2012 Supplemental Report of the Supreme Court Special Civil Part Practice Committee

March 16, 2012

TABLE OF CONTENTS

I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendment to R. 6:1-2 – Cognizability of Ejectment and Detainer Actions in the Special Civil Part

The goal of the Committee in recommending this rule amendment is to provide a fast, inexpensive remedy for those situations in which there is otherwise no effective solution to the problem of guests who refuse to leave at the request of a homeowner or apartment dweller. There is no landlord-tenant relationship, so the remedy of a summary dispossess action is not available. Typically these cases involve an adult child who has been living temporarily with his or her parents, a boyfriend or girlfriend who is not on the lease but refuses to leave after the relationship has ended, or someone invited to stay temporarily while getting himself or herself back on their feet after losing a job. Initially the Committee focused on the statutory provisions for what used to be called ejectment actions, N.J.S.A. 2A:35-1 et seq. Common law ejectment actions involved two forms of legal relief — damages and possession of real property — so they and the statutory actions that replaced them have traditionally been brought in the Civil Part of the Law Division, where the filing fee is $200 and lawyers are needed to navigate the pretrial discovery procedures. The statutory scheme is suited to actions that involve questions of title to real estate and claims for items such as mesne profits over $15,000, which may require significant pretrial discovery. Filing such actions in the Civil Part does not make sense in cases that that do not involve title issues or damages in excess of $15,000 and there is no apparent reason why they should not be cognizable in the Special Civil Part pursuant to R. 6:1-2(a)(1).

It was brought to the Committee's attention early on, however, that there is no statutory provision or rule that permits ejectment actions to proceed in a summary manner without the trappings of plenary proceedings. The Committee thus turned its attention to the forcible and unlawful detainer actions provided for in N.J.S.A. 2A:39-1 et seq. These are, of course,

cognizable in and handled by the Special Civil Part every day. Normally they involve situations where the landlord has used self-help to lock the tenant out of leased premises. It is clear, however, that proceedings under Chapter 39 can be brought in a variety of other circumstances in which entry into real property used solely as a residence is "made in any manner without the consent of the party in possession unless the entry and detention is made pursuant to legal process …" N.J.S.A. 2A:39-1. Specific provision is made by the statute for situations:

- where the entry and detention of the property is accomplished by force or threats of force (N.J.S.A. 2A:39-2),
- where a tenant holds over after the termination of a lease (N.J.S.A. 2A:39-4), and
- when a person "without the consent of the owner or without color of title … willfully and without force" holds or detains the same "after demand and written notice" to leave (N.J.S.A. 2A:39-5).

Specific provision is made for such cases to be heard as summary proceedings and for an award of damages, costs and reasonable attorney's fees, but title cannot be an issue. N.J.S.A. 2A:39-6 through 8.

There may be situations in which an action is essentially one in the nature of detainer but does not fit neatly into the categories set forth in N.J.S.A. 2A:39-1 et seq. For this reason, the Committee recommends that R. 6:1-2(a) be amended to state that both detainer actions and ejectment actions are cognizable in the Special Civil Part, so long as there is no colorable issue of title and the damages do not exceed $15,000. The proposed amendment involves the addition of a new paragraph (4) to R. 6:1-2(a), redesignation of the current paragraph (4) as paragraph (5) and, as recommended by the Committee in its January 31, 2012 Report to the Supreme Court, elimination of the current paragraph (5), which deals with municipal court actions that are no longer heard in three counties and is thus no longer needed. Note also that paragraph (1) includes the amendment recommended by the Committee in its January 31 Report that will eliminate malpractice actions from the Special Civil Part. The proposed amendments follow.

6:1-2. Cognizability

(a) Matters Cognizable in the Special Civil Part. The following matters shall be cognizable in the Special Civil Part:

(1) Civil actions (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) seeking legal relief when the amount in controversy does not exceed $15,000;

(2) Small claims actions **[**in those counties that heretofore have had small claims divisions**]**, which are defined as all actions in contract and tort (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) and actions between a landlord and tenant for rent, or money damages, when the amount in dispute, including any applicable penalties, does not exceed, exclusive of costs, the sum of $3,000. Small claims also include actions for the return of all or part of a security deposit when the amount in dispute, including any applicable penalties, does not exceed, exclusive of costs, the sum of $5,000. The Small Claims Section may provide such ancillary equitable relief as may be necessary to effect a complete remedy. Actions in lieu of prerogative writs and actions in which the primary relief sought is equitable in nature are excluded from the Small Claims Section;

(3) … no change.

(4) Summary actions for the possession of real property pursuant to N.J.S.A. 2A:35-1, et seq., where the defendant has no colorable claim of title or possession, or pursuant to N.J.S.A. 2A:39-1, et seq.;

(5) **[**4**]** Summary proceedings for the collection of statutory penalties not exceeding $15,000 per complaint;

[(5) Municipal court actions, pursuant to R. 7:1, in the counties of Bergen, Hudson and Warren.**]**

(b) … no change.

(c) … no change.

Note: Adopted November 7, 1988 to be effective January 2, 1989; caption added to paragraph (a) and paragraph (a) amended July 17, 1991 to be effective immediately; paragraphs (a)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1) and (2) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a)(1) and (a)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (a)(2) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(4) and paragraph (c) amended July 27, 2006 to be effective September 1, 2006; subparagraphs(a)(1) and (a)(2) amended, new subparagraph (a)(4) adopted, former subparagraph (a)(4) redesignated as subparagraph (a)(5) and former subparagraph (a)(5) deleted , 2012 to be effective , 2012.

B. Proposed Appendix XI-Y – Writ of Possession (New)

As a practical matter the relief afforded in these cases will involve the issuance of a writ of possession. The Committee recommends that the writ be included as an appendix to the rules and that it be generated by the Automated Case Management System (ACMS) or the Judiciary Electronic Filing and Imaging System (JEFIS). The proposed form of the writ is attached and, if approved by the Supreme Court, would become Appendix XI-Y to the rules.

The proposed amendments to Rules 6:1-2(a) and 6:3-4(a) and the proposed Appendix XI-Y contemplate that writs of possession issued by the Special Civil Part in detainer and/or ejectment actions will be executed by Special Civil Part Officers, rather than the county sheriff. These cases require prompt action to remove an individual from the premises and the Committee believes that execution of the writs will take longer if directed to the sheriff, for the simple reason that sheriffs must take account of many other demands on their resources in setting priorities, such as serving writs issued in Civil Part and General Equity Part cases, courthouse security and other law enforcement duties. The Committee is aware of the concern of the Special Civil Part Management Committee (whose membership consists of the Assistant Civil Division Managers – Special Civil) that sending Special Civil Part Officers into some of these situations with a writ of possession may expose them to a potential risk of violence, but the risk is perceived to be no greater than the risk currently faced by Officers in executing warrants of removal in tenancy actions. In both instances the Officer can request assistance from local police departments to prevent a breach of the peace while the Officer is executing a warrant or a writ. The proposed form for the writ of possession contains exactly the same language in this regard as the warrant of removal: "Local police departments are authorized and requested to provide assistance to the Special Civil Part Officer who is executing this writ." The proposed form for the writ follows.

APPENDIX XI-Y

_____	SUPERIOR COURT OF NEW JERSEY
Plaintiff	LAW DIVISION, SPECIAL CIVIL PART
_____	_____ COUNTY
Address	
_____	DOCKET NO: _____
City, State, Zip Code	
	CIVIL ACTION
_____	
Plaintiff	WRIT OF POSSESSION
v.	
_____	
Defendant	

Do Not Write Below This Line – For Court Use Only

THE STATE OF NEW JERSEY TO _____,
SPECIAL CIVIL PART OFFICER, _____ COUNTY:

WHEREAS, on _____, 20__, by a certain judgment of the Superior Court of New Jersey, Law Division, Special Civil Part, _____ County, in a cause therein pending, wherein _____ is (are) the Plaintiff(s) and _____is (are) the Defendant(s), it was ordered and adjudged that the Plaintiff(s) recover the possession of the lands and premises, with appurtenances, described in the Complaint from the Defendant(s) which premises are located at:

_____
Street Address

_____
City, State, Zip Code

the possession of which the Defendant(s) have unlawfully deprived the Plaintiff(s), as appears to us of record.

Therefore, you are hereby COMMANDED without delay, to restore Plaintiff(s) to possession of his/her/their property; and return this writ to the Clerk of Special Civil Part within 14 days of its execution.

Local police departments are authorized and requested to provide assistance to the Special Civil Part Officer who is executing this writ.

WITNESS, the Honorable _____ , Judge of the Superior Court at _____, this ____ day of _____, 20___.

_____
Clerk of the Special Civil Part

Certification of Execution of Writ for Possession

I hereby certify that I executed this writ for possession as follows:

Date and Time Executed: _____

Additional Services Charge: $_____

Additional Services Performed: _____

_____
Signature of Special Civil Part Officer

_____
Printed or Typed Name of Officer

Note: Adopted _____, 2012 to be effective_____, 2012.

C. Proposed Amendment to R. 6:3-4(a) – Nonjoinder of Certain Actions and Eliminating Prohibition on Filing Counterclaims or Third Party Complaints in Detainer Actions

The Committee noted, during its discussions of ejectment and detainer, that R. 6:3-4(a) prohibits the joinder of summary tenancy actions and forcible entry and detainer actions with any other cause of action and that the rule further prohibits the filing of a counterclaim or third party complaint in either type of action. The Committee recommends that forcible entry and detainer actions be removed from this paragraph of the rule for two reasons. First, the proposed amendment to R. 6:1-2(a) would permit the filing of simultaneous claims for detainer and ejectment. Second, there should be no prohibition of answers, counterclaims or third party complaints in detainer actions. While they are summary actions, they are not the same as summary dispossess actions between landlord and tenant. The proposed amendment to R. 6:3-4 (a) follows.

6:3-4. Summary Actions For Possession of Premises

(a) No Joinder of Actions. Summary actions between landlord and tenant for the recovery of premises **[**and forcible entry and detainer actions**]** shall not be joined with any other cause of action, nor shall a defendant in such proceedings file a counterclaim or third-party complaint. A party may file a single complaint seeking the possession of a rental unit from a tenant of that party and from another in possession of that unit in a summary action for possession provided that (1) the defendants are separately identified by name or as otherwise permitted by R. 4:26-5(c) or (d) and R. 4:26-5(e), and (2) each party's interests are separately stated in the complaint.

(b) … no change.

(c) … no change.

(d) … no change.

Note: Source – R.R. 7:5-12. Caption and text amended July 14, 1992 to be effective September 1, 1992; amended July 27, 2006 to be effective September 1, 2006; caption amended, former text allocated into paragraphs (a) and (b), captions to paragraphs (a) and (b) adopted, and new paragraphs (c) and (d) added July 9, 2008 to be effective September 1, 2008; paragraph (a) amended , 2012 to be effective , 2012.

D. Proposed Amendment to R. 6:4-1(d) – Transfer of Actions / Transmission of Record; Costs

Rule 6:4-1 deals generally with the transfer of actions from the Special Civil Part to other courts, such as the Civil Part of the Superior Court, Law Division. Paragraph (d) of that rule requires the Special Civil Part Clerk to transmit the papers on file in the court and copies to the Deputy Clerk of the Superior Court upon payment by the party seeking the transfer of the Special Civil Part fees for making the copies. The Committee has been advised by the Special Civil Part Management Committee that the cost and bother of collecting the copying fees exceeds the cost of making the copies and both groups therefore recommend deleting the mention of copying fees from the rule. The proposed amendment follows.

6:4-1. Transfer of Actions

(a) … no change

(b) … no change

(c) … no change

(d) Transmission of Record; Costs. Upon presentation of an order transferring an action to the Law Division, the clerk of the Special Civil Part shall transmit the papers on file in the court, together with copies thereof, to the deputy clerk of the Superior Court in the county of venue **[**upon payment by the party applying for the transfer of the Special Civil Part fees prescribed by law for said copies**]**.

(e) … no change

(f) … no change

(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 , 2012 to be effective , 2012.

E. Proposed Amendment to R. 6:6-6 — Orders to Release Levies on Exempt Funds

The Committee considered a proposal to codify a requirement in the court rules that the order on any successful exemption claim by a judgment-debtor (*i.e.*, the judge determines that a levy must be released because the source of the funds levied upon is social security, welfare, child support, unemployment, etc.) systemically include a provision that any levy fee charged by a bank or other financial institution should be returned to the account holder when a judge has determined that the funds levied upon are exempt under State or federal law. The proponent observed that it is disconcerting how much banks are charging judgment debtors who are account holders to process a writ and that the banks deduct that fee (anywhere between $75 to $150) automatically, even if the money in the account subsequently has been determined by a judge to be from an exempt source such as social security or welfare.

The Committee agreed that banks or other financial institutions should not charge any fees against an account holder if those funds have been found by a Superior Court judge to be exempt under either federal or state law. The rule amendment proposed to address this problem would add a paragraph to R. 6:6-6, which already deals with relief from levies when there are exemption claims. The new paragraph would be designated as paragraph (c) and the current paragraph (c) would be redesignated as paragraph (d). The new paragraph (c) would provide that an order to release exempt funds from levy must require the bank or other third-party garnishee, over whom the court acquired jurisdiction when the writ of execution was served, to refund to the judgment-debtor all fees incurred as a result of the levy. Alternatively, if the court determines that the creditor knew or should have known that the funds were exempt from levy, the order may require the creditor to reimburse the debtor for the fees. The proposed amendment follows.

6:6-6. Post-Judgment Levy Exemption Claims and Applications for Relief in Tenancy Actions

(a) Generally. Rules 4:52-1 and 4:52-2 shall apply to post-judgment applications for relief in tenancy actions and to claims of exemption from levy in other actions in the Special Civil Part, except that the filing of briefs shall not be required.

(b) Orders for Orderly Removal. An order for post-judgment relief, applied for on notice to a landlord pursuant to paragraph (a) of this rule, need not have a return date if the sole relief is a stay of execution of a warrant of removal for seven calendar days or less, but it shall provide that the landlord may move for the dissolution or modification of the stay on two days' notice to the tenant or such other notice as the court sets in the order.

(c) Orders to Release Levies on Exempt Funds. An order to release a levy on funds because they are exempt from execution, levy or attachment under New Jersey or federal law shall require the third-party garnishee to refund to the judgment-debtor all fees incurred as a result of the levy. However, if the court determines that the judgment-creditor at whose instance the levy was made knew or should have known that the funds were exempt from execution, levy or attachment, the order can require that party to reimburse the judgment-debtor for such fees.

(d) **[**(c)**]** Forms. Forms for applications for post-judgment relief in tenancy actions and claims of exemption from levy in other actions shall be available to litigants in the clerk's office.

Note: Adopted July 12, 2002 to be effective September 3, 2002; caption and paragraphs (a), (b), and (c) amended July 27, 2006 to be effective September 1, 2006; paragraph (c) adopted and former paragraph (c) redesignated as paragraph (d) , 2012 to be effective , 2012.

F. Proposed Amendment to R. 6:7-2(g) – Warrant for Arrest Out of County

The Committee considered a letter from the President of the Sheriffs' Association of New Jersey to the Acting Administrative Director of the Courts regarding the need to amend R. 6:7-2 to eliminate confusion as to which sheriff should execute a warrant for arrest in a civil matter when the defendant does not reside in the county of venue. The Sheriff's letter was referred to the Civil Practice Committee and that committee referred it to this Committee for initial review because, while a few of the arrest warrants in civil matters are issued by the Civil Part of the Superior Court, Law Division, most of them are issued by the Special Civil Part.

Rule 6:7-2(g) provides, in pertinent part, that "If the judgment-debtor is to be arrested in a county other than the one in which the judgment was entered, the warrant shall have annexed to it copies of the order to enforce litigants rights and the certification in support of the application for the warrant" and the defendant is to be brought before a judge in the county where he or she is arrested. The rule does not otherwise address the procedures for executing warrants outside the county of venue because such warrants may be directed to sheriffs or to Special Civil Part Officers, depending upon the Part and the county in which the case was filed, and their procedures are not necessarily the same. Warrants that are to be executed by Special Civil Part Officers are directed to the Special Civil Part Clerk in the county where they are to be executed and the Clerk assigns them to the Officers in that county. The Sheriffs' Association had worked out a different procedure for its members: the warrant would be directed to the sheriff's office in the county of venue, who would then forward it to the sheriff of the county of residence for service, the defendant would be brought before a judge in that county and the warrant would then be returned to the sheriff in the county of venue, who would return it to the court and collect the fee for service. The Sheriffs' Association indicated in its letter that in some Special Civil Part cases the court would send the warrant directly to the sheriff in the county where it was to be served, if that is a county where Special Civil Part warrants for arrest are directed to the sheriff in

the first instance, pursuant to R. 6:7-2 (h). The letter indicated that in some Civil Part cases attorneys are sending warrants to sheriffs in the county of venue, the county of residence, and the county in which the defendant is employed, with the result of multiple arrests on the same warrant because the sheriffs were not aware that copies of the warrant had been sent to the other sheriffs.

To remedy this situation, the Committee proposes the simple solution of amending R. 6:7-2(g) to provide that in all cases where the warrant for arrest is to be served outside the county of venue, it shall be issued directly by the court to a Special Civil Part Officer or the sheriff of the county in which the defendant is to be arrested. This means that the creditor will pay the service and mileage fees to the clerk of the court in the county of venue, the clerk will then issue the writ, with the service and mileage fees, to the sheriff of the appropriate county or, in the case of warrants issued by the Special Civil Part for service by a Special Civil Part Officer in the appropriate county, to the Special Civil Part Clerk of that county, who will then assign it to one of the Special Civil Part Officers. This also means that in Civil Part cases, or Special Civil Part cases in which the warrant will be served by a sheriff, the warrant will not be issued to the attorney for forwarding to the sheriff. This uniform procedure will ensure that multiple warrants are not issued, that the defendant will be brought before a judge in the county where they are arrested and that the sheriff or the Special Civil Part Officer are paid the fees to which they are entitled by statute. The proposed amendment follows.

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

(a) … no change.

(b) … no change.

(c) … no change.

(d) … no change.

(e) … no change.

(f) … no change.

(g) Warrant for Arrest. Upon the judgment-creditor's certification, in the form set forth in Appendix XI-P to these Rules, that a copy of the signed order to enforce litigant's rights has been served upon the judgment-debtor as provided in this rule, that 10 days have elapsed and that there has been no compliance with the information subpoena or discovery order, the court may issue an arrest warrant. If the judgment-debtor is to be arrested in a county other than the one in which the judgment was entered, the warrant shall be issued directly to a Special Civil Part Officer or the Sheriff of the county where the judgment debtor is to be arrested, and the warrant shall have annexed to it copies of the order to enforce litigant's rights and the certification in support of the application for the warrant. The warrant shall be in the form set forth in Appendix XI-Q to these Rules and, except for good cause shown and upon such other terms as the court may direct, shall be executed by a Special Civil Part Officer or Sheriff only between the hours of 7:30 a.m. and 3:00 p.m. on a day when the court is in session. If the notice of motion and order to enforce litigant's rights were served on the judgment-debtor by mail, the warrant may be executed only at the address to which they were sent. In all cases the arrested judgment-debtor shall promptly be brought before a judge of the Superior Court in the county where the judgment-debtor is arrested and released upon compliance with the order for discovery or information subpoena. When the judgment-debtor has been arrested for failure to answer an

information subpoena, the clerk shall furnish the judgment-debtor with a blank form containing the questions attached to the information subpoena, as set forth in Appendix XI-L to these Rules.

(h) … no change.

(i) … no change.

Note: Source — R.R. 7:11-3(a)(b), 7:11-4. Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 17, 1975 to be effective September 8, 1975; amended July 21, 1980 to be effective September 8, 1980; caption amended, paragraph (a) caption and text amended, paragraph (b) adopted and former paragraph (b) amended and redesignated as paragraph (c) June 29, 1990 to be effective September 4, 1990; paragraph (a) amended and paragraphs (d), (e) and (f) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (b), (d), (e) and (f) amended July 13, 1994 to be effective September 1, 1994; former paragraph (b) redesignated as subparagraph (b)(1), subparagraph (b)(2) adopted, paragraph (c) amended, paragraph (d) adopted, former paragraph (d) amended and redesignated as paragraph (e), former paragraphs (e) and (f) redesignated as paragraphs (f) and (g) June 28, 1996 to be effective September 1, 1996; subparagraph (b)(2) and paragraph (g) amended July 10, 1998 to be effective September 1, 1998; paragraph (h) adopted July 5, 2000 to be effective September 5, 2000; new paragraph (h) added, and former paragraph (h) redesignated as paragraph (i) July 12, 2002 to be effective September 3, 2002; paragraphs (f) and (g) amended July 28, 2004 to be effective September 1, 2004; paragraph (g) amended , 2012 to be effective , 2012.

G. Proposed Amendment to Appendix XI-W – Consent to Enter Judgment for Possession (Tenant Vacates)

The Committee proposes to amend Appendix XI-W to the court rules, which is the model form used when a tenant settles a case by consenting to entry of a judgment for possession and vacation of the premises. The amendment is designed to eliminate an unintended delay that is built into the form agreement and is endorsed by the Special Civil Part Management Committee. This form and several others were created to implement the Supreme Court's opinion in Commonwealth Realty Management, Inc. v. Harris, 155 N.J. 212 (1998) for the purpose protecting unrepresented tenants in summary landlord-tenant actions. Rule 6:6-4(a) requires the judge to review and approve in open court any proposed stipulation of settlement or agreement that calls for an unrepresented tenant to both vacate the premises and pay rent, primarily to assure that the tenant's rights are not being violated and that the tenant understands what they have agreed to.

The model form provides in paragraph 3A, that, "If the tenant does not make all payments required in paragraph 2 of this agreement, the tenant agrees that the landlord, with notice to the tenant, can file a certification stating when and what the breach was and that the warrant of removal will then be issued by the clerk [emphasis added]." Based upon this language, landlords and/or their attorneys are precluded from even applying for the warrant until the agreed upon vacate date. The tenant who does not make the payments required by the agreement and does not vacate by the specified date essentially receives more time than was agreed before the eviction eventually occurs. This is aggravated by the fact that several days are required to process a request for the issuance of a warrant of removal and assign it to a Special Civil Part Officer. The Officer must then serve the warrant and then wait at least three more days to execute it.

The Committee proposes to remedy this unintended consequence of the language used in the model form by amending it to allow a landlord to request a warrant of removal BEFORE the agreed upon vacate date and to allow the warrant to be issued to and served by the Officer. The revised model agreement would require forbearance on executing the warrant until the agreed upon vacate date, unless the tenant fails to make the payments as agreed. The proposed amendment to Appendix XI-W follows.

APPENDIX XI-W

CONSENT TO ENTER JUDGMENT FOR POSSESSION (TENANT VACATES)

Plaintiff v. Defendant	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SPECIAL CIVIL PART _____COUNTY LANDLORD-TENANT DIVISION DOCKET # LT - _____ **CONSENT TO ENTER JUDGMENT (TENANT REQUIRED TO VACATE)**

THE TENANT AND LANDLORD HEREBY AGREE THAT:

1. The Tenant **AGREES TO THE IMMEDIATE ENTRY OF A JUDGMENT FOR POSSESSION AND THAT THE WARRANT OF REMOVAL MAY ISSUE AND BE SERVED UPON THE TENANT AT THE LANDLORD'S REQUEST, AS PERMITTED BY LAW. THE LANDLORD AGREES THAT THE WARRANT OF REMOVAL CANNOT BE EXECUTED (NO EVICTION) UNTIL _____ ("THE MOVE OUT DATE"), UNLESS THE TENANT FAILS TO COMPLY WITH PARAGRAPH 2(B).**

2. Check one of the following:

   A. _____ The Tenant shall pay no money, or

   B. _____ The Tenant shall pay $_____, as follows: _____
   _____
   _____

3. A. If the Tenant does not make all payments required in paragraph 2(B) of this Agreement, the Tenant agrees that the Landlord, with notice to the Tenant, can file a certification stating when and what the breach was and that the warrant of removal can then be executed upon, as permitted by law, prior to the agreed upon MOVE OUT DATE.

   B. **EVEN IF THE TENANT DOES MAKE ALL PAYMENTS REQUIRED IN PARAGRAPH 2(B), TENANT STILL AGREES TO MOVE NO LATER THAN _____. IF THE TENANT DOES NOT MOVE BY THAT DATE, LANDLORD CAN HAVE THE TENANT EVICTED, AS PERMITTED BY LAW. THE 30 DAY PERIOD TO EXECUTE UPON A WARRANT OF REMOVAL IS AGREED BETWEEN THE LANDLORD AND TENANT TO BE EXTENDED TO INCORPORATE THE MOVE OUT DATE.**

DATE: _____

_____ Landlord's Attorney

_____ Tenant's Attorney

_____ Landlord

_____ Tenant

NOTE: THE CERTIFICATION BY LANDLORD AND THE CERTIFICATION OF LANDLORD'S ATTORNEY (IF THE LANDLORD HAS AN ATTORNEY) ARE ATTACHED HERETO.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendment to R. 6:1-2 — Raise Monetary Limit to $20,000

In its January 31, 2012 Report to the Supreme Court the Special Civil Part Practice Committee rejected a proposal to increase the monetary limit of the Special Civil Part from the current $15,000 to $30,000. Subsequently the Committee considered and rejected (by a wide margin) a rule amendment first proposed at its last meeting before submitting this Supplemental Report, which would eliminate personal injury cases from the Special Civil Part and raise the limit to $20,000. The net effect, the proponent of the amendment argued, would be to confine the Special Civil Part to small claims, tenancy actions and an increase in contract cases which the court would be able to accommodate. Another member of the Committee stated, however, that automobile insurance cases involving property damage would still be cognizable and subject to arbitration mandated by statute. Other members felt that further study of the ramifications of the proposal would be necessary before the Committee could recommend it to the Supreme Court.

B. Proposed Amendment to R. 6:6-3(a) — Enlarge Time for Submission of Affidavits of Proof to Support Entry of Judgment by Default

The Committee was informed that several instances had been uncovered in which the amount of prejudgment interest sought in affidavits of proof, submitted to support the entry of judgment by default, and the dates of the affidavits had been changed by personnel in two law firms that handled cases for a particular bank. This situation is still under investigation, but AOC staff to the Committee raised the question of whether the 30 days within which R. 6:6-3(a) requires affidavits to be submitted to the clerk may simply be not enough time for lawyers to adequately process the proofs submitted to support requests for the entry of judgment by default. The Committee unanimously concluded, however, that the 30-day window allowed by the rule is sufficient and that no change in the rule is warranted.

C. Proposed Amendment to R. 6:6-3(a) — Use of Certification In Lieu of Affidavit of Proof to Support Entry Of Default Judgment

The Committee was informed that recently the proofs submitted by a law firm in a few cases contained affidavits made on dates subsequent to the date of the notary's jurat. This situation was addressed by the entry of a consent order in which the bank promised a nationwide revision of its procedures for processing proofs submitted to support the entry of default judgments. It was suggested that if law firms used a certification of proof, rather than an affidavit, this logistical problem could be avoided altogether. While R. 1:4-4(b) permits the use of the certification format in lieu of affidavit, the suggestion was made that perhaps R. 6:6-3(a) should reiterate that fact.

The Committee decided not to recommend amending the rule because the substance is already set forth in a rule of general application and amending the Part VI rule might suggest that there was something different. The Committee recommends, instead, the publication of a Notice to the Bar reminding attorneys of the fact that certifications can be used in lieu of affidavits in presenting proofs for entry of default judgment (see section III.B. of this Report, infra).

III. OTHER RECOMMENDATIONS

A. Revise Administrative Directive #13-06 or Issue a New One Covering Fees for Execution of Writs of Possession

In sections I.A. and B. of this Report the Committee proposes an amendment to R. 6:1-2 that explicitly states that actions in ejectment and detainer are cognizable in the Special Civil Part and a new Appendix XI-Y to the rules that would set forth the form of the writ of possession to be used in such cases. The Committee believes that the execution of writs of possession in ejectment and/or detainer actions will involve the same need for Special Civil Part Officers to perform services ancillary to execution of the writ, such as standing by while, for example, (1) a locksmith changes locks, (2) animal control officers remove animals that have been left behind, (3) arrangements for minors on the premises are made by the Divison of Youth and Family Services, (4) police officers are present to prevent a breach of the peace, or (5) personal possessions of the defendant are removed. Administrative Directive #13-06 governs the provision of these supplemental services and the additional fees that can be charged when Officers are executing warrants of removal in tenancy actions. The Committee recommends that the Directive be revised to incorporate ancillary services that may be provided and the fees that can be charged by Officers when executing writs of possession. Alternatively, a new Administrative Directive should be issued to cover the supplemental services and fees involved in executing writs of possession.

B. Notice to Bar On Use of Certifications in Lieu of Affidavits for Proofs Submitted to Support Entry of Judgment By Default

In section II.C. of this Report, the Committee stated that it decided not to recommend amending R. 6:6-3(a) to reiterate the fact that a certification can be used in lieu of an affidavit to present proofs to support the entry of judgment by default because the substance is already set forth in R. 1:4-4(b), a rule of general application, and amending the Part VI rule might suggest that there is a difference. The Committee recommends, instead, the publication of a Notice to the Bar reminding attorneys of the fact that certifications can be used in lieu of affidavits in presenting proofs for entry of default judgment. This might assist law firms in managing their cases in a way that facilitates compliance with the requirement of R. 6:6-3(a) that sworn statements of proof be submitted to the clerk within 30 days of their execution.

C. Administrative Directive — Fees to Be Charged Upon Transfer of a Case to Another Court

As noted above in section I.D. of this Report, R. 6:4-1 deals generally with the transfer of actions from the Special Civil Part to other courts, such as the Civil Part of the Superior Court, Law Division. Paragraph (f) makes specific provision for the fees to be charged when a case is transferred to the Special Civil Part, but the fees that must be paid upon transfer from the Special Civil Part to another court, such as the Civil Part of the Law Division, are addressed in R. 1:13-4(c). This rule, however is not clear in certain respects. It states that when a court orders the transfer of an action "the order shall be conditioned upon the payment by the parties to the clerk of such court … of the fees that would have been payable had the action originally been instituted in such court or agency." Does this mean that the clerk of the receiving court should, for example, give credit for the fees originally paid in the Special Civil Part, or do the parties have to pay the full amount that would have been paid had the action commenced in the receiving court? The Committee believes that practices in this regard vary from county to county and suggests that an Administrative Directive be issued to address these issues.

IV. LEGISLATION — NONE

V. MATTERS HELD FOR CONSIDERATION

A. Adequacy of Proofs for Entry of Judgment By Default

The Committee made recommendations for rule amendments, in sections I.F and I. of its January 31, 2012 Report to the Supreme Court, regarding the captioning, content of pleadings and proofs for entry of default judgment on assigned claims. The Committee delegated to a Subcommittee the task of defining what evidence of the defendant's liability and the amount due on the claim is required, beyond the requirements already set forth in R. 6:6-3(a). The Subcommittee reported to the full Committee at its most recent meeting that its members agree that the facts set forth in an affidavit of proof submitted to support the entry of judgment by default must be evidence that would be admissible if the individual who executed the affidavit were testifying in court.

The Subcommittee also reported, however, that it had discussed the rules of evidence at length, particularly the business records exception to the hearsay rule in the context of suing on assigned claims, but was unable to reach an agreement on what recommendations to make to the full Committee. The Subcommittee asked AOC staff to the Committee to confer with the principal protagonists for the purpose of devising a recommendation that would be acceptable to both attorneys who represent creditors and those who represent debtors. The compromise would be submitted to the Subcommittee and then hopefully recommended by that body to the full Committee. There followed an exchange of voluminous materials on the subject among the three individuals, consisting mainly of judicial opinions from many jurisdictions, including New Jersey, that reached different conclusions on what evidence is admissible under the business records exception to the hearsay rule. Unfortunately, no agreement was reached for the Subcommittee to consider and hence there was no recommendation to place before the full Committee at this time. The Subcommittee intends to continue the discussions in the hope that

they will produce a result that the Committee can recommend to the Supreme Court in another supplemental report for adoption outside the normal two-year rules cycle.

VI. CONCLUSION

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

Respectfully submitted,

Hon. Joseph R. Rosa, J.S.C., Chair
Hon. Fred H. Kumpf, J.S.C., Vice Chair

Mary Braunschweiger, Civ. Div. Mgr.
Felipe Chavana, Esq.
Hon. Susan L. Claypoole, J.S.C.
I. Mark Cohen, Esq.
Gregory G. Diebold, Esq.
JoAnn Ezze, Asst. Civ. Div. Mgr.
Gerard J. Felt, Esq.
Eric H. Fields, Court Officer
Lloyd Garner, Esq., Asst. Civ. Div. Mgr.
Hon. Melvin L. Gelade, J.S.C.
Tracey Goldstein, Esq.
Joanne Gottesman, Esq.
Linda G. Hampton, Esq.
Kennon Jenkins, Court Officer
Adolfo L. Lopez, Esq.
Richard A. Mastro, Esq.
David G. McMillin, Esq.
Jonathan Mehl, Esq.
Raymond F. Meisenbacher, Jr., Esq.
Hon. David W. Morgan, J.S.C.
Hon. Steven F. Nemeth, J.S.C.
Hon. Maryann L. Nergaard, J.S.C.
W. Peter Ragan, Sr., Esq.
Hon. Ned M. Rosenberg, J.S.C.
Hon. Barry P. Sarkisian, J.S.C.
Stephen E. Smith, Esq.
Clara Son, Esq.
Andrew R. Wolf, Esq.
Robert J. Piscopo, AOC Staff
Robert D. Pitt, Esq., AOC Staff

Dated: March 16, 2012

LMJG
S:\RULE-SCP\2012\Draft Supplemental Report\#2 Supplemental Report 2012.doc