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Via Email and Mail

Hon. Glenn A. Grant
Administrative Director of the Courts
Comments on Proposed Amendments to Rule 1:38-3
Public Access To Landlord Tenant Records More than Seven Years Old
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037
Comments.Mailbox@njcourts.gov

Dear Judge Grant:

We write on behalf of a coalition of advocates for the rights of tenants. As you know, the coalition includes individuals and organizations that have spent thousands of hours over many decades representing and advocating on behalf of low-income residential tenants. We are grateful for the Court's continuing review of the issue of public access to records and the disparate impact such access may have on disadvantaged populations.

The current proposal

The coalition supports the proposed amendment to R. 1:38-3(f) to remove from public access records of landlord-tenant matters in which a judgment for possession was entered more than seven years ago. The proposal represents an important step in the ongoing effort to lessen the harmful effects of eviction judgments on tenants looking for housing, and particularly on low-income, Black and Latinx people who are disproportionately likely to face eviction in New Jersey. Stale records like these should not continue to compromise tenants' ability to rent new homes. Moreover, neither the parties nor their legal representatives and advisors are likely to have

pressing needs for such older records, and if they do, their requests may be handled on a case-by-case basis.

We are concerned, however, that the proposal does not go far enough. An eviction is often the result of financial hardship caused by a sudden drop in income due to loss of a job or health issues faced by the income earner in the household, or as we know so well, a pandemic. The fact of an eviction quickly becomes irrelevant to future risk. We suggest, therefore, that the time period be reduced such that the public would not have access to the records in any landlord-tenant matter in which a judgment for possession was entered more than three years ago.

Future action to shield landlord-tenant court records

Although we support and seek to strengthen the current proposal, we caution that shielding older records may not have the significant, intended benefits for low-income families seeking housing. While we are far from experts on data mining, we assume that the companies that collect data on tenants and sell it to landlords obtain information from the courts on a frequent basis. If so, these companies will capture and record the vast majority of judgments before the shield takes effect, even if the period is shortened to three years.

In the long run, therefore, we favor a more comprehensive solution along the lines suggested in the comments we submitted on October 15, 2020, in response to the Court's September 16, 2020, request for comments on then-proposed changes to 1:38-3(f). Those comments are attached here. In particular, we hope the Court will continue to work toward a system in which it can protect records from public access in both ongoing and closed residential landlord-tenant matters except those in which a warrant of removal was executed. Under our landlord-tenant process, a judgment of possession is not the best indicator of a tenant's lack of creditworthiness. Many judgments of possession are entered by default, some against tenants who have voluntarily vacated and do not understand the ramifications of not appearing in court. Thousands of additional judgments for possession are actually consent judgments entered in conjunction with settlements, and in many cases, the tenant pays or has already paid the rent arrears due under the settlement.[1] Tenants who pay their rental debt should not carry the stigma of eviction. For these and other reasons, the execution of the warrant is a far better indicator of risk than entry of a judgment for possession.

Progress toward more comprehensive protection such as this, however, must take into account the overriding need of self-represented litigants for ready access to their own records in current and recent cases. The current system of access through JEDS is cumbersome and, unfortunately, unworkable for many low-income clients who do not have access to computers. Making a simpler and more usable form of access available to self-represented litigants is a necessary precondition to more thoroughgoing restrictions on public access to landlord-tenant records.

In the meantime, we eagerly await details on the Court's plan with regard to the records in cases where no judgment for possession was entered. Currently, meritless landlord-tenant filings that result in dismissals nevertheless end up on credit-screening reports and haunt tenants when they need to move. We look forward to working with the Court on solutions to this problem.

Finally, we thank the Court for its swift creation of the Limited Appearance mechanism to provide access for advocates who have not entered a Notice of Appearance in cases affected by Public Law 2021, chapter 189. Notice to the Bar (Jan. 11, 2022) (relaxing and supplementing R. 1:11-2(c) to permit the filing of limited appearances by attorneys assisting clients in residential landlord-tenant matters). The new system is working very well. The Coalition is grateful for the Court's quick and effective response in this area.

Very truly yours,

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