A PRACTITIONER'S GUIDE TO NEW JERSEY'S CIVIL COURT PROCEDURES

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N O T I C E

This document provides procedural guidance to practitioners in the New Jersey Superior Court, Law Division, Civil Part. It was prepared under the supervision of the Conference of Civil Presiding Judges, along with the Conference of Civil Division Managers and the Civil Practice Division of the Administrative Office of the Courts (AOC). This document is intended to embody the policies adopted by the New Jersey Supreme Court, the Judicial Council and the Administrative Director of the Courts, but does not itself establish case management policy. It has been reviewed by the Judicial Council and the Conference of Civil Presiding Judges and is intended to promote uniform practices and procedures statewide.

While this document reflects court policies existing as of the date of its preparation, in the event there is a conflict between its contents and any Rule or statement of policy issued by the Supreme Court, the Judicial Council, or the Administrative Director of the Courts, that Rule or statement of policy, rather than this document, will be controlling.

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SECTION 1 : CASE INITIATION

a. Procedure for Instituting a Civil Case

Most cases are initiated by the filing of a complaint. See *R.* 4:2-2. The complaint shall contain:

- a brief statement indicating the grounds upon which the court's jurisdiction depends, *e.g.*,
  - a party to the claim resides in the filing county
  - the cause of action occurred in the filing county
  - affected real property, as set forth in the complaint, is located in the filing county (see *R.* 4:3-2);
- a brief statement of the claim showing that the pleader is entitled to relief;
- the "wherefore" clause, generally demanding judgment for the relief sought (See *Botta v. Brunner,* 26 *N.J.* 82 (1958) regarding the proscription on including a specific dollar amount);
- the certification, stating that there is no other pending court action arising from the cause of action set forth by the complaint (see *R.* 4:5-1(b)(2)); and
- the original signature of an attorney duly licensed to practice in New Jersey or *pro se* plaintiff, if a *pro se* appearance is permitted by the court rules (*i.e.*, papers submitted on behalf of a corporation must be signed by a New Jersey licensed attorney).

Civil cases can also be initiated by way of a verified complaint (*i.e.*, one that is sworn to) and an Order to Show Cause (OSC). The filing fee for this is $200.00 for the verified complaint and $30.00 for the OSC. This alternative procedure is used where the plaintiff in the particular case requires some emergent relief or the matter involves a summary action pursuant to *R.* 4:67 or an action under *R.* 4:70-1 for the enforcement of a statutory penalty. Examples of summary actions under *R.* 4:67 that must be brought by way of verified complaint and OSC include:

- Actions to expunge a voluntary or involuntary civil commitment. *N.J.S.A.* 30:4-80.9.
- Actions by insured to compel UIM arbitration after settlement with a

tortfeasor. See *R.* 4:67 *et seq.* and *Rutgers Cas. Ins. Co. v. Vassas,* 139 *N.J.* 163, 174 (1995).

- Actions to discharge a construction lien. *N.J.S.A.* 2A:44A-30.

- Proceedings to obtain money deposited pursuant to a lien on real estate. *N.J.S.A* 2A:56-20.

- Appeals by police officers pursuant to *N.J.S.A.* 40A:14-150.

- Appeals by investigators in the county prosecutors' offices pursuant to *N.J.S.A.* 2A:157-10.7.

- Controversies between execution creditors as to application of money realized from the sale of the property of a judgment debtor under executions issued out of different courts. *N.J.S.A.* 2A:17-6.

- Actions for enforcement of written agreement for alternative resolution. *N.J.S.A.* 2A:23A-4.

- Actions to challenge an election. *N.J.S.A.*19:28-1 *et seq*.

- Actions for cancellation or discharge of a mortgage loan. *N.J.S.A.* 46:10B-6.

- Actions to confirm, vacate or modify an outside arbitration award including a fee arbitration award entered pursuant to *R.* 1:20*A et seq. N.J.S.A.* 2A:23A-26. It should be noted that if a suit was pending prior to the matter going to fee arbitration, a summary action should not be filed. Rather, default can be entered pursuant to *R* 1:20A-3 (e). See *R.* 1:20A-3 (e).

- Actions for civil penalties for violations of the animal cruelty laws. *N.J.S.A.* 4:22-17.

- Actions to recover wages paid at less than the minimum wage. *N.J.S.A.* 34:11-56.40.

- Actions by crime victims to recover the proceeds of sale of criminal memorabilia. *N.J.S.A.* 52:4B-28.

- Actions for a determination of costs and expenses when the court vacates arbitration awards. *N.J.S.A.* 2A:23A-18.

In either instance, *i.e.*, cases initiated with complaints or verified complaints with an OSC, service of these documents on the defendant is required, along with a summons (see *R*. 4:4-1). However, when a case is initiated via a verified complaint and OSC, the signed OSC serves as original process and no summons is needed. Forms of OSCs when used as original process are found in Appendix XII-F through XII-I of the Rules of Court

and are posted on the Judiciary's Internet Website. See also Directive #16-05. As will be discussed, service of complaints may be effectuated by personal delivery upon the defendant by an approved agent, *e.g.*, Sheriff's Officer or private process server. Failure to serve the complaint may be cause for the case to be dismissed in accordance with *R.* 1:13-7.

b. Case Information Statements

Every complaint must be accompanied by a completed and signed Case Information Statement (CIS) and the appropriate filing fee. See *R.* 4:5-1. The CIS must be signed by an attorney admitted to practice in New Jersey or a *pro se*, provided that a *pro se* appearance is permitted pursuant to the Rules of Court. A *pro se* cannot sign a CIS on behalf of a corporation. Original signatures must appear on the CIS. CIS forms may not contain stamped or facsimile signatures or anything other than an original. If pleadings are filed along with a CIS not containing an original signature, these will be returned to the sender stamped "received but not filed." See *R.* 1:5-6(c). The CIS is a brief statement that identifies the case type and contains information about the case including the degree of complexity and complementary dispute resolution eligibility, as well as any special accommodations required for the timely resolution of the case. *Rule* 1:5-6(c) permits the court to reject any complaint not signed or submitted with the appropriate fee or the required completed CIS or on paper of standard weight and quality in accordance with *R.* 1:4-9. The CIS form appears as Appendix XII-B to the *Rules of Court* and is also included as an appendix to this document.

c. Wordprocessed CIS Forms

Civil case management staff in all counties have been directed that CIS forms produced on an attorney's wordprocessor must be accepted so long as all the information on the Supreme Court-approved form, as it appears as the Appendix XII-B to the *Rules of Court*, is present and in the same format or placement.

d. CIS not Required for Motions That Are First Pleadings

A CIS must be filed with first pleadings only, and "pleadings," pursuant to *R.* 4:5-1(a), do not include motions. Thus, even if a motion is the first *paper* filed by a party, no CIS need accompany it.

e. Weight of Papers Submitted for Filing

Rule 1:4-9 requires that papers submitted to the court for filing must be of standard weight and quality for copy paper. Papers submitted that are not in accordance with the requirements of this rule may be rejected for filing pursuant to *R.* 1:5-6(c).

f. No Stipulations to Enter Suit Without Process

Parties seeking court approval of a private settlement entered into on behalf of a minor or mentally incapacitated person may not file a stipulation to enter suit without process. The proper procedure is to file a complaint and CIS along with the applicable $200 filing fee. Thereafter, the matter will be scheduled for a friendly hearing pursuant to *R.* 4:44.

g. Petitions for Obtaining Depositions in Aid of Foreign Litigation

Rule 4:11 prescribes the procedure for out-of-state counsel to use when filing a New Jersey action to obtain a deposition in aid of a case pending in a foreign jurisdiction. A kit has been developed for use in such actions. A copy appears in the appendix and on the Judiciary website. A CIS is not required insofar as the filer is not a "party" in a pending New Jersey case, as contemplated by *R.* 4:5-1(b)(2).

h. Requests for Letters Rogatory

A letter rogatory is a formal written communication from one court in which an action is pending to a court in a foreign jurisdiction (interstate or international) requesting that the testimony of a non-party witness be taken within its jurisdiction for the use of the court making the request. Under *R.* 4:11-5, a deposition of a non-party resident may be taken "… in accordance with a commission or letter rogatory issued by a court of this state, which shall be applied for by motion on notice…" A commission or letter rogatory shall be issued in accordance with *R.* 4:12-3, on application and notice. Once a judge has issued an order for a letter rogatory, the Clerk of the Superior Court in Trenton must affix the seal of the court to the letter rogatory. The party seeking the deposition must then apply to the foreign state court pursuant to the law of the foreign state.

i. Actions Seeking Titles to Abandoned Motor Vehicles

Individuals or entities seeking titles to abandoned motor vehicles should contact the legal department of the Motor Vehicle Commission. There is an administrative procedure available and lawsuits in the Superior Court no longer need to be instituted in most cases.

j. Requests to Change New Jersey Birth Certificates

If a request is made to change the name on a birth certificate, a name change action must be commenced. If the request is to change anything else on a New Jersey issued birth certificate, such as designation of parentage, a misspelling of the first, middle or last name, or misstatement as to gender, the requestor should be directed to contact the New Jersey Registrar of Vital Statistics ("the Registrar"). See *N.J.S.A.* 26:8-49.

Specifically, with respect to an error in a first or middle name, the individual seeking a correction must supply documentary proof of the correct spelling and the proof has to be something from before the individual's 7th birthday, such as a baptismal certificate, school records, etc. This goes through the Registrar and the court is not involved.

With respect to an error in the last name, the individual seeking a correction must show documentary proof of the correct name and the documentation itself must date from within a year of the individual's birth or prior to the birth, such as the parent's marriage certificate with the last name spelled correctly, the birth certificate of an older sibling, or a parent's birth certificate. This also goes through the Registrar and the court is not involved.

With respect to an error in gender on the birth certificate (that is, if someone who is and has always been a male is mistakenly classified on the birth certificate as a female), the individual seeking a correction must show documents with the correct gender noted, such as school records, marriage certificate, etc. This, too, goes through the Registrar and the court is not involved.

With respect to someone who has undergone gender reassignment and wants both a name change and a gender change on the birth certificate, that individual can get a birth certificate in the new name with the court-ordered name change, but the gender will not be changed unless the person has a **notarized statement from the physician certifying the completion of the gender reassignment.** Once this latter document is presented to the Registrar, the individual can get a new birth certificate showing both the new name and the new gender. In this scenario, then, the court is involved to order the name change but everything else is done through the Registrar.

k. Wage and Hour Appeals

An individual having a wage and hour claim not exceeding $30,000 has a choice of remedies. If the claim does not exceed $30,000, the individual can bring the claim to the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance (hereinafter referred to as "Wage and Hour"). If an individual brings the claim via Wage and Hour, he or she shall receive a decision after a hearing before a wage collection referee. At any time after initiation of the claim with Wage and

Hour and up to two days before the date of the hearing before the referee, either party can opt to have the matter determined by a Superior Court jury by payment within that time of the $200 Law Division, Civil Part filing fee to the Wage Collection Division of Wage and Hour. See *N.J.S.A.* 34:11-66. If this is not done, the referee will render a decision. If the award is for any monetary amount, it will thereafter be docketed as a "" judgment in the Superior Court via submission of the certified transcript of judgment to the Superior Court Judgment Unit. If a party disagrees with the referee's award, the party must file a Notice of Appeal and provide a surety bond within 20 days after the judgment pursuant to *N.J.S.A.* 34:11-63. If this is done, Wage and Hour will forward the appeal to the Superior Court in the county in which the employment was located. Such appeals are *de novo* appeals on the record. The filing fee is not sent with the papers from Wage and Hour, but it is $75 pursuant to *N.J.S.A.* 22*A*:2-27. The case type code for these appeals is 801 – Summary Action and no CIS is required.

If a jury trial is requested after a claim is initiated with Wage and Hour or the case filed originally in Superior Court pursuant to *N.J.S.A.* 34:11-66 (*e.g.,* the claim exceeds $30,000) the filing fee is $200, the case type code is 599 – contract/commercial transaction and a CIS is required.

l. Ejectment Actions

Ejectment is a legal action brought by a plaintiff under *N.J.S.A.* 2A:35-1 and *R.* 4:59-2, claiming a right to possess real property against a defendant who currently possesses the property. In New Jersey, the common law action of ejectment was replaced by *N.J.S.A.* 2A:35-1, which states, "Any person claiming the right of possession of real property in the possession of another or claiming title to such real property, shall be entitled to have his rights determined in an action in the Superior Court." It differs from a summary dispossess action under *N.J.S.A.* 2A:18-53 which permits the removal of tenants or lessees under certain circumstances (*e.g.,* holdover tenants, defaults in rent, and certain violations of the leasing agreement), but does not involve claims to title of the property. Ejectment actions should be brought in the Law Division.

m. Late Notice of Claim Against a Public Entity

At times, the first paper filed by a plaintiff is a motion requesting the court's permission to file a late notice of claim against a public entity, such as the State of New Jersey, a county or municipality. Such motions are filed because the plaintiff failed to timely notify the public entity of his or her claim as required by *N.J.S.A.* 59:8-7 and –8, which provide that, within 90 days after the cause of action arose, *e.g.,* the date of an accident, the claimant must file a notice of claim with the Attorney General of the department or agency involved in the alleged negligent act. The plaintiff must then wait six months (after the date the notice of claim is received) before filing a complaint in

court. The six-month waiting period is to allow the public entity against which the claim is made to investigate and, if appropriate, to negotiate a settlement. The claimant must also file suit within two years of the accrual of the cause of action.

Sometimes, however, claimants fail to file the notice of claim with the Attorney General or other governmental department or agency within 90 days of the accrual of the cause of action, as required by *N.J.S.A.* 59:8-8. *N.J.S.A.* 59:8-9 provides for late notices of claim to be filed, if permission to do so is granted by the court, within one year of the accrual of the cause of action.

Claimants must make a motion to the court for permission to file a late notice of claim. The fee for such a motion is $200 since it is the party's first paper. The motion is given a docket number.

When the motion is decided, whether it is granted or denied, it counts as a termination and the "case" is closed.

If the motion is granted and, after the six-month waiting period, the claimant files a complaint, the matter is reopened under the original docket number. No additional fee is required.

n. Election-Related Matters

A copy of Directive #2-09, relating to filing fees, docket numbers and records in election related matters appears in the appendix.

o. Proceedings by Indigents Seeking Waivers of Filing Fees

Rule 1:13-2 sets forth the procedure to be used for seeking a determination of indigency status and waiver of filing fees. A sample form for use in such instances appears in the appendix.

p. Venue

Venue refers to the particular county in which a court with jurisdiction may hear and determine a case because that county has some relationship to the particular dispute. In New Jersey, pursuant to *R.* 4:3-2, venue in civil cases shall be laid (designated) by the plaintiff in Superior Court actions as follows:

- actions affecting real property are brought in the county where the affected property is situated;

- actions not affecting real property which are brought by or against municipal corporations, counties, public agencies or officials, are brought in the county in which the cause of action arose;

- in all other actions, with few exceptions (see *R.* 4:3-2), venue shall be laid in the county in which the cause of action arose, or the county in which any party to the action resides, or in any county where summons was served on any non-resident defendant; or

- actions on and objections to certificates of debt for motor vehicle surcharges that have been docketed as judgments by the Superior Court Clerk pursuant to *N.J.S.A.* 17:29A-35 shall be brought in the county of residence of the judgment debtor.

Moreover, according to *R.* 4:3-2(b), a corporation is deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business.

Finally, *R.* 4:3-2(c) provides that with the approval of the Chief Justice, the Assignment Judge of any multicounty vicinage may order that instead of laying venue in a county of the vicinage pursuant to *R.* 4:3-2, venue in any designated category of cases may be laid in any other county within the vicinage.

q. Jury Demand

Any party to most civil actions may demand a trial by jury. (See *Rules* 1:8-1 and 4:35-1) By filing certain summary actions, a party is deemed to have waived the right to a jury trial. See *R.* 4:67-4(b). The jury demand must be made with the filing of the party's initial pleading only or within 10 days thereafter. The jury demand may specify the issues to be tried by jury; otherwise the demand will be deemed to apply to all triable issues. The failure of a party to demand a jury will be considered a waiver of trial by jury. See *R.* 4:35-1. In civil actions, a jury will consist of six (6) people unless the court for good cause shown orders a jury of twelve (12) persons or the parties agree to be bound by the verdict of another number of jurors. See *R.* 1:8-2.

SECTION 2 : PARTIES

a. Types of Parties

The following are parties in civil actions:

- **Plaintiff –** person who sues
- **Defendant –** person who is sued
- **Guardian –** person appointed to represent the interests of another with a disability (*e.g.*, minor, incapacitated person)
- **Executor –** person named in a will to carry out the terms of the will, suing or defending on behalf of the estate of a decedent
- **Administrator –** person suing or defending on behalf of an estate when the decedent died without a will
- **John or Jane Doe –** fictitious defendant designation used when the true identity of the defendant or potential defendant is unknown
- **ABC Corporation –** fictitious defendant designation used when the true identity of a corporate defendant or potential corporate defendant is unknown
- **Crossclaimant –** defendant suing another defendant on a crossclaim
- **Counterclaimant –** defendant suing a plaintiff on a counterclaim
- **Intervenor –** a third party who voluntarily requests to participate in a lawsuit and is permitted by the court. See *R.* 4:33 *et seq*.
- **Interpleader –** party suing two or more persons claiming the same thing or fund and requesting that the court determine between or among them which is entitled to recover it
- **Third Party Plaintiff –** party suing a non-party to the original suit on a third party complaint
- **Third Party Defendant –** party being sued in a third party complaint.

b. Papers Submitted By Non-Parties

When papers are submitted by or on behalf of individuals not named in the complaint, other than papers submitted by intervenors, or amicus briefs, the papers will be returned by the court stamped "received but not filed." Similarly, if papers are submitted by a law firm, other than co-counsel, that is not the attorney/firm representing the party on whose behalf the papers are being submitted, the papers will be returned "received but not filed."

c. Alien Litigants or Litigants Unable to Physically Appear

If a litigant is not a United States citizen and can not legally reenter the United States to participate in his or her litigation, for example, appear for depositions, medical exams, trial or other court events or if the litigant cannot do so because he or she is in a coma, in another state, etc., the case should be dismissed without prejudice. When the plaintiff returns, the burden is on him or her to move to reinstate the case, pursuant to *R* 4:50-1(f). In fact, the judge may include in the order of dismissal without prejudice a provision requiring that a motion to vacate the dismissal and reinstate the case must be made within 30 days of the plaintiff's return, for example, or the case will be dismissed with prejudice. When considering a motion to reinstate, the judge has discretion to deny it and to dismiss the case with prejudice if reinstatement would be inequitable to any party.

Another approach would be to dismiss the case without prejudice subject to re-filing when the plaintiff returns, to eliminate statute of limitations problems. In any case, a case should be dismissed without prejudice for failure to appear at trial.

SECTION 3 : TYPES OF CASES

a. Case Type Definitions

There are many different types of cases filed in the Law Division, Civil Part of the Superior Court. These include:

action in lieu of prerogative writs (701) – initial appeal from a decision of or failure to act on the part of a local governmental body, such as a Zoning Board of Adjustment or Planning Board; limited to an appeal on the record below. This procedure is also available, for example, to restrain a municipal or county body from acting in excess of its jurisdiction or to challenge an official's right to hold public office. These matters are governed by *R.* 4:69-4. It should be noted that a challenge to a decision of a State agency must be filed in the Appellate Division. *R.* 2:2-3(a)(2).

Rule 6:1-2 sets forth with specificity those types of actions that are cognizable in the Special Civil Part. Since Actions in Lieu of Prerogative Writs are not included among the types of actions listed, such actions are not cognizable in the Special Civil Part and thus may not be filed there. See Directive #2-01.

These cases are assigned to Track IV to ensure individual judge management, even though most will not need the full 450 days of discovery. The managing judge must conduct an informal conference, by telephone or in chambers, within 30 days of joinder to determine factual and legal disputes, mark exhibits, establish a briefing schedule, and if necessary, a discovery schedule. At least five days prior to that conference, each party shall submit a statement of factual and legal issues and an exhibit list to the managing judge. The complaint must be accompanied by a certification that transcripts of hearings have been ordered.

Rule 4:69-4, as amended effective September 1, 2004, provides that the discovery to be conducted, if any, and the time to complete such discovery, will be determined by the managing judge at the informal conference and thereafter will be memorialized in the case management order.

Action on a negotiable instrument (511) – suit seeking damages for the defendant's failure to honor obligations pursuant to a written instrument such as a check. These actions usually involve a dishonored check.

Assault and battery (602) – action seeking damages for unlawful contact.

Auto negligence (603) – **personal injury –** action seeking damages for bodily injuries arising out of the negligent ownership and/or use of a motor vehicle.

Auto negligence (610) – **property damage** – action seeking damages for damage to property arising out of the negligent ownership and/or use of a motor vehicle.

Book account (502) – action for the collection of an unpaid bill for goods or services provided.

Civil rights (005) – action brought pursuant to the Federal Civil Rights Act, 42 *U.S.C.* 1983, which establishes a civil action for the deprivation of constitutionally protected rights.

Complex commercial (508) – commercial matters involving unusually complex factual or legal issues.

Complex construction (513) – construction matters involving unusually complex factual or legal issues.

Condemnation (301) – action also known as eminent domain, brought by a governmental entity seeking to take private real property for a public use and after payment of just compensation.

A condemnation action is instituted by the filing of a verified complaint, which must include a statement of the compensation offered by the condemnor and the manner in which the amount was calculated. See *R*. 4:73-1. The matter will proceed in a summary manner under *R.* 4:67. Within 14 days of the filing of the complaint, the condemnor must file and record in the county recording office a notice of the pendency of the action (lis pendens). The condemnor must also file a declaration of taking in the court and the county recording office. Simultaneously, the condemnor must deposit with the clerk of the court the amount of the estimated compensation. Once the declaration has been filed and the compensation paid to the clerk of the court, the title and the right to immediate and exclusive possession to the property belongs to the condemnor.

The court will appoint three commissioners to fix the amount of compensation. Regarding the fees paid to condemnation commissions, refer to section 21. The presiding commissioner will schedule a hearing date at which testimony is taken regarding the value of the property. No discovery occurs during this phase of the case. The commissioners' report is to be filed within four months of their appointment, unless the court extends the time. If there is no appeal from the commissioners' determination of the amount of compensation, the award is considered a final judgment to be paid within 60 days.

Appeals from the commissioners' report are made by filing a notice of appeal with the Clerk of the Superior Court within 20 days after service of the commissioners' report. If this is the party's first paper, the filing fee must be paid. Discovery may be done during this phase. Pursuant to *R*. 4:73-6(a), unless the

court otherwise orders, if the original action involves taking or takings from a tract of land under single ownership, the appeal shall be docketed under the docket number assigned to the original action and shall continue in that action. A party may demand a trial by jury within 10 days after service of the notice of appeal. The hearing on appeal is a trial *de novo*.

Construction (305) – dispute arising out of a construction agreement or arrangement.

Contract/commercial transaction (599) – action based upon the failure to honor the terms of an oral or written agreement/or arising from a business dispute.

Defamation (609) – action seeking damages due to the publication, either orally (slander) or in writing (libel), of false information concerning another.

Employment (509) – dispute arising out of an agreement between an employer and employee.

Environmental/environmental coverage litigation (156) – action based upon damage to the environment or against an insurance company by an insured seeking coverage pursuant to an insurance contract or policy to remediate or compensate the insured for damage to the environment.

False Claims Act (620) - Actions under N.J.S.A. 2A:32C-1 et seq., which provides that those who knowingly submit, or cause another person or entity to submit, false claims for payment of State government funds are liable for treble the State's damages plus civil penalties of $5,500 to $11,000 per false claim. The act also contains fee-shifting and whistleblower provisions. The latter allow citizens with evidence of fraud against government contracts and programs (for example, Medicaid) to sue on behalf of the government in order to recover the misappropriated funds. Under subsection – 7d, in compensation for the risk and effort of filing a whistleblower case, the citizen whistleblower may be awarded a percentage of the recovery (between 25% to 35%) for prosecuting the civil action.

Actions brought under the False Claims Act are to be placed under seal and remain so for at least 60 days. The purpose of the seal is two-fold – to encourage citizens to come forward without fear of reprisal, and to allow the Attorney General time to investigate and determine whether to join the action without tipping off the alleged wrong doer.

The Conference of Civil Presiding Judges has concluded that the statute provides the court the authority to substitute initials when full names are used, to impound the case in ACMS while it is under seal and to impound the parties' full names thereafter.

Forfeiture (175) – action by the government seeking ownership of personal property either used as an instrumentality of a crime or the fruits of criminal activity. A civil forfeiture proceeding must normally be instituted by the State within 90 days of the seizure for property, unless the property forfeited is considered to be what the applicable statute, *N.J.S.A.* 2C:64-3, considers to be "prima facie contraband". See *N.J.S.A.* 2C:64-3. Examples of "prima facie contraband" are untaxed cigarettes, controlled dangerous substances, firearms and gambling devices. Forfeiture will be denied if the action is not timely filed and the property may be returned to the owner. The complaint must be verified and must describe with particularity the property, which is the subject matter of the action and the reason for the forfeiture. Often in forfeiture cases a thing, such as a car or money, is named as a defendant. This is called a "chattel defendant."

N.J.S.A. 2C:64-3 permits the court to stay a forfeiture until the underlying criminal case is concluded. Other than for lack of prosecution, forfeiture cases should not be dismissed as the State will lose jurisdiction over the *res*.

Insurance fraud (514) – action alleging damages resulting from a fraudulent insurance claim.

Inverse condemnation (617) – action brought by owner of real property seeking damages compensating the owner for a taking of the owner's private real property for a public use.

Law Against Discrimination (LAD) (618) – action seeking damages pursuant to *N.J.S.A.* 10:5-1 *et seq.*, commonly known as the New Jersey Law Against Discrimination, which makes it unlawful to subject people to differential treatment based on race, creed, color, national origin, nationality, ancestry, age, sex, familial status, marital status, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, mental or physical disability, perceived disability, and AIDS and HIV status. The LAD prohibits unlawful discrimination in employment, housing, places of public accommodation, credit and business contracts.

Lemon law (512) – suit pursuant to *N.J.S.A.* 56:12-29 to -49, commonly known as the New Jersey Lemon Law, brought by the purchaser or leaser of a new motor vehicle against the car dealer who sold the vehicle seeking damages because the vehicle was faulty. The law seeks to ensure that the manufacturer of the vehicle fixes any problems or defects that were originally covered under the manufacturers' warranty and which were reported by the owner within 2 years or 18,000 miles whichever comes first.

Medical malpractice (604) – action against a healthcare provider for injuries arising from negligence in acting or failing to act.

In *Ferreira v. Rancocas Orthopedic Associates*, 178 *N.J.* 144 (2003) and *Knorr v. Smeal*, 178 *N.J.* 169 (2003), the Supreme Court mandated a case management conference in all professional malpractice cases. This conference must be held within 90 days of the service of the answer. During the conference, the court must address discovery issues, and whether an affidavit of merit has been served on the defendant.

These conferences may be held by telephone.

When there are multiple defendants in a malpractice case, requiring service of the affidavit of Merit on each, only one conference need be held.

The Court-mandated case management conference must be:

- conducted by a judge in all professional malpractice cases (unless all parties consent to a staff-conducted conference), and memorialized in a case management order pursuant to *R*. 1:2-6; and

- held unless all counsel consent to waive the conference, and agree that the Affidavit of Merit has been provided and that the defendant waives objections to its adequacy, with such consent, agreement and waiver memorialized in a consent order signed by all counsel and the judge.

The above-mentioned consent, agreement and waiver are memorialized in a consent order signed by all counsel and the judge.

- When a motion is filed to amend the complaint to add a professional malpractice claim, the judge handling the motion will be made aware of the claim and will ensure that the process of scheduling and noticing the case management conference is set in motion.

- When the professional malpractice claim is raised in the answer, in a counterclaim or in a third party complaint, counsel should notify the court, through the CIS or otherwise, that the case now includes such a claim so that the conference mechanism can be scheduled.

- When plaintiff categorizes a case with a professional malpractice claim as "personal injury" or "other tort," the defendant should raise the professional malpractice claim in the answer and insist on an Affidavit of Merit.

The question was raised as to the consequences, if any, if the conference is not waived and the court fails to schedule the conference within 90 days. Often, in such situations, the defendant will move to dismiss the case because the required conference did not occur. The Civil Presiding Judges are of the view that dismissal in this instance would be inappropriate as it would penalize the plaintiff for the court's failure to schedule the conference.

Another consequence of failure to schedule the affidavit of merit conference is that the defendant may ask for a discovery extension, which the judges generally grant, to keep the case on track

Some judges use case management orders memorializing the initial *Ferreira* conference and these orders require the plaintiff to contact the court to schedule any subsequent Affidavits of Merit conferences should additional defendants be joined.

Other judges in orders permitting late amendments to pleadings require the moving parties to notify the court in writing regarding the need for a waiver of *Ferreira* conferences.

In *Saunders v. Capital Health Systems,* 398 *N.J. Super.* 500 (App. Div. 2008), the Appellate Division overturned the trial court's dismissal of plaintiff's med mal case for failure to provide the defendants with the Affidavit of Merit, because the court had failed to hold the Affidavit of Merit conference at which the failure would have been discovered.

A party filing an Affidavit of Non-Involvement pursuant to *N.J.S.A.* 2A:53A-40 in accordance with the New Jersey Medical Care Access and Responsibility and Patients Trust Act, shall do so by annexing the affidavit, which shall comply with *R.* 1:6-6, to a Notice of Motion for dismissal of the action as to that party if that party has not yet paid a first paper fee, the filing fee for this motion is $135. If the filer has already paid a first paper fee, the motion fee of $30 applies. Pursuant to *R.* 1:6-6, if a motion is based on facts not appearing of record or not judicially noticeable, the court may hear it on affidavits made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify and which may have annexed thereto certified copies of all papers or parts thereof referred to therein. The court may direct the affiant to submit to cross-examination, or hear the matter wholly or partly on oral testimony or depositions.

If no opposition to the motion is filed, in accordance with *R.* 1:6-3, an order shall be entered dismissing the action as to the moving party. If opposition to the motion is filed, the court shall proceed in accordance with *R.* 1:6-2. See *R.* 1:6-2 (b)(2).

Mt. Laurel (303) – actions brought pursuant to the New Jersey Fair Housing Act, *N.J.S.A.* 52:27D-301 *et seq*., relating to the allocation of a fair share of affordable housing to lower and moderate income families.

Name Change (151) – action to change an individual's or family's name. See section *infra* regarding **"Redaction of Social Security Numbers from Name Change Judgments"**.

If the complaint seeks a name change for a minor, the complaint shall state whether the child or any party in interest in the name change application is the subject of a family action pending or concluded within the three years preceding the filing of the complaint. In such event, the court will transfer the action to the Family Part in the county in which the family action is pending or was concluded. If neither the child nor any party in interest is or has been the subject of such action, a certification to that effect shall be appended to the complaint. See *R.* 4:72-1 (b).

Name changes involving minors should be handled as follows:

- The initial complaint must be filed with the Civil Division, with a CIS and a $200 fee; it should NOT be filed directly with the Family Part as Family has no jurisdiction over such complaints.

- If the accompanying, required certification indicates that one of the parents or the guardian of the minor is or was a party in a Family action of the "FM" or docket type only and the case is currently pending or was concluded within the previous three years, a Civil judge will sign an Order transferring the case to the Family Part.

- When the application for a name change covers both a minor and a related adult, this counts as one Civil filing, requiring but one filing fee, and the combined application will be transferred to the Family Part if the facts set forth above are present.

- If the related Family matter is or was in a county other than the one in which the minor's name change application was filed, the matter will be transferred to the Family Division in the vicinage in which the related "FM" matter is pending or was recently concluded.

- If the certification attached to the minor's name change application indicates that a Family matter is pending or was recently concluded in another state, the name change application will be handled in the Civil Division in the county of venue. The point of the rule is to get

the minor's name change application before the New Jersey Family Division Judge who is familiar with matters involving the minor and/or his or her family. If the Family case is in another state, that purpose is not served by transferring the name change to a Family Division judge, so the Civil Division should handle the application.

- If the "FM" action was terminated by dismissal within the past three years, the case will be handled in the Civil Division.

Open Public Records Act (OPRA) (802) – summary action brought pursuant to *N.J.S.A.* 47:1A-1 *et seq.* which provides that certain government records shall be accessible for inspection, copying or examination by New Jersey citizens, with certain exceptions, and provides the process for requesting access and appealing any denial of access.

Other insurance claim (505) (including declaratory judgment actions) – suit involving differing interpretations of an insurance policy or a dispute over insurance coverage.

Personal injury (605) – action seeking damages for bodily injuries caused by the negligence of another in a context other than in the ownership and/or use of a motor vehicle, usually as a result of negligence in the ownership, use or control of premises.

PIP coverage (506) – suit brought by an insured or a healthcare provider on behalf of the insured against the insured's automobile insurance company for unpaid medical bills or other insurance benefits.

Products liability (606) – action against a manufacturer, distributor or seller of goods including pharmaceuticals, seeking damages for injuries suffered as a result of the use of the good.

Professional malpractice (607) – action against a provider of professional services, other than a healthcare provider, for injuries or damages arising from a negligent act or failure to act.

These conferences may be held by telephone.

When there are multiple defendants in a malpractice case, requiring service of the affidavit of Merit on each, only one conference need be held.

The court-mandated case management conference must be:

- conducted by a judge in all professional malpractice cases (unless all parties consent to a staff-conducted conference), memorialized in a case management order pursuant to *R*. 1:2-6; and

- held unless all counsel consent to waive the conference, and agree that the Affidavit of Merit has been provided and that the defendant waives objections to its adequacy, with such consent, agreement and waiver are memorialized in a consent order signed by all counsel and the judge.

The above-mentioned consent, agreement and waiver are memorialized in a consent order signed by all counsel and the judge.

- When a motion is filed to amend the complaint to add a professional malpractice claim, the judge handling the motion will be made aware of the claim and will ensure that the process of scheduling and noticing the case management conference is set in motion.

- When the professional malpractice claim is raised in the answer, in a counterclaim or in a third party complaint, counsel should notify the court, through the CIS or otherwise, that the case now includes such a claim so that the conference can be scheduled.

- When plaintiff categorizes a case with a professional malpractice claim as "personal injury" or "other tort," the defendant should raise the professional malpractice claim in the answer and insist on an Affidavit of Merit.

The question was raised as to the consequences, if any, if the conference is not waived and the court fails to schedule the conference within 90 days. Often, in such situations, the defendant will move to dismiss the case because the required conference did not occur. The Civil Presiding Judges took the position that dismissal in this instance would be inappropriate as it would penalize the plaintiff for the court's failure to schedule the conference.

Another consequence of failure to schedule the Affidavit of Merit conference is that the defendant may ask for a discovery extension, which the judges generally grant, to keep the case on track.

Some judges use case management orders memorializing the initial *Ferreira* conference and these orders require the plaintiff to contact the court to schedule any subsequent Affidavits of Merit conferences should additional defendants be joined. Sample orders appear in the appendix.

Other judges in orders permitting late amendments to pleadings require the moving parties to notify the court in writing regarding the need for or waiver of *Ferreira* conferences.

In *Saunders v. Capital Health Systems*, 398 *N.J. Super.* 500 (App. Div. 2008) the Appellate Division overturned the trial court's dismissal of plaintiff's medical malpractice case for failure to provide the defendants with the Affidavit of Merit, because the court had failed to hold the Affidavit of Merit conference at which the failure would have been discovered.

Real property (399) – suit based upon a dispute over real property and **not** involving a landlord/tenant relationship, contract, condemnation, complex commercial or construction issues.

Summary action (801) – action pursuant to *R*. 4:67, seeking an expeditious judicial determination rather than a full-blown trial; usually based upon particular statute. Summary actions should be filed via verified complaint and order to show cause. If these matters are not resolved on the return date of the order to show cause, they must be actively case managed by a judge.

Tenancy (302) – action arising from any dispute between a landlord and tenant other than summary dispossess action and actions to recover a security deposit under $15,000.

Tort (699) – other – action seeking damages for injuries to a person or property due to negligent or deliberate conduct other than in the use and/or ownership of a motor vehicle or in the ownership or control of premises, such as intentional infliction of emotional distress, tortuous interference with contract, trespass, malicious prosecution.

Toxic tort (608) – action seeking damages due to the emission of a harmful substance into the environment.

UM or UIM claim (510) – action by an insured against the insured's automobile insurance company seeking damages from the insurance company under either the uninsured motorist or underinsured motorist coverage provision of an insurance policy. Under such a provision, if the insured sustains injuries or damages due to an automobile accident caused by the fault of a third person but the third person either is uninsured or is underinsured (*i.e.*, does not have adequate coverage to cover the value of the insured's damages or injuries), the insurance carrier must pay the amount needed to fully compensate the insured.

Whistleblower/Conscientious Employee Protection Act (CEPA) (616) – action filed pursuant to *N.J.S.A.* 34:19-1 *et seq.* seeking damages due to retaliation against an employee by the employer for 1) disclosing or threatening to disclose to

a supervisor or public body an activity, policy or practice of an employer that the employee believes violates a law or regulation, or 2) providing information or testimony to a public body conducting an investigation, hearing or inquiry into any violation of law, rule or regulation by the employer, or 3) objecting to or refusing to participate in any activity, policy or practice which the employee reasonably believes is in violation of the law, is fraudulent or criminal, or is incompatible with a clear mandate of public policy.

Zelnorm (280) – actions against the manufacturers and others for damages arising from the use of the drug Zelnorm. This litigation is being centrally managed in Bergen County by Judge Jonathan N. Harris pursuant to an Order of the Supreme Court dated September 8, 2008.

b. Mass Torts

There are a number of Track IV cases that have been designated by the Supreme Court, pursuant to *R.* 4:38A, mass tort guidelines and Directive #7-09, "Revised Mass Tort Guidelines", as "mass torts" and/or approved for centralized case management. A copy of the guidelines appears in the appendix.

Mass tort cases are groups of cases filed in a number of counties and assigned to a single designated judge for centralized case management. These mass tort judges have specialized expertise in the handling of such cases. There are currently three mass tort sites in New Jersey located in Atlantic, Bergen and Middlesex Counties.

In New Jersey, there is no definition of a mass tort. Each group of cases that ultimately are designated as a mass tort do, however, bear a number of common characteristics, as noted in the attached guidelines. There have been three general classes of cases determined thus far in New Jersey to be mass torts. These include:

- large numbers of claims associated with a single product: For example, diet drugs or other large products liability cases such as tobacco, Norplant, breast implant, asbestos, Propulsid, Rezulin, PPA and latex litigation.

- mass disasters: These cases are characterized by a commonality of technical and legal issues. The Durham Woods pipeline explosion litigation is a good example of this type of case.

- complex environmental cases and toxic torts: These cases are characterized by a large number of parties with claims arising from a common event. An example of this type of case is the Ciba-Geigy litigation.

Some of the possible characteristics of a mass tort include:

- large number of parties involved;
- many claims involving common, recurrent issues of law and fact that are associated with a single product, mass disaster, or very complex environmental or toxic tort;
- geographical dispersement of parties;
- parties having common injuries and damage issues;
- value interdependence between different claims, that is, causation and liability aspects are often dependent upon the success or failure of similar lawsuits in other jurisdictions; and
- degree of remoteness between the court and actual decision-makers in the litigation – *i.e.*, the fact that the simplest of decisions often must pass through layers of local, regional, national, general and house counsel.

The cases currently designated as mass torts are:

Accutane (271) – actions against the manufacturers of Accutane and others for damages arising from its use.

Asbestos (601) – actions against the manufacturers, suppliers, distributors or others for damages arising from the exposure to asbestos.

Bextra/Celebrex (272) – actions against manufacturers of the drugs Bextra and Celebrex and others for damages allegedly caused by ingestion of one or both of these drugs.

Bristol-Myers Squibb Environmental (281) – actions against Bristol-Myers Squibb for damages and other relief arising from exposure to toxic chemicals released by the defendant into the environment.

Ciba Geigy (248) – actions for damages or medical monitoring arising out of the environmental contamination of the byproducts of chemical manufacturing in Toms River, New Jersey.

Digitek (283) – actions for damages and other relief against the manufacturers and others arising from the use of the drug Digitek.

Fosamax (282) – actions against manufacturers and others of Fosamax for damages and other relief arising from the use of this drug.

Gadolinium (279) – actions for damages arising out of the use of gadolinium-based diagnostic contrast agents.

HRT (Hormone Replacement Therapy) (266) – actions against manufacturers, sellers, distributors or others for damages arising from the use of Hormone Replacement Therapy.

Levaquin (286) – actions against manufacturers and others for damages arising from the use of the antibiotic Levaquin.

Mahwah Toxic Dump Site (277) – actions brought for damage or other relief resulting from the alleged dumping of hazardous chemicals at the Ford Motor Plant, Ringwood Mines landfill and adjacent sites in Mahwah and Ringwood, New Jersey.

NuvaRing® (284) – actions against the manufacturer and others for damages arising from the use of the contraceptive ring NuvaRing.

Ortho Evra (275) – actions against the manufacturer and others for damages arising from the use of the Ortho-Evra Birth Control Patch.

Risperdal/Seroquel/Zyprexa (274) – actions against the manufacturers and others of the drugs Risperdal/Seroquel/Zyprexa for damages arising from their use.

Vioxx (619) – actions against the manufacturers, suppliers, distributors or others for damages arising from the use of the drug Vioxx, an anti-inflammatory medication used to treat arthritis and menstrual pain.

Zometa/Aredia (278) – actions against the manufacturer for damages arising from use of the drugs Zometa and Aredia

SECTION 4 TRACKS

a. Track Assignments

For purposes of managing and providing for the needs of civil cases, the caseload is broken down into discrete categories. Cases are assigned to a track upon the filing of the complaint. The track assignment is based on case type as noted on side 2 of the CIS and each track provides a specific discovery period based on the presumed discovery needs of the case types allocated to the particular track. See *Rules* 1:5-6 and 4:5-1; 4:5A-1, -2, -3.

The four tracks and the discovery period and case types associated with each are:

Track I – 150 days discovery

151 Name Change
175 Forfeiture
302 Tenancy
399 Real Property
502 Book Account (debt collection matters only)
505 Other Insurance Claim (including declaratory judgment actions)
506 PIP Coverage
510 UM or UIM Claim
511 Action on a Negotiable Instrument
512 Lemon Law
801 Summary Action
802 Open Public Records Act (Summary Action)
999 Other

Track II – 300 days discovery

305 Construction
509 Employment (other than CEPA or LAD)
599 Contract/Commercial Transaction
603 Auto Negligence – Personal Injury
605 Personal Injury
610 Auto Negligence – Property Damage
699 Tort – Other

Track III – 450 days discovery

005 Civil Rights
301 Condemnation
602 Assault and Battery
604 Medical Malpractice
606 Products Liability

607 Professional Malpractice
608 Toxic Tort
609 Defamation
616 Whistleblower/Conscientious Employee Protection Act (CEPA) Cases
617 Inverse Condemnation
618 Law Against Discrimination (LAD) Cases
620 False Claims Act

Track IV – Active Case Management by Individual Judge/450 days discovery

156 Environmental/Environmental Coverage Litigation
280 Zelnorm
303 Mt. Laurel
508 Complex Commercial
513 Complex Construction
514 Insurance Fraud
701 Action in Lieu of Prerogative Writs

Mass Tort (Track IV)

248 Ciba Geigy
266 HRT
271 Accutane
272 Bextra/Celebrex
274 Risperdal/Seroquel/Zyprexa
275 Ortho Evra
277 Mahwah Toxic Dump
278 Zometa/Aredia
279 Gadolinium
281 Bristol-Myers Squibb Environmental
282 Fosamax
283 Digitek
284 NuvaRing®
286 Levaquin
601 Asbestos
619 Vioxx

b. Track Assignment Notice

A Track Assignment Notice (TAN) is automatically generated the day after a complaint is entered and is mailed by the court to the plaintiff with the docketed copy of the complaint or within 10 days of the filing of the complaint. The TAN will advise the

plaintiff of the track, team, and judge to which the case has been assigned. The TAN must be attached to, and served with, the summons, complaint and CIS on all parties. See *R.* 4:5A-2.

c. Track Assignments for Administratively or Procedurally Complicated Cases

Cases that are administratively or procedurally complicated are not necessarily Track IV cases; such cases should be placed and remain on the track to which they are presumptively assigned based upon case type.

d. Change of Track Assignment

A track assignment may be changed either at the outset of a case or as the case develops, as follows:

- Within 30 days of receipt of the TAN, the plaintiff may apply to the court for a change of initial track assignment by filing a certification of good cause.

- Any party other than the plaintiff seeking a change of initial track assignment may file and serve a certification of good cause with its first pleading.

- Objections to the certification of good cause for change of track assignment must be made within 10 days by responding certification.

- The designated pretrial or managing judge, or his or her designee, should respond in writing, *e.g.*, by letter or memo, advising of the court's determination on the application for change of track assignment.

- Any party who is aggrieved by the court's determination on such applications may seek relief by filing a formal motion within 15 days of the entry of the order.

- Subsequent applications to change a track assignment must be made on formal motion or on the court's own motion only if the fundamental cause or causes of action have changed or if the case type or track was erroneously identified on a party's CIS or erroneously entered by staff into the Civil Automated Case Management System (ACMS). See *R.* 4:5A-2(b).

- A track assignment should not change to accommodate a party's (or the parties') need for a longer discovery period or because of the alleged complexity of the case; rather in such situations, the party(ies) may apply to the pretrial judge for an extension of the discovery end date, which may be granted in accordance with *R.* 4:24-1. See *R.* 4:5A-2.

- Orders directing track changes should also direct a change to the underlying case type in accordance with side 2 of the CIS.

SECTION 5 : SERVICE

a. Issuance of the Summons

Rule 4:4-1 provides that the summons must be issued within 15 days from the date of the TAN. Failure to do so may result in dismissal of the action pursuant to *R.* 1:13-7.

b. Service of the Summons, Complaint, CIS and TAN - - Who May Serve

According to *R.* 4:4-3(a), the summons shall be served, together with the complaint (and the required attachments to the complaint which include the CIS pursuant to *R.* 4:5-1(b) and TAN pursuant to *R.* 4:5A-2), by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation.

If personal service cannot be made after a reasonable and good faith attempt, which must be described with specificity in the proof of service required by *R.* 4:4-7, service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the defendant's residence or to the residence of a person authorized by law to accept service for the defendant or, with postal instructions to deliver to addressee only, to the defendant's place of business or employment. If the addressee fails to claim or refuses to accept delivery of the registered or certified mail, service may be made by ordinary mail addressed to the defendant's residence. The party making service may, at the party's option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee fails to claim or refuses accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing constitutes effective service. Mail may be addressed to a post office box in lieu of a street address only if the sender cannot by diligent effort determine the addressee's street address or if the post office does not make street address delivery to the addressee. The specific facts underlying service must be recited in the proof of service filed with the court pursuant to *R.* 1:5-3. See *R.* 1:5-2.

c. Methods of Personal Service

According to *R.* 4:4-4, the primary method of obtaining personal jurisdiction over a defendant is by causing the summons and complaint to be personally served in New Jersey pursuant to *R.* 4:4-3. *Rule* 4:4-4 sets out how personal service may be made on an adult, a minor, a mentally incapacitated person, sole proprietors and real property owners, a partnership, a corporation, the State and other public bodies.

d. Substituted Service

If personal service cannot be made, the rules also provide for substituted service. See *R*. 4:4-4(b) and *R*. 4:4-5. Methods of substituted service include service by mail and service by publication of a notice, and the rules set out the circumstances under which such service may be made as well as the steps attorneys and *pro se* litigants must follow to make substituted service.

Note that *R*. 4:4-4(c) provides for optimal mailed service by registered, certified or ordinary mail instead of personal service, when personal service is required. Service made pursuant to this paragraph of the rule, however, is considered effective *only* if the defendant answers or otherwise appears in response to the complaint. Default may not be entered against a defendant served by mail pursuant to *R*. 4:4-4(c) who does not answer or appear. (This prohibition against entry of default does not apply to mailed service authorized by court order.)

e. Service of Law Division Process by Special Civil Part Officers

Special Civil Part Officers are not permitted to serve Law Division process.

f. Service by E-Mail not Permitted

Absent a special Order of the Court, service by e-mail is not permitted. However, if service by e-mail is acknowledged by an acknowledgement of service, signed by the defendant or defendant's attorney, the acknowledgement may be filed and has the same effect as if the defendant had been properly served. See *R*. 4:4-6.

g. Affidavit of Service Form

An Affidavit of Service form has been developed. A copy appears in the appendix. The form was developed for use by private process servers. The form also is posted in the forms section of the Judiciary website at www.njcourtsonline.com.

h. Service of Dismissed Complaints

A complaint that has been dismissed for lack of prosecution under R. 1:13-7(a) may be served before it is reinstated. The plaintiff when serving such a complaint must advise the defendant that the case has been dismissed and must promptly file a motion to reinstate. The defendant's time to answer will not begin to run until the complaint has been reinstated. See *Weber v. Mayan Palace Hotel & Resorts*, 397 *N.J. Super*. 257 (App.

Div. 2007) and *Stanley v. Great Gorge Country Club*, 353 *N.J. Super*. 475 (Law Div. 2002).

SECTION 6 : RESPONSIVE PLEADINGS

a. Answers

A signed answer must be accompanied by a completed and signed CIS and the appropriate filing fee. Answers and CIS forms must be signed by a New Jersey licensed attorney or *pro se* party, provided that a *pro se* appearance is permitted by the court rules. Thus, an answer and CIS submitted on behalf of a corporation must be signed by a New Jersey licensed attorney. Answers not meeting the paper weight requirements of *R.* 1:4-9 or not signed or unaccompanied by the proper fee or CIS or submitted after default has been entered must be returned by the court to the sender stamped "received, but not filed."

Answers not complying with other court rules, *e.g.*, does not contain the certification of service required by *R.* 4:6-1(d) or signed notices of adoption in lieu of answer accompanied by the correct filing fee and a completed and signed CIS, are filed as "non-conforming." In such instances, the court may, but it is not required to, provide the filer with notice of the non-conformity as provided by *R.* 1:5-6(c).

The filing of a non-conforming answer, *e.g.*, without the required certification of service, will trigger the calculation of the discovery end date and block the generation of a dismissal notice.

b. Time for Answer

Defendant must file an answer within 35 days after service of the summons and complaint. *R.* 4:6-1. If a summons and complaint are served in a case that has been dismissed for lack of prosecution pursuant to *R.* 1:13-7(a), the time to answer does not begin to run until the complaint has been reinstated. See *Weber v. Mayan Palace Hotel & Resorts,* 397 *N.J. Super.* 257 (App. Div. 2007) and *Stanley v. Great Gorge Country Club,* 353 *N.J. Super.* 475 (Law Division 2002).

c. Counterclaims

A counterclaim is a claim made by the defendant in a suit against the plaintiff. Since the counterclaim is normally part of the answer, it is served on all other parties in the same manner as an ordinary answer to the complaint. Therefore, there is no need for a summons to accompany the counterclaim. The counterclaim or answer and counterclaim must be accompanied by the applicable filing fee. A counterclaim must be answered or the counterclaim is subject to dismissal pursuant to *R.* 1:13-7.

d. Crossclaims

A crossclaim is a claim by a defendant against another named defendant. It must be asserted in an answer to the plaintiff's complaint. Since the crossclaim is part of the

answer, it must be served on all other parties in the same manner as an ordinary answer to the complaint is served. A crossclaim for contribution or indemnification need not be answered. See *R*. 4:7-5.

e. Third Party Complaints

A third party complaint or impleader is an action by the defendant that brings a third party not previously named into a lawsuit. The third party complaint must be accompanied by the appropriate filing fee.

A third party plaintiff must serve the third party complaint along with summons, CIS and TAN and must abide by the rules covering service of process. A third party defendant must reply to the complaint or risk having a default entered for failure to respond. If default is not timely filed, the third party complaint may be dismissed pursuant to *R*. 1:13-7.

f. Interpleader

Interpleader is one means of joining multiple parties to a lawsuit and is provided for in *R.* 4:31. Interpleader may occur when the plaintiff possesses a fund to which several persons claim ownership. The plaintiff, who has no personal interest in the fund, interpleads the various claimants for an adjudication of the competing claims. Interpleader is based on the beliefs that adverse claimants should litigate between or among themselves their conflicting rights or claims and that a plaintiff should be protected from exposure to double or multiple liability. Another example of a situation in which an interpleader maybe filed involves a realtor who asks the court to ascertain who is entitled to a deposit held by the realtor after a buyer and seller of real property have a dispute and the agreement to sell the real property is not consummated, leaving the realtor holding a deposit in escrow.

When a plaintiff seeks interpleader, he or she must file a complaint setting forth all the claims which may expose the plaintiff to double or multiple liability and joining all persons having claims as defendants. The complaint usually demands a judgment requiring the defendants to interplead their claims, enjoining them from prosecuting those claims against the plaintiff, discharging the plaintiff from liability and seeking costs. The defendants answer the complaint and assert their claims by cross-claims against each other.

g. Intervention

A party seeking to intervene in a pending civil action must file a motion, along with the motion fee. The motion must be accompanied by the proposed complaint or answer, a CIS and the fee for the complaint or answer, along with the motion fee. If the motion is denied, the complaint or answer fee will be refunded. See *R.* 4:33-3. A party

seeking to intervene normally has not suffered a personal harm, as did the plaintiff, but nonetheless may have an interest in the litigation because the litigation may, for example, involve a matter of some greater public significance.

h. Appearances

If an answer has yet to be filed on behalf of a particular defendant, that defendant may not file an appearance. Rather, that defendant must file an answer, accompanied by a CIS and the appropriate fee. If the defendant submits for filing a completed and signed CIS, the appropriate fee and the entry of appearance as the defendant's first pleading, staff must accept and file the document as a non-conforming answer provided that it meets all requirements of *R.* 1:5-6(c).

If, however, an answer has been filed on behalf of a particular defendant and a second attorney also representing that same defendant wishes to enter an appearance in the case (*e.g.*, in a dram shop case or an action in which a defendant is being sued beyond the limits of an insurance policy), he or she may do so. No CIS or fee need be submitted with the entry of appearance as this is not the defendant's first pleading. The document is filed simply to indicate that there is a second attorney representing the defendant and to ensure that that attorney receives all court notices.

SECTION 7 : CASE MANAGEMENT

a. Individual Judge Management of Cases on Tracks I, II and III

Individual judge management may be available to cases on Tracks I, II, and III, if the court determines it to be necessary, either on the request of a party or *sua sponte*; this degree of management, however, should not result in reassignment of the case to Track IV.

b. Pretrial Judge Upon Consolidation

When two or more cases are consolidated, and one or more, but not all, of the cases eventually are disposed, the remaining case(s) will generally stay with the judge who had managed the consolidated case.

c. Judicial Case Management/Calendaring

Cases on Tracks I, II and III should be handled by the same pretrial judge from filing at least through discovery, and for cases on Track IV by the same managing judge from filing through trial, barring exceptional circumstances. See *R.* 4:5A-1, -2. A judge other than the designated pretrial or managing judge may nonetheless handle a settlement conference in any case, and block scheduling of settlement conferences (*e.g.*, "settlement days" involving many cases from a designated carrier) may continue. The oversight of the designated pretrial judge in cases on Tracks I, II and III does not necessarily extend beyond the track-allotted discovery period plus 60 days. Thereafter, motions to extend discovery further may be handled by the Civil Presiding Judge or his or her designee. See *R.* 4:24-1. Civil Presiding Judges retain the authority to assign particular cases or classes of cases to particular judges for oversight of all pretrial activity prior to the end of the track-allotted discovery period plus 60 days. For example, a single pretrial judge may be designated to handle all medical malpractice cases filed in the vicinage. An initial case management conference in all Track IV cases is to be conducted within 60 days of joinder (except in prerogative writ cases, which are governed by *R.* 4:69-4).

In cases on any track the number of case management conferences is within the discretion of the pretrial or managing judge. Case management conferences should not ordinarily be held after a case is ready for trial. All decisions and directives issued at a case management conference must be memorialized by court order, pursuant to *R.* 1:2-6.

SECTION 8 : AMENDING PLEADINGS

a. Time for Amendment

A pleading may be amended without obtaining court permission at any time before the opposing party responds to the original pleading. Thereafter, pleadings may be amended with the written consent of the adversary or with the court's permission. Such written consent may include a consent order, a letter from both attorneys, or a letter from one attorney representing that all parties consent and copying all counsel and *pro se* parties. Permission to amend and/or supplement is obtained by filing a motion, which must have attached to it a copy of the proposed amended pleading. All amended or supplemental pleadings require responses from the adversaries in the litigation. See *R.* 4:9.

SECTION 9 : DISCOVERY

a. Time for Discovery

The time for completion of discovery and other pretrial procedures depends upon the track to which the case is assigned. The case type normally determines the track on which the case will be placed. The applicable discovery periods for each track are:

Track I	(150 days' discovery)
Track II	(300 days' discovery)
Track III	(450 days' discovery)
Track IV	(450 days' discovery)

b. Calculation of Discovery Period

Discovery runs from the date the first answer is filed or from 90 days after the first defendant is served, whichever is first. See *R.* 4:24-1.

c. Discovery Extension on Restoration of Pleading

On restoration of a pleading dismissed pursuant to *R.* 1:13-7 or *R.* 4:23-5(a)(1) or if good cause is otherwise shown, the court shall enter an Order extending discovery and specifying the discovery end date. The extension order may describe the discovery to be completed and such other terms and conditions as may be appropriate. See *R.* 4:24-1(c).

d. Discovery End Date Notice

Pursuant to *R.* 4:36-2, the court must send every party a discovery end date notice 60 days prior to the end of the prescribed discovery period.

e. Types of Discovery

In any civil action, parties may obtain discovery by one or more of the following methods:

- Depositions upon oral examination or written questions (*R.* 4:14)
- Written interrogatories (*R.* 4:17)
- Production of documents or things (*R.* 4:18)
- Permission to enter upon land for inspection (*R.* 4:18)

- Physical and mental examinations (*R.* 4:19)

- Requests for admissions (*R.* 4:22).

Parties may obtain discovery regarding any matter which is relevant to the subject matter involved in the pending action whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.

f. Track IV Discovery Period

Rule R. 4:24-1(a) states that Track III and Track IV cases are entitled 450 days' discovery, except as otherwise provided by *R.* 4:69-4 (prerogative writs).

g. Posting of Discovery End Dates on Web

The discovery end dates for all pending civil cases are posted on the Judiciary's website www.njcourtsonline.com. The information posted on the website is updated nightly.

h. Extension of Time for Discovery

Parties may, prior to the expiration of the discovery period, extend the track-allotted discovery period up to 60 days, by letter, copied to all parties, representing that all parties have consented See *R.* 4:24-1(c).

This "automatic" consensual extension was intended to be the initial extension of discovery, in the hope that subsequent discovery extension motions might be avoided. Attorneys waiting until the end of the discovery period, after previous motions to extend discovery have been granted, to pull the automatic, consensual extension out of their pockets, defeats this purpose. Accordingly, the Conference of Civil Presiding Judges is of the view that the 60-day consensual extension of discovery should precede any formal extension motions.

If parties do not agree, or if an extension greater than 60 days is sought, a formal motion must be filed with the Civil Presiding Judge or his or her designee in Track I, II or III cases and with the designated managing judge in Track IV cases. The motion shall have all previous orders granting or denying an extension of discovery or a certification stating that there are none. Any such application for discovery may be granted for good cause shown, and the order must describe the discovery to be engaged in and specify the date by which discovery is to be completed. Absent exceptional circumstances, no court-sanctioned discovery extension is to be permitted once an arbitration or trial date is set.

i. Initial Consensual Extensions of Discovery

Initial extensions of the discovery period should not usually be applied for early in the discovery process. The contemplation is that such extensions should be applied for during the 60-day period between the court's notice to all parties that the end of the discovery period is approaching and the discovery end date.

This "automatic," consensual extension is intended to be the initial extension of discovery, in the hope that subsequent discovery extension motions might be avoided. Accordingly, the 60-day consensual extension of discovery should precede any formal extension motions.

j. Discovery Relating to Late Served and Newly Added Parties

An originally named party who was not timely served may seek an extension of discovery.

Joinder of a new party extends the discovery period for 60 days from the current discovery end date, unless reduced or enlarged by the court for good cause shown. A party filing a pleading that joins a new party to the action must, within 20 days after service of the new party's pleading, serve a copy of all discovery materials upon, or otherwise make such materials available to, the new party. This language should be included in the order allowing joinder of the new party. See *Rules* 4:8-1 and 4:24-1(a) and (b).

k. New Parties – 60-Day "Automatic" Discovery Extension

On occasion, the order granting a new party's entrance into the case may extend discovery for more than the 60 days mentioned in the rule. If there has been no previous request for an "automatic," consensual 60-day extension, the parties still have the right to such an extension on top of the new-party extension unless the order granting the new party's entrance into the case and extending discovery specifies that this additional discovery is in lieu of any consensual request for the "automatic" 60-day extension that may be made.

l. Protocol for Extensions of Discovery for Late-Added Parties

A protocol and suggested form order for providing discovery extensions when new parties are added have been developed. The judge issuing the order allowing a new party to be added should provide for a discovery extension in that order. The provision should not be phrased in terms of discovery extended by X days, but rather should specifically state the new discovery end date. That date should build in time to serve the new party, time for the new party to answer and then, generally, should provide for 60 days of additional discovery from the current discovery end date. The court may shorten

or enlarge the 60-day period, however, as appropriate in the individual case. If any party thereafter needs additional discovery, an application must be made pursuant to *R*. 4:24-1.

If the order permitting a new party to be added does not address the issue of discovery, staff will extend the time 60 days from the current discovery end date. If any party is not satisfied with the discovery provisions contained in the form order, that party may make a formal motion. A copy of the form order is attached in the appendix.

Some vicinages use a stamp on orders extending discovery, adding parties, consolidating cases, amending the complaint and transferring Special Civil Part cases to the Civil Part. The stamp reads as follows:

NEW DISCOVERY END DATE IS:_____
SCHEDULED COURT EVENT IS ADJOURNED_____YES_____NO.

m. Discovery End Date Upon Consolidation

When cases are consolidated, the consolidation order should specify the discovery end date that will apply to all cases within the consolidation. If the consolidation order does not specify a discovery end date, the most distant discovery end date among the cases consolidated will generally apply to all cases within the consolidation.

When two cases are consolidated, ACMS is programmed to automatically provide the longest appropriate discovery period to the consolidated cases. For example, if a Track I and a Track II are consolidated, the consolidated case will be provided with the Track II discovery period. If both cases are on Track II, but one was filed later and so has a more distant discovery end date that more distant date will be assigned to the consolidated case. This is a "default" procedure, which can be overridden if the judge assigns a specific discovery end date in the consolidation order.

n. Standard for Motions to Amend or Add Parties After Discovery Ends

When a motion to amend or to add parties is filed after the discovery end date has passed, *R*. 4:9-1 sets the standard as "by leave of court which shall be freely given in the interest of justice."

o. Motion Needed for Discovery to be Completed Beyond 60-Day Consent Period

Rule 4:24-1 provides that a 60-day extension of discovery is automatic if all parties consent; if additional discovery is needed, a motion must be made. Thus, if an IME (independent medical exam) is scheduled to occur, say, six months in the future, and this date is well past the discovery end date, a motion must nonetheless be filed even if all parties agree to the scheduled IME date. The parties may not merely submit a consent order setting out with specificity what discovery remains to be done and when each element will be completed; however, if the adversary consents to an extension greater than 60 days, that should be stated in the motion.

p. Discovery Extension Orders to Specify Discovery Remaining to be Completed and Dates

Pursuant to *R*. 4:24-1, an order to extend discovery, granted as a result of a motion, should specify what discovery remains to be completed and the date by which each item of discovery will be complete.

q. Discovery End Date Upon Stay

Once a stay order is entered into ACMS as to a specific case, the system automatically extends the discovery end date by the number of days of the stay.

r. Motions to Extend Discovery – Effect on All Parties

When a motion to extend discovery is granted, it changes the discovery end date for all parties in the case (unless the order specifies otherwise). One party can join in another's motion to extend discovery, although this is not necessary. If any party needs relief beyond that which is requested in the motion, that party should make its own motion.

s. Discovery Extensions in Judge-Managed Cases

When a discovery extension is needed in a judge-managed case, this need generally can be addressed in a case management conference and order. Alternatively, the managing judge may direct that the party requesting the extension file a motion.

t. Right to 60-Day Discovery End Date Extension When Answer Stricken

A party has the right to the "automatic" 60-day discovery extension when, at the time the request is received, the defendant's answer has been stricken without prejudice for failure to provide discovery, provided all parties consent to the extension and the request is timely made.

u. Discovery End Date Upon Restoration

On restoration of a pleading dismissed pursuant to *R.* 1:13-7 or *R.* 4:23-5(a)(1) or if good cause is otherwise shown, the court shall enter an order extending discovery and specifying the new discovery end date. The extension order may also describe the discovery to be completed and other terms and conditions as appropriate. See *R.* 4:24-1 (c). When there is but a single defendant, a case that is dismissed (*e.g.*, for failure to provide discovery) and later restored, the case should be returned to the calendar with the same discovery end date it had prior to the dismissal (unless the restoration order directs otherwise), even if that discovery end date has passed. The judge may extend the discovery end date in the restoration order, or the parties may seek a discovery end date extension by motion based on exceptional circumstances. In any event, the court should not penalize the non-delinquent party by foreclosing further discovery.

v. Dismissal Time Not Added Upon Reinstatement

When a case is dismissed for failure to provide discovery and is thereafter reinstated, the "time out" period is **not** added back onto the discovery period. The discovery end date remains fixed unless extended by order.

w. Consensual Discovery Beyond Time Provided in the Rules

The parties may conduct additional discovery by consent, even after an arbitration or trial date is set. Such consensual discovery, however, must not delay any proceeding date fixed by the court, nor will it be enforced by the court.

x. Depositions

Any party may take the testimony of any person, including a party, by deposition upon oral examination. In a deposition, the attorneys question a witness under oath to learn what the witness knows and to have the opportunity to assess that witness's demeanor and credibility before trial. Deposition testimony is recorded by a court reporter or videotaped. Instead of oral questions, parties may serve written questions in a sealed envelope on the party. The main purposes of depositions are to impeach or

contradict testimony of that person as a witness and to give counsel an opportunity to assess a witness' demeanor and credibility prior to trial. During depositions, any party may make a formal motion by telephone to the court to limit the scope and/or manner of the taking of the deposition. Videotaped depositions of treating physicians or expert witnesses may be used for discovery purposes and in lieu of trial testimony. See *R.* 4:14-9.

y. Objections to Videotaped Testimony

Rule 4:14-9(f) requires that objections to the videotaped testimony of a treating physician and/or expert be presented to the court within 45 days following completion of the deposition, and the comments indicate that the failure to seek such a pretrial ruling will be deemed a waiver of any objection. The rationale behind the rule is that these objections should be dealt with pretrial so as not to delay the trial, which would be the result if the objections were presented after the trial started.

This approach, that is, of handling objections to the videotaped testimony does not apply to the videotaped testimony of experts taken pursuant to *R*. 4:36-3.

z. Written Interrogatories

Interrogatories are a form of discovery in which the parties to a case are required to answer, under oath, a series of written questions relevant to the case. See *R.* 4:17. Some important points relative to interrogatories are:

- In all negligence actions seeking recovery for property damage to autos or personal injury actions, there are certain uniform interrogatories which must be used. These appear as Appendix II to the Rules of Court. Uniform interrogatories are not used in professional malpractice, toxic tort and wrongful death cases.

- A defendant served with a complaint in a case type for which uniform interrogatories have been adopted, is deemed to have been simultaneously served with such interrogatories, and must serve answers to the appropriate uniform interrogatories within 60 days after service of the answer to the complaint. See *Rules* 4:17-1, -2, -4.

- The plaintiff is deemed to have been served with uniform interrogatories simultaneously with service of defendant's answer to the complaint, and must serve answers to the interrogatories within 30 days.

- Motions can be made to strike certain questions or to compel more specific answers.

- If new information is found which renders any answers to interrogatories inaccurate, amended answers must be served.

- Interrogatories may be used at the time of trial to contradict or impeach testimony – as is the case with depositions.

- Interrogatories are not separately filed with the court, but may be filed as part of a discovery motion.

aa. Amending Answers to Interrogatories

Rule 4:17-7 requires that amended answers to interrogatories be served no later than 20 days prior to the end of the discovery period. Thereafter, amendments may be allowed only if the party seeking the amendments certifies that the facts on which the amendment is based could not have been reasonably discoverable prior to the end of the discovery period. If a post-discovery end date amendment is made, the adversary may then make a motion, alleging exceptional circumstances, for additional discovery.

bb. Production of Documents and Things and Entry Upon Land for Inspection

Any party may apply to the court to require another party produce documents or permit inspections of items or entry upon land to inspect, survey or photograph. See *R.* 4:18.

cc. Physical and Mental Examinations

In any action for personal injuries or in which the mental or physical condition of a party is in controversy, the adverse party may require the party whose physical or mental condition is in controversy to submit to an exam by serving notice upon that party, stating with specificity when, where and by whom the exam will be conducted, as well as the nature of the exam and any proposed tests. At least 45 days' notice of the exam must be provided. See *R.* 4:19.

dd. Requests for Admissions

A party may serve upon any party a written request for the admission of the truth of any matter including the genuineness of documents. The matter is admitted unless an answer or objection is given in writing. Any admission not objected to is considered conclusively established for the pending trial and no other action. See *R.* 4:22.

ee. Non-Compliance with Discovery Request

If a party does not timely comply with discovery requests made pursuant to *Rules* 4:17 (interrogatories) and 4:18-1 (production of documents, etc.) or 4:19 (mental or physical exams), the other party may move for an order compelling the discovery or for an order dismissing or suppressing the pleading of the delinquent party, without prejudice.

To vacate an order of dismissal without prejudice, the delinquent party may make a motion, accompanied by a reinstatement fee made payable to "Treasurer, State of New Jersey" ($100 if the motion is made within 30 days of the dismissal order, $300 thereafter) and an affidavit stating that the discovery has been provided.

After 60 days from the date of the order of dismissal without prejudice, if that order has not been vacated, the party entitled to the discovery may move for an order of dismissal with prejudice.

If a person being deposed refuses to answer a deposition question, the party taking the deposition may bring a motion to compel an answer. If the individual fails to answer after being directed to do so, the failure is considered a contempt of court.

ff. Late Motions to Compel Discovery

Rule 4:24-2 provides that, absent good cause, motions to compel discovery and to impose or enforce sanctions for failure to provide discovery must be made returnable prior to the expiration of the discovery period.

gg. Carrying Motions to Strike or Dismiss Upon Agreement to Provide Discovery

With the consent of the court, the parties may agree to carry motions to dismiss without prejudice for failure to provide discovery if the delinquent party agrees to provide the discovery by a date certain

hh. Party Seeking Relief Under R. 4:23-5 Must not be Delinquent in Providing Discovery

Rule 4:23-5(a) requires that a party moving to strike or dismiss the adversary's pleading must certify that he or she is not in default on any discovery obligations owed to the delinquent party. In discussing whether a motion to dismiss for failure to attend an

IME might be denied if the movant has not yet answered the delinquent party's interrogatories, even if the time for answering has not yet run, the Conference of Civil Presiding Judges took the position that, as long as one party is not delinquent in providing discovery, *i.e.*, the time period within which the discovery must be provided has not yet run, that party should generally be able to obtain relief under *R*. 4:23-5.

ii. Dismissal of Complaint for Discovery Default – Effect on Other Parties

If a defendant obtains an order of dismissal against plaintiff due to plaintiff's discovery default, the case is dismissed as to the moving defendant **only** and continues as to the other defendants. If the order submitted is not specific, the judge should pen in that the case is dismissed "as to the moving party."

SECTION 10 : COUNSEL

a. Trial Counsel Designation

Pursuant to *R.* 4:25-1(b)(14), in the event that a particular member or associate of a firm is to try the case, or if specified counsel is to try the case, the name should be included in the initial pleadings, and must be specifically set forth in the pretrial order. No change in designated trial counsel may be made without the permission of the court, if the change will interfere with the trial schedule. Changes may be requested by letter. If the name of a specific trial counsel is not specifically provided, the court and opposing counsel shall have the right to expect any partner or associate of the firm to try the case when reached by the court.

b. Trial Counsel Designation – No Per Diem Attorneys Permitted

A *per diem* attorney, *i.e.,* an attorney not associated with a particular law firm but who is retained by the firm to handle a particular task only on a particular day and paid for the daily task performed, who will try the case may not be designated as trial counsel.

c. No Designation of Trial Co-Counsel Permitted

R. 4:25-4 allows only one designated attorney per interested party; however, a party is permitted to have more than one firm of record in a litigated matter. Thus, for example, if a four-count complaint is filed by one firm on behalf of a plaintiff, a second firm can later move to file an amended complaint adding a fifth count.

d. Waivers and Disregard of Trial Counsel Designation

Counsel must, either in the first pleading or in writing filed no later than ten days after the discovery end date, notify the court of the name of counsel designated to try the case or the right to designate counsel is deemed waived. The court may disregard trial counsel designation in any Track 1 or 2 tort case over two years old and in any Track 3 or 4 tort case pending for more than 3 years, if the unavailability of designated counsel will delay trial. If the name of the trial counsel is not specifically set forth, the court and opposing counsel shall have the right to expect any partner or associate to try the case. See *R*. 4:25-4 and *R*. 4:36-2.

e. Withdrawal or Substitution of Counsel

Prior to the fixing of a trial date, an attorney may withdraw with the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear *pro se.* If the client will appear *pro se*, the

withdrawing attorney shall file a substitution. An attorney retained by a client who had appeared *pro se* shall file a substitution.

After the setting of a trial date, an attorney may withdraw without a motion only upon the filing of the client's written consent, a substitution of attorney executed by both the withdrawing attorney and the substituted attorney, a written waiver by all other parties of notice and the right to be heard, and a certification by both the withdrawing attorney and the substituted attorney that the withdrawal and substitution will not cause or result in delay. In all other situations a motion must be brought. See *R.* 1:11-2.

f. Admission of Out-of-State Attorneys to Practice in New Jersey

Under RPC 5.5(b), there are several ways an attorney not admitted to the bar in New Jersey is permitted to practice law in New Jersey. These include:

1) the lawyer is admitted pro hac vice under R.1:21-2 for participation in a matter pending in a court if all requirements of that rule are met (RPC 5.5(b)(1);
2) the lawyer is in-house counsel and complies with R. 1:27-2 (RPC 5.5(b)(1 and 2);
3) the lawyer is representing an existing client in the jurisdiction in which the lawyer is licensed to practice in negotiations or alternate dispute resolution programs;
4) the lawyer is engaged in discovery for a matter in the jurisdiction where the lawyer is licensed to practice (*RPC* 5.5(b)(3)(iii); or
5) the lawyer practices in circumstances representing a client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice is occasional and necessary to avoid substantial inefficiency, impracticality, or detriment to the client (RPC 5.5(b)(3)(iv)).

Attorneys falling into categories (3), (4) and (5) may apply to the Supreme Court under the Multi-Jurisdictional Practitioners (MJP) program. The caveat is that those attorneys must be acting on behalf of existing clients in the state in which they are licensed to practice.

For admission to represent a client in private, non-court arbitration, an individual would need to make a special *ex parte* application to the court for an order permitting participation in the New Jersey activity, similar to an application under *R.* 4:11-4. That application would require the use of a New Jersey attorney and is subject to the discretion of the judge.

g. Pro Hac Vice Admission

A packet has been developed for *pro hac vice* admission in accordance with *R.* 1:21-2. Such an application must be done on motion. The packet appears on the Judiciary's Internet website at www.njcourtsonline.com

h. New Jersey Counsel with Bona Fide Offices Elsewhere

In accordance with *Rules* 1:20-1(b), 1:28-2 and 1:28B-1(e), all counsel practicing in New Jersey are required to pay an annual fee to the New Jersey Lawyers' Fund for Client Protection and file annual registration statements. Moreover, pursuant to *R.* 1:21-1 (a), a power of attorney must be filed designating the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions, including disciplinary actions. See *Rules* 1:20-1(b), 1:28-2, 1:28B-1(e) and 1:21-1(a).

SECTION 11 : MOTION PRACTICE

a. Motion Filing Procedures

A notice of motion should include:

- the time and place the motion is to be heard;
- the grounds upon which it is made;
- nature of relief sought;
- the discovery end date or a statement that no such date has been assigned;
- the trial or arbitration date if one is scheduled;
- whether the motion is opposed or unopposed; and
- an indication whether oral argument is sought.

Motions seeking a ruling on the papers (that is, without an appearance in court) under *Rules* 1:6-2 and 1:6-3 are considered uncontested unless responsive papers in opposition are filed not later than 8 days before the return date of the motion. In addition, the notice of motion should be accompanied by the following:

- certification signed by moving party;
- if the motion is for an extension of discovery, it must attach copies of all prior discovery extension orders or a certification that none exist, pursuant to *R.* 1:6-2(c);
- a proposed form of order;
- the required filing fee in a check, or money order made payable to Treasurer of State of New Jersey. Attorneys with charge accounts with the State can include their charge account numbers; and
- certification or proof of mailing.

If the filing party wants the court to return a "filed" copy of the motion, an extra copy of the motion and a pre-addressed, stamped envelope with sufficient postage must also be provided to the court.

For most new motions, the motion papers must be filed and served 16 days before the requested hearing date ("return date"). However, for summary judgment motions, moving papers must be filed and served 28 days before the return date and not later than 30 days before a scheduled trial date, unless the court otherwise orders on good cause shown. *R.* 4:46-1.

b. Motions to Change Venue

Rule 4:3-3(b) provides that motions to change venue cannot be brought with motions seeking any other relief.

c. Cross-motions

A cross-motion may be filed and served by the responding party together with that party's opposition to the motion and noticed for the same return date only if it relates to the subject matter of the original motion. A cross-motion relating to the subject matter of the original motion shall, if timely filed, relate back to the date of the filing of the original motion. See *R*. 1:6-3(b).

d. Withdrawn Motions

Rule 1:6-2 specifically requires counsel to advise the court immediately if a motion is withdrawn or a case is settled. Motions that are not withdrawn timely may have to be marked "denied" because they are moot.

e. Proof of Service of Motions

The proof of service of a motion must include the names and addresses of all attorneys and the parties they represent and of all *pro se* parties. See *R*. 1:5-3.

f. Assignment of Motions

The same pretrial judge handles all motions in a Track I, II, or III case, through the track-allotted discovery period plus 60 days (see *R.* 4:24-1). Thereafter, motions may be heard by the Civil Presiding Judge or his or her designee. Illness, vacation or transfer out of the Civil Division will necessitate an exception to the above rule. Motions to amend pleadings and add parties, as well as *pro hac vice* motions and motions to consolidate, are handled by the designated pretrial judge through the track-allotted discovery period plus 60 days (see *R.* 4:24-1). Thereafter, such motions may be heard by the Civil Presiding Judge or his or her designee. See *R.* 1:6-2.

g. Scheduling Motions/Oral Argument

Motions must always be assigned a return date; if no return date is indicated in the notice of motion, then the motion will be assigned to be heard on the next available motion date. Motions will not be adjourned without being assigned another hearing date. Oral argument should be confirmed by the court two days prior to the return date. Confirmation is made to the moving party, whose obligation it is to advise all other parties. Note that motion calendars and oral argument status are now posted on the Judiciary's Internet website at www.njcourtsonline. This information is updated nightly so that attorneys and parties can search their particular case to determine when the motion will be heard and whether oral argument has been granted. The practice of posting tentative motion decisions in advance of the return date may be continued or implemented as a local prerogative. The court makes every effort to accommodate attorneys' requests to schedule oral argument on motions at a particular time. The use of the telephone to hear oral argument is encouraged, and attorneys' requests for telephone argument are accommodated where possible.

h. Joining In Motions

A party seeking affirmative relief specific to that particular party must file a motion, with the required fee and any supporting documents. In such instances, a "join in" letter is insufficient. For example, if one defendant makes a verbal threshold motion, another defendant cannot simply write to the court indicating that he or she "joins in" that verbal threshold motion. The second defendant would have to file his or her own motion for summary judgment, and pay the requisite filing fee. One party, however, may join in another's motion when that motion affects the case as a whole, *e.g.*, a motion to extend discovery, consolidate, or change venue.

i. Motions to Adjourn Arbitration

Short-notice motions to adjourn a scheduled arbitration hearing in order to permit additional discovery will generally not be considered. A motion received after the normal filing deadline for the return date specified will be calendared for the next return date. Motions to adjourn must demonstrate exceptional circumstances (*R.* 4:24-1) and should be made pursuant to the timetable set forth in *R.* 1:6-3.

j. Motion to Extend Time to Answer Not Required – Stipulation or Consent Order Sufficient

Pursuant to *R*. 4:6-1(c), a motion to extend time to answer should not be required, that is, a filed consent order or written stipulation is sufficient, unless other relief, such as vacating default or extending discovery, is also sought.

k. Processing of In Limine Motions

A motion *in limine*, *i.e*., a motion that is to be heard at the start of a trial, does not require a fee and no return date need be assigned. The motion papers will simply be placed into the file jacket for the trial judge's review and handling and the motion will become part of the trial record.

If, however, a motion is submitted with a return date in advance of the trial date, it will be handled as any other motion, and should be accompanied by a motion fee.

l. Reserved Decisions

An attorney or *pro se* party may apply to the Civil Presiding Judge to have a reserved motion decided timely. It is the responsibility of the Civil Presiding Judge to be knowledgeable as to which decisions are reserved and to address delays as needed.

m. Motions to Extend Time for Discovery

Any motion to extend the time for discovery must have annexed thereto either a copy of all prior orders extending the discovery period or a certification that there have been no prior orders. See *R.* 1:6-2(c).

n. Decisions on Orally Argued Motions

If an orally argued motion is not decided on the return date and the court intends to place its findings on the record at a later date, at least one day's notice (which may be by telephone) of that later date will be provided to counsel and *pro se* parties. See *R.* 1:6-2(f).

o. Motions Required to be Made During Discovery Period

Rule 4:24-2 provides that no motion for the relief provided by the following rules may be granted in any action unless it is returnable before the expiration of the time limited for discovery unless on notice and motion, for good cause shown, the court otherwise permits: *R.* 4:8 (motion for leave to file a third-party complaint); *R.* 4:7-6, 4:28-1, or 4:30 (motion for joinder of additional parties); *R.* 4:38-1 (motion for consolidation); and *R.* 4:38-2 (motion for separate trials), as well as motions to compel discovery and motions to impose or enforce sanctions for failure to provide discovery.

p. Motions Filed After Discovery End Date

The question arose as to what standard applies to a motion to amend or to add parties, filed after the discovery end date has passed. *Rule* 4:9-1 sets the standard as "by leave of court which shall be freely given in the interest of justice."

q. Motions to Deposit or Withdraw Funds

Attached in the appendix are detailed instructions outlining the procedure for the deposit of funds into Superior Court and also for withdrawal of funds previously deposited. In accordance with the attached instructions, **prior** to the filing of such motions, copies of the proposed motion papers must be reviewed by the Trust Fund Unit of the Office of the Clerk of the Superior Court. The address of the office appears in the instructions.

r. Motions on Short Notice

Although the term "motion on short notice" is sometimes used by attorneys filing motions after the appropriate deadline, description of a motion as one on short notice places the court under no obligation to calendar the motion based on the designated date in the filer's notice of motion. A motion received after the normal filing deadline for the return date specified will be calendared for the next return date.

s. Motions to Consolidate with a Special Civil Part Case

A motion to consolidate a Special Civil Part case with a Civil Part or General Equity case must be made in the county where the Civil Part or General Equity case is venued regardless of whether the Special Civil Part case was filed first. See *R.* 4:38-1.

t. Summary Judgment Motions

Summary judgment motions shall be returnable no later than 30 days prior to the scheduled trial date, unless otherwise ordered by the court for good cause shown. If the decision on the motion is not communicated to the parties at least 10 days prior to the scheduled trial date, an application for adjournment shall be liberally granted. See *R.* 4:46-1.

u. Motions to Consolidate with a Special Civil Part Case

A motion to consolidate a Special Civil Part case with a Civil Part or General Equity case must be made in the county where the Civil Part or General Equity case is venued regardless of whether the Special Civil Part case was filed first. See *R.* 4:38-1.

v. Motions to Consolidate Cases Pending in More Than a Single County

Rule 4:38-1 provides that if actions involving a common question of law or fact arising out of the same transaction or series of transactions are not triable in the same county, the Assignment Judge of the county in which the venue is laid in the action first instituted, may on the court's own motion or on a party's motion, issue an order consolidating the matters. Therefore, for example, if there are actions filed in two counties arising from a single automobile accident, any party to either case may make a motion in the county having the older case to consolidate the cases.

SECTION 12 : DEFAULT/DEFAULT JUDGMENT

a. Entry of Default and Default Judgment

If a party has failed to plead or otherwise defend or if the answer has been stricken, according to *R.* 4:43-1 the clerk shall enter a default on the docket as to such party.

The following must be filed before default can be entered:

- **Request for Default** (a document, formally requesting of the clerk to enter a default against a specific party identified).

- **Affidavit/Proof of Service** (identifying the type of service of process, the date of service, the time within which the defendant(s) had to respond, the fact that the time has expired and has not been extended).

The request for default and affidavit for entry of default must be filed within 6 months of the actual default date. Thereafter, default cannot be entered except on notice of motion to the court. However, if the request is submitted beyond the 6-month period, it will be filed as "non-conforming." If the defendant was originally served with process either personally or by certified/ordinary mail, the party/attorney obtaining the entry of default must send a copy of the request for default to the defaulting party by ordinary mail addressed to the same address at which the defendant was served with process.

A **default judgment** can be obtained against a party who has failed to respond, *i.e.*, "plead", or whose pleading has been stricken by the court and against whom default has been entered. Application may be made after entry of default judgment to vacate or void the judgment.

According to *R*. 4:43-2, default judgment can be entered in the following ways:

- by the clerk, if the plaintiff's claim is for a sum certain or for a sum which can by computation be made certain, and
- in such cases, a valid affidavit of proof must be filed; and
- in all other cases, by the court, on notice of motion, after a proof hearing is held.

In addition, pursuant to the *Servicemembers' Civil Relief Act (SCRA)* 50 *U.S.C. §* 521, its New Jersey counterpart, *N.J.S.A.* 38:23C-4, and *R*. 1:5-7, an affidavit of non-military service must be filed with any application for default judgment.

It should be noted that the entry of default and default judgment cannot be done simultaneously in the Civil Part. Default must be entered and the defaulted party provided with notice of the entry before a default judgment may be sought and entered. See *R*. 4:43-2. Such notice will encourage defendants to be heard at each stage of the default process thereby reducing subsequent motions to vacate the entry of default judgment and expediting the final disposition of these cases.

Rule 4:43-2(b) requires that applications for entry of default judgment be brought by notice of motion. Attorneys must make a motion with the relief sought being an order scheduling the proof hearing on a selected date. On the return date of the motion, if no opposition is filed, the motion presumably would be granted on the papers, an order signed and served at the same address as the motion, and the proof hearing would take place on the date specified in the order (not a motion day, but a date convenient to the court and the moving party). If opposition is filed, the court will address it on the return date and, if the opposition is unfounded, will schedule the proof hearing date, advise the parties of the date on the record, and also put the date in the order.

b. Entry of Default Upon Striking of Answer

The court will not automatically enter default against a party whose answer is stricken for failure to answer interrogatories. Further, an answer must be stricken with prejudice before default judgment can be entered.

c. Answers Submitted After Default Entered

If default has been entered and an answer is thereafter submitted, the answer will be returned, "received, but not filed." See *R.* 1:5-6(c)(2).

d. Motion to Set Aside Default

A motion for the vacation of any entry of default must be accompanied by:

- an answer to the complaint and CIS or a dispositive motion pursuant to *R.* 4:6-2;
- a $30 fee for the motion; and
- a $135 fee for the answer or dispositive motion in lieu of answer.

If the motion to vacate the default is denied, the $135 fee will be returned. For good cause shown, the court may set aside an entry of default and if a judgment by default has been entered may likewise set it aside in accordance with *R.* 4:43-3.

e. Affidavits of Non-Military Service

Pursuant to Rule 1:5-7 and in accordance with the *Servicemembers' Civil Relief Act*, 50 *U.S.C.* §521, unless based on facts admissible in evidence, an affidavit of non-military service must have attached to it a statement from the Department of Defense (DOD) or from each branch of the armed services that the defendant is not in military service. The DOD Manpower Data Center maintains a public website at https://www.dmdc.osd.mil/scra/owa/home that allows individuals to search for information regarding military status. Users must know the social security number and the last name of the person whose military status is to be verified. Once the information has been entered, a report will be generated electronically in a form with the seal of the DOD and the signature of the Center's Director.

Certificates from the individual branches of the armed services may be obtained from the addresses listed below. Requests for certificates should contain the defendant's full name, social security number, and date of birth. If the social security number is not known, this fact should be noted. A statement of why the information is needed and a self-addressed, stamped envelope must also be included. Unless otherwise noted below, a postal money order or a certified, cashier's or personal check made payable to the "Department of Treasury" in the amount of $5.20 for each defendant must accompany each request.

U.S. NAVY
Navy Personnel Command
PERS-312F
5720 Integrity Drive
Millington, TN 38055-3120
Make check payable to: U.S. Treasurer

U.S. AIR FORCE
Air Force Worldwide Locator
HQ AFPC/DPDXIDL
550 C Street, West, Suite 50
Randolph AFB, TX 78150-4752
Make check payable to: DAQ-DE

U.S. MARINE CORPS (MMSBO)
Headquarters U.S Marine Corps
Code MMSB-10
2008 Elliott Road Suite 203
Quantico, VA 22134-5030

Please mark "OFFICIAL BUSINESS" on bottom of envelope. Make check payable to: U.S. Treasurer

U.S. ARMY
Commander
U.S. Army Enlisted Records and Evaluation Center
Attn: Locator
8899 East 56th Street
Indianapolis, IN 46249-5031
Make checks payable to: Finance Officer

U.S. COAST GUARD
Coast Guard Personnel Command
2100 Second Street, S.W.
Washington, DC 20593-0001
Make checks payable to: U.S. Coast Guard

If personal information or information from the DOD Manpower Data Center or the individual branches of the armed services is not available or does not identify the defendants non-military status with certainty, the court may require a bond to be posted before issuing default judgment.

f. Time for Entry of Default Judgment

If a party entitled to a default judgment fails to apply within 6 months after the entry of the default, judgment may not be entered except on motion. See *R.* 4:43-2(a).

g. Calculation of Interest on Judgments

It is the attorneys' responsibility to calculate interest on default judgments. Staff may review the interest calculation and if there appears to be an obvious problem, may either bring it to the attention of the judge or contact the attorneys and ask them to resubmit the order with a corrected interest calculation.

h. Defaults in Matters Involving Attorney Fee Arbitration

If a civil case was filed involving an attorney's fee (*e.g.,* for collection of an unpaid fee) and the matter was referred to fee arbitration, default in the matter can be entered on application pursuant to *R.* 1:20A-3(e). This rule provides that if an action for collection of the fee was pending in Superior Court when the client's written request for fee arbitration was filed, the amount of the fee or refund as so determined may be entered as a judgment in the action unless the full balance is paid within 30 days of receipt of the arbitration determination. If no such action was filed previously in Superior Court, the attorney or client must proceed by summary action pursuant to *R.* 4:67.

SECTION 13 : DISMISSAL

a. Dismissal for Lack of Prosecution

The dismissal process pursuant to *R*. 1:13-7 works as follows:

- After four months of inactivity as defined in *R*. 1:13-7, the court will issue a notice to counsel advising that a particular party will be dismissed without prejudice in 60 days, unless one of the following occurs within that period:

  - an answer, or non-conforming answer is filed or default is requested if the required action not timely taken was failure to answer or enter default;

  - proof of service or acknowledgement of service of the party is filed with the court if the required action not timely taken was failure to file proof of service or acknowledgement of service with the court;

  - a default judgment is obtained if the required action not timely taken was failure to convert a default request into a default judgment; or

  - a motion is filed by or with respect to a defendant noticed for dismissal. If the motion is denied, the defendant will be dismissed without further notice. See *R*. 1:13-7(a).

- If, before the dismissal order is issued, the court receives proof of service or an acknowledgment of service or a request to enter default or default judgment (provided such request is made within the six month period set forth in *Rules* 4:43-1 and -2) with respect to the targeted defendant, the dismissal will not go through.

- If the required action does not occur within the 60-day period following the notice, the case will be dismissed without prejudice and the order of dismissal will be sent to the parties; thereafter, reinstatement of the action against a single defendant after dismissal may be permitted on submission of a consent order vacating the dismissal and allowing the dismissed defendant to file an answer, provided the proposed consent order is accompanied by the answer for filing, a CIS and the required fee. If the defendant has been properly served but declines to execute a consent order, the plaintiff must move on good cause shown for vacation of the dismissal. In multi-defendant actions in which at least one defendant has been properly served, the consent order must be submitted within 60 days of dismissal order and if not, a motion for reinstatement is required. The motion shall be granted on good cause shown if filed within 90 days of the order of dismissal, and thereafter will be granted only on a showing of exceptional circumstances. In multi-defendant actions, if an order of dismissal is vacated and an answering pleading is filed by the

restored defendant during or after the discovery period, the restored defendant shall be considered an added party, and discovery shall be extended pursuant to *Rule* 4:24-1(b). The court may, with respect to a particular defendant, also impose reasonable, additional or different procedures to facilitate the timely occurrence of the next required proceeding to be taken in the case with respect to the defendant. See *R.* 1:13-7(a).

b. Dismissal in Multi-Defendant Actions

In any case involving multiple defendants in which at least one defendant has answered and the answer has not been suppressed, no defaulted defendant will be noticed for dismissal for the plaintiff's failure to timely convert a default request into a default judgment as required by *R.* 4:43-2. See *R.* 1:13-7(b)(4).

c. Service of Complaint Following Lack of Prosecution Dismissal

In *Weber v. Mayan Palace Hotel & Resorts,* 397 *N.J. Super.* 257 (App. Div. 2007), the court held that a complaint dismissed for lack of prosecution under *R.* 1:13-7(a) can be served before it is reinstated. See also *Stanley v. Great Gorge Country Club,* 353 *N.J. Super.* 475 (Law Div. 2002).

d. Exemptions from the Automated Dismissal Process

The following case types are exempt from the automated dismissal process:

- ***Name Changes*** – these cases are excluded from the automated dismissal process, as name change complaints require no answer.

- ***Forfeitures*** – forfeiture matters that have been stayed at the request of the Attorney General or inactivated because the defendant in the underlying criminal case is a fugitive are not subject to the automated dismissal process; those forfeitures that have not been stayed or inactivated, however, are subject to the automated dismissal process.

- ***Condemnations/Inverse Condemnations*** – these cases are individually managed and, while the managing judge based on his or her determination in a particular case may dismiss them, they are not to be subject to the automated dismissal process.

- ***Actions in Lieu of Prerogative Writs*** – same as condemnations, above.

- ***Summary Actions, including OPRA Cases*** – these cases are not subject to the automated dismissal process as no answer is required.

- ***Mass Tort Cases*** – these cases are specially handled.

e. Fictitious Parties – No Automated Dismissal

Notices of dismissal are not issued as to fictitious defendants *unless* the fictitious defendants are the only defendants in the case.

f. Service Effected Following Dismissal – Reinstatement

Service of a dismissed complaint, as a prerequisite to vacating a dismissal and restoring the pleading, is permissible. *Stanley v. Great Gorge Country Club,* 353 *N.J. Super.* 475 (Law Div. 2002) and *Weber v. Mayan Palace Hotel and Resorts,* 397 *N.J. Super.* 257 (App. Div. 2007).

g. Consent Orders Vacating Dismissal – Proof of Curing Deficiency Needed

When the discovery end date has not passed and the case has not been scheduled for arbitration or trial, vacation of dismissal and restoration of the complaint may generally be accomplished by consent order, provided the document curing the reason for the dismissal, *e.g.*, the proof of service of an answer, is attached to the consent order. See *R.* 1:13-7.

h. Noticing Dismissed and Defaulted Parties

Notice of arbitration and trial are sent to parties who have filed pleadings in the case and subsequently have been dismissed without prejudice, as well as to parties in default after having previously answered or otherwise appeared, or who have had their answers stricken for failure to provide discovery.

i. Voluntary Dismissal Without Prejudice By Consent Order

The court does not dismiss cases without prejudice (or suggest that the attorneys take a voluntary dismissal without prejudice) to avoid aging. Specifically, the court does not sign consent orders dismissing a case without prejudice, which orders contemplate subsequent restoration or refiling and provide for a waiver of the statute of limitations. Nor does the court in any way suggest that the attorneys take a voluntary dismissal in order to gain time to complete discovery or prepare for trial. See *Shulas v. Estabrook,* 385 *N.J. Super.* 91 *(App. Div. 2006).* Further, the court does not sign consent or voluntary dismissal orders that dismiss a case without prejudice so that the case may go

to arbitration, mediation or any other CDR or ADR mechanism (whether court-annexed or private) and then be restored under the same docket number if arbitration or mediation does not resolve the matter.

j. Bankruptcy Dismissals

The following sets forth the procedure for handling of cases including bankruptcies.

- When the sole defendant is in bankruptcy, the case may be dismissed without prejudice, subject to restoration.

- If the plaintiff files the bankruptcy petition, the case will not be dismissed or stayed, but should proceed. The claim is an asset of the estate, and it is the obligation of the trustee in bankruptcy to track it.

- When one of multiple defendants files in bankruptcy, the case may be dismissed without prejudice against that defendant **and** against any other defendant who may be covered by the bankruptcy order. If the case can be effectively prosecuted against the remaining defendants, it may proceed, as the automatic stay in bankruptcy is only as to the party or parties covered by the bankruptcy.

- If there is a carrier for the party in bankruptcy, the case may proceed after the plaintiff obtains an Order from the bankruptcy judge obtaining relief from the automatic stay.

- If there are cross-claims, these may be dismissed subject to restoration and the cross-claims preserved.

k. No Dismissal of Stayed Forfeitures

Forfeiture cases should *not* be dismissed pending resolution of the underlying criminal action; such cases may be inactivated if the underlying criminal action is inactivated because the defendant is a fugitive. Otherwise such cases should either be stayed or handled as any other pending case after the underlying criminal case is concluded. If stayed, the stay may be for a specified duration to be continued or terminated following periodic court review.

SECTION 14 : STAYS AND INACTIVATIONS

a. Inactivation of Cases

The only cases that may be inactivated by the court are cases placed on the military list pursuant to *R.* 1:13-6, forfeitures in which the defendant in the underlying criminal case is a fugitive and cases in which there is a stay imposed because of the insolvency or rehabilitation of an insurance company. Cases placed on the inactive list will continue to be monitored by the court.

b. Stays

Cases may be stayed by court order in certain circumstances. Examples include:

- cases in which an appeal is pending; or
- federal preemption of a cause of action brought in state court.

Rule 1:40-6(c) allows the court to stay discovery when a case is referred to mediation, but the parties may not stay discovery by consent.

c. Effect of a Stay

During a stay, discovery should cease and the case should not be scheduled for any court proceedings; however, pleadings may be filed and docketed. The order granting a stay should specify the date the stay will expire (pending further order of the court), to ensure that the matter comes up for the court's review.

d. Insurance Company Rehabilitations and Insolvencies

Guidelines have been developed to prescribe the procedure to be used whenever an insurance company has been declared insolvent or has been placed into liquidation and a statewide stay is sought of all New Jersey litigation. A copy of the procedure appears in the appendix. Whenever a carrier is declared insolvent, the New Jersey Property Liability Insurance Guaranty Association (NJPLIGA) is responsible for the defense of certain suits and payment of certain claims up to $300,000 per claim, after the claimant has exhausted all other insurance coverage. See *N.J.S.A.* 17:22.6-74, -77 and –79. NJPLIGA is entitled, as a matter of right, to an initial stay of litigation of 120 days from the date of any order of insolvency. See *N.J.S.A.* 17:30A-18.

Whenever an insurance carrier has been placed into rehabilitation by a court in a foreign jurisdiction and the order contains language staying all cases in which the carrier is involved, the New Jersey courts must honor such stays. See *Aly v. E.S. Sutton Realty*, 360 *N.J. Super*. 214 (App Div. 2003).

All cases subject to a stay because of either a rehabilitation or insolvency of an insurance carrier may be placed on the inactive list during the period of the stay and any extensions thereof.

e. Bankruptcies

Whenever the court is notified that a party to civil litigation has filed bankruptcy, the court will require copies of the following documents:

- filed petition in bankruptcy including filing date and case number; and
- schedule of creditors showing that the debt forming the subject matter of the civil action is listed.

The filing of a bankruptcy petition immediately stays all state court proceedings by operation of federal law. If there are cross-claims, these may be dismissed subject to restoration and the cross-claims preserved. When there is a joint tortfeasor situation, the negligence of the party in bankruptcy does not go to the jury. There is no allocation of harm. See Section 13 regarding the procedure for the handling of civil cases involving bankruptcies.

f. Claim of Privilege

When a defendant in a civil case asserts a claim of privilege because of a pending and related criminal matter, the court may stay the civil case pending the outcome of the criminal matter. Depending upon the particular matter, the court may also schedule the civil case and permit the defendant to be deposed or appear and assert the privilege.

SECTION 15 : ADJOURNMENT

a. Statewide Adjournment Policy

The following statewide adjournment policy is in effect:

- All requests to adjourn a civil trial or an arbitration are governed by *Rule* 4:36-3(b).

- A good faith effort shall be made to discuss any request for an adjournment with all other parties before the request is presented to the court.

- All adjournment requests must be made in writing, submitted to the Civil Division Manager. Faxed requests are permitted. Telephone requests will not be accepted absent exceptional circumstances. Requests must be copied to all other parties.

- Any request for an adjournment must be presented as soon as the need for an adjournment is known. Absent exceptional circumstances, the request must be presented no later than the close of business on the Wednesday preceeding the Monday of the week the matter is scheduled for trial or arbitration.

- The written request must indicate the reason or reasons the adjournment has been requested, and whether the other parties have consented to the proposed adjournment. The written request should also include a new proposed date for trial or arbitration, consented to by all parties. If consent cannot be obtained, the court will determine the matter by conference call with all parties.

  - If the adjournment request is based upon a conflict with another court proceeding, the party requesting the adjournment must indicate whether he or she is designated trial counsel and supply the name of the other matter, the court and county in which it is pending, and the docket number assigned to the matter.

- No adjournments will be granted to accommodate dispositive motions returnable on or after the scheduled trial date.

- A matter should not be considered adjourned until court staff has confirmed that the request for an adjournment has been granted. Timely response will be given to the party requesting the adjournment, who will then be responsible for communicating the decision to all other parties.

- To the extent any party is dissatisfied with the decision made by the Civil Case Management Office, the following procedure should be followed:

- in master calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party may ask that the matter be presented to the Civil Presiding Judge;

- in individual/team calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party may ask that the matter be presented to the pretrial or managing judge.

- Requests for adjournment of a civil trial based on expert unavailability are governed by *R*. 4:36-3(c). See AOC Directive #6-04, a copy of which appears in the appendix.

b. Insufficient Reasons for Adjournment

Adjournment requests should generally be made only if an attorney, party or witness is unavailable. No adjournment request for incomplete discovery should be made or granted, barring exceptional circumstances. No adjournment request will be granted to accommodate a dispositive motion returnable on or after the trial date.

c. Failure to Provide Proposed Agreed Upon New Date

Rule 4:36-3(b) requires the attorney requesting an adjournment of a trial to provide the court with a proposed new trial date, agreed upon by all parties. If the proposed new date is not provided, the adjournment request may be denied.

d. Exceptional Circumstances Warranting Trial Adjournment for an Expert's Unavailability

A determination of "exceptional circumstances" justifying a trial adjournment due to the unavailability of an expert must be a judicial determination made within the context of a specific case.

e. Late Adjournment Requests - - Personal Appearance

Personal appearances will not be routinely required to make a timely (*i.e.,* before Thursday preceding the trial week) or emergency (*e.g.,* because of illness) adjournment request.

A vicinage, however, may routinely impose a personal appearance requirement on attorneys making untimely adjournment requests for non-emergent reasons. A judge will handle these requests, as an "exceptional circumstances" determination must be made.

f. Failure to Timely Communicate Summary Judgment Decision – Liberal Grant of Adjournment Request

If the decision on the motion is not communicated to the parties at least 10 days prior to the scheduled trial date, an application for adjournment shall be liberally granted. See *R.* 4:46-1.

SECTION 16 : TRIALS AND SCHEDULING OF EVENTS

a. Motions to Extend Discovery – Impact on Arbitration Scheduling

- If a motion to extend discovery is filed a*fter the arbitration date is fixed,* no arbitration should be scheduled until the motion is decided and the discovery end date passes.

- If a motion to extend discovery is filed *after the arbitration date has been scheduled* and the motion is heard *before* the scheduled arbitration date, the judge will decide whether the arbitration date will be adjourned. This is not a problem if the judge does not grant the motion, but if discovery is extended beyond the scheduled arbitration date, the arbitration must be adjourned to occur after the discovery end date has passed, unless otherwise provided by Order. If the discovery end date is extended after an arbitration hearing is scheduled (which might occur if an exceptional circumstances motion to extend discovery is made after the discovery end date has passed and a hearing scheduled), the order should expressly address the arbitration date issue. If, discovery is extended and the order is silent on the arbitration date, the court must adjourn the arbitration, whether the attorneys request this or not. However, if all attorneys expressly consent that the arbitration may go forward prior to the discovery end date, this is permissible.

- If the motion to extend the discovery end date is *returnable after the scheduled arbitration date,* the vicinage has the discretion to adjourn the arbitration until after the motion is heard or to require that the arbitration go forward on the scheduled date.

The setting of an arbitration date in an order extending discovery is only permissible after the discovery end date has already been extended via the "automatic" consensual 60-day extension or if the parties cannot agree, in an order extending discovery more than 60 days, provided in either case that at least 45 days' advance notice of the arbitration is provided.

b. No Scheduling for Arbitration of Previously Mediated Cases

Cases that were previously referred to court-ordered mediation should not be scheduled for arbitration, unless all parties request arbitration or the court finds good cause for the matter to be arbitrated. See *R.* 4:21A-1(a).

c. Notice of Trial

At least 10 weeks' notice of trial must be provided by the court. The ten-week period is counted from the date of the receipt of the trial notice. The notice may not be sent prior to the discovery end date. See *R*. 4:36-3.

d. Adjustment of Trial Date

Attorneys should notify the court timely, ideally no later than 30 days following the date of the trial notice of the need to adjust the first, court-generated trial date to accommodate an expert's scheduling conflict. The court's "adjustment" of the trial date upon such notice does not constitute an adjournment within the contemplation of *R*. 4:36-3(c).

e. Appearance of Attorneys at Trial Calls

On the day of the call, attorneys should be released by early afternoon unless their cases are sent out, or can reasonably be expected to be sent out, for settlement discussion or trial that day. Attorneys should not be expected to appear at trial calls subsequent to the initial call for their case in the trial week unless the case can reasonably be expected to be sent out for settlement discussion or trial on that subsequent date.

f. "Subject To" / "Ready Hold" Markings; No Pre-Assignment

Unless an attorney is actually on his or her feet before another judge, that attorney may be expected to appear for trial before any other judge, absent exceptional circumstances. As a general rule, if two ready cases handled by the same attorney will be reached for trial on the same day, the older case takes precedence. In some instances, however, as when the younger case involves witnesses who have traveled a considerable distance to testify, the younger case will take precedence. Such conflicts should be worked out reasonably by the Civil Presiding Judges involved or their designees. It is essential, therefore, that attorneys advise the Presiding Judge as soon as they know that a conflict is likely. The practice of "pre-assigning" cases for trial has been eliminated.

g. "On Call"

No vicinage should have a blanket "on call" period, such as a "one-hour" call or a "half day call" for all cases being held. The length of an "on call" period should be worked out between the attorneys and court staff before the attorneys leave the courthouse. It should be determined on a case by case basis depending on the needs of the particular case and the status of the calendar during the particular week**.**

h. Relisted Cases

If a case is not reached during the week in which the initial trial date falls, it should be relisted for a trial date certain after consultation with counsel. No case should be relisted sooner than four weeks from the initial trial date without agreement of counsel. Counsel are to receive written notice of new trial dates for relisted cases. This is intended to put a stop to telephone notice of rescheduled trial dates, which made the entire trial process unpredictable for attorneys, litigants and witnesses. Telephone notice is impermissible. See *R*. 4:36-3.

i. Trial Calendaring Prior to End of Trial De Novo Filing Period

Trial notices for a case subject to arbitration should not go out until after a trial *de novo* request is made**.**

j. Assignment for Trial

Advising an attorney that he or she is "assigned" for trial on some day in the near future will not serve to hold that attorney's time on that day. All "assigned" means is that the court anticipates that the attorney will start trial on a particular day.

k. Continuous Trials

Insofar as is practicable, all trials should be continuous and uninterrupted, and should run for the full day as prescribed by *R.* 1:30-3.

l. Excusal of State Bar Association Officers, Trustees and Members From Trial Dates

Directive #1-08 sets forth to the policy regarding the excusal of bar association officers, trustees and members from trial dates to attend bar association meetings. Directive #1-08 is posted on the Judiciary's Internet website at www.njcourtsonline.com and is attached in the appendix.

m. Procedures for Resolving Attorneys' Civil Trial Scheduling Conflicts

The Supreme Court has authorized the following procedures for resolving attorneys' civil trial scheduling conflicts:

1. As a general principle, in the event of a conflict involving cases scheduled for trial at the same time in different counties, the older or oldest case will have priority over cases commenced at a later time. Exigent circumstances may, however, suggest a different priority, as, for example, when a party is terminally ill or a complex matter involving multiple attorneys has been scheduled peremptorily (see paragraph 4, below). In such instances, the vicinage with the younger case must follow the procedure set forth in paragraph 3, below.

2. Immediately upon recognizing that a conflict may exist between cases scheduled for trial at the same time in more than one county, an attorney shall notify the Civil Division Manager of each county in which a conflicting case is scheduled, as well as all counsel in all affected cases, in order that the Civil Division Manager with the newer case may know that the case is subject to the trial of an older case in another county.

3. In the event that an attorney or a Civil Division Manager is of the opinion that valid reasons exist for extending priority to the newer case, the conflict will be promptly resolved by a conference of the Civil Division Managers of the counties where the cases are pending. In the event that the Civil Division Managers are unable to resolve the scheduling conflict among themselves, each shall immediately communicate the problem to their respective Civil Presiding Judges, who shall promptly confer and resolve the conflict.

4. Peremptory designation is defined as trial priority granted by a Presiding Judge or his or her designee, regardless of the age of the case, upon a showing of exceptional circumstances and only where that Presiding Judge or designee has secured the consent of any other Presiding Judge(s) or designee(s) whose trial calendar may be affected by such designation. Peremptory designations should be used sparingly and should only be made no sooner than four weeks before the trial date.

5. When an attorney is actually in trial at the time another case is called for trial, whether or not the case called for trial is older, it either shall be marked "ready-hold" or "subject to" pending completion of the case in trial, or adjourned and another date set.

6. An attorney awaiting assignment for trial in more than one case shall proceed to trial on the first case actually assigned out to a judge for immediate trial, regardless of the age of the other case or cases. The intent of this principle is that a county may not hold an attorney in a case that cannot be assigned to a judge for immediate trial, but must release the attorney to proceed to another county where adverse counsel and the judge are awaiting the arrival of the attorney to commence trial immediately.

7. As stated in *R*. 4:35-4, insofar as practicable, all civil trials should be continuous and uninterrupted, and should run for the full day as prescribed in *R*. 1:30-3.

NOTE: Nothing in this Directive is intended to alter the operation of the designated trial counsel rule (Rule 4:25-4).

These procedures should be followed uniformly in all counties. See Directive #12-05, a copy of which appears in the appendix.

"Pre-assignment" of a case for trial does not constitute a peremptory designation and thus such cases are subject to being trumped by an older case scheduled for trial in another county.

n. Conflict Between Trial and Videotaped Deposition - - Designated Trial Counsel Rule

The videotaped deposition of an expert for use at trial is tantamount to trial testimony, so the designated trial counsel rule should apply in such circumstances; however, trials take precedence over videotaped depositions. The court should take a reasonable approach to try to accommodate conflicts between these two events. For example, if money has been paid out to schedule the video deposition and the adversary cannot attend because he or she is in trial and no one else can cover the deposition, the court may allow the video deposition to be put off but might order the party who cannot go forward on the originally scheduled date to reimburse the party scheduling the video deposition.

o. Videotaping Expert Unavailable for Trial

A previously unavailable expert will be required to appear in person or on videotape on the rescheduled trial date or, with the consent of all parties, the expert's deposition may be read to the jury. See *R.* 4:36-3(c).

If the trial was previously adjourned because of one expert's unavailability, the court may direct that no further adjournments will be granted for the failure of *any* expert to appear. See *R.* 4:36-3(c).

p. Pretrial Information Exchange Form

Rule 4:25-7 provides that parties must confer and exchange (unless waived in writing) certain information seven days prior to the scheduled trial date. See Appendix XXIII to the Court Rules. This and other information, as provided in *R.* 4:25-7, should be provided to the court on the trial date. The purpose of the rule is to ensure that counsel review their file prior to arriving at the courthouse for trial and that counsel and the court have all the information they will need to take the case to trial. Trial judges benefit from the attorneys' preparation of the information because the judges are provided with everything they need in a single package. If the case is simple or routine, then preparation of the information required under *R.* 4:25-7 should be relatively simple or routine as well. In case of non-compliance, the discretion as to whether to impoase a sanction resides with the trial judge.

q. Sanctions May Be Imposed for Failure to Exchange and Submit Pretrial Information Exchange

Failure to exchange (unless waived in writing) and submit the required information may result in sanctions, in the discretion of the trial judge.

The trial judge, *not* the Civil Presiding Judge, should determine if sanctions are appropriate under *R.* 4:25-7 and, if so, should impose them via an order.

r. No Exceptions to Pretrial Informational Exchange Requirements

Rule 4:25-7 makes no exceptions for cases on particular tracks. All civil cases are subject to the requirements of *R.* 4:25-7.

s. Stipulations – Continuing Duty to Report During Trial

Attorneys are under a continuing obligation to report to the court any stipulations reached during trial.

t. Good Faith Effort to List Witnesses

Attorneys should make a good faith effort to list in the pretrial information exchange all witnesses to be called at trial. A party, however, will not be foreclosed from calling a witness, properly named in discovery, who is not listed in the pretrial information exchange, if such a good faith effort was made.

u. Bifurcation of Liability and Damages

Rule 4:38-2(b) permits consideration of bifurcation in individual cases only. No county should implement or maintain a policy that calls for routine bifurcation of a particular type of case.

v. Writs for Production of Inmates at Trials or Court Events

Directive #1-04, relating to writs for the production of inmates at court proceedings, is posted on the Judiciary's Internet website at www.njcourtsonline.com.

w. Transportation Costs for Inmates

N.J.A.C. 10A:3-9.13 governs responsibility for the payment of the cost of transporting inmates to and from attendance at court proceedings. A copy appears in the appendix. Inmates classified as Sexually Violent Predators are transported by the Department of Corrections.

x. Transportation of Patients at State Hospitals to Civil Court Proceedings

"*Krol* patients" and other civilly committed individuals are transported by the Department of Human Services police. Unless these patients are on conditional discharge pending placement, they are generally accompanied by clinical staff from the facility. The one exception is that individuals committed to Ann Klein Forensic Center in Trenton are transported by medical security officers from that facility.

SECTION 17 : TRANSFER / REMOVAL OF CASES

a. Procedure for Removal of a Civil Case from State Court to Federal District Court

A defendant seeking to remove a civil action from a State court to the Federal District Court shall file a notice of removal in the District Court to which the action is to be transferred. The notice must contain a short statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon the defendant. The notice of removal must be filed within 30 days after the receipt of the initial pleading. The defendant must give written notice to all adverse parties and file a copy of the notice with the clerk of the State court. Once the notice of filing is received in the clerk's office, the case is removed and shall proceed no further unless or until the matter is remanded from the District Court. At this point, the State court case shall be closed. After prompt review of the notice, the District Court either enters an order for summary remand to the State court when the face of the notice and annexed exhibits do not support a removal or orders an evidentiary hearing to determine whether removal should be permitted. If the District Court decides to permit removal, it shall notify the State court in which the case was pending. See 28 *U.S.C.A.* 1445.

b. Transferring a Case from One County to Another

When a case is transferred, it is closed in the county transferring it and reopened in the new county under a new docket number. The transferring county will send the originals of all filed documents to the receiving county, keeping copies. If the case is transferred back to the county of original venue, it is closed out in the transferring county and will be reopened in the original county under the original docket number. In such instances, the originals of documents will be returned by the transferring county.

c. Transfer of a Special Civil Part Case to the Civil Part

Rule 6:4-1(b) sets out the circumstances and procedure for transferring a case from the Special Civil Part to the Law Division – Civil Part.

SECTION 18 : SETTLEMENT

a. Court-Mandated Settlement Events

No more than one court-mandated settlement conference may be held. See *R.* 4:5B-3. The requirement of no more than one court-mandated settlement conference prior to the trial date does not preclude continuation of a conference from one day to the next.

Additional settlement conferences may be held with the consent of the parties. If all parties do not consent to more than one settlement conference, the court may nonetheless hold such a conference with those parties that do consent.

b. New Jersey Property-Liability Insurance Guaranty Association (NJPLIGA) Settlement Programs

Following the expiration of all stays involving an insolvent insurance carrier, NJPLIGA is willing to participate in a special settlement program listing blocks of its cases for possible resolution. NJPLIGA will send a representative to the vicinage. A special order of dismissal has been developed for use in this program. A copy of the order appears in the appendix. However, in a multi-defendant case, the defendant represented by NJPLIGA cannot be dismissed.

c. Medicare Reimbursement – Apportionment of Settlement Monies

When the U.S. Department of Health and Human Services is not a party to a case and there is a Medicare reimbursement claim and the proceeds of a settlement are allocated entirely to pain and suffering, the court will require that Medicare be noticed of the action and of the pending settlement.

Attached and appearing in the appendix are materials to assist in the handling of settlements involving Medicare reimbursement claims. Counsel can also contact the Medicare Secondary Payment Contract (MSPC) staff by telephone at 866-677-1220.

Under the *Medicare Secondary Payor* statute, Medicare's reimbursement right arises only "if it is demonstrated that (a) primary plan [*i.e.,* an insurance carrier or self-insured tortfeasor] has or had a responsibility to make payment with respect to such [Medicare-covered] item or service." See 42 *U.S.C.* 1395y(b)(2)(B)(2)(ii). Medicare recognizes allocation of settlement proceeds to losses other than medical expense when made by court order or other adjudication on the merits. See *Medicare Secondary Payer Manual* 50.4.4. Accordingly, it is within the court's authority to rule on such allocation motions to the extent that the order sought delineates the nature of the losses recovered

and the liability of the parties (if any) with respect to medical expenses. This is the type of documentation that Medicare asks to be presented in its administrative review process.

d. Medicaid Third-Party Liability Recoveries

In *Arkansas Department of Health and Human Services v. Ahlborn,* 126 *S.Ct.* 1752 (2006), the Supreme Court held that a state may no longer impose liens on settlements in an amount equal to Medicaid costs. Rather, the lien may encumber settlement funds only insofar as the funds are designated as payment for medical care and not for pain and suffering or lost wages.

Counsel have an obligation to provide timely notice to the Division of Law in cases in which a Medicaid recipient obtains a tort recovery. Pursuant to *N.J.S.A.* 30:4D-7(k) and *N.J.S.A.* 30:4D-7.1, the Division of Medical Assistance and Health Services (DMAHS) in the Department of Human Services has the duty to seek reimbursement from third parties for medical expenses paid by Medicaid on behalf of Medicaid recipients. Thus, judges will not approve a friendly settlement or special needs trust, or at any other settlement in which a party is or was a Medicaid recipient, unless notice has been timely provided to DMAHS. Notice of the pending settlement should be sent to:

State of New Jersey
Division of Law
P.O. Box 112
Trenton, New Jersey 08625-0112
Attention: Medicaid Recovery Unit.

e. Friendly Settlements

Rule 4:44 requires court approval of a settlement on behalf of a minor or mentally incapacitated person. When approving a settlement on behalf of a minor, the court enters an appropriate judgment in accordance with *R.* 4:48A. Attached in the appendix is a revised model minor's "friendly" settlement judgment. This revised model judgment was approved by the Judicial Council and supersedes the model judgment originally promulgated in 1989. This form judgment provides guidance in drafting an acceptable "friendly settlement" judgment when the court approves a settlement on behalf of a minor or mentally incapacitated person. While use of the model friendly settlement judgment form is encouraged but not mandatory any variations from the model must nonetheless conform to the requirements of the Rules of Court and any applicable Administrative Directives.

Although the majority of settlements on behalf of minors are paid into the custody of the court, *i.e.,* into the Surrogate's Intermingled Trust Fund (SITF), the court under *R.* 4:48A has the discretion for good cause to allow a guardian, rather than the Surrogate, to control the investment and use of settlement funds. The revised model friendly judgment

promulgated here includes language covering both deposits of net settlement funds into SITF and the alternative of guardians holding and independently investing such funds, including both the guardianship process and the bond requirement. See Directive #9-08.

SECTION 19 : COMPLEMENTARY DISPUTE RESOLUTION

Complementary Dispute Resolution or "CDR" is a collection of strategies or methods for resolving legal disputes without the time and expense ordinarily associated with trials and the traditional trial court process. CDR methods complement the traditional litigation process. In New Jersey, Alternate Dispute Resolution or "ADR" refers to the referral of cases to private providers outside of the court system. It should be used as early in the life cycle of a case as possible to avoid many of the pitfalls of the traditional litigation process, including cost, delay, intimidation and polarization of the parties.

Without sacrificing quality, court-sponsored CDR programs offer many benefits: reduced time to resolution; streamlined and less costly discovery; effective case management; increased confidentiality; improved communication of essential issues; participation of litigants in the resolution of their dispute. A wide range of CDR methods are available for use in the civil case management system, including:

- **Non-Binding Arbitration** -- the dispute is submitted to experienced, knowledgeable, neutral attorneys or retired judges to hear arguments, review evidence and render a non-binding decision. Any party has the right to reject the award and demand a trial. The arbitration award, if accepted by the parties and confirmed by the court, can be made into a legally binding and enforceable judgment. Less formal and less complex than trial, arbitration can often be concluded more quickly than formal court proceedings. Arbitration is mandatory for certain types of cases.

- **Voluntary Binding Arbitration** -- the parties file a written consent order, signed by all attorneys and the parties themselves, submitting the case to binding arbitration and voluntarily dismissing their case. Parties are encouraged to enter into high/low agreements of which the arbitrators are unaware. The purpose of the high/low agreement is to give the parties control over the outcome. The case is presented in abbreviated form to a panel of two arbitrators whom the parties have selected. A sitting Superior Court judge also selected by the parties is present but becomes involved in the process only if (and to the extent that) the arbitrators do not agree. The proceedings are held in the courtroom and the judge explains to the parties at the outset and on the record that the determination of the panel will be final and not appealable. All parties must then agree, on the record, that they understand the final and binding nature of the program. The hearing, however, proceeds off the record. The decision of the arbitration panel is memorialized as a judgment if the court does not receive a stipulation of settlement within 30 days. If the parties had entered into a high/low agreement, the plaintiff could get no less than the "low" and the defendant would not be subject to exposure above the "high." Sample forms appear in the appendix.

- **Court-Annexed Mediation** -- an impartial third party, the mediator, facilitates negotiations among the parties to help them reach a mutually acceptable settlement. A mediator does not make a decision. The parties, with the assistance of their attorneys, work toward a solution with which they are comfortable. Benefits include: preservation of ongoing party relations, savings in trial expenses and decreased psychological and emotional costs to litigants. Cases may either be referred to the Civil Mediation Program, to mediation by the state Office of Dispute Settlement (run by Eric Max), or to private mediators.

- **Summary Jury Trial (SJT)** -- most appropriate for complex cases. SJT allows the parties to learn the probable outcome of an actual jury trial, by conducting an abbreviated trial lasting one half to one full day, with little or no live testimony, before an "advisory" jury. All aspects of a traditional trial are streamlined. A judge presides. Attorneys present their cases by oral summary based upon discovery documents and affidavits of experts. Comprehensible, lay language is utilized in presenting the case and in the jury charge. The verdict is non-binding. Sample forms appear in the appendix.

- **Expedited Jury Trial** -- similar to SJT but binding and appealable. Sample forms appear in the appendix.

- **Settlement Conferences and Settlement Weeks** -- Except in individual judge-managed Track IV cases, in the Law Division, Civil Part, the court may mandate no more than one settlement event (with a judge or before a bar panel) in advance of the trial date.

  The court may periodically schedule settlement weeks to allow for the resolution of a large number of cases within a brief period of time. Cases may be scheduled for conferencing based on age (*e.g.,* over three years old), case type, carrier or attorney representation. Attorneys are given advance notice and are usually advised that all discovery should be completed prior to the conference. If a case is not settled at the conference, an expedited trial date is usually set.

- **Non-Court Mediation by the New Jersey Office of Dispute Settlement –** Under *R.* 1:40-11, cases may be sent to non-court mediation through the Office of Dispute Settlement (ODS). However, the approval of the Assignment Judge or designee is required. ODS has full-time mediators on staff with expertise in all areas of civil litigation including, construction, insurance coverage, environmental clean-up and employment law.

- **Private Options for Dispute Resolution –** *Rule* 1:40-11 allows any judge (with the approval of the Assignment Judge or designee) to mandate parties to participate in mediation or any other non-binding ADR program before a skilled, private neutral. Such a mandatory referral may take place *sua sponte* or on any party's motion, at any time after joinder. In determining whether, when and to whom to refer cases, judges consider factors such as characteristics of cases that make them appropriate for ADR, skills and experience of professional neutrals, and simple cost-benefit analysis.

For more detailed provisions relating to Civil CDR modalities, see *Civil CDR Program Resource Book.*

SECTION 20 : APPEAL, JUDGMENT, POST-JUDGMENT AND WRITS

a. Appealing Civil Part Decisions

If a party disagrees with a decision of a Civil Part judge and wishes to appeal, an appeal must be filed with the Appellate Division of the Superior Court within 45 days from the date of the judgment or order being appealed. A kit outlining the procedure appears on the Judiciary's Internet Website at www.njcourtsonline.com.

b. Civil Judgment and Order Docket

The Clerk of Superior Court is required by statute and court rule to keep the Civil Judgment and Order Docket. The Civil Judgment and Order Docket creates a record of judgments or orders for the payment of money. See *N.J.S.A.* 2A:16-11 and *R.* 4:101.

A judgment docketed on the Civil Judgment and Order Docket becomes a lien on all real property owned by the judgment debtor throughout the State of New Jersey. Such liens are purely statutory in nature. This is in contrast to judgments entered but not docketed with the Clerk of Superior Court which are often referred to as "venue judgments". The latter are not liens against real property in the county of venue since these judgments are not recorded against the property deed nor are they recorded in a local lien book as was the previous practice in the former County Courts.

The Civil Judgment and Order Docket is supported by ACMS. All judgments filed since 1984 and prior judgments revived by order pursuant to 2A:14-4 are indexed on the Civil Judgment and Order Docket by both judgment debtor name and judgment creditor name.

There are a number of courts and executive agencies that have authority to record judgments. The source of a judgment on the Civil Judgment and Order Docket is distinguished by the prefix to the judgment docket number. The five judgment categories are:

"J" Judgments rendered in the Superior Court, both Chancery and Law Divisions.

"DJ" Judgments rendered in the Special Civil Part, Municipal Courts, Certificates of Debt filed by State and County Agencies and Foreign Judgments.

"MP" Judgments docketed covering municipal parking violations.

"ML" Municipal Public Defender Liens.

"PD" Certificates of Liens filed by the Office of the Public Defender.

The Civil Judgment and Order Docket contains detailed information on "J" judgments from the Civil Part and General Equity and on "DJ" judgments that originated in the Special Civil Part. In these instances, case and party information residing on ACMS is automatically transferred to the Judgment System at the time a judgment is recorded as a statewide lien. There is no similar bridge of information from the automated management systems used the Family, Criminal or Probation Divisions.

The full record for any electronically recorded judgment *i.e.,* those sent electronically from state agencies and child support judgments appears on the Civil Judgment and Order Docket. There is no paper copy. Such liens are purely statutory in nature. This is in contrast to judgments entered but not docketed with the Clerk of Superior Court which are often referred to as "venue judgments". The latter are not liens against real property in the county of venue since these judgments are not recorded against the property deed nor are they recorded in a local lien book as was the previous practice in the former County Courts.

c. Recording of Judgments in the Civil Judgment and Order Docket

N.J.S.A. 2A:16-11 requires the prevailing party in a matter to submit a judgment to the Clerk of the Superior Court in Trenton for recording the judgment as a statewide lien in the Civil Judgment and Order Docket. Directive #1-95 sets forth the following procedures relating to the recording of judgments in the Civil Judgment and Order Docket:

1. Order and Judgment

a. A judge signing an order or judgment pursuant to *R.* 4:42-1(e) or entering a default judgment under *R.* 4:43-2(b) shall stamp on the copies of the order or judgment that are returned to the submitting party:

"If this is a money judgment, it will not be automatically recorded as a statewide lien. To do so, forward it directly to the Clerk of the Superior Court in Trenton along with a $35.00 fee."

b. The party submitting the order or judgment to the judge for signature is then responsible for forwarding the signed order or judgment along with the fee, directly to the Clerk of the Superior Court in Trenton for recording in the Civil Judgment and Order Docket. That party should forward two copies of the order or judgment and a self-addressed envelope with sufficient postage.

c. The Deputy Clerks of Superior Court in the vicinages will continue to enter orders and judgments in the automated Superior Court Civil Docket

(ACMS) and Family Docket (FACTS). They should not, however, forward copies of those orders and judgments to the Superior Court Clerk in Trenton.

d. When a money judgment is entered by the Probate Part of the Chancery Division of Superior Court, the Surrogate shall similarly advise the proponent of the judgment that for it to be recorded in the Civil Judgment and Order Docket, the proponent must transmit it, with the $35.00 judgment recording fee, to the Superior Court Clerk for entry in the Civil Judgment and Order Docket.

2. Default Judgments and Statements of Verdict

a. Entry of Default Judgments – Deputy Clerks of Superior Court should continue to enter default judgments on behalf of the Clerk of the Superior Court pursuant to *R.* 4:43-2(a) and also enter those default judgments into ACMS. Copies of the default judgment **should not** be sent by the Deputy Clerk to the Superior Court Clerk's Office for recording in the Civil Judgment and Order Docket. The Deputy Clerk should instead forward a copy of the default judgment to the submitting party with the following advisory stamped on it:

"If this is a money judgment, it will not be automatically recorded as a statewide lien. To do so, forward it directly to the Clerk of the Superior Court in Trenton along with a $35.00 fee."

b. Statement of Verdict – Deputy Clerks of Superior Court should continue to prepare statements of verdict as required under *R.* 4:47 and continue to enter them into ACMS. The Deputy Clerk **should not** send the statement of verdict to the Superior Court Clerk in Trenton. The Deputy Clerk should instead forward a copy of the statement of verdict to the submitting party with the following advisory stamped on it.

"If this is a money judgment, it will not be automatically recorded as a statewide lien. To do so, forward it directly to the Clerk of the Superior Court in Trenton along with a $35.00 fee."

c. The party seeking the default judgment or receiving the statement of verdict is responsible for forwarding the default judgment or statement of verdict, along with the statutory recording fee, directly to the Clerk of the Superior Court in Trenton for recording as a statewide lien in the Civil Judgment and Order Docket. That party should thereafter forward two copies of the default judgment of statement of verdict along with a self addressed envelope with sufficient postage.

3. Taxed Costs

The $35 fee for recording a judgment in the Civil Judgment and Order Docket should be considered as a subsequent cost and handled as any other permitted subsequent cost. If a request for taxed cost(s) is made after the judgment has been recorded in the Civil Judgment and Order Docket, the $35 judgment recording fee can be included in the computation of allowable costs.

R. 4:59 *et seq.* sets forth the process to enforce judgments.

d. Judgment Guidelines

The following guidelines are intended to address common areas of confusion as to where different types of judgment documents should be filed and processed. Unless otherwise provided, there are two units within the Superior Court where judgment related documents are filed. They are:

Judgment Unit
Superior Court Clerk's Office
P.O. Box 971
Trenton, NJ 08625
Telephone No. (609) 292-4804/05

Records Management Unit
Superior Court Clerk's Office
P.O. Box 971
Trenton, NJ 08625
Telephone No. (609) 292-4685.

Checks submitted as filing fees referred to in these guidelines should be made payable to the Treasurer, State of New Jersey.

1. Handling "DJ" Docket Numbers

Once a Special Civil Part judgment is docketed in the Civil Judgment and Order Docket as a statewide lien (*i.e.*, after a Statement for Docketing is entered and a "DJ" number assigned), any further proceedings must be brought under the "DJ" number in the Law Division, Civil Part in the original county of venue. The only exception to this procedure is a motion to vacate the Special Civil Part judgment.

A motion to vacate the original Special Civil Part judgment must be brought in the Special Civil Part in the county in which the judgment was entered. See *N.J.S.A.* 2A: 18-41.

Pursuant to *R.* 4:3-2(a), State-initiated post-judgment matters requiring a judge's attention, *i.e.,* actions arising from a state agency, all of which are venued in Mercer County (the location of the State capitol) involving "DJ" actions must be brought in the Mercer vicinage, except motions relating to foreign judgments and matters involving the New Jersey Motor Vehicle Commission (MVC). The latter must be filed in the county in which the judgment debtor resides.

All "DJ" motions, applications, petitions or any other documents requiring a decision by a judge must be filed in the county of venue.

- Warrants for arrest on "DJ" judgments are issued by the Deputy Clerk of Superior Court in the county of venue.

- Requests for the issuance of writs of execution with a "DJ" docket number must be directed to the Judgment Unit.

- Warrants to Satisfy Judgment with "DJ" numbers should be sent by the filer to the Judgment Unit and the fee is $35.

2. "L" Docket Numbers

- "L" Docket Numbers without a "J" Number represent judgments entered in the Law Division, Civil Part only. This indicates there was no Order for Judgment requested, paid for or entered on the Civil Judgment and Order Docket system. Therefore, unless otherwise noted elsewhere in Section 20 of this guide, all filings relating to these matters are handled in the county of venue.

- Writs of Execution and Warrants to Satisfy Judgment with "L" docket numbers (without "J" numbers) are filed and handled in the county of venue.

3. **"J" Judgments**

- all motions, applications, petitions and all other documents with a "J" number are handled in the county of venue unless otherwise noted elsewhere in Section 20 of this guide.

- Warrants to Satisfy Judgments with "J" docket numbers should be sent by the filer to the Judgment Unit and the fee is $35.

e. Judgments Involving Certain Motor Vehicle Accidents (MVC Judgments)

In actions involving motor vehicle accidents in which the amount of a judgment is $500 or more, the defendant/judgment debtor must pay this money to the plaintiff within 60 days of the judgment, or alternatively file a formal appeal. If the defendant fails to pay the money owed within the 60-day period or file a formal appeal, the plaintiff must prepare and then request the issuance by the court of form SR-38. Once issued, this document is sent by the Judgment Unit if it is a "DJ" or "J" or by the county in which the judgment debtor resides in all other cases, to the MVC at the following address of venue unless otherwise noted in Section 20 of this guide.

Motor Vehicle Commission
P.O. Box 403
Trenton, NJ 08666-0403.

Upon receipt, the MVC will issue a revocation of the defendant's driving privilege until such time that the judgment is fully paid. When the judgment is fully paid, a request must be made for the issuance by the court (the Judgment Unit if it is a "J" or "DJ" and the county of residence of the judgment debtor in all other cases) of a SR-39 form. For "J" docket numbers, the requesting party must prepare the form and send it to the court in the county of residence for issuance. For "DJ" docket numbers, the form on request is prepared and issued by the Judgment Unit. Sample SR38 and SR39 forms appear on the Judiciary's Internet website at www.njcourtsonline.com. Thereafter, this form will be forwarded by the court to the MVC to restore the defendant's driving privileges. See *N.J.S.A.* 39:6-35.

f. Judgments Discharged in Bankruptcy

In order to satisfy the judgment lien that the judgment debtor claims was discharged in bankruptcy, the debtor must obtain within one year of the date of the discharge, an Order specifically discharging the lien of the particular judgment from the United States Bankruptcy Court. If more than one year from the date of the discharge in bankruptcy has passed, the debtor must file a motion in the county to discharge the lien of the judgment, in the underlying action giving rise to the judgment, seeking an Order of the Superior Court pursuant to *N.J.S.A.* 2A:16.49.1. For "DJ" docket numbers, the form is prepared and issued by the Judgment Unit of the Office of the Clerk of the Superior Court on request.

g. Workers' Compensation Judgments

Workers' compensation judgments against uninsured defendants should be filed by the State agency directly with the Superior Court Clerk's Office Judgment Unit. Where the workers' compensation judgment is against an insured defendant, the judgment is filed in the Superior Court in the county in which the hearing was held. See *N.J.S.A.* 34:15-58. There is no filing fee. See *N.J.S.A.* 34:15-63. Workers' compensation judgments are not assigned a "DJ" number until the transcript of judgment is forwarded to the Judgment Unit. Upon request, staff will prepare and issue a transcript of judgment to the person requesting the docketing. The Deputy Clerk signs the transcript of judgment and there is a $5 issuance fee. The transcript is returned to the requesting party who must complete the certification of amount due and then submit the transcript to the Judgment Unit. The filing fee for docketing the transcript with the Judgment Unit is $35.

h. Foreign Judgments

The *Uniform Enforcement of Foreign Judgments Act*, *N.J.S.A.* 2A:49A-25, permits a judgment, decree, or order of the United States or of any other court, which is entitled to full faith and credit in New Jersey, to be filed with the Clerk of the Superior Court. The Clerk shall treat the foreign judgment in the same manner as a judgment of the Superior Court of New Jersey.

Pursuant to *Enron (Thrace) Exploration & Production v. Clapp*, 378 *N.J. Super.* 8 (App. Div. 2005), foreign country money judgments are enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit, provided that the provisions of the *Uniform Foreign Country Money Judgments Recognition Act*, *N.J.S.A.* 2A:49A-16 to –24 are met.

Requests to record foreign judgments should be directed to the Superior Court Clerk's Office, Judgment Unit, P.O. Box 971, Trenton, NJ 08625. A kit for use in such matters can be found on the Judiciary's Internet website at www.njcourtsonline.com.

Following docketing, the court will mail notice of the filing of the foreign judgment to the judgment debtor at the address provided and make a note of the mailing in the docket. The notice shall include the name and post office, address of the judgment creditor and the judgment creditor's lawyer, if any, in this State.

Motions involving the enforcement of foreign judgments are venued and heard in the county where the debtor resides, or, if the debtor is not a resident of New Jersey, the motion should be venued in the county where the property is located.

i. Requests for Exemplified Copies and Triple Exemplified

Requests for exemplified copies of all judgments bearing a "J" or "DJ" docket number must be directed to the Records Management Unit of the Superior Court Clerk's Office. The fee is $10.00 plus the statutory per page copy fee.

j. Requests to Assign Judgments

Requests to assign a judgment with either "DJ" or "J" docket numbers should be sent by the filer to Judgment Unit of the Office of the Clerk of the Superior Court. Each request to assign the judgment must be made in writing and include the name and address of the person or entity to whom the judgment is being assigned, the amount of the judgment and the parties to the judgment. The request must be accompanied by a $5 fee.

k. Requests to Subordinate, Release or Postpone Judgments

Any request to subordinate, release or postpone a "DJ" or "J" judgment should be sent by the filer to the Judgment Unit of the Office of the Clerk of Superior Court. The request must be accompanied by a $5 fee.

l. Substitution of Attorney on Judgments

A Substitution of Attorney for a "J" or "DJ" judgment should be filed in the county of venue and a copy sent by the filer to the Judgment Unit of the Office of the Clerk of Superior Court. There is no fee for filing this document.

m. Docketing Criminal Division Orders

Criminal Division Orders entering a civil judgment, *e.g.*, for restitution to a crime victim, should be sent to the Judgment Unit of the Office of the Clerk of Superior Court for docketing. The filing fee is $35. As to post-judgment enforcement of these judgments, please refer to Directive #5-93 on the Judiciary's Internet Website at www.njcourtsonline.com.

n. Revival of Judgments

According to *N.J.S.A.* 2A:14-4, a judgment in any court of record in New Jersey may be revived within 20 years after the date of the judgment but not thereafter. Such applications must be by motion using the original judgment number.

o. Satisfaction of Judgments

A judgment can be fully satisfied, in the following ways:

- A warrant of satisfaction is filed pursuant to *R.* 4:48-1 with a $35 fee;

- Wage or writ of execution return – sheriff marks the writ return "fully satisfied" which reflects that the judgment and costs have been paid in full.

- Order of Satisfaction – the judgment debtor can apply to the court for an Order of Satisfaction when the judgment creditor refuses and/or cannot be located to produce a warrant of satisfaction. The proof submitted by the judgment debtor will be sent by the court to the judgment creditor who will have 10 days to object. If an objection is received, the matter will be set down for a hearing. If no objection is received, the court will determine if the judgment/debt has been satisfied and will enter an order.

- Consent Order – an order signed by both parties consenting to the entry of a satisfaction of judgment is submitted to the court for a judge's signature.

- In order to satisfy of record, the lien of a judgment that the judgment debtor claims was discharged in bankruptcy, the debtor must obtain within one year of the date of the discharge from the United States Bankruptcy Court, an Order signed by the Bankruptcy Judge specifically discharging the lien of the particular judgment. If more than one year from the date of the discharge in bankruptcy has passed, the debtor must file a motion to discharge the lien of the judgment, in the underlying action that gave rise to the judgment, pursuant to *N.J.S.A.* 2A:16.49.1.

p. Warrant of Satisfaction

Rule 4:48-1 requires the party in whose favor the judgment is entered to provide a warrant of satisfaction. See *N.J.S.A.* 2A:16-46. A sample warrant of satisfaction form appears on the Judiciary's Internet website at www.njcourtsonline.com.

The judgment creditor should submit a warrant of satisfaction to the court when the judgment debtor has paid a judgment in full or to their satisfaction.

The Clerk of the Superior Court enters warrants of satisfaction or satisfied execution returns submitted by the sheriff on the docket when the warrant or satisfied

execution is presented for filing. *Rule* 4:48-2 sets forth the docketing responsibility of the clerk. See also *N.J.S.A.* 2A:16-47 and 48.

The court cannot force a judgment creditor to issue a warrant to satisfy, nor can it require the creditor to pay the filing fee for the warrants it may issue to the debtor. This may necessitate the debtor filing a motion to have the judgment marked satisfied or, to pay the applicable filing fees for warrants issued to them.

If there is a "J" or "DJ" docket number on the pleadings, the filer should send the warrant to satisfy judgment to the Judgment Unit of the Office of the Clerk of Sueprior Court in Trenton. The fee is $35.

q. Vacation of Judgments

If the original judgment is vacated after it was recorded as a "DJ" (docketed judgment) in the Office of the Clerk of the Superior Court, the "DJ" record gets vacated as well. When an order is signed vacating the original judgment a copy of the order should be sent by the filer of the motion to the Superior Court Judgment Unit and the "DJ" will be vacated.

r. Judgment by Confession

A Judgment by Confession (also known as Confession of Judgment) is the entry of a judgment for the amount of a claim upon a written admission or acknowledgment by a debtor usually without the formality of a court proceeding. *R*. 4:45-2 sets forth the procedure for entry of a judgment by confession.

s. Naming of Parties in Judgment

Although a suit may be started against a party designated by an initial letter or letters or a contraction of a given name or names, no final judgment may be entered against a party so designated unless the plaintiff amends the complaint to state at least one full given name of the defendant or the court otherwise orders.

t. Amount of Judgment

Attorney's fees or collection charges can only be included in a judgment when the contract forming the basis of the lawsuit or a statute provides for such fees or charges in a fixed amount or percentage. See *R.* 4:43-2(a)(c).

u. Allowable Costs

A party to whom costs are awarded or allowed by law or otherwise in any action, motion or other proceeding, in the Law Division or Chancery Division of the Superior Court, is entitled to include in the costs such necessary disbursements, as follows:

- The legal fees of witnesses, including mileage for each attendance, masters, commissioners and other officers;
- The costs of taking depositions when taxable, by order of the court;
- The legal fees for publication where publication is required;
- The legal fees paid for a certified copy of a deposition or other paper or document, or map, recorded or filed in any public office, necessarily used or obtained for use in the trial of an issue of fact or the argument of an issue of law, or upon appeal, or otherwise;
- Sheriff's fees for service of process or other mandate or proceeding;
- All filing and docketing fees and charges paid to the clerk of court, including trial *do novo* fees following arbitration pursuant to *R.* 4:21A-6(c); and
- Such other reasonable and necessary expenses as are taxable as allowed by the judge or by express provision of law, or rule of court. See *N.J.S.A.* 22A:2-8.

v. Redaction of Social Security Numbers from Name Change Judgments

The statute governing name changes requires that the name change judgment include the Social Security number of the person whose name is being changed (*N.J.S.A.* 2A:52-2). The corresponding court rule (*R.* 4:72-4) requires publication of the name change judgment in a newspaper of general circulation in the county of plaintiff's residence. Pursuant to the rule, the plaintiff's social security number must be redacted from the published judgment. The unredacted judgment must be filed with the Deputy Clerk of Superior Court in the county of venue and the appropriate office within the Department of Treasury.

w. Executions on Money Judgments Entered in the Family Part

The Family Part handles requests for post-judgment executions to satisfy money judgments entered in Family Part cases.

x. Requests for Judgment Searches

All requests for statewide judgment searches should be referred to the following:

Clerk of the Superior Court
Judgment Unit
P.O. Box 971
Trenton, NJ 08625
Phone: 609-984-4204.

y. Post-Judgment Supplementary Proceedings to Obtain Information About Debtor's Assets and Income

In order to seek additional information about a judgment debtor's assets and income, following the entry of a judgment in the Law Division, Civil Part, a judgment creditor may proceed in accordance with *R.* 6:7-2 except that service of an order for discovery or an information subpoena must be made as prescribed by *R.* 1:5-2 for service on a party.

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

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

An information subpoena may be served upon the judgment debtor, without leave of court, accompanied by an original and copy of written questions and a prepaid, addressed return envelope. The information subpoena and written questions shall be in the form and limited to those set forth in Appendix XI-L to the Court Rules. A sample

Information Subpoena form is posted on the Judiciary's Internet website at www.njcourtsonline.com. Answers shall be made in writing, under oath or certification, by the person upon whom served, if an individual, or by an officer, director, agent or employee having the information sought, if a corporation, partnership or sole proprietorship. The original subpoena, with the answers to the written questions annexed thereto shall be returned to the judgment creditor, if *pro se*, or judgment creditor's attorney within 14 days after service thereof.

An information subpoena may not be served on a judgment debtor more frequently than once in any six-month period without leave of court.

An information subpoena may be served upon banking institutions possibly used by the judgment-debtor without leave of court or upon possible employers or account-debtors (who are business entities) of the judgment-debtor upon *ex parte* application, supported by certification, and court order, if the judgment-debtor has failed to fully answer an information subpoena within 21 days of service. The application will be granted if the court determines that the information subpoena is reasonably necessary to effectuate a post-judgment judicial remedy and that the party receiving the subpoena may have in their possession information about the debtor that will assist the creditor in collecting the judgment. The information subpoena must be accompanied by an original and copy of written questions and a prepaid, addressed return envelope. The information subpoena and written questions shall be in the form and limited to those set forth in Appendix XI-R to the Court Rules and posted on the Judiciary's Internet website, except that an information subpoena served upon a banking institution must contain a certification by the judgment-creditor or the creditor's attorney that the debtor has failed to fully answer an information subpoena served pursuant to *R.* 6:7-2(b)(1) within 21 days of service, that the information subpoena is reasonably necessary to effectuate a post-judgment judicial remedy, and that the bank may have in its possession information about the debtor that will assist the creditor in collecting the judgment. Answers must be made in writing, under oath or certification, by the person served, if an individual, or by an officer, director, agent or employee having the information sought, if a corporation, partnership or sole proprietorship. The original subpoena, with the answers to the written questions attached must be returned to the judgment creditor, if *pro se,* or judgment creditor's attorney within 14 days after service thereof.

A copy of an order for discovery must be served personally or by registered or certified mail, return receipt requested, and simultaneously by regular mail, at least 10 days before the date for appearance fixed therein. The information subpoena, must be served personally or by registered or certified mail, return receipt requested, and simultaneously by regular mail.

Service of an order for discovery or an information subpoena must be effective as set forth in *R.* 6:2-3(d). Upon completion of service, the failure to comply with an information subpoena shall be treated as a failure to comply with an order for discovery.

z. Writs of Execution

See *R*. 4:59 *et seq*. *R.* 4:59-1 provides that the process to enforce a judgment or order for the payment of money and process to collect costs allowed by a judgment or order is by a writ of execution, except if the court otherwise orders or if in the case of a *capias ad satisfaciendum* (*i.e.,* writ directing the sheriff to take physical custody of a defendant, to keep the defendant safe and have the defendant in court) the law otherwise provides. The amount of the debt, damages, and costs actually due and to be raised by the writ, together with interest from the date of the judgment, shall be endorsed on the writ by the party at whose instance it shall be issued before its delivery to the county sheriff. The endorsement must explain in detail the method by which interest has been calculated, taking into account all partial payments made by the defendant. A copy of the fully endorsed writ shall be served, personally or by ordinary mail by the judgment creditor upon the judgment debtor after a levy on the debtor's property has been made by the sheriff and in no case less than 10 days prior to turnover of the debtor's property to the creditor pursuant to the writ. Unless the court otherwise orders, every writ of execution must be directed to a sheriff and shall be returnable within 24 months after the date of its issuance, except that in case of a sale, the sheriff shall make return of the writ and pay to the clerk any remaining surplus within 30 days after the sale, and except that a *capias ad satisfaciendum* shall be returnable not less than eight and not more than 15 days after the date it is issued. One writ of execution may issue on one or more judgments or orders in the same cause. The writ may be issued either by the court or the clerk.

Writs of execution must be prepared by the judgment creditor, endorsed and submitted to the court for issuance need not be signed by a judge upon issuance; printing of the judge's name and signing of the writ by the Deputy Clerk in the appropriate space is sufficient. Two of the most common approaches for collecting judgments are to request the court to issue an execution on goods and chattels or an execution against a debtor's wages. It should be noted that to ensure that the judgment debtor is aware of the method by which interest has been calculated and that all partial payments have been accounted for, *R.* 4:59-1 requires that the endorsement on an application for a writ explain in detail the method by which interest has been calculated and demonstrate how all partial payments have been applied; and that a copy of the writ with the endorsement be served on the judgment debtor by the judgment creditor. See *R.* 4:59-1(a). Subparagraph (h) of the rule makes it clear that all the forms in Appendices XI-I and XI-L through XI-R, inclusive, are to be used in both the Civil and Special Civil Parts. See *R.* 4:59-1 and Appendices XI-I and XI-L through XI-R and XI-X and XI-Y. Samples of the forms appear on the Judiciary's Internet website.

If a writ of execution is issued against several parties, some liable after the others, the court before or after the levy may, on application of any of them and on notice to the others and the execution creditor, direct the sheriff that, after levying upon the property liable to execution, he or she raise the money, if possible, out of the property of the parties in a designated sequence.

- **Execution on Goods and Chattels. See *R.* 4:59-1(a).**

A creditor can apply to the court for an execution on goods and chattels once the creditor has a valid judgment. The creditor may also request that court costs be added to the amount owed on the judgment. Costs are usually the filing and service fees. The execution allows the sheriff to collect on the debt owed by taking possession of the debtor's personal property, such as their money in bank accounts (bank levy), furniture, motor vehicles, animals, notes, stocks and bonds. *N.J.S.A.* 2A:17-4 provides that executions, including bank levies, can be issued simultaneously in any county, not simply the county in which the case was venued. The sheriff can attempt to sell property to satisfy the debt.

One of the most effective ways to collect on the judgment is to levy on a bank account. To do this, the creditor must know where the debtor has a savings, checking or other account. He or she must know the name and address of the bank. Account number information is helpful. Once the sheriff levies on the account, the money is frozen. The creditor must then make a motion to the court for an order to turnover funds. The sheriff will serve the signed order on the bank, which will forward the levied funds to him or her for disbursement.

- **Execution on Wages. See *R.* 4:59-1(d).**

If the creditor knows where the debtor works, an attempt can be made to garnish the debtor's wages. Wage executions differ from executions on goods and chattels in that proceedings against the wages must be made on notice to the debtor. Every sheriff's officer levying on a debtor's property must on the day the levy is made, mail a notice to the person whose assets are to be levied on stating that a levy has been made and describing exemptions from levy and how such exemptions may be claimed. The notice must be in the form prescribed by Appendix VI to Court Rules and copies must be promptly filed by the sheriff's officer with the clerk of the court and mailed to the person who requested the levy. A sample form Notice to Debtor is posted on the Judiciary's Internet website. If the court receives a claim of exemption, whether formal or informal, it must hold a hearing within 7 days after the claim is made. If an exemption claim is made to the sheriff's officer, the sheriff must immediately forward it to the court and no further action will be taken with respect to the levy pending the outcome of the exemption hearing. No turnover of funds or sale of assets maybe made, in any case, until 20 days after the date of the levy and the court has received a copy of the properly completed notice to the debtor.

The notice of application for wage execution must be mailed to the debtor by certified and regular mail and filed with the court. It specifies the name of the employer and tells the judgment debtor that any objection must be made in writing within 10 days or the execution will be issued without further notice. It must also advise the defendant that an objection may be made at any time after the order is issued and specify the

procedure for so doing. A supporting certification sets forth the date of the judgment and the total amount due, including post-judgment interest. If an objection is received a hearing will be scheduled. If no objection is received, the court will issue the order for wage execution. After the order is signed and the wage execution has been issued, the judgment debtor has a continuing right to object or apply for a reduction of the amount withheld. If such an objection or application is made, the wages collected will be held by the sheriff pending resolution of the matter. The order for wage execution shall include provisions directing the employer to immediately provide a copy of the order to the employee judgment-debtor and advising the employee judgment-debtor of their right at any time to notify the court, in writing, of reasons why the levy should be reduced or discontinued. See *R*. 4:59-1(d).

Unlike other executions, the wage execution is a continuing levy or garnishment from the time served upon the employer until the amount specified in the order is paid or wages cease. Only one execution against wages may be satisfied at any one time. Priority is determined by the time of presentation to the employer. The amount of the garnishment is limited by federal and state legislation. Note that wage executions for child support take priority over all others.

aa. Motion to Enforce Litigant's (Creditor's) Rights

If an individual fails to answer or provide complete answers in response to an order for post-judgment discovery, a judgment creditor may make a motion to the court to enforce his or her rights as a creditor. This application notifies the judgment debtor that an appearance before the court is now required. The purpose of the appearance is to have a judge advise the person that he or she has failed to comply with a prior order of the court and may be punished with further sanctions. The appearance may also provide an opportunity for the development of a mutually agreed upon arrangement for the satisfaction of the debt. If the respondent does not appear on the hearing date, the court may issue an order for arrest as will be discussed below. See *R*. 1:10-3.

bb. Order to Arrest/Warrant for Arrest

If the respondent to the motion does not appear on the hearing date of the motion for enforcement of the creditor's rights, the judge may sign an Order to Enforce Litigant's Rights. This Order must be served immediately. The respondent then has 10 days to answer. If no timely answer is received, an order for arrest can be entered by the court upon request. Warrants for arrest on "DJ" judgments are issued by the Deputy Clerk of the Superior Court in the county of venue and there is a $5 filing fee. Only a sheriff's officer can serve the warrant. There is a fee for serving this document. The warrant authorizes the officer to go to the address indicated on the notice of motion and make arrangements for all parties to be brought before the court. At that time, the judge may incarcerate the person until he or she complies with the court's Order.

cc. Taxation Certifications of Debt

Taxation Certifications of Debt are entered onto the Civil Judgment and Order Docket and given a "DJ" number. Subsequently, the Division of Taxation issues a Warrant of Execution to the Superior Court of New Jersey, Law Division, County of "(county name)" for filing. The warrant expires 60 days after the docketing.

dd. Proof of Service of Post-Judgment Papers

In accordance with *R.* 1:5-3, green cards are not to be routinely required as part of the proof of service for post-judgment applications. However, it is permissible to require green cards as proof of service in applications for arrest warrants.

ee. Sheriff's Handling of Judgment Creditors' Funds – Standards for Disbursement

The Conference of Civil Presiding Judges has developed, in consultation with the county Sheriffs, proposed standards for the disbursement of funds collected by the Sheriffs pursuant to writs or other court orders. It was agreed that funds should be disbursed within 15 days of collection.

ff. Compliance with Child Support Lien Law

N.J.S.A. 2A:17-56.23b requires attorneys and parties to undertake a search, using a private firm, to determine if the party receiving money as a result of a settlement or judgment, or in a number of other situations, is a child support debtor. If so, the amount of child support owed is a lien against the net proceeds. The statute provides as follows:

- Before distributing any net proceeds of a settlement, judgment, inheritance or award to the prevailing party or beneficiary:

    1. The prevailing party or beneficiary shall provide the attorney, insurance company or agent responsible for the final distribution of such funds with a certification that includes the prevailing party's or beneficiary's full name, mailing address, date of birth and social security number; and

    2. The attorney representing the prevailing party or beneficiary shall initiate a search of New Jersey judgments, through a private judgment search company that maintains information on child support judgments to

determine if the prevailing party or beneficiary is a child support judgment debtor. *N.J.S.A.* 2A:17-56.23b(b);

- If the certification of the search company shows that the prevailing party or beneficiary is not a child support judgment debtor, the net proceeds may be paid to the prevailing party or beneficiary immediately. If the certification shows that the prevailing party or beneficiary is a child support judgment debtor, the attorney, insurance company or agent that initiated the search shall contact the Probation Division of the Superior Court to arrange for the satisfaction of the child support judgment. *N.J.S.A.* 2A:17-56.23b(c). See *Strickland v. 212 Corp. of N.J.*, 380 *N.J. Super.* 248 (Law Div. 2005).

gg. Other Writs

Other writs include:

- **Writs of Replevin**

A writ of replevin can only be issued by order of the court. It is usually for the recovery of tangible personal property that has been wrongfully taken or detained. The posting of a replevin bond with the court is usually required before the Sheriff can act on the writ. See *R.*4:61 *et seq.* These writs are returnable in 30 days. See *R.* 4:61(c).

The Writ of Replevin shall be signed in the name of the Clerk of the Court issuing the Writ.

- **Writs of Attachment**

A writ of attachment can only be issued upon the court's order on plaintiff's motion and is usually sought in the beginning of litigation to ensure, that if the plaintiff is successful, assets are preserved and available to satisfy a judgment. It allows the seizure of the debtor's property. Some instances in which attachments are issued include: when the defendant is a nonresident of this State; the defendant flees; or the defendant is a corporation created by the laws of another State which allows attachments against New Jersey corporations authorized to do business in that State. See *R.* 4:60 *et seq*.

Under *R.* 4:60-6, there are two ways a writ of attachment for property located in a county other than that of the docketed litigation may be issued. Subsection (a) states that the court where the matter is docketed shall issue a writ directed to the sheriff of the county in which the property to be attached is located. Subsection (b) states that the court where the matter is docketed may, in its discretion, order the deputy clerk of the Superior Court of a county where the

property is located to issue a writ addressed to the sheriff of that county and forward a copy to the judgment unit of the Superior Court Clerk's office in Trenton, where it will be entered in the Civil Judgment and Order Docket. In either case, the writ must be prepared by the filer, not by the court.

SECTION 21 : FEES

a. Payee

All checks for fees paid to the court in civil matters except for deposits of money into court must be made payable to Treasurer, State of New Jersey. Deposits of moneys into court, to be held in the Superior Court Trust Fund, should continue to be made payable to the Superior Court of New Jersey. See *R.* 1:13-10.

b. Applications to Waive Filing Fees

Rule 1:13-2 allows the court to waive payment of fees for indigent persons, *i.e.,* those unable to pay filing fees, who apply for waiver and who provide verification of their indigent status. Copies of the pleadings to be filed must accompany the application.

c. Fees Based upon Docket Number

There is a single filing fee for each first paper or motion charged per docket number, regardless of the number of individuals on whose behalf the pleading or motion is filed.

d. Filing Fees – State of New Jersey/State Agencies

The State of New Jersey and any of its agencies, including the Motor Vehicle Commission, are exempt from payment of all filing fees. See *N.J.S.A.* 22A:2-22.

e. New Jersey Property Liability Insurance Guaranty Association (NJPLIGA) Exempt from Fees

Pursuant to *N.J.S.A.* 17:30A-15, New Jersey Property Liability Insurance Guaranty Association is exempt from payment of filing and other court fees.

f. Checks Must Have Preprinted Names and Addresses

Judiciary Management Services Bulletin 206 – "Acceptance of Cash and Checks for Superior Court Matters" -- defines acceptable forms of payment. All checks must have preprinted names and addresses.

g. Filing Fees – Prosecutor

The county prosecutors' offices are not exempt from the payment of filing fees even in forfeiture actions in which county prosecutor is acting on behalf of the State.

h. Fees for Name Changes – Family Members

When a name change is brought, as a single complaint, by a parent and adult children or by registered domestic partners, a single fee is due and a single docket number will be assigned.

i. Fees for First Papers

When the first paper filed by a particular party is not a complaint or an answer, such as a motion for leave to file a late tort claim or other motion, the complaint or answer fee, whichever is applicable, must be paid. Therefore, if the first paper filed by a party is a stipulation extending time to answer only or a motion in lieu of answer, the answer fee must be paid. If the first paper is a motion in lieu of answer, the fee for filing a motion is not required, only the answer fee must be paid.

j. Refund of Filing Fees

Filing fees generally will not be refunded. However, the court may, as a courtesy but not an obligation, choose to make a refund of a filing fee only when the fee has not been processed AND a docket number has not yet been assigned.

k. Consolidated Cases – Filing Fees

For purposes of filing fees, consolidated matters (non-mass torts) are treated the same as singular cases.

l. Fees for Omnibus Motions

When a single motion is filed that relates to a number of cases, for instance, when the cases involve a common insurance carrier that is in rehabilitation, a single motion fee may be charged.

m. Fees Payable When Filers Are Spouses

When a document is filed on behalf of a husband and wife, and a single filing fee is required.

n. Fee for Cases Remanded from Criminal Division

If a matter is remanded from the Criminal Division, a $200 filing fee must be paid.

o. Fees for Motions to Turnover Funds and Motions to Withdraw Funds

The fee for a motion to turnover funds is $30, regardless of the amount of the funds. A motion to turnover funds is a postjudgment motion to get access to funds that were the subject of a levy. This is different from the motion to withdraw funds for which the filing fee is $30 for funds less than $100; $30 plus an extra $5 for funds of $100 but less than $1000 or a total of $35; and $30 plus an extra $10 for funds of $1000 or more or a total of $40. The motion to withdraw is filed to get access to funds previously paid into court. An example is when a carrier pays the amount of the insurance policy limits into court during the pendency of a personal injury case.

p. Fees for Exemplified and Certified Copies

Fees for exemplified copies of Law Division, Civil Part judgments are computed as $5 for the certification, plus $5 for the exemplification plus the per page statutory fee. Thus the fee for an exemplification is $10 plus the per page copy fee. An exemplification fee for a single page document is $10.75; for a five-page document the fee is $13.75. Note that the fee for an exemplified copy of a Special Civil Part judgment is different ($5) and is governed by a different statute.

Fees for certified copies of civil documents are as follows:

- If a copy of the document to be certified is supplied by the requestor and if this is the first request by the particular requestor for the particular document, there is no fee;

- If the copy of the document is not supplied or for all requests after the initial request, the fee is $5.00 per request. There is no charge for the first copy of a name change judgment and writ of execution.

q. Fees for Defense Motions to Dismiss

When the first paper filed by a defendant is a motion to dismiss, the $135 fee for the defendant's first pleading is charged. Even if the motion is granted, the fee is non-refundable.

r. Fees for Motions to Transfer from Special Civil Part

The fee for a filing of a motion to transfer a case from the Special Civil Part to the Civil Part is $30 (the Civil Part motion filing fee), as these motions must be brought in the Civil Part. If the motion is granted, the moving party must pay the applicable Civil Part filing fee for its first paper, less any filing fee previously paid when originally filing in the Special Civil Part.

s. Fees for Condemnation Appeals

Rule 4:73-6 provides that an appeal from the Report of the Commissioners on a condemnation case can be filed under the original docket number without a fee. However, the second part of the rule requires a new docket assignment for appeals that should be severed and for these the fee is $200 per property.

t. Presumptive Fees to Condemnation Commissioners

The standard rate for compensating condemnation commissioners should be $200 per hour for commissioners and $225 per hour for the chair or lead commissioner.

u. Fees for Wage and Hour Matters

If a wage and hour case is filed pursuant to *R.* 4:74-8 as an appeal from a judgment obtained in the Wage Collection Section of the Department of Labor and Industry (now known as the Department of Labor and Workforce Development), the filing fee is $75 pursuant to *N.J.S.A.* 22A:2-27. If, on the other hand, the case is brought not as an appeal, but as an original action, the filing fee is $200.

v. Restoration Fees Following Reinstatement Under R. 4:23-5

The restoration fee payable under *R.* 4:23-5, whether restoration is done via motion or consent order, must be submitted with the motion or consent order.

w. Fees Upon Remand from Federal Courts

When a matter is remanded from the Federal Court to the Law Division, Civil Part, the remand should be considered as a new filing and the party charged the full $200 filing fee. Likewise, even if the defendant filed an answer in the Federal Court, the defendant is charged the full filing fee upon filing his/her answer in the Superior Court. The only time no fees would be charged is when the matter originated in the Superior Court and was removed to the Federal Court. In that situation, no fees would be charged if the matter is subsequently remanded back to the Superior Court, as long as the parties paid the appropriate fees prior to the remand.

When a case is initially filed in the Federal Court and later remanded back to the Superior Court, the answer filed in the Federal Court should be entered into ACMS; the date of the answer in ACMS should be the date the answer was filed in the Federal Court; and prior to such entry into ACMS, staff should contact the attorney or pro se party who filed the answer to obtain the Superior Court answer fee. (2/24/04 Conference of Civil Presiding Judges' MeetingRestoration Fees Following Reinstatement Under R. 4:23-5

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aa. Fees for the Issuance of Subpoenas By the Court

The fee for issuance of a subpoena is $5.00. See *N.J.S.A* 22A:2-7.

bb. Fees for the Issuance of an Arrest Warrant

The fee for the issuance of a civil arrest warrant is $5. To execute the warrant, additional fees are charged by the county Sheriffs' offices.

cc. Fees for Appeals of Administrative Hearings

The fee for filing an appeal of an administrative decision pursuant to *N.J.S.A.* 40A:14-150 is $200.

dd. Fees for the Issuance of an Arrest Warrant

The fee for the issuance of a civil arrest warrant is $5. To execute the warrant, additional fees are charged by the county Sheriffs' office.

ee. Legal Services Requests for Copies of Documents

There is no charge for copies of documents requested by Legal Services providers. If legal services require copies of documents in a number of files, Legal Services should

be asked to provide a written list of the docket numbers of the various files on the Legal Services letterhead.

ff. Payment of Fees by Social Services Agencies

Social Service agencies are ***not*** exempt from the payment of filing and copy fees.

gg. Fees for Election-Related Matters

As to fees in election-related matters, refer to Directive #2-09, a copy of which appears in the appendix.

hh. Fees for Appeals of Administrative Hearings

The fee for filing an appeal of an administrative decision pursuant to *N.J.S.A.* 40A:14-150 is $200.

ii. Entry of Fees for Withdrawal of Funds, Deposited Into Court in ACMS

When a motion is filed for the withdrawal of funds deposited into court, code M7 should be used the $30 motion fee should be recorded in ACMS "Motion Entry". Staff should then use the "Miscellaneous Receipt Entry" in the "Fee Receipt Menu" to enter the additional statutory fee based upon the amount of the funds involved.

jj. Fees for Motions to Vacate Defaults

See Section 12.

SECTION 22 : ACCESS TO PROCEEDINGS AND COURT RECORDS

a. Policy of Open Records

Rule 1:2-1 states the Judiciary's policy favoring open court proceedings and open records. Rule 1:38 et seq. sets forth the policies related to public access to court records and administrative Judiciary records. See R. 1:38 et seq., the Notice to the Bar dated August 6, 2009, the Supreme Court Administrative Determinations and Report of the Special Committee on Public Access to Court Records, copies of which are posted on the Judiciary's Internet website at njcourtsonline.com.

b. Access Policies and Procedures

Directive #15-05 which provides guidelines and uniform procedures and forms for access to case-related records is posted on the Judiciary's Internet website at njcourtsonline.com

c. Civil Cases Involving Child Victims of Sexual Abuse

N.J.S.A. 2A:82-46 requires that all court documents that state the name, address and identity of a victim who was a minor at the time of the alleged commission of certain sexual assault, endangering the welfare and abuse and neglect cases shall be confidential. Although the statute reads in terms of "the name, address and identity," if any one of the three is present, court personnel should treat the document as confidential since that appears to be the intent of the Legislature. Such documents should not be disclosed to the public unless a judge authorizes such disclosure for good cause after notice is given to all interested parties and a hearing is conducted on the matter. The Act also provides that the name of the victim shall not appear in any public record; rather, initials or a fictitious name shall appear. The offenses covered by the Act include aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of children under *N.J.S.A.* 2C:24-4, and actions alleging an abuse or neglect under *N.J.S.A.* 9:6-8.21 *et esq*. Any person who purposefully discloses to the public a document in violation of the statute is guilty of a disorderly persons offense.

The following procedures apply in such cases:

- **Impoundment of Case Files**

  In all actions coming under the statute, the complaint and other public records must use initials or fictitious names in place of the name, address and identity of any victim under age 18.

  In situations where court personnel have identified cases as falling within the confidentiality provisions of the Act – and notwithstanding that the initial case filings may have failed to comply with the statutory provisions

regarding the use of initials and fictitious names – court personnel have been directed to impound the records.

- **Transcripts**

  Court reporters and other transcribers will continue to produce the court proceedings in covered cases verbatim. Such verbatim transcripts shall be available for normal use by the court and the parties. However, any transcript that identifies, by name, address or otherwise, a child victim of an offense covered by the statute shall not be released to or inspected by the public unless the court authorizes the release of the transcript following a hearing as provided in the statute. If the court decides to release such a transcript, it shall make provision for protection of the child victim's identity as the court deems appropriate.

- **Control of Files**

  There is a need to ensure strict control of files to prevent inadvertent dissemination of child victim information in violation of the statute. On occasion, trial court files are informally reviewed in the courtroom by attorneys and others, including members of the media. In addition, files are often circulated to judges who make duplicate copies of part or all of the file. In cases coming under the statute, any and all requests for documents, except for requests by parties, their attorneys, or judges involved in deciding the case, shall be directed to a centrally designated court office that will have responsibility for maintaining procedures to ensure compliance with the statute.

Unless the presiding judge of a division designates an alternate procedure, in each division such central court office shall be the division manager's office, and the division manager will coordinate the response to a request with the county clerk and other court personnel. See Directive #11-90.

e. Civil Commitment Records

Pursuant to *N.J.S.A.* 30:4-24, records involving civil commitments are confidential. These records are maintained in the office of the County Adjuster.

SECTION 23 : INTERPRETING AND TRANSLATING

a. Interpreting Standards

Directive #3-04 sets forth the Standards for Delivering Interpreting Services in the New Jersey Judiciary. A copy of the Directive appears on the Judiciary's Internet website at www.njcourtsonline.com. The Standards are grounded in four basic tenets: (1) that people who are limited in their ability to speak and understand English or who are deaf or hard of hearing should have the same access to the courts as those who are neither; (2) that only qualified interpreters may ordinarily interpret; (3) that all costs for interpreting are to be borne by the Judiciary except in very limited instances; and (4) that team interpreting should be used for events of more than two hours.

Standard 1.4, Reimbursement of expenses for interpreting services provides as follows:

The Judiciary may seek reimbursement when it incurs actual expense for interpreting services:

- that could have been avoided but for the failure of a party or an attorney to give reasonable attention to the matter; or
- that an attorney or a *pro se* litigant requests but fails to use during a court event.

This standard points out the need for attorneys and litigants to be responsible in their use of public funds expended for interpreting services. In its use of the criterion, "failure…to give reasonable attention", the standard parallels the language of *New Jersey Court Rule* 1:2-4, which delineates sanctions for attorneys who fail to appear for a court proceeding.

Examples of the types of events that might trigger a shifting of incurred interpreting costs to a party:

- requesting an interpreter, then not giving the judiciary sufficient advance notice that the interpreter is no longer needed, despite having such advance notice, or

- requesting an interpreter, then failing to appear with no legitimate excuse for such failure to appear.

The Judiciary's professional agreements with free-lance interpreters provide for the interpreters to be paid for scheduled and subsequently cancelled services **unless** 24 hours' notice of cancellation is given for a court event of less than two days duration, or 48 hours notice of cancellation for a court event of two or more days. The notice period excludes weekends and holidays.

The problem arises when interpreting services have been scheduled and at the last minute the court event is canceled because, for example, an expert is unavailable or a witness becomes ill. The requisite notice of cancellation is not provided to the interpreter, so he or she must be paid. The question is, must the court pay the interpreter's fee or can this expense be charged to the party requesting that the scheduled court event be adjourned (why may not be the party requiring interpreting services)?

Standard 1.4 can be interpreted to allow the court to shift the cost of the interpreter to the party requesting adjournment of the scheduled court event at which the interpreter is needed if, barring exceptional circumstances, that party does not adhere to the deadlines set forth in the Statewide Adjournment Policy for Civil Trials and Arbitrations and in *R* 4:36-3.

SECTION 24 : MISCELLANEOUS PROVISIONS

a. Accepting Faxed Documents

Only adjournment requests and other particular documents that a judge might direct be faxed to him or her, on a case-by-case or document-by-document basis, are acceptable. Filing of pleadings and other papers by fax is not permitted.

b. Court Hours

The hours for court offices to be open are established by court order pursuant to *R.* 1:30-3(a) and are 8:30 a.m. to 4:30 p.m.

c. File Stamp

The filing stamp does not have to indicate the division or part of the Superior Court in which the document is filed although that must be noted in the caption. The stamp serves as an endorsement and evidence by the clerk that the filing has been received and/or filed and for that reason and to authenticate the receipt, the clerk or deputy clerk's signature should appear on the stamp.

d. Stamping Papers for Cases Venued in Another County

If a party submits documents relating to a case venued in another New Jersey county, staff will accept the papers, date stamp them "received" and forward them, along with any fees received, to the county of venue.

e. Non-Acceptance of Mail Without Return Address

Court staff do not mail conformed copies of filed documents in envelopes containing the return address of the court. In such situations, if the postage provided by the filer is insufficient, the court will be assessed for postage due. Accordingly, filers wishing a conformed copy of the filed document should provide an addressed, stamped envelope with the filer's return address.

f. Handling Requests for ACMS Reports

All requests for automated reports should be directed to the following:

Superior Court Clerk's Office
Records Management
P.O. Box 971
Trenton, NJ 08625

g. Remote Access to ACMS and Purchase of Reports

Individuals can obtain remote, dial-up access to ACMS by subscribing to a special service provided by the Office of the Superior Court Clerk. Once they have subscribed, they may also purchase from the Clerk's Office any available automated reports. These reports may also be purchased by non-subscribers to the remote access service. Inquiries as to the cost of such services and reports should be directed to the Superior Court Clerk's Office.

h. Requests for Certification of Opinions

Because judges are required to file opinions with the Clerk of the Superior Court, opinions can be certified. Therefore, requests to certify opinions should be directed to that office.

i. Issuance of Subpoenas

A subpoena may be issued by the clerk of the court and the fee is $5.00 pursuant to *N.J.S.A* 22A:2-7 or by an attorney or party in the name of the clerk. It shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The testimony of a party who could be subpoenaed may be compelled by a notice in lieu of subpoena served upon the party's attorney demanding that the attorney produce the client at trial. If the party is a corporation or other organization, the testimony of any person deposable on its behalf, under *R.* 4:14-2, may be compelled by like notice. The notice shall be served in accordance with *R.* 1:5-2 at least 5 days before trial. The sanctions of *R.* 1:2-4 shall apply to a failure to respond to a notice in lieu of a subpoena. See *R.* 1:9-1.

A PRACTITIONER'S GUIDE TO NEW JERSEY'S CIVIL COURT PROCEDURES

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