

**MIDDLESEX COUNTY CHANCERY DIVISION
GENERAL EQUITY PART
PRACTICE MANUAL
2017 Edition**

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PRACTICE MANUAL**

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DEDICATION

This manual is dedicated to all of the Judges who have served in the Chancery Division, General Equity Part in Middlesex County. Particular thanks are directed to former Presiding Judge Joseph C. Messina, who authored, as legend has it, the 2003 edition of this Handbook. We also thank the tireless efforts of Risa Chalfin, Esq., and Leslie Barham, Esq., for their assistance in revising this 2017 edition of the Handbook. Finally, we would be remiss, however, if we did not specifically recognize immediate past Presiding Judge Frank M. Ciuffani and Assignment Judge Travis L. Francis. Both represented the best of the Judiciary as they possessed a powerful combination of intellect, practicality and compassion.

Hon. Arnold L. Natali, Jr., P.J. Ch.

Hon. Arthur Bergman, J.S.C.

INTRODUCTION

Over the years, practices and preferences of the members of the judiciary change. The Superior Courts of New Jersey are moving towards universal e-filing, and more and more communications are occurring by email and telephone, rather than in-person or letter. This guide has been prepared for use by those practicing law in the Middlesex Vicinage Chancery Court, General Equity Part, to navigate the landscape in an effort to assist attorneys when presenting cases to the judiciary. While the information contained herein has only been adopted, and is only intended for use, in the Middlesex Vicinage, we are hopeful that the lessons contained herein can be used across the board.

This manual is to be used as an aide when filing an action, and demonstrates what is needed to present a case in this Court, and what can be expected from the judiciary. When in doubt, call the Court. Relevant contact information for the Court is attached as Appendix A. The law clerk or judicial staff will be happy to assist and guide you through the process, rather than having to correct mistakes throughout the pendency of a case. Finally, we attach as Appendix B is a list of treatises that may assist counsel and the parties in framing equitable disputes and presenting arguments and proofs before the Chancery Court.

MIDDLESEX COUNTY CHANCERY DIVISION PRACTICE MANUAL

I. PURPOSE AND GOALS

This practice manual is meant to provide guidance to attorneys, support staff, and court staff in their daily interaction with the Middlesex County Chancery Division, General Equity Part. These are the current procedures and forms that are generally accepted standards of practice for this vicinage, but they are not the only method of filing and practice. Counsel is encouraged to expand or improve the procedure through flexibility in unanticipated situations. This policy and manual are drafted around the belief that justice follows common sense and the efficient utilization of the resources of the civil justice system. This manual incorporates applicable provisions of the Rules of Court and Statutes. In the event of a conflict between local practice and Court Rules or Statutes, the latter shall prevail.

A. How to Use the Manual

1. Guide to Court Personnel

It is recognized that the differing requirements of judges or court staff produces confusion, unnecessary expense and inconsistent results to litigants otherwise similarly situated. To the extent possible, those contingencies should be eliminated by adherence to one uniform set of standards in the Chancery Division, General Equity Part, in the Middlesex Vicinage, as promulgated by this manual.

2. Guide to Litigants

This manual is intended to advise litigants who utilize the Middlesex Vicinage Chancery Division, General Equity Part, of the expected requirement for most filings and applications. If litigants conform to the standards set forth in this manual, the pleadings will be more focused and in compliance with applicable

rules, thus obviating wasteful effort, multiple amendments, and supplementary filings. The guide will also direct litigants to the judges immediately responsible for their cases.

II. ORGANIZATION OF THE CHANCERY DIVISION

A. Judicial Assignments

1. Staffing

The Middlesex Vicinage Chancery Division, General Equity Part currently consists of two Judges: the Hon. Arnold L. Natali Jr., Presiding Judge, Chancery, and the Hon. Arthur Bergman, J.S.C. Each Judge is assisted by a law clerk and permanent staff consisting of a court clerk and secretary. Law clerks each serve a one-year term, commencing during the last week of August each year.

Litigants are advised that if there is a special need for a certified shorthand record for a proceeding they should contact the Judge's staff at least two working days in advance to so advise. That being said, each courtroom is equipped with CourtSmart software and records each proceeding. A copy of the recording or a transcript of the proceeding can be ordered.

2. Case Allocation

With exceptions, which may be made by the Assignment Judge or the Presiding Judge, cases will be assigned to the Chancery Division Judges by docket number, with each judge taking every other new Chancery matter. Please note that the Assignment Judge reserves the right to assign a Chancery matter to him/herself for direct handling. All foreclosure docket cases will be evenly divided. All probate matters will be handled by Judge Bergman.

Prior to assigning each new “Chancery” matter a docket number, the Presiding Judge will review the matter to determine whether it is appropriately venued in the General Equity Part. Should either the Assignment Judge or the Presiding Judge determine a matter is appropriately venued in the Law Division; the Presiding Judge will issue an Administrative Order transferring the matter, sua sponte. Of course, the litigants may also seek a transfer of a Chancery Division matter on motion and in accordance with R. 4:3-1. If a previously filed Chancery Division matter is reassigned to the Law Division, the matter will be assigned a Law Division docket number.

3. Support Staff

The Middlesex Vicinage Chancery Division, General Equity Part, shall be assigned vicinage clerical support staff under the immediate control of the Assignment Judge and the Trial Court Administrator or their designee. The number and designation of such personnel shall be within their discretion given workload, budgetary considerations, and applicable civil service rules. Notwithstanding direct supervisory control, staff assigned to responsibility for Middlesex Vicinage Chancery Division, General Equity Part filings shall work in close concert with the Presiding Judge of the division and follow the directions of this policy and manual. All substantive and procedural directions shall be at the discretion of the Assignment Judge and the Chancery Division Presiding Judge.

B. Case Coordination and Information

All initial and general inquiries regarding filings should be directed to the Chancery Team in the Civil Records Office. Scheduling inquiries and substantive questions should be directed to the appropriate Judge's law clerk.

III. GENERAL FILING PROCEDURES

A. Initial Filings

Like all matters before the Court, all Chancery filings are to be filed as required by the Rules of Court. Most initial filings are commenced by way of Complaint and should be filed with the Clerk of the Court. Actions instituted by Order to Show Cause (“OTSC”) seeking Temporary Restraints (“TRO”) must be filed with the Clerk of the Court, but should also be concurrently submitted to Chambers given the urgency of these matters. Probate cases are to be filed directly with the Middlesex County Surrogate.

At this time, Chancery is not participating in e-filing, though it is anticipated that will commence soon after the pilot program in the Law Division is concluded.

Upon the filing of a chancery matter, before the entry into the Automated Case Management System (“ACMS”) to assign a docket number, each Complaint will be reviewed by the Presiding Judge to confirm whether the matter is appropriately venued in the Chancery Division, General Equity Part. This is to ensure that all matters filed in Chancery belong in Chancery.

It should be noted that in addition to the Chancery Court, litigants now have available the Complex Business Track in the Law Division for matters involving large business disputes that are not suited for a Chancery filing. The Complex Business Track, much like Chancery, permits for total handling by the Complex Business Judge. At the

time of publication, the Middlesex County Complex Business Court is presided over by the Honorable Arnold L. Natali Jr., P.J.Ch.

B. Chancery Filings Instituted By OTSC Seeking A TRO

1. General

Litigants who initiate an action by OTSC seeking a TRO shall do so by applying to the Presiding Judge. Depending upon availability, the Presiding Judge may assign the matter to Judge Bergman or the Assignment Judge may decide to hear the application.

2. Clerk/Litigant Communication

a. TRO Applications

If the matter contains a request for a TRO, as noted, pro se litigants or counsel should first call the Presiding Judge’s Law Clerk to advise of the matter being filed and the emergent relief sought. The Law Clerk will advise if the matter will be heard by the Presiding Judge, Judge Bergman, or another Judge. During the initial phone call with the Presiding Judge’s Law Clerk, the attorney should be prepared to supply the following information to the Judge through his/her law clerk:

- 1. Outline of the claim for relief sought;
- 2. Emergent nature of the problem;
- 3. Identity of parties and counsel;
- 4. Notice to adversary of the pending application; and
- 5. If opposition is anticipated.

On any request for a TRO, counsel should timely file any and all documents at the Courthouse and be prepared, if an emergent hearing is

sought, to present their case upon filing. If possible, the papers should be filed with the Court and served on one's adversary concurrently. Unless urgency is apparent, an ex parte hearing will not be granted by the Court.

b. The Law Clerk

The Law Clerk will review the matter with the assigned Judge for scheduling of the formal application by counsel, with formal pleadings and certification, and direct the applicant as to the method and timeliness of notice required to be given to the adversary.

Upon the scheduled hearing of the initial application for a TRO, litigants shall present to the Court all required pleadings and fees. The Law Clerk will secure a docket number from the vicinage Clerk's Office and affix it to the pleadings. The file will be retained by the emergent application Judge until a disposition of the first proceeding on the Order to Show Cause. If the Order to Show Cause is returnable in less than two weeks, the file shall remain with the assigned Judge. If the Order to Show Cause shall be set at a greater than a two-week period, the papers are forwarded to the Clerk's Office for storage.

C. Motion Practice

1. General

The Chancery Division controls its own motion practice and generally conforms with the schedule of Law Division motion days as promulgated by the Supreme Court. The Court will, however, retain significant latitude to assign specific motion days based on the complexity of issues, availability of counsel, and the

Court's own trial schedule. Assignment of special motion days may be accomplished by informal telephonic application without the necessity of formal pleadings.

Notably, the Probate Motion calendar is set by the Surrogate. Those motion days are generally non-motion Fridays. All inquiries regarding Probate should be directed to the Deputy Surrogate rather than the Law Clerk.

2. Internal Management of Motions

In order to ensure timely preparation and coordination of filed motions, the vicinage Clerk's Office will sort out the Chancery filings and segregate all motions, opposition to motions and replies thereto. The Clerk's Office thereafter will segregate those papers for pickup by the appropriate Judge's law clerk. Motion practice papers as well as orders submitted therewith will not be placed in routine house mail. Each day the Judge's law clerk will pick up all motion papers from the Clerk's Office. With the advent of e-filing, this procedure will unquestionably change. It is still strongly encouraged that each attorney send a hard copy courtesy copy of each filing directly to each Judge, rather than rely upon the Clerk's Office or the e-Filing mechanism.

a. Maintaining a Motion List:

Each Judge's law clerk shall be responsible for maintaining a current motion list and will prepare a hard copy list of motions no later than Friday of the first week of the motion cycle. That list shall reflect the caption, docket number, summary of relief sought, by whom and whether opposition and reply papers have been received. The decision to grant oral argument will be decided on the Wednesday or Thursday prior to the motion Friday.

Lawyers will receive a call from Chambers if oral argument is granted and the time at which to appear. If you do not receive a call by Thursday morning, attorneys are encouraged to call Chambers to confirm if an appearance is not necessary. Following each motion day, the disposition will be entered into the electronic system and all Orders will be posted on the Middlesex Judiciary's Website found at njcourts.gov. Orders will not ordinarily be mailed to litigants.

b. Entry of Orders:

To the extent possible, the motion Judge will sign all orders on the motion day. It shall be the responsibility of the Court Clerk to place the original of each signed order in the file before returning the file to the record room. All signed orders will be posted at njcourts.gov for litigants to retrieve and serve on their adversary. It is the goal of the Court to have all motions posted by the Wednesday following the motion day.

c. Adjournment Policy:

To obtain an adjournment, please first consult all parties and try to obtain consent. Armed with that knowledge, counsel may call the Law Clerk and request an adjournment. The Law Clerk will request a letter to consult with the Judge. If the request is granted, a confirming letter will be sought. Letters can be faxed to the Court.

d. Opinions on Motion Rulings:

If a motion requires an explanation of the Court's reasoning, the Court Rules require either an oral opinion from the bench or a written

opinion (see R. 1:6-2(f) and R. 1:7-4). In the event the matter is disposed of on the papers by an opinion delivered orally, it will be so noted on the Order. To obtain a copy of the ruling, please contact the transcript department. A copy of the audio recording or a transcript can be ordered.

e. **Local Practice Requirements¹**:

1. Motions will generally be heard on Law Division motion days.
2. The original Notice of Motion should be filed with the Chancery Clerk of the Superior Court in Civil Records in accordance with local filing rules, with a copy to Chambers.
3. Originals and filing fees should not be sent directly to Chambers, but rather directly to the Clerk's office.
4. Notices of Motion on non-dispositive motions should be filed and served no later than 16 days prior to the return date, with Answers and Responses served and filed 8 days prior to the return date.
5. Opposing Certifications and Cross-Motions must be filed and served 8 days prior to the return date, with Answers and Responses served and filed 4 days prior to the return date.
6. Chancery Judges will deem all motions to be "on the papers" unless oral argument is specifically requested and granted by the Judge. The law clerk will contact the parties two days before the return date of any motion to schedule oral argument.
7. To obtain a Ready Hold time, the applicant requesting the delay should obtain consent of all parties.
8. A proposed form of order should be filed along with all motion papers.

¹ While the Law Division has recently transitioned to e-filing, the Chancery Division still requires paper filing. When the Chancery Division transitions to e-filing, please note that a courtesy copy of all filings must still be delivered to Chambers. With regard to emergent applications, a hard copy must still be delivered to Chambers should the relief be emergent. Any emergent application filed electronically, or sent by regular mail, will be typically reviewed in the normal course, rather than on an emergent basis.

D. Case Management and Scheduling

The Court will schedule a Case Management Conference following receipt of an Answer joining issue or upon the return date of an Order to Show Cause whenever possible, setting forth a discovery calendar, motion practice return dates, and a good-faith trial date. If such Case Management Conference does not feasibly resolve the necessary issues at that time, the Court will set down a special date for a further case management conference within a period not to exceed 30 days, at which time the parties will be directed to address discovery needs and trial preparation. All Case Management Conferences will be memorialized by a Case Management Order that the Court may direct to be drafted by counsel. It shall be the responsibility of the Judge's law clerk to ensure the submission of such orders by counsel. Notwithstanding a formalized court order, each Judge will be required to provide notice to the Presiding Judge's court clerk, with all trial dates.

E. Foreclosure Management

This vicinage only receives notice of a foreclosure action when the foreclosure section of the Superior Court Clerk's Office forwards a matter with a Contesting Answer to the Chancery Judge for the assigned venue. It is the goal of the Court that within five (5) days of receipt of the file, the assigned Judge will either send out a notice scheduling the matter for a Case Management Conference ("CMC") or send out a Case Management Order ("CMO") setting forth relevant pre-trial and trial dates. If a Case Management Conference is required or ordered in a foreclosure matter, the notice will require the parties to advise the Court of all issues in dispute and anticipated discovery needs. Any scheduled conference is mandatory, and an unexcused absence may result in either default or dismissal. The CMC may be adjourned if a substantive motion addressed to the pleadings

has actually been filed before the CMC date. In that event, the CMC will be held if the issues are still viable immediately after such motion is resolved. Except in unusual circumstances, discovery in foreclosure matters will be concluded within 90-120 days with trial set within 180 days.

IV. SUBSTANTIVE GUIDELINES AND MIDDLESEX COUNTY CHANCERY DIVISION REQUIREMENTS

A. Injunctive Relief

1. When Does a Complaint Belong in the Chancery Division?

The fact that a complaint seeks injunctive relief or may be initiated by an Order to Show Cause does not automatically mean it should be filed in the Chancery Division. The Chancery Division hears actions in which the plaintiff's *primary* right, or the *principal* relief sought, is equitable in nature. If the primary relief sought is legal in nature, and any restraints sought are merely ancillary to that primary legal relief, then the matter does not belong in the Chancery Division. Rather, it belongs in the Law Division, which has co-extensive power to afford equitable relief. Cases frequently misfiled in the Chancery Division include actions for declaratory judgment, which almost always belong in the Law Division.

B. Orders to Show Cause ("OTSC")

1. Three Primary Types

Generally, there are four circumstances when an Order to Show Cause may be considered by the Court:

a. OTSCs brought under R. 4:67-1(a): Summary Proceedings.

OTSCs brought under R. 4:67-1(a) are framed as summary proceedings. On the return date, the plaintiff requests final

judgment on all or some portion of the claim contained in the complaint. R. 4:67-1(a) applies only to those actions in which the court is permitted by rule or by statute to proceed in a summary manner.² Where the order to show cause issues under R. 4:67-1(a), it may be presented to the court *ex parte*, so no summons shall issue. Where a litigant wishes to proceed summarily but no statute or rule so permits, the litigant can make a motion pursuant to R. 4:67-2(b) to proceed summarily, but such motion must be served with the complaint and summons.

Appendix C, Exhibit 2 (*Form CN 10704 (Appendix XII-F)*) is an Order to Show Cause as a Summary Action.

b. OTSCs brought under R. 4:52 – Injunctions.

OTSCs brought under R. 4:52 seek injunctive relief, either immediately or on the return date. Such OTSCs may be sought at the inception of a case, simultaneous with the filing of the complaint, or during the pendency of an action. In the former situation, the plaintiff files the Verified Complaint and concurrently applies for an order requiring the defendant to show cause on the return date why an interlocutory injunction should not issue pending final disposition of the action. The complaint must be verified to the plaintiff's personal knowledge.

² When an applicant seeks an OTSC under R. 4:67-1(a) but fails to cite the rule or statute which permits the summary action, the law clerk may contact the applicant to provide such permitting rule or statute. If the applicant cannot identify such Rule or Statute, the applicant will be directed to file a motion pursuant to R. 4:67-2(b), which will be returnable after the opposing party has an opportunity to answer.

Temporary Restraints.

As a general matter, where a plaintiff seeks an order requiring a defendant to show cause why an interlocutory injunction should not be granted, the order to show cause is not permitted to include any temporary restraints or interim relief. R. 4:52-1. However, there are two exceptions to this general proposition: the order may include such temporary restraints where the defendant either had notice, whether formal or informal, of the application and opportunity to be heard, or the plaintiff has shown that he or she will probably suffer immediate and irreparable damage before notice can be given. R. 4:52-1; and see, e.g., Sherman v. Sherman, 330 N.J. Super. 638, 643-44 (Ch. Div. 1999); In re Adoption of Child, 444 N.J. Super. 83, 90-91 (App. Div. 2016).³

If temporary restraints are imposed without notice to the defendant, then the Order must provide that the defendant may move to dissolve or modify the restraints on two-days' notice. The terms of the OTSC may continue the restraint until further order of the Court, but it shall be returnable within 35 days. The OTSC must provide the time within which the defendant is to serve and file its answer, and advise the defendant that if he fails to do so timely, default judgment may

³Litigants should be on notice that ex parte applications for a TRO request extraordinary relief and are reserved for those rare circumstances that temporary injunctive relief must be issued without notice to prevent irreparable harm prior to a noticed hearing.

be entered against him. The OTSC may itself serve as process, as long as it contains all required information as per R. 4:52-1(b).

Appendix C, Exhibit 3 (*Form CN 10705 (Appendix XII-G)*) is an Order to Show Cause why a preliminary injunction should not be granted, and Appendix C, Exhibit 1 (*Form CN 10308 (Appendix XII-H)*) is an Order to Show Cause With Temporary Restraints.

c. OTSCs brought under R. 1:10-2 and R. 1:10-3: Contempt of Court and to Enforce Litigant's Rights.

OTSCs for Contempt of Court, under R. 1:10-2, are sought to punish a party for failing to obey an order of the court. Applications for contempt require applicants to comply with strict and lengthy procedures in order to prevail. Thus, they are far more stringent than OTSCs to Enforce Litigant's Rights under R. 1:10-3, which are sought in order to compel compliance with an order of the court. Thus, when an applicant's intent is to influence their adversary to comply with a Court Order, it will likely be best to seek an OTSC under R. 1:10-3. In addition, R. 1:10-3 permits the Court to award counsel fees for services rendered on a successful application.

2. Filing Guides for Practitioners

Orders to Show Cause must be accompanied with supporting affidavits when filed with the Court. Three copies of the OTSC must be filed with the Court, and if the Judge to whom the application is assigned is known (i.e., an OTSC where the case is already pending), a copy of the OTSC shall also be simultaneously submitted to the Judge. OTSCs that are brought at the inception of a case will be

assigned to a Judge after they are docketed. However, OTSCs which are brought at the inception of a case but seek temporary restraints should be filed directly with the Presiding Judge or the designated emergent Chancery Judge's Chambers, whose law clerk will provide an emergent docket number and collect the filing fees. The notice of the initial application for an OTSC does not need to be given to adverse parties unless temporary restraints or a receivership are being sought.

The filing fee for an OTSC is \$50.00, but if it is filed with a Verified Complaint at the inception of a case, the filing party will also have to pay the \$250.00 fee for the Complaint.

3. Filing Guides for Law Clerks – Emergent Applications

When an OTSC with Temporary Restraints is being sought, the application will be filed directly with Chambers (of the emergent duty Chancery Judge). Emergent docket numbers are available by telephone from the Chancery Team. However, you will have to provide the Clerk with copies of the papers, which must include the following information:

- Case Caption;
- Case type;
- Filing date;
- Plaintiff's attorney and telephone number;
- Method of filing payment (check or charge, with attorney's account number)

The vicinage clerk will provide you with a docket number, which you will handwrite on all copies of pleadings and supporting documents. Following the

initial application for restraints, the judge assigned to the docket number will keep the case, which may not necessarily be the judge who heard the application for restraints.

C. Special Medical Guardianships

Special Medical Guardianships may be appropriate in certain emergent situations, where decisions need to be made regarding an individual's medical treatment. For such applications, venue is laid in the vicinage where the patient is physically located at the time the application is made.

R. 4:86-12 provides that, upon the application of a hospital, nursing home, treating physician, relative or other appropriate person, the court may appoint a special medical guardian to act for the patient respecting medical treatment if it finds that:

- The patient is incapacitated, unconscious, underage or otherwise unable to consent to medical treatment;
- No general or natural guardian is immediately available who will consent to the rendering of medical treatment;
- The prompt rendering of medical treatment is necessary in order to deal with a substantial threat to the patient's life or health; and
- The patient has not designated a health care representative or executed a health care instruction directive pursuant to the New Jersey Advance Directives for Health Care Act, determining the treatment question in issue.

A sample Order Appointing Special Medical Guardian is attached in Appendix D.

D. Receiverships and Agents

1. Generally

Receivership actions are brought by Verified Complaint and OTSC seeking appointment of the receiver. Venue is properly laid where the corporation's principal place of business is located.

2. Custodial Receiverships

Courts of equity have the inherent power to appoint a custodial receiver to manage a corporation's affairs and preserve its assets, *pendente lite*. A custodial receiver does not take title to the corporate assets, but rather is appointed to maintain the status quo for a definitive period (usually during the pendency of the litigation), and may be appointed on the grounds of gross or fraudulent mismanagement, abuse or dereliction of duty, internal dissention, violation of fiduciary duty, etc.

Pursuant to R. 4:53-1, no order appointing a custodial receiver shall be granted without consent of or notice to the adverse party, unless it clearly appears from the specific facts shown by affidavit or verified complaint that immediate and irreparable damage will result.

3. Statutory Receiverships

Statutory receivers, on the other hand, are appointed by the court in the case of corporations with financial difficulties to liquidate its assets and wind up its affairs. Pursuant to N.J.S.A. 14A:14-2, a receivership action may be brought by: a creditor whose claim is for a sum certain or for a sum which can by computation be made certain; a shareholder or shareholders who individually or in combination

own at least ten per cent of the outstanding shares of any class of the corporation; or the corporation, pursuant to resolution of its board. The action must be based on at least one of the following grounds: the corporation is insolvent; the corporation has suspended its ordinary business for lack of funds; and/or the business of the corporation is being conducted at a great loss and greatly prejudicial to the interests of its creditors or shareholders. However, even if one of these statutory prerequisites are met, the Court has the discretionary authority to deny a request for a statutory receivership.

Pursuant to R. 4:53-1, no statutory receiver shall be appointed for a corporation without giving it notice and an opportunity to be heard; and an order appointing a statutory receiver shall give the stockholders and creditors of the corporation leave, at a specified time and place, to show cause why the receiver should not be continued.

Statutory receivership actions are expressly authorized to proceed in a summary manner. N.J.S.A. 14A:14-2(3).

4. Fiscal Agents

Another option for protecting corporate assets and shareholders is the fiscal agent. The imposition of a fiscal agent, rather than a receiver, is to avoid the disruptive effect of the appointment of a receiver while also affording protection to the plaintiff and the corporation. Fiscal agents are appointed *pendente lite*, with the powers circumscribed by the court on a fact-sensitive basis. Their primary role is to investigate, advise the court as to the status of the corporation and its prospects

for survival, and oversee the corporate operations. Fiscal agents may also play a conciliatory role by representing minority shareholders.

5. Rent Receiver

During the pendency of a foreclosure action, the lender may seek to appoint a receiver to collect rent, keep the property in repair, pay municipal liens, taxes, and assessments, etc. To do so, the lender will file a Motion to Appoint a Rent Receiver. To prevail, the lender must show that either: the building violates a housing code requirement affecting the health and safety of the tenants for a period of 90 days; or the building shows a pattern of repeated violations over a period of one year or more.

Many different entities have the legal right to bring receivership actions. They include the municipality, lienholders, individual tenants, organizations representing a majority of the tenants, and nonprofit organizations providing community services within the municipality. N.J.S.A. 2A:42-116. It is important to note that the right to bring a receivership action is not the same as the authority to act as a receiver. The receiver must be a “qualified entity” with “demonstrated knowledge and substantial experience in the operation, maintenance and improvement of residential buildings” or a lienholder. While the Department of Community Affairs is charged under the Act to establish a registry of qualified entities, the court has the ultimate authority to designate receivers. N.J.S.A. 2A:42-116, 123, 142.

Appointment of a rent receiver is also expressly authorized to be brought by summary action. N.J.S.A. 2A:42-117.

The owner can petition at any time for termination of the receivership, unless the court has established a minimum term for the receivership, which can be no more than one year. In order to be reinstated, the owner must:

- Demonstrate that it will carry out any remaining features of the receiver's plan;
- Pay or deposit with the court all funds needed to meet the obligations of the receivership;
- Agree to assume all legal obligations, including repayment of debt, incurred by the receiver;
- Pay all municipal liens on the property, as well as any municipal costs incurred in connection with the receivership; and
- Post a bond in an amount determined by the court but not in excess of 50% of the fair market value of the property, which is forfeited in the event of future code violations.

E. Foreclosures

1. Generally

Foreclosure complaints ask the Court to allow the mortgagee to recover the property pursuant to the provisions of a mortgage instrument – they do not seek to collect money damages from the defendants. The foreclosure process in New Jersey is a two-tiered system involving both Superior Court General Equity judges and the Office of Foreclosure. The Office of Foreclosure is a unit in the Superior Court Clerk's Office. The Office of Foreclosure handles all uncontested foreclosure matters. There are seven types of foreclosure actions that can be filed: (1) residential mortgage foreclosure; (2) multi-family/commercial mortgage foreclosure; (3) in personam tax certificate foreclosure; (4) municipal in rem tax certificate foreclosure; (5) condominium lien foreclosure; (6) strict foreclosure (to

remedy foreclosure action errors); and (7) Fair Foreclosure Act optional foreclosures.

The statutory framework for the foreclosure of mortgages is set out in N.J.S.A. 2A:50-1, et seq., and the court procedures for same are set out in R. 4:64-1, et seq. In 1995, the Legislature enacted the Fair Foreclosure Act, N.J.S.A. 2A:50-53, et seq., which governs residential foreclosure practices and establishes uniform procedures with respect to sheriff's sales.

2. The Procedure

The Fair Foreclosure Act requires residential mortgage lenders to serve a Notice of Intent, which must be served on the mortgagor at least 30 days before the filing of a foreclosure complaint. All Foreclosure pleadings are filed on eCourts.

The complaint must name any party who has a "legal title interest" in the Property. This can include a spouse, heir, or other party who may hold a lien or judgment against the property. The defendant(s) have thirty-five (35) days from the service of the Complaint to file an Answer, together with a completed Foreclosure Case Information Statement, Certification pursuant to R. 4:5-1 and a \$175.00 filing fee. Answers may be contesting or non-contesting. Non-attorneys must file the documents in Trenton; attorneys must file all pleadings on eCourts.

Unlike other lawsuits, the defenses to a foreclosure action are narrow and limited. The only material issues in a foreclosure proceeding are the validity of the mortgage, the amount of indebtedness, and the right of the mortgagee to foreclose on the mortgaged property. Thus, pursuant to R. 4:64-1(c)(2), an answer to a foreclosure complaint is deemed to be non-contesting if none of the pleadings

responsive to the complaint either contest the validity or priority of the mortgage or lien being foreclosed, or create an issue with respect to plaintiff's right to foreclose. When a foreclosure action is deemed uncontested, the procedure is dictated by R. 4:64-1(d).

When an answer is filed, it will be reviewed by the Office of Foreclosure to determine whether it is a contesting or a non-contesting answer. If it is determined to be non-contesting, the Office of Foreclosure will retain the file and the matter will proceed as an uncontested foreclosure. If it is determined to be contesting, the Office of Foreclosure will transfer the action to the Superior Court in the vicinage where the property is located.

3. Stays

On a daily basis, Chancery Judges receive two types of emergent applications emanating from foreclosure proceedings. The first, and most common, is a mortgagor's request to stay a scheduled (or sometimes not yet scheduled) Sheriff's sale of the property. The second application is a request to delay or stay removal of the occupant of the property after conclusion of a sale and the issuance of an attendant Writ of Possession. The Court will likely address these applications in accordance with the following procedures.

a. Sheriff's Sale

A motion to stay the Sheriff's sale should include a certification in a form available on the Judiciary website. The information in the application should detail if the applicant has requested and exhausted their two statutory rights to a stay and the basis for the current request. The assigned judge or

his/her staff, upon receipt and review of the application, will review the case jacket on eCourts for additional relevant information, such as the date of default, all other relevant allegations in the Complaint, the date and amount of final judgment and the notice of sale.

Next, the Court will confirm that the individual appearing has standing to make the application, and upon satisfaction that the real party in interest has filed the request, will conduct a hearing on the record. Prior to swearing in any witness or taking testimony, the Court will contact counsel for the bank or lender by phone and request that they participate in person or by phone in the emergent proceedings. The Court will contact the counsel who signed the last pleading. Counsel for banks and lenders should have an available attorney to handle such emergent applications, if possible. Once all parties are available, the Court will go on the record, take appearances, identify the materials before it and swear in all witnesses. The Court will inquire of the applicant as to the bases of the request. The parties should be prepared to address the equities underlying the application and be prepared to address the Crowe v. DeGioia factors.

b. Removal

Stays of removal are usually made after a Sheriff's sale. However, pro se applicants often file such requests prior to a scheduled sale and the issuance of a Writ of Possession, and prior to notice of any removal. In such circumstances, the Court will likely explain the foreclosure process and describe post-sale procedures to the applicant, which may result in the

withdrawal of the application or its denial without prejudice. In the event that a Sheriff's sale has occurred, and a Writ of Possession issued with an imminent removal date, the application will be heard on an emergent basis, and the Court will follow the procedure detailed above with respect to emergent applications to stay a Sheriff's sale.

F. Other Common Actions in the Chancery Division

1. Cancellation of a Mortgage

Actions brought in the Chancery Division to direct the County Clerk or Register of Deeds and Mortgages to cancel or discharge a mortgage are governed by N.J.S.A. 2A:51-1, *et seq.* The plaintiff must: (a) present satisfactory proof that all sums due have been paid in full; (b) deposit any balance due on the mortgage with the Clerk of the Superior Court in the county where the mortgage is recorded; or (c) present special circumstances sufficient to satisfy the Court that the mortgagee has no further interest in the mortgage or the debt secured thereby. This type of action may be brought summarily.

2. Partition

Partition is an equitable remedy by which property held by joint tenants or tenants in common may be divided or sold, with the proceeds from the sale being divided thereafter. Partition actions are governed by N.J.S.A. 2A:56-1, *et seq.* and R. 4:63. While properties can be physically divided by the Court and distributed among the co-owners, this is not common and generally applies only to vacant land. If there is to be a physical division, then the Court may appoint a commissioner to recommend a proposed division of the property. More often, the Court will order

a sale of the property and an equitable division of the proceeds among the co-owners.

The Complaint for partition must describe the land in sufficient detail to identify the property and the respective interests of the co-owners, and should state whether a physical partition or a sale is being sought. All persons having any interest in the property should be joined as defendants – this could include mortgagees or creditors. Additionally, the plaintiff should file a notice of *lis pendens* to eliminate possible claims by persons who subsequently acquire an interest in the property. N.J.S.A. 2A:15-6.

A defendant may dispute the plaintiff's right to seek partition on grounds such as waiver or partnership property being involved. If the defendant's answer provides such a defense, the action will be scheduled for a trial on that issue in the Chancery Division. Summary judgment will be precluded when a factual dispute exists regarding partitionability. See Swartz v. Becker, 246 N.J. Super. 406 (App. Div. 1991).

3. Quiet Title

An action for Quiet Title is intended to allow one who is in peaceful possession of real property to compel another person or entity who asserts a hostile right or claim to submit it to judicial determination. This can include persons who claim to be entitled to ownership of property as a result of adverse possession. These actions are governed by N.J.S.A. 2A:62-1, *et seq.*, and R. 4:62.

The Complaint must state the manner in which the plaintiff either acquired title or the right to possession, and must also describe the property in sufficient

detail to identify the property at issue. As in partition actions, a *lis pendens* should be filed by the plaintiff. When the defendants are unknown in a quiet title action, which is quite common, the plaintiff should conduct a 60-year title search to ascertain who may hold a potential interest in the property. Thereafter, service may be made by publication, with notice thereof posted upon the property in question. Any defendant who claims an interest in the property must detail the facts supporting the purported interest with specificity.

G. Actions Commonly Misfiled in the Chancery Division

1. Ejectment

Ejectment actions, though similar to eviction actions, are intended to remove an occupant from your property when that occupant is not technically a “tenant.” An example is where a property owner has a live-in significant other or family member who refuses to move out of the property when asked to do so. In these cases, there was never a true landlord-tenant relationship, so to remove the occupant, the plaintiff must file an ejectment action pursuant to N.J.S.A. 2A:35-1 et seq. These are usually heard by the sitting landlord-tenant division judge; however, they are technically a Special Civil Division matter under R. 6:1-2 because monetary damages can be awarded against the occupant.

2. Actions in Lieu of Prerogative Writs

An action in lieu of prerogative writs is a right under the New Jersey Constitution, permitting parties to seek review, hearing and relief in the Superior Court of all actions of municipal agencies. Pursuant to R. 4:69-1, actions in Lieu of Prerogative Writs belong in the Law Division.

3. **Matrimonial and Palimony Actions**

Matrimonial and palimony actions are heard in the Family Part.

4. **Declaratory Judgment Actions**

In rare cases, a declaratory judgment action may belong in the Chancery Division, such as where inherently equitable rights (under a trust, with regard to an easement, in a corporation's stock, etc.) are the subject matter of the action. More commonly, declaratory actions belong in the Law Division. See, e.g., Township of Ewing v. Trenton, 137 N.J. Eq. 109, 111 (Ch. Div. 1945).

V. **DISPOSITIONS AND DISMISSALS**

A. **General Dispositions**

When a case is terminated either by judgment or by an Order on motion, the Chancery Judge will so advise the Court Clerk and forward the appropriate judgment or Order to the Court Clerk, who will reflect the disposition on ACMS.

B. **Dismissal Lists**

With the exception of receivership and liquidation proceedings, and in condemnation and foreclosure actions governed by R. 4:64-8, in any general equity action which has been pending for two months without a required proceeding having taken place, the court will issue a written notice to the plaintiff advising that the action will be dismissed without prejudice in 30 days following the notice unless certain actions are taken. R. 1:13-7(a) – (c). Subsection (b) of the Rule details what constitutes a “required proceeding,” and subsection (c) of the rule details the actions that can be taken to prevent the action from being dismissed without prejudice once the notice has been served on the plaintiff.

APPENDIX A

Contact Information

Hon. Arnold L. Natali, Jr. P.J.Ch.
56 Paterson Street, 3rd Floor
New Brunswick, NJ 08903
732-645-4300 Ext. 88245 (Chambers)
732-645-4300 Ext. 88247/ 88248 (Law Clerk)

Hon. Arthur Bergman, J.S.C.
56 Paterson Street, 4th Floor
New Brunswick, NJ 08903
732-645-4300 Ext. 88370 (Chambers)
732-645-4300 Ext. 88247/ 88267 (Law Clerk)

Hon. Kevin Hoagland, Surrogate
75 Bayard Street
New Brunswick, NJ 08903
732-745-3055
732-745-3585 (Deputy Surrogate)

APPENDIX B

LIST OF TREATISES

- Hon. William A. Dreier & Paul A. Rowe, Guidebook to Chancery Practice in New Jersey (7th ed. 2008).
- Paul A. Rowe & Andrea J. Sullivan, New Jersey Business Litigation (2017 ed.).
- Scott T. Tross, New Jersey Foreclosure Law & Practice (2014)

APPENDIX C

SAMPLE ORDER TO SHOW CAUSE FORMS

- EXHIBIT 1:** **ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINT
PURSUANT TO R. 4:52**
Revised 09/04/2012, CN 10308-English (Appendix XII-H)
- EXHIBIT 2:** **ORDER TO SHOW CAUSE SUMMARY ACTION**
Revised 09/04/2012, CN 10704-English (Appendix XII-F)
- EXHIBIT 3:** **ORDER TO SHOW CAUSE PRELIMINARY INJUNCTION**
Revised 09/04/2012, CN 10705-English (Appendix XII-G)

_____ [Insert the plaintiff's name], Plaintiff(s), v. _____ [Insert the defendant's name], Defendant(s).	Superior Court of New Jersey Division _____ County Part _____ Docket No.: _____ CIVIL ACTION ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS PURSUANT TO RULE 4:52
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THIS MATTER being brought before the court by _____, attorney for plaintiff, [insert the plaintiff's name], seeking relief by way of temporary restraints pursuant to R. 4:52, based upon the facts set forth in the verified complaint filed herewith; and it appearing that [the defendant has notice of this application] or [defendant consent's to plaintiff's application] or [immediate and irreparable damage will probably result before notice can be given and a hearing held] and for good cause shown.

It is on this ____ day of _____ ORDERED that defendant, [insert the defendant's name], appear and show cause before the Superior Court at the _____ County Courthouse in _____, New Jersey at ____ o'clock in the ____ noon or as soon thereafter as counsel can be heard, on the _____ day of _____, 20 __ why an order should not be issued preliminarily enjoining and restraining defendant, [insert the defendant's name], from

- A. [Set forth with specificity the return date relief that the plaintiff is seeking.];
- B. _____;
- C. _____;
- D. Granting such other relief as the court deems equitable and just.

And it is further ORDERED that pending the return date herein, the defendant is [temporarily] enjoined and restrained from:

- A. [Set forth with specificity the temporary restraints that the plaintiff is seeking.];
- B. _____;
- C. _____.

And it is further *ORDERED* that:

1. The defendant may move to dissolve or modify the temporary restraints herein contained on two (2) days notice to the [plaintiff's attorney *or alternate*: plaintiff].

2. A copy of this order to show cause, verified complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the defendant [personally *or alternate*: describe form of substituted service] within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

3. The plaintiff must file with the court his/her/its proof of service of the pleadings on the defendant no later than three (3) days before the return date.

4. Defendant shall file and serve a written response to this order to show cause and the request for entry of injunctive relief and proof of service by _____, 20__ . The original documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf. You must send a copy of your opposition papers directly to Judge _____, whose address is _____, New Jersey. You must also send a copy of your opposition papers to the plaintiff's attorney whose name and address appears above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of \$ _____ and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the plaintiff is seeking.

5. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____, 20__ . The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

6. If the defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

7. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

8. Defendant take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf. Include a \$_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

9. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.

10. The court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than ____ days before the return date.

J.S.C.

defendant(s), [personally or alternate: describe form of substituted service] within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The plaintiff must file with the court his/her/its proof of service of the pleadings on the defendant(s) no later than three (3) days before the return date.

3. Defendant(s) shall file and serve a written answer, an answering affidavit or a motion returnable on the return date [*Family Part alternate: appearance or response*] to this order to show cause and the relief requested in the verified complaint and proof of service of the same by _____, 20___. The answer, answering affidavit or a motion [*Family Part alternate: appearance, response*], as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge _____.

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____, 20___. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If the defendant(s) do/does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendant(s) take notice that the plaintiff has filed a lawsuit [*Family Part alternate: divorce action*] against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date to the order to show cause [*Family Part alternate: appearance or response*] and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf. Include a \$

_____ filing fee payable to the “Treasurer State of New Jersey.” You must also send a copy of your answer, answering affidavit or motion [*Family Part alternate: appearance or response*] to the plaintiff’s attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion [*Family Part alternate: appearance or response*] with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

J.S.C.

And it is further ORDERED that:

1. A copy of this order to show cause, verified complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the defendant(s) [personally or alternate: describe form of substituted service] within ____ days of the date hereof, in accordance with *R. 4:4-3* and *R. 4:4-4*, this being original process.

2. The plaintiff must file with the court his/her/its proof of service of the pleadings on the defendant no later than three (3) days before the return date.

3. Defendant(s) shall file and serve a written response to this order to show cause and the request for entry of injunctive relief and proof of service by _____, 20___. The original documents must be filed with the clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf. You must send a copy of your opposition papers directly to Judge _____, whose address is _____, New Jersey. You must also send a copy of your opposition papers to the plaintiff's attorney whose name and address appears above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of \$ _____ and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the plaintiff is seeking.

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____, 20___. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If the defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendant takes notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the day of service of this order to show cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf. Include a \$_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the court may enter a default against you for the relief plaintiff demands.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf.

9. The court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

J.S.C.

APPENDIX D

SAMPLE SPECIAL MEDICAL GUARDIANSHIP FORM

- **Order Appointing Special Medical Guardian**

OUTLINE OF A JUDGMENT APPOINTING A SPECIAL MEDICAL GUARDIAN

[CAPTION]

ORDER APPOINTING SPECIAL MEDICAL GUARDIAN

This matter being opened to the court by [Attorney for Plaintiff], Esq., attorney for [Plaintiff], upon the plaintiff's application for the appointment of a special medical guardian for [Patient] pursuant to *Rule* 4:86-12; in the presence of [Attorney for Patient] Esq., the court-appointed attorney for [Patient] and [Attorney for Plaintiff] having met *[and consulted]*¹ with [Patient] and the attorney for [Patient] having reported and having *[not objected to] [opposed]*] the proposed medical/surgical procedure and the appointment of a special medical guardian.

The court having considered the verified complaint and affidavits/certifications in support of the application and having conducted a *[telephonic]/ [in person]* hearing where Dr. _____, Dr. _____ and _____ testified concerning the medical necessity of *[describe medical/surgical intervention]*.

[If the patient is competent] The Court having taken the testimony of [Patient] as to *[his] [her]* grounds for refusing to consent to the medical/ surgical procedure.

It further appearing that [Patient] is in need of *[describe medical/surgical intervention]* to *[describe the purpose of the medical/surgical intervention]* and the prompt rendering of the medical/surgical treatment is necessary to deal with a substantial threat to the patient's life or health.

The standards for appointment of special medical guardian, as set forth in *Rule* 4:86-12, have been met.

It further appearing that *[insert SMG's name]* consents to serve as special medical guardian, and good cause appearing.

It is on this _____ day of _____, 20____ *[ORDERED and ADJUDGED]/ [nunc pro tunc to the ___ day of _____, 20____]*² that:

1. [Patient] is *[incompetent/ unconscious/ underage]* or otherwise unable to give or withhold *[his][her]* informed consent to the emergency medical/ surgical treatment based upon the affidavits/ certifications and testimony of Dr. _____ and Dr. _____ and the *[written][oral]* report of the court appointed attorney, _____.

¹ Insert "consulted" if the patient is competent.

² Insert *nunc pro tunc* if the judgment documents a prior oral judgment appointing a special medical guardian.

OR

- 1A. [Patient] is an adult and competent and based upon the affidavits/ certifications and testimony of Dr. _____ and Dr. _____, the [written/oral] report of the court appointed attorney, _____ and the testimony of [Patient], [Patient]'s election to refuse the medical/ surgical procedure is outweighed by the State's interest to [(1) preserve life, (2) prevent suicide, (3) safeguard the integrity of the medical profession, (4) protect innocent third parties [choose the appropriate rationale(s)].

OR

- 1B. [If PATIENT'S prior instructions are now determined to be no longer operable, then state basis, e.g., *patient's treatment instructions are NOT clear and unequivocal; DNR orders NOT clearly documented, reviewed, and updated periodically to reflect changes in the patient's condition; current condition/circumstances were NOT explicitly discussed with patient; including a balancing of benefits and burdens to patients and therapeutic goals; the advanced directive is not specific enough to cover a particular treatment decision.*]

THEN

substitute judgment
best interest

If medical or surgical treatment is denied, then consider ordering necessary palliative care to reduce suffering.

2. [SMG's Name] be and hereby is appointed special medical guardian for and on behalf of [Patient].
3. The special medical guardian be and hereby is directed to execute a consent for [describe medical/surgical intervention].
4. [Until the patient recovers decision making capacity or the patient is discharged from the hospital, whichever first occurs] the special medical guardian be and hereby is further empowered to make [subsequent] [immediately ancillary] medical/surgical decisions on behalf of [Patient] related to [describe medical/surgical intervention] as the [Patient]'s treating physician/surgeon deems necessary and, accordingly, is authorized to execute all consents or documents necessary to accomplish the same.³

³ Authorization may be limited to a specific procedure, or to a specific procedure and its sequelae, whether expected or unexpected. Generally, however, any consent should not be so limited that a physician should be placed in the position of not being able to provide a needed procedure, e.g., a transfusion to save the patient's life during the course of that surgery.

5. The special medical guardian shall not sign any order or instruction not to resuscitate [Patient] without further order of the court following a hearing on the matter.
6. This judgment shall be effective from the aforementioned date and the special medical guardian shall be discharged ~~[by further order of the court]~~ ~~[after the prompt]~~ ~~[within 10 days]~~ of the procedure's completion filing of a brief report with the court concerning the ~~[outcome of the medical/surgical procedure]~~ ~~[patient's post-procedure status]~~.
7. ~~[If Patient is solvent]~~ Attorney _____, Esq. having submitted an affidavit/certification of services, is awarded a fee of \$ _____ which shall be paid from [Patient]'s assets.
- 7A. **OR** ~~[If PATIENT is solvent]~~ Attorney _____, Esq. having submitted an affidavit/certification of services, is awarded a fee of \$ _____ which shall be advanced by the plaintiff, subject to reimbursement out of the estate of [Patient] to the extent that an estate exists and has funds available for this purpose.
- 7B. **OR** ~~[If PATIENT is indigent]~~ Attorney _____, Esq. having submitted an affidavit/certification of services, is awarded a fee of \$ _____ which shall be paid from the plaintiff's assets.
- 7C. **OR** ~~[If PATIENT is indigent]~~ Attorney _____, Esq.'s activities shall be registered as a *pro bono* assignment.
8. Physician _____ shall be paid \$ _____ for reports in support of application from _____. Physician _____ shall be paid \$ _____ for reports in support of application from _____.
9. Applicant's/ Plaintiff's cost and fees shall be paid from _____ in an amount not to exceed \$ _____.
10. ~~[Additional Case-Specific Provisions]~~
11. **IT IS FURTHER** Ordered that a copy of this judgment be served on all interested parties and attorneys of record by the plaintiff's attorney within seven (7) days of the date hereof.

P.J. Ch./ J.S.C.