2002 REPORT OF THE

SUPREME COURT COMMITTEE ON

SPECIAL CIVIL PART PRACTICE

March 1, 2002

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INTRODUCTION

During this term the Supreme Court Committee on Special Civil Part Practice considered rule amendments in four categories: (1) Special Civil Part rules affected by the year 2000 Civil Part Best Practices rule amendments; (2) substitution of the words "mentally incapacitated person" for the term "incompetent" in all Part VI rules; (3) other matters that arose during the term; (4) changes necessary to implement those recommendations contained in the September 2000 "Report of the Committee of Special Civil Part Supervising Judges on Standardization of Operating Procedures and Best Practices" (hereafter referred to as the "Best Practices Report") that were approved by the Supreme Court in late November 2001. There are more recommendations contained in the Best Practices Report than rules for which this Committee is proposing amendments. This is because some of the approved Best Practices recommendations will be implemented by other means, such as administrative directives, and because frequently two or more recommendations can be implemented by multiple amendments to one rule. Finally, please note that proposals to amend three of the appendices to the court rules are set forth in the section of this report devoted to rule changes.

I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendment to *R.* 1:13-7 — Restoration on *Ex Parte* Application After One Year

Rule 1:13-7(b) provides that the Special Civil Part Clerk is to dismiss any action that has not been served on the defendant within 60 days of filing, subject to automatic restoration "without motion or further order of the court upon service . . . within one (1) year of the date of the dismissal." The Supervising Judges found that practices varied from county to county for handling applications to restore dismissed cases more than one year after filing.

Recommendation #13 of the Best Practices Report originally called for an amendment to *R.* 1:13-7(b) that would require a notice of motion and a showing of good cause and due diligence to obtain an order restoring a case more than one year after its dismissal. The recommendation was changed by the Judicial Counsel in two ways: first, the application to restore can be made *ex parte*; and second, the rule amendment should include a provision that explicitly preserves defendant's right to raise a statute of limitations defense in the main case if the court orders restoration of the case. The recommendation, as modified by the Judicial Council, was approved by the Supreme Court. The proposed amendment to *R.* 1:13-7(b) follows.

1:13-7. Dismissal of Civil Cases for Lack of Prosecution

(a) ... no change.

(b) Whenever any civil action filed in the Special Civil Part has not been served within sixty (60) days of the date of filing, the clerk of the court shall dismiss the matter and notify the plaintiff that the matter has been marked "dismissed subject to automatic restoration within one year." The matter shall be restored without motion or further order of the court upon service of the summons and complaint within one (1) year of the date of the dismissal. A case dismissed pursuant to this rule may be restored after one year only by order upon application, which may be made *ex parte*, and a showing of good cause for the delay in making service and due diligence in attempting to serve the summons and complaint. The entry of such an order shall not prejudice any right the defendant has to raise a statute of limitations defense in the restored action

Note: Source--*R.R.* 1:30-3(a) (b) (c) (d), 1:30-4. Amended July 7, 1971 to be effective September 13, 1971; former rule redesignated as paragraph (a) and paragraph (b) adopted July 15, 1982 to be effective September 13, 1982; paragraph (b) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; caption and paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended _____, 2002, to be effective _____, 2002.

B. Proposed Amendments to *R.* 1:40-7 - Complementary Dispute Resolution Programs

In recommendations 16, 17, 17a, 18, 19 and 20 the Supervising Judges addressed the subject of Special Civil Part complementary dispute resolution programs in detail. Recommendation #16 states that the small claims CDR programs should be recognized as settlement, rather than mediation, programs. Recommendation #17 calls for the small claims settlement program to involve law clerks from all divisions and others to serve as trained neutrals who help litigants settle their cases; cases that do not settle should be tried the same day if possible. Recommendation #17a calls for law clerks to be trained in settlement techniques as well as mediation. In Recommendation #18 the Supervising Judges did not recommend a standardization of CDR programs in tenancy cases, but said that if they are used, cases that do not settle should be tried the same day, if possible. In Recommendation #19 the Supervising Judges said that mandatory non-binding arbitration should not be used in the Special Civil Part because of the additional time and expense required. As for CDR in actions for damages of $10,000 or less, the Supervising Judges said in Recommendation #20 that each vicinage should establish a settlement program in which there is one settlement event scheduled to occur on the trial date.

All of these recommendations regarding CDR programs in the Special Civil Part should be gathered under the umbrella of a single rule. The best place for that appears to be *R.* 1:40, since it deals with all CDR programs. The only section in that rule devoted to Special Civil Part CDR programs is *R.* 1:40-7, which currently deals with mediation programs in the Special Civil Part, so it should be broadened. The proposed amendments to *R.* 1:40-7 follow. Note that the proposed amendments address the need for training in settlement techniques (as opposed to the mediation training that will continue), expressed in

Recommendation #17a. The Committee understands that the source, content and duration of the settlement training has not yet been worked out.

1:40-7. [Mediation of Special Civil Part Matters] Complementary Dispute Resolution Programs in the Special Civil Part

[The CDR program of each vicinage shall include a program for mediating small claims actions and, in the discretion of the Assignment Judge, for mediating landlord-tenant disputes and other such matters as are within guidelines approved by the Supreme Court.**]**

(a) Small Claims.

Each vicinage shall provide a small claims settlement program in which (1) law clerks from all the divisions who have been trained in settlement techniques and as mediators pursuant to *R.* 1:40-12(b)(6), and other employees and volunteers who have been trained in settlement techniques and as mediators pursuant to *R.* 1:40-12(b)(1), serve as trained neutrals who help litigants settle their cases, and (2) cases that are not settled are tried on the same day, if possible. The training requirements apply to law clerks but not to other attorneys.

(b) Tenancy Actions.

If complementary dispute resolution programs are used for tenancy actions, cases that are not settled shall be tried on the same day, if possible.

(c) Other Actions for Damages.

Each vicinage shall establish a settlement program, that does not include arbitration, for other Special Civil Part actions for damages in which there is one settlement event scheduled to occur on the trial date.

Note: Adopted July 14, 1992 as Rule 1:40-6 to be effective September 1, 1992; amended and redesignated as Rule 1:40-7 July 5, 2000 to be effective September 5, 2000; title and text deleted and new title and paragraphs (a), (b) and (c) adopted _____, 2002 to be effective _____, 2002.

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

The 1987 Supreme Court Task Force on the Special Civil Part recommended that the monetary limits for Special Civil and Small Claims be raised first to $7,500 and $1,500, respectively, and then to $10,000 and $2,000. In 1987, the limits were $5,000 for Special Civil and $1,000 for Small Claims, and they had not been changed since 1981. The limits were the subject of both statute and court rule at that time. In 1991 the statutes affecting the limits *(N.J.S.A.* 2A:6-34 and 2A:6-43) were repealed and the matter was left to court rule. The Supreme Court amended *R.* 6:1-2(a)(1) and (2), per the recommendation of the Special Civil Part Practice Committee, to increase the limits to $7,500 and $1,500, effective September 1, 1992. In 1994 those limits were raised again to the current levels of $10,000 and $2,000. The questions now are whether to increase the limits again and, if so, then to what levels. In deliberating these questions the Committee considered what other states are doing in this regard, the effects of inflation on the current limits since they were adopted in 1994 and the probable impact of any change on the court system.

Other Jurisdictions

The Committee considered an AOC staff memorandum which reported what the other 49 states, Puerto Rico and the District of Columbia have in the way of civil courts of limited monetary jurisdiction. Thirty-four (34) states have courts devoted to small claims and other civil matters with monetary limits. A little less than one-third of the states have conferred exclusive small claims jurisdiction on a specific court. The limits on small claims range from $100 to $25,000. The most common small claims limits are $3,000

and $5,000, each of which has been chosen by 10 states. General jurisdiction courts with monetary limits tend to set those limits at either $10,000 or $25,000. New Jersey thus appears to be in the lower range of the mainstream monetary limits for both small claims and monetarily limited general jurisdiction courts.

Inflation

One indication of the appropriate monetary limits for Special Civil and Small Claims is inflation. The notion is that the proportion of civil actions filed in Special Civil will remain about the same if the level of the monetary limit is kept current by adjusting for inflation. There is a natural desire not to make changes that will unduly increase the caseload without simultaneously increasing the number of judges and support staff.

Before the September 1992 increase in the monetary limits, they were last adjusted in July 1981 to $5,000 for Special Civil and $1,000 for Small Claims. The Special Civil Part Practice Committee calculated in 1994 that the 1981 monetary limits, adjusted for inflation, would be about $8,240 for Special Civil and $1,650 for small claims, or approximately 65% higher. At that time the Committee also calculated that it would take about 8 more years, at the then current inflation rate of 2.5% per year, for the inflation-adjusted 1981 levels to reach $10,000 and $2,000. Eight years have now elapsed since that prediction, and the intervening inflation of about 20.3% would bring the inflation-adjusted 1981 levels to $9,912 and $1,982. This analysis would suggest that a conservative approach be taken in raising the current limits of $10,000 and $2,000. Another way to look at the effects of inflation is to adjust the 1994 levels of $10,000 and $2,000 for the 20.3% rise in the Consumer Price Index, which yields limits of $12,030 and $2,406. Again, this suggests that a modest increase would be in order.

Impact of Increasing Monetary Limits

It is probable that any increase in the $10,000 limit for the Special Civil Part will result in an increase in the number of new cases filed. Whatever the magnitude of the increased volume, it will have to be added to any increase that would have happened without a change in the monetary limit. The current trend in the volume of actions seeking $10,000 or less in damages (DC docket type cases) is up. As the chart A (attached) indicates, the volume of DC cases rose from 175,723 in Court Year 2000 to 186,650 in Court Year 2001, or about 6%. Based on the numbers of new cases filed thus far in Court Year 2002, the AOC is predicting another increase of 6%, or 11,199 cases, to an annualized level of almost 198,000 DC cases per year. The current forecast for the volume of tenancy and small claims is that they will remain static. At the time of the 1992 increase in the limit from $5,000 to $7,500, there was some concern that the number of automobile negligence cases would increase, but as Chart B (also attached) indicates, there has been a steady decline of auto negligence cases filed in the Special Civil Part over the last 10 years.

One of the purposes of raising the Special Civil monetary limit is to reallocate cases from the Civil Part, which will result in speedier dispositions and concomitant savings for litigants. Currently the average time to disposition for Track 1 cases is 172 days, while DC cases in Special Civil are disposed of in 71 days. Predicting the number of cases that will be filed in the Special Civil Part, rather than the Civil Part of the Law Division, as a result of an increase in the monetary limit is difficult. Since plaintiffs do not specify the quantum of damages in Civil Part cases there is no way of knowing how many cases could be filed in Special Civil from data currently on hand. Using the number of Civil Part judgments in a certain range is not helpful because many judgments are for amounts substantially less than what was sought. One way to

predict the impact is to project the worst case scenario and assume that all or half of the Track I cases wind up in Special Civil. The aggregate number of Track I cases last year, excluding name changes and real property cases, but including auto property cases from Track II, was about 39,000. If all of these cases were filed in Special Civil, the total caseload for that part would increase by 9% and the DC-docket type caseload would increase by 20%. This outcome is highly unlikely and even moving half the Track I cases to Special Civil, with overall and DC caseload increases of 4.5% and 10%, respectively, is highly unlikely. This was exactly the same analytical situation in 1994 when the limit was raised from $7,500 to $10,000 and there subsequently was only a 3% increase in the number of DC filings, which may, or may not, have been due to the change. From a caseload management point of view, therefore, it is likely that a modest increase in the $10,000 monetary limit at this time could be absorbed without undue disruption.

The Committee was somewhat concerned regarding the possible impact if Personal Injury Protection (PIP) cases are filed in the Special Civil Part rather than the Civil Part of the Law Division because they generally require more extensive discovery than is available in Special Civil except upon motion to the court. The AOC's research on the subject was unable to correlate the filing of a PIP case in the Civil Part with a dollar amount since the demand does not have to be stated in the complaint and there is thus no data field for that item in ACMS. Instead, the Committee looked at judgment amounts, for which there is data.

Overall there were very few judgments in PIP cases, regardless of the amount. Aggregating those in the $0 to $15,000 ranges, the volume grew from 21 in 1989 to a high of 222 in 1993, and declined thereafter until, in 2001, there were only 26 judgments under $15,000. There was about an equal number of judgments each year in the $1,000 to $5,000 range and the $5,000 to $15,000 range. This may indicate

that attorneys will file PIP cases in the Civil Part rather than the Special Civil Part regardless of the amount at stake. Staff was informed by a representative of the American Arbitration Association (AAA), however, that when attorneys file a PIP case in the Civil Part, it is often because they don't know if they have a case and thus will add a PIP count to a negligence complaint in the event that a PIP case does develop later. In PIP cases filed in the Special Civil Part, on the other hand, the attorney has identified a medical bill for a certain amount and thus knows that there is a case. Special Civil, however, does not appear to be the forum of choice for PIP cases — AAA arbitrates about 18,000 PIP cases per year. The actual number of PIP cases filed in the Special Civil Part last year is unknown since ACMS does not code for that case type. It is known that 2,503 PIP cases were filed last year in the Civil Part. Assuming that the percentage of these filings that were below $15,000 correlates with the percentage of Civil Part PIP judgments below $15,000 --- 45.6% --- staff extrapolated that about 1,141 PIP cases were filed seeking less than $15,000. If all of these cases were filed instead in the Special Civil Part and added to the unknown number of PIP cases already filed there, the impact would be negligible since only 1 or 2% of these will not be settled and go to judgment. Again, from the fact that there are many judgments under $5,000 in Civil Part PIP cases, the Committee knows that it is unlikely that all PIP cases under $15,000 would be filed in Special Civil.

It is difficult to predict the effect of raising the small claims limit. Many cases fall within the small claims limit but are filed as DC-docket type cases because counsel and plaintiff do not have to appear in court if the defendant, as happens in 75% of the cases, defaults, so these cases will not be filed as small claims, where an appearance is required, whatever the monetary limit. Raising the limit will have an impact on discovery, however, since discovery is limited for cases within the small claims monetary limit even if

they are not filed as small claims. The experience of plaintiffs' counsel at the time of the last two increases in 1992 and 1994 suggest that the balance between the need to control the cost of litigation and the need to afford litigants discovery of relevant facts will not be upset by a modest increase in the small claims limit. Moreover, the Supreme Court has approved the recommendation of the Committee of Special Civil Part Supervising Judges that limited discovery be permitted in these cases. The rule implementing that recommendation and any increase in the small claims limit would take place at the same time in September, 2002.

Another point to consider, in thinking about an increase in the small claims limit, is that historically the ratio of the Special Civil limit to the small claims limit has been 5:1. This consideration and the factors discussed above, coupled with the need for simplicity, suggest that the limits be set at $12,500 for Special Civil and $2,500 for small claims or at $15,000 and $3,000. Since the limits are not changed very often and the inflation-adjusted 1994 limits are already almost at the lower of the two suggested limits, the Committee recommends adoption of the higher limits of $15,000 and $3,000 now so that inflation creep will not have to be addressed again for a few years. The proposed amendments to *R.* 6:1-2(a)(1) and (2) follow charts A and B.

Chart A

Special Civil Filings

Year	DC Docket Type	Small Claims	Tenancy	Total
CY 2001	186,650	48,427	178,835	413,912
CY 2000	175,723	55,435	173,933	405,091
CY 1999	195,463	57,502	176,219	429,184
CY 1998	197,150	61,159	176,701	435,010
CY 1997	188,950	62,465	179,313	430,728
CY 1996	179,269	60,863	181,831	421,963
CY 1995	187,610	61,960	181,264	430,834
CY 1994	181,477	58,855	176,488	416,820
CY 1993	202,079	58,796	165,186	426,061
CY 1992	212,832	59,865	160,506	433,203
CY 1991	272,995	62,251	172,548	507,794
CY 1990	256,732	57,582	163,994	478,308

Chart B

Special Civil

Year	Auto Negligence
1991	10,414
1992	7,450
1993	6,895
1994	5,664
1995	5,626
1996	4,104
1997	3,938
1998	3,617
1999	3,726
2000	3,422

6:1–2. Cognizability

(a) Matters Cognizable in the Special Civil Part. The following matters shall be cognizable in the Special Civil Part:

(1) Civil actions seeking legal relief when the amount in controversy does not exceed **[**$10,000**]** $15,000;

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

(3) ... no change.

(4) ... no change.

(5) ... no change.

(b) ... no change.

(c) ... no change.

Note: Adopted November 7, 1988 to be effective January 2, 1989; caption added to paragraph (a) and paragraph (a) amended July 17, 1991 to be effective immediately; paragraphs (a)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1) and (2) amended July 13, 1994 to be

effective September 1, 1994; paragraph (a)(1) and (2) amended _____, 2002 to be effective _____,2002.

D. Proposed Amendments to *R.* 6:2-1 and Appendix XI-B — Mandatory Form for Summons in Tenancy Actions

In Recommendation #4 of their Best Practices Report the Supervising Judges said that "each summons and return in all Special Civil actions should be separate from the complaint and in a format prescribed by the Court Rules." This has been achieved for "regular" Special Civil Part cases and small claims, but not for tenancy actions. The implementation of this recommendation for tenancy actions will require an amendment to *R.* 6:2-1 and replacement of the current model form (Appendix XI-B) for the tenancy summons and complaint with a mandatory form for the summons. The proposed rule amendments and the form for the summons follow. Note that the proposed summons form includes much of the language from the current model complaint and that there will no longer be a model complaint in the appendices. The Special Civil Part Clerks and AOC will develop a new model tenancy complaint for the use of litigants. The Committee believes that "unlawful" entry and detainer actions is a more accurate description of these tenancy actions than "forcible" entry and detainer and so has proposed that change in the second sentence of the rule. Note also the addition in the rule of the words "not less than" before "5 days" and substituting the words "small claims" for "other actions." The Committee agrees with the Clerks that these changes will make it easier to answer small claims litigants' questions about how much notice of the trial date they are entitled to.

6:2-1. Form of Summons

The form of the summons shall conform with the requirements of *R.* 4:4-2 and shall be in the form set forth in Appendix XI-A(1) to these Rules or, for small claims, in the form set forth in Appendix XI-A(2) or, for tenancy actions, in the form set forth in Appendix XI-B. However in landlord and tenant actions for the recovery of premises, **[**forcible**]** unlawful entry and detainer actions and actions in the Small Claims Section, in lieu of directing the defendant to file an answer, it shall require the defendant to appear and state a defense at a certain time and place, to be therein specified, which time shall be not less than 10 days in summary dispossess actions, and not less than 5 days in **[**other actions**]** small claims, nor more than 30 days from the date of service of the summons, and shall notify the defendant that upon failure to do so, judgment by default may be rendered for the relief demanded in the complaint.

Note: Source--*R.R.* 7:4-1(a) (b), 7:17-2. Amended July 16, 1979 to be effective September 10, 1979; amended July 15, 1982 to be effective September 13, 1982; amended November 7, 1988 to be effective January 2, 1989; amended July 10, 1998 to be effective September 1, 1998; amended July 5, 2000 to be effective September 5, 2000; amended ,2002 to be effective , 2002.

APPENDIX XI-B. TENANCY SUMMONS AND RETURN OF SERVICE

Plaintiff or Plaintiff's Attorney Information:
Name:_____
Address:_____
_____
Phone:(___)_____-_____

Superior Court of New Jersey
Law Division, Special Civil Part
_____**County**
_____
_____
(____)_____-_____

_____, **Plaintiff(s)**

Docket Number: LT - _____
(to be provided by the court)

versus

_____, **Defendant(s)**

Civil Action
SUMMONS
LANDLORD/TENANT

Defendant Information:
Name:_____
Address:_____
_____
Phone:(___)_____-_____

__Nonpayment Back Rent Claimed: $_____
__Other

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

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

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

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

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

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

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

Date:_____ **_____**
Clerk of the Special Civil Part

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

Docket Number: _____Date: _____Time: _____
WM ___ WF ___ BM ___ BF__ OTHER _____ HT ____ WT _____ AGE ___ MUSTACHE ___ BEARD ___ GLASSES___
NAME: _____RELATIONSHIP: _____
Description of Premises_____
_____

I hereby certify the above to be true and accurate: _____ .
_____ Court Officer

[Adopted effective January 2, 1989; amended June 29,1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; amended _____, 2002, effective _____ ,2002.

E. Proposed Amendment to *R.* 6:2-3 — Service of Process by Mail

In Recommendation #3 the Supervising Judges said that initial process in small claims and DC docket-type cases (actions for damages of $10,000 or less) should be served, in all 21 counties, simultaneously by certified mail, return receipt requested, and regular mail. The rationale is that experience has shown the service by mail program to be effective and the practice should be uniform throughout the State.

In formulating the amendments to *R.* 6:2-3 that are necessary to implement this Best Practices recommendation, the Committee considered correspondence from a private process server criticizing the Special Civil Part's service by mail program. The correspondent asserted that service by mail is ineffective because the US Mail Service is unreliable and that an excessive number of motions are filed each year to vacate defaults and default judgments as a result. The AOC provided data on the subject for court year 2001 (July 2000 to June 2001) which shows generally that when complaints were served by mail, the percentage of cases in which motions to vacate defaults and default judgments were filed is less than 2%. The percentage for cases in which the complaint was served by court officer is about 3%. These numbers indicate that mailed service is more effective than personal service and there is no evidence that Special Civil Part Officers are any less diligent or efficient in serving initial process than private process servers. These results are similar to those found in a 1985 study conducted by this Committee which led to the formalization of the service by mail program in *R.* 6:2-3(d).

The proposed amendments to *R.* 6:2-3 include some housekeeping changes. The outdated reference in paragraph (a) to "sergeants-at-arms" is eliminated and substituted therefore is the term "Special Civil Part Officers," as the individuals responsible for personal service of process issued by the Special Civil

Part. This is consistent with the provisions of *R.* 6:1-1(e) and *N.J.S.A.* 2B:6-3. The words "by statute" are added to the second sentence of paragraph (a) to clarify the underlying authority for the payment of service fees to the Special Civil Part Officers. Finally, paragraph (e) is changed to reflect the Supreme Court's determination that the term "incompetent" be changed to "mentally incapacitated" throughout the rules. The proposed amendments follow.

6:2-3. Service of Process

(a) By Whom Served. Personal service of process within this State may be made by **[**sergeants-at-arms of the court**]** Special Civil Part Officers and such other persons authorized by law to serve such process as the Assignment Judge designates. Persons so designated shall receive in payment for their services the fees allowed therefor by statute. **[**If the process is to be served in a county of this State other than that in which the action is instituted, the clerk of the Special Civil Part in which the action has been instituted shall serve it by mail pursuant to *R.* 6:2- 3(d).**]** Service of all process outside this State may be made in accordance with *R.* 4:4-4 and *R.* 4:4-5. After the filing of a complaint and receipt of a docket number, service may be made by mail pursuant to either *R.* 4:4-4(c) by plaintiff or, **[**in those counties which have established a service by mail program**]** pursuant to *R.* 6:2-3(d), by the clerk, without the payment of mileage fees.

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

(c) Notice of Service. Except in landlord and tenant actions for recovery of the premises and actions in the Small Claims Section, upon the return of service of original process, the clerk shall inform the plaintiff or attorney of the date of service.

(d) Service by Mail Program. If the process is to be served in **[**a county of**]** this State **[**other than that in which the action is instituted**]**, or if substituted service of process is to be made within this state **[**, or, if the action is instituted in a county where the Assignment Judge, with the approval of the Chief Justice, has established a service by mail program pursuant to this rule and guidelines promulgated by the Supreme Court**]**:

(1) *Initial Service.* The clerk of the court shall simultaneously mail such process by both certified and ordinary mail. Attorneys shall submit to the clerk the mailing addresses of parties to be served and the appropriate number of copies of the summons and complaint. The clerk shall furnish postage, envelopes, and return receipts and shall address same. Mail service on each defendant shall be placed in separate envelopes by the clerk regardless of marital status or address. Process shall be mailed within 12 days of the filing of the complaint. The clerk thereafter shall send a postcard to plaintiff or the attorney showing the docket number, date of mailing and a statement that, unless the plaintiff is otherwise notified, default will be entered on the date shown. If service cannot be effected by mail, the clerk shall send a second card to the plaintiff or attorney stating the reasons for incomplete service and requesting instructions for reservice.

(2) *Reservice*. Where initial service by mail is not effected, plaintiff or the attorney may request reservice by mail or by court officer personally pursuant to *R.* 4:4-4. If reservice by mail at the

same address is requested the plaintiff or attorney shall be required to provide a postal verification or other proof satisfactory to the court that the party to be served receives mail at that address.

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

(4) *Effective Service*. Consistent with due process of law, service by mail pursuant to this rule shall have the same effect as personal service, and the simultaneous mailing shall constitute effective service unless the mail is returned to the court by the postal service marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," "forwarding order expired," or the court has other reason to believe that service was not effected. Process served by mail may be addressed to a post office box. Service shall be effective when forwarded by the postal service to an address outside the county in which the action is instituted. Where process is addressed to the defendant at a place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom process was mailed.

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

(e) General Appearance; Acknowledgment of Service. A general appearance or an acceptance of the service of a summons, signed by the defendant's attorney or signed and acknowledged by the defendant (other than a minor or **[**incompetent**]** mentally incapacitated person), shall have the same effect as if the defendant had been properly served.

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

F. Proposed Amendment to *R.* 6:3-1 — Time to Answer Complaint

In Best Practices Recommendation #7 the Committee of Special Civil Part Supervising Judges proposed, and the Supreme Court agreed, that the time to answer a complaint in the Special Civil Part be changed from the current 20 days to 35 days, whether the defendant is in or out of State. This stemmed from the Supervising Judges' perception that 20 days is too short a time when, for example, the defendant may be having the mail held by the post office while he or she is on vacation or the defense is to be provided by an insurer. Note that there is no change in the fundamental concept, set forth in *R.* 6:2-3(d)(4), that service is complete upon mailing. Note also that, as before, *R.* 1:3-3 requires that 3 days be added to the time to answer a mailed pleading in determining the date an answer is due. The proposed amendment to *R.* 6:3-1 enlarging the time to answer to 35 days follows.

6:3-1. Applicability of Part IV Rules

Except as otherwise provided by *R.* 6:3-4 (joinder in landlord and tenant actions), the following rules shall apply to the Special Civil Part: *R.* 4:2 (form and commencement of action); *R.* 4:3-3 (change of venue in the Superior Court), provided, however, that in Special Civil Part actions a change of venue may be ordered by the Assignment Judge of the county in which venue is laid or the Assignment Judge's designee; *R.* 4:5 to 4:9, inclusive (pleadings and motions); *R.* 4:26 to 4:34, inclusive (parties); and *R.* 4:52 (injunctions as applicable in landlord/tenant actions); provided, however, that, in Special Civil Part actions, (1) a defendant who is served with process, whether within or outside this State, shall serve an answer including therein any counterclaim within [20] 35 days after completion of service; (2) extension of time for response by consent provided by *R.* 4:6-1(c) shall not apply; (3) the 90-day periods prescribed by *R.* 4:6-3 (defenses raised by motion) and *R.* 4:7-5(c) (cross claims) shall each be reduced to 30 days; (4) an appearance by a defendant appearing pro se shall be deemed an answer; (5) no answer shall be permitted in summary actions between landlord and tenant or in actions in the Small Claims Section; (6) if it becomes apparent that the name of any party listed in the pleadings is incorrect, the court, at any time prior to judgment upon its own motion or the motion of any party and consistent with due process of law, may correct the error, but following judgment such errors may be corrected only upon motion with notice to all parties; (7) a defendant who is served with an amended complaint pursuant to *R.* 4:9-1 shall plead in response within [20] 35 days after the completion of service; and (8) the double spacing and type size requirements of *R.* 1:4-9 do not apply.

Note: Source--*R.R.* 7:2, 7:3, 7:5-1, 7:5-3, 7:5-4(a)(b), 7:5- 5, 7:5-6, 7:5-7, 7:5-8, 7:12-5(a)(b), 7:12-6. Amended June 29, 1973 to be effective September 10, 1973; amended July 24, 1978 to be effective September 11, 1978; amended November 5, 1986 to be effective January 1, 1987; amended November 2, 1987 to be effective January 1, 1988; amended November 7, 1988 to be effective January 2, 1989; amended June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994; amended _____, 2002 to be effective _____, 2002.

G. Proposed Amendments to *R.* 6:3-3 - Requests for and Waiver of Oral Argument of Motions; Use of Telephone Conferences to Dispose of Motions; Answer Fee to be Supplied with Motion to Vacate

At the request of the New Jersey State Bar Association, Recommendations #24, 25 and 26 were proposed by the Supervising Judges and approved by the Supreme Court. They will ensure that timely requests for oral argument be granted as a matter of right and that when oral argument has been waived by all parties it shall not be required unless the court believes it necessary for disposition of the motion.

Recommendation #26 encourages the use of telephone conferences to dispose of motions. These recommendations can be implemented by adding them to paragraph (b) of *R.* 6:3-3 so that it will address all aspects of oral argument. The amended rule would incorporate the substance of subparagraphs (c)(6) and (c)(7) and add the new content called for by the three recommendations. The current subparagraphs (c)(6) and (c)(7) would be eliminated. Subparagraph (c)(8) would be redesignated as (c)(6), since it deals with the form of the papers to be submitted, which is the topic of paragraph (c). Outdated references to branch parts of the court would be eliminated and paragraph (d) would be revised to clarify that the reference to the "Law Division" is a reference to the "Civil Part of the Law Division."

To address the problem of extra work created by defendants who fail to file an answer after successfully moving to vacate a default or default judgment, the Supervising Judges recommended that, as is the current practice in some counties, defendants who move to vacate a default or default judgment should be required by rule to include the proffered answer and its filing fee with the moving papers. This can be implemented by adding a paragraph (e) to *R.* 6:3-3.

The proposed amendments to *R.* 6:3-3 follow.

6:3-3. Motion Practice

(a) Serving and Filing Motion Papers. On motions to which *R.* 6:3-3(c) is applicable, moving papers including proof of service shall be filed forthwith after service. On all other motions, except ex parte applications, moving papers including proof of service shall be served and filed within the time prescribed by *R.* 1:6-3. Ex parte applications shall be filed with the clerk **[**at the principal location except that in actions assigned to branch parts, they shall be filed with the clerk of the part**]**.

(b) **[**Where and**]** When Heard. Motions shall be heard on days designated by the Assignment Judge or designee **[**and at the principal location of the court, except that in actions assigned to branch parts they shall be made to the part unless the court otherwise orders**]**.

(1) Upon receipt of an objection and a request for oral argument, or at the direction of the court, the clerk shall set the motion down for hearing and shall notify the parties or their attorneys by mail of the time and place thereof. Requests for oral argument of contested motions made in a timely and procedurally proper manner by any party shall be granted as a matter of right.

(2) A party who has not requested oral argument may waive in writing the right to appear at the hearing and rely on the papers. When oral argument has been waived by all parties, it should not be required unless the court believes that it is necessary for disposition of the motion.

(3) The court may use telephone conferences to dispose of motions.

(c) Service and Form. Motions shall be made in the form and manner prescribed by *R.* 1:6, and in conformity with *R.* 6:6-1, provided, however, that:

(1) The notice of motion shall not state a time and place for its presentation to the court. No oral argument of a motion shall be permitted unless specifically demanded by a party or directed by the court.

(2) The notice of motion shall also state the court's address and that the order sought will be entered in the discretion of the court unless the attorney or pro se party upon whom it has been served notifies the clerk of the court and the attorney for the moving party or the pro se party in writing within ten days after the date of service of the motion that the responding party objects to the entry of the order.

(3) Every notice of motion shall include the following language: "NOTICE. IF YOU WANT TO RESPOND TO THIS MOTION YOU MUST DO SO IN WRITING. Your written response must be in the form of a certification or affidavit. That means that the person signing it swears to the truth of the statements in the certification or affidavit and is aware that the court can punish him or her if the statements are knowingly false. You may ask for oral argument, which means you can ask to appear before the court to explain your position. If the court grants oral argument, you will be notified of the time, date, and place. Your response, if any, must be in writing even if you request oral argument. Any papers you send to the court must also be sent to the opposing party's attorney, or the opposing party if they are not represented by an attorney."

(4) In addition to the notice contained in subparagraph (3) above, all notices of motion for summary judgment must also state: "We are asking the court to make a final decision against you without a trial or an opportunity for you to present your case to a judge. We are requesting that a decision be entered against you because we say that the important facts are not in dispute and the law entitles us to a

judgment. If you object to the motion, you must file a written response stating what facts are disputed and why a decision should not be entered against you."

(5) In addition to the notice contained in subparagraph (3) above, all notices of motion to dismiss or suppress for failure to answer interrogatories must also state: "We are requesting that your complaint be dismissed or your answer not be considered for failure to answer the interrogatories (questions) we sent you. In order to avoid this you must, within 10 days, either (a) send us answers to the questions and inform the court in writing that you have fully answered the questions; or, (b) respond to the motion. If you choose to respond, you must state your opposition in writing and send copies to us and to the court."

[(6) Upon receipt of such objection and a request for oral argument, or at the direction of the court, the clerk shall set the motion down for hearing and shall notify the parties or their attorneys by mail of the time and place thereof.

(7) A party who has not requested oral argument may waive in writing the right to appear at the hearing and rely on the papers.**]**

[(8)**]** (6) The party seeking an order under this rule shall submit a proposed form of order with the moving papers.

(d) Transfer of Landlord/Tenant Actions; Enforcement of Discovery Orders and Information Subpoenas. Motions to transfer landlord/tenant actions to the Civil Part of the Law Division shall be governed by *R.* 6:4-1(g). Motions to enforce discovery orders and information subpoenas shall be governed by *R.* 6:7-2.

(e) Motions to Vacate Defaults or Default Judgments. Motions to vacate defaults or default judgments that were entered because a written answer was not filed on time shall include the proffered answer and its filing fee.

Note: Source--*R.R.* 7:5-9, 7:5-10, 7:5-11(a)(b); paragraph (c) amended July 15, 1982 to be effective September 13, 1982; paragraph (c) amended November 2, 1987 to be effective January 1, 1988; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended and paragraph (d) adopted July 14, 1992 to be effective September 1, 1992; new text of subparagraph (c)(5) added and former subparagraph (c)(5) redesignated as (c)(6) July 13, 1994 to be effective September 1, 1994; subparagraph (c)(2) amended, subparagraphs (c)(4), (c)(5), and (c)(6) redesignated as subparagraphs (c)(6), (c)(7), and (c)(8), and new subparagraphs (c)(4) and (c)(5) adopted July 5, 2000, to be effective September 5, 2000; caption and text of paragraph (b) amended, subparagraphs (b)(1), (2) and (3) adopted, subparagraphs (c)(6) and (7) incorporated into new subparagraphs (b)(1) and (2), subparagraph (c)(8) redesignated as (c)(6), paragraph (d) amended and paragraph (e) adopted _____, 2002 to be effective _____, 2002.

H. Proposed Amendments to *R.* 6:4-3 — Form Interrogatories and Limited Discovery in Cases Cognizable But Not Filed in Small Claims

Best Practices Recommendation #12 asks the Special Civil Part Practice Committee to formulate form interrogatories for all causes of action in the Special Civil Part. In case types for which form interrogatories have been adopted, the parties would be required to use them. If form interrogatories have not been adopted for a particular case type such as credit card collection cases, the parties would be free to use their own, in the manner prescribed by *R.* 6:4-3(a). At the present time form interrogatories exist only for personal injury and automobile negligence actions (Appendix II, Forms C, D and E). The Committee considered, but ultimately rejected, a proposal to have an omnibus set of form interrogatories, with 5 to 15 additional free-form questions, designed to deal with all case types. The Committee concluded that it would not be possible using this approach to elicit all the information needed to litigate the variety of cases found in the Special Civil Part. Given the time constraint of having only 3 months to craft all the rules necessary to implement the Best Practices recommendations approved by the Supreme Court in late November 2001 and given the impossibility of creating an omnibus set of form interrogatories, the Committee concluded that its work on form interrogatories during the current rules cycle would have to be limited to clarifying which of the existing sets apply to the Special Civil Part. Additional sets for other case types will be formulated and presented to the Supreme Court during the next rules cycle and in the interim the Committee endorses the creation and inclusion of suggested interrogatories in the kits that are provided to *pro se* litigants by the Special Civil Part Clerk's offices.

There has been some confusion to exactly which form interrogatories in Appendix II apply to actions in the Special Civil Part. The confusion stems from the fact that the titles for forms D and E

expressly state that they apply to actions in the Special Civil Part, while the title to form C does not. The confusion is compounded by the fact that there are now 4 additional sets of form interrogatories denominated as C(1), C(2), C(3) and C(4) which state that, like form C, they apply to the "Superior Court."

The history of these forms resolves the confusion. Prior to 1994, *R.* 6:4-3(c) referred to form interrogatories C, D and E. The title for each of these 3 forms stated that they were intended for use in the County District Court. The title for Form C stated that it was for use in "motor vehicle collision cases involving personal injuries . . ." In 1994 the Supreme Court, on the recommendation of the Civil Practice Committee, replaced the 27 interrogatories in Form C with a new set of 20 interrogatories which the title said are to be answered by the defendant in "personal injury: Superior Court." Then in 1996, the Supreme Court replaced form C again, and added forms C(1), C(2), C(3) and C(4) which are to be used in various personal injury actions. In the meantime, *R.* 6:4-3(c) continued unchanged, stating in the title, as it does today, that it pertains to "automobile negligence actions, " and making reference to forms C, D and E.

The question then becomes whether *R.* 6:4-3(c) should continue to refer to form C and whether that reference includes forms C(1) through (4). The Committee believes the answer is that all 5 of these forms should be used in the Special Civil Part. Form C deals with all personal injury cases. Form C(1) deals with personal injury in auto accident cases; note that forms D and E deal only with property damage in auto accident cases. Form C(2) deals with fall down cases, which are filed in the Special Civil Part, as well as the Civil Part of the Superior Court, Law Division. Form C(3) deals with medical malpractice cases and Form C(4) deals with product liability cases, both of which can be filed in the Special Civil Part. The conclusion, then, is that *R.* 6:4-3(c) should be amended to state explicitly that forms C(1) through (4), as

well as D and E are for use in Special Civil. The draft amendment to the rule, proposed later in this report, to address the time frame for form interrogatories, includes references to C(1) through (4). The title of the rule should also be changed to include personal injury actions and this is included in the draft.

The Committee noted that the enlargement of the time to answer a complaint from 20 to 35 days will affect the time periods for serving and answering form interrogatories. Currently *R.* 6:4-3(c) states that the party making a claim must serve answers to the uniform interrogatories within 30 days after service of the complaint or counter/cross claim and the defending party must also serve answers within 30 days of service of the complaint or counter/cross claim. That is a problem when the time to answer a complaint is 35 days; it means that a plaintiff or defendant would have to answer interrogatories before an answer to the complaint has been filed. If the present 10 day gap between the filing and service of an answer and the service of answers to form interrogatories is to be maintained — and it must in order to accommodate our practice involving *pro se* litigants — the time to serve answers to form interrogatories will have to be changed from the current 30 days to 45 days. This approach was approved by the Supreme Court when staff brought the problem to the Court's attention. In thinking this problem through, the Committee perceived that, alternatively, the time period can be set to start running for both parties from the date that defendant serves an answer to the complaint. Following this line of thinking, the Committee decided that 30 days from service of the answer would be a sufficient amount of time for the parties to answer the form interrogatories and pro se litigants should be given 30 days from the time that the plaintiff serves the form interrogatories, which must occur within 10 days from plaintiff's receipt of the answer. This solution will assure that both *pro se* and represented parties have the same amount of time to answer interrogatories;

the present scheme does not. The Committee's proposed amendments to *R.* 6:4-3 reflect this decision, even though it varies slightly from what the Supreme Court approved.

Best Practices Recommendation #11 calls for limited discovery, consisting of 5 interrogatories without parts, to be permitted without requiring a motion in Special Civil Part cases which are cognizable, but not filed, in the Small Claims section. Presently, there is no discovery in these cases without leave of court granted on motion. The recommendation states that additional interrogatories or extensions of time should be permitted only by court order, on timely notice of motion, for good cause shown. Implementation of this recommendation can be accomplished by amending *R.* 6:4-3(f).

The Committee 's proposed amendments to *R.* 6:4-3 follow.

6:4-3. Interrogatories; Admissions; Production

(a) ...no change.

(b) ...no change.

(c) Automobile Negligence and Personal Injury Actions. A party in an automobile negligence or personal injury action may propound interrogatories only by demanding, in the initial pleading, that the opposing party answer the appropriate standard set of interrogatories set forth in Forms C, C(1) through C(4), D, and E of the Appendix to these Rules, specifying to which set answers are demanded and to which questions, if less than all in the set. The demand shall be stated in the propounding party's initial pleading immediately following the signature. Interrogatories shall be served upon a party appearing pro se within 10 days after the date on which the pro se party's initial pleading is received. A party making claim for property damage or personal injuries **[**shall serve answers within 30 days after the date of service of the pleading containing the demand,**]** and a party defending such claim shall serve answers within 30 days **[**after such date**]** of service of the answer, except that a pro se party shall serve answers within 30 days after receipt of the interrogatories. The answers shall be set forth in a document duplicating the appropriate Form, containing the questions propounded, each followed immediately by the answer thereto. Additional interrogatories may be served and enlargements of time to answer may be granted only by court order **[**on timely**]** upon motion on notice, made within the 30 day period, for good cause shown, and on such terms as the court directs.

(d) ...no change.

(e) ...no change.

(f) Actions Cognizable in Small Claims Section, Discovery. Any action **[**where the demand does not exceed the monetary limit of**]** cognizable but not pending in the Small Claims Section of the Special Civil Part shall proceed without discovery, except [pursuant to formal motion and] that each party may serve interrogatories consisting of no more than 5 questions without parts. Such interrogatories shall be served and answered within the time limits set forth in *R.* 6:4-3(a). Additional interrogatories may be served and enlargements of time to answer may be granted only by court order on timely notice of motion for good cause shown.

Note: Source--*R.R.* 7:6-4A(a) (b) (c), 7:6-4B, 7:6-4C. Caption amended and paragraph (c) adopted July 7, 1971 to be effective September 13, 1971; caption amended, paragraph (a) amended, and paragraph (d) adopted July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (e) adopted July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 22, 1983 to be effective September 12, 1983; paragraphs (a), (c), (d) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended, paragraph (b) adopted and former paragraphs (b), (c), (d) and (e) redesignated as (c), (d), (e) and (f) respectively, June 29, 1990 to be effective September 4, 1990; paragraph (b) amended August 31, 1990, to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (c) and (f) amended _____, 2002 to be effective _____, 2002.

I. Proposed Amendment to *R.* 6:4-5 — Time to Complete Discovery

The time for completion of discovery in Special Civil Part actions is geared by *R.* 6:4-5 to *R.* 4:24-1, except that the time is set at 100 days. Prior to September 1, 2000, *R.* 4:24-1 started the running of the discovery period from the "date of service of the original complaint on the defendant." The rule was amended, however, as of 9/1/00 to set different time periods for the newly created tracks, all of which begin on "the date the first answer is filed or from 90 days after the first defendant is served, whichever occurs first." This formulation extends the completion of discovery in Special Civil by at least 20 days and, if the time to answer is changed by the Supreme Court to 35 days, discovery could run as long as 135 days, which is well beyond the new standard of 120 days for inventory recommended by the Supervising Judges and approved by the Supreme Court.

Rule 6:4-5 must, of course, be changed to omit the reference to *R.* 4:24-1 in defining the time to complete discovery. The Committee noted that simply reinstating the old discovery limit of 100 days from service of the complaint would be problematic, in view of the increase in the time to answer a complaint from 20 to 35 days, since that would leave only 65 days to actually conduct discovery when there used to be 80 days under the old rule. The Committee felt that simply tacking an extra 15 days on to the 100 would result in an odd number that is difficult to remember and calculate. An increase to 120 days from service of the complaint was considered because it is easy to remember and calculate and it coincides with the new 120 day standard for separating case inventory from backlog. The Committee noted, however, that this would result in an incongruity between the triggering event for form interrogatories and standard interrogatories; the triggering event for the former will be service of the answer under the new *R.* 6:4-3,

while the trigger for standard interrogatories would be service of the complaint. This lack of consistency may produce confusion.

More significant, however, is the uncertainty that the parties face when a defendant succeeds on a motion to vacate a default or default judgment, because almost invariably the order makes no mention of the time to complete discovery. This generally results in the defendant having less time to conduct discovery simply because there was a failure to serve initial process, which hardly seems fair. The problem will be solved by identifying service of the answer as the triggering event. The parties will know that discovery must be completed within the time specified by the rule, i.e., from the date the proffered answer is served following entry of the order and the defendant will not be disadvantaged by the failure of initial service. There may, of course, be particular cases in which the court wants the parties to be ready for trial sooner and these can be addressed in the order by shortening the time for discovery.

This left the question of how much time from service of the answer to allow for discovery. One hundred days would delay trial readiness to at least 135 days from the filing of the complaint which is, again, well beyond the new 120 day definition of inventory. Getting the number of days to trial readiness to come out to 120 would mean setting the time limit for discovery at 85 days. This also is an odd number that is difficult to remember and calculate. The Committee therefore recommends a discovery period of 90 days from service of the answer, as to each defendant. This will take the trial readiness date to 125 days, rather than the 120 previously approved for inventory. The problem can be resolved by moving the definition of inventory an extra 5 days, to 125 days, or by simply accepting the incongruity, as we have for many years in setting the definition of inventory at 90 days, while permitting 100 days for discovery.

The Committee's proposed amendment to *R.* 6:4-5 follows.

6:4-5. Time for Completion of Discovery Proceedings

[The provisions of *R.* 4:24-1 (completion of discovery proceedings) shall apply to actions in the Special Civil Part except that the time for completion of discovery shall be 100 days.] All proceedings referred to in *R.* 6:4-3 and 6:4-4, except for proceedings under *R.* 4:22 (request for admissions), shall be completed as to each defendant within 90 days of the date of service of that defendant's answer, unless on motion and notice, and for good cause shown, an order is entered before the expiration of said period enlarging the time for such proceedings to a date specified in the order. In actions transferred to the Special Civil Part pursuant to *R.* 4:3-4(c), however, the parties shall complete discovery within such time to which they would have been entitled under *R.* 4:24-1 had the action not been transferred.

Note: Source--*R.R.* 7:6-6; amended November 7, 1988 to be effective January 2, 1989; amended _____, 2002 to be effective _____, 2002.

J. Proposed *R.* 6:4-7 — Adjournments (New)

Recommendation #21, as modified by the Judicial Council and approved by the Supreme Court, reads as follows:

> **All requests for adjournments shall be made to the clerk's office as soon as the need is known, but, absent good cause for the delay, not less than 5 days before the scheduled court event. Prior to contacting the clerk's office, the party requesting the adjournment shall notify the adversary that the request is going to be made, and shall then notify the clerk of the adversary's response. The court shall then decide the issue and, if granted, assign a new date. The requesting party shall notify the adversary of the court's response.**

The modification made by the Judicial Council was to substitute the words "good cause for the delay," for the standard originally proposed by the Supervising Judges, which was "exceptional circumstances." Recommendation #38 calls for the application of Recommendation #21 to tenancy actions. Because this recommendation addresses adjournment requests of all types of proceedings, not just trials, the best place for it in the rules appears to be in *R.* 6:4, which covers the topic of "proceedings before trial." The draft of a new *R.* 6:4-7 follows. It implements Recommendations #21 and #38 in a new paragraph (a) and includes language currently in *R.* 6:5-2(a) concerning adjournments to complete discovery in a new paragraph (b). The Committee contemplates that the requirement in paragraph (a), that the party requesting the adjournment notify the adversary that the request is going to be made, applies to adjournment requests to complete discovery in short-calendared cases under paragraph (b). Placing references to

adjournments in one rule should facilitate searches for the subject by judges, practitioners and *pro se* litigants. The corresponding amendment to *R.* 6:5-2(a) is set forth in section I.L. of this Report.

6:4-7. Adjournment of Proceedings. (New)

(a) Generally. All requests for adjournments of hearings, trials and complementary dispute resolution events shall be made to the clerk's office as soon as the need is known, but, absent good cause for the delay, not less than 5 days before the scheduled court event. Prior to contacting the clerk's office, the party requesting the adjournment shall notify the adversary that the request is going to be made and, except for requests made pursuant to paragraph (b) of this rule, shall then notify the clerk of the adversary's response. The court shall then decide the issue and, if granted, assign a new date. The requesting party shall notify the adversary of the court's response.

(b) Adjournment to Complete Discovery. If a case in which discovery is permitted is listed for arbitration, mediation, or trial before the expiration of the time allowed by these rules or court order for discovery, an adjournment to complete discovery shall routinely be granted without necessity of an appearance or the consent of the adversary if the request is made within the discovery period and discovery was timely commenced, as required by these rules. The requesting party shall notify the adversary of the court's response.

Note: Paragraph (a) adopted and a portion of *R.* 6:5-2(a) redesignated as paragraph (b) _____ ,2002, to be effective _____ ,2002.

K. Proposed Amendment to *R.* 6:5-1 — Award of Costs, Counsel Fees and Expenses on Certain Dismissals and Refilings

Best Practices Recommendation #14 calls for an amendment to *R.* 6:5-1 so as to permit an award of costs, counsel fees and expenses when small claims are dismissed pursuant to *R.* 1:2-4 or *R.* 4:37-1(b) or are refiled pursuant to *R.* 4:37-4. The recommendation was extended to all Special Civil Part cases in Recommendation #41. The purpose is to deter the use of voluntary dismissals to gain unfair advantage by causing the defendant to lose a day's pay repeatedly. The proposed amendment follows.

6:5-1. Applicability of Part IV Rules; Sanctions

R. 4:37 (dismissal of actions), *R.* 4:39 (verdicts) and *R.* 4:40 (motion for judgment) are applicable to the Special Civil Part. The court may order a party whose complaint is dismissed pursuant to *R.* 1:2-4 or *R.* 4:37-1(b) for failure to appear for trial or who seeks, pursuant to *R.* 4:37-4, to refile such a complaint, to pay to the aggrieved party costs, reasonable attorney's fees and expenses related to the dismissed action..

Note: Source--1969 Revision; amended November 7, 1988 to be effective January 2, 1989; amended _____, 2002 to be effective _____, 2002.

L. Proposed Amendments to *R.* 6:5-2 — Adjournments; Avoiding Multiple Appearances

In Best Practices Recommendations 9, 17, 18 and 20, the Committee of Special Civil Part Supervising Judges recommended that multiple appearances in Special Civil Part cases "should be minimized and to this end they should be disposed of on the trial date by mediation or other complementary dispute resolution technique, trial, proof hearing or the filing of an affidavit of proof." The Judicial Council took the position that multiple appearances should not just be "minimized," they should be "avoided," and the Supreme Court agreed. The particulars of complementary dispute resolution for each docket type in the Special Civil Part are addressed in proposed amendments to *R.* 1:40-7, which are discussed earlier in this report. The overarching principle of one appearance per case for both trial and CDR events can be addressed by an amendment to *R.* 6:5-2, which deals with trials and their scheduling. A proposed draft amendment, which will add a new paragraph (d) follows. Note that paragraph (a) is to be amended to reflect the reallocation of the subject of adjournments to complete discovery in short-calendared cases to a new *R.* 6:4-7, which will deal with the topic of adjournments.

6:5-2. Notice of Trial; Assignment for Trial

(a) Notice by Clerk**[**, Adjournment to Complete Discovery**]**. Except for summary actions brought under *R.* 6:2-1, the clerk shall inform the parties or their attorneys of the trial date at least 30 days before trial. **[**If a case in which discovery is permitted is listed for arbitration, mediation, or trial before the expiration of the time allowed by these rules or court order for discovery, an adjournment to complete discovery shall routinely be granted without necessity of an appearance or the consent of the adversary if the request is made within the discovery period and discovery was timely commenced, as required by these rules, and 5 days' notice of the request has been given to the adversary.**]** For good cause shown, the court may order a longer or shorter notice in any action.

(b) ... no change.

(c) ... no change.

(d) Avoidance of Multiple Appearances. Multiple appearances in cases that have been scheduled for trial shall be avoided and, consistent with *R.* 1:40-7, cases should be disposed of on the trial date by a complementary dispute resolution event, trial, entry of dismissal or default (with a proof hearing if requested).

Note: Source--*R.R.* 7:7-3, 7:7-4, 7:7-11, 7:7-12; paragraph (a) amended November 27, 1974 to be effective April 1, 1975; amended July 17, 1975 to be effective September 8, 1975; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) caption and text amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 18, 2001 to be effective November 1, 2001; paragraph (a) caption and text amended and paragraph (d) adopted , 2002 to be effective , 2002.

M. Proposed Amendment to *R.* 6:6-3 — Address Certification for Default Judgment; Notification to Parties of Entry of Default Judgment; Housekeeping

In Recommendation #6, the Best Practices Report proposed that a certification should be required, by or on behalf of the applicant for a default judgment, setting forth the source of the address used for service of the summons and complaint. The purpose is to provide the court with a record of what the plaintiff or plaintiff's attorney said about the defendant's address if service is later challenged and to add to the reliability of the address. The requirement has been added as a proposed amendment to paragraph (a) of *R.* 6:6-3.

In a proposal that is not related to the Best Practices Report, the Committee proposes a new paragraph (e) that would require the clerk to notify the judgment-creditor of the effective date and amount of the default judgment at the time of its entry. The judgment-creditor, in turn, would have to relate this information to the judgment-debtor by ordinary mail within 7 days of receipt of the court's notice. This will have the effect of reducing the amount of status inquiries to the clerk's offices, letting defaulted parties know the outcome of the case and providing the parties with another opportunity to settle the case.

As housekeeping matters, the Committee proposes an amendment to paragraph (a) of the rule that will correct erroneous references to two federal regulations and amendments to paragraph (a), (b) and (c) that will substitute the words "mentally incapacitated" for the term "incompetent."

6:6–3. Judgment by Default

(a) Entry by the Clerk; Judgment for Money. If the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit setting forth a particular statement of the items of the claim, their amounts and dates, the calculated amount of interest, the payments or credits, if any, and the net amount due, shall sign and enter judgment for the net amount and costs against the defendant, if a default has been entered against the defendant for failure to appear and the defendant is not a minor or [incompetent] mentally incapacitated person. If prejudgment interest is demanded in the complaint the clerk shall add that interest to the amount due provided the affidavit of proof states the date of defendant's breach and the amount of such interest. If the judgment is based on a document of obligation that provides a rate of interest, prejudgment interest shall be calculated in accordance therewith; otherwise it shall be calculated in accordance with *R.* 4:42–11(a). If the claim is founded upon a note, contract, check or bill of exchange or is evidenced by entries in the plaintiff's book of account, or other records, a copy thereof shall be attached to the affidavit or, if attached to the complaint, verified by reference in the affidavit. The clerk may require for inspection the originals of such documents. The affidavit prescribed by this Rule shall be sworn to not more than 30 days prior to its presentation to the clerk and, if not made by plaintiff, shall show that the affiant is authorized to make it. The affidavit shall contain or be supported by a separate affidavit containing a statement, by or on behalf of the applicant for a default judgment, which sets forth the source of the address used for service of the summons and complaint.

If plaintiff's records are maintained electronically and the claim is founded upon an open-end credit plan, as defined in 15 U.S.C. § 1602(i) and 12 C.F.R. § [266.2] 226.2(a)(20), a copy of the

periodic statement for the last billing cycle, as prescribed by 15 U.S.C. § 1637(b) and 12 C.F.R. § [266.7] 226.7, or a computer-generated report setting forth the financial information required to be contained in the periodic statement, if attached to the affidavit, or if attached to the complaint, and verified by reference in the affidavit, shall be sufficient to support the entry of judgment.

(b) Entry by the Clerk; Judgment for Possession. In summary actions between landlord and tenant for the recovery of premises, judgment for possession may be entered by the clerk on affidavit if the defendant fails to appear, plead or otherwise defend, and is not a minor or [incompetent] mentally incapacitated person, except where the landlord acquired title from the tenant or has given the tenant an option to purchase the property. The affidavit must state the facts establishing the jurisdictional good cause for eviction required by the applicable statute and that the charges and fees claimed to be due as rent, other than the base rent, are permitted to be charged as rent by the lease and by applicable federal, state, and local law. If the landlord is represented by an attorney, that attorney must also submit a certification that the charges and fees claimed to be due as rent, other than the base rent, are permitted to be charged as rent by the lease and by applicable federal, state, and local law. If the basis for eviction requires service of a notice to quit, the landlord's affidavit must have a copy of all required notices attached, and the affidavit must state that the notices were served as required by law and that the facts alleged in the notices are true.

If the landlord fails to obtain or make written application for the entry of a judgment for possession within 30 days after the entry of default, such judgment shall not be entered thereafter except on application to the court and written notice to the tenant served at least 7 days prior thereto by

simultaneously mailing same by both certified and ordinary mail or in the manner prescribed for service of process in landlord/tenant actions by *R.* 6:2–3(b); provided, however, that the 30 day period may be extended by court order or written agreement executed by the parties subsequent to the entry of default and filed with the clerk.

(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 therefore. No judgment by default shall be entered against a minor or [incompetent] mentally incapacitated person without 5 days' written notice to the guardian or a guardian ad litem appointed for the minor or [incompetent] mentally incapacitated person; nor against any other party without written notice to that party, if the court, in the interest of justice, orders such notice. When a landlord acquired title from the defendant or has given the tenant an option to purchase the property, a judgment for possession by default shall not be entered without proof in open court. If application is made for the entry of judgment by default in deficiency suits or claims based directly or indirectly on the sale of a chattel that has been repossessed peaceably or by legal process, the plaintiff shall prove entitlement to a judgment by affidavit containing a description of the property, the amount realized at the sale or credited to the defendant, the costs of sale and such other proof as required by law. If the plaintiff's claim is for an unliquidated sum that 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 that would be required in the case of oral proof. In all negligence actions involving damage to property, proof of negligence of the defendant shall

be by affidavit of the person with knowledge of the negligence of the defendant. In automobile negligence actions and insurance subrogation cases proof of the property damage shall be given by an affidavit of an automobile mechanic or an insurance adjuster or appraiser setting forth the affiant's occupation and business address; if employed, the name of the employer and the affiant's position; the date of inspection of the property involved and, if a 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 therefore reasonable; and the amount actually paid for repairs, if completed. The plaintiff may request or the court, after review of the affidavits submitted in accordance with this rule, may require oral testimony in open court.

(d) Time for Entry. If a party entitled to a judgment by default fails to apply therefore 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 thereto.

(e) Notice of Entry. At the time a default judgment is entered, the clerk shall notify the judgment-creditor or judgment-creditor's attorney of the effective date and amount of the judgment. Upon receipt of the notice the judgment-creditor shall, within 7 days, notify the judgment-debtor by ordinary mail of the effective date and amount of the judgment.

Note: Source—*R.R.* 7:9–2(a)(b), 7:9–4. Paragraphs (a) and (d) amended June 29, 1973 to be effective September 10, 1973; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a), (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b), and (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a), (b), and (c) amended and paragraph (e) adopted _____, 2002 to be effective _____, 2002..

N. Proposed Amendment to *R.* 6:6-6 — Post-Judgment Applications in Tenancy Actions

In Recommendations #45, 46 and 47 the Supervising Judges addressed the topic of post-judgment applications for relief in tenancy actions. Basically they wanted to make it clear that briefs should not be required in connection with post-judgment applications (Recommendation #45), since most applicants are proceeding *pro se*, and to set forth a defined procedure for seeking and obtaining orders for orderly removal (Recommendation #46). The Supervising Judges also felt that forms for this purpose should be available in the clerk's office (Recommendation #47). Implementation of these recommendations can be accomplished by amending *R.* 6:6, which deals generally with the topic of judgments. Proposed amendments follow; these would create a new *R.* 6:6-6 to deal with post-judgment applications in tenancy actions and redesignate the current 6:6-6 as 6:6-7. Note that the new *R.* 6:6-6 (c) will require the clerks' offices to make forms available for such applications. The forms will not be part of the Appendices to the Rules and so the drafts will be prepared sometime in the near future for review by the Clerks, Supervising Judges and this Committee.

6:6-6. Post-Judgment Applications for Relief in Tenancy Actions. (New)

(a) Generally. *Rules* 4:52-1 and 4:52-2 shall apply to post-judgment applications for relief in tenancy actions in the Special Civil Part, except that the filing of briefs shall not be required.

(b) Orders for Orderly Removal. An order for post-judgment relief, applied for upon notice to a landlord pursuant to paragraph (a) of this rule, need not have a return date where the sole relief is a stay of execution of a warrant of removal for 7 calendar days or less, but it shall provide that the landlord may move for the dissolution or modification of the stay on 2 days' notice to the tenant or such other notice as the court fixes in the order.

(c) Forms. Forms for applications for post-judgment relief in tenancy actions shall be available to litigants in the clerk's office.

Note: Adopted , 2002 to be effective 2002.

O. Proposed Redesignation of *R.* 6:6-6 as *R.* 6:6-7 — Clerk's Certification

If the Supreme Court adopts the Committee's proposed amendments to *R.* 6:6-6, relating to post-judgment applications in tenancy actions, the current 6:6-6 will have to be redesignated as *R.* 6:6-7. The proposed redesignation follows.

[6:6-6.]6:6-7. Issuance by Clerk of Certificate of Satisfaction of Judgment

In cases where a judgment debtor has fully satisfied a judgment, but the clerk has not entered satisfaction on the record pursuant to *R.* 4:48-2(a) because either the party receiving full satisfaction has not given a warrant for satisfaction or no execution issued on the judgment has been returned fully paid, the judgment debtor may make written application to the clerk for the issuance of a certificate of satisfaction of judgment. Upon receipt of such written application along with proof of payment, the clerk shall send to the attorney for the judgment creditor or the judgment creditor, if pro se, a letter setting forth that the judgment debtor has filed a written application seeking the issuance of a certificate of satisfaction of judgment and that said certificate will be issued within 10 days, unless written objection is received by the clerk with a copy sent to the judgment debtor. The letter sent by the clerk shall include a copy of the written application and proof of payment filed by the judgment debtor. If no objection is received within 10 days from the date of the letter, the clerk shall issue the certificate of satisfaction of judgment to the judgment debtor and enter satisfaction on the record. If an objection is received, the clerk shall set the matter down for a hearing and notify all parties as to the date of the hearing.

Note: Adopted as *Rule* 6:6-5 November 7, 1988 to be effective January 2, 1989; redesignated as *Rule* 6:6-6 July 18, 2001 to be effective November 1, 2001; redesignated as *Rule* 6:6-7 , 2002 to be effective , 2002.

P. Proposed Amendments to *R.* 6:7-2 — Execution of Arrest Warrants by Special Civil Part Officers and Sheriffs

The Supreme Court has approved Best Practices Recommendation #33, which seeks to regularize the assignment of Special Civil Part arrest warrants to court officers and sheriffs. The text of the recommendation reads as follows:

> **6. The practice of directing Special Civil Part warrants to the sheriff in the first instance should be allowed to continue and where this is not the arrangement, the warrant directed to a Special Civil Part Officer should remain with the officer for execution for six months, at the conclusion of which the officer would furnish a certification regarding his /her efforts to serve the warrant and the creditor would be allowed to apply by motion to the court for an order directing the issuance of a warrant to the sheriff.**

The recommendation can be implemented by adding a new paragraph (h) to *R.* 6:7-2 and redesignating the current paragraph (h) as paragraph (i). The Committee believes that it was the Supervising Judges' intention to allow applications for orders to direct a warrant to the sheriff to be made *ex parte,* since the second warrant is a continuation of the exercise of the court's power to coerce compliance with its earlier orders to make post-judgment discovery. The proposed amendments, including the provision for *ex parte* applications, follow.

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

(a) through (g) ... no change.

(h) Execution of Warrants by Special Civil Part Officers and Sheriffs. A warrant may be directed to the sheriff in the first instance, but a warrant directed to a Special Civil Part Officer shall remain with the Officer for execution for six months, at the conclusion of which the Officer shall furnish a certification of his or her efforts to serve the warrant and the judgment creditor may apply *ex parte* for an order directing the issuance of a warrant to the sheriff.

[h**]**(i) Expiration of Unserved Warrants. If the warrant for arrest is not executed within 24 months after the date of the entry of the order authorizing it, both the order and the warrant shall be deemed to have expired and to be of no further effect.

Note: Source--*R.R.*7:11-3(a)(b), 7:11-4. Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 17, 1975 to be effective September 8, 1975; amended July 21, 1980 to be effective September 8, 1980; caption amended, paragraph (a) caption and text amended, paragraph (b) adopted and former paragraph (b) amended and redesignated as paragraph (c) June 29, 1990 to be effective September 4, 1990; paragraph (a) amended and paragraphs (d), (e) and (f) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (b), (d), (e) and (f) amended July 13, 1994 to be effective September 1, 1994; former paragraph (b) redesignated as subparagraph (b)(1), subparagraph (b)(2) adopted, paragraph (c) amended, paragraph (d) adopted, former paragraph (d) amended and redesignated as paragraph (e), former paragraphs (e) and (f) redesignated as paragraphs (f) and (g) June 28, 1996 to be effective September 1, 1996; subparagraph (b)(2) and paragraph (g) amended July 10, 1998 to be effective September 1, 1998; paragraph (h) adopted July 5, 2000 to be effective September 5, 2000; paragraph (h) adopted and former paragraph (h) redesignated as paragraph (i) , 2002, to be effective , 2002.

Q. Proposed Amendment to *R.* 6:7-4 - Hours for Execution of Writs (New)

The Supreme Court has approved Best Practices Recommendation #28. The approved recommendation reads as follows:

> **Levies on personal property within residential premises can only be made between the hours of 6:00 a.m. and 10:00 p.m., unless otherwise permitted by court order, which may be sought by *ex parte* application. Levies on other personal property can be made at any time, but a court officer shall be required to levy on such property outside the hours of 6:00 a.m. to 10:00 p.m. only if the property cannot otherwise be effectively levied upon.**

The purpose is to establish a uniform regulation of the hours during which levies can be made on personalty within a residence that balances the interests of creditors, residents and court officers and yet is consistent with statutory and case law.

The recommendation can be implemented by the adoption of a new rule, designated as *R.* 6:7-4, which follows.

6:7-4. Time at Which Levy Can be Made (New)

(a) Personal Property Within Residential Premises. Levies on personal property located within residential premises can only be made between the hours of 6:00 a.m. and 10:00 p.m., unless otherwise permitted by court order, which may be sought by *ex parte* application.

(b) Other Personal Property. Levies on other personal property may be made at any time, but a Special Civil Part Officer shall be required to levy on such property outside of the hours of 6:00 a.m. to 10:00 p.m. only if the property cannot otherwise be levied upon.

Note: Adopted _____, 2002 to be effective _____, 2002.

R. Proposed Amendments to Appendices XI-G and XI-H — Police Assistance with Chattel Executions and Warrants for Removal

The Committee considered a proposal made by a representative of the New Jersey Superior Court Officers Association to add the phrase, "Local police departments are authorized and directed to provide assistance to the officer executing this warrant" [or writ, in the case of a chattel execution], to the warrant of removal set forth in Appendix XI-G and to the model writ of execution against goods and chattels in Appendix XI-H to the Rules. The proposal was made because there are times when, in the opinion of the court officer, the presence of a police officer is necessary to keep the peace when the court officer is attempting to seize, for example, an automobile pursuant to a chattel execution or to execute a warrant for removal in a tenancy action and yet the local police are reluctant to perform that function because the process was issued in a civil proceeding. The thought was that the appearance of the phrase in the text of the warrant or writ would facilitate the cooperation of the police when it is needed for the safety of the officer and to prevent a breach of the peace.

During the course of the Committee's deliberations on the proposal, it had the benefit of legal research performed by AOC staff to the Committee which indicated that *N.J.S.A.* 2A:154-1 gives judges broad power to do whatever is necessary to enforce laws enacted to keep the peace. Presumably this would include *N.J.S.A.* 2C:29-1, which makes it a disorderly persons offense to purposely obstruct the "administration of law or other governmental function" or to prevent "a public servant from lawfully performing an official function" by means of intimidation, violence or physical interference. Under *N.J.S.A.* 2C:29-9a, it is a fourth degree crime to purposely disobey a judicial order or hinder, obstruct or impede the effectuation of a court's jurisdiction over any person, thing or

controversy. Municipal police officers of course, have the power under *N.J.S.A.* 40A:14-152 to arrest any disorderly person or person committing a breach of the peace. Last, but not least, *N.J.S.A.* 2B:6-3b authorizes Special Civil Part Officers to execute writs and warrants issued by the Special Civil Part. It is the confluence of these statutes that would authorize a statement, such as the one proposed by the court officers, to be included in the writ and the warrant. On the strength of this authority, the AOC wrote in 1997 to the Deputy Director of the Division of Criminal Justice and the President of the County Prosecutors Association to ask that they urge local law enforcement agencies and county prosecutors to cooperate with Special Civil Part Officers executing an arrest warrant issued pursuant to *R.* 6:7-2(g) containing this very same language.

It became clear in the course of the Committee's work on this proposed that it was narrowly divided between those who wanted the additional language to state that the police are "authorized and directed" to assist and those who favored the phrase "authorized and requested". The key concern was with creating the appearance that the Judiciary, through the writ or the warrant, is trying to manage the deployment of resources for the police department. Other issues were also raised, including Legal Services' concern that the presence of a police officer at the scene of an already emotionally charged situation may be inflammatory or be perceived in the community as unduly coercive. Two members of the Committee suggested that perhaps the police chiefs and prosecutors associations and the Attorney General should be contacted for their views to ensure that whatever solution the Committee recommends to the Supreme Court is workable. During the discussion, the Committee was also reminded that on two occasions in the recent past, officers have been killed while executing this kind of court-issued process in the New York metropolitan area.

In the end a closely divided Committee voted in favor of using the language "authorized and directed" on the warrant of removal. A large majority favored using the language "authorized and requested" on the chattel execution. The Committee deferred to the police departments' authority to manage their resources by specifying that the assistance is directed or requested "if needed"; presumably the police will determine if their presence is required to keep the peace. The language on the writ also make it clear that it alone does not authorize forced entry to a residence. Other changes of a housekeeping nature are proposed for the warrant and the writ. On the warrant, the phrase "subject to applicable law" was added to the sentence regarding the landlord's possible removal of the tenant's possessions to alert those concerned to the Abandoned Property Act. In the second paragraph of the warrant, the term "relief" has been substituted for the phrase "a hardship stay of eviction," to reflect the fact, without stating it in detail, that the tenant can move to vacate the judgment or apply for an order for orderly removal. These procedures are fully explained in the announcement set forth in Appendix XI-S, which the judge makes at the calendar call and copies of which are served with each tenancy summons and made available in the court room. On the chattel execution the court officer's percentage was adjusted in accordance with the recent change to *N.J.S.A.* 22A:2-37.2.

APPENDIX XI-G — WARRANT OF REMOVAL

Docket No.: _____

Plaintiff's Name
Plaintiff(s) - Landlord(s)
- vs -
Defendant's Name
Defendant(s) - Tenant(s)

(Address -- 1st Line)
(Address -- 2nd Line)
City, NJ 00ZIP

_____ County Special Civil Part
Landlord/Tenant Division
(Court Address -- 1st Line)
(Court Address -- 2nd Line)
City, NJ 00ZIP
Phone No. (XXX) XXX-XXXX

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

WARRANT OF REMOVAL

To: Name of Court Officer
(Court Officer)

You are hereby commanded to dispossess the tenant and place the landlord in full possession of the premises listed above. Local police departments are authorized and directed to provide assistance, if needed, to the officer executing this warrant.

To: Name of Defendant
(Tenant(s))

You are to remove all persons and property from the above premises within three days after receiving this warrant. Do not count Saturday, Sunday and holidays in calculating the three days. If you fail to move within three days, a court officer will thereafter remove all persons from the premises between the hours of 8:30 a.m. and 4:30 p.m. Thereafter, your possessions may be removed by the landlord, subject to applicable law.

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

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

Date:_____ Witness:_____
(Judge)

_____
Name of Clerk, Clerk of the Special Civil Part

==========

If you do not have an attorney, you may call the Lawyer Referral Service at (XXX) XXX-XXXX. Si ud. puede pagar los servcios de un abagado pero no conoce a ninguno, puede llamar a las oficinas del servicio de referencias de abagado de la asociacion de abagados del condado local. Telefono: (XXX) XXX-XXXX. If you cannot afford an attorney, you may call _____ _____ Legal Services at (XXX) XXX-XXXX. Si ud. no puede pagar un abagado, ayuda legal gratis esta a su orden. Llame Servicios Legales: (XXX) XXX-XXXX.

Landlord: XXXXX XXXXX
Address: XXXXXXXXXX
City, NJ 00ZIP
Telephone: (XXX) XXX-XXXX

Court Officer:_____
Date Served :_____
Method of Service:_____
If Unserved, Why:_____
Date Executed: _____
Must Vacate By:_____

[Adopted effective January 2, 1989; amended June 29, 1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; amended July 10, 1998 to be effective September 1, 1998; amended , 2002 to be effective ,2002.]

APPENDIX XI-H EXECUTION AGAINST GOODS AND CHATTELS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART
_____County
Street Address of Court
Town, NJ ZIP
Tel. No. of Court
Docket No.

EXECUTION AGAINST GOODS AND CHATTELS

Plaintiff,

vs.

Designated Defendant(s),
(Address(es))

TO: _____
COURT OFFICER OF THE SPECIAL CIVIL PART

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

Local police departments are authorized and requested to provide assistance, if needed, to the officer executing this writ. This does not authorize entry to a residence by force unless specifically directed by court order.

Judgment Date . . . . . $ _____
Judgment Amount . . . . . $ _____
Costs and Atty. Fees . . . . . $ _____
Subsequent Costs . . . . . $ _____
Total . . . . . $ _____
Credits, if any . . . . . $ _____
Subtotal A . . . . . $ _____
Interest . . . . . $ _____
Execution costs and mileage . . . . . $ _____
Subtotal B . . . . . $ _____
Court officer fee (10%) . . . . . $ _____

Total due this date . . . . . $ _____

Date _____

Property to be Levied
Upon and Location of Same:

Plaintiff's Attorney and Address:
_____
_____
_____
_____
_____
Telephone No. _____

Date_____

_____
Judge

_____
Clerk of the Special Civil Part

I RETURN this execution to the Court

( ) Unsatisfied _____

( ) Satisfied ( ) Partly Satisfied

Amount Collected. . . . $ _____
Fee Deducted. . . . . $ _____
Amount Paid to Atty . .. $ _____

Date _____

_____
Court Officer

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

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendment to *R.* 1:13-7 — Dismissal for Lack of Prosecution

Prior to September 1, 2000, paragraph (a) of this rule provided for the dismissal of cases that have been pending for six months "without any required proceeding having been taken therein." It was used primarily in Civil Part cases, but the Special Civil Part in a few counties also used the rule to dismiss defaulted actions in which no affidavit of proof had been filed during the six months following entry of default. Most counties did not bother to use this procedure because statistically a case is counted as "disposed" at the time default is entered. Legally, those defaulted cases which are not dismissed, or in which no judgment is entered for six months, are in limbo and may adversely affect the rights of the defendants to later raise a statute of limitations defense if the plaintiff attempts to reactivate the case. In any event, the dismissal mechanism is no longer available because *R.* 1:13-7(a) was amended in a way that made it specific to the Civil Part. The Committee considered, but rejected a proposed amendment that would add a new paragraph (c) to provide for the dismissal of defaulted Special Civil Part cases that have been inactive for six months.

The proposed amendment was rejected for a variety of reasons. First, but not necessarily most important, the amendment could hurt the defendant by forcing the plaintiff to seek a judgment which will adversely affect the defendant's credit rating. Second, it would create extra work of the clerk's office and the plaintiff on cases that have already been counted as disposed. Third, the proposed amendment would not provide any additional protection for the defendant since *R.* 6:6-3(d) provides that if 6 months elapses after the entry of default, the plaintiff seeking entry of default judgment must apply to the court and give notice of the application, which gives the defendant another opportunity to object. Fourth, the Committee's proposed amendment to *R.* 6:6-3(e) will require notice to the defendant upon entry of a

default judgment, so there's no issue of defendant having to wait years to find out that a judgment has been entered.

B. Proposed Amendments to *R.* 6:4-4 — Additional Discovery in PIP Cases

Following the Committee's decision to recommend an increase in the monetary limit of the Special Civil Part to $15,000 there was concern among some members that more Personal Injury Protection (PIP) cases would be filed in the Special Civil Part. The concern was that since depositions and medical exams are available in the Special Civil Part only by court order, more motions would be filed, adding to the court's burden. To address this possibility the Committee considered amendments to *R.* 6:4-4 that would permit depositions and medical exams in PIP cases without court order.

In evaluating the proposal, the Committee found that most PIP cases in New Jersey (18,000 this past year) are arbitrated by the American Arbitration Association. Only 2503 PIP cases were filed in the Law Division, Civil Part for the same year and these resulted in 26 judgments under $15,000. The Committee believes that most of these cases resulted from a PIP count being added to a negligence complaint in the event that it developed at a later point in the case, so future cases of this sort are unlikely to be filed in the Special Civil Part rather than the Civil Part of the Law Division, regardless of the monetary limit of the former. Even if all 2500 PIP cases filed in the Civil Part were instead filed in Special Civil, the Committee believes that the effect would be negligible on a court that is already handling more than 400,000 cases per year; of which 180,000 are actions for damages. The Committee thus reached the conclusion that the case management concerns related to PIP cases are *de minimus* if the monetary limit is raised to $15,000. There thus appears to be no sound reason to make an exception for PIP cases in the Special Civil Part's discovery procedures. A change of this nature might even have the unwanted effect of more PIP cases being filed in Special Civil, to the extent that discovery considerations are a factor in determining whether to proceed with arbitration, where more discovery is currently available than in Special Civil, or to proceed in the Civil Part, where discovery opportunities are maximal. The proposed rule amendment was therefore rejected.

C. Proposed Paragraph (c) in the New *R.* 6:4-7 — Amount of Deposit Upon Adjournment of a Tenancy Action

When the Committee made the decision to recommend the creation of a new *R.* 6:4-7, where all rule provisions regarding adjournments would be placed, it considered a proposal to add a paragraph (c) stating that the amount, if any, of the deposit required upon adjournment of a tenancy action in which a habitability defense has been raised is within the discretion of the court. The proposal was rejected because it was a statement of the obvious under the governing case law and its inclusion in a rule might raise more questions than it answers.

D. Proposed Addition of Form H Interrogatories to Appendix II — Omnibus Form Interrogatories for All Case Types

As noted in section I.H. (above) of this Report, the Committee considered a proposal to have an omnibus set of form interrogatories, with 5 to 15 additional free form questions, designed for use in all case types filed in the Special Civil Part. An initial set of interrogatories was prepared by one of the Supervising Judges and further developed by a subcommittee for the consideration of the full Committee. The Committee concluded that it would not be possible using this approach to elicit all the information needed to litigate the variety of cases found in the Special Civil Part and therefore rejected the proposed Form H interrogatories. As indicated earlier, the Committee will now focus on sets of form interrogatories for each case type, as recommended by the Committee of Special Civil Part Supervising Judges in its Best Practices Report.

III. OTHER RECOMMENDATIONS

A. Change in Definition of Inventory and Backlog to 125 Days for Damages Actions

The present definition of case inventory in the Special Civil Part is any case pending for less than 90 days from the date of filing. Any case older than 90 days is considered backlog. Best Practices Recommendation #23, which has been approved by the Supreme Court, provides separate definitions for inventory/backlog for each of the three docket types. The standard for tenancy actions and small claims will be 60 days and the standard for actions for damages within the monetary limit of Special Civil will be 120 days.

In section I.I. of this Report, the Committee proposes an amendment to *R.* 6:4-5 that would set the time limit for completion of discovery in Special Civil Part cases at 90 days from the filing of the answer. There are a number of reasons why the Committee settled on this approach and they are explained in section I.I. When the 90 days are added to the 35 days allowed for the filing of the answer, the result is trial readiness in 125 days, rather than the 120 previously approved for inventory. The problem can be solved by changing the definition of inventory to 125 days, which the Committee recommends. The alternative, as noted earlier, is to simply accept the incongruity as we have for many years in setting the definition of inventory at 90 days, while the rules permit 100 days for discovery.

IV. LEGISLATION — NONE

V. MATTERS HELD FOR CONSIDERATION

A. Proposed Amendment to *R.* 6:3-4 — Consolidation of Tenancy Cases

Rule 6:3-4 currently prohibits the joinder of summary disposes actions, and "forcible" entry and detainer actions with any other cause of action. The rule also prohibits the filing of a counterclaim or third-party complaint in such actions.

The Supervising Judges said in recommendation #40 that "when two tenancy actions involving the same parties and premises are pending, the cases should be consolidated and the first one dismissed." The recommendation can be implemented by amending *R.* 6:3-4, but the Committee noted that a dismissal of one of the actions is inconsistent with *R.* 4:38-1(c), which provides for the continued maintenance of both actions. The dismissal of the earlier action could be problematic if it is an action for summary dispossess and the later-filed action is one alleging forcible entry and detainer which the judge subsequently finds did not occur. The Committee therefore attempted to craft an amendment to *R.* 6:3-4 that is consistent with the Part IV rule, but accomplishes what it perceives that the Supervising Judges sought --- a uniform method of handling consolidated cases. The Committee, however, was unable, within the time allowed, to settle on the appropriate language. The heart of the problem appears to be whether, in the damages portion of unlawful entry and detainer actions, the landlord should be permitted to assert a counterclaim or setoff for unpaid rent. The competing interests are the need to focus the unlawful entry and detainer actions on deterring the use of self-help evictions, whatever the cause, versus the need to resolve claims between the same parties in a single proceeding. This is the only Best Practices recommendation requiring a rule change for implementation that the Committee was unable to address and had to holdover for further consideration.

B. Proposed Amendment to *R.* 6:6-6 — Time to Respond to Application for Clerk's Certificate of Satisfaction of Judgment

Rule 6:6-6 sets forth a procedure by which a judgment-debtor who has paid a judgment can apply to the clerk to have it marked satisfied when either the judgment-creditor has not given a warrant to satisfy or no execution issued on the judgment has been returned fully paid. The rule allows the judgment-creditor 10 days to respond to the application. When the Committee decided to recommend redesignating the rule as 6:6-7, in order to accommodate the new 6:6-7 dealing with applications for post-judgment relief in tenancy actions, a member proposed enlarging the time allowed the judgment-creditor to respond from 10 to 20 days. There are pros and cons to the proposal that the Committee could not resolve in time for this report and so it was held for further consideration.

C. Court Officer Oversight and Evaluation of Centralized Post-Judgment Collection System

The Committee was asked by a member to consider what steps might be recommended to improve the responsiveness of Special Civil Part Officers in the southern part of the State and what role, if any, is played in this situation by the Centralized Post-Judgment Collection System in the four southern counties where it is used.

AOC Staff provided the Committee with a list of the counties that have established the court officer advisory committees required by Administrative Directive #4-01 and the Committee briefly discussed the subject of how to measure the impact on collections of the centralized post-judgment collection system. The Committee decided to take no action for the moment because more time is needed to assess the effectiveness of the supervisory procedures set forth in the recently adopted administrative directives and measuring the impact of the post-judgment collection system on collections is a complicated task that will require more time than is available before the Committee submits its report to the Supreme Court.

VII. CONCLUSION

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

Respectfully submitted,

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