2016 REPORT OF THE SUPREME COURT COMMITTEE ON SPECIAL CIVIL PART PRACTICE

JANUARY 12, 2016

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The Committee considered a proposal submitted by civil practice staff to recommend amending Rules 6:1-1(g) and 6:7-1(a) to mandate that the forms set forth under Appendix XI-H (execution against goods and chattels) and Appendix XI-J (wage execution) shall be issued by the Special Civil Part Clerk's Office. Historically, the Court's Automated Case Management System (ACMS) generates both forms on behalf of Special Civil Part litigants utilizing the data previously entered into ACMS by staff. For efficacy purposes, due to the volume of executions issued from the Special Civil Part, the court rules should reflect the current practice by requiring that the Special Civil Part Clerk's Office issue both forms, thereby avoiding instances of having to review a judgment creditor's proposed form of execution.

One vicinage had reported to civil practice staff instances of judgment creditors submitting proposed form of Orders to Turnover which conflict with the form set forth under Appendix XI-H, requesting that banks turn over funds directly to the judgment creditor, bypassing the Special Civil Part Officer. While the execution against goods and chattel form appears to provide otherwise, there is no corresponding court rule requiring its issuance by the Clerk. Moreover, Rule 4:59-1(i) mandates the use of appendix forms XI-I (Notice of Application for Wage) and appendix forms XI-L through R, for both Civil Part and Special Civil Part, but it omits reference to mandating usage of Special Civil Part's wage execution and goods and chattel execution forms. Litigants submit these two forms of executions in the Civil Part but the Special Civil Part Clerk Offices prepare them daily in great volume for the benefit of the public. The proposed amendment to Rules 6:1-1(g) and 6:7-1(a) follows.

6:1-1. Scope and Applicability of Rules

The rules in Part VI govern the practice and procedure in the Special Civil Part, heretofore established within and by this rule continued in the Law Division of the Superior Court.

(a) … no change.

(b) … no change.

(c) … no change.

(d) ... no change.

(e) ... no change.

(f) … no change.

(g) Forms. The forms contained in Appendix XI to these rules are approved and, except as otherwise provided in R. 6:2-1 (form of summons), R. 6:7-1(a) (Execution Against Goods and Chattels and Wage Execution) and R. 6:7-2 (b) through (g) (information subpoena), suggested for use in the Special Civil Part. Samples of each form shall be made available to litigants by the Clerk of the Special Civil Part.

Note: Caption amended and paragraphs (a) through (g) adopted November 7, 1988 to be effective January 2, 1989; paragraph (c) amended July 17, 1991 to be effective immediately; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; 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 (e) and (g) amended July 9, 2008 to be effective September 1, 2008; paragraph (e) amended July 19, 2012 to be effective September 4, 2012; paragraph (g) amended , 2016 to be effective September , 2016.

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. All requests for issuance of writs of execution and other process for the enforcement of judgments shall be made in writing to the clerk at the principal location of the court. A request for the issuance of a writ of execution against goods and chattels shall be accompanied by a statement of the amount due and shall be issued by the clerk in the form set forth in Appendix XI-H. A request for the issuance of a wage execution shall be accompanied by a certification of the amount due and shall be issued by the clerk in the form set forth in Appendix XI-J. The statement or certification of the amount due shall include the amount of the judgment, subsequent costs that have accrued, any credits for partial payments since entry of the judgment, and a detailed explanation of the method by which interest accrued subsequent to the judgment has been calculated, taking into account all partial payments made by the judgment-debtor. The court officer shall give to the judgment-creditor or judgment-creditor's attorney at least 30 days' notice of an intention to return a wage execution or an unexpired writ of execution, marked unsatisfied or partially satisfied and may so return the writ unless further instructions are furnished within that time period.

(b) … no change.

(c) … no change.

(d) … no change.

(e) … no change.

(f) … 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; caption amended, former paragraph (b) redesignated as paragraph (c) and amended, former paragraphs (c) and (d) redesignated as paragraphs (d) and (e), and new paragraph (b) caption and text adopted July 23, 2010 to be effective September 1, 2010; subparagraph (b)(2) amended May 17, 2011 to be effective immediately; caption amended, paragraph (c) amended, and new paragraph (f) adopted July 19, 2012 to be effective September 4, 2012; paragraph (d) amended July 22, 2014 to be effective September; paragraph (a) amended , 2016 to be effective September , 2016.

B. Proposed Amendment to Rule 6:1-3(a) – Venue for Landlord/Tenant Cases

The Committee considered a proposal by civil practice staff to recommend amending Rule 6:1-3(a) to codify the Special Civil Part's existing practice that venue shall lie in the county where the rental property is located. Concern was preliminarily raised that this proposed rule amendment might impact upon the landlord's ability to maintain compliance with the Federal Debt Collection Practices Act (FDCPA), 15 U.S.C. §1692i. However, upon careful review of the FDCPA, the Committee opined that the FDCPA does not apply to commercial tenancies and will not cause landlords to be in violation of the aforementioned provisions of the FDCPA for residential tenancy cases. No Committee member was aware of any residential landlord running afoul of the FDCPA based upon the Court's historic practice of placing venue where the residential property is located. However, in the unlikely event a landlord perceives that the FDCPA might be violated based upon unique factual circumstances in their particular case, the language of the proposed rule amendment suggested by civil practice staff does provide for the same statutory exception already reflected in this rule for venue for the other Special Civil case types. The Committee agreed with the proposal.

The Committee also took this opportunity to clarify that the existing Special Civil Part venue provisions of Rule 6:1-3(a) apply to Small Claims' cases as well inasmuch as reference to "Special Civil Part" alone may have caused inadvertent confusion that it incorrectly applied to the (DC) docket type only. The proposed rule amendment merely inserts reference to the Small Claims Section of the Special Civil Part Court, so as to avoid any potential confusion. The proposed amendment follows.

6:1-3. Venue

(a) Where Laid. Except as otherwise provided by statute, venue in actions in the Special Civil Part and the Small Claims Section shall be laid in the county in which at least one defendant in the action resides. If all defendants are non-residents of this state, venue shall be laid in the county in which the cause of action arose. For purposes of this rule, a business entity shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business. Except as otherwise provided by statute, venue in landlord and tenant actions shall be laid in the county where the rental premises is located and [A] actions for the recovery of a security deposit may be brought in the county where the property is situated.

(b) … no change.

Note: Caption amended and paragraphs (a) through (g) adopted November 7, 1988 to be effective January 2, 1989; paragraph (c) amended July 17, 1991 to be effective immediately; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; 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 (e) and (b) amended July 9, 2008 to be effective September 1, 2008; paragraph (a) amended , 2016 to be effective September, 2016.

C. Proposed Amendment to Rules 6:2-1 and 6:3-1 – Clarify that the Filing of Answers to Summary Unlawful Entry and Detainer Actions are Precluded

The Committee originally considered email correspondence from former member and retired Judge, the Honorable Mahlon Fast, seeking consideration to amend Rule 6:1-2(a)(4), so that the current Special Civil Part practice of permitting actions under N.J.S.A. 2A:35-1 et seq. (commonly referred to as "Ejectment Actions") and N.J.S.A. 2A:39-1 et seq., (commonly referred to as Unlawful Entry/Detainer Actions") be summary and not require answers or discovery. The Committee agreed that both aforementioned actions, which were made cognizable in the Special Civil Part Court under Rule 6:1-2(a)(4) effective September 4, 2014, should remain summary and that Rule 6:1-2(a)(4) in its present form, successfully achieves that purpose requiring no amendment.

Careful review of Rule 6:2-1 (Form of Summons) states that in unlawful entry and detainer actions, the summons form does not require a defendant to file an answer. However, these actions are instituted by verified complaint and order to show cause, and a summons form is not being used nor is one issued by the Special Civil Part Clerk's Office. The signed order to show cause is used as original process and directs the defendant to appear and state a defense at a date and time certain in lieu of filing an answer. The proposed rule amendment would clarify that the Court is directing the defendant to appear by way of the signed order to show cause used as original process, in the aforementioned actions, not by a summons form. Accordingly, the Committee endorsed the proposal submitted by Civil Practice to amend Rule 6:2-1, to clarify that signed orders to show cause used as original process are directing defendants to appear on a date and time certain for these actions, not a summons form. The Committee also agreed to the proposed amendment to Rule 6:3-1 to similarly reflect the preclusion of filing an answer in these actions.

Notably, related to this item is the prior approval on December 9, 2015 by Judicial Council and the Acting Director of the Administrative Office of the Courts to adopt and publish the proposed uniform Self-Represented Litigants Writ of Possession Kit. The 'kit" attempts to provide easy to follow instructions for self-represented litigants if they wish to file one of the aforementioned causes of action previously made cognizable on September 4, 2012 in the Special Civil Part Court under Rule 6:1-2(a)(4). It provides for the verified complaint and order to show cause form of pleadings which are used as original service of process directing defendants to appear at a date and time certain in lieu of filing an answer. This "kit" is referenced subsequently herein as an "Other Recommendation" endorsed by the Committee.

The Committee also took this opportunity to clarify that the minimum mandatory notice required for Small Claims' trials is five business days. The Court's computation of time requirements, as set forth under Rule 1:3-1, requires that the computation of time on a period of 7 days or less noted in any rule be considered business days unless it is noted differently, of course, in another court rule. Notwithstanding, the Committee endorsed the insertion into Rule 6:2-1 of the word "business," to make more clear for the public, inasmuch as most small claims' actions are filed by self-represented litigants, that at least five business days' notice for defendants from the date of service of the summons are required before a trial can be scheduled. The proposed amendments follow.

6:2-1. Form of Summons

The form of the summons shall conform with the requirements of R. 4:4-2 and shall be in the form set forth in Appendix XI-A(1) to these Rules or, for small claims, in the form set forth in Appendix XI-A(2) or, for tenancy actions, in the form set forth in Appendix XI-B. However in landlord and tenant actions for the recovery of premises, summary ejectment and unlawful entry and detainer actions, and actions in the Small Claims Section, in lieu of directing the defendant to file an answer, the summons or signed order to show cause used as original process, shall require the defendant to appear and state a defense at a certain time and place, to be therein specified, which time shall be not less than 10 days in summary dispossess actions and not less than 5 business days in small claims, nor more than 30 days from the date of service of the summons, and shall notify the defendant that upon failure to do so, judgment by default may be rendered for the relief demanded in the complaint.

Note: Source-R.R. 7:4-1(a) (b), 7:17B2. Amended July 16, 1979 to be effective September 10, 1979; amended July 15, 1982 to be effective September 13, 1982; amended November 7, 1988 to be effective January 2, 1989; amended July 10, 1998 to be effective September 1, 1998; amended July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended , 2016, to be effective September , 2016.

6:3-1. Applicability of Part IV Rules

Except as otherwise provided by R. 6:3-4 (joinder in landlord and tenant actions), the following rules shall apply to the Special Civil Part: R. 4:2 (form and commencement of action); R. 4:3-3 (change of venue in the Superior Court), provided, however, that in Special Civil Part actions a change of venue may be ordered by the Assignment Judge of the county in which venue is laid or the Assignment Judge's designee; R. 4:5 to R. 4:9, inclusive (pleadings and motions); R. 4:26 to R. 4:34, inclusive (parties); and R. 4:52 (injunctions as applicable in landlord/tenant actions); provided, however, that, in Special Civil Part actions (1) a defendant who is served with process whether within or outside this State shall serve an answer including therein any counterclaim within 35 days after completion of service; (2) extension of time for response by consent provided by R. 4:6-1(c) shall not apply; (3) the 90-day periods prescribed by R. 4:6-3 (defenses raised by motion), R. 4:7-5(c) (cross claims), and R. 4:8-1(a) (third party complaints) shall each be reduced to 30 days; (4) the 45-day period prescribed by R. 4:8-1(b) (amended complaint asserting claims against third party defendant) shall be reduced to 30 days; (5) an appearance by a defendant appearing pro se shall be deemed an answer; (6) no answer shall be permitted in summary actions between landlord and tenant, summary ejectment and unlawful entry and detainer actions or in actions in the Small Claims Section; (7) if it becomes apparent that the name of any party listed in the pleadings is incorrect, the court, at any time prior to judgment on its own motion or the motion of any party and consistent with due process of law, may correct the error, but following judgment such errors may be corrected only on motion with notice to all parties; (8) a defendant who is served with an amended complaint pursuant to R. 4:9-1 shall

plead in response within 35 days after the completion of service; and (9) the double-spacing and type-size requirements of R. 1:4-9 do not apply.

Note: Source - R.R. 7:2, 7:3, 7:5-1, 7:5-3, 7:5-4(a)(b), 7:5-5, 7:5-6, 7:5-7, 7:5-8, 7:12-5(a)(b), 7:12-6. Amended June 29, 1973 to be effective September 10, 1973; amended July 24, 1978 to be effective September 11, 1978; amended November 5, 1986 to be effective January 1, 1987; amended November 2, 1987 to be effective January 1, 1988; amended November 7, 1988 to be effective January 2, 1989; amended June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994; amended July 12, 2002 to be effective September 3, 2002; amended July 27, 2006 to be effective September 1, 2006; amended , 2016 to be effective September , 2016.

D. Proposed Amendment to R. 6:2-3(d)(1) – Party Neutral Reference

Civil practice staff suggested a rule amendment to maintain party neutral reference in Rule 6:2-3(d)(1). The rule in its current form expresses a requirement upon attorneys only. However, self-represented plaintiffs are required under the rule to submit the same information and appropriate number of copies of the summons and complaint when necessary. The Committee approved this suggestion. The proposed amendment follows.

6:2-3. Service of Process

(a) … no change.

(b) … no change.

(c) … no change.

(d) Service by Mail Program. If the process is to be served in this State, or if substituted service of process is to be made within this state:

(1) Initial Service. The clerk of the court shall simultaneously mail such process by both certified and ordinary mail. A plaintiff or attorney [Attorneys] shall submit to the clerk the mailing addresses of parties to be served and the appropriate number of copies of the summons and complaint. The clerk shall furnish postage, envelopes, and return receipts and shall address same. Mail service on each defendant shall be placed in separate envelopes by the clerk regardless of marital status or address. Process shall be mailed within 12 days of the filing of the complaint. The clerk thereafter shall send a postcard to plaintiff or the attorney showing the docket number, date of mailing and a statement that, unless the plaintiff is otherwise notified, default will be entered on the date shown. If service cannot be effected by mail, the clerk shall send a second card to the plaintiff or attorney stating the reasons for incomplete service and requesting instructions for reservice.

(2) … no change.

(3) … no change.

(4) ... no change.

(5) **…** no change.

(e) … 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 July 23, 2010 to be effective September 1, 2010; subparagraph (d)(2) amended July 19, 2012 to be effective September 4, 2012; paragraph (d)(1) amended , 2016 to be effective September , 2016.

E. Proposed Amendment to Rule 6:4-1(f) – Clarify Fees Taxable Upon Transfer to the Special Civil Part Court

Rule 1:43 ("Filing and Other Fees Established Pursuant to N.J.S.A. 2B:1-7") sets forth the schedule of those filing fees and other fees payable to the court that were revised or established as authorized by N.J.S.A. 2B:1-7 (L. 2014, c. 31, § 12), effective November 17, 2014. These filing fee changes, however, required the Committee to reexamine Rule 6:4-1(f) which provide for only $15 of the fee paid to the clerk of the court (an amount no longer accurate).

The Committee endorsed the proposal submitted by civil practice staff that the specific amount of taxed costs should not be specified inasmuch as filing fees could be changed again, which would necessitate another amendment to this rule, and that there are other fees that the prevailing party may request to be entered as taxed costs as a matter of course. Also, a defendant or third party plaintiff/defendant might have been the party who sought the transfer of the case to Special Civil Part, and thereafter succeed in entering judgment against a plaintiff, co-defendant or third party defendant, so reference to plaintiffs only should be omitted maintaining party neutral reference within the rule. Consideration was given to the fact that the party who successfully sought and received an Order transferring a case to the Special Civil Part (plaintiff or defendant) might not ultimately prevail in the underlying litigation after the case is transferred, so the Committee endorsed the proposed amendment to the rule to reflect that the costs "may" be entered instead of "shall."

Finally, civil practice notes that the factual circumstances in each case typically result in requests for other filing fees paid by a prevailing party to be permissibly entered as taxed costs. Such requests can include other filing fees paid in a different court prior to transfer, in addition to

the filing fee for the underlying motion to transfer, and/or any other filing fees paid subsequent to the transfer to the Special Civil Part Court. However, the prevailing party continues to remain obligated to apply for the entry of all taxed costs upon the filing of an affidavit, said costs allowed as of course, in accord with Rules 6:6-1 and 4:42-8. Accordingly, the proposed rule amendment also attempts to clarify that the filing fees paid by the prevailing party in any other Court on that case can be considered permissible taxed costs in the Special Civil Part, however, its entry is not automatic. The proposed amendment follows.

6:4-1. Transfer of Actions

(a) … no change.

(b) … no change.

(c) … no change.

(d) … no change.

(e) … no change.

(f) Fees on Transfer to Special Civil Part. If [the plaintiff] a party in an action transferred to the Special Civil Part thereafter prevails, [$15.00 of] the filing fees paid by that party to the [clerk of the] court from which the action was transferred [shall] may be taxed as part of the costs whether the transfer was to the Special Civil Part of the same or another county.

(g) … no change.

Note: Source R.R. 7:6-1(a)(b)(c)(d)(e). Paragraph (b) adopted and former paragraphs (b)(c)(d)(e) redesignated June 29, 1973 to be effective September 10, 1973; paragraph (g) amended July 21, 1980 to be effective September 8, 1980; paragraph (f) amended November 2, 1987 to be effective January 1, 1988; paragraphs (a), (b), (c), (d), (e) and (g) and captions of paragraphs (b), (c) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (g) amended July 14, 1992 to be effective September 1, 1992; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (d) amended July 19, 2012 to be effective September 4, 2012; paragraph (f) amended , 2016 to be effective September , 2016.

F. Proposed Amendment to Rule 6:6-2 – Entry of Default and Automatic Vacation Thereof Requiring Responsive Pleading's Filing Fee

Civil practice staff proposed an amendment to Rule 6:6-2 to require the applicable filing fee be included with the answer or responsive pleading on requests to automatically vacate default, containing the adversary's written consent thereon, filed within 30 days from the date of entry of default. This addresses administrative issues that may arise if the party fails to include the filing fee with that answer or responsive pleading. The exact language proposed and the basis thereof is based upon the Committee's March 1, 2002 Report which recommended the same revision to Rule 6:3-3(e), subsequently adopted by the Court, requiring the filing fee for the proffered answer or responsive pleading on motions to vacate default/default judgment. That language and reasoning was endorsed again by this Committee. The proposed amendment follows.

6:6-2. Entry of Default and Automatic Vacation Thereof

When a party against whom affirmative relief is sought has failed to appear, plead or otherwise defend as provided by law or these rules, or has failed to appear at the time fixed for trial, or if the party's answer is stricken on order of the court, the clerk shall enter the party's default. A party against whom a default has been entered for failure to plead or enter an appearance may have same automatically removed by the clerk provided there is filed with the clerk within 30 days of its entry a written application with the consent of the adversary endorsed thereon consenting to the vacation of the default, which application shall include [have annexed thereto] the answer or other responsive pleading of the party in default and its filing fee.

Note: Source-R.R. 7:9-1; caption and text amended November 2, 1987 to be effective January 1, 1988; amended July 13, 1994 to be effective September 1, 1994; amended , 2016 to be effective September , 2016.

G. Proposed Amendment to Rule 6:6-3(a) – Judgment by Default by the Clerk Reflecting Correct Reference to the Code of Federal Regulations (C.F.R.)

A committee member noted that the reference within Rule 6:6-3(a) to 12 C.F.R. §226.2(a)(20) and 12 C.F.R. §226.7 should be changed to reflect changes made to the numbering of the Code of Federal Regulations (C.F.R.). He proposed that 12 C.F.R. §226.2(a)(20) should be changed to 12 C.F.R. §10226.2(a)(20) and that 12 C.F.R. §226.7 should be changed to 12 C.F.R. §10226.7. The Committee agreed to the proposal. The proposed amendment follows.

6:6-3. Judgment by Default

(a) Entry by the Clerk; Judgment for Money.

If the plaintiff's claim against a defendant is for a sum certain or for a sum that can by computation be made certain, the clerk on request of the plaintiff and on affidavit setting forth a particular statement of the items of the claim, the amounts and dates, the calculated amount of interest, the payments or credits, if any, the net amount due, and the name of the original creditor if the claim was acquired by assignment, shall enter judgment for the net amount and costs against the defendant, if a default has been entered against the defendant for failure to appear and the defendant is not a minor or mentally incapacitated person. If prejudgment interest is demanded in the complaint the clerk shall add that interest to the amount due provided the affidavit of proof states the date of defendant's breach and the amount of such interest. If the judgment is based on a document of obligation that provides a rate of interest, prejudgment interest shall be calculated in accordance therewith; otherwise it shall be calculated in accordance with R. 4:42-11(a). If a statute provides for a maximum fixed amount as an attorney fee, contractual or otherwise, and if the amount of the fee sought is specified in the complaint, the clerk shall add it to the amount due, provided that in lieu of the affidavit of services prescribed by R. 4:42-9(b) the attorney files a certification that sets forth the amount of the fee sought, how the amount was calculated, and specifies the statutory provision and, where applicable, the contractual provision that provides for the fixed amount. If the claim is founded on a note, contract, check, or bill of exchange or is evidenced by entries in the plaintiff's book of account, or other records, a copy thereof shall be attached to the affidavit. The clerk may require for inspection the originals of such documents. The affidavit shall contain or be supported by a separate affidavit containing a statement, by or on behalf of the applicant for a default judgment, that sets forth the source of the address used for service of the summons and complaint. The affidavit prescribed by this Rule shall be sworn to not more than 30 days prior to its presentation to the clerk and, if not made by plaintiff, shall show that the affiant is authorized to make it.

In any action to collect an assigned claim, plaintiff/creditor shall submit a separate affidavit certifying with specificity the name of the original creditor, the last four digits of the original account number of the debt, the last three digits of the defendant-debtor's Social Security Number (if known), the current owner of the debt, and the full chain of the assignment of the claim, if the action is not filed by the original creditor.

If plaintiff's records are maintained electronically and the claim is founded on an open-end credit plan, as defined in 15 U.S.C. §1602(i) and 12 C.F.R. §10226.2(a)(20), a copy of the periodic statement for the last billing cycle, as prescribed by 15 U.S.C. §1637(b) and 12 C.F.R. §10226.7, or a computer-generated report setting forth the previous balance, identification of transactions and credits, if any, periodic rates, balance on which the finance charge is computed, the amount of the finance charge, the annual percentage rate, other charges, if any, the closing date of the billing cycle, and the new balance, if attached to the affidavit, shall be sufficient to support the entry of judgment.

(b) … no change.

(c) … no change.

(d) … no change.

(e) . . . no change.

Note: Source — R.R. 7:9-2(a) (b), 7:9-4. Paragraphs (a) and (d) amended June 29, 1973 to be effective September 10, 1973; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a), (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b), and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 18, 2001 to be effective November 1, 2001; paragraphs (a), (b), and (c) amended, and new paragraph (e) added July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective September 1, 2006; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; paragraph (a) amended July 19, 2012 to be effective September 4, 2012; paragraph (a) amended July 22, 2014 to be effective September 1, 2014; paragraph (a) amended , 2016 to be effective September , 2016.

H. Proposed Amendment to Rule 6:12-3(a) – Special Civil Part Officer's Bond Filed in the Office of the Deputy Clerk

Civil practice staff proposed an amendment to Rule 6:12-3(a) to reflect that Special Civil Part Officers are required to provide their bond and all riders and/or updates thereto to the vicinage's trial court administrator (a/k/a "Deputy Clerk"), per Directive #01-15, not to the Office of the Clerk. Trial Court Administrators act as the administrative arm of the courts within each vicinage, under the direction of the Assignment Judge and the Administrative Director, per Rule 1:33-5. Trial Court Administrators and/or all other applicable employees in a vicinage serve as "Deputy Clerks," per Rule 1:34-2. Counsel's Office to the Acting Director of the Administrative Office of the Courts concurred with civil practice's proposed amendment to clarify the title to whom the court officers must file their bonds with. The Committee agreed and the proposed amendment follows.

6:12-3. Supporting Personnel

(a) Officers' Bonds; Fiscal Accounts. All officers executing writs issued out of the Special Civil Part upon which money may be collected shall, before entering upon the discharge of their duties, file in the office of the deputy clerk a bond in such sum and form as prescribed by the Administrative Director of the Courts. Such officers shall maintain such fiscal records, subject to such audit, as the Administrative Director of the Courts prescribes.

(b) … no change.

Note: Source — R.R. 7:21-4, 7:21-5; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 19, 2012 to be effective September 4, 2012; paragraph (a) amended effective September , 2016.

I. Proposed Amendment to Appendices XI-I and XI-J – Notice of Application for Wage Form and Wage Execution Form (Clarifies Minimum Income Amounts Required Before an Execution Can Take Place)

A committee member submitted that the minimum income amounts currently reflected on the notice of application and wage execution forms that are required before a wage garnishment can take place are not entirely clear and can cause inadvertent confusion. Specifically, the member proposed that appropriate deductions should be made more understandable to clarify for employers the amounts they should be garnishing depending upon how frequently an employee is paid, and that amendments to both appendices might help to reduce confusion caused by the current language. The Committee endorsed the proposed language suggested which should clarify, for third party garnishees (employers) upon receipt of wage execution orders as well as for judgment debtors, how much income a judgment debtor (the employee) must earn before the wage garnishment can commence. The proposed amendments to Appendices XI-I (Notice of Application for Wage) and XI-J (Wage Execution) follow.

Plaintiff or Filing Attorney Information:

Name _____

NJ Attorney ID Number _____

Address _____

_____

Telephone Number _____

Superior Court of New Jersey
Law Division, Special Civil Part

_____ County

Docket No: _____

_____,
Plaintiff,

v.

Civil Action

_____,
Defendant(s).

Notice of Application for Wage Execution

To: _____
Name of Judgment-Debtor

Address _____

_____

TAKE NOTICE that an application is being made by the judgment-creditor to the above-named court, located at _____, New Jersey for a Wage Execution Order to issue against your salary, to be served on your employer, _____, (name and address of employer), for: (a) 10% of your gross salary when the same shall equal or exceed the amount of $217.50 per week; or (b) 25% of your disposable earnings for that week; or (c) the amount, if any, by which your disposable weekly earnings exceed $217.50, whichever shall be the least. Disposable earnings are defined as that portion of the earnings remaining after the deduction from the gross earnings of any amounts required by law to be withheld. In the event the disposable earnings so defined are $217.50 or less, <u>if paid weekly, or $435.00 or less, if paid every two weeks, or $471.25 or less, if paid twice per month, or $942.50, or less, if paid monthly then</u> no amount shall be withheld under this execution. In no event shall more than 10% of gross salary be withheld and only one execution against your wages shall be satisfied at a time. Your employer may not discharge, discipline or discriminate against you because your earnings have been subjected to garnishment.

You may notify the Clerk of the Court and the attorneys for the judgment- creditor, whose address appears above, in writing, within ten days after service of this notice upon you, why such an Order should not be issued, and thereafter the application for the Order will be set down for a hearing of which you will receive notice of the date, time and place.

If you do not notify the Clerk of the Court and the judgment-creditor's attorney, or the judgment-creditor if there is no attorney, in writing of your objection, you will receive no further notice and the Order will be signed by the Judge as a matter of course.

You also have a continuing right to object to the wage execution or apply for a reduction in the amount withheld even *after* it has been issued by the Court. To object or apply for a reduction, file a written statement of your objection or reasons for a reduction with the Clerk of the Court and send a copy to the creditor's attorney or directly to the creditor if there is no attorney. You will be entitled to a hearing within 7 days after you file your objection or application for a reduction.

Certification of Service

I served the within Notice upon the judgment-debtor, _____, on this date by sending it simultaneously by regular and certified mail, return receipt requested, to the judgment-debtor's last known address, set forth above. I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

Date Attorney for Judgment-Creditor or Judgment-Creditor Pro Se

[<u>Note:</u> Adopted July 13, 1994, effective September 1, 1994; amended September 27, 1996, effective October 1, 1996; amended July 30, 1997, effective September 1, 1997; amended July 28, 2004, to be effective September 1, 2004; amended July 3, 2007, to be effective July 24, 2007; amended July 2, 2008, to be effective July 24, 2008; amended July 9, 2009 to be effective July 24, 2009; amended November 6, 2013 to be effective November 25, 2013; amended July 22, 2014 to be effective September 1, 2014; <u>amended , 2016 to be effective September , 2016</u>]

APPENDIX XI-J. WAGE EXECUTION

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

ORDER AND EXECUTION AGAINST EARNINGS
PURSUANT TO 15 U.S.C. 1673 and N.J.S.A. 2A:17-56

Docket No.:_____

Judgment No.: _____
Writ Number : ___ Issued _____

Name and Address of Employer Ordered to Make Deductions:
_____
_____
_____

Plaintiff

vs.

Designated Defendant
(Address)

Unless the designated defendant is currently subject to withholding under another wage execution, the employer is ordered to deduct from the earnings which the designated defendant receives and to pay over to the court officer named below, the lesser of the following: (a) 10% of the gross weekly pay; or (b) 25% of disposable earnings for that week; or (c) the amount, if any, by which the designated defendant's disposable weekly earnings exceed $217.50 per week, until the total amount due has been deducted or the complete termination of employment. Upon either of these events, an immediate accounting is to be made to the court officer. Disposable earnings are defined as that portion of the earnings remaining after the deduction from gross earnings of any amounts required by law to be withheld. In the event the disposable earnings so defined are $217.50 or less, if paid weekly, or $435.00 or less, if paid every two weeks, or $471.25 or less, if paid twice per month, or $942.50, or less, if paid monthly then no amount shall be withheld under this execution. In no event shall more than 10% of gross salary be withheld and only one execution against the wages of the designated defendant shall be satisfied at a time. Please refer to Page 2, How to Calculate Proper Garnishment Amount.

The employer shall immediately give the designated defendant a copy of this order. The designated defendant may object to the wage execution or apply for a reduction in the amount withheld at any time. To object or apply for a reduction, a written statement of the objection or reasons for a reduction must be filed with the Clerk of the Court and a copy must be sent to the creditor's attorney or directly to the creditor if there is no attorney. A hearing will be held within 7 days after filing the objection or application for a reduction. According to law, no employer may terminate an employee because of a garnishment.

Judgment Date .....____
Judgment Award..... $ ____
Court Costs & Stat Atty. Fees ...$ ____
Total Judgment Amount. .....$ ____
Interest From Prior Writs…. .....$ ____
Costs From Prior Writs..... $ ____
Subtotal A ..... $ ____
From Prior Writs ……. $ ____
Subtotal B ……..…. $ ____
New Miscellaneous Costs.....$ ____
New Interest On This Writ.. ..... $ ____
On This Writ……..$ ____
Execution Fees & Mileage..... ..$ ____
Subtotal C ……..$ ____
Court Officer Fee…….. $ ____
Total due this date ..... $ ____

Plaintiff's Attorney and Address:
_____
_____
_____
_____

Date_____

_____
Judge

_____ Credits
Jane B. Doe
Clerk of the Special Civil Part

Make payments at least monthly to Court Officer as New Credits set forth:

_____
Court Officer

I RETURN this execution to the Court
( ) Unsatisfied ( ) Satisfied ( ) Partly Satisfied
Amount Collected .....$ ____
Fee Deducted .....$ ____
Amount Due to Atty .....$ ____
Date: _____
_____
Court Officer

HOW TO CALCULATE PROPER GARNISHMENT AMOUNT

(1) Gross Salary per pay period ..... _____
(2) Less:
Amounts Required by Law to be Withheld:
(a) U.S. Income Tax ..... _____
(b) FICA (social security) ..... _____
(c) State Income Tax, ETT, etc..... _____
(d) N.J. SUI ..... _____
(e) Other State or Municipal Withholding..... _____
(f) TOTAL ..... _____ - _____
(3) Equals "disposable earnings" ..... = _____
(4) If salary is paid:
-- weekly, then subtract $217.50
-- every two weeks, then subtract $435.00
-- twice per month, then subtract $471.25
-- monthly, then subtract $942.50
(Federal law prohibits any garnishment when "disposable earnings" are smaller than the amount on line 4) ..... - _____
(5) Equals the amount potentially subject to garnishment (if less than zero, enter zero) ..... = _____
(6) Take "disposable earnings" (Line 3) and multiply by .25:
$_____ x .25 = $_____ ..... _____
(7) Take the gross salary (Line 1) and multiply by .10:
$_____ x .10 = $_____ ..... _____
(8) Compare lines 5, 6, and 7--the amount which may lawfully be deducted is the smallest amount on line 5, line 6, or line 7, i.e.,
..... _____

Source: 15 U.S.C. 1671 *et seq*.; 29 C.F.*R.* 870; *N.J.S.A.* 2A:17- 50 *et seq*.

[Note: Former Appendix XI-I adopted effective January 2, 1989; amended June 29, 1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-J and amended July 13, 1994, effective September 1, 1994; amended September 27, 1996, effective October 1, 1996; amended July 30, 1997, effective September 1, 1997; amended July 28, 2004 to be effective September 1, 2004; amended July 3, 2007, to be effective July 24, 2007; amended July 2, 2008, to be effective July 24, 2008; amended July 9, 2009 to be effective July 24, 2009; amended November 6, 2013 to be effective November 25, 2013; amended July 22, 2014 to be effective September 1, 2014; amended , 2016 to be effective September , 2016.]

J. Proposed Amendment to Appendix XI-O – Order to Enforce Litigants Rights

A committee member proposed an amendment to Appendix XI-O (Order to Enforce Litigants Rights) to reflect common judicial practice by Special Civil Part Judges who routinely change the form of Order to reflect that warrants of arrest "may" (instead of "shall") issue out of the Court without further notice, out of concern for judgment debtors. For example, not every instance where the moving party obtains an Order to Enforce Litigants Rights results in the issuance of a warrant for arrest. The moving party is required to pay an additional filing fee for the issuance of the warrant for arrest and/or may decide subsequent thereto not to pay/apply for same and/or other circumstances may arise which may result in the warrant not being issued. The proposed amendment is a more accurate interpretation of the process and removes the incorrect understanding and/or expectation from *pro se* litigants that a warrant for arrest shall issue in every instance when an Order to Enforce Litigants Rights is obtained. The Committee endorsed changing the word "shall" to "may" in paragraph (3) of the form of Order. The proposed amendment follows.

APPENDIX XI-O
ORDER TO ENFORCE LITIGANTS RIGHTS

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN YOUR ARREST

Filing Attorney Information or Pro Se Litigant:
Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____

Superior Court of New Jersey
Law Division, Special Civil Part
_____ County
Docket Number: _____

_____,
Plaintiff

v.

_____,
Defendant

Civil Action
Order to Enforce Litigant's Rights

This matter being presented 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.

(Do Not Write Below this line – for Court Use Only)

It is on this _____ 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 ☐ Order for Discovery ☐ Information Subpoena;

3. If Defendant, _____, fails to comply with the ☐ 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] 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.

Dated: _____ Signature: _____

[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 , 2016 to be effective September , 2016]

K. Proposed Amendments to Appendices XI-C, XI-D, XI-E, XI-F, XI-I, XI-M, XI-P, XI-U and XI-X (Attorney ID#); (Indication on Landlord/Tenant Verified Complaint Form of Need for Interpreter or Disability Accommodation)

Civil practice staff presented for the Committee's information required minor edits to various appendices, made necessary by Rule 1:41-(b), to reflect reference for attorneys to include their Attorney ID# above the caption at the left hand margin. The AOC forms unit is in the process of inserting that minor reference on all of the Court's affected forms and appendices thus it was not necessary for the Committee to formally endorse these changes. Civil practice staff presented a proposal to amend the Landlord/Tenant Verified Complaint form (Appendix XI-X), to reflect identical language which appears on all other Special Civil Part complaint forms - a need for an interpreter or ADA accommodation. The Committee endorsed the proposed amendments. The proposed amendment to only Appendix XI-X follows.

Filing Attorney Information or Pro Se Litigant:

Name _____

NJ Attorney ID Number _____

Address _____

_____

Telephone Number _____

Superior Court of New Jersey
Law Division, Special Civil Part
_____ County
Docket Number: LT _____

_____,
Name of Plaintiff(s)/Landlord(s),
v.

_____,
Name of Defendant(s)/Tenant(s).

Civil Action

Verified Complaint
Landlord/Tenant

☐ Non-payment of Rent
☐ Other (Required Notices Attached)

Address of Rental Premises: _____.

Tenant's Phone Number: _____.

1. The owner of record is (name of owner) _____.
2. Plaintiff is the owner or (check one) ☐ agent, ☐ assignee, ☐ grantee or ☐ prime tenant of the owner.
3. The landlord ☐ did ☐ did not acquire ownership of the property from the tenant(s).
4. The landlord ☐ has ☐ has not given the tenant(s) an option to purchase the property.
5. The tenant(s) now reside(s) in and has (have) been in possession of these premises since (date) _____, under (check one) ☐ written or ☐ oral agreement
6. ☐ Check here if the tenancy is subsidized pursuant to either a federal or state program or the rental unit is public housing.
7. The landlord has registered the leasehold and notified tenant as required by *N.J.S.A.* 46:8-27.
8. The amount that must be paid by the tenant(s) for these premises is $_____, payable on the _____ day of each ☐ month or ☐ week in advance.

Complete Paragraphs 9A and 9B if Complaint is for Non-Payment of Rent

9A. There is due, unpaid and owing from tenant(s) to plaintiff/landlord rent as follows:

$ _____ base rent for _____ (specify the week or month)
$ _____ base rent for _____ (specify the week or month)
$ _____ base rent for _____ (specify the week or month)
$ _____ late charge* for _____ (specify the week or month)
$ _____ late charge* for _____ (specify the week or month)
$ _____ late charge* for _____ (specify the week or month)
$ _____ attorney fees*
$ _____ other* (specify) _____

$ _____ TOTAL

* The late charges, attorney fees and other charges are permitted to be charged as rent for purposes of this action by federal, state and local law (including rent control and rent leveling) and by the lease.

9B. **The date that the next rent is due is** (date) _____.

If this case is scheduled for trial before that date, the total amount you must pay to have this complaint dismissed is (Total from line 9A) **$**_____.

If this case is scheduled for trial on or after that date, the total amount you must pay to have this complaint dismissed is $ _____.
(Total from line 9A plus the amount of the next rent due)

These amounts do not include late fees or attorney fees for Section 8 and public housing tenants. Payment may be made to the landlord or the clerk of the court at any time before the trial date, but on the trial date payment must be made by 4:30 p.m. to get the case dismissed.

Check Paragraphs 10 and 11 if the Complaint is for other than, or in addition to, Non-Payment of Rent. Attach All Notices to Cease and Notices to Quit/Demands For Possession.

10. ☐ Landlord seeks a judgment for possession for the additional or alternative reason(s) stated in the notices attached to this complaint. **State Reasons**: (Attach additional sheets if necessary.)

_____
_____
_____
_____

11. ☐ The tenant(s) has (have) not surrendered possession of the premises and tenant(s) hold(s) over and continue(s) in possession without the consent of landlord.

WHEREFORE, plaintiff/landlord demands judgment for possession against the tenant(s) listed above, together with costs

Dated: _____

_____
(Signature of Filing Attorney or Landlord Pro Se)

_____
(Printed or Typed Name of Attorney or Landlord Pro Se)

At the trial plaintiff will require:

An interpreter: ☐ Yes ☐ No Indicate language: _____

An accommodation for a disability: ☐ Yes ☐ No Indicate accommodation: _____

Landlord Verification

1. I certify that I am the ☐ landlord, ☐ general partner of the partnership, or ☐ authorized officer of a corporation or limited liability company that owns the premises in which tenant(s) reside(s).

2. I have read the verified complaint and the information contained in it is true and based on my personal knowledge.

3. The matter in controversy is not the subject of any other court action or arbitration proceeding now pending or contemplated and no other parties should be joined in this action except (list exceptions or indicate none):

   _____.

4. I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

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

Dated: _____

_____
(Signature of Landlord, Partner or Officer)

_____
(Printed Name of Landlord, Partner or Officer)

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendment to *R.* 6:1-1(e) – Dispense with Special Civil Part Officer Requirement to First Obtain and File Bond, as Ordered by Civil Presiding Judge on Civil Part Writs of Execution, before any Collection Occurs

Rule 6:1-1(e) precludes a writ of execution issued out of the Civil Part of the Law Division to be assigned to a Special Civil Part Officer except by court order of the Civil Presiding Judge. The order is required to specify the amount of the officer's fee, require the officer to account for all funds collected and disbursed and require the officer to file a bond in such form and sum as the Civil Presiding Judge directs. The Committee considered a proposal submitted by a Special Civil Part Officer to amend Rule 6:1-1(e), so as not to require an officer to procure a bond or increase his/her existing bond prior to collection. The proponent argues that it is punitive to require an officer to incur costs associated with obtaining a new bond or a rider to his/her existing bond, upon the receipt of such an Order permitting the issuance of a Civil Part writ, before the officer has levied upon any assets.

There are many goods and chattel writs assigned to Special Civil Part Officers in the normal course that do not incur any successful collection. The proponent argues that this additional bonding requirement in advance of any collection is unnecessary and premature and that the public is already satisfactorily protected by the bonding requirement procedures set forth in Directive #01-15. Directive #01-15 states that an officer's bond is calculated annually based upon the actual amount of money/gross receipts an officer has already successfully received over a preceding specific 11 month period of time (July through May). Administrative Directive #01-15, Section V, (E) requires the court officer's bond to be based upon three times the average gross monthly collection figure.

During the discussion, some Committee members thought the requirement was necessary to protect the public. It was noted that Civil Presiding Judge orders permitting the issuance of writs from the Civil Part of the Law Division to court officers are rare and may contain significantly large amounts for an officer to be responsible to levy upon. A judge opined that the Court should thus not wait to calculate the bond amount

months later. A proposal was made to table the item, several proposals were made to amend the text, and each was ultimately rejected.

Specifically, the Committee decided not to approve the proposed rule amendment, which was to delete the text in Rule 6:1-1(e) following "pursuant to the writ," by a vote of 15 to 10, with 2 abstentions.

B. Proposed Amendments to *R.* 6:3-3(c) – (Motions For Turnover) - Requiring the Special Civil Part Officer's Notice to Debtor and Affidavit of Levy Forms be Included When Applying for A Motion to Turnover; Require Certification in Support Thereof Include Goods and Chattel Writ's Expiration Date

The Special Civil Part Management Committee proposed a rule amendment which would require a moving party to certify to the expiration date of a goods and chattel writ in their application for an order to turnover funds. The genesis of this item was Directive #07-13, now superseded by Directive #01-15, which requires court officers to return writs after two years, as goods and chattel writs are null and void after two years from the date of issuance, under N.J.S.A. 2A:18-17. The assistant civil division managers advise that some court officers are not regularly complying with this requirement and their expired writ register reports reflect a large amount of expired writs thereon, illustrating their failure to timely perform their goods and chattel execution returns. They submit that barring an approved exception, this reflects that officers might be impermissibly collecting on the writ after it has expired, refusing to release a levy once the writ has expired and/or just sloppy paperwork by not providing timely returns. The Conference of Civil Division Managers and Supervising Special Civil Part Judges subsequently endorsed this proposal. Civil practice staff confirmed, upon the Committee's request, that every judgment creditor in Special Civil Part receives a postcard reflecting the writ's expiration date and the goods and chattel writ form itself contains the writ's expiration date.

An additional request to amend Rule 6:3-3 was submitted by civil practice staff to codify the present practice into the rule which requires the moving party to attach a copy of the court officer's notice to debtor and certification/affidavit of levy forms with a motion to turnover. This requirement is reflected in the previously approved and published self-represented litigant form, "*How to Ask the Court to Order a Bank to Turn Over Funds that have been Frozen (Motion to Turnover Funds – Form 10547*).

Creditor attorneys opposed the suggestion to require judgment creditors to certify to additional information in support of a motion to turnover when that information pertaining to a writ's expiration date is already available to the Court. Placing a burden upon the moving party in this regard was felt to be unfair inasmuch as the onus is on the court officer to comply with the Directive and for the Court to address its

officers' alleged failure to do so. Any writ's expiration date is information readily available to the judge, as reflected on the writ contained in the court's case file, as well as within the court's database called ACMS. Other members opined that the judge's law clerk and/or court staff could "red flag" these turnover motions for a judge's convenience or quick edification if it involves a writ that has expired in lieu of requiring same upon all judgment creditors. A few Committee members also expressed disagreement with Directive #01-15's underlying requirement for officers to return goods and chattel writs and/or release levies after writs expire.

The Committee made no recommendation nor took any action pertaining to Directive #01-15, offered no responsive comment pertaining to the proposal to codify the Court's existing practice requiring a copy of the court officer's certification/affidavit of levy and notice to debtor forms and ultimately rejected both proposals to amend Rule 6:3-3 by a vote of 12 to 9.

C. Proposed Amendment to *R.* 6:3-4(c) and Appendix XI-X – Additional Verified Facts in Residential Landlord-Tenant Verified Complaints

The Committee considered a proposal submitted by a vicinage judge who is assigned periodically to handle landlord/tenant cases to amend Rule 6:4-3(a), and corresponding Appendix form XI-X (Verified Landlord/Tenant Complaint), to require three additional verified facts: (1) number of units at the location; (2) a designation as to whether the units are commercial or residential; and (3) whether the premises are owner occupied. The basis for same would be to assist the Court in reviewing each matter's notice/registration requirements, whether a case is governed by either N.J.S.A. 2A:18-61.1 (Anti-Eviction Act) or N.J.S.A. 2A:18-53 and for the potential of needed relocation assistance, prior to the scheduled trial date. By doing so, it was suggested that this would streamline proceedings by avoiding unnecessary testimony and dispose of cases more expeditiously overall.

During the Committee's discussion, a majority of members stated strong opposition to the proposed additional information sought, as it only affects a limited amount of cases, most residential landlord/tenant complaints do not involve owner occupied units and the number of units is irrelevant. Moreover, members noted that the additional proposed verified facts go beyond the required changes previously mandated by the Supreme Court in Hodges v. Sasis Corp., 189 N.J. 210 (2007). A few judges commented that the landlord/tenant verified complaint form requires no further revision, this would unnecessarily over complicate the form, especially for *pro se* landlords, and there is not enough time available to review all of the cases scheduled for trial prior to trial. A few members retorted that it is not overly burdensome to require this information and that the more information that the Court has would be helpful to the Court.

During the Committee's discussion, it became evident that the vicinages have different methods for dealing with the issue of a landlord's registration requirement for residential rental property. In most vicinages, the tenant can raise a landlord's failure to register property as an affirmative defense which typically results in the case's adjournment and rescheduled trial listing upon the landlord's timely submission of proof of successful registration. Notably, however, in one county, the registration is a requirement of proof upon the landlord prior to the issuance of a warrant of removal. Committee members opined that the

suggested amendment would therefore only benefit that one particular county based upon the unique approach on how it addresses landlord's registration requirements. For these reasons, the Committee did not support the proposed amendment by a vote of 19 to 4, with 3 abstentions.

D. Proposed Amendment to *R.* 6: 6-3(d) - Good Cause to Issue Order for Orderly Removal

A Civil Presiding Judge submitted a proposal to the Committee to consider an amendment to Rule. 6:6-3(d) to require a showing of "good cause" for the delay when requesting an entry of default judgment out of time and that this requirement to enter a default judgment by motion be required after twelve months from the date of entry of default instead of six months. The Committee took note of a prior suggestion to amend this rule to require a showing of good cause for delay and that it was considered and rejected in its 2010-2012 term.

As previously noted in its January 31, 2012 Supreme Court Special Civil Part Practice Committee Report, and stated again in the discussion that ensued, the rules already require that all orders be entered for good cause only and the purpose behind this rule was to put the defendant on notice of the application. The proposal would add a requirement that would change that purpose. A judge mentioned that the vast majority of these motions are unopposed and essentially ministerial and that judges do not sign orders unless there is good cause. The Committee determined that there was no good cause to change this rule and the proposed amendment was unanimously rejected.

E. Proposed Amendment to *R.* 6:7-2(f); Appendix XI-O – Warrant of Arrest Cannot Issue if More than Six Months Have Lapsed From the Date of Service Upon the Judgment Debtor of the Underlying Order to Enforce Litigants Rights

The Special Civil Part Management Committee proposed a rule amendment which would preclude the issuance of a warrant for arrest if more than 6 months has expired from date of service upon the judgment debtor of the underlying order to enforce litigant's rights and to change the corresponding Appendix XI-O form accordingly. The assistant civil division managers submit that their offices occasionally receive requests to issue a warrant for arrest, which is based upon permission derived from an order to enforce litigant's rights, that can be many months or years after the Order to Enforce Litigants Rights was originally granted and/or served upon a judgment debtor. The intent behind the proposed amendment was to preclude the issuance of a warrant for arrest in these instances inasmuch as the judgment creditor has essentially sat on his/her rights and the assistant civil division managers felt it was not fair to allow the warrant's issuance any time thereafter, which is permissible, by not having any rule requirement providing for any cutoff date. The Conference of Civil Division Managers endorsed this proposal.

The Supervising Special Civil Part Judges Committee did not endorse the proposal. The Special Civil Part Judges saw this proposal as an unnecessary impediment to judgment creditors and was essentially a non-issue, since it impacted very few people in this regard. Their committee did not think it was necessary to insert any cutoff date.

During this Committee's discussion, several committee members noted that they have never seen this situation before but members from the Legal Services of New Jersey stated otherwise. A member commented that a six month limit was unrealistic and another member noted that this would not be helpful for judgment creditors, who are self-represented litigants, and ultimately could aid judgment debtors' attempts to escape collection. The Committee did not support the proposed amendment by a vote of 14 to 7.

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

A civil division manager submitted a memo to the Chief Justice requesting that the Committee consider increasing the Special Civil Part's jurisdiction (DC) from $15,000 to $30,000 or alternatively to $20,000. That memo was forwarded to the Committee for their consideration wherein the manager suggests that this court is overdue for an increase inasmuch as the Special Civil Part had three jurisdictional limit increases between 1992 and 2002 (within a period of ten years) and in the subsequent thirteen years there have been no further increases. Some statistical information on special civil filings, increase in the cost of living and the noted preclusion of malpractice cases no longer being cognizable within Special Civil Part formed the basis for the request. A lengthy discussion ensued wherein the Committee tabled the matter for a subsequent meeting upon the receipt of more detailed statistical analysis requested from civil practice staff. A committee member from Legal Services of New Jersey submitted statistics and a study on racial disparity in debt collection cases (A*nnie Waldman & Paul Kiel, ProPublica, New York, NY, October 8, 2015)* in support of the position to reject this proposal and a member from the creditor's bar submitted a research paper from the research department of the Federal Reserve Bank of Philadelphia (*Viktar Fedaseyeu Bocconi University and Visiting Scholar, Federal Reserve Bank of Philadelphia, Working Paper NO. 15-23, June 19, 2015)* in support of the amendment which provided for the theory that stricter debt collection laws reduce credit availability.

During the Committee's discussion, members did not find either of the above noted members' submissions persuasive. A history of the Special Civil Part monetary limit increases over the last thirty years was presented to the Committee and it shows the following progression:

Year	Regular SCP Limit (DC)	Small Claims Limit
1983	$ 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 35.2% between September 2002 (the last time the Special Civil Part monetary limits were raised) and August 2015, the most recent month for which statistics were available at the time of the Committee's meeting. This would appear to justify an increase in the monetary limit from $15,000.00 to $20,250 (or rounding it to $20,000) for regular Special Civil Part cases (DC) and a corresponding increase to small claims to $4,000, maintaining the 5 to 1 ratio.

The Committee took into account the history of Special Civil Part (DC) overall filings per court calendar year from the date of its last jurisdictional increase (2002):

COURT YEAR	(DC) FILINGS	*AUTO/NEG (below #'s within overall DC filings)
2002	218,236	2,431
2003	261,353	3,218
2004	279,493	2,838
2005	245,649	2,238
2006	279,887	2,057
2007	307,843	1,389
2008	390,247	1,032
2009	386,686	1,155
2010	390,247	1,377
2011	374,475	1,591
2012	311,793	1,557
2013	252,984	2,144
2014	235,546	2,057
2015	201,660	2,154

Special Civil Part (DC) filings have decreased by 188,587 filings in the last seven years and there were less (DC) filings in FY2002 (last time the jurisdiction was raised) than the filings FY2015. The volume of tenancy actions and small claims has remained relatively static over the years, although court year 2015 Small Claims' filings decreased by 9% (FY2014 – 40,223 cases filed and FY2015 – 35,388 cases filed). New Jersey's present small claims monetary limit is lower than the limit in 44 other states, according to data collected since 2012 by an organization called HALT (Help Abolish Legal Tyranny). Information about the group's study is available at http://www.halt.org/reform_projects/small_claims/2011_small_claims_rc/.

Based on the factors expressed at the meeting derived from the collective experiences of the judges, court managers and attorneys who are Special Civil Part Practice Committee members, a motion was ultimately not submitted by any member either in support or against the proposal. The factors that prompted the Committee to not move on this proposal, ostensibly not endorsing the proposal, were: (1) proofs could become complicated with the restricted discovery permitted in the Small Claims Section if its monetary limit were to be raised to $4,000 or any other significant amount, (2) witness management in small claims cases could be a problem in cases involving the more substantial amounts, (3) the loss in revenue to the State would be significant based upon the recent increase in filing fees to the Civil Part of the Law Division, as the filing fees in Special Civil Part are far less than in the Civil Part; (4) discovery management in Special Civil (DC) cases could become difficult to manage within the confines of the expedited discovery timelines set forth under Rules 6:4-3 through 5, as an increase in the jurisdictional limit would prompt deposition requests, more extensive discovery needs, etc.; (5) concern over an increase in automobile and personal injury cases which also have procedural complications not suited for Special Civil Part; (6) some of the aforementioned case types and/or discovery complexities that will arise will cause an increase to backlog, as they will go beyond the 120 day inventory standard for backlog; and (7) some members opined that it may harm indigent or *pro se* defendants as this would make it easier for creditors to pursue a broader range of cases in a more expedited basis giving pause to some members.

III. OTHER RECOMMENDATIONS

A. Proposed Writ of Possession Self–Represented Litigant's Kit Endorsed

As previously expressed in this report under amendments recommended for adoption (*C. Proposed Amendment to Rules 6:2-1 and 6:3-1)*, the Committee requested to review a draft of a proposed uniform self-represented litigant's kit which was previously endorsed at the time of the Committee's meeting by the Special Civil Part Management Committee, Conference of Civil Division Managers and Supervising Special Civil Part Judges Committee for statewide use. The "kit" was prepared with the intent to provide self-represented litigants (or attorneys) with a set of easy instructions and form pleadings on how to file actions under N.J.S.A. 2A:35-1 et seq. (commonly referred to as "Ejectment Actions") and N.J.S.A. 2A:39-1 et seq., (unlawful retainer actions) previously made cognizable within the Special Civil Part, effective September 4, 2012, by Rule 6:1-2(a)(4).

The Committee unanimously recommended that the Court approve the "kit" as the statewide uniform form or "kit" and to subsequently publish/disseminate same in the normal course for the benefit of the public. As previously noted herein, on December 9, 2015, prior to the publishing of the within 2016 Report of the Supreme Court Committee on Special Civil Part Practice, Judicial Council and the Acting Director of the Administrative Office of the Courts approved the kit for statewide use.

IV. LEGISLATION – NONE

V. MATTERS HELD FOR CONSIDERATION

A. Proposed New Appendix Form (Answer with Crossclaim, Counterclaim and/or Third Party Complaint)

The Special Civil Part Management Committee suggested and prepared a new form of Answer, for use in the Special Civil Part (DC) docket, which contains information and ability for defendants to include a counterclaim, crossclaim and/or third party complaint in their responsive pleading, if they so desire. The assistant civil division managers expressed a need for same based upon their interaction with the public and noted that several Ombudsmen in their respective vicinages mentioned a need for such a form. The two available (DC) "straight" answer forms that appear in the Court's appendix apparently do not satisfactorily address *pro se* litigants' needs, as they typically have to doctor one of the two available straight answer forms when they wish to include one or more of these additional claims. The proposed new Answer form was endorsed by the Conference of Civil Division Managers and the Supervising Special Civil Part Judges Committee with additional edits previously made thereon by those respective Committees.

This Committee formed a sub-committee to examine the proposal. During the full Special Civil Part Practice's Committee's discussion on this proposal, a creditor's attorney disagreed entirely with the proposal as it would essentially encourage self-represented litigants to file additional meritless claims on debt collection cases that would make cases unduly complex. This proposed new Answer form would also make these cases very difficult to settle, increase the amount of trials that occur and expend unnecessary court time to address. Committee members from Legal Services of New Jersey thought the concept of having such a new answer pleading form was appropriate. The civil and assistant civil managers countered that any additional claim requires a higher filing fee to be paid by a defendant and disagreed that it would encourage the filing of frivolous counterclaims, crossclaims or third party complaints. They submit that a need exists to make available for the public such a form, and that by doing so, it would not encourage meritless additional claims.

Several sub-committee members suggested that all relevant available affirmative defenses should be listed, reference more specifically relevant discovery requirements, include Consumer Fraud and/or Federal Debt Collection Practice Act provisions, etc. This position was based upon a perceived need that the Answer form should include more legal information for defendants on debt collection cases and include provisions these members stated are typically included in their private practices. Other sub-committee members, consisting of assistant civil managers, were satisfied with the original answer form, disagreed to the other proposed forms submitted by fellow sub-committee members, and believed that the other proposals were too complicated for *pro se* litigants, would generate unintended confusion and/or was inappropriately providing legal advice. Ultimately, the sub-committee members presented three different Answer versions with significantly different conceptual approaches. The Committee was also unable to reach any consensus and a motion was carried to table the matter into its next rule cycle for further consideration by the sub-committee.

B. Possible Amendment to Rule 1:43 - (Addressing Inability to Collect Permissible Taxed Cost of $25 Filing Fee Incurred on Motions to Turnover that Satisfy Underlying Judgment

Arthur Raimon, Esq., a former Committee member and on behalf of the New Jersey's Creditors Bar, requested the Committee to consider an amendment to Rule 1:43 to address the present inability for a judgment creditor to recoup the new $25 (DC) motion filing fee which is a permissible taxed for the prevailing party. Specifically, for (DC) motions for turnover only that are granted, which also ultimately satisfy the underlying judgment, the judgment creditor is unable to recoup his/her $25 (DC) motion filing fee (a permissible taxed cost).

Civil practice staff explained that the goods and chattel writ execution form (Appendix XI-H) is generated by the Special Civil Part Clerk Offices and assigned to a Special Civil Part Officer who performs the levy in the normal course. The exact amount reflected on the writ, that the Officer can permissibly levy, is based upon uncollected filing fees (taxed costs) that existed at the time of the writ's issuance. The taxed costs included on each goods and chattel writ are automatically populated thereon by computer (ACMS) which are derived from those existing taxed costs already entered into ACMS. Thus, the writ cannot include taxed costs that have not yet been incurred (e.g., future or anticipated cost from a subsequent motion to turnover), so the officer has no authority to levy upon that additional amount. The subsequent $25 filing fee incurred for the (DC) motion for turnover is a permissible taxed cost, in accord with Rules 6:6-1 and 4:48-2, yet it remains unrecoverable.

During the course of several Committee meetings, members agreed that Special Civil Part is unable, nor should it, include future or additional costs that might be incurred onto every clerk issued goods and chattel writ. In addition, members commented that it would be unlikely that the Court could delete entirely the new $25 (DC) motion filing fee, impacting upon all (DC) motions filed, or that it would amend Rule 1:43 so that all (DC) motions to turnover no longer would incur a filing fee, inasmuch as the majority of turnover motions do not fall within this specific situation of satisfying the entire judgment.

Whereas, the Committee did not move to reject or approve the proposal and were otherwise unable to formulate an alternative proposal, they did unanimously agree that this issue should be addressed and tabled same for consideration into its next rule cycle.

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,

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