2020

Report of the Supreme Court Committee on Special Civil Part Practice

January 17, 2020

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to *R.* 4:59-1(e) - Incorporate Reference to *Rule* 6:7-1(c) and Omit Requirements to Submit an Order and Certification of Service for Special Civil Part Wage Applications

The Civil Practice Division requested the Committee consider amending *Rule* 4:59-1(e) for the purpose to eliminate the requirements that the Special Civil Part (SCP) moving party submit additional proof of service of the Notice of Application of Wage, a proposed wage execution order and to clarify that the required submission of the certification of amount due for SCP wages, per *Rule* 6:7-1(a), must be filed with the Notice of Application of Wage. The requirement to submit a proposed wage execution order and additional certification of service for SCP wage applications are duplicative and unnecessary. The Notice of Application for Wage (Appendix XI-I) is mandated for use in both the SCP and Civil Part, per *Rule* 4:59-1(i), and it contains therein the required certification of service upon the judgment debtor. Attorneys are also now automatically noticed through the Judiciary's approved electronic filing and record keeping system, eCourts. The wage execution order (Appendix XI-J) is an automated form that the Office of the Special Civil Part produces and must issue, per *Rule* 6:7-1(a), so it is not necessary for the moving party to submit a proposed wage execution order.

Some Committee members expressed that the proposed form of wage execution order should continue to be sent to the judgment debtor notwithstanding that the SCP Office automatically generates the order and are required to issue it. The judgment debtor loses the benefit of not seeing how the wage garnishment is calculated which is contained on the mandatory wage execution order form (Appendix XI-J). Other members noted that the mandatory notice of application of wage form (Appendix XI–I) contains all of the salient information a judgment debtor needs and that most of the text on the wage execution order form appears on the notice of wage application form. Moreover, debtors can object prior to or after a wage is issued, as many times as they may like without incurring any fee to do so, and that the notice of wage form otherwise addresses due process concerns.

The Committee agreed with the proposal to amend *Rule* 4:59-1(e). This recommendation was referred to the Civil Practice Committee for consideration as *Rule* 4:59-1(e) falls under its purview.

The proposed amendments to *Rule* 4:59-1(e) follow.

Rule 4:59-1. Execution

(a) … no change.

(b) … no change.

(c) … no change.

(d) … no change.

(e) 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 comply with the requirements of paragraph (a) of this rule and 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 on the defendant's named employer, (2) the limitations prescribed by 15 U.S.C. §§ 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 ten days after service of the notice of reasons why the order should not be entered, (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, and (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 seven 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 application for 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 except in the Special Civil Part no order is required to be submitted. In the Special Civil Part, the copy of the notice of application for wage execution along with the certification of amount due in accordance with R. 6:7-1(a) shall be filed with the clerk. No wage execution order shall be issued [entered] unless the [form of order] notice of application was filed within 45 days of service of the notice upon the judgment debtor or 30 days of the date of the hearing. The [writ] 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 seven days of receipt of the objection.

(f) … no change.

(g) … no change.

(h) … no change.

(i) … 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 July 28, 2004 to be effective September 1, 2004; paragraphs (a) and (d) amended, and new paragraph (h) adopted July 27, 2006 to be effective September 1, 2006; paragraphs (a) and (f) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) redesignated as subparagraph (c)(2), new paragraph (c) caption adopted, new subparagraph (c)(1) caption and text adopted, and paragraph (g) amended July 23, 2010 to be effective September 1, 2010; paragraph (a) amended, former paragraphs (b) through (h) redesignated as paragraphs (c) through (i), new paragraph (b) adopted, redesignated paragraph (h) amended, and caption added to redesignated paragraph (i) July 19, 2012 to be effective September 4, 2012; paragraph (i) amended July 22, 2014 to be effective September 1, 2014; paragraph (c) amended July 27, 2015 to be effective September 1, 2015; paragraph (e) amended to be effective September 1, 2020.

B. Proposed Amendments to *R.* 6:1-2 – Increase to the Monetary Limits of the Special Civil Part and the Small Claims Section

The Committee considered a proposal by a member of the creditor's bar to increase the jurisdictional limits of the Special Civil Part (DC) and Small Claims (SC) dockets. Extensive materials were prepared by the Committee Chair with historical, comparative, economic and statistical analysis of the DC and SC dockets. A brief examination of when the Court previously increased the SCP jurisdiction will follow as well as an examination of other jurisdictions with small claims and intermediary courts, inflation and other economic factors, and mitigating and negative implications of raising the limits which were presented and/or discussed by the Committee.

Historical Analysis in New Jersey

In 1987, the limits were $5,000 for Special Civil (DC) and $1,000 for Small Claims, and they had not been changed since 1981. The limits were the subject of both statute and court rule at that time. The *1987 Supreme Court Task Force on the Special Civil Part* recommended that the monetary limits for Special Civil (DC) and Small Claims be raised first to $7,500 and $1,500, respectively, and then to $10,000 and $2,000. In 1991, the statutes affecting the limits (N.J.S.A. 2A:6-34 and 2A:6-43) were repealed and the matter was left to court rule. New Jersey is one of only

four states where the judiciary sets the jurisdictional limits. The New Jersey Supreme Court amended *Rule* 6:1-2(a)(1) and (2), per the recommendation of the Special Civil Part Practice Committee, to increase the limits to $7,500 and $1,500, effective September 1, 1992. In 1994, those limits were raised again to $10,000 and $2,000. In 2002, those limits were raised again to $15,000 and $3,000, with a subsequent exception set by the legislature for security deposit actions up to $5,000 being cognizable in small claims. The last time that the jurisdictional limits were raised was 2002. The questions now are whether to increase the limits again and, if so, then to what amount. As background, the following chart reflects overall DC filings and the number of which were auto negligence cases.

COURT YEAR (July 1-June 30)	OVERALL (DC) FILINGS	*AUTO/NEG (below #'s included in overall DC filings)
2002	218,236	2,431
2003	261,353	3,218
2004	279,493	2,838
2005	245,649	2,238
2006	279,887	2,057
2007	307,843	1,389
2008	390,247	1,032
2009	386,686	1,155
2010	390,247	1,377
2011	374,475	1,591
2012	311,793	1,557
2013	252,984	2,144
2014	235,546	2,057
2015	201,660	2,154
2016	178,350	2,118
2017	209,820	2,768
2018	231,360	3,393
2019	217,500	3,079

The next chart reflects all Special Civil Part filings (Landlord/Tenant, Special Civil and Small Claims), for the last six years:

	Case Type	July 2013 - June 2014	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017	July 2017 - June 2018	July 2018 - June 2019
DC	Auto Neg	2,057	2,154	2,118	2,768	3,393	3,079
	Contract	226,642	192,586	167,944	198,642	219,822	207,640
	Other	6,847	6,920	8,288	8,410	8,145	6,781
DC Total		235,546	201,660	178,350	209,820	231,360	217,500
Small Claims		40,223	35,388	31,945	30,235	27,834	24,604
Tenancy		176,029	169,262	161,329	159,168	157,052	151,920

Comparative Analysis in the United States

The Committee considered an extensive binder of materials prepared by the Chair that compared the 50 states and six other jurisdictions in the United States (American Samoa, District of Columbia, Guam, Northern Marianas Islands, Puerto Rico, and Virgin Islands) regarding due process in civil courts of limited monetary jurisdiction. The Committee also considered two reports that were before the Committee the last time jurisdictional limits were examined in 2016 *(Propublica Report,* Annie Waldman & Paul Kiel*, Racial Disparity in Debt Collection Lawsuits* and a Federal Reserve Bank of Philadelphia Report, *Working Paper No. 15-23*, June 19, 2015).

The comparative analysis included the mean, median and mode of certain elements. The mean is the average value. The median is the amount at which half are above and half are below. The mode is the most common value. Thirty-three

(33) jurisdictions had intermediate courts of limited monetary jurisdiction with the mean, median and mode as: $40,455, $25,000 and $25,000. Texas had the highest intermediate limit at $250,000 and Mississippi was second highest at $200,000. Kentucky had the lowest at $5,000.

All 56 U.S. jurisdictions had small claims courts and their jurisdictional limits mean, median and mode were: $8,154, $7,000 and $10,000. Of the 56 U.S. jurisdictions, New Jersey's $3,000 limit was one of the lowest (ranked 47th) and restrictive. Only Kentucky and Rhode Island, with limits of $2,500, were lower. Kentucky's cost of living ($.91) was compared to New Jersey's cost of living ($1.22). On a cost of living adjustment basis, Kentucky's limit was higher than New Jersey's. On a due process basis, Rhode Island did not allow appeals in small claims. Whereas, New Jersey not only allowed appeals, but New Jersey was tied with Wisconsin for the longest periods of time in which to take an appeal.

Other notable small claims court comparisons reflected the following:

- forty-eight (48) jurisdictions did not allow discovery and New Jersey was among the majority;
- forty-eight (48) jurisdictions had informal rules of evidence and New Jersey was among the majority;
- forty-two (42) jurisdictions allowed a jury trial and New Jersey was among the majority. However, New Jersey was only one of sixteen (16)

jurisdictions that had a simple procedure to have a jury at the first trial (no motion, order, de novo request, etc. required);

- thirty-nine (39) jurisdictions allowed parties to be represented by attorneys and New Jersey was among the majority;
- forty-five (45) jurisdictions allowed businesses to represent themselves by an agent, rather than an attorney, and New Jersey was among the majority.
- forty-four (44) jurisdictions had service of process by mail and New Jersey was among the majority. Not all service by mail programs were the same. For example, Massachusetts service by mail program was by regular mail only and service was considered good service unless the regular mail was returned. New Jersey's service by mail program requires the mailing be done by the court and that there be both regular and certified mail.

The average time since U.S. jurisdictions have increased their respective intermediate and small claims limits was 10.5 and 13.5 years, respectively. The median date of last change in the United States was April 17, 2007. In New Jersey, the last change for both courts was 17 years (2002).

Historical perspective reflects that since 1926 (when the Small Claims court was first created in New Jersey setting forth a $50 limit), the average increase for small claims has been 181% every 9.6 years since 1926. In Special Civil, following

the prior courts of small causes and District Courts from 1798, the average increase was 157% every 12.2 years. Focusing on the period since 1981, the average increase to the jurisdictional limit was about 150% every seven (7) years.

New Jersey's intermediate and small claims courts have had a ratio of 5:1 since 1981. For the thirty-three (33) jurisdictions that have intermediate courts, the most common ratio was 3:1; average was 7:1 and median 4:1. The largest ratio was Mississippi with intermediate limit of $200,000 and small claims at $3,500 (57:1 ratio). The smallest ratio was Nevada with an intermediate limit of $15,000 and small claims at $10,000 (3:2).

Inflation and Economic Analysis

One consideration of the appropriate monetary limits for Special Civil and Small Claims was inflation. A modest adjustment for inflation will maintain consistency and access to the courts without impairing the amount of due process historically provided. In other words, the notion is that the proportion of civil actions filed in the Special Civil Part will remain about the same if the level of the monetary limit is kept current by adjusting for inflation.

The United States Bureau of Labor Statistics provides an on-line inflation calendar based upon the Consumer Price Index (CPI). For example, the SCP Practice Committee calculated in 1994 that the 1981 monetary limits, adjusted for inflation

using the CPI, would be about $8,240 for Special Civil and $1,650 for Small Claims, or approximately 65% higher. In 2002, eight years later, the effects of inflation were examined by the Committee again to adjust the 1994 levels of $10,000 and $2,000 for the 20.3% rise in the CPI, which yielded limits at that time of $12,030 and $2,406. Since 2002, the CPI calculates the September 2002 value of SCP's Small Claims and (DC), in June 2019 dollars, at $4,245 for Small Claims and $21,227 for Special Civil (DC).

The materials prepared by the chair reflected that the Personal Consumption Expenditure (PCE) might be a more reliable way to measure inflation. This index is utilized by the Federal Reserve to measure inflation. It is an index calculated by the Bureau of Economic Analysis (BEA) and measures the prices that people living in the United States, or those buying on their behalf, pay for goods and services. It excludes energy and food because those prices tend to swing up or down more often and more dramatically than other prices. In addition, the CPI has reportedly been criticized by the financial community as a method to measure inflation since it measures the floor or minimum of the range of inflation. The PCE data from September 2002 to May 2019 indicated the Small Claims and Special Civil (DC) yielding $5,905 and $29,525 limits respectively.

As calculated by the Federal Reserve, New Jersey's GDP (gross domestic product) was provided and New Jersey has the eighth highest in the United States.

Using New Jersey's GDP rate, calculated by the Federal Reserve, provided an estimate of jurisdictional limits in Small Claims at $4,827 and Special Civil (DC) at $24,136.

The United States Census Bureau placed the median rent in New Jersey for years 2013-2017 at $1,249/month. The average rent in 2017 was $1,308 and median $1,284. Other average rent sources such as Apartmentlist.com, Zillow, Department of Numbers, etc. indicated higher rent averages in New Jersey than the Census Bureau. Using the Census Bureau's lowest average rent from this time period to set the jurisdictional limits yields $7,000 for Small Claims and $35,000 for Special Civil (DC) if the Court maintains its 5:1 ratio.

Based on the minimum wage of $5.15 in 2002 and $10 in 2019, a comparative calculation using this as a measure yields $5,825 for small claims and $29,126 for (DC). Of course, there are many people whose jobs pay more now than they did in 2002.

A summary chart follows memorializing all the inflation/economic comparisons previously stated:

2019	National Small Claims	National Intermediate	New Jersey Small Claims	New Jersey Special Civil
Average limit	$8,154	$40,455		
Median limit	$7,000	$25,000		
Years since last adjustment	10.5 years	13.5 years	17 years	17 years
Average of last adjustment amount	$3,251	$19,000		

2019	National Small Claims	National Intermediate	New Jersey Small Claims	New Jersey Special Civil
Average of last adjustment %	200%	200%		
Average historical adjustment %			157%	181%
N.J.'s Current amount			$3,000	$15,000
CPI			$4,245	$21,227
GDP			$4,827	$24,136
Core PCE			$5,905	$29,525
Minimum wage			$5,825	$29,126
Rent			$7,000	$35,000
Average of the above indices			**$5,560**	**$27,803**
			NJ Tax Court Small Claims	NJ Tax Court Intermediate
Amount			$5,000	$25,000
Jurisdiction			State taxes	real estate tax
Years since last adjustment			9	9

Impact of Increasing Monetary Limits

One of the noted purposes previously considered in support of raising the Special Civil monetary limit is the anticipated reallocation of a certain amount of cases from the Civil Part to Special Civil, which will result in speedier dispositions and savings for litigants. Increasing limits would promote access and fairness for self-represented litigants because the SCP filing fees are less expensive and SCP promotes speedier dispositions than in the Civil Part (Track I through IV cases). For example, a defendant would have to pay $175 to defend a case in the Civil Part, but only $30 in Special Civil. There would be a consequent decrease in the amount of

a judgment creditor's taxed costs, subsequently made part of a judgment, for the benefit of debtors.

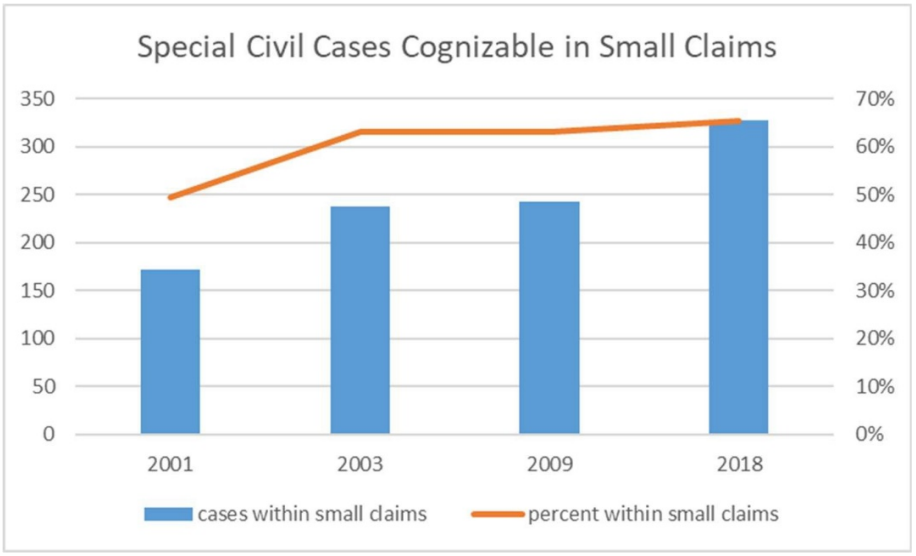
However, there is one fee that exists in Special Civil that does not apply in the Civil Part. Pursuant to *N.J.S.A.* 22A:2-42, the attorney's statutory taxing of costs (5% of the first $500 and 2% thereafter) would increase accordingly and these costs do not apply in the Civil Part. For example, at $15,000, the attorney's statutory taxing of costs on a (DC) docket is $315, but at $30,000, it would increase to $615.

Since data submitted by the chair shows that judgments tend to last for many years, the statutory attorney's fee is more than offset by the lower post-judgment interest rate charged in Special Civil. The interest rates on judgments is 2% higher in the Civil Part than in Special Civil, as set forth in *Rule* 4:42-11. In totality, an increase to SCP limits would cause a decrease in the total amount added to a judgment and born on judgment debtors for those cases filed in excess of $15,000 that could otherwise be filed in the Civil Part.

In court year 2019, the median time to final disposition for Track 1 cases was 139 days and 49 days for (DC) cases. Predicting the number of cases that will be filed in Special Civil subsequent to an increase to the jurisdictional limits, rather than the Civil Part of the Law Division, can be difficult to discern. However, the chair prepared a statistical analysis providing for the percentage of Special Civil (DC) cases filed, which were otherwise cognizable in the Small Claims section at

four separate points of time, reflecting that the majority of (DC) cases filed have been within the cognizable limits of the Small Claims section. The analysis utilized a random sampling of 2000 cases: 500 filed cases from each 2001, 2003, 2009 and 2018. An analysis was provided in the materials which seemed to indicate that the majority of (DC) cases filed, if the limits should increase, would continue to be for smaller amounts cognizable in the Small Claims section. The illustrative chart prepared by the Chair follows.

Special Civil Cases Cognizable in Small Claims (500 Random Cases Sampled)



The chart shows that in 2018 there were over 300 cases, of the 500 sampled, that were filed in Special Civil that could have been brought in Small Claims. This tends to support the point of view that the impact of a limit increase on the courts would be small.

Further statistical data offered some guidance, as the amount of overall Special Civil filings per year in 2002 (218,236) was greater seventeen (17) years ago than this last court year of 2019 (217,500). There were approximately 658 more auto/negligence (DC) cases filed in 2019 than in court year 2002. Therefore, it would appear that the quantity of auto/negligence cases and Special Civil cases overall would not significantly increase upon the (DC) and Small Claims limits being increased. The chair noted that he had asked a number of personal injury attorneys why they did not file their cases in Special Civil and the answers were either that the attorney did not want to limit the recovery or did not want to risk a malpractice case.

The quantity of small claims cases has decreased in the last six years from 40,223 filings to 24,604 filings or 39% less small claims cases filed. In 2019, there were only 29 small claims cases in backlog (more than 60 days old from the date of filing). This seems to indicate that Special Civil would be able to effectively manage expeditiously an increase to the quantity of small claims cases filed.

The aggregate number of Track 1 cases last year, excluding name changes and real property cases, was about 17,000 cases. The number of auto property and personal injury cases filed last year (Track 2 cases) is about 26,879 cases. In a worst case scenario, if all of these cases were filed in (DC), that would increase the (DC) docket case type by almost 44,000 cases or about 20%. This was the same analytical

situation in 1994 when the limits were raised but subsequently there was only a 3% increase in the number of (DC) filings and no increase in filings when the filings were raised in 2002 compared to 2019. Prior concerns and current concerns that raising the limits would increase auto negligence and personal injury cases are not supported by either the statistical data or by the court's experience.

When Special Civil reached $15,000 in 2002, it moved into the range of the minimum auto insurance coverage for personal injury. If there was an accident with an uninsured (UM) or underinsured (UIM) motorist, the Unsatisfied Claim and Judgment Fund (UCJF) administered the Property Liability Insurance Guaranty Association (PLIGA), which can provide coverage up to $15,000 plus Personal Injury Protection (PIP) benefits. Despite matching limits between (DC) in Special Civil Part, starting in 2002, PLIGA and minimum auto insurance coverage cases have rarely been filed in SCP. Although, anecdotally, of the half dozen or so jury trials in Special Civil in a given year, some judges had the experience that those cases included prototypical car accident personal injury cases because plaintiff's attorney knew before the case was filed that the limit on the insurance was $15,000.

Some members expressed concern that the quantity of (DC) automobile and negligence cases might nevertheless increase following a raise to the jurisdictional limits and that SCP would not be able to address expediently and is not well suited to address more complex discovery issues that may occur. An increase in overall

Special Civil motion filings could also occur. In addition, if Special Civil incurs an increase in the quantity of personal injury cases filed, due to expedient discovery of 90 days, and possible complex discovery issues that may arise therefrom, it will increase the Special Civil in a court meant to be handle a volume of filings. Special Civil cases with higher values will not settle as often as they do now, increasing the amount of trials. The assigned Special Civil Supervising Judge essentially would not be prepared to address the increase to overall Special Civil filings, increase to auto/negligence cases, increase to motion practice, etc. Some members expressed additional concerns that raising the limits to the Small Claims docket could detrimentally impact upon debtors since there is no discovery permitted in that court. Debtors would be at a disadvantage consequently and it would be inherently unfair. A member opined that this would open up the floodgates to debt collection cases, affecting especially upon low income members of society.

In response, other members opined that these concerns are not supported by the years of available statistical data and that New Jersey should keep up with inflation and the rest of the country's courts that seem to be able to expeditiously address various case types filed in their respective intermediary and small claims courts which have much larger jurisdictional limit amounts than New Jersey's. The Chair noted that the Committee of Special Civil Supervising Judges had examined this issue last year and had unanimously endorsed a proposal to increase the

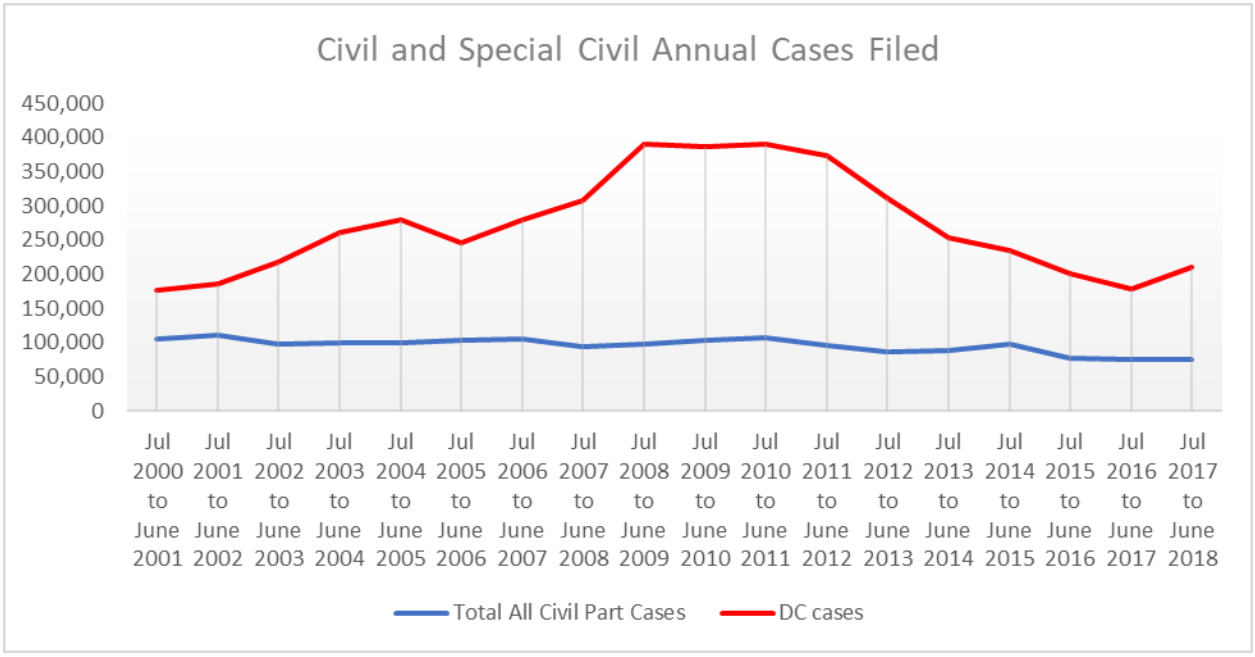
jurisdictional limits of small claims to $5,000 and an increase to the Special Civil (DC) docket but offered no specified amount for (DC). The committee had the benefit of the position of the Civil Presiding Judges too.

Some members noted that an increase in jurisdictional limits to $5,000 and $25,000 would save confusion because that would be consistent with the 5:1 ratio in place since 1981 and eliminate the dual small claims limits. Presently, there is one limit for security deposit cases filed in Small Claims ($5,000) and another for everything else allowed in Small Claims. At the Senate Commerce Committee hearing in 2002, on the bill that raised the security deposit cases in Small Claims to $5,000, the Senate committee co-chair suggested that limits in Small Claims should be raised to $10,000. That was in 2002 dollars.

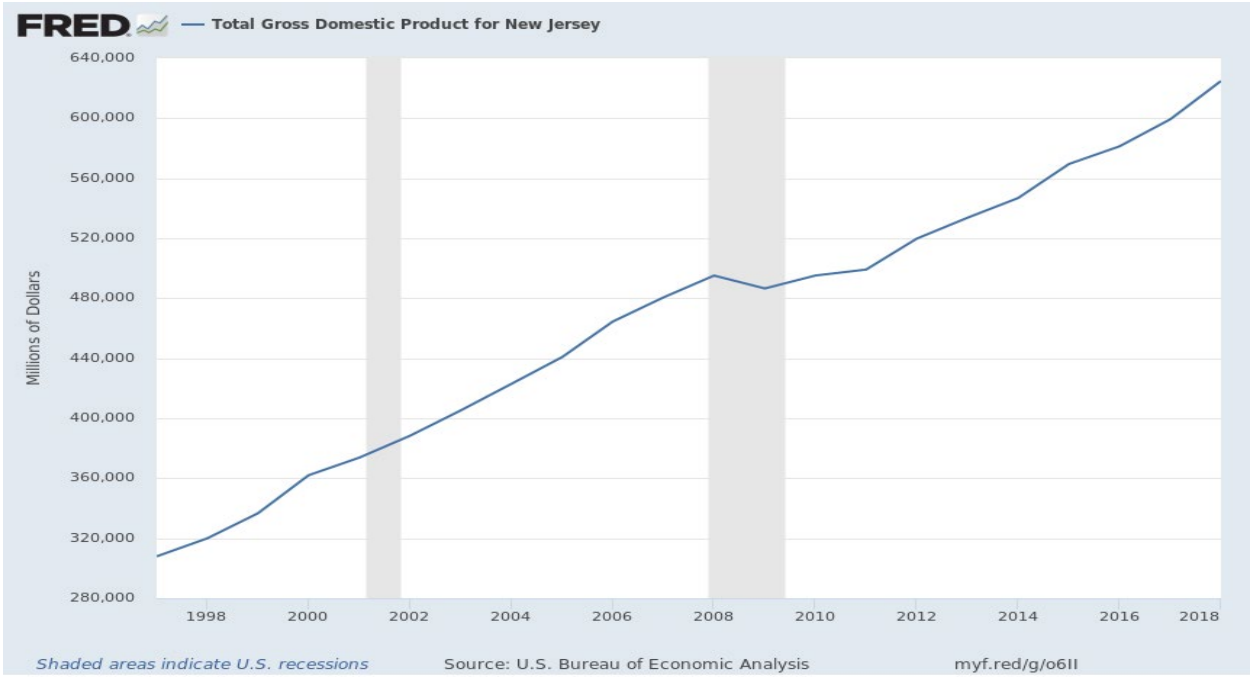
The concern that increasing jurisdictional limits would increase the number of filings overall would assume that there are cases not filed because it is too expensive to file and/or not worth filing given the present jurisdictional limits. However, the Special Civil Part handled nearly double the current case load at the peak of filings in 2009. Historical records show these concerns to be a constant when jurisdictional limits are examined and/or raised, but they have not been a problem. Some members argued against increasing jurisdictional limits for the express purpose of eliminating the Special Civil Part as much as possible. However,

the purpose of courts of limited jurisdictional was not meant to close the courthouse doors.

As can be seen in the charts below, there is a correlation during periodic economic downturns to the number of filings in Special Civil, but little or no impact on the Civil Part. For the Special Civil Part, it also appears that the lower New Jersey's GDP may correlate with a higher number of Special Civil filings. From the prior reports of the Special Civil Practice Committee since 2002, the estimated increase in Special Civil Part filings ranged from 1% to 3% for an inflation-based adjustment. With about 200,000 filings a year, the impact of an inflation-based adjustment might not have a noticeable impact on court operations because that number of cases is less than the annual fluctuations. However, for the approximately 2,000 to 6,000 citizens that can bring and defend the cases that are simpler and less expensive, that would be a significant impact and a meaningful increase in access and fairness.



Civil and Special Civil Annual Cases Filed



Federal Reserve GDP for New Jersey

Service by regular and certified mail for Special Civil Part cases has been an additional concern raised when jurisdictional limits are reexamined. Information was provided pertaining to service by mail by other jurisdictions and members discussed if New Jersey's SCP mail service would continue to constitute sufficient due process on cases with higher demand amounts. The chair opined that an increase to the limits would amount to an inflation-based adjustment (i.e., $25,000 demand amounts today are the equivalent of $15,000 demand amounts filed in 2002), which would mean that service by mail would ostensibly remain the same for SCP cases filed with $25,000 demand amounts because the Court previously determined mail service satisfied due process for cases filed with $15,000 demand amounts. Further, states that have service by mail for intermediate courts have higher jurisdictional limits than New Jersey's and tend to require more traditional personal service when they have lower jurisdictional limits. As previously noted, the average limit for intermediate courts is $40,455. For these jurisdictions with service by mail for intermediate courts, the average limit was $58,500, and for these jurisdictions with traditional personal service, the average limit was $26,300. Since the New Jersey judiciary focuses on access and fairness, on a comparative basis for service by mail, the chair opines that jurisdictional limits could accordingly even be more than $50,000.

Objection to levy forms and self-help packets are now available on the court's website including a self-calculating worksheet for wage garnishments. These forms, packets and on-line tools were not available when service by mail was introduced decades ago. In that regard, there is more protection for the least sophisticated, most impecunious judgment debtors now than in 2002.

Some members suggested that confusion, if any, would be eliminated if the small claims limit for all cases were raised to $5,000, so that it matches the legislature's security deposit case exception of $5,000 for this docket type. Other members believed that an increase to the jurisdictional limits would not cause a dramatic increase in new filings, but if filings were to increase, the Special Civil Part Offices and the Special Civil Part judges are well prepared to handle that increase. Improvements in technology due to auto-docketing of complaints, electronic filing via eCourts, centralized printing and mailing of service of original process, automation of entry of defaults and dismissals, etc., have cumulatively caused Special Civil to improve upon numerous case management practices which has resulted in Special Civil having an average of 0% to 1% backlog only each year. Moreover, certain case types currently filed in the Civil Part, Law Division, due to claims being in excess of $15,000, would simply cause creditors to file them in Special Civil (DC) instead. The volume of cases to all civil judges in each vicinage would remain the same as there are cases that are anticipated to shift from Civil Part

to Special Civil (DC). For example, certain Track 1 cases, such as book account, tenancy and/or actions on a negotiable instrument, would presumably be filed in Special Civil (DC) instead of the Civil Part. Other members again referred to the available statistical data, which they believed does not support the concerns expressed, and that the majority of these Track 1 cases are presently resolved expeditiously in the Civil Part, so they would presumably be resolved more expeditiously and inexpensively in Special Civil.

Considerable debate ensued with some members expressing that the matter should be tabled into the next rule cycle, so that more time could be provided to more fully examine all of the statistical data presented. A majority of members disagreed and moved on the proposal. The Committee Chair noted his position in support of an increase to Small Claims and Special Civil (DC) limits. He noted that on an inflation basis the limits should be raised to either $5,000 and $25,000 or $6,000 and $30,000 and that inflation-based analysis very slightly favored the higher amount.

Recommendation

The Committee ultimately recommended increases to the jurisdictional limits. An amount of $5,000 for the Small Claims section was recommended. An amount of $20,000 for Special Civil (DC) was recommended.

The chair notes that this recommendation decreases the historical ratio maintained by the Court between Special Civil (DC) and Small Claims limits, from 5:1 to 4:1, and does not fully adjust for inflation. An amount of $25,000 for Special Civil would more fully adjust for inflation.

The proposed rule amendments to *Rule* 6:1-2(a)(1)(2) and (5) follow.

Rule 6:1-2. Cognizability

(a) Matters Cognizable in the Special Civil Part. The following matters shall be cognizable in the Special Civil Part, except as otherwise specifically provided in R. 4:3-1(a)(4):

(1) Civil actions (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) seeking legal relief when the amount in controversy does not exceed $[15,000] 20,000;

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

(3) … no change;

(4) … no change;

(5) Summary proceedings for the collection of statutory penalties not exceeding $[15,000] 20,000 per complaint.

(b) … no change.

(c) … no change.

Note: Adopted November 7, 1988 to be effective January 2, 1989; caption added to paragraph (a) and paragraph (a) amended July 17, 1991 to be effective immediately; paragraphs (a)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1) and (2) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a)(1) and (a)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (a)(2) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(4) and paragraph (c) amended July 27, 2006 to be effective September 1, 2006; subparagraphs (a)(1) and (a)(2) amended, new subparagraph (a)(4) adopted, former subparagraph (a)(4) redesignated as subparagraph (a)(5), and former subparagraph (a)(5) deleted July 19, 2012 to be effective September 4, 2012; paragraph (a) amended July 27, 2018 to be effective September 1, 2018; paragraphs (a)(1), (a)(2) and (a)(5) amended 2020 to be effective September 1, 2020.

C. **Proposed Amendments to *R.* 6:1-2(a)(1) and *R.* 6:4-1(e) – Correct References to Parts and Divisions, in accord with the New Jersey Constitution**

A Special Civil Part Supervising Judge requested the Committee amend *Rules* 6:1-2(a)(2) and 6:4-1(e), so that they reflect correct references to the two divisions that were promulgated under the New Jersey Constitution, Article VI, Section III (3) (Law and Chancery Divisions only). Such other parts may be created by the rules promulgated by the Supreme Court. The Committee agreed and recommended that both rules be amended accordingly so that they are in accord with the vernacular created by the state's constitution.

The amendments to *Rules* 6:1-2(a)(1) and 6:4-1(e) follow.

Rule 6:1-2. Cognizability

(a) Matters Cognizable in the Special Civil Part. The following matters shall be cognizable in the Special Civil Part, except as otherwise specifically provided in R. 4:3-1(a)(4):

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

(2) … no change.

(3) … no change.

(4) … no change.

(5) … no change.

(b) … no change.

(c) … no change.

Note: Adopted November 7, 1988 to be effective January 2, 1989; caption added to paragraph (a) and paragraph (a) amended July 17, 1991 to be effective immediately; paragraphs (a)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1) and (2) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a)(1) and (a)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (a)(2) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(4) and paragraph (c) amended July 27, 2006 to be effective September 1, 2006; subparagraphs (a)(1) and (a)(2) amended, new subparagraph (a)(4) adopted, former subparagraph (a)(4) redesignated as subparagraph (a)(5), and former subparagraph (a)(5) deleted July 19, 2012 to be effective September 4, 2012; paragraph (a) amended July 27, 2018 to be effective September 1, 2018; paragraph (a)(1) amended to be effective September 1, 2020.

Rule 6:4-1. Transfer of Actions

(a) … no change.

(b) … no change.

(c) … no change.

(d) … no change.

(e) Remand to Special Civil Part. Upon the settlement or dismissal of a Law Division, Civil Part action with which a Special Civil Part action has been consolidated, the Law Division, Civil Part on its own motion or the motion of a party may remand the action for trial in the Special Civil Part, provided, however, that no such action shall be remanded to a county other than that in which the consolidated Law Division, Civil Part action would have been tried. If the plaintiff in a Special Civil Part action so transferred or consolidated is the prevailing party, the Law Division, Civil Part on plaintiff's or its own motion may remand the action to the Special Civil Part for the county in which it was instituted for the entry of judgment and taxation of costs.

(f) … no change.

(g) … no change.

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

July 14, 1992 to be effective September 1, 1992; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (d) amended July 19, 2012 to be effective September 4, 2012; paragraph (f) amended August 1, 2016 to be effective September 1, 2016; paragraphs (d) and (g) amended March 7, 2017 to be effective immediately; paragraphs (b), (c), (d) and (g) amended July 27, 2018 to be effective September 1, 2018; paragraph (e) amended to be effective September 1, 2020.

D. Proposed Amendment to *R.* 6:4-3(f) – Delete the Discovery Limitations Placed on Special Civil (DC) Actions Cognizable in Small Claims

The Committee considered a proposal from LSNJ committee members to remove the discovery limitations placed upon those cases filed in the Special Civil (DC) docket that are otherwise cognizable in the Small Claims section. In other words, to repeal the current limitations of discovery that only permits five interrogatory questions, without sub-parts, when an action is filed in the Special Civil (DC) docket when it otherwise falls within the Small Claims jurisdictional limits. This spontaneous suggestion was made in response to the Committee's endorsement to raise the jurisdictional limitation of SCP (DC) and Small Claims.

Some members commented that the proposal does not serve the constituency to which LSNJ serves and/or other litigants faced with a lawsuit for relatively small demand amounts. By removing the discovery limitations set forth under *Rule* 6:4-3(f), which would permit creditors to serve lengthier sets of interrogatory questions and other discovery demands upon debtors for cases involving smaller demand amounts, creditors would benefit more than debtors. In addition, it might increase the quantity of motions to dismiss for a defendant's alleged failure to respond to interrogatory questions or other discovery demands, a possible outcome some members found unfavorable.

The Committee ultimately endorsed the proposal to repeal *Rule* 6:4-3(f) and the proposed rule amendment follows.

Rule 6:4-3. Interrogatories; Admissions; Production

(a) … no change.

(b) … no change.

(c) … no change.

(d) … no change.

(e) … no change.

[(f) Actions Cognizable but Not Pending in Small Claims Section, Discovery. Any action filed in the Special Civil Part that is cognizable but not pending in the Small Claims Section may proceed with discovery, but each party is limited to serving 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, July 28, 2004, to be effective September 1, 2004; paragraph (b) amended, new paragraph (c) adopted, and former paragraphs (c), (d), (e) redesignated as paragraphs (d), (e), (f) July 27, 2006 to be effective September 1, 2006; paragraph (a) amended August 1, 2006 to be effective September 1, 2006; paragraph (f) caption and text amended July 23, 2010 to be effective September 1, 2010; paragraph (f) repealed August . 2020 to be effective September 1, 2020.

E. Proposed Amendment to *R.* 6:7-1(a) – Clerk Affixing Judge's Signature to Uncontested Wage Applications

On September 12, 2016, made effective retroactively on July 1, 2016, the Court by order relaxed *Rule* 4:59-1(e) to authorize SCP staff to affix a judge's electronic signature to uncontested wage applications. The Committee considered a proposed amendment to *Rule* 6:7-1(a), which seeks to codify said rule relaxation order. Committee staff noted that designated clerical staff presently review the wage applications to ensure that the requested fees and credits are appropriate, correct appendix form has been utilized and all other applicable court rules have been complied with. As such, the proposed amendment seeks to memorialize an already existing process.

The proposed rule amendment to *Rule* 6:7-1(a) codifying the Court's September 12, 2016 Order follows.

Rule 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; Writs of Possession

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

(b) … no change.

(c) … no change.

(d) … no change.

(e) … no change.

(f) … no change.

Note: Source - R.R. 7:11-1; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; caption amended and paragraph (c) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; caption and paragraph (c), caption and text, amended July 13, 1994 to be effective September 1, 1994; paragraph (a) caption and text amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (d) adopted July 18, 2001 to be effective November 1, 2001; paragraph (c) amended September 14, 2004 to be effective immediately; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; caption amended, former paragraph (b) redesignated as paragraph (c) and amended, former paragraphs (c) and (d) redesignated as paragraphs (d) and (e), and new paragraph (b) caption and text adopted July 23, 2010 to be effective September 1, 2010; subparagraph (b)(2) amended May 17, 2011 to be effective immediately; caption amended, paragraph (c) amended, and new paragraph (f) adopted July 19, 2012 to be effective September 4, 2012; paragraph (d) amended July 22, 2014 to be effective September1, 2014; paragraph (a) amended August 1, 2016 to be effective September 1, 2016; paragraph (a) amended August _____, 2020 to be effective September 1, 2020.

F. Proposed Amendment to R. 6:7-1(d) – Clarifying Permissible Service upon an Attorney and Omitting Incorrect Reference to Agreements Entered Subsequently

A SCP Supervising Judge requested the Committee consider amending *Rule* 6:7-1(d) to clarify that service upon a tenant's attorney, if any, satisfies the notice requirement pertaining to seven-day applications to issue/execute a warrant of removal out of time. *Rule* 1:5-2 provides for the manner of service of papers subsequent to original service of process upon attorneys, which is by ordinary mail upon an attorney.

The Civil Practice Division recommended an additional amendment to *Rule* 6:7-1(d), so that it conforms to existing case management practices and Appendix forms XI-V and XI-W. Parties may consent to extend the 30-day time period within which to request, issue and/or execute a warrant of removal. These landlord/tenant agreements (consent to enter judgment for possession) are submitted on the day of trial and/or subsequent to entry of judgment and require a judge's approval when residential tenants are unrepresented. Accordingly, the recommendation was to omit reference to agreements submitted subsequent to entry of judgment. The Committee agreed with the proposals and the rule amendments follow.

Rule 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; Writs of Possession

(a) … no change.

(b) … no change.

(c) … no change.

(d) 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, 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 seven days prior thereto by simultaneously mailing same by both certified and ordinary mail upon the tenant or by ordinary mail upon the tenant's attorney, if any [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 tolled for the duration of any order for orderly removal or any other court initiated stay, 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.

(e) … no change.

(f) … no change.

Note: Source - R.R. 7:11-1; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; caption amended and paragraph (c) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; caption and paragraph (c), caption and text, amended July 13, 1994 to be effective September 1, 1994; paragraph (a) caption and text amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (d) adopted July 18, 2001 to be effective November 1, 2001; paragraph (c) amended September 14, 2004 to be effective immediately; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; caption amended, former paragraph (b) redesignated as paragraph (c) and amended, former paragraphs (c) and (d) redesignated as paragraphs (d) and (e), and new paragraph (b) caption and text adopted July 23, 2010 to be effective September 1, 2010; subparagraph (b)(2) amended May 17, 2011 to be effective immediately; caption amended, paragraph (c) amended, and new paragraph (f) adopted July 19, 2012 to be effective September 4, 2012; paragraph (d) amended July 22, 2014 to be effective September1, 2014; paragraph (a) amended August 1, 2016 to be effective September 1, 2016; paragraph (d) amended _____, 2020 effective September 1, 2020.

G. Proposed Amendments to *Rules* 6:7-3(b), (c) and 6:7-4(c) and (d) – How to Request the Accrual of Subsequent Costs or Credits on Previously Issued Executions (Wages and Writs)

The Committee was asked by members of the creditor's bar to consider amendments to *Rules* 6:7-3 and 6:7-4, submitting that there is no existing mechanism by which costs incurred or credits received subsequent to the issuance of an active execution (wage garnishment or goods and chattel writ) to a Special Civil Part Officer (Officer) can be effectively added to that existing active execution and collected upon by that Officer. There is importance for an Officer to be able to collect on the correct amount and account for monies that may have been subsequently paid by a judgment debtor to a judgment creditor (credits) and/or to include court filing fees (permissible taxed costs) that were paid by a judgment creditor after the execution has been issued. A requirement to issue a new execution incurs unnecessary and additional filing fees that ultimately are born on a judgment debtor as more taxed costs. For example, a judgment creditor should not have to seek a new execution when they have subsequently paid new mileage fees on an existing and unexpired execution or be required to file a motion to add new taxed costs to an existing execution and thereby incur more fees due to (DC) motions costing $25. Having a uniform mechanism within which to amend existing executions that have not yet been returned or expired, on notice to the judgment

debtor, assures correct amounts are being collected without having either party incurring more costs.

Concerns were raised pertaining to the proposed amended language of "costs" as being too obscure and the appropriate process for oversight to ensure that correct costs are being added to the existing execution. In addition, if a judgment creditor is allowed to send that information directly to the Officer, problems may ensue without court staff intervention and verification. In response, it was suggested that the proposal would not allow the Officer to amend what he is collecting without receipt of an additional affidavit or certification that must be copied to the judgment debtor and third party garnishee, if any. The judgment debtor and the debtor's employer would thus be made aware that the costs or credits are being updated. Also, specific inclusion to *Rule* 1:43 filing fees only would preclude a creditor from being able to ask for any other additional fees to be added as taxed costs to an active execution previously issued other than for those fees which they have already paid to the SCP Office.

SCP Court Officer Committee members commented that historically, when they and debtors' employers receive copies of certified accrued interest requests on active wage executions, per *Rule* 6:7-3(a), they have had no issue with being able to garnish the additional amount. In response to questions posed, the Officers advised that they have not needed an amended wage or reprinted wage execution to

effectuate and anticipate that they will not need an amended or re-printed writ or wage in this regard if a court rule provides for same in the same manner that accrued interest on wages is addressed.

Inconsistent practices have been reported to the Civil Practice Division pertaining to requests for entry of additional taxed costs incurred by a judgment creditor after an execution has been issued which remains active, unexpired and not yet returned by an Officer. Also, inconsistent practices have been reported on how vicinage staff address the request to add new credits to an existing execution that can arise such as when multiple executions have been issued on the same case. For example, an Officer on a prior issued execution has collected thereon but has not yet returned the execution because it has not expired nor been fully satisfied, and the creditor dutifully reports new credit (money received from the first Officer on this prior execution) when they request the issuance of another execution in accord with existing court rules and practices. Subsequently, the first Officer returns his/her execution and dutifully reports on the same credit thereby causing an entry into the court's docket of the same credit twice which the creditor then seeks to amend consequently. Some vicinage staff reportedly request an additional affidavit or certification while other staff alter the credits upon being alerted via email or letter that this was a "double credit" scenario.

Civil Division Managers on the Committee noted that for staff, it would make it easier to have clear affidavits to know what those subsequent costs or credits are. Many times, an execution may not be reportedly correct and there is delay in responding to requests to amend active executions. SCP staff receive many requests to amend existing executions for various reasons and this could expedite the process by relying upon the affidavit. The Chair noted that judgment creditors are in charge of their judgments in New Jersey. The attorney would file these requests electronically via eCourts and self-represented creditors would do so via hard copy until such time that self-represented litigants can file in eCourts. Finally, Committee staff noted that the vernacular should be corrected so as to reference the Special Civil Part Office instead of the clerk and to clarify that upon any executions' return and/or a goods and chattel writ's expiration, said requests should be denied, not just in instances when an execution has been returned by an Officer marked fully satisfied.

The Committee agreed and the proposed rule amendments follow.

Rule 6:7-3 Wage Executions; Notice, Order, Hearing; Accrual of Interest, Costs and Credits

(a) … no change.

(b) … Accrual of Interest. The judgment creditor or the judgment creditor's attorney who seeks to recover interest that has accrued subsequent to issuance of the execution must file an affidavit or certification with the [clerk of the court] Office of the Special Civil Part setting forth the amount of accrued interest. A copy of the affidavit or certification shall be served personally or by certified mail upon the judgment debtor's employer by the judgment creditor or attorney. A copy of the affidavit or certification shall be sent by ordinary mail by the judgment creditor or attorney to the judgment debtor at the debtor's last known address and to the court officer who served the execution upon the judgment debtor's employer. The affidavit or certification shall state that the interest and the court officer fees thereon have been imposed pursuant to R. 4:42-11 and must be collected in accordance with same by the employer. The court officer shall give to the judgment creditor or judgment creditor's attorney at least 30 days' notice of intention to return the wage execution [fully satisfied]. The affidavit or certification shall be filed with the [clerk] Office of the Special Civil Part prior to the return of the [satisfied] wage execution by the court officer. An affidavit or certification filed subsequent to the return of the [satisfied] wage execution shall be returned by the [clerk] Office of the Special Civil Part to

the judgment creditor or attorney with a notation or notice that the wage execution has been returned [fully satisfied].

(c) Accrual of Credits and Costs. The judgment creditor or the judgment creditor's attorney who seeks to amend an active wage execution to adjust for credits received or to recover taxed costs set forth in R. 1:43 that may have accrued subsequent to issuance of the wage execution must file an affidavit or certification with the Office of the Special Civil Part setting forth the amount of credits received or costs accrued. A copy of the affidavit or certification shall be served personally or by certified mail upon the judgment debtor's employer by the judgment creditor or attorney. A copy of the affidavit or certification shall be sent by ordinary mail by the judgment creditor or attorney to the judgment debtor at the debtor's last known address and to the court officer who served the wage execution upon the judgment debtor's employer. An affidavit or certification filed subsequent to the return of the wage execution shall be returned by the Office of the Special Civil Part to the judgment creditor or attorney with a notation that their request to amend is denied because the wage execution is no longer active.

Note: Source - R.R. 7:11-5. Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1972 to be effective September 5, 1972; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraphs (a) and (b) amended July 19, 2012 to be effective

September 4, 2012; paragraph (a) amended March 7, 2017 to be effective immediately; paragraph (a) amended July 27, 2018 to be effective September 1, 2018; paragraphs (b) and (c) amended August , 2020 to be effective September 1, 2020.

Rule 6:7-4. Chattel Executions; Time at Which Levy Can be Made; Accrual of Interest, Credits and Costs

(a) … no change.

(b) … no change.

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

satisfied].

(d) Accrual of Credits and Costs. The judgment creditor or the judgment creditor's attorney who seeks to amend an active chattel execution to adjust for credits received or to recover taxed costs set forth in R. 1:43 that may have accrued subsequent to issuance of the chattel execution must file an affidavit or certification with the Office of the Special Civil Part setting forth the amount of credits received or costs accrued. A copy of the affidavit or certification shall be sent by ordinary mail by the judgment creditor or attorney to the judgment debtor at the debtor's last known address. The affidavit or certification shall be filed with the Office of the Special Civil Part prior to the return of the execution by the court officer and prior to the execution's expiration date. An affidavit or certification filed subsequent to the return of the execution or subsequent to the execution's expiration date shall be returned by the Office of the Special Civil Part to the judgment creditor or attorney with a notation that their request to amend the chattel execution is denied because the execution is no longer active.

Note: Adopted July 12, 2002 to be effective September 3, 2002; caption amended and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 19, 2012 to be effective September 4, 2012; paragraphs (c) and (d) amended August , 2020 to be effective September 1, 2020.

H. Proposed Amendment to *R.* 6:12-1(d) – Correct Reference to *Rule* 2:5-3

The Committee reviewed *Rule* 6:12-1(d) due to an incorrect reference to *Rule* 2:5-3(e) therein. The Chair noted that the reference in the rule should be corrected to reference *Rule* 2:5-3(f), as this rule provision pertains to preparation of transcripts in accordance with AOC standards. This change was considered housekeeping in nature and was approved by the Committee. The proposed rule amendment follows.

Rule 6:12-1. Recording and Transcript of Proceedings

(a) … no change.

(b) … no change.

(c) … no change.

(d) When No Record Is Made. In the absence of a stenographic or sound record of any proceeding, in the event of an appeal, a statement of proceedings shall be prepared as provided for by *R*. 2:5-3(f) [(e)].

Note: Source - R.R. 7:16-1(a) (b) (c). Paragraph (c) adopted July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended July 19, 2012 to be effective September 4, 2012; paragraph (d) amended August , 2020 to be effective September 1, 2020.

I. Proposed Amendments to *R.* 6:12-3(b) – Incorporate Directive #01-15 Requirements Pertaining to the Substitution of Deceased or Incapacitated Officers

Presently, under *Rule* 6:12-3(b), the court shall, by order, appoint another officer on an approved list to receive and complete the work of an officer who passes away or becomes incapacitated. The Civil Practice Division suggested that the rule be amended, so as to be in accord with existing judiciary protocols which were modified by the Court and the Acting Administrative Director on November 26, 2018 by way of the promulgation of the Supplement to Directive #01-15 (*Special Civil Part Officer Contingency Plan*).

The Directive Supplement requires Officers who serve post-judgment process to request the appointment of a Special Assistant Officer ("SAO") of their choosing that meet with the Presiding Civil Judge and Assignment Judge's approval. This person is pre-screened and selected to act as the primary Officer's assistant officer but also as the primary officer's Contingency/Succession Plan ("Plan") for the purpose to be pre-authorized to complete all previously assigned work only if/when the primary Officer is no longer available to do so because their appointment order is abruptly rescinded due to death, incapacity, abrupt retirement or termination. The SAO immediately takes over their primary officer's business upon timely procurement of his or her own bond for the purpose to complete all

work previously assigned summarily. Thus, the vicinage is no longer responsible to wind down an officer's book account and the delay caused therefrom is avoided when the SAO has already been appointed and issued their credentials.

The Committee approved and the proposed rule amendment follows.

Rule 6:12-3. Supporting Personnel

(a) … no change.

(b) Substitution for Officer Deceased or Otherwise Unable to Act. When an officer that serves post-judgment process dies or becomes incapacitated or for any other reason has their appointment order rescinded [is unable to act,] the court shall utilize that officer's predesignated and appointed special assistant officer, in accord with Administrative Directive, [by order appoint another officer on the approved list of the court] to proceed with and complete the execution of all [writs] work which had been previously assigned to the officer's predecessor [delivered to the deceased or incapacitated officer for execution] with the same power in all things yet to be done as the officer would have had, had the work assigned [executions] been delivered to the officer originally and had the officer done what was done by the officer's predecessor. [, except that the officer shall not be liable for any error or default of the officer to whom the executions were originally delivered.]

Note: Source - R.R. 7:21-4, 7:21-5; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 19, 2012 to be effective September 4, 2012; paragraph (a) amended August 1, 2016 effective September 1, 2016; paragraph (b) amended to be effective September 1, 2020.

J. Proposed Amendment to Appendix XI-G (Warrant of Removal Order)

The Committee considered a proposal made by a landlord/tenant practitioner and Committee member to amend Appendix XI-G (Warrant of Removal Order) to add text that *directs* local police to respond in lieu of current text wherein an Officer *request*s that the local police provide assistance. The proposal was made because there are times, in the opinion of several members, wherein the local police do not respond when requested to do so by an Officer while performing the execution of a warrant of removal. The presence of a police officer is necessary, when requested by an Officer, in order to keep the peace if necessary when he/she is attempting to execute a warrant for removal in a tenancy action, the tenant(s) fail to abide by the Officer's lawful commands and/or there may be a breach of the peace. Notwithstanding the current language in the warrant of removal, some local police departments are reportedly unresponsive or reluctant to respond when contacted by the Officer. The thought was that the appearance of the stronger phrase in the warrant of removal order, that they are directed to respond, would facilitate the cooperation of the local police department when needed for the safety of the Officer, to secure the premises and/or to prevent a breach of the peace.

Some members suggested that several municipal police departments might be under the misconception that a county sheriff is responsible to address, that the

landlord has to file a complaint in municipal court seeking the removal of the tenant, who is now considered a trespasser after service/execution of the warrant of removal, and/or that because the warrant of removal was issued in a civil landlord/tenant proceeding, they are not required to respond. However, the Civil Practice Division advised that they previously provided the Conference of Municipal Police Chiefs with a set of materials, which included but were not limited to, the warrant of removal order form, applicable excerpt from Court Officer Directive #01-15, a picture of the uniform badge and ID cards issued to all SCP Officers, etc., which sought to respectfully edify the local police chiefs as to their role in this regard. Special Civil Part Officers simply do not have the law enforcement authority of a municipal police officer.

The Committee last addressed this issue in 2002. By inserting stronger language wherein the local police are *directed* to assist gave members similar concerns of creating an appearance that the Judiciary was managing the deployment of police resources and for the Judiciary to maintain deference to their authority. However, it was noted that when an Officer requires assistance, they are reporting behavior to the police that not only reflects that a tenant is violating the court's SCP's warrant of removal order but also a potential breach of the peace. The Committee noted that several criminal statutes are being violated if the tenant(s) refuse to depart the rental premises or disobey the commands of the Officer, which include but are

not limited to, *N.J.S.A.* 2C:29-1 (disorderly persons offense to prevent an Officer from lawfully performing an official function or obstruct a government function) and *N.J.S.A.* 2C:29-9(a) (fourth degree offense to personally obstruct, disobey, hinder or impede the effectuation of the court's jurisdiction over any person, thing or controversy such as a warrant of removal order). Municipal police officers have the power under *N.J.S.A.* 40A:14-152 to arrest any disorderly person or person committing a breach of the peace.

The warrant of removal order currently recites the criminal penalty for landlords should they illegally evict a tenant or refuse to let a tenant back in if they were illegally evicted. Accordingly, in lieu of *directing* local police to assist upon an Officer's request, the Committee approved a recommendation to recite the aforementioned two criminal statutes in the warrant of removal order that are being violated by the tenant(s) when they fail to depart the rental premises and/or fail to obey the lawful commands of the Officer. The Committee approved to omit the word "request" to make clearer that the local police are authorized to assist.

It is the Committee's intent for this to clarify and facilitate assistance from the local police, since this is not merely a violation of a civil warrant of removal order, it is the reporting of a tenant's criminal behavior by the Court's appointed SCP Officer, that local police have the power to address in the normal course pursuant to *N.J.S.A.* 40A:14-152. The Committee is attempting to achieve a balance between

deference to local police, as to how or when local police choose to employ their resources when a crime is reported, with the need for police to in fact respond when an Officer reports criminal behavior.

The proposed amendments to the warrant of removal order (Appendix XI-G) follows.

WARRANT OF REMOVAL

(Una traducción al español comienza en la página 3)

Docket No.: _____

Plaintiff's Name
Plaintiff(s) - Landlord(s)
- vs -
Defendant's Name
Defendant(s) - Tenant(s)
(Address -- 1st Line)
(Address -- 2nd Line)
City, NJ 00ZIP

Superior Court of New Jersey
Law Division, Special Civil Part
Landlord/Tenant Section Any County
(Court Address -- 1st Line)
(Court Address -- 2nd Line)
City, NJ 00ZIP
Phone No. (XXX) XXX-XXXX

WARRANT OF REMOVAL

To: Name of Court Officer
(Special Civil Part Officer)

You are hereby commanded to dispossess the tenant and place the landlord in full possession of the premises listed above. A tenant commits a disorderly person's offense if he or she purposely obstructs the administration of law, other government function or prevents you from lawfully performing an official function by means of intimidation, violence or physical interference pursuant to N.J.S.A. 2C:29-1. A tenant commits a fourth degree offense if he or she purposely disobeys this warrant of removal order or hinders, obstructs or impedes the effectuation of the court's jurisdiction over any person, thing or controversy pursuant to N.J.S.A. 2C:29-9(a). If this occurs, the [L] local police departments are authorized [and requested] to provide assistance, if needed, to the officer executing this warrant.

To: Name of Defendant
(Tenant(s))

You are to remove all persons and property from the above premises within three days after receiving this warrant. Do not count Saturday, Sunday and holidays in calculating the three days. If you fail to move within three days, a court officer will thereafter remove all persons from the premises at any time between the hours of 8:30 a.m. and 4:30 p.m. on or after _____ (month) _____ (day), _____ (year). Thereafter, your possessions may be removed by the landlord, subject to applicable law (N.J.S.A. 2A:18-72 *et seq*.). The 3 day provision applicable to residential tenants does not apply to commercial property. Commercial tenants may be evicted at the time the warrant is served.

It is a crime for a tenant to fail to comply with the court officer's execution of the warrant of removal or to damage or destroy a rental premises to retaliate against a landlord for starting an eviction proceeding in court, and in addition to imposing criminal penalties, the court may require the tenant to pay for any damage.

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

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

Only a court officer can execute this warrant. It is illegal and a disorderly person's offense for a landlord to padlock or otherwise block entry to a rental premises while a tenant who lives there is still in legal possession. A landlord can only do these things in a distraint action involving non-residential premises. If your property has been taken or you have been locked out or denied use of the rental premises by anyone other than a court officer who is executing a warrant of removal you can contact the Office of the Special Civil Part for help in (a) requesting an emergency order to return your property and/or put you back into your home; and/or (b) filing a lawsuit requesting a judgment for money.

If you do not have an attorney, you may call the Lawyer Referral Service at (XXX) XXX-XXXX. Si usted puede pagar los servicios de un abogado, pero no conoce a ninguno, puede llamar a las oficinas del Servicio de Recomendación de Abogados del Colegio de Abogados de su Condado. Teléfono: (XXX) XXX-XXXX. If you cannot afford an attorney, you may call Legal Services at (XXX) XXX-XXXX. Si usted no puede pagar un abogado, puede llamar a Servicios Legales: (XXX) XXX-XXXX.

To: Landord XXXXX XXXXX
Address: XXXXXXXXXXX
City, NJ 00ZIP
Telephone: (XXX) XXX-XXXX

A person commits a disorderly person's offense if he or she does any of the following things after being warned by a law enforcement officer or other public official that they are illegal: (1) illegally evicts a residential tenant without a warrant of removal issued by a court or the consent of the tenant; or (2) refuses to immediately let the tenant who was evicted this way back into the premises to live there. A person who is convicted of an offense under this section more than once within a five-year period is guilty of a crime of the fourth degree.

"Illegal eviction" means to enter onto or into the rental premises and hold it by:

(1) any kind of violence including threatening to kill or injure the tenant;
(2) words, circumstances or actions which are clearly intended to incite fear, apprehension or a sense of danger in the tenant;
(3) putting the personal property or furniture of the tenant outside;
(4) entering peacefully and then, by force or threats, putting the tenant out;
(5) padlocking or changing the locks;
(6) shutting off vital services such as heat, electricity and water or causing them to be shut off; or
(7) any means other than a court officer executing a warrant of removal issued by a court.

To: Law Enforcement Officers

Tenants evicted without a warrant of removal are entitled to reenter and reoccupy the premises and shall not be considered trespassers or chargeable with any offense provided that a law enforcement officer is present at the time of reentry. It is the duty of the officer to prevent the landlord or anyone else from obstructing or hindering the reentry and re-occupancy of the dwelling by a tenant who was evicted without a warrant of removal executed by a court officer.

Date: _____ Witness: _____
(Judge)

_____
Clerk of the Superior Court

Certification of Service and Execution of Warrant of Removal

I hereby certify that I (check as applicable) __ served __ executed this warrant of removal as follows:

Date First Served: _____ Method of Service: _____
If Unserved, Why: _____ Must Vacate By: _____
Date and Time Executed: _____ Date Executed Warrant Posted: _____
Date Executed Warrant Served on Tenant: _____ Date Executed Warrant Served on Landlord: _____
Mileage Charge for Execution: $ _____ Additional Services Charge: $ _____
Additional Services Performed: _____

_____
Signature of Special Civil Part Officer

_____
Printed or Typed Name of Officer

[Note: Adopted effective January 2, 1989; amended June 29, 1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; amended July 10, 1998 to be effective September 1, 1998; amended July 12, 2002 to be effective September 3, 2002; amended July 28, 2004 to be effective September 1, 2004; amended July 27, 2006 to be effective September 1, 2006; amended March 7, 2017 effective immediately, amended July 27, 2018 to be effective September 1, 2018; amended August , 2020 to be effective September 1, 2020.]

K. Proposed Amendments to Appendix XI-J (Wage Execution Order)

The Committee's Chair submitted a proposal to amend Appendix XI-J (Wage Execution Order) so that it is consistent with the Court's July 29, 2019 promulgation of a self-represented litigant's kit on "*How to Object to a Wage Garnishment, CN12322*." Amendments to Appendix XI-J should mirror the published information contained in this kit, provided for the benefit of self-represented litigants, as it includes additional descriptions of deductions that are not presently reflected on Appendix XI-J. The Committee considered this a housekeeping matter and approved this recommendation.

The proposed amendments to Appendix XI-J (Wage Execution Order) follow.

Wage Execution

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

Order and Execution Against Earnings
Pursuant to 15 *U.S.C.* 1673 and *N.J.S.A.* 2A:17-56

Judgment Number _____
Writ Number _____ Issued _____
Name and Address of Employer Ordered to Make Deductions

_____
_____
_____
_____

Plaintiff

vs

_____

Designated Defendant
(Address)

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

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

Judgment Date		
Judgment Award.	$	_____
Court Costs & Stat Atty. Fees	$	_____
Total Judgment Amount	$	_____
Interest From Prior Writs	$	_____
Costs From Prior Writs	$	_____
Subtotal A	$	_____
Credits from Prior Writs	$	_____
Subtotal B	$	_____
New Miscellaneous Costs	$	_____
New Interest on this Writ	$	_____
New Credits on this Writ	$	_____
Execution Fees & Mileage	$	_____
Subtotal C	$	_____
Court Officer Fee	$	_____
Total due this date	$	_____

Plaintiff's Attorney and Address:

_____
_____
_____
_____

Date _____

_____
Judge

_____
Michelle M. Smith
Clerk of the Superior Court

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

_____
Court Officer

I RETURN this execution to the Court
☐ Unsatisfied ☐ Satisfied ☐ Partly Satisfied

Amount Collected	$	_____
Fee Deducted	$	_____
Amount Due to Attorney	$	_____

Date _____

_____
Court Officer

How to Calculate Proper Garnishment Amount

1. Gross [Salary] pay per pay period **$**

2. Less amounts legally required [by law] to be deducted [withheld]:
   a. [U.S.] Federal Income Tax $ _____
   b. Social Security (FICA or OASDI) [(social security)] $ _____
   c. Medicare _____
   d. State Income Tax [, ETT, etc.] _____
   e. Unemployment Insurance [N.J.] (SUI) _____
   f. Temporary Disability Insurance (TDI) $ _____
   g. Family Leave Insurance (FLI) $ _____
   h. Workforce Development Fund/Supplement Workforce (WFD/SWF) [Other State or Municipal Withholding] $ _____
   i. Other **[Total]** $ _____

3. Total allowable deductions [Equals "disposable earnings"]

4. Net pay (Subtract line 3 from line 1) (Follow steps 5-9) **$**

5. **If salary is paid:** **Exemption Amount:** **$**
   - weekly, then subtract $217.50
   - every two weeks, then subtract $435.00
   - twice per month, then subtract $471.25
   - monthly, then subtract $942.50

(Federal law prohibits any garnishment when "total allowable deductions" [disposable earnings"] are smaller than the exemption amount on line 5 [4]) - _____

6. Equals the amount potentially subject to garnishment (subtract line 5 from line 4 and if less than zero, enter zero) = _____

7. Take "total allowable deductions [disposable earnings"] (Line 3) and multiply by .25 $_____ x .25 = _____

8. Take gross pay [salary] (Line 1) and multiply by .10 $_____ x .10 = _____

9. Compare lines [5], 6, 7 and 8 - the amount which may lawfully be deducted is the smallest amount on line [5], line 6, line 7 or line 8, i.e., **$**

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

[Note: Former Appendix XI-I adopted effective January 2, 1989; amended June 29, 1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-J and amended July 13, 1994, effective September 1, 1994; amended September 27, 1996, effective October 1, 1996; amended July 30, 1997, effective September 1, 1997; amended July 28, 2004 to be effective September 1, 2004; amended July 3, 2007, to be effective July 24, 2007; amended July 2, 2008, to be effective July 24, 2008; amended July 9, 2009 to be effective July 24, 2009; amended November 6, 2013 to be effective November 25, 2013; amended July 22, 2014 to be effective September 1, 2014; amended August 1, 2016 to be effective September 1, 2016; amended March 7, 2017 to be effective immediately; amended August _____, to be effective September 1, 2020.]

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendment to *R.* 6:1-1(e) – Include Reference to Administrative Directive #01-15

The Civil Practice Division requested consideration be given to amend *Rule* 6:1-1(e) to specifically reference Administrative Directive #01-15, which sets forth in greater detail the service of pre and post-judgment SCP process required of Officers. The Committee noted that a specific reference to the applicable provisions of the Directive offers more information than the court rule. However, the Committee had concerns about referencing a specific Directive in the court rules since no other court rule appears to reference a specific Directive and only *Rule* 1:38-5(r) makes a generic reference to an Administrative Directive and not a specific one. Adding a reference to Directive #01-15 could be unduly complicated in the event the Directive subsequently changes or is repealed. The Committee ultimately rejected this proposal to specifically reference Directive #01-15 within *Rule* 6:1-2(e). In the alternative, the Committee recommended a non-rule recommendation that the comments to Gann's published court rules contain a reference under *Rule* 6:1-1(e) of the applicability of Directive #01-15. (See Other Recommendations, Section III, B. at p. 83 in this Report).

B. Proposed Amendments to *Rules* 6:3-2(b), (c) and 6:6-3(a) – On Assigned Claim Cases, Reference the Name of the Creditor at the Time of Charge-Off Rather than the Name of the Original Creditor

A Creditor's Bar Committee member requested consideration be given to amend *Rules* 6:3-2(b), (c) and 6:6-3(a) to offer more clarity to debtors as to who the original owner of the debt was for causes of action wherein the debt was subsequently assigned to another creditor. The suggestion was founded upon a believe that the debtor would better understand, on assigned claim cases, the basis of the lawsuit and why they are being pursued if the assignee (plaintiff) were required to include onto captions and complaints the name of the creditor that owned the debt at the time of last charge-off or closing of the account rather than the current requirement to include the name of the original creditor or owner of the debt.

On assigned claim cases, the Committee was originally tasked by the Court to develop court rules which would make it clear to consumers or debtors that when they receive original process, they better understand that the plaintiff pursuing them is for a debt previously incurred with a different creditor. The debtors would not ignore the service of process and more likely recognize why the plaintiff on an assigned claim case is pursuing the debt against them.

The Committee discussed the merits of the proposal and ultimately determined that the name of the original creditor is more favorable to achieve this

noted purpose than by requiring the name of the creditor at last charge-off that closed the account. The Committee rejected these rule amendment recommendations.

C. **Proposed Amendments to *R.* 6:3-4(d), 6:6-3(b) and Appendices XI-T and XI-U – Require the Landlord or their Attorney, if any, to Certify that Notices were Attached to the Complaint at the Time of Filing**

The Civil Practice Division requested the Committee to consider amending *Rules* 6:3-4(d), 6:6-3(b) and Appendices XI-T and XI-U to ensure landlord compliance with *Rule* 6:3-4(d) which requires that landlord/tenant complaints have attached thereto copies of all notices which the landlord intends to rely upon. Applicable notices are required to be submitted by the landlord or their attorney at the time of the filing of the landlord/tenant complaint. In addition, *Rule* 6:2-2(a) requires the SCP Office staff to include the attached notices with the complaint, that the landlord intends to rely upon, with the original service of process upon the tenant(s). The proposed recommendation was to require the landlord and the landlord's attorney, if any, to certify that they have complied with *Rule* 6:3-4(d). In other words, that the notices upon which the landlord intends to rely upon were, in fact, attached to the complaint at the time of filing. The clerical staff do not screen for this requirement. The landlord, not their attorney, would continue to have to certify that the facts in the notices are true and to the dates of service of those notices upon the tenant(s), in accord with *Rule* 6:6-3(b) and Appendix XI-T (Certification by Landlord).

The Committee was informed that in accord with *Rule* 1:5-6 and current case management practices, when a landlord/tenant summons and complaint is filed without notices, upon proper payment and screening by staff for venue, the complaint is docketed, accepted for filing, trial is scheduled and the pleadings served upon the tenants. Some members expressed concern that there is no recourse for when a landlord and/or their attorney should fail to attach the applicable notices at the time of filing of the complaint of which they may subsequently intend to rely upon at the trial date. After considerable debate, a sub-committee was formed to examine the proposal.

The sub-committee submitted various proposed versions of amendments to the Appendices and court rules that proposed requiring the attorney to now certify to the content of the notices, and/or to dismiss the case if a landlord or their attorney failed to attach the notices. Landlord attorneys noted that the notices are often previously prepared and served upon tenants by their clients, so they have no personal knowledge within which to certify to the merits of their content or dates of service. In addition, the rules already provide for the requirements for the notices to be attached, so there is no need to add an additional requirement to certify to it. A few members opined that *Rule* 1:5-6 could be amended, so that staff are given the authority to reject complaints that do not have these notices. However, by doing so, staff would have to perform an inappropriate higher level screening function

requiring them to review every complaint to determine if the cause of action stated therein requires notices. This was deemed impractical due to the nature of the work performed by clerical staff, provide them with too much discretion and would slow down the filing process considerably due to the volume of landlord/tenant cases filed. The Committee did not endorse any of the recommendations to amend these court rules or appendices.

D. Proposed Amendment to *R.* 6:6-4(a) and Appendices XI-V and XI-W – Add a Blank Signature Line on the Landlord/Tenant Settlement Forms to Indicate that the Judge has Approved of the Settlements

The Civil Practice Division requested the Committee to consider amendments to *Rule* 6:6-4(a) and Appendices XI-V and XI-W (Consent to Enter Judgments for Possession Settlement Forms) by adding a blank signature line at the bottom of each settlement form for the judge to sign to indicate that the judge has reviewed and approved of the agreement when necessary to do so, which is when the residential tenant is unrepresented. The recommendation was based upon *Rule* 6:6-4(a) which arose from the seminal case of *Community Realty Management, Inc., v. Harris*, 155 N.J. 212 (1998). In *Harris*, the Court held that for a consent judgment to be valid, like a contract, the parties' consent must be knowing and informed and there must be a proverbial meeting of the minds. The *Harris* opinion found that no jural act was evident at the trial court in the landlord's case against Harris, an unrepresented residential tenant, and a clerk's notation insufficient, so no proper form of judgment was entered. In response to the *Harris* opinion, to avoid unfair treatment of self-represented residential tenants, procedures for the handling of consent judgments or settlements were created.

On November 1, 2001, the Court adopted *Rule* 6:6-4(a) which states, in part, that a stipulation of settlement or an agreement that provides for entry of a judgment for possession must be written, signed by the parties, and presented to a judge on the day of trial or as the judge otherwise directs, but if it requires the tenant to both pay rent and vacate the premises, the judge shall review it in open court." (Emphasis added). The proposal to add a blank judge's signature line to both consent to enter judgment for possession settlement forms would reflect that the judge has, in fact, approved the settlement for the unrepresented residential tenant in instances wherein the tenant remains and pays, or vacates without agreeing to pay, the rental premises. Agreements that provide for the tenant to both pay and vacate are approved by a judge on the record in open court.

Some members relied upon the provision of the rule which states, *as otherwise directed by the judge*, indicating to them that this proposed amendment to this rule and Appendix forms would conflict with the current rule's provision and therefore should not provide a requirement for a judge to always have to approve and sign these agreements when the residential tenant is unrepresented. They opined that the rule currently provides discretion to the judge, as to whether or not these settlements should be presented to them for their approval when it is an agreement other than a pay and vacate settlement, and so it should not be mandated.

However, it was noted that this might be a misinterpretation of the rule's application and contrary to the intent behind the *Harris* opinion which was thought to stand for the premise that judges are supposed to approve of all landlord/tenant agreements entered into by unrepresented residential tenants and that pay and vacate agreements are the only type of agreement requiring approval on the record. Thus, the proposed judicial signature line would indicate those instances wherein the judge dutifully approved of an unrepresented residential tenant's settlement agreement that was not required to be placed onto the record. It was opined that the noted language "*as otherwise directed by the judge*," provides the judge with discretion as to <u>when</u> they review and approve of the unrepresented residential tenant's written agreement, not that the judge has discretion to review and approve it or not.

Some judicial committee members noted that the volume is so large on a typical landlord/tenant trial calendar that there would not be enough time for a judge to review all the agreements entered into by unrepresented residential tenants and sign the forms indicating that they have done so. The proposal would delay the judge's ability to effectively administer to large calendars, inadvertently cause adjournments and require the litigants and their attorneys to remain in the court, even after they have reached a settlement, until the judge has indicated on the settlement form (by signing it) that he/she has approved of it. The judge can decide, on a case-

by-case basis, if necessary to review and approve of the settlement and/or to sign the form.

Instances wherein the tenant is paying and vacating are required to be approved by the judge on the record, which negates the need for a requirement to have a judge sign the pay and vacate settlement form (Appendix XI-W). However, in response it was noted that the vacate and pay settlement form (Appendix XI-W) is used when the unrepresented residential tenant has either agreed to vacate and not pay, or vacate and pay, and the vast majority of instances when this particular vacate settlement form is used is in the former instance, when a tenant has agreed to vacate only. Thus, the judge's requirement to approve an unrepresented residential tenant's settlement (pay and vacate) on the record occurs in the smallest of instances.

No motion was ultimately made to recommend this proposal and it was rejected by the Committee.

E. Proposed Amendment to *R.* 6:6-4(b) – Clarify that Approval on the Record by Judge Required for Represented Tenants on Pay and Vacate Settlements

A Special Civil Part Judge on recall requested consideration be given to amend *Rule* 6:6-4(b) for the purpose of clarifying that pay and go landlord/tenant settlements must be reviewed and approved on the record when a tenant is represented by an attorney. Members disagreed, concluding that the seminal case of *Community Realty Management, Inc., v. Harris*, 155 N.J. 212 (1998) provides that this type of agreement should go on the record for unrepresented residential tenants only. It was thought that the proposal would cause unnecessary delay if required for every applicable case that is resolved via a pay and vacate agreement, when the tenant is represented. More settlements could be facilitated by not requiring this upon judges during a very busy and voluminous calendar.

No motion was made to approve and the Committee rejected the proposal.

F. Proposed Amendments to *Rules* 6:6-5 and 4:42-8(c) – Incorporate Reference to *Rule* 1:43

A Creditor's Bar Committee member requested consideration be given to amend *Rule* 6:6-5 for the purpose to make clearer that all previously paid filing fees required per *Rule* 1:43 be taxed into the costs *pro forma* by the clerk upon the entry of judgment by a judge. He reported that not all counties were uniformly doing so, noting that when judgment was getting entered by a judge via a successful summary judgment motion, successful motion to strike a pleading for failing to answer discovery demands, successful trial, etc., staff are not entering the previously paid filing fees as taxed costs, at that time, in violation of *Rule* 6:6-5. Moreover, the court and/or staff in a few counties are incorrectly requiring the submission of an additional certification in support thereof.

A Creditor's Bar member from the Supreme Court's Civil Practice Committee requested consideration be given to amend *Rule* 4:42-8(c) to also incorporate reference to *Rule* 1:43 for the purpose to make more clear that all previously paid filing fees, required per *Rule* 1:43, should be entered as taxed costs by staff *pro forma* without need for any additional certification in support thereof. The proposal to amend *Rule* 4:42-8(c) similarly sought to offer needed clarity to the judiciary's clerical staff that a judgment creditor submit an affidavit or certification in support of a request to enter various costs as taxed costs, but this is not needed for previously

court paid filing fees that are required under *Rule* 1:43. Reportedly, *Rule* 1:43 filing fees previously incurred by the prevailing party or judgment creditor, such as the $25 filing fee for (DC) motions, are not uniformly being entered automatically by court staff at the time of entry of judgment as taxed costs, and incorrectly require an additional certification or affidavit to be filed in support thereof.

The Committee rejected the proposals, indicating that it was not necessary to amend these rules, as they already provide for the authority for staff to automatically enter *Rule* 1:43 filing fees as taxed costs. Members commented that the issues raised resulted from misapplication or misinterpretation of *Rules* 4:42-8(c) and 6:6-5 by some vicinage staff. However, the Committee desires uniform case management practices and alternatively offered a non-rule recommendation to address this issue, which is reflected subsequently in this Report. (See Other Recommendations, Section III, A. at pp. 79-82).

III. OTHER RECOMMENDATIONS

A. Certain Filing Fees Should not be Allowable as Taxed Costs and Clarification that all other Paid Filing Fees, Required under *R.* 1:43, be Entered *Pro Forma* as Taxed Costs

As previously expressed in this Report under proposals not recommended for adoption (Section II., F., *Proposed Amendments to Rules 6:6-5 and 4:42-8)*, the Committee rejected a proposal that would have specifically referenced *Rule* 1:43 therein for the purpose to clarify that filing fees required to be paid under *Rule* 1:43 should be entered as taxed costs for the prevailing party *pro forma* by staff. Uniform case management practices were sought as some vicinages reportedly require additional certifications in support of entry of previously paid filing fees as taxed costs at the time of entry of judgment or request for issuance of executions and others do not. The Creditor Bar's position is that filing fees, that were required to be paid to SCP under *Rule* 1:43, are reflected in the court's computer fee system. So, when the party prevails (obtains judgment), all those filing fees that have been paid, per *Rule* 1:43, be entered automatically by court staff as taxed costs without necessity of further certification or application in support thereof. In addition, it was noted that the court's computer programming has historically automatically entered most previously paid filing fees as taxed costs for the convenience of judiciary clerical

staff, either at the time of entry of judgment or at the time of requesting an execution, so a certification in support of same is also not necessary.

Effective November 17, 2014, *Rule* 1:43 ("Filing and Other Fees Established Pursuant to N.J.S.A. 2B:1-7") set forth the schedule of SCP filing fees and all other fees payable to the court that were revised or established as authorized by *N.J.S.A.* 2B:1-7. Some of the new SCP filing fees created at that time, included but not limited to, was the Special Civil (DC) motion filing fee of $25, which is not automatically entered as a taxed cost by the judiciary's computer programming and reportedly not by staff manually in only a few vicinages. In response to this proposal to include specific reference to *Rule* 1:43 into *Rules* 4:42-8 and 6:6-5, concerns were raised as to whether certain filing fees, per *Rule* 1:43, ought to become the responsibility of a judgment debtor to repay. The Civil Practice Division advised of a uniform court procedure whereby Special Civil (DC) motion filing fees are denied, as taxed costs against a judgment debtor, if the judgment creditor did not prevail on that motion. It was also discussed whether it is fair for the judgment debtor to have to incur taxed costs in instances when a judgment creditor previously filed and paid for a substitution of attorney.

The definition of "prevailing party" was discussed. Some LSNJ members opined that the court should entertain the ability of a defendant, who successfully defends a lawsuit, to recoup their filing fees as taxed costs and ostensibly be

considered a "prevailing party" notwithstanding that no judgment is entered against the plaintiff (e.g. the defendant recouping filing fees that they paid for the answer, a successful summary judgment motion, etc.). The Committee did not endorse that concept and believed that the judgment creditor (party that obtains a judgment) is the "prevailing party." Thus, the judgment creditor is the only party entitled to taxed costs.

The Committee noted that *Rule* 1:43 currently states, next to certain filing fees, that they are not an allowable taxed cost. For example, assignment of judgment and warrant of satisfaction filing fees are not an allowable taxed cost and this language appears in parenthesis next to these specific filing fees. Committee staff suggested that the same text could similarly be inserted in parenthesis next to substitution of attorney and SCP motion fees, "*not an allowable taxed cost"* and add, "*motions not granted*" for the SCP motion-filing fee.

As previously stated, the Committee did not believe amendments to *Rules* 4:42-8 and 6:6-5 were necessary inasmuch as these rules, and applicable statutes, currently provide the authority for staff to automatically enter previously paid filing fees as taxed costs. The Committee was presented with *N.J.S.A.* 2A:18-69, which states that "the actual cash disbursements of the prevailing party for any fees paid to the clerk and witness and officers' fees shall be allowed as taxed costs." (Emphasis added) However, the Committee recognized a need for clarity and uniformity in

vicinage case management practices, and recommended the following non-rule recommendations: (1) Acting Administrative Director should issue a clarifying statement to vicinage staff that the judgment creditor, as the prevailing party, is entitled to have all paid filing fees, required under *Rule 1:43,* be entered as taxed costs *pro forma*; (2) At the time of entry of judgment, a certification or affidavit in support of entering previously paid filing fees as taxed costs is unnecessary and (3) *Rule* 1:43 should be clarified for equity and fairness sake that previously paid filing fees for a substitution of attorney, and for (DC) motions that are not granted, should not be allowable as taxed costs.

B. Reference to Directive #01-15 in the Comments Section Only to *R.* 6:1-1(e)

As previously expressed in this Report under proposals not recommended for adoption (Section II., A., *Proposed Amendments to Rule 6:1-1(e))*, the Committee rejected a proposal that would have specifically referenced Directive #01-15 within *Rule* 6:1-1(e) for the purpose to offer more information and clarity as to the role of SCP Officers serving pre and post-judgment process. The Committee noted that a specific reference to the applicable provisions to Directive #01-15 offers more information than the court rule. However, the Committee had concerns to reference a specific Directive in the court rules since no other court rule appears to reference a specific Directive and only *Rule* 1:38-5(r) makes a generic reference to an Administrative Directive and not a specific one.

Accordingly, in lieu of specific reference to Directive #01-15 within a court rule, the intent to offer more clarity and information can be achieved by adding a reference of the applicability of Directive #01-15 to the comments section of published court rule books to *Rule* 6:1-1(e).

Respectfully Submitted,

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