shall," but stopped the practice after carefully re-reading the rule and the forms provided for its enforcement in the Appendices to the Rules, the use of which is mandated by the Supreme Court. Considering the text of R. 6:7-2 and the implementing Appendices in their entirety, he concluded that the protections built into the mechanism for the judgment-debtor were so extensive that by the time the arrest warrant is actually issued it is indeed the last resort to force compliance with the information subpoena and the court's order to enforce it. These protections include:

(1) A statement in the required form of the Information Subpoena itself (Appendix XI-L) warning the judgment-debtor that failure to comply with it "may result in your arrest and incarceration."

(2) A requirement in R. 6:7-2(c) that the Information Subpoena be served personally or simultaneously by regular and certified mail return-receipt-requested.

(3) Requirements in R. 6:7-2(e) that the notice of motion to enforce litigant's rights (a) be in the form set forth in Appendix XI-M, (b) warn the debtor that s/he may be arrested and held until s/he has complied with the Information Subpoena, (c) state that a court appearance can be avoided by compliance with the Information Subpoena and (d) be served either personally or simultaneously by regular and certified mail return-receipt-requested.

(4) Requirements in R. 6:7-2(f) that the order to enforce litigant's rights be in the form set forth in Appendix XI-O, be served personally or simultaneously by regular and certified mail return-receipt-requested and warn the debtor that upon failure to comply with the Information Subpoena within 10 days, "the court will issue an arrest warrant."

(5) Requirements in R. 6:7-2(g) that in order to get an arrest warrant the judgment-creditor must certify that the debtor has not complied with the order to enforce litigant's rights, that the warrant be executed only between the hours of 7:30 a.m. and 3:00 p.m. on a day when court is in session, that if the debtor was served with the notice of motion and order by mail the warrant must be executed only at the address to which they were sent and that the debtor be brought before a judge forthwith and released immediately upon completion of the Information Subpoena.

For these reasons the Committee member who had originally suggested the modification to circumscribe the court's discretion moved to recommend that the rule and forms be left as they are. The motion was seconded by a representative of Legal Services of New Jersey (LSNJ) and the motion was adopted by a vote of 19 in favor and one abstention.

It should be noted that the reasoning of the Special Civil Part Practice Committee in originally proposing this enforcement mechanism is explained in the Committee's 1992 Report to the Supreme Court at pages 51 – 59 and 101-122. An excerpt containing those pages is attached as an appendix to this Report.

III. OTHER RECOMMENDATIONS - NONE

IV. LEGISLATION - NONE

V. MATTERS HELD FOR CONSIDERATION

A. Use of Credit Cards to Pay Fees and Post Deposits

The Committee endorses the idea of permitting the payment of filing fees and posting of deposits by credit card but recognizes that formulation of the language for the rule change should await completion of the AOC's work on this project. Staff informed the Committee that the Information Technology Office, Office of Management Services and the Civil Practice Division of the Office of Trial Court Services are already deeply involved in this project.

B. "Shotgun" Bank Levies

The Committee discussed the practice of some Special Civil Part Officers using a "shotgun" approach by serving copies of writs of execution on a number of banks, not knowing whether the judgment-debtor in fact has an account at any of them. The Committee asked for advice from the Conference of Civil Division Managers, the Special Civil Part Management Committee (composed of the Assistant Civil Division Managers responsible for running the clerks' offices in the counties) and the Committee of Special Civil Part Supervising Judges as to the extent of the practice and the problems, if any, that it raises. The Supervising Judges will discuss the matter at their February meeting and this Committee will then transmit its recommendations to the Supreme Court in the form of a supplemental report.

C. Proposed Amendment to R. 6:7-2(b)(2) - Eliminate Requirement of Serving Defendant With Information Subpoena Before Serving Banks

A member of the Committee, has proposed an amendment to R. 6:7-2(b)(2) that would eliminate the requirement, presently in the rule, of serving a judgment debtor with an information subpoena and getting no response, before the judgment-creditor can serve an information subpoena on a bank to find out if the debtor has an account there. The Committee will report on this proposal in its supplemental report to the Supreme Court.

VI. CONCLUSION

The members of the Supreme Court Committee on Special Civil Part Practice appreciate the opportunity to have served the Supreme Court in this capacity.

Respectfully submitted,

Hon. Joseph R. Rosa, J.S.C., Chair

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Felipe Chavana, Esq.
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Hon. Jerome M. St. John, J.S.C.
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Andrew R. Wolf, Esq.
Robert J. Piscopo, AOC Staff
Robert D. Pitt, Esq., AOC Staff

APPENDIX – Excerpts From 1992 Report of the Special Civil Part Practice Committee to the Supreme Court (Pages 51-59 and 101-122)

M. Proposed Amendments to R. 6:7-2--Administration of Oath During Post-Judgment Discovery Proceedings; Enforcement of Discovery Orders and Information Subpoenas

The Committee proposes two kinds of amendments to R. 6:7-2, which deals with post-judgment orders for discovery and information subpoenas. The first is a simple amendment to R. 6:7-2(a) that will make clear that the attorney for the judgment-creditor can administer the oath to the judgment-debtor who has been ordered to appear for post-judgment discovery. The second category of amendments deals with the enforcement of discovery orders and information subpoenas, which the Committee has found to be increasingly troublesome. Enforcement problems may be increasing because more creditors, including those who proceed pro se, are using post-judgment discovery since the information subpoena became available in 1990. Whatever the cause, the Committee proposes a comprehensive overhaul and codification of the enforcement procedures.

Rule 6:7-2(c) provides, in pertinent part, that "...the failure to comply with an information subpoena shall be treated as a failure to comply with an order for discovery entered in accordance with paragraph (a) of this rule." The question then arises as to whether the judgment creditor should seek to enforce litigant's rights pursuant to R. 1:10-5 by way of order to show cause or motion. Papers submitted to

the Committee by one attorney, who is a member, indicated that he uses the motion procedure. The Special Civil Part Clerk's office in Atlantic County, on the other hand, supplies a form petition for an order to show cause, together with a form of order, to the litigant whose information subpoena has been unanswered. In a letter and memorandum to the Committee, another member contended that the proper procedure is by way of motion. Others use the order to show cause.

The Committee concluded that either procedure is permitted by the applicable court rule, Supreme Court opinion and according to other published authorities on the subject. Rule 1:6-2 states that "[a]n application to the court for an order shall be by motion, or in special cases, by order to show cause." The Supreme Court stated, in N.J. Dept. of Health v. Roselle, 34 N.J. 331, 343 (1961), that either procedure can be used by a litigant seeking supplemental relief in a civil matter. The same conclusion is reached in 4A N.J. Practice (Walzer, Civil Practice Forms) 4th ed., 1991) § 84.2 at 438. The skills training course materials distributed to new attorneys in 1976-77 advocated use of the order to show cause procedure. See: Nudelman and Rosenberg, Collection Practice in New Jersey (I.C.L.E., 1976) at pp. 31-35.

The real question, if either procedure is permissible, is which is best for accomplishing the purpose of the discovery

order and information subpoena while promoting the efficient handling of the applications for supplemental relief. Another question is the type of notice to the debtor, mail or personal service, that the court will require before issuing an arrest warrant; most judges require personal service so as to ensure that notice and an opportunity to be heard are given before a judgment-debtor is deprived of liberty for however brief a period of time.

These questions arise in a context of one year's experience with the information subpoena. One attorney reported that of 100 cases in which he used the subpoena, 3 defendants answered the questions, 4 defendants moved and 93 made no response. The 93 cases were all brought to the court's attention by orders to show cause and this meant that a judge had to read the papers and sign the order in each and every case. The volume raises questions regarding the effectiveness of the information subpoena and the administrative burden for the court. The Committee concluded that certain steps could be taken to increase the likelihood of compliance with the information subpoena.

First, the Committee decided that the information subpoena itself, contained in Appendix XI-K to the Rules, should contain words warning the debtor that failure to comply may result in the debtor's arrest and incarceration. The warning should be placed at the top of the subpoena in bold letters.

The form of the subpoena, as amended, is set forth in Section III of this Report.

Second, the Committee decided that R. 6:7-2 should be amended, by adding a new subparagraph (d), to specify that the motion procedure, rather than the order to show cause, should be used when a debtor fails to answer the subpoena and the creditor seeks to enforce litigant's rights. The motion procedure should also be used to enforce discovery orders in the Committee's view. This will avoid the court's involvement at the earliest stage of the enforcement procedure and defer such involvement to a point, hopefully, after the debtor has complied with the subpoena or discovery order and the involvement is no longer required. The motion procedure in this context requires a return day and this will be an exception to the general motion practice under R. 6:3-3(c). The Committee felt the motion should be returnable no sooner than 10 days following service and filing so that there is adequate time for the debtor to comply with the subpoena or order in response to the notice of motion. Note that in the case of an information subpoena, the debtor can avoid a court appearance by furnishing answers to the subpoena at least 3 days before the return date.

Third, the Committee believes that the current confusion surrounding the enforcement procedure can be attenuated by specifying in the rule the contents of the notice of motion,

the resulting order and the eventual arrest warrant and by prescribing mandatory forms for each in the Appendices to the Rules. Particularly, the new subparagraph (d) requires the notice of motion to advise the debtor that if she or he fails to appear on the return date of the motion, an order for his or her arrest will be sought, together with an order to pay the creditor's attorney fees in connection with the motion to enforce litigant's rights. A new subparagraph (e) prescribes the contents of an order, to be entered in the event that the debtor fails to appear on the return date, for the debtor's arrest, without further notice, if he or she fails to comply with the discovery order or information subpoena within 10 days. A new subparagraph (f) provides for the issuance of an arrest warrant in the event of further non-compliance, which is to be executed between the hours of 7:30 a.m. and 3:00 p.m. on a court day. For good cause shown, the warrant may be executed at another time subject to such terms as the court directs. Further, to ensure due process, if the motion and order for arrest were served by mail, the arrest warrant can be executed only at the address to which they were sent.

The proposed rule amendments follow. The mandatory forms are set forth in Section III of this Report.

6:7-2.Orders for Discovery; Information Subpoenas

(a) Order for Discovery. The court may, upon the filing by the judgment creditor or a successor in interest (if that interest appears of record) of a petition verified by the judgment creditor or the creditor's agent or attorney stating the amount due on the judgment, make an order, upon good cause shown, requiring any person who may possess information concerning property of the judgment debtor to appear before the attorney for the judgment creditor or any other person authorized to administer an oath and make discovery under oath concerning said property at a time and place therein specified. The location specified shall be in the county where the judgment debtor lives or works.

No more than one appearance of any such person may be required without further court order. The time and place specified in the order shall not be changed without the written consent of the person to be deposed or upon further order of the court.

(b) ...no change

(c) ...no change

(d) Enforcement by Motion. Proceedings to enforce litigant's rights pursuant to R. 1:10-5, when a judgment-debtor fails to obey an order for discovery or an information subpoena, shall be commenced by notice of motion supported by affidavit or certification. The notice of motion and certifi

cation shall be in the form set forth in Appendices XI-L and M to these Rules. The notice of motion shall contain a return date and shall be served on the judgment-debtor and filed with the clerk of the court not later than 10 days before the time specified for the return date. The moving papers shall be served on the judgment-debtor either in person or simultaneously by regular and certified mail, return receipt requested. The notice of motion shall state that the relief sought will include an order:

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

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

(3) directing that if the judgment-debtor fails to appear in court on the return date or to furnish the required answers, he or she shall be arrested and confined to the county jail until he or she has complied with the order for discovery or information subpoena,

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

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

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

(e) Order for Arrest. If the judgment-debtor has failed to appear in court on the return date and the court enters an order for his or her arrest, it shall be in the form set forth in Appendix XI-N to these Rules and shall state that upon the judgment-debtor's failure, within 10 days of the certified date of mailing or personal service of the order, to comply with the information subpoena or discovery order, the court will issue a warrant for his or her arrest. The judgment-creditor shall serve a copy of the signed order upon the judgment-debtor either personally or by mailing it simultaneously by regular and certified mail, return receipt requested. The date of mailing or personal service shall be certified on the order.

(f) Warrant for Arrest. Upon the judgment-creditor's certification, in the form set forth in Appendix XI-O to these Rules, that a copy of the signed order for arrest to enforce litigant's rights has been served upon the judgment-debtor as provided in this rule, that 10 days have elapsed and that there has been no compliance with the information subpoena or discovery order, the court may issue an arrest warrant. The

warrant shall be in the form set forth in Appendix XI-P to these Rules and, except for good cause shown and upon such other terms as the court may direct, shall be executed by a Special Civil Part Officer or Sheriff only between the hours of 7:30 a.m. and 3:00 p.m. on a day when the court is in session. If the notice of motion and order for arrest were served on the judgment-debtor by mail, the warrant may be executed only at the address to which they were sent. In all cases the arrested judgment-debtor shall promptly be brought before a judge of the Superior Court and released upon compliance with the order for discovery or information subpoena.

Note: Source -- R.R. 7:11-3(a)(b), 7:11-4. Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 17, 1975 to be effective September 8, 1975; amended July 21, 1980 to be effective September 8, 1980; caption amended, paragraph (a) caption and text amended, paragraph (b) adopted and former paragraph (b) amended and redesignated as paragraph (c) June 29, 1990 to be effective September 4, 1990; paragraph (a) amended and paragraphs (d)(e) and (f) adopted to be effective .

F. Proposed Revision of Appendix XI-K--Information Subpoena and Written Questions

The Committee proposes in Section I. M. of this Report to amend R. 6:7-2 so as to improve the procedures for enforcing discovery orders and information subpoenas. This effort also involves the revision of the information subpoena itself so as to advise judgment-debtors in large print at the top of the form that failure to comply with the subpoena may result in the debtor's arrest and incarceration. At the same time, the Committee perceives a two-fold need to revise the written questions attached to the subpoena.

First, the questions addressed to an individual judgment-debtor need to cover personalty in greater detail if there is a possibility of later seeking to enforce a lien against realty. Two New Jersey bankruptcy cases were brought to the attention of the Committee in which levies on real estate were successfully attacked because the interrogatories served on the debtor did not inquire as to the debtor's cash on hand and ownership of furniture, appliances and other household goods. See Kellman v. Palese (In re Italiano), 66 Bankr. 468 (Bankr. D. N.J. 1986) and Genz v. Hallmark Cards, Inc. (In re Silverman), 6 Bankr. 991, 995-96 (D. N. J. 1980). The additional questions proposed by the Committee would require the judgment-debtor to list cash on hand and details regarding other personal property, but only if the debtor owns real

estate and has cash and other personalty worth more than the statutory exemption of $1,000.

Second, the present questions do not adequately inquire about the finances and assets of judgment-debtors who happen to be corporations, partnerships or other business entities. The Committee proposes a set of 18 questions for this purpose, which will be denominated "Questions for Business Entity." The original questions, augmented as explained above, will be called "Questions for Individuals." The judgment-creditor will select the set that is appropriate for the particular case.

The revised information subpoena, questions for individual and questions for business entity follow. Together they will comprise Appendix XI-K to the Rules.

APPENDIX XI-K

INFORMATION SUBPOENA AND WRITTEN QUESTIONS

IMPORTANT NOTICE - PLEASE READ CAREFULLY

FAILURE TO COMPLY WITH THIS INFORMATION SUBPOENA
MAY RESULT IN YOUR ARREST AND INCARCERATION

NAME:
ADDRESS:

TELEPHONE NO.:

Attorneys for:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SPECIAL CIVIL PART

Plaintiff, _____ COUNTY

-vs- DOCKET NO.

Defendant, CIVIL ACTION

INFORMATION SUBPOENA

THE STATE OF NEW JERSEY, to:

Judgment has been entered against you in the Superior Court of New Jersey, Law Division, Special Civil Part, _____ County, on _____, 19__, in the amount of $_____ plus costs, of which $_____ together with interest from _____, 19__, remains due and unpaid.

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

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

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

Dated: _____, 19

_____ _____

Attorney for Clerk

QUESTIONS FOR INDIVIDUALS

1. Full name _____

2. Address _____

3. Birthdate _____

4. Social Security # _____

5. Driver's license # and expiration date _____
_____

6. Telephone # _____

7. Full name and address of your employer _____
_____

   (a) Your weekly salary: Gross _____ Net _____

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

8. Is there currently a wage execution on your salary?

   Yes _____ No _____

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

10. If you receive money from any of the following sources, list the amount, how often, and the name and address of the source:

Type	Amount & Frequency	Name & Address of Sources
Alimony		
Loan Payments		
Rental Income		
Pensions		
Bank Interest		
Stock Dividends		

11. Do you receive Social Security benefits?

Yes _____ No _____

12. Do you own the property where you reside?

Yes _____ No _____ If yes, state the following:

(a) Name of the owner or owners _____

(b) Date property was purchased _____

(c) Purchase price _____

(d) Name and address of mortgage holder _____
_____

(e) Balance due on mortgage _____

13. Do you own any other real estate?

Yes _____ No _____ If yes, state the following for each property:

(a) Address of property _____

(b) Date property was purchased _____

(c) Purchase price _____

(d) Name and address of all owners_____
_____

(e) Name and address of mortgage holder _____
_____

(f) Balance due on mortgage _____
_____

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

14. If you answered "yes" to either question 12 or 13, does the present value of your personal property, which includes automobiles, furniture, appliances, stocks, bonds, and cash on hand, exceed $1,000?

Yes _____ No _____ If the answer is "yes," you must itemize all personal property owned by you.

Cash on hand: $_____

Other personal property: (Set forth make, model and serial number. If financed, give name and address of party to whom payments are made).

Item	Date Purchased	Purchase Price	If Financed Balance Still Due	Present Value

15. Do you own a motor vehicle?

Yes _____ No _____ If yes, state the following for each vehicle owned:

(a) Make, model and year of motor vehicle

(b) If there is a lien on the vehicle, state the name and address of the lienholder and the amount due to the lienholder

(c) License plate #

(d) Vehicle identification #

16. Do you own a business?

Yes ____ No _____ If Yes, state the following:

(a) Name and address of the business _____
_____

(b) Is the business a Corporation _____, sole proprietorship _____ or partnership _____?

(c) The name and address of all stockholders, officers and/or partners _____
_____

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

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

Creditor's Name	Creditor's Attorney	Amount Due	Name of Court	Docket #

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

Date: _____ _____

QUESTIONS FOR BUSINESS ENTITY

1. Name of business including all trade names. _____

_____

2. Addresses of all business locations. _____

_____

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

_____

_____

_____

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

_____

_____

_____

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

_____

_____

_____

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

_____

_____

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

_____

_____

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

_____

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

_____

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

_____

_____

_____

11. Does the business own any real estate? Yes_____ No _____

If yes, state the following for each property:

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

(b) Address of property _____

(c) Date property was purchased _____

(d) Purchase price _____

(e) Name and address of mortgage holder _____

_____

(f) Balance due on mortgage _____

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

NAME AND ADDRESS OF TENANT	MONTHLY RENTAL

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

(a) Make, model and year _____

_____

(b) License plate number _____

(c) Vehicle identification number _____

(d) If there is a lien on the vehicle, the name and address of the lienholder and the amount due on the lien

_____

_____

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

NAME AND ADDRESS	AMOUNT DUE

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

(a) The nature of the asset _____

_____

(b) The date of transfer _____

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

_____

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

_____

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

_____

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

(a) The date of cessation _____

(b) All assets as of the date of cessation _____

_____

(c) The present location of those assets _____

_____

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

(1) The nature of the assets _____

_____

(2) Date of transfer _____

(3) Name and address of the person to whom the assets were transferred _____

_____

(4)The consideration paid for the assets and the form in which it was paid _____

_____

(5) Explain in detail what happened to the consideration paid for the assets _____

_____

16. Set forth all other judgments that you are aware of that have been entered against the business and include the following:

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

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

(a) Date litigation commenced _____

(b) Name of party who started the litigation _____

_____

(c) Nature of the action _____

_____

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

_____

_____

(e) Trial date _____

(f) Status of case _____

(g) Name of the court and docket number _____

_____

18. State the name, address and position of the person answering these questions. _____

_____

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

Date: _____ _____

G. Proposed Appendices XI-L, M, N, O, P--Mandatory Forms for Enforcing Discovery Orders and Information Subpoenas

As explained in Sections I. M. and III. F. of this Report, the Committee proposes to amend R. 6:7-2 and revise the information subpoena so as to improve the procedures for enforcing both the subpoena and orders for discovery. The Committee is recommending that a motion procedure be prescribed for this purpose, rather than an order to show cause procedure, and the proposed amendments to R. 6:7-2 refer to forms which the Committee feels should be mandatory. The amendments to R. 6:7-2 and the forms are discussed in detail in Section I. M. of this Report. The forms would be set forth in the Appendices to the Rules as follows:

Appendix XI-L Notice of Motion for Order Enforcing Litigant's Rights

Appendix XI-M Certification In Support of Motion for Order Enforcing Litigants Rights

Appendix XI-N Order for Arrest

Appendix XI-O Certification In Support of Application for Arrest Warrant

Appendix XI-P Warrant for Arrest

The proposed appendices follow.

APPENDIX XI-L

NOTICE OF MOTION FOR ORDER ENFORCING LITIGANT'S RIGHTS

Name:
Address:
Telephone No.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART
_____ County

Docket No. _____

_____, Plaintiff

v.

_____, Defendant

CIVIL ACTION

Notice of Motion for Order Enforcing Litigant's Rights

PLEASE TAKE NOTICE that on _____, 19__ at _____ __.m., I will apply to the above-named court, located at _____ _____, New Jersey, for an Order:

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

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

(3) Directing that, if you fail to appear in court on the date written above, you shall be arrested by an Officer of the Special Civil Part or the Sheriff and confined in the county jail until you comply with the (check one) ☐ order for discovery, ☐ information subpoena;

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

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

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

I will rely on the certification attached hereto.

Date: _____

_____
Attorney for Plaintiff or
Plaintiff, Pro Se

APPENDIX XI-M
CERTIFICATION IN SUPPORT OF MOTION FOR ORDER ENFORCING LITIGANT'S RIGHTS

Name:
Address:
Telephone No.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART
_____ County

Docket No. _____

_____, Plaintiff

v.

_____, Defendant

CIVIL ACTION

Certification In Support of Motion for Order Enforcing Litigant's Rights

The following certification is made in support of plaintiff's motion for an order enforcing litigant's rights:

1. I am the plaintiff or plaintiff's attorney in this matter.

2. On _____, 19__, plaintiff obtained a judgment against the defendant _____ for $ _____ damages, plus costs.

3. (Check applicable box below)

☐ a. On _____, 19___, an Order was entered by this Court ordering defendant _____ to appear at _____ on _____, 19___, at _____ __.m. and make discovery on oath as to the defendant's property and on _____, 19___, a copy of the Order was served upon _____ (check one) ☐ personally, ☐ by sending it simultaneously by ordinary and certified mail, return receipt requested to _____'s last known address.

☐ b. On _____, 19___, I served an information subpoena and attached questions as permitted by Court Rules on the defendant _____ (check one) ☐ personally, ☐ by sending it simultaneously by regular and certified mail, return receipt requested to defendant's last known address.

4. _____ has failed to comply with (check one) ☐ the order, ☐ the information subpoena.

5. I request that the Court enter an order enforcing litigant's rights.

6. On _____, 19___, I served copies of this motion and certification on _____ (check one) ☐ personally, ☐ by sending them simultaneously by regular and certified mail, return receipt requested.

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

Date: _____ _____

APPENDIX XI-N
ORDER FOR ARREST

Name:
Address:
Telephone No.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART
_____ County

Docket No. _____

_____, Plaintiff

v.

_____, Defendant

CIVIL ACTION

ORDER FOR ARREST

This matter being opened to the court by _____ on plaintiff's motion for an order enforcing litigant's rights and the defendant having failed to appear on the return date and having failed to comply with the (check one) ☐ order for discovery previously entered in this case, ☐ information subpoena;

It is on the _____ day of _____, 19___, ORDERED and adjudged:

1. Defendant _____ has violated plaintiff's rights as a litigant;

2. Defendant _____ shall immediately furnish answers as required by the (check one) ☐ order for discovery, ☐ information subpoena

3. If defendant _____ fails to comply with the (check one) ☐ order for discovery, ☐ information subpoena within ten (10) days of the certified date of personal service or mailing of this order, a warrant for the defendant's arrest shall issue out of this Court without further notice;

_____
, J.S.C.

PROOF OF SERVICE

On _____, 19___, I served a true copy of this Order on defendant _____ (check one) ☐ personally, ☐ by sending it simultaneously by regular and certified mail, return receipt requested to:
(Set forth address) _____

_____

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

Date: _____ _____

APPENDIX XI-O
CERTIFICATION IN SUPPORT OF APPLICATION
FOR ARREST WARRANT

Name:
Address:

Telephone No.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART
_____ COUNTY

Docket No.

_____, Plaintiff

v.

_____, Defendant

CIVIL ACTION
Certification in Support of
Application for Arrest Warrant

The following certification is made in support of plaintiff's application for an arrest warrant:

1. I am the plaintiff or plaintiff's attorney in this matter.

2. On _____, 19__, plaintiff obtained a judgment against the defendant _____ for $ _____ damages, plus costs.

3. (Check applicable box below)

☐ a. On _____, 19___, an Order was entered by this Court ordering defendant _____ to appear at _____ on _____, 19___, at _____ __.m. and make discovery on oath as to the defendant's property and on _____, 19___, a copy of the Order was served upon _____ (check one) ☐ personally, ☐ by sending it simultaneously by ordinary and certified mail, return receipt requested to _____'s last known address.

☐ b. On _____, 19___, I served an information subpoena and attached questions as permitted by Court Rules on the defendant _____ (check one) ☐ personally, ☐ by sending it simultaneously by regular and certified mail, return receipt requested to defendant's last known address.

4. _____ has failed to comply with (check one) ☐ the order, ☐ the information subpoena.

5. On _____, 19__, the Court entered an Order for Arrest when defendant failed to appear on the return day of my motion for order enforcing litigant's rights.

6. On _____, 19__, I served a true copy of the Order for Arrest on _____ (check one) ☐ personally, ☐ by sending it simultaneously by regular and certified mail, return receipt requested.

7. Ten days have passed since I served a copy of the Order for Arrest on defendant and defendant has not complied with the (check one) ☐ information subpoena, ☐ order for discovery.

8. I request that the Court issue a warrant for the arrest of defendant.

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

Date: _____ _____

APPENDIX XI-P
WARRANT FOR ARREST

Name:
Address:
Telephone No.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART
_____ County

Docket No. _____

_____, Plaintiff

v.

_____, Defendant

CIVIL ACTION

WARRANT FOR ARREST

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

You are hereby commanded to arrest _____, at (check one) ☐ any location, ☐ the address set forth in the annexed order for arrest between the hours of 7:30 a.m. and 3:00 p.m. on a day when the court is in session, and bring him or her forthwith before a Judge of the Superior Court to await the further order of the Court in this matter.

Date: _____ WITNESS: _____
Judge of the Superior Court

_____
Clerk of the Special Civil Part

BIENNIAL REPORT OF THE

SUPREME COURT COMMITTEE ON THE TAX COURT

2008-09 AND 2009-10 COURT YEARS

SUBMITTED TO THE SUPREME COURT OF NEW JERSEY

January 15, 2010

Table of Contents

INTRODUCTION

The Supreme Court Committee on the Tax Court (the "Committee") is comprised of members of the bench and tax bar as well as representatives of taxpayers' groups, local, county and state tax administrators and others concerned with the administration and review of the New Jersey tax laws. The Committee held five meetings during the period beginning March 4, 2009 and ending January 12, 2010. Numerous topics and issues were covered and discussions were detailed and vigorous. The Chairman reappointed and continued a Small Claims Jurisdiction Subcommittee, chaired by Joseph C. Small, P.J.T.C. (Retired). Other subcommittees were appointed on an as-needed basis.

The Committee continued to engage in a comprehensive examination of the rules governing practice in the Tax Court as well as a variety of other issues. Specifically, the Committee discussed issues relating to the review of state and local tax assessments, proposed rule amendments, proposed legislation, case management and court procedures, court forms, small claims procedures, and rules and procedures governing public access to court and administrative records. The project which consumed a substantial amount of the Committee's time was the continuing review and study of issues relating to local property tax small claims jurisdiction and the drafting of revised small claims jurisdiction rules.

The Committee's focus on and review of small claims jurisdiction dates back to its Biennial Report to the Supreme Court for the 1998-1999 and 1999-2000 Court Years, in which the Committee recommended that the small claims jurisdiction of the Tax Court be modified in local property tax cases. The Committee addressed what it felt to be an increasing problem concerning the improper designation of filed local property tax cases as small claims in order to avoid the higher filing fee and the more formal discovery requirements associated with the filing of regular cases. At that time, small claims jurisdiction for all cases (local property tax cases and

state tax cases) was based upon the amount of tax in controversy, which could not exceed the sum of $2,000. However, given the interaction of factors such as value, ratios of assessment to true value, and tax rates, the tax amount at stake in local property tax cases was frequently not readily ascertainable by the Tax Court Management Office, thereby making classification difficult at the time of intake. The Committee recommended that the jurisdictional determination for local property tax small claims cases be changed from a dollar amount to a jurisdiction based upon property classification.

The Committee's recommendations to modify R. 8:3-4(b) and (c), R. 8:11 and R. 8:12(b) and (c)(2) were adopted by the Supreme Court effective September 5, 2000. The adopted rules limited the local property tax small claims jurisdiction of the Tax Court to 1 to 4 family residences ("class 2 property," N.J.A.C. 18:13-2.2) and farmland residences ("class 3A farm residences," N.J.A.C. 18:12-2.2). The prior "$2,000 tax in controversy limitation" was eliminated. See 1998-1999 and 1999-2000 Biennial Report pages 3-5, 10-17. The $2,000 limitation in non-local property tax cases remained unchanged.

Upon adoption of these rules, the Supreme Court requested a report from the Presiding Judge of the Tax Court and the Tax Court Administrator as to the operation of the revised rules and procedure. The Presiding Judge and the Tax Court Administrator provided a report dated January 8, 2002, which set forth statistical evidence of two years suggesting that the new small claims jurisdiction rules were having their intended effect. However, the Committee noted in its Biennial Report to the Supreme Court for the 2000-01 and the 2001-02 Court Years that it would continue to monitor filing data in the small claims and regular divisions of the Tax Court in order to continue to review and evaluate small claims jurisdiction.

The Committee considers full access to the Tax Court by all taxpayers to be a significant issue. Since 2002, every sitting Committee has continued to monitor filing data, receive feedback from the Tax Court Management Office and actively solicit and receive feedback from Tax Court practitioners concerning small claims jurisdiction. The Committee received input from its standing Small Claims Jurisdiction Subcommittee and continued to review and discuss proposals to modify the small claims jurisdiction of the Tax Court.

Feedback from Tax Court practitioners over the past several years has suggested that small business taxpayers seeking to appeal assessments with small amounts of tax at stake have found bringing an appeal to the Tax Court less feasible due to higher filing fees and costs related to more formal discovery procedures. Under these circumstances, the Committee has developed a solution which still addresses the administrative and procedural concerns expressed by the Committee in 2000, but also makes small claims jurisdiction available to all property classifications based upon readily ascertainable standards.

As set forth in proposed amendments to R. 8:3-4 and R. 8:11, small claims jurisdiction will continue to be available to properties classified as family or farm residence. In addition, all other properties on which the prior year's taxes are less than $25,000 will now have access to the Small Claims Division. The Committee also concluded that the small claims jurisdictional amount in state tax cases should be raised from $2,000 to $5,000. Since adoption of the $2,000 amount in 1979, inflation has caused a substantial increase in dollar values and New Jersey's two primary state taxes (Gross Income Tax and the Sales And Use Tax) have seen their rates substantially increased by the Legislature.

PART I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

The Committee recommends to the Supreme Court the following rule amendments. All deletions and new language are indicated in bold text.

A. Proposed Amendment to R. 8:3-2—Pleadings Allowed.

R. 8:3-2 requires a case information statement to be attached to a complaint. R. 1:5-6(c) provides procedures for returning nonconforming papers filed by a party under certain circumstances. One of those circumstances is the failure to include a "completed Case Information Statement as required by R. 4:5-1 in the form set forth in Appendix XII to these rules." R. 1:5-6(c)(1)(B). The Tax Court does not use a form of case information statement specified in R. 4:5-1 and Appendix XII. Accordingly, the Committee proposes to amend R. 8:3-2 to expressly incorporate the nonconforming paper procedure in R. 1:5-6(c) when a complaint fails to attach a case information statement.

The text of the proposed amendment follows.

8:3-2. Pleadings Allowed

(a) Generally. Pleadings shall consist of the complaint and such responsive pleadings as shall be filed in the action. A case information statement shall be attached to the complaint. **A complaint that fails to include a case information statement shall be treated as a nonconforming paper that shall be returned stamped "Received but not filed (date)" as provided in R. 1:5-6(c)**.

(b) . . . . No change.

(c) . . . . No change.

Note: Adopted June 20, 1979 to be effective July 1, 1979; amended July 16, 1981 to be effective September 14, 1981; text allocated into paragraphs (a) and (b) and amended, paragraph (a) and (b) captions adopted, and new paragraph (c) adopted July 9, 2008 to be effective September 1, 2008**; paragraph (a) amended , 2010 to be effective September 1, 2010**.

B. Proposed Amendment to R. 8:3-4—Contents of Complaint Generally.

The Committee proposes to amend R. 8:3-4(c) to set forth how the proposed modified small claims jurisdiction proposed for R. 8:11 should be recited in the complaint. In addition, R. 8:3-4(c)(2) provides for nonconforming paper treatment as provided in R. 1:5-6(c) if the complaint fails to confirm the prior year's taxes when small claims jurisdiction is based on prior year's taxes.

The text of the proposed amendment follows.

8:3-4. Contents of Complaint Generally

(a) . . . . No change.

(b) . . . . No change.

(c) Small Claims Classification.

(1) In state tax cases the complaint shall state whether the amount of refund claimed or the taxes or additional taxes sought to be set aside or the amount in controversy, as the case may be, with respect to any year, exceeds the sum of **[$2,000]** **$5,000** exclusive of interest and penalties.

(2) In local property tax cases, the complaint shall state whether each separately assessed parcel of property under appeal is a class 2 property (1-4 family residence) or a class 3A farm residence **or, if small claims jurisdiction is based on the prior year's taxes, there shall be included with the complaint a copy of the prior year's final tax bill or the current year's notice of assessment or a statement certifying the prior year's taxes. Where small claims jurisdiction is based on the prior year's taxes, a complaint that fails to confirm the prior year's taxes as specified in this subparagraph, shall be treated as a nonconforming paper that shall be returned stamped "Received but not filed (date)" as provided in R. 1:5-6(c).**

(d) . . . . No change.

(e) . . . . No change.

(f) Note: Adopted June 20, 1979 to be effective July 1, 1979. Paragraphs (a) and (d) amended July 15, 1982 to be effective September 13, 1982; paragraph (e) adopted November 5, 1986 to be effective January 1, 1987; paragraphs (b) and (c) amended July 5, 2000 to be effective September 5, 2000**; paragraph (c)(2) amended , 2010 to be effective September 1, 2010.**

C. Proposed Amendment to R. 8:3-5—Contents of Complaints in Specific Actions.

The Committee proposes to amend R. 8:3-5(a)(3) in order to conform the rule to the revised direct appeal jurisdiction amount in local property tax cases as a result of the amendment to N.J.S.A. 54:3-21 signed into law on January 16, 2010 (L.2009, c.251).

The text of the proposed amendment follows.

8:3-5. Contents of Complaint; Specific Actions

(a) Local Property Tax Cases.

(1) . . . . No change.

(2) . . . . No change.

(3) In cases of direct review by the Tax Court pursuant to N.J.S.A. 54:3-21, the complaint shall contain an allegation that the assessed valuation of the property for which direct review is sought exceeds **[$750,000]** **$1,000,000**. A complaint for direct review may include in separate counts separately assessed, contiguous properties in common ownership, in the same or different taxing districts, provided that the assessed valuation of one of such separately assessed, contiguous properties exceeds **[$750,000]** **$1,000,000**.

(4) . . . . No change.

(b) . . . . No change.

Note: Adopted June 20, 1979 to be effective July 1, 1979, Paragraphs (a)(1), (2) and (3) amended July 8, 1980 to be effective July 15, 1980; paragraph (a)(1) and (3) amended July 15, 1982 to be effective September 13, 1982; paragraph (a)(4) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a)(1), (2) and (4) amended November 5, 1986 to be effective January 1, 1987; paragraph (b)(2) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a)(1), (b)(1) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(4) amended July 10, 1997 to be effective September 1, 1997; paragraph (b)(1) amended July 9, 2008 to be effective September 1, 2008**; paragraph (a)(3) amended , 2010 to be effective September 1, 2010**.

D. Proposed Amendment to R. 8:11—Small Claims Division Practice and Procedure.

The Committee proposes to amend R. 8:11 to (i) increase to $5,000 the amount in controversy for small claims jurisdiction in state tax cases, and (ii) to expand small claims jurisdiction in local property tax cases to include property tax cases in which the prior year's taxes for the subject property was less than $25,000.

The text of the proposed amendment follows.

RULE 8:11. SMALL CLAIMS DIVISION; PRACTICE AND PROCEDURE

(a) (1) The small claims division will hear all state tax cases in which the amount of refund claimed or the taxes or additional taxes sought to be set aside with respect to any year for which the amount in controversy as alleged in the complaint does not exceed the sum of **[$2,000] $5,000** exclusive of interest and penalties.

(2) The small claims division will hear all local property tax cases in which the property at issue is a class 2 property (1-4 family residence) or a class 3A farm residence **and all other local property tax cases in which the prior year's taxes for the subject property were less than $25,000. Cases raising exemption or abatement issues are not eligible for the small claims division**. Local property tax cases in the small claims division shall be assigned to the small claims track.

(b) . . . . No change.

(c) . . . . No change.

(d) . . . . No change.

(e) In local property tax cases, if it appears at any time before the close of proofs that a parcel of property under appeal is **[neither a class 2 property (1-4 family residence) nor a class 3A farm residence, and therefore]** not within the jurisdiction of the small claims division, the court may in its discretion retain the matter in the small claims track or transfer the matter to the standard track.

Note: Adopted June 20, 1979 to be effective July 1, 1979; amended July 22, 1983 to be effective September 12, 1983; amended November 5, 1986 to be effective January 1, 1987; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994 amended July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004; paragraph letters added, paragraphs (a), (b), (c) and (e) amended July 9, 2008 to be effective September 1, 2008**; paragraph (a) amended _____, 2010 to be effective September 1, 2010.**

PART II. RULE AMENDMENTS CONSIDERED AND REJECTED

1. The Committee discussed and rejected a proposal to modify or eliminate the mandatory settlement conference required for local property tax cases in R. 8:6-8. It was suggested that these mandatory settlement conferences were not working and were not effective. The Committee felt that eliminating the conference and reports required by R. 8:6-8 would be contrary to the policy and goals of the Tax Court's Differentiated Case Management procedures and that any such change should only be considered after the passage of more time and experience with the rule.

2. The Committee discussed a proposal to amend R. 8:3-5(a) to require that a copy of the current tax bill for the year at issue be attached to all local property tax complaints. While it remains Tax Court policy to request that a copy of the tax bill be produced, the Committee felt that codifying this practice in the rule would be burdensome and raise some practical difficulties because taxpayers frequently do not have a hard copy of the current tax bill readily available. The rejection of this rule amendment is not inconsistent with the Committee's proposed amendments to the Tax Court's small claims jurisdiction in local property tax cases because those proposed rule amendments refer to the prior year's taxes and allow three alternatives to document the prior year's taxes, including providing a copy of the prior year's tax bill.

3. On January 16, 2010, the Governor signed into law an amendment to N.J.S.A. 54:3-21 (L.2009, c.251) which raised the direct appeal jurisdiction amount in local property tax cases before the Tax Court from $750,000 to $1,000,000. However, the Legislature failed to simultaneously amend N.J.S.A. 54:4-63.11 (direct appeal jurisdiction from added assessments) and N.J.S.A. 54:4-63.39 (direct appeal jurisdiction from omitted assessments) to make their direct appeal thresholds consistent with the $1,000,000 amount in N.J.S.A. 54:3-21.

The Committee discussed amending R. 8:2 and R. 8:5-3 to change the direct appeal amount referenced in those rules from $750,000 to $1,000,000, but determined it could not proceed with these amendments because those rules refer to N.J.S.A. 54:4-63.11 and 54:4-63.39. The Committee felt it could not amend these rules until the Legislature acted to amend N.J.S.A. 54:4-3.11 and 54:4-63.39. These legislative amendments are proposed in Part C of this Report.

PART III. OTHER ACTIONS AND RECOMMENDATIONS

The Committee took the following actions and/or made the following recommendations:

A. Availability of Unpublished Opinions.

A majority of the Committee continues to recommend that unpublished opinions prepared by the Tax Court be made available to the public on the internet.

When one party in a litigation is a governmental entity, unpublished opinions addressing a particular issue are frequently available to the governmental party but not the private litigant because the governmental entity was previously a party in a case with that issue. This is particularly so in state tax cases before the Tax Court where the New Jersey Division of Taxation is always the defendant. The Committee believes that public access to summaries of unpublished opinions will eliminate any actual or perceived inequalities in the availability of Tax Court information and decisions. The Committee also realizes that rules differentiating between the authority of and citation to unpublished opinions versus published opinions are essential if the designation of some but not all opinions for publication is to continue. It would appear that the publicly circulated state law journals now summarize many unpublished opinions and that the Tax Court should not ignore this reality.

A minority of the Committee, which includes all of the Judges on the Committee, believes that although all written opinions of the Tax Court should be available to the public, internet publication of opinions of the Tax Court designed as "unpublished" should be consistent with the practice of the trial divisions of the Superior Court. That practice is to publish on the internet those opinions designated for internet publication by the trial judge. This minority opinion is consistent with the recommendations set forth at page 50 of the Report of the Supreme Court Committee on Public Access to Court Records dated November 29, 2007.

PART IV. LEGISLATION

A. Legislation Supported.

At its various meetings, the Committee did not vote to support any legislative bills pending in the Senate and/or the Assembly.

The Committee did review, discuss and decide to take no position on Senate Bill No. 61, which proposed to change the interest rate on property tax refunds, and Assembly Bill No. 4313 (substitute for S.2711), which proposed to streamline procedures for partial reassessments and to raise the direct appeal jurisdiction to the Tax Court to $1 million. The Committee notes that A.4313 was approved by the Legislature and signed into law by the Governor on January 16, 2010 as L.2009, c.251.

B. Legislation Opposed.

At its various meetings, the Committee voted to oppose the following legislative bills pending in the Senate and/or Assembly. The Committee's positions on these pending bills were communicated to the Administrative Office of the Courts.

1. A.2348—Limitation on Judiciary.

This bill proposes to amend N.J.S.A. 54:1-35(c)(6), 54:1-35.35 and 46:4-1(d) in order to make several changes to assessment practices for real property in New Jersey and includes a provision to prevent judges of the Tax Court from substituting their own opinion of value for the opinion of expert witnesses without justifying the court's valuation process. Judges rely upon many factors, including conclusions of experts, in determining the valuation of property for local property tax purposes. Generally, the Committee believes that the local property tax appeal system in New Jersey works efficiently and effectively and is a model for other tax court systems throughout the country. The Committee opposes this legislation because (i) these changes are generally not necessary and (ii) the section addressing judicial discretion is an unwarranted intrusion into the judicial decision-making process. Judges of the Tax Court are by statute required to have special qualifications, knowledge, and experience in matters of taxation. N.J.S.A. 2B:13A-6(b). To have a statute require that judges have an expertise which another statute restrains them from using does not merit further comment.

2. A.2162—Limiting Local Property Tax Appeals.

This bill proposes to amend N.J.S.A. 54:3-21 in order to eliminate a property owner's right to appeal the assessed value of his or her property if an appeal was filed in the previous three tax years, unless the assessed value has increased by ten percent or more. The Committee opposes this legislation because it is an unfair procedural barrier to assessment review and access to the Tax Court. The Committee believes that the current tax appeal system works effectively to eliminate frivolous tax appeals and that a complete bar of certain tax appeals is not a reasonable way to regulate the tax appeal process.

C. Legislation Proposed.

1. Proposed Amendment of N.J.S.A. 54:51A-9 to Clarify Time for Taking Real Property Tax Cases to Tax Court After Municipal Revaluation or Reassessment.

The Legislature amended N.J.S.A. 54:3-21 on January 11, 2008 (L.2007, c.256) to extend the filing date for the Tax Court's direct appeal jurisdiction in property tax cases to May 1 if the taxing district has implemented a municipal-wide revaluation or municipal-wide reassessment. However, the Legislature failed to amend N.J.S.A. 54:51A-9b, which also addresses the direct appeal jurisdiction of the Tax Court. In order to be consistent and avoid confusion, the Committee proposes that N.J.S.A. 54:51A-9b be amended to extend the filing date for the Tax Court's direct appeal jurisdiction in property tax cases to May 1 in the case of a municipal-wide revaluation or municipal-wide reassessment.

The Committee also proposes to amend N.J.S.A. 54:51A-9b to reflect the Legislature's amendment of N.J.S.A. 54:3-21 on January 16, 2010 (L.2009, c.251) raising the direct appeal jurisdiction amount in local property tax cases from $750,000 to $1,000,000.

The text of the recommended amendments follow and are indicated in bold text.

54:51A-9. Time for taking real property tax cases to tax court.

a. Except as otherwise provided in this section, a complaint seeking review of adjudication or judgment of the county board of taxation shall be filed within 45 days of the service of the judgment.

b. Direct appeals to the Tax Court of assessments of property with an assessed valuation in excess of **[$750,000.00]** **$1,000,000** as provided in R.S. 54:3-21 shall be filed on or before April 1 of the tax year or 45 days from the date the bulk mailing of notifications of assessment is completed for the taxing district, whichever is later, or with regard to added or omitted assessments, on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessment or omitted assessments, whichever is later. **Direct appeals involving a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented shall be filed on or before May 1 of the tax year or 45 days from the date the bulk mailing of notifications of assessment is completed for the taxing district, whichever is later**.

c. All real property tax cases not provided for herein shall be taken in the manner and time prescribed for such appeals by the rules of the Tax Court.

2. Proposed Amendment of N.J.S.A. 54:4-63.11 and 54:4-63.39 to Increase Direct Appeal Jurisdiction Amount in Added and Omitted Assessment Cases.

On January 16, 2010, the Governor signed into law an amendment to N.J.S.A. 54:3-21 (L.2009, c.251) which raised the direct appeal jurisdiction amount in local property tax cases before the Tax Court from $750,000 to $1,000,000. However, the Legislature failed to simultaneously amend N.J.S.A. 54:4-63.11 (direct appeal jurisdiction from added assessments) and N.J.S.A. 54:4-63.39 (direct appeal jurisdiction from omitted assessments) to make the direct appeal thresholds in these statutes consistent with the $1,000,000 amount in N.J.S.A. 54:3-21. In order to be consistent and avoid confusion, the Committee proposes that N.J.S.A. 54:4-63.11 and 54:4-63.39 be amended to change the direct appeal jurisdictional amount in added and omitted assessment cases from $750,000 to $1,000,000. The text of the recommended amendments follow and are indicated in bold text.

54:4-63.11. Appeals from added assessments

Appeals from added assessments may be made to the county board of taxation on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later, and the county board of taxation shall hear and determine all such appeals within one month after the last day for filing such appeals; provided, however, that appeals from added assessments may be made directly to the Tax Court on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later, if the aggregate assessed valuation of the property exceeds **[$750,000]** **$1,000,000**. Within ten days of the completion of the bulk mailing of tax bills for added assessments, the collector of the taxing district shall file with the county board of taxation a certification setting forth the date on which the bulk mailing was completed. Appeals to the Tax Court from the judgment of the county board of taxation shall be made within 45 days from the date fixed for final decisions by the county board of taxation on appeals from added assessments. In all other respects such appeals shall be governed by the laws concerning appeals from real property assessments.

54:4-63.39. Appeals to county board of taxation from omitted assessments

Appeals from assessor's omitted assessments may be made to the county board of taxation on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for omitted assessments, whichever is later, and the county board shall hear and determine all such appeals within one month after the last day for filing such appeals; provided, however, that appeals from assessor's omitted assessments may be made directly to the Tax Court on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later, if the aggregate assessed valuation of the property exceeds **[$750,000]** **$1,000,000**. Within ten days of the completion of the bulk mailing of tax bills for omitted assessments, the collector of the taxing district shall file with the county board of taxation a certification setting forth the date on which the bulk mailing was completed. Appeals to the Tax Court from the judgment of the county board of taxation shall be made within 45 days from the date fixed for final decisions by the county board of taxation on appeals from assessor's omitted assessments. In all other respects such appeals shall be governed by the laws concerning appeals from real and personal property assessments.

3. Proposed Amendment of N.J.S.A. 54:3-27 to Authorize Relaxing Tax Payment Requirement.

The Committee believes that the Tax Court's power to relax the tax payment requirement as the interests of justice require should be specifically set forth in N.J.S.A. 54:3-27. It is a legislative recommendation, which was inadvertently omitted from comprehensive legislative recommendations previously made by the Committee and enacted into law in 1999 as chapter 208 of the Laws of 1999. Specifically providing for the power to relax the tax payment requirement in N.J.S.A. 54:3-27 is consistent with the relaxation power added by the amendment of N.J.S.A. 54:51A-1 as part of that same 1999 comprehensive legislation. This legislative amendment has been proposed in prior Biennial Reports of the Committee. The text of the recommended amendment follows and is indicated in bold text.

54:3-27. Payment of tax pending appeal

A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the total of all taxes and municipal charges due, up to and including the first quarter of the taxes and municipal charges assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66.

A taxpayer who shall file an appeal from an added or omitted assessment shall, in order to maintain an action contesting the added or omitted assessment, pay to the collector of the taxing district all unpaid prior years' taxes and all of the taxes for the current year as said taxes become due and payable, exclusive of the taxes imposed under the added or omitted assessment.

If an appeal involves Class 3B (Farm Qualified) or Classes 15A, B, C, D, E and F (Exempt Property as defined in R.S. 54:4-52) and the subject of the appeal is statutory qualification, the taxpayer shall not be required to meet the payment requirements specified herein.

The collector shall accept such amount, when tendered, give a receipt therefor and credit the taxpayer therewith, and the taxpayer shall have the benefit of the same rate of discount on the amount paid as he would have on the whole amount.

Notwithstanding the foregoing, the county board of taxation **or the Tax Court in a matter before the court** may relax the tax payment requirement and fix such terms for payment of the tax as the interests of justice may require. If the county board of taxation refuses to relax the tax payment requirement and that decision is appealed, the Tax Court may hear all issues without remand to the county board of taxation as the interests of justice may require.

The payment of part or all of the taxes upon any property, due for the year for which an appeal from an assessment upon such property has been or shall hereafter be taken, or of taxes for subsequent years, shall in nowise prejudice the status of the appeal or the rights of the

appellant to prosecute such appeal, before the county board of taxation, the Tax Court, or in any court to which the judgment arising out of such appeal shall be taken, except as may be provided for in R.S. 54:51A-1.

4. Reorganization and Revision of N.J.S.A. 54:4-3.6 to Clarify Property Exemption Applicable to Nonprofit Organizations.

The Committee believes the organizational structure of N.J.S.A. 54:4-3.6 is confusing and warrants revision. This proposal is intended to revise the existing structure of N.J.S.A. 54:4-3.6 without affecting the meaning, purpose or interpretation of the statute as currently written. Consistent with that approach, and notwithstanding that the Committee believes the current language in N.J.S.A. 54:4-3.6 is outdated, offensive and politically incorrect, the language utilized in the existing statute was retained as much as possible. This legislative amendment has been proposed in prior Biennial Reports of the Committee. The text of the recommended revision follows in its entirety.

54:4-3.6 Exemption of property of nonprofit organizations

The following property shall be exempt from taxation under this chapter:

a. 1. All buildings actually used for colleges, schools, academies or seminaries, provided that if any portion of such buildings is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, said portion shall be subject to taxation and the remaining portion only shall be exempt.

2. All buildings actually used for historical societies, associations or exhibitions, when owned by the State, county or any political subdivision thereof or when located on land owned by an educational institution which derives its primary support from State revenue.

3. All buildings actually and exclusively used for public libraries.

4. All buildings actually and exclusively used for asylum or schools for feebleminded or idiotic persons and children.

5. All buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals.

6. All buildings actually and exclusively used by volunteer first-aid squads, which squads are or shall be incorporated as associations not for pecuniary profit.

7. (i) All buildings actually used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children provided that if any portion of a building used for that purpose is leased to profit-making organizations or is otherwise used for purposes

which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt.

(ii) All buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of two or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children.

8. (i) All buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation.

(ii) All buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them.

9. All buildings actually used in the work of associations and corporations organized exclusively for hospital purposes, provided that if any

portion of a building used for hospital purposes is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt.

As used in this section "hospital purposes" includes health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L. 1979, c. 496 (C.55:13B-1 et al.), the "Rooming and Boarding House Act of 1979"; similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly.

10. The buildings, not exceeding two, actually occupied as a parsonage by the officiating clergyman of any religious corporation of this State, together with the accessory buildings located on the same premises.

b. The land whereon any of the buildings mentioned in subsection a. are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres in extent.

c. The furniture and personal property in said buildings mentioned in subsection a. if used in and devoted to the purposes therein mentioned.

d. All property owned and used by any nonprofit corporation in connection with its curriculum, work, care, treatment and study of feebleminded, mentally

retarded, or idiotic men, women, or children shall also be exempt from taxation, provided that such corporation conducts and maintains research or professional training facilities for the care and training of feebleminded, mentally retarded, or idiotic men, women or children.

e. Provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes. The foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is authorized to carry out the purposes on account of which the exemption is claimed or where an educational institution, as provided herein, has leased said property to a historical society or association or to a corporation organized for such purposes and created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes.

5. Proposed Amendment of N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 to Clarify Tax Court Fees.

Statutory provisions concerning Tax Court fees are set forth in N.J.S.A. 22A:5-1 (L.1993, c.74, §2). Generally, the filing fee for commencement of proceedings in the Tax Court, other than Small Claims Division proceedings, is the same as the fee for proceedings in the Superior Court, Law Division. Additional fees, Small Claims Division fees and other fee matters are to be established by court rules. The fee for filing a complaint in the Tax Court is $200, which is the fee for filing a complaint in the Law Division of the Superior Court. See N.J.S.A. 22A:2-6. It has come to the Committee's attention that, when this statutory fee schedule was adopted in 1993, the Legislature failed to amend or repeal N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 which fixed the fee for filing the first paper in the Tax Court at $75. In all other respects, the provisions of N.J.S.A. 22A:5-1 are the same as the provisions of N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19.

In order to eliminate this statutory conflict and inconsistency, the Committee proposes to amend both N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 to simply cross-reference N.J.S.A. 22A:5-1. Alternatively, N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 can be repealed in their entirety. These legislative amendments have been proposed in prior Biennial Reports of the Committee. The text of the recommended amendments follows, with new language indicated in bold text and deleted language in brackets.

54:51A-10. Fees

Filing fees in the Tax Court shall be established in accordance with R.S. 22A:5-1. [Upon the filing or entering of the first paper or proceeding in any action or proceeding in the tax court hereunder, the plaintiff or any person filing a counterclaim shall pay to the clerk of the court, for use of the State, $75.00 for the first paper filed by him, which shall cover all fees payable therein, except a lesser fee may be provided by rule of court, and except further that a taxing district shall not be required to pay a filing fee upon the filing of a counterclaim or upon the filing of any responsive pleading. Other or additional fees may be established by rules of court, except where a lesser fee is provided by law or rule of court, that fee shall be paid. The foregoing fees shall not be applicable to any proceeding in the small claims division. The fees in the small claims division shall be established pursuant to rules of court.]

54:51A-19. Fees

Filing fees in the Tax Court shall be established in accordance with R.S. 22A:5-1. [Upon the filing or entering of the first paper or proceeding in any action or proceeding in the tax court hereunder, the plaintiff or any person filing a counterclaim shall pay to the clerk of the court, for use of the State, $75.00 for the first paper filed by him, which shall cover all fees payable therein, except a lesser fee may be provided by rule of court, and except further, that no filing fee shall be required upon the filing of a responsive pleading by a taxing district.]

PART V. MATTERS HELD FOR CONSIDERATION

1. Continued review and consideration of Tax Court computerization, including on-line access to case status and electronic filing.

2. Continued review and consideration of availability of unpublished opinions.

3. Continued review and consideration of the impact of new R. 1:38 on public access to Tax Court records and practice before the Tax Court.

4. Continued review and consideration of administrative and procedural issues raised by the Gloucester County assessment pilot program.

5. Continued review and consideration of practice and discovery procedures in state tax cases.

Respectfully submitted,

/s/ Michael A. Guariglia

Michael A. Guariglia
Chairman

Dated: January 15, 2010

PART VI. MEMBERS OF THE SUPREME COURT COMMITTEE ON THE TAX COURT

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