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VIA FIRST CLASS MAIL AND EMAIL

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Amendments to Rule 1:38-3 – Records of Landlord/Tenant Matters Not Resulting in Judgment for Possession
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Dear Judge Grant:

I write on behalf of a coalition of advocates for the rights of tenants. This coalition includes the signatories listed at the end of this letter. We want to extend our deepest gratitude to the Court for its continued commitment to the elimination of barriers to equal justice and for once again showing national leadership by taking affirmative steps to review and improve the landlord-tenant process through the Court's Action Plan for Equal Justice. The proposed amendments to Rule 1:38-3 are a vital first step in addressing the serious problem of court records being used by landlords to screen prospective tenants, which "create[s] inappropriate hardships for disadvantaged populations."[1] We have long recognized the significant harm posed by this practice, with tenants "often denied future renting opportunities, stigmatized, and excluded from the promise of fair housing" regardless of the outcome of their case.[2] Moreover, the pernicious consequences are felt disproportionately by people of color, given that six out of ten Black households rent their homes, and Black households are twice as likely as white households to face eviction.[3]

We agree that more must be done to protect tenants, especially in instances where an eviction filing does not lead to a judgment for possession, or a judgment for possession is subsequently dismissed or reversed on appeal. We also believe that transparency and the public's right to access court records must be taken into account when considering what records should be classified as confidential. Our coalition includes advocates and educators who rely on publicly available data regarding the landlord-tenant process. Such data is critical to understanding what occurs in landlord-tenant court on a statewide

[1] New Jersey Judiciary. *Commitment to Eliminating Barriers to Equal Justice: Immediate Action Items and Ongoing Efforts* (July 16, 2020), https://www.njcourts.gov/public/assets/supremecoutactionplan.pdf?c=sl9 last visited Oct. 6, 2020).
[2] Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 Fordham Urban Law Journal 662-97 (2018), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2732&context=ulj (last visited Oct 6, 2020).
[3] Chris Salviati, *Rental Insecurity: The Threat of Evictions to America's Renters - Research Apartmentlist.com* (2020), https://www.apartmentlist.com/research/rental-insecurity-the-threat-of-evictions-to-americas-renters (last visited Oct 6, 2020).

level and allows us and others to advocate for meaningful reforms. Accordingly, we respectfully submit the following comments and suggested modifications to the proposed amendments to Rule 1:38-3(f)(11), with the dual goals of protecting tenants while maintaining public access to certain records.

For the reasons more fully explained below, we propose the following additions to the proposed amendments:

Rule 1:38-3. Court Records Excluded from Public Access
The following court records are excluded from public access:
(a) – (e) ... no change
(f) Records of Other Proceedings.
(1) – (9) ... no change
(10) Certification of Confidential Information for Name Change forms and Final Judgment Addendum forms prepared in actions for change of name pursuant to N.J.S.A. 2A:52-1 and R. 4:72-1 et seq.;
(11) Records of any **pending or prior** landlord/tenant matter [] that did not or does not result in a judgment for possession **and executed warrant of removal, including records of cases in which a judgment for possession is or was entered but subsequently vacated. Parties to a landlord/tenant matter and their legal representatives shall be able to access all records related to their matters (past and present) in the Judiciary's databases or case files. A party may also authorize a designee to access an excluded court record on the party's behalf for the purpose of providing assistance to the party.**

Notwithstanding the above, the Judiciary will continue to make court records relating to all landlord/tenant matters available to the public in a manner that will protect the identities of tenants as intended by this Rule. As of XX/XX/XXXX, the tenant's name and address shall be redacted from records produced in response to records requests that relate to landlord/tenant cases that did not result in a judgment for possession and executed warrant of removal.

1. **The changes to Rule 1:38-3 should apply retroactively and to pending matters, as well as to matters in which a judgment was entered and subsequently vacated.**

We read the proposed amendments to apply to matters that were adjudicated prior to the rule change, as well as all current and future matters for which no final disposition has yet been entered. Assuming the Judiciary agrees with this interpretation of the proposed new rule, we offer the above modifications to erase any possible ambiguity on this point.

If the Judiciary did not intend for the amendments to apply retroactively and to pending matters, we respectfully request that it reconsider this. If a tenant's prior landlord-tenant records remain in the public domain, the very harms regarding the misuse of court records that the Judiciary seeks to redress will persist. Moreover, it is particularly important that a landlord-tenant matter remain confidential during the time between the filing of the complaint and the entry of a final disposition. Even if those landlord-tenant matters are ultimately removed from the public record, tenants can suffer significant harm as a result of the release of records pertaining to the eviction filing while the case is still pending. Tenants involved in a dispute with their landlord often look for alternative housing before or during the pendency of the eviction action. Public access to the filing itself can undermine their ability to find safe

and affordable housing and increase their risk of homelessness—all before a court even has an opportunity to hear the merits of their case. Furthermore, the mere threat of an eviction filing can push tenants with "clean" records out of their homes and cause them to abandon meritorious defenses or to enter into unfavorable agreements with their landlords because they fear that even the filing of an eviction action will forever mark them. Rather than viewing the courts as a forum to resolve the issue, tenants come to see the courts themselves as the threat. Accordingly, the goals of this proposed rule change will be thwarted unless it extends to prior, current, and future landlord-tenant matters.

2. **We propose changing Rule 1:38-3(f)(11) to permit public access to records only in cases where there has been an executed warrant of removal because that is the true indicator of whether an eviction occurred.**

We recommend applying the rule change to matters in which there has been a judgment for possession AND an executed warrant of removal. This will protect tenants who resolve their disputes with their landlords and remain in their homes despite the entry of a judgment for possession. This can occur when tenants enter into a typical form settlement, which includes consent to the entry of a judgment for possession, and then pay the arrearages in compliance with the settlement: in most such cases, the court record is never updated to vacate the judgment and dismiss the case (see below). Judgments for possession may also remain in the Court's records when tenants settle after a judgment is entered, or when tenants pay the rental arrearage within three business days after the lockout, as permitted by N.J.S.A. 2A:42-10.16A. It is also common for a tenant who resolves a dispute before the trial date to be defaulted because the landlord fails to notify the court that a complaint should be withdrawn or dismissed, and the tenant does not realize that the case is still on the calendar. An executed warrant of removal is therefore a far stronger indicator than a judgment for possession that an eviction has actually occurred. Because the warrant of removal must be executed by a court officer, the court should be able to track those executions and determine which records should be publicly accessible.

If, however, the Court rejects this recommendation and does not amend Rule 1:38-3(11) to make records accessible only after a warrant of removal has been executed, then a simultaneous change to the court's settlement forms and approach to settlement in landlord-tenant cases is essential. Presently, the court forms call for a judgment for possession to be entered when a settlement is executed. The judgment can subsequently be vacated, and the case dismissed, if the tenant complies with the terms of the agreement. Based on our collective experience, however, landlords rarely inform the court if the tenant complies, and pro se tenants rarely, if ever, know that they need to file an Order to Show Cause in order to have the record changed. The current proposed rule would therefore maintain public access to court records in thousands of settled cases in which a judgment for possession was entered and never properly dismissed or vacated. Tenants who work cooperatively with their landlords to pay back-rent should not carry a factually inaccurate stigma of eviction.[4]

This injustice is unique to the landlord-tenant docket. Traditionally, when parties settle a case, it is dismissed. If there is a breach, the non-breaching party reopens the matter. The court does not typically enter a judgment when a settlement occurs in other dockets, and that same policy should apply here, given how dire the consequences can be for tenants. Thus, if the Court does not tie the release of records to the execution of a warrant of removal, it must ensure that judgments for possession are not

[4] There are other reasons, unrelated to this proposed rule change, to amend the Court's settlement forms. We will convey our suggestions concerning those amendments in separate correspondence in order to focus these remarks on the Court's proposed changes to Rule 1:38-3.

entered at the time a settlement is executed, but only once that settlement is breached and a warrant of removal is executed.

3. **Continue to allow access to landlord-tenant records by the parties and their designated representatives.**

It will be important for parties involved in a landlord-tenant matter and their counsel to be able to access the current complaint, as well as any previous filings between the parties, such as prior settlement agreements on file with the court. The parties need access to the documents created in earlier cases for an array of reasons. For example, we have all too frequently seen complaints in which landlords demand alleged back-rent that they had agreed to forgo in a prior settlement.

In addition, there may be other individuals assisting the parties who will need to access these documents on an expedited basis. For example, as the Court is well aware, only a small percentage of tenants have legal representation. Low-income tenants also rely on organizations that provide limited scope legal services, such as the court-based tenancy clinic administered by Volunteer Lawyers for Justice, and these clinics cannot be effective without immediate access to the tenant's court records. Tenants may also need to share their court records with a social worker, the case manager administering their housing subsidy, organizations that provide financial assistance for rent arrears, etc. The ability to access these records quickly will be especially important over the next several months as the legal and social services sectors assist tenants participating in settlement conferences. We therefore recommend that the court implement a mechanism by which either party or their designated representative (not limited to attorneys of record) may have immediate access to the party's court records.

4. **Provide an exception by which all landlord-tenant records, regardless of outcome, remain publicly accessible, but only after the tenant's name and address have been redacted.**

The important goals of this rule change must be weighed against the need for transparency. In its Notice to the Bar for the current proposed amendments to Rule 1:38-3(f), the Judiciary indicated that "[g]oing forward, any bulk records requests would not include any records of landlord-tenant cases that did not or do not result in a judgment for possession or where such judgment was subsequently dismissed." We interpret this statement as referring to the Court's process for allowing for the purchase of bulk data, pursuant to the Court's "Report Description(s) and Record Layout(s)" document.[5]

We recognize that the majority of bulk records requests to the Court are from parties seeking to collect this basic data, including the names of the parties, rather than full court files (complaints, etc.), and applaud the Court's goal of limiting access in the various electronic databases only to data about matters that resulted in an eviction. We agree with the Court that records relating to such cases should be available to the public. Our proposed amendments would permit the release of tenants' names and addresses, in response to bulk records requests, in cases in which a judgment for possession was entered and a warrant of removal was executed.

Additional public access is necessary, however. Advocates, scholars, journalists and others rely on access to landlord-tenant records to inform the public of landlord-tenant practices and to advocate for a more equitable system. Therefore, we urge the Court to continue to allow access to all landlord-tenant court records, *including those that did not result in a judgment for possession and warrant of removal,*

[5] https://njcourts.gov/courts/assets/scco/civilreports.pdf?c=GuT.

by redacting the tenants' names and addresses from these records.[6] There are instances where the public has a need to access records even in cases that did *not* result in an eviction. Advocates and others rely on their ability to access landlord-tenant court records, such as complaints and settlement agreements, in order to better understand landlord-tenant practices and to protect tenants from bad actors. For example, if a landlord or landlord representative were in the practice of regularly filing baseless complaints, or complaints seeking inappropriate fees, such actions would be shielded from public scrutiny if those actors regularly settled the matters before they went to trial, or if those complaints were regularly dismissed by the court. Tenants could be routinely subject to predatory and unlawful practices that violated the New Jersey Consumer Fraud Act or the Federal Fair Debt Collections Practices Act, but advocates would have no access to the records necessary to bring such an action. We therefore urge the Court to develop a mechanism by which its records will remain accessible in the interest of transparency and justice.

We recommend that the Court adopt a policy that will continue to provide access to hard copies of landlord-tenant records, such as complaints and settlement agreements, while still protecting the identities of tenants who were not, in fact, evicted. Pursuant to Rule 1:38, the Court already has procedures in place by which social security numbers[7] and other "required personal identifiers"[8] are redacted from certain court records before they are made publicly available. We believe that tenants' names and addresses should be treated in the same manner to protect them from the harms identified in the Court's notice of proposed rule change while still affording the public access to these records.

We offer the above suggestions to balance the competing interest of preventing the unfair treatment of tenants interacting with the court system while maintaining robust public access to court records for the purposes of transparency and fairness. We believe these suggestions are vital to implementing a rule change that truly accomplishes the goal of protecting tenants from the harmful effects of having an eviction filing on their record.

Thank you, as always, for considering these suggestions.

Respectfully submitted,

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[6] Pursuant to other sections of Rule 1:38, we recognize that a fee may be charged for the cost of redacting the tenant's identifying information from such records.
[7] Rule 1:38-7(f).
[8] Rule 1:38-7(e).

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