



2010 REPORT

OF THE SUPREME COURT COMMITTEE

ON SPECIAL CIVIL PART PRACTICE

JANUARY 21, 2010

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendment to R. 6:2-3(b) – Service of Original Process in Tenancy Actions

During the 2006-2008 Committee term a member had proposed to amend R. 6:2-3(b) so as to resolve a perceived discrepancy between the statute and the rule regarding service in tenancy actions. N.J.S.A. 2A:18-54 provides for service of the summons and complaint by posting in those situations where admission to the subject premises is refused or no person above the age of 14 is present. Rule 6:2-3(b), on the other hand, requires service by mail and by either personal delivery or posting. In other words, there is no requirement in the rule that the Special Civil Part Officer first attempt personal service before posting. The Committee decided, by a vote of 16-4, to recommend amending the rule so as to require personal service, but permit attachment to the door of the defendant's unit if the Officer is unable to personally deliver it to the defendant or a member of the defendant's household over the age of 14 years. Note that, if adopted, this rule change will require a modification of the Officer's return of service on the summons and this is addressed in the next section of the Report. The text of the proposed amendment to the rule follows.

6:2-3. Service of Process

(a) By Whom Served. ... 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. 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 summary actions for the recovery of premises [landlord and tenant actions], service of process shall be by ordinary mail and by [either] delivery personally pursuant to R. 4:4-4. When the person serving process is unable to effectuate service by delivering process personally, service may be effectuated [or] by affixing a copy of the summons and complaint on the door of the unit occupied by the defendant [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. The landlord shall furnish to the clerk two additional copies of the summons and complaint for each defendant for this purpose.

(c) Notice of Service. ... no change.

(d) Service by Mail Program. ... no change.

(e) General Appearance; Acknowledgement of Service. ... no change.

Note: Source--*R.R.* 7:4-6(a)(b) (first three sentences), 7:4-7. Paragraph (a) amended July 7, 1971 effective September 13, 1971; paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a)(b) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and paragraph (d) adopted November 5,

1986 to be effective January 1, 1987; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended July 17, 1991 to be effective immediately; paragraph (e) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (d)(4) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a), (b), (d), (d)(2), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b), d(4) and (5) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended _____, 2010 to be effective _____, 2010.

B. Proposed Amendment to Appendix XI-B – Return of Service on Tenancy Summons

Having agreed to recommend amending R. 6:2-1, as described above in Section I.A. of this Report, the Committee turned its attention to the Special Civil Part Officer's return of service on the summons, which is a mandated form set forth in Appendix XI-B to the court rules. Members of the Committee debated the degree of detail that should be required if the officer is unsuccessful in making personal service. Concerns ranged from fear of imposing unreasonable requirements on the officers when they are unable to gain access to the door of the tenant's unit in a large apartment building, on the one hand, to a need for specifics when service of process is challenged by the defendant, on the other. Included was the thought that the court officers should have a clear understanding of what is expected of them by the court. Ultimately, the Committee decided (by a vote of 9 in favor and 7 opposed) to recommend amending the return of service on the summons by adding a line for the court officer to describe the efforts made to personally serve the defendant, if that effort was unsuccessful, and to retain the current line for the officer to describe the premises when the summons has been posted. It will be up to the judge to determine the adequacy of service if that issue is raised in the litigation. The proposed amendments to Appendix XI-B follow.

**APPENDIX XI-B. TENANCY SUMMONS
AND RETURN OF SERVICE (R. 6:2-1)**

Plaintiff or Plaintiff's Attorney Information:

Name: _____

Address: _____

Phone: (____) _____

Superior Court of New Jersey

Law Division, Special Civil Part

_____ County

(____) _____

_____, **Plaintiff(s)**

Docket Number: LT - _____

(to be provided by the court)

versus

_____, **Defendant(s)**

**Civil Action
SUMMONS
LANDLORD/TENANT**

Defendant Information:

Name: _____

___ Nonpayment

Address: _____

___ Other

Phone: (____) _____

NOTICE TO TENANT: The purpose of the attached complaint is to permanently remove you and your belongings from the premises. If you want the court to hear your side of the case you must appear in court on this date and time: _____ at _____ a.m./p.m., or the court may rule against you. REPORT TO: _____

If you cannot afford to pay for a lawyer, free legal advice may be available by contacting Legal Services at _____. If you can afford to pay a lawyer but do not know one, you may call the Lawyer Referral Services of your local county Bar Association at _____.

You may be eligible for housing assistance. To determine your eligibility, you must immediately contact the welfare agency in your county at _____, telephone number _____.

If you need an interpreter or an accommodation for a disability, you must notify the court immediately.

Si Ud. no tiene dinero para pagar a un abogado, es posible que pueda recibir consejos legales gratuitos si se comunica con Servicios Legales (Legal Services) al _____. Si tiene dinero para pagar a un abogado pero no conoce ninguno puede llamar a Servicios de Recomendación de Abogados (Lawyer Referral Services) del Colegio de Abogados (Bar Association) de su condado local al _____.

Es posible que pueda recibir asistencia con la vivienda si se comunica con la agencia de asistencia publica (welfare agency) de su condado al _____, telefono _____.

Si necesita un interprete o alguna acomodación para un impedimento fisico, tiene que notificárselo inmediatamente al tribunal.

Date: _____

Clerk of the Special Civil Part

COURT OFFICER'S RETURN OF SERVICE (FOR COURT USE ONLY)

Docket Number: _____ Date: _____ Time: _____ WM ___ WF ___ BM ___ BF ___ OTHER _____ HT ___ WT _____ AGE ___ MUSTACHE ___ BEARD ___ GLASSES ___ NAME: _____ RELATIONSHIP: _____
Efforts Made to Personally Serve _____ _____
Description of Premises if Posted _____ _____
I hereby certify the above to be true and accurate: _____ Special Civil Part Officer

[Note: Former Appendix XI-B, consisting of model tenancy complaint and summons forms, deleted, and new tenancy summons and return of service form adopted July 12, 2002 to be effective September 3, 2002; amended July 27, 2006 to be effective September 1, 2006; amended _____, 2010 to be effective _____, 2010.]

C. Proposed Amendments to R. 6:7-1 – Protection of Exempt Funds From Levy

The Committee stated in its 2008 report to the Supreme Court that it was holding for further consideration the idea of going beyond the provision of a speedy remedy when bank accounts are levied upon that contain funds that are exempt from levy under federal or state law to find a mechanism that can prevent it from happening in the first place. The funds in question come from a variety of sources, such as Social Security, S.S.I., V.A., unemployment, workers' compensation, welfare and child support payments. The Committee noted that in 2006 the Supreme Court accepted the its recommendation to provide a speedy mechanism in the court rules for recipients of exempt funds to seek their release from levy (see, R. 6:6-6(a)), but concluded that more should be done to prevent such levies in the first place because it is often difficult to undo the damage they cause to those members of society least able to afford it. These consequences include bank fees for checks that have bounced, bank fees for freezing the debtor's account pursuant to the levy, evictions for nonpayment of rent and deprivation of life's necessities.

The Committee was well aware of the danger of intruding on the legislative realm if it sought to create new substantive rights, but it became clear that the rights in question had already been defined in both federal and state legislation and the question is one of how best to implement those legislative determinations in the judicial context. The mechanism recommended by the Committee consists of limiting the scope of any levy on bank accounts so that it conforms to established law and so that it can be easily implemented by the third-party garnishee banks. The Committee was informed that several large banks are already doing this voluntarily and that other jurisdictions have pursued similar efforts along these lines.

The easiest scenario to address is one in which the deposits into a judgment-debtor's account have been made electronically on a recurring basis and have come exclusively from an exempt source. This is not difficult for banks to discern from their electronic records. Some accounts, however, have been in existence for many years and it could be difficult to determine which funds are exempt when they have been commingled with non-exempt funds if the bank has to look at the entire deposit history of an account. As a practical matter the Committee concluded, as most judges have when called upon to rule in these matters, that if nothing but exempt funds have been electronically deposited into an account for 90 days, the account almost certainly consists exclusively of those exempt funds and the entire amount should be protected from levy. It is also the period of time that is of most interest to judgment-creditors, as reflected in Question #11 in the mandatory form for the Information Subpoena contained in Appendix XI-L to the court rules. Question #11 asks the judgment-debtor for copies of the three most recent bank statements for any accounts containing funds from seven exempt sources.

With regard to situations where funds from exempt and non-exempt sources have been commingled within the 90 days preceding the levy, the Committee concluded that funds deposited electronically on a recurring basis by exempt sources within the last 45 days should be presumed by the garnishee bank to be exempt from levy. Again, this should be easily discernable by the bank from its electronic records.

These recommendations have been incorporated into proposed amendments to R. 6:7-1, as set forth infra. They will comprise a new paragraph (b), divided into two parts that address the situations described above. The implementation of the rule amendments would be accomplished by corresponding modifications to the form of the writ of execution against goods and chattels contained in Appendix XI-H to the rules (see Section I.D. of this Report, below).

Note that the addition of a new paragraph (b) will require the redesignation of the current (b), (c), and (d) as paragraphs (c), (d) and (e), respectively.

It should be noted that the Committee was divided on the question of whether to include the statutory \$1,000 exemption (regardless of source) in the rule amendments. Some members felt that doing so would effectively preclude the judgment-debtor from choosing to exempt \$1,000 worth of tangible property or cash from levy rather than the \$1,000 in the bank account when the debtor might prefer to use the money in the account to pay the judgment. Others thought that funds necessary to meet immediate basic needs (an amount at least equal to the \$1000 general exemption) can and must be protected from judicial restraint in all consumers' bank accounts in order to achieve a minimum level of basic fairness --- and protection from extreme hardship --- for low-income New Jerseyans. Ultimately the Committee decided to leave to the debtor the choice of which funds to protect by using the statutory \$1,000 exemption and focus instead on protecting the funds that are exempt by statute in their entirety. The proposed amendments follow.

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

(a) Requests for Issuance; Intention to Return. ... no change.

(b) Contents of Writs of Execution and Other Process for the Enforcement of Judgments. All writs of execution and other process for the enforcement of judgments shall provide that any levy pursuant thereto shall exclude:

(1) all funds in an account of the debtor with a bank or other financial institution, if all deposits into the account during the 90 days immediately prior to service of the writ were electronic deposits, made on a recurring basis, of funds identifiable by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey or federal law, and

(2) all funds deposited electronically in an account of the debtor with a bank or other financial institution during the 45 days immediately prior to service of the writ that are identifiable by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey or federal law.

(c) [(b)] Notice to Debtor. ... no change to text.

(d) [(c)] Warrant of Removal; Issuance, Execution. ... no change to text.

(e) [(d)] Enforcement of Consent Judgments and Stipulations of Settlement in Tenancy Actions. ... no change to text.

Note: Source – R.R. 7:11□1; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; caption amended and paragraph (c) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; caption and paragraph (c), caption and text, amended July 13, 1994 to be effective September 1, 1994; paragraph (a) caption and text amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (d) adopted July 18, 2001 to be effective November 1, 2001; paragraph (c) amended September 14, 2004 to be effective immediately; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) adopted and former paragraphs (b), (c), and (d) redesignated as (c), (d), and (e) respectively , 2010 to be effective , 2010.

D. Proposed Amendments to Appendix XI-H to Protect Exempt Funds From Levy – Execution Against Goods and Chattels

To effectuate the protection of exempt funds from levy as set forth in the proposed amendments to R. 6:7-1 in Section I.C. of this Report, above, the Committee recommends that the form for the writ of execution against goods and chattels set forth in Appendix XI-H to the court rules be amended accordingly. All the writs issued by the Special Civil Part statewide will contain these provisions since the form is generated by the Automated Case Management System (ACMS). It is important for the garnishee bank to know that the levy pursuant to the writ should not include those funds in the judgment-debtor's account that the bank can identify as being exempt under federal or state law and so the amended form of the writ would be explicit in this regard. As noted in the previous section of this Report, several banks are already doing this voluntarily, utilizing their electronic record keeping capability to identify the exempt funds. The proposed amendments to Appendix XI-H follow.

APPENDIX XI-H EXECUTION AGAINST GOODS AND CHATTELS

DOCKET NO.: _____ DC-_____-_____
 JUDGMENT NO.: _____ VJ-_____-_____
 WRIT NUMBER: _____

SUPERIOR COURT OF NEW JERSEY
 SPECIAL CIVIL PART
 _____ COUNTY
 STATE OF NEW JERSEY
 EXECUTION AGAINST GOODS AND CHATTELS

PLAINTIFF(S)

VS.

DEBTORS: _____

DEFENDANT(S)

ADDRESS OF FIRST DEBTOR:
 STREET ADDRESS
 CITY NJ ZIP

TO: _____
 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. Any levy pursuant to this writ shall exclude (1) all funds in an account of the debtor with a bank or other financial institution, if all deposits into the account during the 90 days immediately prior to service of the writ were electronic deposits, made on a recurring basis, of funds identifiable by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey or federal law, and (2) all funds deposited electronically in an account of the debtor with a bank or other financial institution during the 45 days immediately prior to service of the writ that are identifiable by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey or federal law. 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 _____ Date: _____
 Judgment Amount.....\$ _____
 Costs and Atty. Fees.....\$ _____
 Subsequent Costs.....\$ _____
 Total.....\$ _____
 Credits, if any.....\$ _____
 Subtotal A.....\$ _____
 Interest.....\$ _____
 Execution costs and mileage.....\$ _____
 Subtotal B.....\$ _____
 Court officer fee.....\$ _____
 Total due this date.....\$ _____

Judge _____

Clerk of the Special Civil Part _____

I RETURN this execution to the Court

() Unsatisfied _____

() Satisfied () Partly Satisfied

Amount Collected. . . _____

Fee Deducted. _____

Amount Paid to Atty. _____

Date: _____
 Property to be Levied
 Upon and Location of Same:

 CITY ST ZIP

CREDITOR'S ATTORNEY AND ADDRESS:

CITY NJ ZIP

Telephone: ____-_____

Date: _____

 Court Officer

E. Proposed Amendment to R. 6:7-1(b) – Filing Notice to Debtor With the Clerk

Rule 4:59-1(g) requires a levying officer (Sheriff's Officer for writs emanating from the Civil Part of the Law Division; Special Civil Part Officer for writs issued by the Special Civil Part of the Law Division) to mail copies of the Notice to Debtor (as set forth in Appendix VI to the rules) to the judgment-debtor and judgment-creditor and to file a copy with the clerk. Rule 6:7-1(b) makes R. 4:59-1(g) applicable to actions in the Special Civil Part. The vast majority of the 140,000 writs of execution against goods and chattels issued by the Special Civil Part each year are used to levy against bank accounts owned by judgment-debtors and the clerks thus receive two separate copies of the Notice to Debtor: the first one from the levying officer and the second with the supporting papers submitted by the judgment-creditor when moving for a turnover order. A member of the Committee explained, on behalf of the Civil Division Managers and Assistant Managers, that the volume of these documents has become impossible to keep up with and the Conference of Civil Division Managers thus recommended in its Report on Workload Reduction Through Operational Efficiencies that the rule be amended to eliminate the requirement that the officer file a copy when making a bank levy since the creditor is required to submit a copy with the motion for a turnover order.

The provision in question was adopted by the Supreme Court in 1985 on the joint recommendation of the Civil and Special Civil Part Practice Committees. The rationale for requiring the Court Officer to file a copy of the Notice to Debtor with the clerk, however, was not discussed in either committee's 1985 report to the Supreme Court.

This Committee decided to recommend an amendment to R. 6:7-1(b) that would require filing of a copy of the Notice to Debtor by the Special Civil Part Officer only in cases involving a levy on tangible physical property; a copy of the Notice would still be required with the

judgment-creditor's motion for a turnover order in cases involving a bank levy. The purpose of the amendment is to eliminate the duplicative filings in connection with executions on bank accounts. The Committee proposes that R. 6:7-1(b) be amended, rather than R. 4:59-1(g), because the number of bank levies is so much greater in the Special Civil Part and the Committee is not aware of a comparable problem in Civil Part actions. The text of the proposed rule amendment follows. Please note that paragraph (b) will become paragraph (c) if the Supreme Court approves the amendment to the rule for the purpose of protecting exempt funds from levy, as proposed in section I.C. of this Report, above.

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) Requests for Issuance; Intention to Return. ... no change.

(b) Notice to Debtor. The provisions of R. 4:59-1(g) respecting notice to debtor, exemption claims and deferment of turnover and sales of assets shall apply to all writs of execution issued by the Law Division, Special Civil Part, except that a copy of the Notice to Debtor shall not be filed by the levying officer with the clerk of the court after a levy on a bank account. The notice to debtor shall be in the form prescribed by Appendix VI to these rules.

(c) Warrant of Removal; Issuance, Execution. ... no change.

(d) Enforcement of Consent Judgments and Stipulations of Settlement in Tenancy Actions. ... no change.

Note: Source – R.R. 7:11□1; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; caption amended and paragraph (c) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; caption and paragraph (c), caption and text, amended July 13, 1994 to be effective September 1, 1994; paragraph (a) caption and text amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (d) adopted July 18, 2001 to be effective November 1, 2001; paragraph (c) amended September 14, 2004 to be effective immediately; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) amended _____, 2010 to be effective _____, 2010.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

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

During the 2006-2008 term, the Committee discussed the possibility of raising the monetary limits for small claims and regular Special Civil Part cases. At the request of the Chair, staff had researched the effect of inflation on those limits and reported back to the Committee. The results of that research are set forth below in an excerpt taken from the Committee's 2008 Report to the Supreme Court (pages 40-41). In 2008 the Committee concluded that there should be no increase in the limits at that time because of the recent large increases in the volume of collection cases and the fact that the current monetary limits were still within the boundaries set in 1994 when adjusted for inflation.

Those two factors retain their validity today. In fact, contract filings increased from Court Year 2007 to 2008 by an even greater margin than had been predicted in the Committee's 2008 Report; the projection was for a 20% increase, from 299,438 to 361,647, while the actual number of filings for 2008 turned out to be 383,154, which represents an increase of 28% over 2007. The number of contract filings in Court Year 2009 came to 378,068, which is 1% less than 2008, but still a 26% increase over 2007. This indicates that the higher level of contract filings will be sustained and was not a one-time phenomenon. After a lengthy discussion this Committee decided, by a vote of 14-5, with one abstention, not to recommend any increase in the current monetary limits. The excerpt from the Committee's 2008 Report follows.

**EXCERPT FROM 2008 REPORT OF THE SPECIAL CIVIL PART PRACTICE
COMMITTEE TO THE SUPREME COURT – PAGES 40-41**

The Committee discussed the possibility of raising the monetary limits for small claims and regular Special Civil Part cases. The Chair asked staff to research the effect of inflation on those limits and report back to the Committee.

A history of the Special Civil Part monetary limits over the last quarter century shows the following progression:

Year	Regular SCP Limit	Small Claims Limit
1981	\$5,000.00	\$1,000.00
1992	\$7,500.00	\$1,500.00
1994	\$10,000.00	\$2,000.00
2002	\$15,000.00	\$3,000.00

Note that the ratio of the two limits has always been maintained at 5 to 1.

Taking into account changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers, published by U.S. Department of Labor's Bureau of Labor Statistics for New York City and Northeastern New Jersey, the cost of living increased by 17.8% between September 2002 (the last time the Special Civil Part monetary limits were raised) and September 2007. This would appear to justify an increase in the monetary limits from \$15,000.00 to \$17,600.00 and from \$3,000.00 to \$3,534.00 for regular Special Civil Part cases and small claims, respectively.

Taking a look at inflation from a longer perspective, however, raises the question of whether such a change would be appropriate at this time. The value of the 1994 limits (\$10,000.00 and \$2,000.00) was \$12,030.00 and \$2,406.00 in 2002, and those values projected to September 2007 come out at \$14,171.00 and \$2874.00, respectively. This indicates that we have not yet exceeded the 1994 limits when they are adjusted for inflation.

An examination of changes in the contracts caseload since 2002 suggests a need for caution when considering another increase in the monetary limits. The chart below indicates that the contracts caseload increased by 20% in Court year 2003, which is when the last monetary limit increase took effect. Between Court Year 2003 and Court Year 2007 there was another 20% increase in the caseload, despite a 12% decline in 2005. For Court Year 2008 the AOC has figures for the first 5 months and when they are projected for the entire year we can expect another 20% increase in the contacts caseload. Note: When that 5 month period is compared to the same period in Court Year 2006, we see an increase of almost 27%.

The most recent contract caseload increase may be due to the confluence of an economic slowdown and changes in the bankruptcy laws that preclude discharge of the debts that now appear in the contracts caseload. Whatever the cause, we know from past experience that an increase in the Special Civil Part monetary limits results in a significant increase in the caseload.

This, coupled with the fact that we have not yet exceeded the 1994 monetary limits (when adjusted for inflation) suggests that this would not be a good time to raise the monetary limits again. Note that while the volume of tenancy actions and small claims has remained relatively static over the years, these cases and the greatly increased number of contract cases are being handled by 30% fewer staff than the Special Civil Part had in 1994. During the next Term, the Committee plans to explore the possibility of raising the limits for collection actions and small claims, neither of which involves the extent of discovery required for tort actions.

Court Year	Contract Filings	% Increase
2002	208,259	---
2003	249,934	20%
2004	269,989	8%
2005	236,670	-12%
2006	270,692	14%
2007	299,438	11%
2008	361,647*	20%*

*Projections based on contract filings during the first 5 months of Court Year 2008

B. Proposed Amendment to Appendix XI-X – Verified Tenancy Complaint

The Committee considered correspondence between AOC Staff and an attorney regarding the clarity (or asserted lack thereof) in paragraph 9A and a problem with paragraph 9B of the Verified Complaint – Non payment of Rent form contained in Appendix XI-X to the Rules. It was noted during the discussion of this item that the language of the Verified Complaint had been crafted through a lengthy process of discussion that included this Committee, the Committee of Special Civil Part Supervising Judges and the Special Civil Part Management Committee. It was also noted that the request for more clarity was not specific as to what changes should be made to achieve that goal. The Committee decided to take no further action on the matter.

C. Proposed Amendments to Appendix XI-J – Wage Execution

The Committee considered correspondence between the Acting Administrative Director of the Courts, and an attorney who proposed amending the model Wage Execution form, set forth in Appendix XI-J to the Rules, to make clear that the judge has discretion to order that an amount less than 10% be withheld from the judgment-debtor's earnings. In his view, the current form implies that the court has no discretion to order an amount less than 10% and he pointed out that there is no such provision in N.J.S.A. 2A:17-56, the statute that authorizes wage withholding to satisfy civil judgments. In discussing the question, the Committee had before it copies of the Wage Execution form and the statute. Some members favored the proposal, while others opposed it. Ultimately the Committee decided to recommend no further action, principally because both the Notice of Application for Wage Execution and the Execution itself make clear that the judgment-debtor has a continuing right to object to the execution and request a reduction, even after the judge has signed the order. Moreover, there simply was no basis to conclude that the judges who handle these matters are not familiar with the law that governs them.

D. Proposed Amendment to R. 6:6-6 - Provision of Notice to Judgment Creditors of Applications for Post-Judgment Relief From Levies

A member of the Committee complained that judgment-creditors often do not get adequate notice of applications for relief from levies to be able to appear and protect their clients' rights. The attorney suggested that there should be a requirement of 48 hours notice or that a hearing be held on the judgment-debtor's application at 3:00 p.m. on the date of application. This would require an amendment to R. 6:6-6 which governs post-judgment applications for relief in tenancy actions and to claims of exemption from levy in other Special Civil Part actions. Because applications brought pursuant to the rule are emergent in nature, the Committee felt that there should be no time barrier to immediate relief, assuming that the rights of all parties to the litigation are protected, and decided to refer the matter to the Committee of Special Civil Part Supervising Judges for further discussion.

E. Proposed Amendment to R. 6:7-2(a) – Elimination of Requirement to Show Good Cause for Issuance of Order to Take Post Judgment Discovery

The Committee considered a request from a member of the Civil Practice Committee for an amendment to R. 6:7-2(a) that would either remove any "good cause" requirement from the rule or set forth in the rule that the existence of an unpaid judgment is sufficient "good cause" for the court to order supplementary proceedings to discover assets that could be used to satisfy a judgment. The Committee concluded that it is up to the judge to decide on a case by case basis what set of circumstances constitute good cause to warrant entry of an order for supplementary proceedings and thus rejected the proposed amendments.

F. Proposed Amendments to Rule 6:7-2 and Appendices XI-M and XI-O - “Shall” vs. “May”

This Committee considered correspondence from one of its members and a member of the Supreme Court Civil Practice Committee on behalf of the New Jersey Creditors Bar Association, complaining that some judges routinely modify orders to enforce litigant’s rights by changing the word “shall” to “may,” in reference to the issuance of a warrant for arrest if the target of a post-judgment information subpoena fails to obey the court’s order. They pointed out that R. 6:7-2(f) mandates the use of the form of order set forth in Appendix XI-O and that the form uses the term “shall.” The end result, they said, is the development of local practices and they proposed the addition of a paragraph (j) to the rule that would make the relaxation rule (R. 1:1-2) inapplicable to R. 6:7-2(d) through (i) and the forms set forth in Appendices XI-M through XI-Q.

This Committee was advised that the Civil Practice Committee had tentatively approved proposed amendments to Appendices XI-M (Notice of Motion for Order Enforcing Litigant’s Rights) and XI-O (Order to Enforce Litigant’s Rights) that would change the word “shall” to “may” in reference to whether a warrant will issue and attorney’s fees be awarded if the respondent fails to comply with the order. The Civil Practice Committee was waiting for advice from this Committee before deciding whether to recommend the changes to the Supreme Court. This Committee had before it copies of the proposed amendments being considered by the Civil Practice Committee.

During this Committee’s discussion it was pointed out that while the form of the order set forth in Appendix XI-O uses the word “shall,” and while use of the form is mandatory under R. 6:7-2(f), there are occasions on which a judge would, in the exercise of his or her discretion, substitute the word “may” for “shall” as, for example, when the target of the order is known to be

an 85-year old with a heart condition. It was thus clear that the rule should not be modified so as to preclude the court's ability to relax the rule pursuant to R. 1:1-2. On the other hand, it was also apparent to the Committee that such a change to the form of the order in every case or on a regular and routine basis would both (1) weaken the perception of the court's determination to compel answers to the questions in the information subpoena and (2) lead to inconsistent practices from county to county. It should also be clear that the use of the word "shall" in the prescribed form of the Notice of Motion for Order Enforcing Litigant's Rights (Appendix XI-M) simply tells the judgment-debtor what relief the creditor is seeking. The Order to Enforce Litigant's Rights (Appendix XI-O) tells the judgment-debtor what ultimately will happen if s/he continues to defy the subpoena and the court's order to comply with it. In no way does use of the word "shall" in the two Appendices impair the discretion of the judge to refuse to sign the arrest warrant when asked to do so.

One of the members of this Committee, who is a judge, stated that in the past he had often substituted the word "may" for the imperative "shall," but stopped the practice after carefully re-reading the rule and the forms provided for its enforcement in the Appendices to the Rules, the use of which is mandated by the Supreme Court. Considering the text of R. 6:7-2 and the implementing Appendices in their entirety, he concluded that the protections built into the mechanism for the judgment-debtor were so extensive that by the time the arrest warrant is actually issued it is indeed the last resort to force compliance with the information subpoena and the court's order to enforce it. These protections include:

- (1) A statement in the required form of the Information Subpoena itself (Appendix XI-L) warning the judgment-debtor that failure to comply with it "may result in your arrest and incarceration."
- (2) A requirement in R. 6:7-2(c) that the Information Subpoena be served personally or simultaneously by regular and certified mail return-receipt-requested.

(3) Requirements in R. 6:7-2(e) that the notice of motion to enforce litigant's rights (a) be in the form set forth in Appendix XI-M, (b) warn the debtor that s/he may be arrested and held until s/he has complied with the Information Subpoena, (c) state that a court appearance can be avoided by compliance with the Information Subpoena and (d) be served either personally or simultaneously by regular and certified mail return-receipt-requested.

(4) Requirements in R. 6:7-2(f) that the order to enforce litigant's rights be in the form set forth in Appendix XI-O, be served personally or simultaneously by regular and certified mail return-receipt-requested and warn the debtor that upon failure to comply with the Information Subpoena within 10 days, "the court will issue an arrest warrant."

(5) Requirements in R. 6:7-2(g) that in order to get an arrest warrant the judgment-creditor must certify that the debtor has not complied with the order to enforce litigant's rights, that the warrant be executed only between the hours of 7:30 a.m. and 3:00 p.m. on a day when court is in session, that if the debtor was served with the notice of motion and order by mail the warrant must be executed only at the address to which they were sent and that the debtor be brought before a judge forthwith and released immediately upon completion of the Information Subpoena.

For these reasons the Committee member who had originally suggested the modification to circumscribe the court's discretion moved to recommend that the rule and forms be left as they are. The motion was seconded by a representative of Legal Services of New Jersey (LSNJ) and the motion was adopted by a vote of 19 in favor and one abstention.

It should be noted that the reasoning of the Special Civil Part Practice Committee in originally proposing this enforcement mechanism is explained in the Committee's 1992 Report to the Supreme Court at pages 51 – 59 and 101-122. An excerpt containing those pages is attached as an appendix to this Report.

III. OTHER RECOMMENDATIONS - NONE

IV. LEGISLATION - NONE

V. MATTERS HELD FOR CONSIDERATION

A. Use of Credit Cards to Pay Fees and Post Deposits

The Committee endorses the idea of permitting the payment of filing fees and posting of deposits by credit card but recognizes that formulation of the language for the rule change should await completion of the AOC's work on this project. Staff informed the Committee that the Information Technology Office, Office of Management Services and the Civil Practice Division of the Office of Trial Court Services are already deeply involved in this project.

B. “Shotgun” Bank Levies

The Committee discussed the practice of some Special Civil Part Officers using a “shotgun” approach by serving copies of writs of execution on a number of banks, not knowing whether the judgment-debtor in fact has an account at any of them. The Committee asked for advice from the Conference of Civil Division Managers, the Special Civil Part Management Committee (composed of the Assistant Civil Division Managers responsible for running the clerks’ offices in the counties) and the Committee of Special Civil Part Supervising Judges as to the extent of the practice and the problems, if any, that it raises. The Supervising Judges will discuss the matter at their February meeting and this Committee will then transmit its recommendations to the Supreme Court in the form of a supplemental report.

C. Proposed Amendment to R. 6:7-2(b)(2) - Eliminate Requirement of Serving Defendant With Information Subpoena Before Serving Banks

A member of the Committee, has proposed an amendment to R. 6:7-2(b)(2) that would eliminate the requirement, presently in the rule, of serving a judgment debtor with an information subpoena and getting no response, before the judgment-creditor can serve an information subpoena on a bank to find out if the debtor has an account there. The Committee will report on this proposal in its supplemental report to the Supreme Court.

VI. CONCLUSION

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

Respectfully submitted,

Hon. Joseph R. Rosa, J.S.C., Chair

Mary Braunschweiger, Civ. Div. Mgr.

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Gregory G. Diebold, Esq.

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Linda G. Hampton, Esq.

Hon. John E. Harrington, J.S.C.

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Daniel I. Rubin, Esq.

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Hon. Jerome M. St. John, J.S.C.

William A. Thompon, II, Esq.

Andrew R. Wolf, Esq.

Robert J. Piscopo, AOC Staff

Robert D. Pitt, Esq., AOC Staff

APPENDIX – Excerpts From 1992 Report of the Special Civil Part Practice Committee to the Supreme Court (Pages 51-59 and 101-122)

M. Proposed Amendments to R. 6:7-2--Administration of Oath During Post-Judgment Discovery Proceedings; Enforcement of Discovery Orders and Information Subpoenas

The Committee proposes two kinds of amendments to R. 6:7-2, which deals with post-judgment orders for discovery and information subpoenas. The first is a simple amendment to R. 6:7-2(a) that will make clear that the attorney for the judgment-creditor can administer the oath to the judgment-debtor who has been ordered to appear for post-judgment discovery. The second category of amendments deals with the enforcement of discovery orders and information subpoenas, which the Committee has found to be increasingly troublesome. Enforcement problems may be increasing because more creditors, including those who proceed pro se, are using post-judgment discovery since the information subpoena became available in 1990. Whatever the cause, the Committee proposes a comprehensive overhaul and codification of the enforcement procedures.

Rule 6:7-2(c) provides, in pertinent part, that "...the failure to comply with an information subpoena shall be treated as a failure to comply with an order for discovery entered in accordance with paragraph (a) of this rule." The question then arises as to whether the judgment creditor should seek to enforce litigant's rights pursuant to R. 1:10-5 by way of order to show cause or motion. Papers submitted to

the Committee by one attorney, who is a member, indicated that he uses the motion procedure. The Special Civil Part Clerk's office in Atlantic County, on the other hand, supplies a form petition for an order to show cause, together with a form of order, to the litigant whose information subpoena has been unanswered. In a letter and memorandum to the Committee, another member contended that the proper procedure is by way of motion. Others use the order to show cause.

The Committee concluded that either procedure is permitted by the applicable court rule, Supreme Court opinion and according to other published authorities on the subject. Rule 1:6-2 states that "[a]n application to the court for an order shall be by motion, or in special cases, by order to show cause." The Supreme Court stated, in N.J. Dept. of Health v. Roselle, 34 N.J. 331, 343 (1961), that either procedure can be used by a litigant seeking supplemental relief in a civil matter. The same conclusion is reached in 4A N.J. Practice (Walzer, Civil Practice Forms) 4th ed., 1991) § 84.2 at 438. The skills training course materials distributed to new attorneys in 1976-77 advocated use of the order to show cause procedure. See: Nudelman and Rosenberg, Collection Practice in New Jersey (I.C.L.E., 1976) at pp. 31-35.

The real question, if either procedure is permissible, is which is best for accomplishing the purpose of the discovery

order and information subpoena while promoting the efficient handling of the applications for supplemental relief. Another question is the type of notice to the debtor, mail or personal service, that the court will require before issuing an arrest warrant; most judges require personal service so as to ensure that notice and an opportunity to be heard are given before a judgment-debtor is deprived of liberty for however brief a period of time.

These questions arise in a context of one year's experience with the information subpoena. One attorney reported that of 100 cases in which he used the subpoena, 3 defendants answered the questions, 4 defendants moved and 93 made no response. The 93 cases were all brought to the court's attention by orders to show cause and this meant that a judge had to read the papers and sign the order in each and every case. The volume raises questions regarding the effectiveness of the information subpoena and the administrative burden for the court. The Committee concluded that certain steps could be taken to increase the likelihood of compliance with the information subpoena.

First, the Committee decided that the information subpoena itself, contained in Appendix XI-K to the Rules, should contain words warning the debtor that failure to comply may result in the debtor's arrest and incarceration. The warning should be placed at the top of the subpoena in bold letters.

The form of the subpoena, as amended, is set forth in Section III of this Report.

Second, the Committee decided that R. 6:7-2 should be amended, by adding a new subparagraph (d), to specify that the motion procedure, rather than the order to show cause, should be used when a debtor fails to answer the subpoena and the creditor seeks to enforce litigant's rights. The motion procedure should also be used to enforce discovery orders in the Committee's view. This will avoid the court's involvement at the earliest stage of the enforcement procedure and defer such involvement to a point, hopefully, after the debtor has complied with the subpoena or discovery order and the involvement is no longer required. The motion procedure in this context requires a return day and this will be an exception to the general motion practice under R. 6:3-3(c). The Committee felt the motion should be returnable no sooner than 10 days following service and filing so that there is adequate time for the debtor to comply with the subpoena or order in response to the notice of motion. Note that in the case of an information subpoena, the debtor can avoid a court appearance by furnishing answers to the subpoena at least 3 days before the return date.

Third, the Committee believes that the current confusion surrounding the enforcement procedure can be attenuated by specifying in the rule the contents of the notice of motion,

the resulting order and the eventual arrest warrant and by prescribing mandatory forms for each in the Appendices to the Rules. Particularly, the new subparagraph (d) requires the notice of motion to advise the debtor that if she or he fails to appear on the return date of the motion, an order for his or her arrest will be sought, together with an order to pay the creditor's attorney fees in connection with the motion to enforce litigant's rights. A new subparagraph (e) prescribes the contents of an order, to be entered in the event that the debtor fails to appear on the return date, for the debtor's arrest, without further notice, if he or she fails to comply with the discovery order or information subpoena within 10 days. A new subparagraph (f) provides for the issuance of an arrest warrant in the event of further non-compliance, which is to be executed between the hours of 7:30 a.m. and 3:00 p.m. on a court day. For good cause shown, the warrant may be executed at another time subject to such terms as the court directs. Further, to ensure due process, if the motion and order for arrest were served by mail, the arrest warrant can be executed only at the address to which they were sent.

The proposed rule amendments follow. The mandatory forms are set forth in Section III of this Report.

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

(a) Order for Discovery. The court may, upon the filing by the judgment creditor or a successor in interest (if that interest appears of record) of a petition verified by the judgment creditor or the creditor's agent or attorney stating the amount due on the judgment, make an order, upon good cause shown, requiring any person who may possess information concerning property of the judgment debtor to appear before the attorney for the judgment creditor or any other person authorized to administer an oath and make discovery under oath concerning said property at a time and place therein specified. The location specified shall be in the county where the judgment debtor lives or works.

No more than one appearance of any such person may be required without further court order. The time and place specified in the order shall not be changed without the written consent of the person to be deposed or upon further order of the court.

(b) ...no change

(c) ...no change

(d) Enforcement by Motion. Proceedings to enforce litigant's rights pursuant to R. 1:10-5, when a judgment-debtor fails to obey an order for discovery or an information subpoena, shall be commenced by notice of motion supported by affidavit or certification. The notice of motion and certifi

cation shall be in the form set forth in Appendices XI-L and M to these Rules. The notice of motion shall contain a return date and shall be served on the judgment-debtor and filed with the clerk of the court not later than 10 days before the time specified for the return date. The moving papers shall be served on the judgment-debtor either in person or simultaneously by regular and certified mail, return receipt requested. The notice of motion shall state that the relief sought will include an order:

(1) adjudicating that the judgment-debtor has violated the litigant's rights of the judgment-creditor by failing to comply with the order for discovery or information subpoena,

(2) compelling the judgment-debtor to immediately furnish answers as required by the order for discovery or information subpoena,

(3) directing that if the judgment-debtor fails to appear in court on the return date or to furnish the required answers, he or she shall be arrested and confined to the county jail until he or she has complied with the order for discovery or information subpoena,

(4) directing the judgment-debtor, if he or she fails to appear in court on the return date, to pay the judgment-creditor's attorney fees, if any, in connection with the motion to enforce litigant's rights, and

(5) granting such other relief as may be appropriate.

The notice of motion shall also state, in the case of an information subpoena, that the court appearance may be avoided by furnishing to the judgment-creditor written answers to the information subpoena and questionnaire at least 3 days before the return date.

(e) Order for Arrest. 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, it shall be in the form set forth in Appendix XI-N 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.

(f) Warrant for Arrest. Upon the judgment-creditor's certification, in the form set forth in Appendix XI-O 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. The

warrant shall be in the form set forth in Appendix XI-P 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 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 and released upon compliance with the order for discovery or information subpoena.

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 to be effective _____.

F. Proposed Revision of Appendix XI-K--Information Subpoena and Written Questions

The Committee proposes in Section I. M. of this Report to amend R. 6:7-2 so as to improve the procedures for enforcing discovery orders and information subpoenas. This effort also involves the revision of the information subpoena itself so as to advise judgment-debtors in large print at the top of the form that failure to comply with the subpoena may result in the debtor's arrest and incarceration. At the same time, the Committee perceives a two-fold need to revise the written questions attached to the subpoena.

First, the questions addressed to an individual judgment-debtor need to cover personalty in greater detail if there is a possibility of later seeking to enforce a lien against realty. Two New Jersey bankruptcy cases were brought to the attention of the Committee in which levies on real estate were successfully attacked because the interrogatories served on the debtor did not inquire as to the debtor's cash on hand and ownership of furniture, appliances and other household goods. See Kellman v. Palese (In re Italiano), 66 Bankr. 468 (Bankr. D. N.J. 1986) and Genz v. Hallmark Cards, Inc. (In re Silverman), 6 Bankr. 991, 995-96 (D. N. J. 1980). The additional questions proposed by the Committee would require the judgment-debtor to list cash on hand and details regarding other personal property, but only if the debtor owns real

estate and has cash and other personalty worth more than the statutory exemption of \$1,000.

Second, the present questions do not adequately inquire about the finances and assets of judgment-debtors who happen to be corporations, partnerships or other business entities. The Committee proposes a set of 18 questions for this purpose, which will be denominated "Questions for Business Entity." The original questions, augmented as explained above, will be called "Questions for Individuals." The judgment-creditor will select the set that is appropriate for the particular case.

The revised information subpoena, questions for individual and questions for business entity follow. Together they will comprise Appendix XI-K to the Rules.

APPENDIX XI-K

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:

Plaintiff, SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SPECIAL CIVIL PART
_____ COUNTY

-vs-

DOCKET NO.

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 _____, 19__, in the amount of \$_____ plus costs, of which \$_____ together with interest from _____, 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: _____, 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:

<u>Type</u>	<u>Amount & Frequency</u>	<u>Name & Address of Sources</u>
Alimony		
Loan Payments		
Rental Income		
Pensions		
Bank Interest		
Stock Dividends		

11. Do you receive Social Security benefits?

Yes _____ No _____

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. If you answered "yes" to either question 12 or 13, 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).

<u>Item</u>	<u>Date</u> <u>Purchased</u>	<u>Purchase</u> <u>Price</u>	<u>If Financed</u> <u>Balance Still</u> <u>Due</u>	<u>Present</u> <u>Value</u>
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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:

<u>Creditor's</u> <u>Name</u>	<u>Creditor's</u> <u>Attorney</u>	<u>Amount</u> <u>Due</u>	<u>Name of</u> <u>Court</u>	<u>Docket #</u>
----------------------------------	--------------------------------------	-----------------------------	--------------------------------	-----------------

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:

<u>Creditor's</u> <u>Name</u>	<u>Creditor's</u> <u>Attorney</u>	<u>Amount</u> <u>Due</u>	<u>Name of</u> <u>Court</u>	<u>Docket</u> <u>Number</u>
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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: _____

G. Proposed Appendices XI-L, M, N, O, P--Mandatory
Forms for Enforcing Discovery Orders and Information
Subpoenas

As explained in Sections I. M. and III. F. of this Report, the Committee proposes to amend R. 6:7-2 and revise the information subpoena so as to improve the procedures for enforcing both the subpoena and orders for discovery. The Committee is recommending that a motion procedure be prescribed for this purpose, rather than an order to show cause procedure, and the proposed amendments to R. 6:7-2 refer to forms which the Committee feels should be mandatory. The amendments to R. 6:7-2 and the forms are discussed in detail in Section I. M. of this Report. The forms would be set forth in the Appendices to the Rules as follows:

Appendix XI-L Notice of Motion for Order Enforcing Litigant's Rights

Appendix XI-M Certification In Support of Motion for Order Enforcing Litigants Rights

Appendix XI-N Order for Arrest

Appendix XI-O Certification In Support of Application for Arrest Warrant

Appendix XI-P Warrant for Arrest

The proposed appendices follow.

APPENDIX XI-L
NOTICE OF MOTION FOR ORDER ENFORCING LITIGANT'S RIGHTS

Name: SUPERIOR COURT OF NEW JERSEY
Address: LAW DIVISION, SPECIAL CIVIL PART
Telephone No. _____ County

Docket No. _____

_____, Plaintiff

CIVIL ACTION

v.

_____, Defendant

Notice of Motion for Order
Enforcing Litigant's Rights

PLEASE TAKE NOTICE that on _____, 19__ at _____ .m.,
I will apply to the above-named court, located at _____
_____, New Jersey, for an Order:

- (1) Adjudicating that you have violated the litigant's rights of the plaintiff by failure to comply with the (check one) order for discovery, information subpoena served upon you;
- (2) Compelling you to immediately furnish answers as required by the (check one) order for discovery, information subpoena;
- (3) Directing that, if you fail to appear in court on the date written above, you shall be arrested by an Officer of the Special Civil Part or the Sheriff and confined in the county jail until you comply with the (check one) order for discovery, information subpoena;
- (4) Directing that, if you fail to appear in court on the date written above, you shall pay the plaintiff's attorney fees in connection with this motion;
- (5) Granting such other relief as may be appropriate.

If you have been served with an information subpoena, you may avoid having to appear in court by sending written answers to the questions attached to the information subpoena to me no later than three (3) days before the court date.

I will rely on the certification attached hereto.

Date: _____

Attorney for Plaintiff or
Plaintiff, Pro Se

APPENDIX XI-M
CERTIFICATION IN SUPPORT OF MOTION FOR ORDER
ENFORCING LITIGANT'S RIGHTS

Name: SUPERIOR COURT OF NEW JERSEY
Address: LAW DIVISION, SPECIAL CIVIL PART
Telephone No. _____ County
Docket No. _____

_____, Plaintiff

CIVIL ACTION

v.

_____, Defendant Certification In Support of Motion
for Order Enforcing Litigant's Rights

The following certification is made in support of plaintiff's motion for an order enforcing litigant's rights:

1. I am the plaintiff or plaintiff's attorney in this matter.
2. On _____, 19__, plaintiff obtained a judgment against the defendant _____ for \$ _____ damages, plus costs.
3. (Check applicable box below)
 - a. On _____, 19__, an Order was entered by this Court ordering defendant _____ to appear at _____ on _____, 19__, at _____ .m. and make discovery on oath as to the defendant's property and on _____, 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.
 - b. On _____, 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.

4. _____ has failed to comply with (check one)
 the order, the information subpoena.
5. I request that the Court enter an order enforcing litigant's rights.
6. On _____, 19____, I served copies of this motion and certification on _____ (check one) personally, by sending them simultaneously by regular and certified mail, return receipt requested.

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: _____

APPENDIX XI-N
ORDER FOR ARREST

Name: SUPERIOR COURT OF NEW JERSEY
Address: LAW DIVISION, SPECIAL CIVIL PART
Telephone No. _____ County
Docket No. _____

_____, Plaintiff

CIVIL ACTION

v.

ORDER FOR ARREST

_____, 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 _____, 19____, 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;

, J.S.C.

PROOF OF SERVICE

On _____, 19____, 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 wilfully false, I am subject to punishment.

Date: _____

APPENDIX XI-O
CERTIFICATION IN SUPPORT OF APPLICATION
FOR ARREST WARRANT

Name: SUPERIOR COURT OF NEW JERSEY
Address: LAW DIVISION, SPECIAL CIVIL PART
_____ COUNTY
Telephone No. _____

Docket No. _____

_____, Plaintiff

CIVIL ACTION

v.

Certification in Support of
Application for Arrest Warrant

_____, Defendant

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 _____, 19__, plaintiff obtained a judgment against the defendant _____ for \$ _____ damages, plus costs.
3. (Check applicable box below)
 - a. On _____, 19__, an Order was entered by this Court ordering defendant _____ to appear at _____ on _____, 19__, at _____ .m. and make discovery on oath as to the defendant's property and on _____, 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.
 - b. On _____, 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.

4. _____ has failed to comply with (check one)
 the order, the information subpoena.
5. On _____, 19__, the Court entered an Order for Arrest when defendant failed to appear on the return day of my motion for order enforcing litigant's rights.
6. On _____, 19__, I served a true copy of the Order for Arrest on _____ (check one) personally, by sending it simultaneously by regular and certified mail, return receipt requested.
7. Ten days have passed since I served a copy of the Order for Arrest on defendant and defendant has not complied with the (check one) information subpoena, order for discovery.
8. I request that the Court issue a warrant for the arrest of 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: _____

APPENDIX XI-P
WARRANT FOR ARREST

Name: SUPERIOR COURT OF NEW JERSEY
Address: LAW DIVISION, SPECIAL CIVIL PART
Telephone No. _____ 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 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.

Date: _____ WITNESS: _____
Judge of the Superior Court

Clerk of the Special Civil Part