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

JANUARY 2004

TABLE OF CONTENTS

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 *First Resolution Investment Corp. v. Seker*, 171 *N.J.* 502, 516 (2002), the Supreme Court directed the Civil and Special Civil Part Practice Committees to review the difference in language between *R.* 1:5-2 ("refuses to claim") and *R.* 1:5-4(a) ("fails or refuses to claim") and recommend any change that may be necessary in order to avoid confusion. The Special Civil Part Practice Committee conveyed its proposal on this subject to the Civil Practice Committee for their review, but, in the meantime, undertook a further look at *R.* 1:5-2 to see if the provision permitting service of papers on the clerk should be retained. The Committee's proposals on both subjects are described below.

The Committee believes 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, can 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" as indicated in the draft that follows. The last sentence, regarding simultaneous service can then be eliminated. The difference in language between *R.* 1:5-2 ("refuses to claim") and *R.* 1:5-4(a) ("fails or refuses to claim") can be eliminated 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.

In the course of the discussion of proposals to reconcile *Rules* 1:5-2 and 1:5-4(a), as suggested by the Court in *Seker*, the Committee evaluated the provision in *R.* 1:5-2 that permits service of papers on the clerk of the court. The question is whether retention of that provision is

consistent with due process requirements. The Committee discussed this provision at some length. It was noted that there are a variety of situations in which the use of the provision might be contemplated by counsel. Before a case has gone to judgment the parties are obliged by *R.* 1:4-1(b) to keep the court and the other parties to the action apprised of their whereabouts and in the event of their failure to do so, service of moving papers on the clerk might be reasonably calculated to apprise the missing party of a pending motion, assuming that the party will likely contact the clerk at some point to ascertain the status of the pending case. That assumption may well have less of a foundation, however, in the situation where 7 months have elapsed between the entry of default and a motion to enter default judgment out of time. As for post-judgment applications, many years may elapse between the entry of judgment and an application for further relief, during which time the parties are under no obligation to inform the court of their current addresses and in these circumstances it is virtually certain that a respondent would not receive notice of a motion served only on the clerk. In the context of a wage execution, the creditor may know where the judgment-debtor works even though s/he does not have a current home address and since the debtor has the opportunity to object to the execution at any time, service of the application on the clerk may help in providing the target with some information when s/he calls the clerk's office for information or to object after wage withholdings have begun. The same may be true in the context of a motion for a turnover order of funds levied upon pursuant to a chattel execution.

Clearly there is a difference between most pre- and post-judgment applications and parties to pending actions cannot be hamstrung by a disappearing opponent. It is also clear that the adequacy of service in a post-judgment context will depend on the facts peculiar to the case, such as the length of time that has elapsed between the entry of judgment and the date of the application or the nature of the post-judgment contacts, if any, between the parties. Since a

bright-line rule is not practicable, the Committee recommends that the provision for service on the clerk be retained, but it should be coupled with a requirement that the moving party certify the efforts that were made to locate the respondent. This will assist the court in determining whether the efforts made were reasonably calculated to apprise the respondent of the pendency of the application.

The proposed amendments to *Rules* 1:5-2 and 1:5-4(a) 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, and the moving party certifies the efforts that were made to locate the respondent, 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 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 _____, 2004 to be effective _____, 2004.

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 refuses to accept delivery of certified or registered mail, the ordinary mailing shall be deemed to constitute service.

(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 , 2004 to be effective , 2004.

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)

The Committee recommends resolving the apparent conflict between *Rules* 1:5-6(c) and 1:21-1(c). The former requires the clerk to accept all papers for filing, with certain narrowly defined exceptions, while *R.* 1:21-1(c) states, in pertinent part, that "Except as otherwise provided by . . . *R.* 6:10 (appearances in landlord-tenant actions, [and] *R.* 6:11 (appearances in small claims actions) . . . a business entity other than a sole proprietor shall neither appear nor file any paper in any action in any court of this State except through an attorney authorized to practice law in this State." There are instances in which it is evident on their face that papers are proffered to the Special Civil Part clerk for filing by a business entity in violation of *R.* 1:21-1(c) and yet the clerk's office is powerless to reject them under *R.* 1:5-6(c). The result is an apparent toleration of *R.* 1:21-1(c) violations by the clerk's office and needless delay for an adjournment, dismissal or suppression when the court later takes action on the violation during proceedings.

The Committee recommends that this problem be resolved by amending *R.* 1:5-6(c) to incorporate the *R.* 1:21-1(c) prohibition into the list of exceptions in which the clerk is permitted to reject papers for filing. Papers filed pro se by a business entity, other than a sole proprietor or one permitted to file papers by *Rules* 6:10 or 6:11 (or the other non-Special Civil Part exceptions listed in *R.* 1:21-1(c) for matters pending in other courts), would be returned with a stamp that reads "Received but not filed (date)" and a notice that if the paper is retransmitted with the required signature within 10 days, the effective filing date will be the original date of receipt stamped on the paper. The proposed amendment to *R.* 1:5-6(c) follows.

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

(D) 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.

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.

(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) amended , 2004 to be effective , 2004.

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

In a letter dated August 20, 2002 to the chairs of this Committee, the Civil Practice Committee and the Family Practice Committee, the Administrative Director of the Courts asked that the committees "consider the disparity between the rules and practice" regarding affidavits of non-military service and "recommend appropriate action." The Committee discussed the subject of the letter at some length and considered letters from a judge and an attorney on the subject, an AOC staff attorney's research memo, a published article on the subject, the relevant statutes, the current *R.* 1:5-7, the 1969 Notice to the Bar on the subject by the then Administrative Director of the Courts and the current practice. In light of the statutory requirements, the Committee recommends amending *R.* 1:5-7 to make clear 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 Department of Defense, which can be obtained for little or no cost. The requirements of the proposed amendment have already been implemented in most, if not all, of the Special Civil Part and practitioners are able to comply with little difficulty. The text of the amendment follows.

1:5-7. Non-military Affidavit

An affidavit setting forth facts showing that the defendant is not in military service [of non-military service of each defendant, male or female, when required by law,] 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 personal knowledge 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 , 2004 to be effective , 2004.

D. Proposed Amendments to *R.* 4:59-1(d), Appendix XI-I (Notice of Application for Wage Execution) and Appendix XI-J (Wage Execution)

Another matter referred to the Committee by the Supreme Court in *Seker* is a direction to modify the model Notice of Application for Wage Execution contained in Appendix XI-I to the Rules. The change mandated by the Court was to add a statement advising the judgment-debtor that s/he has a continuing right under *R.* 4:59-1(d) to object to the wage execution after it has been issued.

The language proposed by the Committee to implement the Supreme Court's direction is contained in the fourth paragraph of the Notice which follows this section of the Committee's report. Note that, at the suggestion of the Committee of Special Civil Part Supervising Judges, language regarding an opportunity to apply for a reduction in the amount of the wage execution has been included, since many times the debtor admits the debt and is really interested in a reduction rather than posing an objection.

The Committee concluded that language mandating the notice of the debtor's ongoing right to object should be included in the service rule, *R.* 4:59-1(d), since Appendix XI-I is a model form, rather than one whose use is mandatory.

Further, the Committee perceives another opportunity to give the debtor notice of his/her rights in this regard by adding to the rule and to the model wage execution in Appendix IX-J a requirement that the employer furnish the employee with a copy of the wage execution order containing the notice of the debtor's continuing right to object or seek a reduction.

The proposed changes to *R.* 4:59-1(d) and Appendices XI-I and XI-J follow.

4:59-1. Execution

(a) ... no change

(b) … no change

(c) … no change

(d) Wage Executions; Notice, Order, Hearing. Proceedings for the issuance of an execution against the wages, debts, earnings, salary, income from trust funds or profits of a judgment debtor shall be on notice to the debtor. The notice of wage execution shall state (1) that the application will be made for an order directing a wage execution to be served upon the defendant's named employer, (2) the limitations prescribed by 15 U.S.C.A. §§ 1671-1677, inclusive and N.J.S. 2A:17-50 *et seq*. and N.J.S. 2A:17-57 *et seq*. on the amount of defendant's salary which may be levied upon, (3) that defendant may notify the court and the plaintiff in writing within 10 days after service of the notice of reasons why the order should not be entered, **[**and**]** (4) if defendant so notifies the clerk, the application will be set down for hearing of which the parties will receive notice as to time and place, and if defendant fails to give such notice, the order will be entered as of course, (5) that defendant may object to the wage execution or apply for a reduction in the amount withheld at any time after the order is issued by filing a written statement of the objection or reasons for a reduction with the clerk and sending a copy to the creditor's attorney or directly to the creditor if there is no attorney, and that a hearing will be held within 7 days after filing the objection or application for a reduction. The judgment creditor may waive in writing the right to appear at the hearing on the objection and rely on the papers. The notice of wage execution shall be served on the judgment debtor in accordance with *R.* 1:5-2. A copy of the notice of application for wage execution, together with proof of service in accordance with *R.* 1:5-3, shall be filed with the clerk at the time the form of order for wage execution is submitted. No order shall be entered unless the form of order was filed within 45

days of service of the notice or 30 days of the date of the hearing. The order for wage execution shall include a provision directing the employer immediately to give the judgment debtor a copy thereof and it shall also include a provision that the judgment debtor may, at any time, notify the clerk and the judgment creditor in writing of reasons why the levy should be reduced or discontinued. If an objection from the judgment debtor is received by the clerk after a wage execution has issued, all moneys remitted by the employer shall be held until further order of the court and the matter shall be set down for a hearing to be held within 7 days of receipt of the objection.

(e) ... no change

(f) … no change

(g) ... no change

Note: Source--*R. R.* 4:74-1, 4:74-2, 4:74-3, 4:74-4. Paragraph (c) amended November 17, 1970 effective immediately; paragraph (d) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended, new paragraph (b) adopted and former paragraphs (b), (c), (d), and (e) redesignated (c), (d), (e) and (f) respectively, July 24, 1978 to be effective September 11, 1978; paragraph (b) amended July 21, 1980 to be effective September 8, 1980; paragraphs (a) and (b) amended July 15, 1982 to be effective September 13, 1982; paragraph (d) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended and paragraph (g) adopted November 1, 1985 to be effective January 2, 1986; paragraph (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (e) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (c), (e), (f), and (g) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended June 28, 1996 to be effective June 28, 1996; paragraph (d) amended June 28, 1996 to be effective September 1, 1996; paragraph (e) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (e), and (g) amended July 5, 2000 to be effective September 5, 2000; paragraph (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended _____, 2004, to be effective _____, 2004.

APPENDIX XI-I. NOTICE OF APPLICATION FOR WAGE EXECUTION

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

v.

_____
Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART
_____ COUNTY
Docket No. _____

CIVIL ACTION

NOTICE OF APPLICATION
FOR WAGE EXECUTION

To:
Name of Judgment-Debtor
_____
_____
Address

TAKE NOTICE that an application is being made by the judgment-creditor to the above-named court, located at _____, New Jersey for a Wage Execution Order to issue against your salary, to be served on your employer, _____ (name and address of employer), for: (a) 10% of your gross salary when the same shall equal or exceed the amount of $154.50 per week; or (b) 25% of your disposable earnings for that week; or (c) the amount, if any, by which your disposable weekly earnings exceed $154.50, whichever shall be the least. Disposable earnings are defined as that portion of the earnings remaining after the deduction from the gross earnings of any amounts required by law to be withheld. In the event the disposable earnings so defined are $154.50 or less, no amount shall be withheld under this execution. In no event shall more than 10% of gross salary be withheld. Your employer may not discharge, discipline or discriminate against you because your earnings have been subjected to garnishment.

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

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

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

CERTIFICATION OF SERVICE

I served the within Notice upon the judgment-debtor _____, on this date by sending it simultaneously by regular and certified mail, return receipt requested, to the judgment-debtor's last known address, set forth above. I certify that 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 the punishment.

Date: _____, 20___

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

[Adopted July 13, 1994, effective September 1, 1994; amended September 27, 1996, effective October 1, 1996; amended July 30, 1997, effective September 1, 1997; amended _____, 2004, effective _____, 2004.]

APPENDIX XI-J. WAGE EXECUTION

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

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

Street Address of Court
Town, NJ ZIP
Tel. No. of Court

Docket No. _____

Plaintiff

vs.

Designated Defendant
(Address)

Name and Address of Employer Ordered to Make Deductions

The employer is ordered to deduct from the earnings which the designated defendant receives and to pay over to the court officer named below, the lesser of the following: (a) 10% of the gross weekly pay; or (b) 25% of disposable earnings for that week; or (c) the amount, if any, by which the designated defendant's disposable weekly earnings exceed $154.50 per week, until the total amount due has been deducted or the complete termination of employment. Upon either of these events, an immediate accounting is to be made to the court officer. Disposable earnings are defined as that portion of the earnings remaining after the deduction from gross earnings of any amounts required by law to be withheld. In the event the disposable earnings so defined are $154.50 or less, no amount shall be withheld under this execution. In no event shall more than 10% of gross salary be withheld.

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

Judgment Date	____
Judgment Amount	$ ____
Costs and Atty. Fees	$ ____
Subsequent Costs	$ ____
Total	$ ____
Credits, if any	$ ____
Subtotal A	$ ____
Interest	$ ____
Execution cost and mileage	$ ____
Costs of Application	$ ____
Subtotal B	$ ____
Court Officer Fee (10%)..	$ ____
Total due this date	$ ____

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: _____

By:_____
(Typed name of signator)
Firm Name: _____
Address: _____

Date _____

_____
Judge

_____
Clerk of Special Civil Part

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

_____
Court Officer

_____
Address

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

_____
Court Officer

HOW TO CALCULATE PROPER GARNISHMENT AMOUNT

(1) Gross Salary per pay period ..... _____

(2) Less:
Amounts Required by Law to be Withheld:
(a) U.S. Income Tax ..... _____
(b) FICA (social security) ..... _____
(c) State Income Tax, ETT, etc..... _____
(d) N.J. SUI ..... _____
(e) Other State or Municipal Withholding. _____
(f) TOTAL ..... _____ - _____

(3) Equals "disposable earnings" ..... = _____

(4) If salary is paid:
-- weekly, then subtract $154.50
-- every two weeks, then subtract $309.00
-- twice per month, then subtract $334.75
-- monthly, then subtract $669.50
(Federal law prohibits any garnishment when "disposable earnings" are smaller than the amount on line 4) ..... - _____

(5) Equals the amount potentially subject to garnishment (if less than zero, enter zero) ..... = _____

(6) Take "disposable earnings" (Line 3) and multiply by .25:
$_____ x .25 = $_____ ..... _____

(7) Take the gross salary (Line 1) and multiply by .10:
$_____ x .10 = $_____ ..... _____

(8) Compare lines 5, 6, and 7--the amount which may lawfully be deducted is the smallest amount on line 5, line 6, or line 7, i.e., ... _____

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

[Former Appendix XI-I adopted effective January 2, 1989; amended June 29, 1990, effective September 4, 1990; July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-J and amended July 13, 1994, effective September 1, 1994; amended September 27, 1996, effective October 1, 1996; amended July 30, 1997, effective September 1, 1997; amended _____, 2004 effective _____, 2004.]

E. Proposed amendment to *R.* 6:1-2(a)(2) – Modification of Small Claims Limit

Effective January 1, 2004, L. 2003, c. 188 (*N.J.S.A.* 46:8-21.4), confers jurisdiction on the Small Claims Section of the Special Civil Part to hear actions between landlords and tenants for the return of all or part of a security deposit in which the amount in dispute, including any applicable penalties, does not exceed $5,000, exclusive of costs. For several years the monetary limit of both the Special Civil Part and the Small Claims Section has been determined by court rule, rather than by statute, as had been the case when the County District Court was a statutory court and not a part of the Superior Court, Law Division. The Committee recommends, in the interest of comity with the other two branches of government, that the relevant rule be amended to reflect the new statutory provision. The text of the proposed amendment to *R.* 6:1-2(a)(2) follows.

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 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, [or for the return of all or a part of a security deposit,] 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) Summary landlord/tenant actions;

(4) Summary proceedings for the collection of statutory penalties;

(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 , 2004 to be effective , 2004.

F. Proposed Amendment to *R.* 6:2-2(a) – Use of Term "Incompetent Defendant"

The Committee was advised that the term "incompetent defendant," used in *R.* 6:2-2(a), is inconsistent with numerous rule changes abandoning the term effective September 3, 2002. The Committee recommends that the term, "mentally incapacitated defendant" be used instead. The proposed amendment follows.

6:2-2. Process; Filing and Issuance

(a) Delivery to Clerk; Issuance. The plaintiff shall, when filing the complaint, furnish the clerk in tenancy actions with the summons to be issued and in all other actions with page 2 of the summons as set forth in Appendices XI-A(1) and (2) to these Rules, and two copies with the complaint annexed for each defendant, together with two additional copies for each mentally incapacitated [incompetent] defendant. The clerk shall issue the summons except as otherwise provided by law and, in tenancy actions, shall attach to the summons and complaint for service on each defendant English and Spanish copies of the announcement contained in Appendix XI-S to these rules. Original process shall issue out of the court and shall require an answer or an appearance at a specific time.

(b) ... no change

Note: Source– *R. R.* 7:3 (second sentence), 7:4-2, 7:4-4; former rule amended and designated paragraph (a) and paragraph (b) adopted July 17, 1975 to be effective September 8, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 18, 2001 to be effective November 1, 2001; paragraph (a) amended , 2004 to be effective .

G. Proposed Amendments to *R* 6:2-3(b),(d)(4) and (5) — Service of Process

The Committee proposes to amend the service of process rule for the Special Civil Part in two respects. First, an amendment to *R.* 6:2-3(b) is recommended that will allow for service of process in tenancy actions at more than one location in certain situations when the subject property is not personally occupied by the tenant. Examples include cases where the property was used for storage, a lot used for occasional auto repairs, and an apartment where the landlord does not have a certificate of occupancy and knows that the tenant has not yet moved in. The rule will thus be clear that process must be served at the premises that are the subject of the action and that additional process must be served at another address if the landlord has reason to believe that the tenant has not yet occupied the subject premises, but can be served at that other address by certified and regular mail. Note that the plaintiff-landlord will have to supply the clerk with two additional copies of the summons and complaint for each defendant and pay for the additional postage in these situations.

Second, the Committee proposes minor amendments to the service by mail program. In the *Seker* opinion, the Supreme Court observed that *R.* 6:2-3(d)(4) contains postal designations, such as "moved, unable to forward," that may be inconsistent with existing post office practices and directed a review of the rule for any changes that may be necessary. The Municipal Courts Committee recently submitted a proposal to the Court for a service by mail rule similar to *R.* 6:2-3 and was directed to reconsider their proposal in light of *Seker*, which means that the Part 7 and Part 6 rules should be consistent. AOC staff for the two Committees researched this issue and found that the postal designations referred to by the Court are not uniform from one post office to another, even though Postal Bulletin F (issued in May of 2002) lists 26 endorsements relating to mail that is undeliverable as addressed. The Committee recommends that the rule retain the 5

examples of post office endorsements that are used for undeliverable mail and that 3 of those be changed to reflect the language used in the postal bulletin. The Committee also recommends that specific language be included in the rule to make clear that service is effective although the certified mail is returned marked “unclaimed” or “refused,” provided that the ordinary mail has not been returned to the Clerk. The proposed amendments follow. Note that in subparagraph (5) the word “notations” has been changed to “markings” to make it consistent with the preceding paragraph. The proposed amendments follow.

6:2-3. Service of Process

(a) … no change

(b) Manner of Service. Service of process within this State shall be made in accordance with *R.* 6:2-3(d) or as otherwise provided by court order consistent with due process of law, or in accordance with *R.* 4:4-5 [, except that, in landlord and tenant actions, service of process shall be by ordinary mail and by either delivery personally pursuant to *R.* 4:4-4 or by affixing a copy of the summons and complaint on the door of the subject premises]. Substituted service within this State shall be made pursuant to *R.* 6:2-3(d). Substituted or constructive service outside this State may be made pursuant to the applicable provisions in *R.* 4:4-4 or *R.* 4:4-5.

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

(c) … no change

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

(1) *Initial Service.* The clerk of the court shall simultaneously mail such process by both certified and ordinary mail. Attorneys shall submit to the clerk the mailing addresses of parties to be served and the appropriate number of copies of the summons and complaint. The clerk shall furnish postage, envelopes, and return receipts

and shall address same. Mail service on each defendant shall be placed in separate envelopes by the clerk regardless of marital status or address. Process shall be mailed within 12 days of the filing of the complaint. The clerk thereafter shall send a postcard to plaintiff or the attorney showing the docket number, date of mailing and a statement that, unless the plaintiff is otherwise notified, default will be entered on the date shown. If service cannot be effected by mail, the clerk shall send a second card to the plaintiff or attorney stating the reasons for incomplete service and requesting instructions for reservice.

(2) *Reservice.* Where initial service by mail is not effected, plaintiff or the attorney may request reservice by mail or by court officer personally pursuant to *R.* 4:4-4. If reservice by mail at the same address is requested, the plaintiff or attorney shall be required to provide a postal verification or other proof satisfactory to the court that the party to be served receives mail at that address.

(3) *Fees.* The fees for service by mail shall be as provided by *N.J.S.A.* 22A:2-37.1.

(4) *Effective Service.* Consistent with due process of law, service by mail pursuant to this rule shall have the same effect as personal service, and the simultaneous mailing shall constitute effective service unless the mail is returned to the court by the postal service [marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," "forwarding order expired"] with a marking indicating it has not been delivered, such as "Moved, Left No Address," "Attempted - Addressee Not Known," "No Such Number/Street," "Insufficient Address," "Not Deliverable as Addressed - Unable to Forward," or the court has other reason to believe

that service was not effected. However, if the certified mail is returned to the court marked "unclaimed" or "refused," service is effective providing that the ordinary mail has not been returned. Process served by mail may be addressed to a post office box. Service shall be effective when forwarded by the postal service to an address outside the county in which the action is instituted. Where process is addressed to the defendant at a place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom process was mailed.

(5) *Vacation of Defaults.* If process is returned to the court by the postal service subsequent to entry of default and displays any of the [notations] markings listed in the preceding paragraph, or other reason exists to believe that service was not effected, the clerk shall vacate the default or default judgment and shall immediately notify the plaintiff or attorney of the action taken.

(e) … no change

Note: Source--*R. R.* 7:4-6(a)(b) (first three sentences), 7:4-7. Paragraph (a) amended July 7, 1971 effective September 13, 1971; paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a)(b) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and paragraph (d) adopted November 5, 1986 to be effective January 1, 1987; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended July 17, 1991 to be effective immediately; paragraph (e) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (d)(4) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a), (b), (d), (d)(2), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b), d(4) and (5) amended , 2004 to be effective , 2004.

H. Proposed Amendments to *Rules* 6:4-3(b) and 6:4-6 – Sanctions for Failure to Make Discovery

The Committee considered ways to resolve the conflict between *Rules* 4:23-5 and 6:4-6, regarding sanctions for failure to make discovery, that was brought to light by the Appellate Division's opinion in *Trust Co. of New Jersey v. Sliwinski*, 350 *N.J. Super.* 187 (App. Div. 2002). In that case the court held that, unlike *R.* 4:23-5, which provides a mechanism for dismissing a complaint or suppressing an answer with prejudice, *R.* 6:4-3(b) does not preclude a motion to restore a pleading more than 30 days after its suppression, so that, in effect, there is no finality in the Special Civil Part sanction for failure to answer interrogatories.

The Committee has determined that a change is necessary if the sanctions for failure to make discovery in the Special Civil Part are to be meaningful. At the same time, the meaningful sanction of striking a pleading with prejudice must be imposed only when it is clear that the offending party has been warned of the permanent consequences of continuing to obstruct discovery. Such protections are included in *R.* 4:23-5. The Subcommittee notes that while the current *R.* 6:4-3(b) is directed only to failure to answer interrogatories, its counterpart in *R.* 4:23-5 applies to <u>all</u> failures to make discovery in accordance with the rules and is incorporated by *R.* 6:4-6 into the Special Civil Part sanctions for failure to make discovery other than failing to provide answers to interrogatories.

Symmetry between the Civil and Special Civil sanctions and consistency within Special Civil sanctions, as well as the need to clearly warn litigants of the consequences of failing to provide discovery lead the Committee to the proposed revisions to *Rules* 6:4-6 and 6:4-3, which follow. The changes to *R.* 6:4-6 will incorporate the two-step process set forth in *R.* 4:23-5, but shorten the time periods, reduce the amounts of the restoration fees, eliminate the reference to a

return date and modify the two notices to clients/pro se parties accordingly. The amendment to *R.* 6:4-3 will eliminate paragraph (b) since the subject of dismissal/suppression will now be addressed in the amendments to *R.* 6:4-6. Please note that although no change to paragraph (a) of *R.* 6:4-3 is recommended, the text has been left in the draft for the convenience of the reader since the elimination of paragraph (b) will require the redesignation of the remaining paragraphs.

6:4-3. Interrogatories; Admissions; Production

(a) Generally. Except as otherwise provided by *R.* 6:4-3(c) interrogatories may be served pursuant to the applicable provisions of *R.* 4:17 in all actions except forcible entry and detainer actions, summary landlord and tenant actions for the recovery of premises and actions commenced or pending in the Small Claims Section. The 40- and 60-day periods prescribed by *R.* 4:17-2 and 4:17-4, respectively, for serving and answering interrogatories shall, however, be each reduced to 30 days in Special Civil Part actions.

[(b) Dismissal or Suppression. If timely answers to interrogatories are not served and no formal motion for an extension has been made pursuant to *R.* 4:17-4(b), the complaint, counterclaim or answer of the delinquent party may be dismissed or stricken by the court upon motion accompanied by a certification stating such failure and a form of order of dismissal or suppression. Thereafter, on formal motion made by the delinquent party within 30 days after service of the order, the court may vacate the order provided fully responsive answers to the propounded interrogatories are presented and the delinquent party pays costs in the amount of $25.00 to the Clerk of the Special Civil Part. An order of dismissal or suppression shall be entered only in favor of the moving party.]

(b) [(c)] Automobile Negligence and Personal Injury Actions. A party in an automobile negligence or personal injury action may propound interrogatories only by demanding, in the initial pleading, that the opposing party answer the appropriate standard set of interrogatories set forth in Forms C, C(1) through C(4), D, and E of Appendix II to these Rules, specifying to which set of interrogatories answers are demanded and to which questions, if less than all in the set. The demand shall be stated in the propounding party's initial pleading immediately following the signature. Interrogatories shall be served upon a party appearing pro

se within 10 days after the date on which the pro se party's initial pleading is received. A party making claim for property damage or personal injuries and a party defending such claim shall serve answers within 30 days after service of the answer, except that a pro se party shall serve answers within 30 days after receipt of the interrogatories. The answers shall be set forth in a document duplicating the appropriate Form, containing the questions propounded, each followed immediately by the answer thereto. Additional interrogatories may be served and enlargements of time to answer may be granted only by court order upon motion on notice, made within the 30-day period, for good cause shown, and on such terms as the court directs.

(c) [(d)] Request for Admissions. The provisions of *R.* 4:22 (admission of facts and genuineness of documents) shall apply to actions in the Special Civil Part.

(d) [(e)] Production; Inspection. The provisions of *R.* 4:18 (production of documents, inspection) shall apply to actions in the Special Civil Part.

(e) [(f)] Actions Cognizable in Small Claims Section, Discovery. Any action cognizable but not pending in the Small Claims Section of the Special Civil Part shall proceed without discovery, except that each party may serve interrogatories consisting of no more than five questions without parts. Such interrogatories shall be served and answered within the time limits set forth in *R.* 6:4-3(a). Additional interrogatories may be served and enlargements of time to answer may be granted only by court order on timely notice of motion for good cause shown.

Note: Source--*R. R.* 7:6-4A(a) (b) (c), 7:6-4B, 7:6-4C. Caption amended and paragraph (c) adopted July 7, 1971 to be effective September 13, 1971; caption amended, paragraph (a) amended, and paragraph (d) adopted July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (e) adopted July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 22, 1983 to be effective September 12, 1983; paragraphs (a), (c), (d) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended, paragraph (b) adopted and former paragraphs (b), (c), (d) and (e) redesignated as (c), (d), (e) and (f) respectively, June 29, 1990 to be effective

September 4, 1990; paragraph (b) amended August 31, 1990, to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) caption and text amended, and paragraph (f) amended July 12, 2002 to be effective September 3, 2002; former paragraph (b) deleted and paragraphs (c), (d), (e) and (f) redesignated as paragraphs (b), (c), (d) and (e), respectively, , 2004 to be effective , 2004.

6:4-6. Sanctions

The provisions of *R.* 4:23 (sanctions for failure to make discovery)**[**, insofar as applicable and to the extent not already incorporated or modified pursuant to *R.* 6:4-3(a),**]** shall apply to actions in the Special Civil Part, except that:

(a) Dismissal or Suppression; Time Periods. The 90-day period prescribed by *R.* 4:23-5 (a)(1) for motions to vacate orders of dismissal or suppression is reduced to 60 days.

(b) Restoration Fees. The amounts of the restoration fees of $100 and $300 specified in *R.* 4:23-5 (a) are reduced to $25 if the motion is made within 30 days and $75 thereafter.

(c) Dismissal or Suppression With Prejudice; Time Period. The 90-day period prescribed by *R.* 4:23-5(a)(2) is reduced to 60 days.

(d) Form of Motion; Attorney's Affidavit. The motion to dismiss or suppress with prejudice shall be filed in accordance with *R.* 6:3-3(c) and the attorney for the delinquent party shall file the affidavit specified in *R.* 4:23-5(a)(2) with the papers filed in response to the motion.

(e) Notice to Client/Pro Se Party Pursuant to *R.* 4:23-5(a)(1). The notice prescribed by Appendix II – F of these rules shall be modified to reflect the time periods and restoration fees set forth in paragraphs (a), (b) and (c) above.

(f) Notice to Client/Pro Se Party Pursuant to *R.* 4:23-5(a)(2). The notice prescribed in Appendix II – G of these rules shall be modified so as to eliminate the second paragraph referring to a return date and substitute in its stead a statement that the Clerk will notify the party of the date, time and place of the hearing on the motion.

Note: Adopted July 29, 1977 to be effective September 6, 1977; amended November 7, 1988 to be effective January 2, 1989; amended and paragraphs (a) through (f) added , 2004 to be effective , 2004.

I. Proposed Amendments to *R.* 6:6-3(a) – Judgment by Default (Entry by the Clerk; Judgment for Money)

The Committee addressed four issues related to the entry of default money judgments by the clerk pursuant to *R.* 6:6-3(a) and makes the following recommendations.

Assigned Claims

There has been a great increase in the volume of actions brought on claims that have been assigned by the original credit grantor to collection agencies or other entities and some of them represent accounts that have been sold more than once. The amount of information that is available to the assignee of a claim is generally less than what the assignor had, but may still be sufficient for the entry of judgment by default and the fact of the assignment is a critical element of the prima facie case. The Committee therefore recommends that paragraph (a) of *R.* 6:6-3 be amended to explicitly require disclosure of any assignment in the proofs. The language that will accomplish this is included in the Committee's proposed amendments to the rule, the text of which follows the discussion of the next three issues addressed by the Committee. Note that the reference, in the first sentence of the rule, to the clerk signing the judgment has been eliminated, since the clerk's function, in this context, is to enter the judgment in the docket and there is no written judgment.

Attorney Fees

The Administrative Director's letter of August 20, 2002, which dealt with the affidavit of non-military service, also asked the three rules committees to examine the rules and actual practice pertaining to the inclusion of attorney fees in default money judgments entered by the

clerk and to recommend any rule changes that may be necessary. Over the years it has been common practice for Special Civil Part clerks to include attorney fees in default judgments where the amount claimed has been fixed by statute or contract, because there are too many default judgments (about 200,000 per year are entered at present) that would otherwise require the court's attention. In some vicinages amounts that exceed a predetermined limit are flagged for more careful review by the court. For the most part, claims for "reasonable" attorney fees, whether permitted by statute or contact and whether limited by a maximum or not, are determined by the court on affidavits of service, as required by *R.* 4:42-9(b).

The Committee's view is that any claim for "reasonable" attorney fees requires the exercise of discretion by a judge after reviewing the affidavit of service required by *R.* 4:42-9(b). A claim for an amount that is fixed by a statute that makes no reference to the reasonableness of the fee, on the other hand, does not require the exercise of discretion in a default context and can be handled by the clerk. The Legislature has expressly provided for this in one statute, *N.J.S.A.* 22A:2-42, which directs the clerk to include attorney fees of 5% of the first $500 and 2% of any excess in the taxed costs added to Special Civil Part judgments. This particular fee has always been included by the clerk in default judgments, without the requirement of an affidavit of services, notwithstanding the provisions of *R.* 4:42-9(b). Other statutes providing for a fixed amount of attorney fees, without reference to their reasonableness, do not include such an explicit direction to the clerk, but their implementation is really ministerial in nature and should be handled by the clerk in virtually the same way. Examples include *N.J.S.A.* 17:16C-42(d) ("The retail installment contract or retail charge account may provide for the payment of attorney's fees not exceeding 20% of the first $500.") and *N.J.S.A.* 17:9A-59.7B ("Upon institution of proceedings for the collection of an advance loan in default, a bank may charge a

collection fee, in addition to court costs, according to the following schedule: (a) on the first $750.00 of indebtedness, 15%; (b) on the excess over $750.00, 10%, but in no case shall such collection fee exceed $500.00"). Accordingly, the Committee proposes to amend *R.* 6:6-3(a) so as to explicitly authorize the clerk, in these situations, to include attorney fees in a default judgment.

The Committee believes that it is important to define the clerk's authority in this area and has reached the conclusion that meaningful change in this regard can only be achieved by permitting the clerk to act within certain boundaries on requests to include attorneys' fees in default judgments. This can be accomplished by permitting the clerk to include the maximum amount permitted by the authorizing statute so that there will be no exercise of discretion. The attorney would be required to submit, in lieu of the affidavit of services required by *R.* 4:42-9(b) a certification which sets forth the amount of the fees sought, how the amount was calculated and specifies the statutory or contractual provision that provides for the fixed amount. The *sine qua non* of this procedure is the existence of a statute that provides for a maximum fixed amount as an attorney fee.

Since this change would have the effect of removing a significant number of applications for attorneys' fees from review by the court prior to the entry of judgment by default, there was a general sense that the defendant should have prior notice of the amount being sought, by requiring the complaint to have stated the amount sought, so that s/he can take this into account in deciding whether to contest the action. The proposal to amend *R.* 6:6-3(a) reflects these considerations.

Electronic Records

The current *R.* 6:6-3(a) provides for the proofs, in situations where plaintiff's records are electronic and the claim is founded on an open-ended credit plan, to include a copy of the periodic statement for the last billing cycle, the format of which is prescribed by federal law, or a computer-generated report "setting forth the financial information required to be contained in the periodic statement." Some judges have interpreted this language to mean that the report must contain data for all of the items required by federal law to be in the periodic statement. In fact, it is usually the case that the periodic statement for the last billing cycle will not contain many of the items because there were no transactions and credits, periodic rates or finance charges during the last billing cycle on an account that has been charged off. The Committee therefore proposes to eliminate the phrase "financial information required to be contained in the periodic statement," and substitute in its stead a list of the particular items that must, if they exist, be included in the statement under federal law.

Elimination of Reference to Items Attached to the Complaint

Note that the phase "or if attached to the complaint and verified by reference in the affidavit," is to be eliminated from the last sentence of the rule. Permitting a reference to items attached to the complaint, in the context of the clerk's review of an affidavit of proof, imposes too much for a burden on the clerks' offices. For the sake of efficiency, the clerk's staff should be able to rely entirely on the affidavit of proof, together with the attachments thereto, when reviewing a request to enter judgment by default.

The Committee's proposed amendments to *R.* 6:6-3(a) follow.

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) ... no change

(e) ... no change

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

J. Proposed Amendment to *R.* 6:7-1(c) – Time for Issuance and Execution of Warrant of Removal

The Committee of Special Civil Part Supervising Judges noted and brought to the attention of this Committee an apparent inconsistency between the practice of most of the Special Civil Part Clerks and the language of both the tape and the written instructions that are played and distributed before the tenancy calendar call, with regard to the number of days that must elapse before a warrant of removal can issue following a judgment for possession. The literal terms of the relevant statute, *N.J.S.A.* 2A:18-57, would seem to permit the issuance of the warrant after three calendar days, rather than three business days as stated in the pre-calendar call instructions contained in Appendix XI-S to the Rules. The practical effect of not requiring the 3 days between judgment and issuance of the warrant to be "business" days is that a judgment could be entered on Thursday and the warrant would then issue on the following Monday and the tenant would thus lose two days during which s/he might search for alternative living arrangements or pursue an application to the court for relief.

The Committee observed that three business days must elapse following service of the warrant before it can be executed in a case involving a residential tenancy under *N.J.S.A.* 2A:42-10.16. The Committee observed further that the spirit of the rules, as reflected in *R.* 1:3-1, is to extend deadlines to the next business day if they fall on a weekend or holiday and to exclude Saturday, Sunday and legal holidays from the computation of a period of time of less than 6 days. The Committee also noted, however, that the Legislature provided that the warrant shall issue within two days of the judgment in the case of a seasonal tenancy subject to *N.J.S.A.* 2A:42-10.17. The proposed amendment to *R.* 6:7-1(c) reflects all of these factors and would

cover both the time for issuance of the warrant and the time for its execution following service on the tenant.

The Committee also proposes to amend the second sentence of the rule. It states, essentially, that if the landlord does not apply for the warrant of removal within 30 days of the entry of judgment or if the warrant is not executed within 30 days of its issuance, the warrant cannot be issued or executed, as the case may be, except on application to the court with notice to the tenant. The purpose of the provision is to prevent the use of stale judgments or warrants as continuing threats, but to allow the parties sufficient time to negotiate a settlement before the issuance of a warrant or, if it has been issued, before it is executed. The Committee was advised that frequently there is a delay between the issuance and the service of the warrant, the timing of which is beyond the landlord's control, and that if the second 30 day period were to start upon the warrant's service, rather than its issuance, there would be a few more days for the parties to negotiate a settlement. Accordingly the Committee proposes to change the word "issuance" to "service" to afford the parties more time to negotiate after the warrant has become a reality by being served.

The proposed amendments to *R.* 6:7-1(c) follow.

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

(a) ... no change

(b) ... no change

(c) Warrant of Removal; Issuance, Execution. No warrant of removal shall issue until the expiration of three business days after entry of a judgment for possession, except that a warrant shall be issued within two days from the date of the judgment in the case of a seasonal tenancy subject to *N.J.S.A.* 2A:42-10.17. A warrant of removal shall not be executed earlier than the third business day after service on a residential tenant. If a judgment for possession is entered in a summary action for the recovery of premises and the landlord fails to apply in writing for a warrant of removal within 30 days after the entry of the judgment, or if the warrant is not executed within 30 days of its [issuance] service, such warrant shall not thereafter[,] be issued or executed, as the case may be, except on application to the court and written notice to the tenant served at least 7 days prior thereto by simultaneously mailing same by both certified and ordinary mail or in the manner prescribed for service of process in landlord/tenant actions by *R.* 6:2-3(b); provided, however, that either 30 day period may be extended by court order or written agreement executed by the parties subsequent to the entry of the judgment and filed with the clerk. For purposes of this rule, entry of judgment shall be defined as the date upon which the right to request a warrant for removal accrues.

(d) ... no change

Note: Source--*R. R.* 7:11-1; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended

November 1, 1985 to be effective January 2, 1986; caption amended and paragraph (c) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; caption and paragraph (c), caption and text, amended July 13, 1994 to be effective September 1, 1994; paragraph (a) caption and text amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (d) adopted July 18, 2001 to be effective November 1, 2001; paragraph (c) amended _____, 2004 to be effective _____, 2004.

K. Proposed Amendments to *R.* 6:7-2(f) and (g) and Appendices XI-O, XI-P and XI-Q – Order for Arrest

The Committee considered a proposal to modify the name of the "Order for Arrest" described in *R.* 6:7-2(f) and set forth in Appendix XI-O to the Court Rules because members of the Committee of Special Civil Part Supervising Judges believe that it is misleading. In their view, it is not an order for arrest, but rather an order that is entered by the court to enforce a litigant's rights when the judgment-debtor has failed to comply with an information subpoena or an order to submit to post-judgment discovery.

Various points of view were expressed during the course of the discussion by this Committee. Some members perceive the order as an order for arrest because it appears to authorize the clerk to issue an arrest warrant upon the filing of a certification by the judgment-creditor that there has been no compliance with the order's requirements. They also believe that calling it an "Order for Arrest" impresses the judgment-debtor with the importance of compliance. In response, other members argued that it cannot be an order for arrest if it is conditioned upon the occurrence or non-occurrence of some future event that triggers further action by the court, i.e., the signing of the warrant for arrest by <u>both</u> the judge and the clerk. Further, they believe that scaring litigants is not an appropriate function of papers emanating from the court.

Ultimately the Committee decided to recommend renaming the order to call it an "Order to Enforce Litigant's Rights," both in the rule and the appendix, but add to the form of the order (the use of which is mandatory) a prominent warning similar to the one contained in the information subpoena, to the effect that failure to comply with the order may result in the judgment-debtor's arrest. Renaming the order also requires changing the language that refers to

the order in the certification in support of application for warrant for arrest, set forth in Appendix XI-P, in the warrant for arrest itself, set forth in Appendix XI-Q, and in paragraph (g) of the rule. The dates in the certification are also to be modified to reflect the turning of the century. The proposed amendments to *R.* 6:7-2(f) and (g), Appendix XI-O, Appendix XI-P and Appendix Q follow.

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

(a) ... no change

(b) ... no change

(c) ... no change

(d) ... no change

(e) ... no change

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

(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 [for arrest] to enforce litigant's rights has been served upon the judgment- debtor as provided in this rule, that 10 days have elapsed and that there has been no compliance with the information subpoena or discovery order, the court may issue an arrest warrant. 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 [for arrest] 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 [for arrest] 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 _____, 2004 to be effective _____, 2004.

APPENDIX XI-O. ORDER [FOR ARREST] TO ENFORCE LITIGANT'S RIGHTS

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN YOUR ARREST

Name:

Address:
Telephone No.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART

County

Docket No. _____

_____, Plaintiff

CIVIL ACTION

v.

ORDER [FOR ARREST] TO ENFORCE LITIGANT'S RIGHTS

_____, Defendant

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

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

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

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

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

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

_____
, J.S.C.

PROOF OF SERVICE

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

(Set forth address) _____

_____

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

Date: _____ _____

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

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 [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.

6. 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.

7. 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.

8. 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.

9. 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.]

APPENDIX XI-Q. WARRANT FOR ARREST

Name:
Address:
Telephone No.

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

Docket No. _____

_____, Plaintiff
v.
_____, Defendant

CIVIL ACTION
WARRANT FOR ARREST

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

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

Local police departments are authorized and directed to provide assistance to the officer executing this warrant.

Date: _____

WITNESS: _____
Judge of the Superior Court

_____
Clerk of the Special Civil Part

[Former Appendix XI-P adopted July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-Q July 13, 1994, effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended _____, 2004 to be effective _____, 2004.]

L. Proposed Amendments to Appendix XI-H – Execution Against Goods and Chattels

AOC staff to the Committee reported that the form for the execution against goods and chattels produced by the Automated Case Management System (ACMS) sometimes does not accurately reflect the creditor or the party that is targeted by the writ. For example, the ACMS-produced writ will show a defendant as both the plaintiff and the defendant when the target of the writ is a third party defendant. The ACMS-produced writ will also show the plaintiff as a defendant when, in fact, the defendant is executing on a judgment recovered against the plaintiff by way of a counterclaim, so the caption looks like the plaintiff sued himself. Similar problems occur on writs involving multiple defendants and defendants with aliases. These problems are not all that frequent but staff at the local level make attempts to address them on a case by case basis and sometimes they have to rely on a form of writ produced by the judgment-creditor, all of which defeats the time-saving purpose of the automated forms.

The AOC proposed changes to the ACMS-generated form that will solve these problems. They include the following revisions:

1. The docket and judgment numbers indicate the county of venue.
2. The caption remains the original caption of the case regardless of who is the judgment-creditor and who is the judgment-debtor. At present the caption changes in an attempt to reflect the originator and target of the writ.
3. The targets of the writ are identified as “DEBTORS” and are listed conspicuously under the name of the document.

4. The address is identified as that of the first listed debtor. Other debtors' addresses will have to be listed on a separate sheet supplied by the creditor, since the form does not have room for more than one address.

5. Throughout the body of the text the words "DEBTOR" and "CREDITOR" are substituted for "DEFENDANT" and "PLAINTIFF," respectively, to reflect the fact that the defendant may be the creditor.

The changes are designed to produce writs that accurately reflect the creditor and debtor when:

(A) the defendant is the creditor on a counterclaim,

(B) the defendant is the creditor on a third party complaint,

(C) there are multiple debtors targeted by the writ, and

(D) the defendant-debtor uses one or more aliases.

The form for the writ of execution against goods and chattels contained in Appendix XI-H is a model form and the form currently generated by ACMS varies slightly from it because there were technical problems in generating the model form. The Committee of Special Civil Part Supervising Judges and the Committee of Special Civil Part Clerks/Managers support the proposed changes to the model form and they are endorsed by this Committee. The proposed form, as amended, follows.

APPENDIX XI-H EXECUTION AGAINST GOODS AND CHATTELS

DOCKET NO.: ATL DC-999999-99
JUDGMENT NO.: ATL VJ-999999-99
WRIT NUMBER: 999

SUPERIOR COURT OF NEW JERSEY
SPECIAL CIVIL PART
ATLANTIC COUNTY
STATE OF NEW JERSEY

XXXX L I N E – U P XXXX
PLAINTIFF (S)

>> EXECUTION AGAINST GOODS AND CHATTELS <<

- VS -

XXXX L I N E – U P XXXX
DEFENDANT (S)

DEBTORS:

ADDRESS OF FIRST DEBTOR:
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX
CITY ST 99999-9999

TO: XXXXX X. XXXXXXXXXX
COURT OFFICER OF THE SPECIAL CIVIL PART

YOU ARE ORDERED to levy on the property of any of the DEBTORS designated herein; your actions may include, but are not limited to, taking into possession any motor vehicle(s) owned by any of the DEBTORS, taking possession of any inventory and/or machinery, cash, bank accounts, jewelry, electronic devices, fur coats, musical instruments, stock certificates, securities, notes, rents, accounts receivable, or any item(s) which may be sold pursuant to statute to satisfy this execution in full or in part. All proceeds are to be paid to the court officer who shall pay them to THE CREDITOR or the attorney for the CREDITOR, or, if this is not possible, to the court. This order for execution shall be valid for two years from this date.

LOCAL POLICE DEPARTMENTS ARE AUTHORIZED AND REQUESTED TO PROVIDE ASSISTANCE, IF NEEDED, TO THE OFFICER EXECUTING THIS WRIT. THIS DOES NOT AUTHORIZE ENTRY TO A RESIDENCE BY FORCE UNLESS SPECIFICALLY DIRECTED BY COURT ORDER.

Judgment Date 99/99/9999	Date: 99/99/9999
JUDGMENT AMOUNT $99,999.99	
COSTS AND ATTY. FEES $99,999.99	_____
SUBSEQUENT COSTS.....$99,999.99	(JUDGE)
TOTAL.....$99,999.99	
CREDITS, IF ANY $99,999.99	
SUBTOTAL A $99,999.99	_____
INTEREST $99,999.99	XXXXX X. XXXXXXX
EXECUTION COSTS AND MILEAGE $99,999.99	
SUBTOTAL B.....$99,999.99	I RETURN THIS EXECUTION TO THE COURT
COURT OFFICER FEE $99,999.99	
TOTAL DUE THIS DATE $99,999.99	( ) UNSATISFIED _____
DATE: 99/99/9999.....	( ) SATISFIED ( ) PARTLY SATISFIED
PROPERTY TO BE LEVIED	AMOUNT COLLECTED. . _____
UPON AND LOCATION OF SAME:	
XXXXX X. XXXXXXXXXX	FEE DEDUCTED. . . . . _____
XXXXXXXXXXXXXXXXXXX	
XXXXXXXXXXXXXXXXXXX	AMOUNT PAID TO ATTY._____
CITY ST 99999-9999	
CREDITOR'S ATTORNEY AND ADDRESS:	DATE: _____
XXXXX X. XXXXXXXXXX	
XXXXXXXXXXXXXXXXXXXX	
XXXXXXXXXXXXXXXXXXXX	_____
CITY ST 99999-9999	COURT OFFICER
TELEPHONE : (999) 999-9999	

[Adopted effective January 2, 1989; amended July 13, 1994, effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; amended July 12, 2002 to be effective September 3, 2002; amended ,2004 to be effective , 2004 .]

M. Proposed Amendment to Appendix XI-L – Information Subpoena and Written Questions

During the discussion of a proposed amendment to *R.* 6:7-2(b) that would have imposed specific sanctions on creditors who levy on funds that are identified by the judgment-debtor as exempt in answers to an information subpoena, it became apparent to the members of the Committee that the questions in the information subpoena are not worded precisely enough to elicit a full picture of the exempt funds that might be in a judgment-debtor's bank account. The Committee rejected the proposed rule amendment but agrees that it is important to know the full picture in order to avoid freezing exempt funds, for however short a period of time, that a judgment-debtor relies on to pay rent, utilities, food bills and other basic necessities of survival. Accordingly, the Committee recommends that question 11 be modified to identify and list all the sources of exempt funds set forth in the Notice to Debtor, contained in Appendix VI to the rules, ask the debtor if s/he receives funds from any of the listed sources of exempt funds and to require production of the judgment-debtor's three most recent bank statements for any accounts that contain funds from these sources, which will corroborate any exemption claim.

The Committee also recommends that notice be given prominently in question 11 that any levy on funds identified by the debtor as exempt may result in monetary penalties, including reimbursement of the debtor's out of pocket expenses. The Committee believes that this will both encourage the debtor to provide the relevant information and deter the creditor from levying on exempt funds. It is also consistent with the sanctions provided for in *R.* 1:4-8. The revisions to the information subpoena follow.

APPENDIX XI-L. INFORMATION SUBPOENA AND WRITTEN QUESTIONS

IMPORTANT NOTICE--PLEASE READ CAREFULLY

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

NAME:
ADDRESS:

TELEPHONE NO.:
Attorneys for:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SPECIAL CIVIL PART
_____ COUNTY
DOCKET NO.

Plaintiff

-vs-

Defendant

CIVIL ACTION
INFORMATION SUBPOENA

THE STATE OF NEW JERSEY, to: _____

Judgment has been entered against you in the Superior Court of New Jersey, Law Division, Special Civil Part, _____ County, on _____, 20 [19]__, in the amount of $_____ plus costs, of which $_____ together with interest from _____, 20 [19]__, remains due and unpaid.

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

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

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

Dated: _____, 20 [19]__

_____
Attorney for

_____
Clerk

QUESTIONS FOR INDIVIDUALS

1. Full name _____

2. Address _____

3. Birthdate _____

4. Social Security # _____

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

6. Telephone # _____

7. Full name and address of your employer _____
   _____
   (a) Your weekly salary: Gross _____ Net _____
   (b) If not presently employed, name and address of last employer. _____
   _____

8. Is there currently a wage execution on your salary?
   Yes ___ No ___

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

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

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

11. Do you receive any of the following, which are exempt from levy?[Social Security benefits? Yes ___ No ___] Any levy on disclosed exempt funds may result in monetary penalties including reimbursement of the debtor's out-of-pocket expenses.

Social Security benefits	Yes	___	Amount per month	No	___
S.S.I. benefits	Yes	___	Amount per month	No	___
Welfare benefits	Yes	___	Amount per month	No	___
V.A. benefits	Yes	___	Amount per month	No	___
Unemployment benefits	Yes	___	Amount per month	No	
Workers' compensation benefits	Yes	___	Amount per month	No	
Child support payments	Yes	___	Amount per month	No	

Attach copies of the three most recent bank statements for each account listed in Question 9 that contains funds from these sources.

12. Do you own the property where you reside?
Yes ___ No ___ If yes, state the following:
(a) Name of the owner or owners _____
(b) Date property was purchased _____
(c) Purchase price _____
(d) Name and address of mortgage holder _____
_____
(e) Balance due on mortgage _____

13. Do you own any other real estate?
Yes ___ No ___ If yes, state the following for each property:
(a) Address of property _____
(b) Date property was purchased _____
(c) Purchase price _____
(d) Name and address of all owners _____
_____
(e) Name and address of mortgage holder _____
_____
(f) Balance due on mortgage _____
_____
(g) Names and address of all tenants and monthly rental paid by each tenant _____
_____

14. Does the present value of your personal property, which includes automobiles, furniture, appliances, stocks, bonds, and cash on hand, exceed $1,000?

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

Cash on hand: $_____

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

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

15. Do you own a motor vehicle?

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

(a) Make, model and year of motor vehicle _____
_____

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

(c) License plate # _____
_____

(d) Vehicle identification # _____
_____

16. Do you own a business?

Yes ___ No ___ If yes, state the following:

(a) Name and address of the business _____
_____

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

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

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

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

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

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

Date: _____ _____

QUESTIONS FOR BUSINESS ENTITY

1. Name of business including all trade names. _____
_____
2. Addresses of all business locations. _____
_____
3. If the judgment-debtor is a corporation, the names and addresses of all stockholders, officers and directors.
_____
_____
_____
4. If a partnership, list the names and addresses of all partners.
_____
_____
_____
5. If a limited partnership, list the names and addresses of all general partners.
_____
_____
_____
6. Set forth in detail the name, address and telephone number of all businesses in which the principals of the judgment-debtor now have an interest and set forth the nature of the interest.
_____
7. For all bank accounts of the judgment-debtor business entity, list the name of the bank, the bank's address, the account number and the name in which the account is held.
_____
_____
8. Specifically state the present location of all books and records of the business, including checkbooks. _____
_____
9. State the name and address of the person, persons, or entities who

prepare, maintain and/or control the business records and checkbooks.

_____

_____

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

_____

_____

_____

11. Does the business own any real estate? Yes ___ No ___
    If yes, state the following for each property:
    (a) Name(s) in which property is owned _____
    (b) Address of property _____
    (c) Date property was purchased _____
    (d) Purchase price _____
    (e) Name and address of mortgage holder _____
    _____
    (f) Balance due on mortgage _____
    (g) The names and addresses of all tenants and monthly rentals paid by each tenant.

NAME AND ADDRESS OF TENANT MONTHLY RENTAL

12. List all motor vehicles owned by the business, stating the following for each vehicle:
    (a) Make, model and year _____
    _____
    (b) License plate number _____
    (c) Vehicle identification number _____
    (d) If there is a lien on the vehicle, the name and address of the lienholder and the amount due on the lien
    _____
    _____

13. List all accounts receivable due to the business, stating the name, address and amount due on each receivable.
    NAME AND ADDRESS AMOUNT DUE

14. For any transfer of business assets that has occurred within six months from the date of this subpoena, specifically identify:
    (a) The nature of the asset _____
    _____
    (b) The date of transfer _____
    (c) Name and address of the person to whom the asset was transferred ____
    _____
    (d) The consideration paid for the asset and the form in which it was paid (check, cash, etc.) _____
    _____

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

_____

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

(a) The date of cessation _____

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

_____

(c) The present location of those assets _____

_____

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

(1) The nature of the assets _____

_____

(2) Date of transfer _____

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

_____

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

_____

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

_____

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

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

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

(a) Date litigation commenced _____

(b) Name of party who started the litigation _____

_____

(c) Nature of the action _____

_____

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

_____

_____

(e) Trial date _____

(f) Status of case _____

(g) Name of the court and docket number _____

_____

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

_____

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

Date: _____ _____

[Former Appendix XI-K adopted June 29, 1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-L and amended July 13, 1994, effective September 1, 1994; amended _____, 2004 to be effective _____, 2004.]

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Rejected Amendments to *R.* 1:5-3 – Proof of Service

In the *Seker* opinion the Supreme Court directed the rules committees to carefully consider the question of whether a creditor should be required to "include information in respect of how it obtained a debtors' last known address in the proof of service . . . because post-judgment service of process relies so heavily on the accuracy of the address." The Committee considered two proposed amendments to *R.* 1:5-3, one that would merely require the proof of service to identify the source of the pro se party's address, and another that would require a showing of the steps taken to ensure the accuracy of the last known address of a party. The proponent of the second proposal stated that although the precise scope of diligent inquiry will vary on a case-by-case basis, at a minimum diligent inquiry would generally consist of obtaining postal service address verification, review of print resources (including but not limited to comprehensive telephone directories), obtaining mailing address information from national credit reporting agencies, making inquiry of any person or other source that is reasonably likely to provide knowledge or information as to the defendant's residence or address, and service by mail to more than one address where a single "last known address" cannot reasonably be determined.

Another view expressed during the discussion of these proposals is that the source of the address and steps taken to verify it are not that important to the four types of post-judgment applications made in the Special Civil Part:

(1) In the wage execution context, the debtor has an opportunity to object when s/he notices the wage deductions and the Committee is proposing a rule amendment that will require the employer to give a copy of the wage execution order to the debtor, with amended language that will parallel the notice of the continuing right

to object that will be set forth in the notice of application for wage execution if the Supreme court approves the proposed amendment to Appendix XI-I.

(2) In the chattel execution context, which typically involves a bank levy, the debtor receives a notice from the bank at the time of the levy and the Notice to Debtor contained in Appendix VI, in addition to a subsequent notice of motion for a turnover order.

(3) In the motion to enforce litigants' rights context, under *R.* 6:7-2(g) there can be no arrest without an address, so the issue will not arise.

(4) An order to pay out of income is unenforceable if the debtor never received the order since it is directed to him or her and the issue will not arise.

Beyond this there was some concern that uniformity in the enforcement of such a provision would be difficult because judges will vary in their interpretation of any new standards that are articulated in the rule. Please note in this context that the Committee recommends an amendment to *R.* 1:5-2 to require a showing of the efforts made to locate the respondent when the moving party intends to use the mechanism of serving the clerk. In view of the protections that are already and will be built into the rules, if the Supreme Court approves the Committee's other proposed amendments, the Committee believes that sufficient measures exist that are reasonably calculated to give notice and an opportunity to be heard without further amending *R.* 1:5-3. The two proposed amendments to *R.* 1:5-3 that were rejected by the Committee follow.

First Rejected Proposal to Amend *R.* 1:5-3 – Proof of Service

1:5-3. Proof of Service

Proof of service of every paper referred to in *R.* 1:5-1 may be made (1) by an acknowledgment of service, signed by the attorney for a party or signed and acknowledged by the party, or (2) by an affidavit of the person making service, or (3) by a certification of service appended to the paper to be filed and signed by the attorney for the party making service. If service has been made by mail the affidavit or certification shall state that the mailing was to the last known address of the person served. A proof of service made by affidavit or certification shall state the name and address of each attorney served, identifying the party that attorney represents, **[**and**]** the name and address of any pro se party and the source of the pro se party's address. The proof shall be filed with the court promptly and in any event before action is to be taken on the matter by the court. Where service has been made by registered or certified mail, filing of the return receipt card with the court shall not be required. Failure to make proof of service does not affect the validity of the service, and the court at any time may allow the proof to be amended or supplied unless an injustice would result.

Second Rejected Proposal to Amend *R.* 1:5-3 – Service of Process

1:5-3. Proof of Service

Proof of service of every paper referred to in *R.* 1:5-1 may be made (1) by an acknowledgment of service, signed by the attorney for a party or signed and acknowledged by the party, or (2) by an affidavit of the person making service, or (3) by a certification of service appended to the paper to be filed and signed by the attorney for the party making service. If

service has been made by mail the affidavit or certification shall state that the mailing was to the last known address of the person served and shall set forth the steps taken to ensure the accuracy of the last known address of the person served. A proof of service made by affidavit or certification shall state the name and address of each attorney served, identifying the party that attorney represents, and the name and address of any *pro se* party, and shall set forth the steps taken to ensure the accuracy of the last known address of the *pro se* party. The proof shall be filed with the court promptly and in any event before action is to be taken on the matter by the court. Where service has been made by registered or certified mail, filing of the return receipt card with the court shall not be required. [Failure to make proof of service does not affect the validity of the service, and] The court at any time may allow the proof to be amended or supplied unless an injustice would result.

B. Rejected Amendments to *R.* 6:7-2(b) – Prohibition of Levy on Funds Identified as Exempt

The Committee considered an amendment to *R.* 6:7-2(b) that would prohibit any creditor from levying on an account when s/he discovers through the information subpoena procedure that the funds contained in the account are from exempt sources. The amendment would provide sanctions for failure to comply, including those set forth in *R.* 1:4-8(d), an order directing payment to the judgment debtor of liquidated sanctions in the amount of $300, or an order declaring that the judgment is void.

The Committee discussed the proposal at some length. There was a general belief that the sanction provisions already contained in *R.* 1:4-8 are sufficient to deter an attorney from seeking to levy on exempt funds contained in a judgment debtor's bank account after that information has been discovered. There was also a general perception that the problem occurs only rarely. Moreover, some members indicated a reluctance to impose sanctions for an attorney's failure or refusal to rely on the judgment-debtor's mere assertion that the funds are exempt without requiring the production of some corroborating documentation. For these reasons the proposed amendment was rejected by the Committee. As noted in Section M. of this Report, however, the Committee agreed that it is important to both the debtor and the creditor that the information subpoena elicit complete information about the debtor's exempt funds in order to avoid freezing them for however short a period of time since they are relied upon for the basic necessities of life. The Committee thus proposed in Section M to amend the information subpoena to identify and list all the sources of exempt funds, ask the debtor if s/he receives funds from any of the listed sources of exempt funds, require production of the debtor's three most recent bank statements for any accounts that contain funds from these sources, which will

corroborate any exemption claim, and to include a prominent warning, consistent with *R.* 1:4-8, that any levy on funds identified by the debtor as exempt, may result in monetary penalties, including reimbursement of the debtor's out of pocket expenses. The text of the rejected rule amendment follows.

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

(a) ... no change

(b) Information Subpoena

(1) To Judgment Debtor. An information subpoena may be served upon the judgment debtor, without leave of court, accompanied by an original and copy of written questions and a prepaid, addressed return envelope. The information subpoena and written questions shall be in the form and limited to those set forth in Appendix XI-L to these Rules. Answers shall be made in writing, under oath or certification, by the person upon whom served, if an individual, or by an officer, director, agent or employee having the information sought, if a corporation, partnership or sole proprietorship. The original subpoena, with the answers to the written questions annexed thereto shall be returned to the judgment creditor, if pro se, or judgment creditor's attorney within 14 days after service thereof.

An information subpoena shall not be served on a judgment debtor more frequently than once in any six-month period without leave of court.

(2) To Other Person or Entity. An information subpoena may be served upon banking institutions possibly used by the judgment-debtor without leave of court or upon possible employers or account-debtors (who are business entities) of the judgment-debtor upon ex-parte application, supported by certification, and court order, if the judgment-debtor has failed to fully answer an information subpoena served pursuant to subparagraph (1) within 21 days of service. The application shall be granted if the court determines that the information subpoena is reasonably necessary to effectuate a post-

judgment judicial remedy and that the party receiving the subpoena may have in their possession information about the debtor that will assist the creditor in collecting the judgment. The information subpoena shall be accompanied by an original and copy of written questions and a prepaid, addressed return envelope. The information subpoena and written questions shall be in the form and limited to those set forth in Appendix XI-R to these Rules, except that an information subpoena served upon a banking institution shall contain a certification by the judgment-creditor or the creditor's attorney that the debtor has failed to fully answer an information subpoena served pursuant to *R.* 6:7-2(b)(1) within 21 days of service, that the information subpoena is reasonably necessary to effectuate a post-judgment judicial remedy, and that the bank may have in its possession information about the debtor that will assist the creditor in collecting the judgment. Answers shall be made in writing, under oath or certification, by the person served, if an individual, or by an officer, director, agent or employee having the information sought, if a corporation, partnership or sole proprietorship. The original subpoena, with the answers to the written questions annexed thereto, shall be returned to the judgment creditor, if pro se, or judgment creditor's attorney within 14 days after service thereof.

(3) Prohibition on Levy of Funds Identified as Exempt. If the answers to an information subpoena affirm that any bank or other deposit account in the name of the judgment debtor includes only funds that are exempt from levy, or funds obtained from sources that the judgment creditor knows or should know are exempt from levy, then notwithstanding any other rule or provision of law, neither the judgment creditor nor any attorney for the judgment creditor shall levy, or cause a court officer or any other person

to levy, on any such account unless the judgment creditor has probable cause to believe that non-exempt funds have been deposited into the account.

(4) Sanctions for Failure to Comply. On motion for sanctions made within 30 days of any violation of subparagraph (a)(3) of this rule, or on its own initiative, the court shall, upon determining that a violation of subparagraph (a)(3) of this rule has occurred, enter an order imposing sanctions sufficient to deter repetition of such conduct. The sanctions may consist of one or more of the following: sanctions of the type identified in *R.* 1:4-8(d), an order directing payment to the judgment debtor of liquidated sanctions in the amount of $300, or an order declaring that the judgment is void. Sanctions imposed under this subsection shall be in addition to any and all remedies available to the judgment debtor pursuant to any other rule or provision of law.

(c) ... no change

(d) ... no change

(e) ... no change

(f) ... no change

(g) ... no change

(h) ... no change

(i) ... no change

III. OTHER RECOMMENDATIONS

A. Placement of Social Security Number on Executions

Attorneys frequently request that Social Security Numbers (SSNs) be included on chattel executions directed to banks, whether or not the writ also contains the debtor's bank account number. The credit reporting industry has indicated in correspondence with the AOC that it needs to have SSNs on court papers because people move so often and so many have the same names. The wage execution forms produced by ACMS have had a field for the SSN adjacent to the debtor's name for several years, but the public can't see it when accessing ACMS. Of course, a member of the public can see the SSN if they look at a copy of the wage execution in the case jacket in the courthouse. With the increased use of imaging in the Special Civil Part (by March 2004 it will be used in 3 counties) there is a real risk of facilitating identity theft by having the SSN on the wage and chattel executions. During its consideration of this issue the Committee made an evaluation of (1) the needs of banks at the time of a levy on an account and (2) the feasibility of redacting JEFIS documents to shield the SSN from disclosure when the public views the documents from remote locations over the Internet.

Several court officers reported to members of the Committee that the banks vary in their requests for identifying information at the time of a levy on a depositor's account. This was confirmed by court officers who are members of the Committee. It was noted that the court officers and the attorneys for the creditors are usually in close contact regarding the officer's progress in making such a levy and that additional identifying information can be requested by the officer, depending on what demands are made by the bank. The officers indicated, however, that having identifying information on hand at the time of the levy, preferably in the writ itself, produces faster results.

AOC staff to the Committee reported that the idea of redacting electronically filed or scanned documents so as to hide the SSN is impractical. ACMS, for example, would have to be programmed to produce two versions of the writs – one with the SSN for the court officer's use and the other without the SSN for placement in the electronic case jacket. When the court officer returns the writ, however, there would still be the problem of the SSN appearing on the scanned image of that returned writ unless staff in the clerk's office black out the number. This would not only be a tedious task, it would involve venturing onto the slippery slope of altering court documents. Staff reported that another possibility had been considered that would involve keeping the writs and the requests for their issuance in segregation so that the public could not see them, but this would require the establishment and maintenance of a parallel system that would have to be synchronized with ACMS and JEFIS, a difficult task at best.

In light of these considerations, the Committee decided to recommend that only the last 4 digits of the SSN be included in the creditors' requests for the issuance of writs and in the writs themselves. This should satisfy the bank in most instances, since the last 4 digits, the name of the account holder and usually the address will match the information in the bank's system. When a bank requests additional information, the court officer can contact the creditor or the creditor's attorney for the full SSN and supply it to the bank without any entry being made into ACMS or the case jacket, whether it be paper or electronic. These same factors apply in the case of wage executions. Implementation of this recommendation can probably be best accomplished by the promulgation of an administrative directive issued by the AOC with the approval of the Supreme Court.

B. Bank Cooperation With Levies on Accounts – Administrative Directive Recommended

The Committee took up the problem of certain banks which, when served with an execution, will not tell the court officer the amount available in the account for levy and wait for it to be validated at some central location. This results in a delay and sometimes the funds are withdrawn before the bank complies with the writ. In 1992 the Special Civil Part Practice Committee recommended that, in this situation, court officers should levy for the full amount of the writ, without waiting for notification from the bank, and so indicate in the certification of levy. The attorney for the creditor presumably will then file a turnover motion for the full amount, the bank will file responding papers if it believes that less than the full amount of the writ was in the account at the time of the levy and a judge will rule on the issue. The Committee recommends that the AOC issue a directive to all Special Civil Part Officers to this effect.

IV. LEGISLATION – NONE

V. MATTERS HELD FOR CONSIDERATION

A. Form Interrogatories

Best Practices Recommendation #12 called for the Special Civil Part Practice Committee to create form interrogatories for all Special Civil Part causes of action. The recommendation was approved by the Supreme Court, but during the last rules cycle the Committee only had time to propose a clarification of *R.* 6:4-3(c), to the effect that Forms C(1) through C(4) are applicable to the Special Civil Part.

Other causes of action await the Committee's attention and the Committee recommended, in its 2002 Report to the Court, that in the meantime suggested interrogatories should be created and included in the kits that are provided to pro se litigants by the Special Civil Part Clerks' Offices. The Forms Subcommittee of the Committee of Special Civil Part Clerks/Managers has prepared a draft set of model interrogatories for use by pro se defendants in collection cases and it was considered by this Committee as a possible starting point. Several members of the Committee believe that the scope of these interrogatories should be broadened so that they could be used by pro se plaintiffs as well as defendants and that the questions need further refinement. The Committee hopes to report to the Supreme Court on this subject in a supplemental report which will be filed at the end of February.

B. Representation of Corporate Landlords

At their July, 2003 meeting the Committee of Special Civil Part Clerks/Managers discussed the problem of corporate landlords appearing in court and attempting to file papers *pro se*. In one county the clerk's office has found that corporate landlords are procuring registration statements that do not list the landlord as a corporation when, in fact, they are. It is not known whether this practice is occurring in other counties. The clerks recommend that the rules be amended to require that a *pro se* landlord seeking the entry of a judgment for possession by default must certify in the affidavit of proof, or on the record, that it is not a corporation or limited liability company. The Committee studied a draft amendment to *R.* 6:6-3(b) that was intended to correct the problem, but decided to give the matter further consideration and hopes to report to the Supreme Court on this subject in its supplemental report.

VI. CONCLUSION

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

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