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REPORT OF (1) New Jersey, (2) SUPREME COURT (3) COMMITTEE ON THE COUNTY DISTRICT COURTS,

BENNETT I. BARDFELD
LOUIS R. DI LIETO
GEORGE A. GRAY
JOSEPH HILLMAN, JR.
MICHAEL P. KING
DAVID LEFF
ALDAN O. MARKSON
DANIEL A. O'DONNELL
SHELDON H. PRESSLER
HARVEY SMITH
JOSEPH F. WALSH
HERMAN L. BREITKOPF, Chairman

Date: May 2, 1973

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

EDWARD B. McCONNELL
ADMINISTRATIVE DIRECTOR OF THE COURTS
STATE OF NEW JERSEY

STATE HOUSE ANNEX
TRENTON
NEW JERSEY
08625

May 2, 1973

TO: THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT

During the past year the committee studied a wide assortment of problems.

Once more the committee attempted to unravel the knotty difficulties posed by the lack of uniform practice in the various counties. Procedures vary from county to county. Some of the differences arise from disparate local conditions. Nevertheless, the committee believes that uniformity should be achieved in so far as practical. Methods of enforcing uniformity must differ depending upon the nature of the disparities sought to be eliminated. Rewriting the Rules of Court so as to eliminate "ambiguities" is not the panacea it might appear to be. No draftsman can be certain that his words are capable of bearing only one construction; no Rule can be free of all uncertainty. In this report, the committee points out a number of areas where recommended rule change will promote uniformity. The committee also discusses other areas where uniformity would be desirable but where the committee is uncertain as to whether uniformity should be mandated by a Rule change, an administrative directive, or otherwise. In some instances legislative response may be necessary.

In addition to uniformity, the committee also considered many problems in other fields including Jurisdiction, Practice of Law, Fees, Forms and Post Judgment Procedure.

The committee recommendations that follow were not necessarily unanimously adopted.

I. RECOMMENDED RULE CHANGES (Drafts of Rules in Appendix)

A. Rule 4:61-1

The committee recommends that Rule 4:61-1 made applicable to County District Courts by Rule 6:8 be amended so as to prohibit the issuance of writs of replevin unless the defendant has been afforded an opportunity to be heard. This change will carry out the spirit of the recent United States Supreme Court case of Fuentes v. Shevin.

B. Rule 6:4-1

The committee considered the plight of a plaintiff who institutes an action in the County District Court only to learn after the running of the applicable statute of limitations of facts which justify recovery over jurisdictional limits. The committee notes that the Rules presently contain no provision authorizing a remedial transfer to the Superior Court and, accordingly, recommends the addition of a new paragraph to Rule 6:4-1 as set out in the Appendix.

C. Rule 6:5-3

Rule 6:5-3 appears to authorize jury trials in summary actions between landlord and tenant. The committee feels that jury trials should not be available in such actions as they are inconsistent with the summary nature of the proceeding. The committee recommends a Rule change if necessary to carry out this recommendation.

D. Rule 6:6-3(a)

The committee considered the problems posed by computer printouts as a documentary basis for default judgments. A majority of the committee feels the use of computer printouts complies with Rule 6:6-3(a) which requires that "copies of all papers and book entries relied upon. . .be annexed to the affidavit" of proof. A minority of the committee disagrees believing that such a result requires an amendment of the Rule. Because of the division on the committee as well as a lack of uniformity in practice, the committee recommends that Rule 6:6-3(a) be amended so as to authorize computer printouts to be used as the documentary basis for default judgment.

E. Rule 6:6-3(c)

The committee recommends that Rule 6:6-3(c) be amended so as to permit County District Court Judges to enter judgments by default upon proof by proper affidavit without hearing proofs in open court. The committee feels that this practice, already being followed in some counties without formal sanction, serves to conserve judicial time without prejudice to the legitimate interests of any party.

F. Rule 6:6-3(d)

There is a lack of uniformity as to whether applications to enter default judgments more than six months subsequent to default under Rule 6:6-3(d) can be made as motions on five days notice pursuant to Rule 6:3-3(c). The committee feels that the five day notice Rule 6:3-3(c) conserves judicial time

and can be applied to such applications without prejudice to the legitimate interests of any party. Accordingly, the committee recommends that Rule 6:6-3(d) be amended so as to provide that applications to enter default judgments be made as motions under Rule 6:3-3(c).

G. Rule 6:11

Some County District Courts permit non-lawyers to appear on behalf of corporate collection agencies in their small claim divisions in the belief that such practice is authorized by Rule 6:11 which authorizes a non-lawyer to appear in the small claims division on behalf of a corporation. The committee disapproves of this practice which violates not only N.J.S. 2A:6-43 (limiting the jurisdiction of the small claims divisions to actions brought on behalf of original creditors) but also Rule 1:21-1(c). The committee recommends that Rule 6:11 be amended so as to require that all corporate parties in the small claims division be the original or real party in interest.

II. JURISDICTION

A. The committee considered whether the jurisdictional limits of the County District Court as set forth in N.J.S. 2A:6-34 should be increased from $3,000 to $5,000 and whether the limits of the Small Claims Division as set forth in N.J.S. 2A:6-43 should be increased from $200 to $500. The committee takes no position on these questions as it lacks the statistical information required to make a recommendation. No member expressed any objection to the increases.

B. The committee disapproves Assembly Bill Number A-1530 which gives the County District Courts jurisdiction over actions to recover security deposits where the landlord defendant resides in a county other than where the action is brought. The committee deems such legislation unnecessary and disapproves of a "piecemeal" approach to jurisdiction.

III. PRACTICE OF LAW IN DISTRICT COURTS

A. N.J.S. 2A:18-51 permits an agent of a landlord to "institute and maintain" landlord-tenant proceedings in his own name. Relying on this, some County District Courts permit non-lawyers to appear for corporate landlords as "agents" therefor, notwithstanding Rule 1:21-1(c) which prohibits corporations from practicing law except as therein specified. The committee, noting the inconsistency, considered whether the Rule should be amended and decided in the negative.

IV. FEES

A. The committee considered several proposed methods of increasing the compensation of District Court Constables. Among these were:

1. Increasing the mileage fees.
2. Increasing the basic service charges.
3. Increasing the dollarage on collections.
4. Allowing re-service fees in additional situations.
5. Allowing fees for effecting service on behalf of O.E.O. plaintiffs out of the general budget of the Court.

The committee retains this subject for further consideration pending the outcome of pending legislation which would substantially increase the dollarage paid to constables upon collection. Our investigation discloses that the adoption of this legislation might make the questions considered moot - at least for some time to come.

B. There is a lack of uniformity in regard to filing fees in that the Clerks of some County District Courts refuse to accept uncertified checks from pro-se litigants. The committee recommends that County District Courts accept uncertified checks from all litigants. See Rule 6:12-2. On those rare occasions where checks are dishonored, the Clerk can refer the matter to the presiding judge for appropriate action.

C. Some County District Court Clerks charge fees for filing cross-claims for contribution or indemnity on the theory that they are "counterclaims". The committee recommends that this practice be discontinued and that no fees be charged for the filing of cross-claims for contribution or indemnity.

D. The committee recommends that a fee of $2.00 be charged for making mail service under Rule 6:2-3 and this charge include both the initial mailing by certified mail and follow-up by regular mail if required.

V. DISTRICT COURT FORMS

A. The committee considered whether interrogatory number 16 of the Uniform Interrogatories by Plaintiffs in Motor Vehicle cases in County District Courts (Rules, Appendix II, Form E) which calls for the names and addresses of all persons having knowledge of relevant facts should be supplemented so as to require a specification of which of such persons were actual "eye witnesses" to the accident. The committee rejects this amendment as unnecessary; the information can be obtained by the procedure set forth in Rule 6:4-3(b) in those unusual situations where it is not voluntarily disclosed.

B. There is a lack of uniformity in the application of Rule 1:5-7 in so far as the quanta of proof required to be set forth in affidavits of non-military service. The committee believes that an affidavit of non-military service should contain more than mere conclusions but should be accepted if it sets forth facts established by reliable sources even if the facts alleged are not within the personal knowledge of the affiant. See Rule 3, Rules of Evidence.

C. There is a lack of uniformity in the forms of writs of execution used in the County District Courts in so far as some call for the payments of accrued interest from the date of judgment and some do not. The committee is of the opinion that District Court judgments bear interest from the date of judgment without a court order directing this result; Rule 4:42-11(a) is made applicable to County District Courts by Rule 6:6-1. The committee recommends that all forms of execution prepared by Clerks of County District Courts, Rule 6:7-1, call for the payment of accrued interest from the date of judgment.

D. There is a lack of uniformity as to whether an affidavit filed to obtain ex parte sanctions against a party for failing to serve timely answers to interrogatories, Rule 6:4-3, must state that the interrogatories, themselves, were timely served as required by Rule 6:4-3. The committee concluded that such a requirement ought not to be imposed because the party receiving untimely interrogatories has the opportunity to object thereto under Rule 4:17-5(a). See Rule 4:17-2 and Rule 6:4-3.

E. A lack of uniformity exists as to whether surety bonds taken by the District Court in replevin actions must be executed by the corporate officers of the principal as well as the corporate officers of the surety. A number of District Court Clerks require the signatures of corporate officers of both principal and surety notwithstanding the inconvenience and impracticality where the principal is a large corporation conducting business throughout the country. The committee recommends that Court Clerks accept surety bonds executed by the corporate officers of the surety and not require execution by officers of the principal.

F. The committee considered whether the form of summons used in landlord-tenant actions for recovery of possession should be amended so as to notify the tenant that he is deemed to have waived the affirmative defences available under Marini v. Ireland, 56 N.J. 130 (1970) and its progeny unless he notifies the landlord prior to the hearing of his intention to raise these defences. See Rule 6:2-1. The committee believes that such a requirement should not be imposed as it would be unfair to tenants;

County District Courts routinely grant continuances when landlords allege surprise or prejudice for lack of notice.

VI. POST-JUDGMENT PROCEDURE

A. The committee considered proposed changes in the provisions of the District Court Act regulating executions. N.J.S. 2A:18-18 et seq.

1. The committee recommends that N.J.S. 2A:18-18 be amended so as to delete references to body executions and that N.J.S. 2A:18-20 and N.J.S. 2A:18-21 which concern body executions be repealed in their entirety.

2. The committee opposes the following changes:

(a) That N.J.S. 2A:18-26 be amended so as to require appraisals made by disinterested parties; as a practical matter, appraisers are not available.

(b) That N.J.S. 2A:18-25 be amended so as to require the levying officer to notify the judgment debtor of his right to a statutory exemption under N.J.S. 2A:17-19.

(c) That the personal exemption allowed under N.J.S. 2A:17-19 be increased from $500 to $1,000.

B. There has been a lack of uniformity among the County District Courts in respect to the grant of stays of warrants for possession with some courts granting stays in non-payment of rent cases notwithstanding N.J.S. 2A:42-10.6. The committee has studied this issue which now appears moot in view of the recent decision of Ivy Hill Park v. Handa, 121 N.J. Super. 366.

C. The committee disapproves of the provisions of Assembly Bill No. 1536 which requires that residential tenants receive three days written notice by certified and ordinary mail prior to their removal under a warrant for possession. There is no evidence that constables execute writs of possession without fair notice to tenants.

D. Complaints have been received that credit agencies issue adverse reports based on County District Court judgments which have been fully satisfied years previously. As a remedy, the Creditor-Debtor Committee of the New Jersey Bar Association recommends that N.J.S. 2A:17-3 be amended so as to reduce the life of County District Court judgments from 20 years to five years. The committee does not concur; such an amendment would encourage the docketing of District Court judgments in the

Superior Court and does not solve the problem which is caused by the failure of credit agencies to carry out their searches accurately and thoroughly.

E. Rule 6:7-2(a) authorizes orders for discovery in aid of execution to be made returnable before a judge as well as an attorney. Nonetheless, a number of County District Courts refuse to enter orders for discovery before a judge. The committee recognizes that there are practical reasons for this judicial abstention and, therefore, recommends that discovery not be held by a judge. The committee retains this subject for further consideration.

F. The committee considered whether District Court Clerks should assist judgment creditors in the small claims division by providing them with forms of interrogatories to be used in conducting discovery in aid of execution. The committee disapproves of this suggestion as setting an unwise precedent.

G. The committee reviewed the draft of a handbook prepared by an intern in the Administrative Office of the Courts entitled "Rights of Parties in Small Claims Division after Judgment". The committee noted several inaccurate generalizations of procedures and felt that the section on appeals was unnecessary in that the number of cases in the small claims division warranting appeals is insignificant and the appeals procedure too complex to be explained concisely for lay readers. The committee is advised that the handbook is being rewritten and will be presented to the committee for reconsideration in the future.

VII. MISCELLANEOUS MATTERS OF PROCEDURE

A. The committee considered whether Rule 4:58 (Offer of Judgment) should be made applicable to County District Courts. The committee disapproves of this change. The presence of numerous pro-se litigants and non-compensated (O.E.O.) attorneys would create serious problems of administration not present in the Superior and County courts. Our investigation failed to confirm the utility of Rule 4:58.

B. Notwithstanding Rule 6:3-1 which makes Rule 4:6-1(c) applicable to County District Courts, it is County District Court practice to prohibit parties from enlarging the time within which the defendant is to answer by stipulation; a court order is uniformly required for this purpose. The rationale is that County District Court Clerks automatically enter defaults when 20 days pass without the filing of an answer and do not await affirmative action by the plaintiff. Compare Rule 6:6-2 with Rule 4:43-1. The committee considered and rejected the proposal that Rule 6:6-2 be amended so as to permit the parties to enlarge the time for filing answers by stipulation. The committee determined that the existing practice should be continued as it facilitates efficient calendar control.

C. There is a lack of uniformity as to whether a party should be permitted to present proof before he has filed an affidavit of non-military service. Some County District Court Clerks refuse to schedule proof hearings prior to the filing of non-military affidavits. The committee recommends that non-military affidavits be accepted at any time prior to the entry of judgment, even after proof. There is no basis for making the submission of such affidavits a prerequisite for taking proofs. See Rule 1:6-7.

D. There is a lack of uniformity as to the dignity of service required as a prerequisite for holding a party in contempt for failure to appear on supplemental proceedings in aid of execution. The committee has this matter under consideration and makes no recommendation at this time.

Respectfully submitted,

COMMITTEE ON THE COUNTY
DISTRICT COURTS

Bennett I. Bardfeld
Louis R. Di Lieto
George A. Gray
Joseph Hillman, Jr.
Michael P. King
David Leff
Aldan O. Markson
Daniel A. O'Donnell
Sheldon H. Pressler
Harvey Smith
Joseph F. Walsh
Herman L. Breitkopf, Chairman

Date: May 2, 1973

APPENDIX

The following changes in Rules 4:61-1, 6:4-1, 6:5-3, 6:6-3(a) (c) and (d), and 6:11 were recommended in Part I of this report and suggested amendments are included for consideration by the Court. The proposed addition to Rule 6:4-1 was reviewed by the committee. The remainder were drafted by the Administrative Office subject to review by Judge Daniel A. O'Donnell.

Rule 4:61-1. Writ of Replevin

If in any action for replevin the plaintiff in his complaint, counterclaim, cross-claim, or third-party complaint, claims the possession of goods or chattels, his attorney or the clerk of the court, at the time summons is issued or at any time thereafter before the entry of judgment, may, after affording the defendant in replevin an opportunity to be heard by the court, issue one or more writs of replevin. The writ of replevin shall be directed to the sheriff, or other officer authorized by law, of the county where the goods or chattels are located and shall describe them with particularity. A copy of the writ shall be served upon the defendant in replevin in the manner prescribed by R. 4:4 for the service of summons unless the court otherwise orders. Upon receipt of the writ of replevin and the delivery of a replevin bond or cash deposit pursuant to law, the sheriff or other officer of the county shall forthwith cause the goods or chattels to be replevied and delivered. If before the entry of judgment the plaintiff in an action for replevin does not cause a writ of replevin to issue, no bond or cash deposit shall be required unless ordered by the court for the protection of persons not before the court who may have an interest in the goods or chattels.

Rule 6:4-1. Transfer When Recovery Will Exceed Jurisdiction

A plaintiff, after commencement of an action in the County District Court, but before the trial date, may apply for removal of the action to the Superior Court or County Court, where circumstances develop which make it likely that the recovery will exceed the County District Court jurisdiction by (1) filing and serving in the County District Court his affidavit or that of his authorized agent stating that the affiant believes that the amount of said claim when established by proof, will exceed the sum or value constituting the jurisdictional limit of the County District Court and that it is filed in good faith and not for the purpose of delay; and (2) filing in the Superior Court and serving a motion for transfer. The Superior Court shall order the transfer if it finds that there is reasonable cause to believe that the amended claim is founded on fact and that it has reasonable chance for success upon the trial thereof.

Rule 6:5-3. Trial by Jury

(a) How Demanded. In actions commenced in the county district court a written demand for trial by jury shall be filed with the clerk at the principal location of the court and served upon opposing parties not later than 10 days after the time provided for the defendant to answer; or in the case of a counterclaim the plaintiff may make such demand not later than 10 days after the time provided for the service of a defensive pleading to the counter claim. In [summary actions between landlord and tenant and] actions

in the small claims division (except actions for property damage resulting from negligence in a motor vehicle accident), the demand shall be filed and served and the fee paid by the demanding party at least one day before the return day of the summons.

Rule 6:6-3. Judgment by Default

(a) Entry by the Clerk; Judgment for Money. The clerk may sign and enter judgment in accordance with R. 4:43-2(a) except where the plaintiff's claim is based upon writs of attachment, replevin or capias ad respondendum or directly or indirectly upon the sale of a chattel which has been repossessed peaceably or by legal process. The affidavit prescribed by R. 4:43-2(a) shall, in addition, be sworn to not more than 30 days prior to its presentation to the clerk and if not made by plaintiff, shall show that the affiant is authorized to make it. Copies of all [papers and book entries] papers, book entries or, where records are maintained electronically, computer printouts relied upon shall be annexed to the complaint, may be verified by reference in the affidavit, and the clerk may require the production for inspection of the originals of such papers and books or, where records are maintained electronically, an audit trail unless they have been lost or destroyed and their absence accounted for.

(c) Entry by the Court; Particular Actions. In all actions to which paragraphs (a) or (b) do not apply, the party entitled to a judgment by default shall apply to the court therefor. No judgment by default shall be entered against an infant or incompetent person without 5 days' written notice to his guardian or a guardian ad litem appointed for him; nor against any other party without written notice to him, if the court, in the interest of justice, orders such notice. If application is made for the entry of judgment by default in deficiency suits or claims based directly or indirectly upon the sale of a chattel which has been repossessed peaceably or by legal process, the plaintiff shall prove [before the court] by affidavit a description of the property, the amount realized at the sale or credited to the defendant and the costs of sale. If the plaintiff's claim is for an unliquidated sum which the court finds is susceptible of proof through personal knowledge (as opposed to opinion or expert testimony) it shall enter judgment by default against a defendant [either upon oral testimony in open court, or] upon affidavit containing the qualifications of the affiant and the information which would be required in the case of oral proof. In automobile negligence actions proof of property damage may be given by automobile mechanics upon affidavit setting forth the affiant's occupation and business address; if he is employed, the name of his employer and his position; the date of his inspection of the vehicle specifying its make or model, its condition at that time, and its mileage if available; the

repairs actually made and the estimated cost thereof; a statement that the repairs were necessary and the charges therefor reasonable; and the amount actually paid for repairs, if completed.

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

Rule 6:11. Division of Small Claims; Practice

The general rules of practice and procedure in the county district courts shall apply to the division of small claims [except that any authorized officer, agent or employee may prosecute and defend claims on behalf of a corporate party.] except that any authorized officer or employee may prosecute and defend on behalf of a corporate party claims originating with and not held by transfer or assignment to that corporate party. Notice in the division of small claims shall be by summons as provided by R. 6:2-1, and actions in such division shall be disposed of on the return day unless adjourned by the court. Upon the filing of a counterclaim for a sum in excess of the jurisdictional limit of the division of small claims, the action shall be transferred to the county district court proper upon payment by the defendant of the required fees.