2004 SUPPLEMENTAL REPORT OF THE SUPREME COURT COMMITTEE ON SPECIAL CIVIL PART PRACTICE

MARCH 2004

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to *R.* 1:5-2 and *R.* 1:5-4(a) – Reconciliation of Language Regarding Service of Papers and Service of Papers on the Clerk

In an effort to reconcile that language of *Rules* 1:5-2 and 1:5-4(a), as directed by the Supreme Court in *First Resolution Investment Corp. v. Seker,* 171 *N.J.* 502, 516 (2002), this Committee proposed changes to both rules in its January 2004 Report to the Supreme Court. The Committee stated its belief that the erroneous interpretation of *R.* 1:5-2 --- that service by ordinary mail can only be done if the party refuses to claim or accept delivery of registered or certified mail --- could be addressed by the removal of the words ". . . if the party refuses to claim or to accept delivery," from the second sentence and adding the words "and simultaneously" to make clear that both modes of mailed service are to be made at the same time. The Committee felt that the last sentence, regarding simultaneous service, could then be eliminated. The Committee proposed to eliminate the difference in language between *R.* 1:5-2 ("refuses to claim") and *R.* 1:5-4(a) ("fails or refuses to claim") by striking the phrase in question from *R.* 1:5-2 and by modifying *R.* 1:5-4(a) to make clear that service by ordinary mail is effective when the party fails to claim the certified/registered mail or refuses to accept delivery of it. As requested by the Court in *Seker*, the Committee also reviewed the provision in *R.* 1:5-2 that permits service of papers on the clerk of the court and recommended that it be retained, but said that it should be coupled with a requirement that the moving party certify the efforts that were made to locate the respondent. In the Committee's view this would help the court to determine whether the efforts made were reasonably calculated to apprise the respondent of the pendency of the application.

These recommendations were then forwarded to the Civil Practice Committee, which endorsed them, with minor changes, in its January 2004 Report and March 1, 2004 Supplemental Report to the Court.

As to *R.* 1:5-2 the Civil Practice Committee concurred in the changes recommended by this Committee to reconcile the language of the rule with the language in *R.* 1:5-4(a) and agreed that some qualification is needed in permitting service on the clerk when a party can't be located. The Civil Practice Committee, however, proposed the words "despite diligent effort," rather than this Committee's "and the party certifies the efforts that were made to locate the respondent." The Civil Practice Committee also added, in the last sentence of *R.* 1:5-2, the phase "required by this rule" in referring to the diligent effort to locate a party. This Committee endorses both recommendations and they are included in the revised amendments to the rule that follow.

The Civil Practice Committee agreed in its January 2004 Report with this Committee's proposal to modify *R.* 1:5-4(a) but decided in its Supplemental Report to recommend substitution of these sentences for the last one in the rule:

> If service is simultaneously made by ordinary mail and certified or registered mail, service shall be deemed complete upon mailing of the ordinary mail. If not made simultaneously and the addressee fails or refuses to claim or to accept delivery of certified or registered mail, service shall be deemed complete upon mailing of the ordinary mail.

The added sentences make it clear that in either event, mailing by certified and regular mail simultaneously or seriatim, service is complete upon mailing of the regular mail. The Special Civil Part Practice Committee therefore endorses the Civil Practice Committee's proposed amendments to *R.* 1:5-4(a). The proposed amendments follow.

1:5-2. Manner of Service

Service upon an attorney of papers referred to in *R.* 1:5-1 shall be made by mailing a copy to the attorney at his or her office by ordinary mail, by handing it to the attorney, or by leaving it at the office with a person in the attorney's employ, or, if the office is closed or the attorney has no office, in the same manner as service is made upon a party. Service upon a party of such papers shall be made as provided in *R.* 4:4-4 or by registered or certified mail, return receipt requested, [to the party's last known address; or if the party refuses to claim or to accept delivery,] and simultaneously by ordinary mail to the party's last known address; or if no address is known, despite diligent effort, by ordinary mail to the clerk of the court. Mail may be addressed to a post office box in lieu of a street address only if the sender cannot by diligent effort determine the addressee's street address or if the post office does not make street-address delivery to the addressee. The specific facts underlying the diligent effort required by this rule shall be recited in the proof of service required by *R.* 1:5-3. [Where mailed service is made upon a party, the modes of service may be made simultaneously.]

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

1:5-4. Service by Mail or Courier: When Complete

(a) Service by Ordinary Mail if Registered or Certified Mail Is Required and Is Refused. Where under any rule, provision is made for service by certified or registered mail, service may also be made by ordinary mail simultaneously or thereafter. [If the addressee fails or refuses to claim or to accept delivery of certified or registered mail, the ordinary mailing shall be deemed to constitute service.] If service is simultaneously made by ordinary mail and certified or registered mail, service shall be deemed complete upon mailing of the ordinary mail. If not made simultaneously and the addressee fails or refuses to claim or to accept delivery of certified or registered mail, service shall be deemed complete upon mailing of the ordinary mail.

(b) …no change.

(c) …no change.

Note: Source — *R.R.* 4:5-2(a) (fifth sentence). Paragraph (a) adopted and former rule designated (b) June 29, 1973 to be effective September 10, 1973; amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended and paragraph (c) added July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) amended _____ to be effective _____.

B. Proposed Amendment to *R.* 1:5-6(c) – Papers Filed Pro Se By Business Entities; Resolution of Conflict with *R.* 1:21-1(c)

This Committee proposed an amendment to *R.* 1:5-6(c), in its January 2004 Report to the Supreme Court, that would resolve a conflict between that rule, which currently requires the clerk to accept pro se filings by business entities, and *R.* 1:21-1(c), which prohibits such filings with certain narrowly drawn exceptions. The amendment would authorize the clerk to reject filings that do not have "the signature of an attorney permitted to practice law in this State pursuant to *R.* 1:21-1 if the paper is filed on behalf of a business entity, unless the business entity is permitted to appear pro se by these rules." The Civil Practice Committee proposal, contained in its 2004 Report, tracks this language up to the point of citing *R.* 1:21-1, but goes on from this point to say " . . . or the signature of a party appearing pro se, provided, however, that a pro se appearance is provided for by these rules." This would have the effect of enabling the clerk to reject a pro se litigant's filing if it were unsigned. Note also that the Civil Practice Committee proposal does not include adding the word "signature" to the last paragraph of *R.* 1:5-6(c)(1), as does this Committee's proposal.

This Committee joins the Civil Practice Committee in recommending that language be added to the rule to bring the unsigned filings of pro se litigants within the purview of the rule, but it also believes that the last sentence of subsection (c)(1) should include the word "signature," as originally proposed by this Committee, to make clear that an unsigned paper returned with the required signature within 10 days will be deemed to have been filed on the date it was first received by the clerk. This Committee expresses no opinion on the proposed amendments regarding Family Part filings and demands for trial de novo. The Committee's revised proposed amendments to the rule follow.

1:5-6. Filing

(a) … no change.

(b) …no change.

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped "Received but not Filed (date)" if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement as required by *R.* 4:5-1 in the form set forth in Appendix XII to these rules; or

(C) in Family Part actions, the affidavit of insurance coverage required by *R.* 5:4-2(f) [or]; the Parents Education Program registration fee required by *N.J.S.A.* 2A:34-12.2; or the Confidential Litigant Information Sheet as required by *R.* 5:4-2(g) in the form prescribed in Appendix ---; or

(D) the signature of an attorney permitted to practice law in this State pursuant to *R.* 1:21-1 or the signature of a party appearing *pro se*, provided, however, that a *pro se* appearance is provided for by these rules.

If a paper is returned under this rule, it shall be accompanied by a notice advising that if the paper is retransmitted together with the required signature, document or fee, as appropriate, within ten days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(2) Except in mortgage and tax foreclosure actions, if an answer is presented by a defendant against whom default has been entered, the clerk shall return the same stamped "Received but not Filed (date)" with notice that the defendant may move to vacate the default.

(3) A demand for trial de novo may be rejected and returned if not filed within the time prescribed in *R.* 4:21A-6 or if it is submitted for filing by a party in default or whose answer has been suppressed.

(d) …no change.

(e) …no change.

Note: Source — *R.R.* 1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a) (first and second sentence), 4:5-7 (first sentence), 5:5-1(a). Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d) redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2), adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1),(3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (c)(1)(C) amended, (c)(1)(D) adopted, and (c)(3) amended to be effective .

C. Proposed Amendments to *R.* 1:5-7 – Affidavit of Non-Military Service

The Civil and Special Civil Part Practice Committees agreed in their 2004 reports that *R.* 1:5-7 should be amended to clarify that the affidavit of non-military service, required by the rule before entry of a default judgment, must be factually based or based on a statement from the United States Department of Defense. There was however, a slight difference in the language proposed by the two committees. This Committee said that the affidavit must be based on "personal knowledge" or have the DOD statement attached, while the Civil Practice Committee said that the affidavit must be based on "facts admissible in evidence," which is somewhat broader because it would include exceptions to the hearsay rule, such as business records. On reconsideration, this Committee agrees with the views and the amendments to the rule proposed by the Civil Practice Committee. The revised proposal follows.

1:5-7. Non-military Affidavit

An affidavit [of non-military service of each defendant, male or female, when required by law,] setting forth facts showing that the defendant is not in military service shall be filed as required by law before entry of judgment by default against such defendant. Such affidavit may be included as part of the affidavit of proof. Unless based on facts admissible in evidence, the affidavit shall have attached to it a statement from the United States Department of Defense that the defendant is not in military service.

Note: Source — *R.R.* 7:9-3; amended _____ to be effective _____.

D. Proposed Amendments to *Rules* 1:6-2(a) and 6:3-3(c)(1) – Form of Motion; Hearing

This Committee made no recommendations regarding *R.* 1:6-2(a). The Civil Practice Committee, however, recommended that the rule be amended to require inclusion of the discovery end date in the notice of motion and to require counsel to advise the court forthwith if the motion is withdrawn or the matter settled. This Committee understands that the impetus for the Civil Practice Committee's proposed amendment came from the Conference of Civil Presiding Judges and is designed to apprise judges handling motions of the discovery end date that has been set by notice to the parties pursuant to Civil Part Best Practices, rather than the discovery end date that can be calculated from *R.* 4:24-1. *Rule* 1:6-2(a) is applied to the Special Civil Part by *R.* 6:3-3(c), and since the Special Civil Part does not have a practice that includes the aforementioned notices of discovery end dates, this Committee recommends that *R.* 6:3-3(c)(1) be amended so as to exclude motions filed in the Special Civil Part from the new requirement that a notice of motion must include the discovery end date that has been set for the case.

The Civil Practice Committee also decided to recommend the inclusion of language in *R.* 1:6-2(a) urging counsel to notify the court promptly if a matter has been settled or withdrawn, to address the problem of motion judges being informed on motion days that a particular matter has been settled or that the motion has been withdrawn. The Special Civil Part Practice Committee endorses this proposed amendment.

The proposed amendments to *Rules* 1:6-2(a) and 6:3-3(c)(1) follow.

1:6-2. Form of Motion; Hearing

(a) Generally. An application to the court for an order shall be by motion, or in special cases, by order to show cause. A motion, other than for bail pursuant to *R.* 3:26-2(d) or one made during a trial or hearing, shall be by notice of motion in writing unless the court permits it to be made orally. Every motion shall state the time and place when it is to be presented to the court, the grounds upon which it is made and the nature of the relief sought, and the discovery end date or a statement that no such date has been assigned. [and] The motion shall be accompanied by a proposed form of order in accordance with *R.* 3:1-4(a) or *R.* 4:42-1(e), as applicable. The form of order shall note whether the motion was opposed or unopposed. If the motion or response thereto relies on facts not of record or not subject of judicial notice, it shall be supported by affidavit made in compliance with *R.* 1:6-6. The motion shall be deemed uncontested and there shall be no right to argue orally in opposition unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought. Counsel shall forthwith advise the court if the motion is withdrawn or the matter is settled.

(b) …no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) …no change.

Note: Source — *R.R.* 3:11-2, 4:8-5(a) (second sentence). Amended July 14, 1972 to be effective September 5, 1972; amended November 27, 1974 to be effective April 1, 1975; amended July 24, 1978 to be effective September 11, 1978; former rule amended and redesignated as paragraph (a) and paragraphs (b), (c), (d), and (e) adopted July 16, 1981 to be effective September 14, 1981; paragraph (c) amended July 15, 1982 to be effective September 13, 1982; paragraph (c) amended July 22, 1983 to be effective September 12, 1983; paragraph

(b) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a) and (c) amended and paragraph (f) adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended and paragraph (d) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 13, 1994 to be effective January 1, 1995; paragraphs (a) and (f) amended January 21, 1999 to be effective April 5, 1999; paragraphs (c) and (d) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended to be effective .

6:3-3. Motion Practice

(a) ... no change

(b) ... no change

(c) Service and Form. Motions shall be made in the form and manner prescribed by R. 1:6, and in conformity with R. 6:6-1, provided, however, that:

(1) The notice of motion shall not state a time and place for its presentation to the court, nor shall the discovery end date as specified in R. 1:6-2(a) be required. No oral argument of a motion shall be permitted unless specifically demanded by a party or directed by the court.

(2) ... no change

(3) ... no change

(4) ... no change

(5) ... no change

(6) ... no change

(d) ... no change

(e) ... no change

Note: Source — *R.R.* 7:5-9, 7:5-10, 7:5-11(a)(b); paragraph (c) amended July 15, 1982 to be effective September 13, 1982; paragraph (c) amended November 2, 1987 to be effective January 1, 1988; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended and paragraph (d) adopted July 14, 1992 to be effective September 1, 1992; new text of subparagraph (c)(5) added and former subparagraph (c)(5) redesignated as (c)(6) July 13, 1994 to be effective September 1, 1994; subparagraph (c)(2) amended, subparagraphs (c)(4), (c)(5), and (c)(6) redesignated as subparagraphs (c)(6), (c)(7), and (c)(8), and new subparagraphs (c)(4) and (c)(5) adopted July 5, 2000, to be effective September 5, 2000; paragraph (a) amended, paragraph (b) caption and text amended, paragraphs (c)(6) and (c)(7) amended and redesignated as paragraphs (b)(1) and (b)(2), new paragraph (b)(3) added, paragraph (c)(8) redesignated as paragraph (c)(6), paragraph (d) amended, and new paragraph (e) added July 12, 2002 to be effective September 3, 2002; subparagraph (c)(1) amended , 2004 effective 2004.

E. Proposed Amendment to *R.* 1:13-7 – Dismissal of Civil Cases for Lack of Prosecution

This Committee made no recommendation regarding *R.* 1:13-7 in its 2004 Report to the Supreme Court, but the Civil Practice Committee proposed an amendment to paragraph (a), the addition of a new paragraph (b) and the redesignation of the current paragraph (b), which deals with the dismissal of unserved Special Civil Part complaints, as paragraph (c). The Special Civil Part Practice Committee notes the proposed redsignation and has no objection. The Civil Practice Committee's proposal follows.

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

(a) Dismissal. Except in receivership and liquidation proceedings[,] and in condemnation and foreclosure actions [as otherwise specified by *R.* 4:43-2(d)] and except as otherwise provided by [rule or court order, whenever any civil action shall have been pending in any court for four months without any required proceeding having been taken therein, the court shall issue written notice to the parties advising that the action as to any or all defendants will be dismissed without prejudice 60 days following the date of the notice unless, within said period, proof of service of process has been filed, or an answer or other response by way of motion or acknowledgment has been filed, or a motion has been filed asserting that the failure of service or the filing of an answer is due to exceptional circumstances. If the plaintiff fails to respond as herein prescribed, the court shall enter an order of dismissal without prejudice as to any named party defendant who has not been served or has not answered and shall furnish the plaintiff with a copy thereof. Reinstatement of the action after dismissal may be permitted only on motion for good cause shown. The court may issue the written notice herein prescribed in any action pending on the effective date of this rule amendment, and this rule shall then apply.] paragraph (c) of this rule, every civil action shall be subject to dismissal four months after the date of filing of the complaint as against a defendant who has not filed an answer or otherwise moved for relief and as to whom neither proof of service nor acknowledgement of service has been filed nor a default or default judgment entered, nor as to whom plaintiff has moved for substituted or constructive service or other relief. In such case, the court shall notify the plaintiff in writing that the action as to that defendant will be dismissed 60 days following the date of the notice unless within said period defendant either files an answer or acknowledgement of service or otherwise moves for relief, or a default or default judgment is entered, or plaintiff moves for relief. If a motion for relief made either by plaintiff or a defendant who has failed to answer or

acknowledge service is denied, the action as to that defendant will be dismissed without further notice. In multiple defendant actions, however, if at least one defendant has filed an answer, the action will not be dismissed as against any other defendant against whom a default has been entered but default judgment as required by *R.* 4:43-2 has not been entered. If a defendant's answer has been suppressed, the action against that defendant will be subject to dismissal in accordance with this rule and on the 60 days notice prescribed herein in the event that the plaintiff takes no further action against the defendant within 120 days following the suppression order.

(b) Reinstatement. [Whenever any civil action filed in the Special Civil Part has not been served within sixty (60) days of the date of filing, the clerk of the court shall dismiss the matter and notify the plaintiff that the matter has been marked "dismissed subject to automatic restoration within one year." The matter shall be restored without motion or further order of the court upon service of the summons and complaint within one (1) year of the date of the dismissal. A case dismissed pursuant to this rule may be restored after one year only by order upon application, which may be made *ex parte,* and a showing of good cause for the delay in making service and due diligence in attempting to serve the summons and complaint. The entry of such an order shall not prejudice any right the defendant has to raise a statute of limitations defense in the restored action.] The action may be reinstated in the court's discretion after dismissal pursuant to paragraph (a) of this rule on filing of a consent order vacating the dismissal provided, however, that the consent order is accompanied by an answer, a case information statement, and the required fee. The court may also, in its discretion, reinstate the action on motion for good cause shown. In permitting reinstatement, the court may direct the defendant to comply with such procedural requirements as it may impose to ensure that the next required proceeding in the action is timely taken.

(c) Special Civil Part. If original process in an action filed in the Special Civil Part has not been served within 60 days after the date of the filing of the complaint, the clerk of the court shall dismiss the action as to any unserved defendant and notify plaintiff that it has been marked "dismissed subject to automatic reinstatement within one year" as to the non-answering defendant or defendants. The action shall be reinstated without motion or further order of the court if the complaint and summons are served within one year from the date of the dismissal.

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

F. Proposed Amendments to *R.* 6:6-1 – Timing of Summary Judgment Motions

The Civil Practice Committee proposed, in it 2004 Report to the Supreme Court, to amend *R.* 4:46-1 to require that summary judgment motions be made returnable no later than 30 days before the trial date. *Rule* 4:46-1 is currently applicable to the Special Civil Part by virtue of *R.* 6:6-1. This Committee noted that *R.* 6:5-2(a) requires the clerk to give notice of the trial date at least 30 days before trial in Special Civil Part cases. In Civil Part cases, by way of contrast, *R.* 4:36-3 currently requires 8 weeks' notice of the trial date and the Civil Practice Committee is proposing to lengthen that to 10 weeks. The Special Civil Part, in the view of this Committee, should be excepted from this portion of the rule and a proposed amendment to *R.* 6:6-1 to accomplish this follows. The discussion of this issue raised the question of whether there should be a similar, but shorter, limit in Special Civil and the Committee decided to explore this during the next committee term (2004-2006).

6:6–1. Applicability of Part IV Rules

R. 4:42 (insofar as applicable), *R.* 4:43–3, *R.* 4:44 to 4:46, inclusive, and *R.* 4:48 to 4:50, inclusive, shall apply to the Special Civil Part, except that for summary judgment motions the requirements of a return date not less than 30 days before trial, a statement of material facts and a responding statement contained in *Rules* **[.]** 4:46-1, 4:46-2(a) and 4:46-2(b), respectively, shall not apply.

Note: Source — *R.R.* 7:9–5, 7:9–6 (third sentence), 7:10–1, 7:10–2, 7:12–1, 7:12–2, 7:12–3, 7:12–4. Amended by order of September 5, 1969 effective September 8, 1969; amended November 7, 1988 to be effective January 2, 1989; amended July 5, 2000 to be effective September 5, 2000; amended , 2004 to be effective , 2004.

G. Proposed amendment to *R.* 6:6-3(d) — Time for Entry of Judgment by Default

In 2002, the Supreme Court amended *R.* 6:3-3(c), as proposed by this Committee, to require 10 days' notice for all Special Civil Part motions except motions to enforce litigants rights. The proposal grew from a Best Practices recommendation, made by the Committee of Special Civil Part Supervising Judges. There are three rules, however, which still provide for applications to the court with less than 10 days' notice and they include:

1. *R.* 6:6-3(b) requires 7 days' notice to the tenant when a landlord applies for a default judgment for possession more than 30 days from entry of the default.

2. *R.* 6:6-3(d) requires 5 days' notice to the debtor before a creditor applies for a default judgment more than 6 months after the entry of default.

3. *R.* 6:7-1(c) requires 7 days' notice to the tenant before a landlord applies for a warrant of removal to be issued or executed more than 30 days after the entry of judgment for possession.

The Committee of Special Civil Part Clerks/Managers posed the questions of whether these periods should be set at 10 days for consistency with *R.* 6:3-3(c) and whether the applications should be made by notice of motion. The Special Civil Part Practice Committee decided that changing the 7-day periods set forth in *Rules* 6:6-3(b) and 6:7-1(c) could have ramifications for landlord-tenant actions that require further study. The Committee also concluded, however, that the 5-day period set forth in *R.* 6:6-3(d) was originally intended to track the 5-day provision set forth in *R.* 6:3-3(c) before it was changed to 10 days in 2002. The Committee therefore recommends that *R.* 6:6-3(d) be amended to require applications for entry of default judgment out of time to be made by motion on 10 days' notice. The proposed amendment follows. Note that the amendments to the rule include the changes to paragraph (a) proposed by the Committee in its January 2004 Report.

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 which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit setting forth a particular statement of the items of the claim, the **[**their**]** amounts and dates, the calculated amount of interest, the payments or credits, if any, **[**and**]** the net amount due, and the name of the original creditor if the claim was acquired by assignment, shall **[**sign and**]** 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 which sets forth the amount of the fee sought, how the amount was calculated and specifies the statutory or contractual provision that provides for the fixed amount. If the claim is founded upon 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 **[**or, if attached to the complaint, verified by reference in 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.

If plaintiff's records are maintained electronically and the claim is founded upon an open-end credit plan, as defined in 15 U.S.C. § 1602(i) and 12 C.F.R. § 226.2(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. § 226.7, or a computer-generated report setting forth the **[**financial information required to be contained in the periodic statement,**]** 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 **[**or if attached to the complaint and verified by reference in the affidavit**]**, shall be sufficient to support the entry of judgment.

(b) ... no change.

(c) ... no change.

(d) Time for Entry. If a party entitled to a judgment by default fails to apply therefor within 6 months after entry of default, judgment shall not be entered except on **[**application**]** motion to the court **[**and on written notice to the party in default served at least 5 days prior thereto**]**.

(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 _____, 2004 to be effective _____, 2004.

H. Proposed Amendment to *R.* 6:7-4 – Post-Judgment Interest Subsequent to Issuance of a Chattel Execution

Rule 6:7-3 (b) provides a mechanism for adding additional post-judgment interest to the amount to be collected on a wage execution. The additional interest in question accrues subsequent to issuance of the execution and before it is returned. The Special Civil Part Clerks reported that some attorneys seek to use the same mechanism in the context of chattel executions. There is no rule provision for this and AOC staff believes that such requests should not be sent by the Clerks to the Court Officers. Instead, the attorneys should be advised to file an updated statement of amount due and request the issuance of an alias or pluries writ that includes the additional post-judgment interest. Alternatively, a request for additional interest could be made by motion. AOC Staff and the Clerks requested direction on this issue from the Committee of Special Civil Part Supervising Judges, which suggested that the Special Civil Part Practice Committee consider a rule amendment that would allow it to be done by certification. This Committee recommends that the rules be amended to specifically allow for the collection of post-judgment interest on a chattel execution and determined that the proper place for such an amendment is *R.* 6:7-4. This rule deals specifically with chattel executions and the Committee recommends that the title be amended to that effect and to indicate that it also, as amended, deals with the accrual of interest. The proposed amendments follow.

6:7-4. Chattel Executions; Time at Which Levy Can be Made; Accrual of Interest

(a) Personal Property Within Residential Premises. Levies on personal property located within residential premises can be made only between the hours of 6:00 a.m. and 10:00 p.m., unless otherwise permitted by court order, which may be sought by ex parte application.

(b) Other Personal Property. Levies on other personal property may be made at any time, but a Special Civil Part Officer may levy on such property outside the hours of 6:00 a.m. to 10:00 p.m. only if the property cannot be levied on between the hours of 6:00 a.m. and 10:00 p.m.

(c) Accrual of Interest. The judgment creditor or the judgment creditor's attorney may file an affidavit or certification with the clerk of the court setting forth the amount of accrued interest. A copy of the affidavit or certification shall be sent by ordinary mail and by certified or registered mail, return receipt requested, by the judgment creditor or attorney to the judgment debtor at the debtor's last known address and by ordinary mail to the court officer to whom the writ of execution has been assigned. The affidavit or certification shall state that the interest and the court officer fees thereon have been imposed pursuant to *R.* 4:42-11 and must be collected in accordance with same by the officer. The court officer shall give to the judgment creditor or judgment creditor's attorney at least 30 days' notice of intention to return the chattel execution fully satisfied. The affidavit or certification shall be filed with the clerk prior to the return of the satisfied execution by the court officer. An affidavit or certification filed subsequent to the return of the satisfied execution shall be returned by the clerk to the judgment creditor or attorney with a notation or notice that the execution has been fully satisfied.

Note: Adopted July 12, 2002 to be effective September 3, 2002; amended _____, 2004, to be effective _____, 2004.

I. Proposed Amendment to Appendix XI-G — Warrant of Removal

The Committee of Special Civil Part Clerks/ Managers suggested that the model Warrant of Removal contained in Appendix XI-G to the Rules be modified to state that the 72-hour or 3-day delay between the service of a warrant of removal and its execution by a Special Civil Part Officer applies only to residential tenants and does not apply to commercial tenants. The Clerks reported that sometimes commercial tenants are mislead by the language in the warrant that is currently use throughout the State and think that they have at least another 3 days to vacate after the warrant has been served. This Committee agrees and proposes to add a sentence to that effect to the end of the first paragraph of the warrant that is directed to the tenant. The proposal follows.

APPENDIX XI-G — WARRANT OF REMOVAL

Docket No.: _____

Plaintiff's Name
Plaintiff(s) - Landlord(s)
- vs -
Defendant's Name
Defendant(s) - Tenant(s)

(Address -- 1st Line)
(Address -- 2nd Line)
City, NJ 00ZIP

_____ County Special Civil Part
Landlord/Tenant Division
(Court Address -- 1st Line)
(Court Address -- 2nd Line)
City, NJ 00ZIP
Phone No. (XXX) XXX-XXXX

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

WARRANT OF REMOVAL

To: Name of Court Officer
(Court Officer)

You are hereby commanded to dispossess the tenant and place the landlord in full possession of the premises listed above. Local police departments are authorized and requested to provide assistance, if needed, to the officer executing this warrant.

To: Name of Defendant
(Tenant(s))

You are to remove all persons and property from the above premises within three days after receiving this warrant. Do not count Saturday, Sunday and holidays in calculating the three days. If you fail to move within three days, a court officer will thereafter remove all persons from the premises between the hours of 8:30 a.m. and 4:30 p.m. Thereafter, your possessions may be removed by the landlord, subject to applicable law. The 3 day provision applicable to residential tenants does not apply to commercial property. Commercial tenants may be evicted at the time the warrant is served.

You may be able to stop this warrant and remain in the premises temporarily if you apply to the court for relief. You may apply for relief by delivering a written request to the Clerk of the Special Civil Part and to the landlord or landlord's attorney. Your request must be personally delivered and received by the Clerk within three days after this warrant was served or you may be locked out. Before stopping this warrant, the court may include certain conditions, such as the payment of rent.

You may also be eligible for housing assistance or other social services. To determine your eligibility, you must contact the welfare agency in your county at (address), telephone number (XXX) XXX-XXXX.

Date:_____

Witness:_____
(Judge)

_____
Name of Clerk, Clerk of the Special Civil Part

==========

If you do not have an attorney, you may call the Lawyer Referral Service at (XXX) XXX-XXXX. Si ud. puede pagar los servicios de un abagado, pero no conoce a ninguno, puede llamar a las oficinas del Servicio de Referencias de Abagado de la Asociacion de Abagados del Condado local. Telefono: (XXX) XXX-XXXX. If you cannot afford an attorney, you may call Legal Services at (XXX) XXX-XXXX. Si ud. no puede pagar un abagado, ayuda legal gratis esta a su orden. Llame Servicios Legales: (XXX) XXX-XXXX.

Landlord: XXXXX XXXXX
Address: XXXXXXXXXX
City, NJ 00ZIP
Telephone: (XXX) XXX-XXXX

Court Officer:
Date Served:
Method of Service:
If Unserved, Why:
Date Executed:
Must Vacate By:

[Note: Adopted effective January 2, 1989; amended June 29, 1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; amended July 10, 1998 to be effective September 1, 1998; amended July 12, 2002 to be effective September 3, 2002; amended _____, 2004 to be effective _____, 2004.]

J. Proposed Amendment to Appendix XI-P — Certification In Support of Application for Arrest Warrant

In *New Century Financial Services, Inc. v. Nason,* _____ *N.J. Super.* _____, *2004 WL 110839* (App. Div. 2004), decided January 26, 2004, a 3-judge panel of the Appellate Division reversed a trial court's refusal to issue a warrant for arrest despite the judgment-creditor's having complied with all of the procedural requirements set forth in *R.* 6:7-2. The court specifically overruled *New Century Financial Services, Inc. v. Reed*, 331 *N.J. Super.* 128 (Law Div. 2000) in which the trial court held that an arrest warrant could not be issued unless proof is presented that the person was personally served with or had knowledge of the information subpoena or order alleged to have been violated. The *Nason* court upheld the provisions for service of these documents by mail and the arrest of the person at the address to which they were mailed, as set forth in *R.* 6:7-2. The *Nason* court suggested, however, that this Committee should consider whether to amend Appendix XI-P, the Certification In Support of Application for Arrest Warrant, to include a recitation of the date on which the motion to enforce litigant's rights was filed, the manner in which it was served and, if served by mail, a report on the results of the mailings. The court said there is no constitutional infirmity as a result of the omission, but that inclusion of this information would provide "an even more detailed history of the proceedings and an additional safeguard in the process." The proposed amendments to Appendix XI-P follow. Note that paragraphs 8 and 9 include substitution of the term "Order to Enforce Litigant's Rights" for the term "Order for Arrest," as recommended by the Committee in its 2004 Report.

APPENDIX XI-P — CERTIFICATION IN SUPPORT OF APPLICATION FOR ARREST WARRANT

Name:
Address:
Phone No.:

)	SUPERIOR COURT OF NEW JERSEY
)	LAW DIVISION, _____ COUNTY
Plaintiff,)	SPECIAL CIVIL PART
)	
)	DOCKET NO.
vs.)	
)	CIVIL ACTION
Defendant.)	
)	CERTIFICATION IN SUPPORT OF
)	APPLICATION FOR ARREST WARRANT

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

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

2. On _____, 20 **[**19**]** _, plaintiff obtained a judgment against the defendant, _____, for $ damages plus costs.

3. (Check all applicable boxes below)

[_] a. On _____, 20 **[**19**]** _, an Order was entered by this Court ordering defendant, , to appear at _____ on _____, 20 **[**19**]** _, at ___ _.m. and make discovery on oath as to the defendant's property, and on _____, 20 **[**19**]** _, a copy of the Order was served upon (check one) [_] personally, [_] by sending it simultaneously by ordinary and certified mail, return receipt requested to _____'s last known address as shown on the discovery Order referenced above.

[_] b. On _____, 20 **[**19**]** _, I served an information subpoena and attached questions as permitted by Court Rules on the defendant, _____, (check one) [__] personally, [__] by sending it simultaneously by regular and certified mail, return receipt requested, to defendant's last known address, as shown on the accompanying notice of motion.

[_] c. The regular mail has not been returned by the U.S. Postal Service.

[_] d. The regular mail has been returned by the U.S. Postal Service with the following notation: _____.

[_] e. The certified mail return receipt card has been signed for and returned to me.

[__] f. Though the certified mailing has been returned by the U.S. Postal Service, it was not returned in a manner that would indicate that the defendant's address is not valid. It was not returned with any of the following markings by the U.S. Postal Service: "Moved, unable to forward," "Addressee not know," "No such number/street," "Insufficient address," "Forwarding time expired," or in any other manner that would indicate that service was not effected.

4. The defendant, _____, has failed to comply with (check one) [__] the Order, [__] the information subpoena.

5. On _____, 20 , I served a true copy of my notice of motion for an order to enforce litigant's rights on defendant (check one) [ ] personally, [ ] by sending it simultaneously by regular and certified mail, return receipt requested, at the address shown on the proof of service at the conclusion of the Order to Enforce Litigant's Rights.

6. Neither the regular mail nor the certified mail containing the notice of motion has been returned by the U.S. Postal Service in a manner that would indicate that the defendant's address is not valid. Neither the regular nor certified mail was returned marked "Moved, unable to forward," "Addressee not known," "No such number/street," "Insufficient address," "Forwarding time expired," or in any other manner that would indicate that service was not effected.

7. On _____, 20 **[**19**]** _, the Court entered an Order **[**for Arrest**]** to Enforce Litigant's Rights when defendant failed to appear on the return day of my motion for an order enforcing litigant's rights.

8. On _____, 20 **[**19**]** _, I served a true copy of the Order **[**for Arrest**]** to Enforce Litigant's Rights on defendant (check one) [__] personally, [__] by sending it simultaneously by regular and certified mail, return receipt requested, at the address shown on the Proof of Service at the conclusion of the Order **[**for Arrest**]** to Enforce Litigant's Rights.

9. Neither the regular mail nor the certified mail has been returned by the U.S. Postal Service in a manner that would indicate that the defendant's address is not valid. Neither the regular nor certified mail was returned marked "Moved, unable to forward," "Addressee not known," "No such number/street," "Insufficient address," "Forwarding time expired," or in any other manner that would indicate that service was not effected.

10. Ten days have passed since I served a copy of the Order **[**for Arrest**]** to Enforce Litigant's Rights on defendant, and defendant has not complied with the (check one) [___] information subpoena, [__] Order for Discovery.

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

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

DATE: _____ _____

[Former Appendix XI-O adopted July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-P July 13, 1994, effective September 1, 1994; amended July 10, 1998, to be effective September 1, 1998; amended _____, 2004 to be effective _____, 2004.]

II. Matters Held for Consideration

A. Proposed Amendment to *R.* 6:2-3(b) – Service of Process by Private Process Servers

The Committee considered correspondence from a private process server proposing and justifying an amendment to *R.* 6:2-3(b) that would permit private process servers to serve Special Civil Part summonses and complaints in the same manner as now permitted in Civil Part matters. The Committee notes that it addressed the subject in its 2002 Report to the Supreme Court and concluded that no changes should be made because mailed service has been shown to be more effective than personal service of original process in Special Civil Part cases. The Committee observed that service by mail is much less expensive than personal service by private process servers, who charge as much as $49.95 per defendant, and that calling the individual who is asserted to have actually served the process to testify may be difficult in those instances where the company contracted to serve the summons frequently uses independent contractors rather than employees. The Committee notes also that the procedure for the automatic entry of default by the clerk depends on the clerk keeping track of the time that has elapsed after service and that this would be complicated by the use of private process servers since their returns would have to be entered into the docket (ACMS) to start the calculation of time. Nevertheless, the Committee will give the proposal further consideration during the 2004 – 2006 term.

B. Timing of Motions for Summary Judgment

As noted earlier in this Supplemental Report, during the Committee's discussion of the Civil Practice Committee's proposal to require that the return day for motions for summary judgment be no later than 30 days before trial, the conclusion was reached that the Special Civil Part should be excepted from the rule amendment and the Committee proposed an amendment to *R.* 6:6-1 to accomplish this. The discussion of this issue raised the question of whether there should be a similar, but shorter, limit in Special Civil and the Committee decided to explore this during the next committee term (2004-2006).

C. Rules Allowing for Less Than 10 Days' Notice of an Application to the Court

The Committee noted earlier in this Report that questions deferred for further study in the next term include whether the 7-day notice requirements set forth in *Rules* 6:6-3(b) and 6:7-1(c), for certain applications to the court in landlord–tenant matters (applications for default judgment for possession more than 30 days from the entry of default and for issuance or execution of a warrant of removal more than 30 days after the entry of a judgment for possession) should be set at 10 days for consistency with *R.* 6:3-3(c) and whether the applications should be made by notice of motion. Changing the 7-day periods set forth in these rules could have serious ramifications for landlord-tenant actions that require further study.

D. Indicating in the Titles to the Appendices Which Are Mandatory Forms and Which Are Model Forms

During the Committee's discussion of the amendments to Appendix XI-P (Certification in Support of Application for Arrest Warrant), the use of which is made mandatory by *R.* 6:7-2(g), the question arose as to whether the forms that are designated in the rules as mandatory or models should be labeled as such in their titles. This will be addressed during the next term.

E. Form Interrogatories

In its January Report to the Supreme Court the Committee indicated that it hoped to report further in this Supplemental Report on the matter of form interrogatories for all causes of action in the Special Civil Part, as requested in the Best Practices Recommendations of the Committee of Special Civil Part Supervising Judges that were approved by the Court. The Committee reports that it was unable to make further progress on this project in the intervening month and will endeavor to complete its work during the next committee term, 2004 – 2006.

III. Conclusion

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

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Dated: March 1, 2004