



**2016-2018 REPORT
OF THE SUPREME COURT COMMITTEE
ON SPECIAL CIVIL PART PRACTICE**

JANUARY 29, 2018

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendment to *R. 6:1-1(c)* – Include Reference to Rule 1:43

The Committee considered a proposal submitted by civil practice staff to amend Rule 6:1-1(c) to include reference to Rule 1:43. Effective November 17, 2014, Rule 1:43 (“Filing and Other Fees Established Pursuant to N.J.S.A. 2B:1-7”) set forth the schedule of Special Civil Part’s filing fees and all other fees payable to the court that were revised or established as authorized by N.J.S.A. 2B:1-7. This proposal was characterized as an administrative correction, so that Rule 6:1-1(c) correctly reflects both legal citations upon which the Special Civil Part fees are derived which now includes Rule 1:43 as well as N.J.S.A. 22A:2-37.1. The Committee unanimously approved of the recommendation to amend Rule 6:1-1(c) as suggested. Please note that the Committee recommended further amendments to Rule 6:1-1, paragraphs (f) and (g), which follow immediately hereafter for the reasons expressed therein.

6-1-1. Scope and Applicability of Rules

The rules in Part VI govern the practice and procedure in the Special Civil Part, heretofore established within and by this rule continued in the Law Division of the Superior Court.

(a) ... no change.

(b) ... no change.

(c) Fees. The fees charged for actions in the Special Civil Part shall be in accordance with N.J.S.A. 22A:2-37.1 and R. 1:43 (insofar as applicable), provided that the face of the pleading and summons alleges the amount in controversy does not exceed \$15,000, and the fees for actions which are not filed in the Special Civil Part shall be in accordance with N.J.S.A. 22A:2-6 et seq. Checks for fees and all other deposits shall be made payable to the Treasurer, State of New Jersey.

(d) ...no change.

(e) ...no change.

(f) ...no change.

(g) ...no change.

Note: Caption amended and paragraphs (a) through (g) adopted November 7, 1988 to be effective January 2, 1989; paragraph (c) amended July 17, 1991 to be effective immediately; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 27, 2006 to be effective September 1, 2006; paragraphs (e) and (g) amended July 9, 2008 to be effective September 1, 2008; paragraph (e) amended July 19, 2012 to be effective September 4, 2012; paragraph (g) amended August 1, 2016 to be effective September 1, 2016; paragraph (c) amended 2018 to be effective September , 2018.

B. Proposed Amendments to *Rules* 6:1-1(f), (g); 6:1-3(b), 6:2-2(b), 6:4-1(d), 6:4-1(g) and 6:7-3(a) – Clarify that Statement for Docketing Fees are Submitted to the Clerk of the Superior Court and File/Contact Special Civil Part Offices

The Committee considered a proposal by civil practice staff to amend Rule 6:1-1(f) for the purpose to make it more clear that the party requesting a statement for docketing from a Special Civil Part Office should subsequently submit payment of the applicable statutory fees to the Clerk of the Superior Court, not to the Special Civil Part. There is no fee to obtain a statement for docketing from the Special Civil Part. However, subsequent entry of the statement into the Civil Judgment and Order Docket, also known as docketing a judgment, is performed by the Office of the Clerk of the Superior Court upon their receipt of that statement and payment of the applicable filing fee to that office. The Committee unanimously approved of the recommendation.

The Special Civil Part Supervising Judges Committee, consisting of all of the vicinages' supervising Special Civil Part Judges, requested that the Committee review the various court rules which were revised that accompanied the Court's March 7, 2017 rule relaxation order and April 6, 2017 Notice to the Bar. The Court ordered the removal of the title of *Clerk of the Special Civil Part* and to thereafter utilize the title and name of the *Clerk of the Superior Court*. The Special Civil Part Judges submit that the various amended rules to effectuate this Order inadvertently caused confusion as to where Special Civil Part related pleadings/documents should be filed, where various requests should be made, which office should be contacted, etc. by the unilateral exchange of titles in these rules. Several judges had commented that parties, especially self-represented litigants, have reportedly incorrectly submitted Special Civil Part pleadings for filing and/or contacted the Superior Court Clerk's Office for information regarding their Special Civil Part case rather than contacting the applicable Special Civil Part Office.

The Committee took note of the applicable Special Civil Part forms within the Appendix which were changed to properly reflect the name and title of the Clerk of the Superior Court thereon, in accord with the Court's March 7, 2017 Order. However, the Committee unanimously agreed that the text of these rules require clarification. The Committee submits that notwithstanding the removal of the title of *Clerk of the Special Civil Part*, it should be made clear in these various rules that parties involved in Special Civil Part matters should continue to submit their various pleadings/documents for filing, seek information or obtain forms, etc. with the applicable county's Special Civil Part Office and not with the Clerk of the Superior Court whose office is located at the Richard J. Hughes Justice Complex in Trenton. Accordingly, the proposed rule amendments follow.

6:1-1. Scope and Applicability of Rules

The rules in Part VI govern the practice and procedure in the Special Civil Part, heretofore established within and by this rule continued in the Law Division of the Superior Court.

(a) ... no change.

(b) ... no change.

(c) ... no change.

(d) ... no change.

(e) ... no change.

(f) Judgments. R. 4:101 shall not apply to judgments of the Special Civil Part unless a statement for docketing is filed with the Clerk of the Superior Court. A statement for docketing shall issue [on request to the Clerk of the Superior Court on] upon ex parte application of the party requesting docketing to the Office of the Special Civil Part in the appropriate county, it shall bear the name of the Clerk of the Superior Court thereon, [on ex parte application of the party requesting docketing,] and shall be filed by the requesting party with the Clerk of the Superior Court upon payment of the statutory fees.

(g) Forms. The forms contained in Appendix XI to these rules are approved and, except as otherwise provided in R. 6:2-1 (form of summons), R. 6:7-1(a) (execution against goods and chattels and wage execution) and R. 6:7-2(b) through (g) (information subpoena), suggested for use in the Special Civil Part. Samples of each form shall be made available to litigants by the [Clerk of the Superior Court] Special Civil Part Office.

Note: Caption amended and paragraphs (a) through (g) adopted November 7, 1988 to be effective January 2, 1989; paragraph (c) amended July 17, 1991 to be effective immediately; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 27, 2006 to be

effective September 1, 2006; paragraphs (e) and (g) amended July 9, 2008 to be effective September 1, 2008; paragraph (e) amended July 19, 2012 to be effective September 4, 2012; paragraph (g) amended August 1, 2016 to be effective September 1, 2016; paragraphs (f) and (g) amended March 7, 2017 effective immediately; paragraph (f) and (g) amended _____, 2018 to be effective September , 2018.

6:1-3. Venue

(a) ...no change.

(b) Improperly Venued Complaints. If a Special Civil Part complaint is presented for filing in a county where venue does not lie, and the error is apparent prior to acceptance of the complaint for filing and processing, the complaint shall be date stamped and returned to the plaintiff with instructions to file it in the county in which venue is properly laid. The original stamped date shall be considered the filing date only if the complaint is filed within 15 days thereof with the [Clerk of the Superior Court or the Deputy Clerk of the Superior Court] Office of the Special Civil Part in the appropriate county. The stamp bearing the filing date shall so inform the plaintiff.

If, however, the complaint has been filed and it becomes apparent before service is effectuated that venue is improper, the [court] Office of the Special Civil Part shall forward the complaint and all other documents filed in the matter to the proper county and advise the litigants of the correct county of venue as well as the address of the Special Civil Part Office in that county.

Note: Adopted November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended August 1, 2016 to be effective September 1, 2016; paragraph (b) amended March 7, 2017 to be effective immediately; paragraph (b) amended, 2018 to be effective September 2018.

6:2-2. Process; Filing and Issuance

(a) ... no change.

(b) Non-resident Defendants; Filing. If no defendant can be served with process within this State, the plaintiff may file the complaint with the [Clerk of the Superior Court or Deputy Clerk of the Superior Court] Office of the Special Civil Part of the county in which the subject transaction or occurrence took place.

Note: Source -- R.R. 7:3 (second sentence), 7:4-2, 7:4-4; former rule amended and designated paragraph (a) and paragraph (b) adopted July 17, 1975 to be effective September 8, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 18, 2001 to be effective November 1, 2001; paragraph (a) amended July 28, 2004 to be effective September 1, 2004. paragraph (b) amended March 7, 2017 to be effective immediately; paragraph (b) amended _____, 2018 to be effective September _____, 2018.

6:4-1. Transfer of Actions

(a) ... no change.

(b) ... no change.

(c) ... no change.

(d) Transmission of Record; Costs. Upon presentation of an order transferring an action to the Law Division, the [Clerk of the Superior Court] Office of the Special Civil Part shall transmit the papers on file in the court, together with copies thereof, to the [Deputy Clerk of the] appropriate Superior Court [in the] and county of venue.

(e) ...no change.

(f) ...no change.

(g) Transfer of Landlord/Tenant Actions. A motion to transfer a summary action for the recovery of premises to the Law Division pursuant to N.J.S.A. 2A:18-60, shall be made by serving and filing the original of that motion with the [Clerk of the Superior Court] Office of the Special Civil Part no later than the last court day prior to the date set for trial. The motion shall be returnable in the Special Civil Part on the trial date, or such date thereafter as the court may determine in its discretion or upon application by the respondent for more time to prepare a response to the motion. Upon the filing of the motion, the Special Civil Part shall take no further action pending disposition of the motion. If the motion is not resolved on the original trial date, the court may require security for payment of rent pending disposition of the motion. If the motion is granted, the [Clerk of the Superior Court] Office of the Special Civil Part shall transmit the record in accordance with R. 6:4-1(d). If the motion is denied, the court shall set the action expeditiously for summary hearing.

Note: Source -- R.R. 7:6-1(a)(b)(c)(d)(e). Paragraph (b) adopted and former paragraphs (b)(c)(d)(e) redesignated June 29, 1973 to be effective September 10, 1973; paragraph (g) amended July 21, 1980 to be effective September 8, 1980; paragraph (f) amended November 2, 1987 to be effective January 1, 1988; paragraphs (a), (b), (c), (d), (e) and (g) and captions of paragraphs (b), (c) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (g) amended July 14, 1992 to be effective September 1, 1992; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (d) amended July 19, 2012 to be effective September 4, 2012; paragraph (f) amended August 1, 2016 to be effective September 1, 2016; paragraphs (d) and (g) amended March 7, 2017 to be effective immediately; paragraph (d) and (g) amended _____, 2018 to be effective September, _____ 2018.

6:7-3. Wage Executions; Notice, Order, Hearing; Accrual of Interest

(a) Notice, Order, Hearing. The provisions of R. 4:59-1(e) (wage executions) are applicable to the Special Civil Part, except as otherwise provided by R. 6:7-1(a) and except that the judgment-debtor shall notify the [Clerk of the Superior Court] Office of the Special Civil Part by filing in the county in which the execution originated and the judgment-creditor in writing within 10 days after service of the notice of any reasons why the order should not be entered and the judgment-creditor may waive in writing the right to appear at the hearing on the objection and rely on the papers.

(b) ... no change.

Note: Source — R.R. 7:11-5. Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1972 to be effective September 5, 1972; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraphs (a) and (b) amended July 19, 2012 to be effective September 4, 2012; paragraph (a) amended March 7, 2017 to be effective immediately; paragraph (a) amended _____, 2018 to be effective September _____, 2018.

C. Proposed Amendment to R. 6:1-2 – Clarify which Actions may be Filed in the Special Civil Part (Endorsement of the *Clarification of Divisions Working Group’s Recommendation as to where Certain Actions should be Filed*)

A working group identified as the *Working Group on the Clarification of Divisions – Civil, Family and General Equity* was charged by the Court to develop court rule recommendations clarifying which trial divisions of the Superior Court should hear particular categories of cases. This arose as a result of the work of a joint committee of presiding judges’ conferences (Civil, Family and General Equity) that addressed certain areas of uncertainty and inconsistency state wide. The Civil Practice and Family Practice Supreme Court Committees had endorsed the working group’s report and this Committee was asked to consider their recommendation as well as it pertains to the Special Civil Part.

The proposed change to Special Civil Part’s cognizability rule, incorporating the proposed amendment of Rule 4:3-1(a)(4), were thought to be minor in nature inasmuch as the Committee reflected that it would have no demonstrable impact upon those cases that are already permitted to be filed in the Special Civil Part. For example, inclusion of the aforesaid proposed rule, insofar as applicable, codifies existing Special Civil Part filing practices which permit the filing of actions seeking the removal of unlawful occupants (ejectment actions), ownership interest of property or pets and/or monetary actions thereof exclusive of any forms of family relief affected by family or family type relationships. The proposed Rule 4:3-1(a)(4), prepared by the *Working Group on the Clarification of Divisions – Civil, Family and General Equity*, was reviewed by this Committee which follows:

Rule 4:3-1. Divisions of Court; Commencement and Transfer of Actions

(a) Where Instituted.

(1) Chancery Division-General Equity. . . . no change.

(2) Chancery Division-Probate Part. . . . no change.

(3) Chancery Division-Family Part. All civil actions in which the principal claim is unique to and arises out of a family or family-type relationship shall be brought in the Chancery Division, Family Part. Civil family actions cognizable in the Family Part shall include all actions and proceedings [provided for] referenced in [of] Part V of these rules, except as specified below in subparagraph (4); all civil actions and proceedings formerly cognizable in the juvenile and domestic relations court; and all other actions and proceedings unique to and arising out of a family or family-type relationship.

(4) Specific Case Types. The following types of cases shall be brought in the Part specified:

(A) Name Change. Name change applications shall be governed by R. 4:72-

1.

(B) Partition. If partition is the only relief sought, regardless of whether there is a family or family-type relationship, the matter shall be filed and heard in the Chancery Division, General Equity Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

(C) Enforcement of Judgments. Motions or Applications to modify or enforce Family Part judgments, and any proceeding that seeks civil relief only pursuant to Rules 4:59 through 4:61, 6:7 and 6:8, shall be brought in the Chancery Division, Family Part, under the existing Family Part judgment. All motions or applications to modify or enforce a judgment shall be brought in the Division and Part where the judgment was entered, except as otherwise provided in the court rules.

(D) Palimony. All palimony applications shall be filed and heard in the Family Part.

(E) Parenting Time/Visitation. All parenting time/visitation issues relating to minors shall be filed and heard in the Chancery Division, Family Part. Parenting time/visitation issues related to adults shall be filed and heard in the Chancery Division, General Equity Part,

except that actions seeking visitation of adjudicated incapacitated adults shall be filed and heard in the Chancery Division, Probate Part.

(F) Pets. If ownership interest or monetary damages pertaining to pets is the only relief sought, the matter shall be filed in the Law Division, Civil Part or Law Division, Special Civil Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

(G) Personal Possessions. If the division of personal property is the only issue, the matter shall be filed and heard in the Civil Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

(H) Ejectment. If ownership interest or monetary damages pertaining to ejectments is the only relief sought, the matter shall be filed in the Law Division, Chancery Division - General Equity or Law Division, Special Civil Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

(I) Requests for Transcripts of Closed Family Court Proceedings Made in a Civil Action. Where, in a Civil Action, a request for a transcript is made of a Family Court proceeding deemed closed by Rule of Court, Court Order or statute, an application shall be made in the Civil Part to determine the disclosure of the Family Part transcript and to establish whether any conditions should be attached to the provision of the transcript. The parties to the Family Part matter and the judge who presided over the Family Part hearing or the Presiding Family Judge shall be noticed of the application.

(J) Birth Certificates and Marriage Certificates. Applications seeking to alter the name of a parent on a birth certificate shall be filed and heard in the Family Part if the application is filed on behalf of a minor. Applications for issuance of a vital record in cases in which the Bureau of Vital Statistics declines to act, such as a request for a delayed certificate of birth, shall be filed in the Civil Part as an action in lieu of prerogative writ. If the county of venue is unknown then application may be made to the Civil Division in Mercer County on the basis of convenience to the State Registrar. Otherwise, the action in lieu of prerogative writ shall be filed in the county where the birth or marriage took place.

(K) Post-Judgment Relief Relating to Incapacitated Adult Child of Parents Subject to Family Part Order. Where issues including custody, parenting time/visitation, and support of an unemancipated minor child are addressed in a Chancery Division, Family Part order, and a judgment of incapacity and appointment of guardian are entered after the child reaches majority, modification or enforcement of such terms in the Family Part order shall be filed and heard in the Chancery Division, Probate Part. However, if child support or custody/parenting time/visitation issues affecting child support are present, those matters shall be heard in Chancery Division, Family Part until the incapacitated child turns age 23.

[4] (5) Law Division. All actions in the Superior Court except those encompassed by subparagraphs (1), (2), [and] (3) and (4) herein shall be brought in the Law Division or Law Division, Special Civil Part.

(b) Transfer Between Law and Chancery Division . . . no change.

Note: Source-R.R. 4:41-2, 4:41-3, 5:1-2. Paragraphs (a) and (b) amended and caption amended July 22, 1983 to be effective September 12, 1983; new paragraph (a) adopted and paragraph (b) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; subparagraph (a)(1) amended, subparagraph (a)(2) recaptioned and adopted, former subparagraphs (a)(2) and (a)(3) redesignated (a)(3) and (a)(4) respectively, and subparagraph (a)(4) amended June 29, 1990 to be effective September 4, 1990; new subparagraphs (a)(4)(A) through (a)(4)(K) adopted and former subparagraph (a)(4) amended and redesignated as subparagraph (a)(5) to be effective

The proposed amendment to Rule 6:1-2(a), unanimously endorsed by this Committee, follows:

6:1-2. Cognizability

(a) Matters Cognizable in the Special Civil Part. The following matters shall be cognizable in the Special Civil Part, and as per R. 4:3-1(a)(4), insofar as applicable:

(1) Civil actions (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) seeking legal relief when the amount in controversy does not exceed \$ 15,000;

(2) Small claims actions, which are defined as all actions in contract and tort (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) and actions between a landlord and tenant for rent, or money damages, when the amount in dispute, including any applicable penalties, does not exceed, exclusive of costs, the sum of \$ 3,000. Small claims also include actions for the return of all or part of a security deposit when the amount in dispute, including any applicable penalties, does not exceed, exclusive of costs, the sum of \$ 5,000. The Small Claims Section may provide such ancillary equitable relief as may be necessary to effect a complete remedy. Actions in lieu of prerogative writs and actions in which the primary relief sought is equitable in nature are excluded from the Small Claims Section;

(3) Summary landlord/tenant actions;

(4) Summary actions for the possession of real property pursuant to N.J.S.A. 2A:35-1 et seq., where the defendant has no colorable claim of title or possession, or pursuant to N.J.S.A. 2A:39-1 et seq.;

(5) Summary proceedings for the collection of statutory penalties not exceeding \$ 15,000 per complaint.

(b) ...no change.

(c) ...no change.

Note: Adopted November 7, 1988 to be effective January 2, 1989; caption added to paragraph (a) and paragraph (a) amended July 17, 1991 to be effective immediately; paragraphs (a)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1) and (2) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a)(1) and (a)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (a)(2) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(4) and paragraph (c) amended July 27, 2006 to be effective September 1, 2006; subparagraphs(a)(1) and (a)(2) amended, new subparagraph (a)(4) adopted, former subparagraph (a)(4) redesignated as subparagraph (a)(5), and former subparagraph (a)(5) deleted July 19, 2012 to be effective September 4, 2012; paragraph (a) amended _____, 2018 to be effective September _____, 2018.

D. Proposed Amendment to R. 6:2-2(a) and R. 1:13-7(d) – Correct Outdated References in (DC) Summons Form, Clarify which Summons Applies to Each of the Docket Types and Require Service of Attached Landlord Notices

The Committee considered several proposals by civil practice staff to recommend amending applicable court rules which (1) incorrectly reflect that the form of summons for Special Civil (DC) cases is two pages, (2) assure uniformity by codifying that service of landlord/tenant process upon a tenant should include those notices attached to the landlord's complaint at the time of filing which are sought to be relied upon by the landlord; and (3) clarify which form of summons applies to each of the three distinct docket or case types that are filed in the Special Civil Part.

Civil practice staff reminded the Committee that the Special Civil Part (DC) form of summons (Appendix XI-A(1)) was previously revised to a one-page double sided form and became effective for use on July 20, 2015, per the Court's July 15, 2015 rule relaxation Order. Accordingly, it was suggested that all outdated references within the court rules to this form of summons having a "page two" be deleted. Civil practice staff also opined that since Rule 6:3-4(d) requires plaintiffs (landlords) to attach to their complaints at the time of filing all notices upon which they intend to rely upon, the court rules should expressly include reference to these notices as part of the court's service upon a tenant. Finally, it was suggested that the Committee take this opportunity to clarify the court rule as to which summons form applies to each of the three types of cases that are filed in the Special Civil Part (Landlord/Tenant, Special Civil (DC) and Small Claims' docket types). The Committee unanimously approved all three of the recommendations and the proposed rule amendments follow.

6:2-2. Process; Filing and Issuance

(a) Delivery to Clerk; Issuance. The plaintiff shall, when filing the complaint, furnish the clerk [in tenancy actions] with the summons as set forth in Appendix XI-B for tenancy actions, [to be issued and in all other actions with page 2 of] with the summons as set forth in Appendix [ces] XI-A(1) for Special Civil (DC) actions and with the summons as set forth in Appendix XI-A(2) – (page 2 only) for Small Claims actions [to these Rules], and two copies with the complaint annexed for each defendant, together with two additional copies for each mentally incapacitated defendant. The clerk shall issue the summons except as otherwise provided by law and, in tenancy actions, shall attach to the summons and complaint for service on each defendant English and Spanish copies of the announcement contained in Appendix XI-S to these rules and copies of any notices upon which the plaintiff intends to rely, as set forth in R. 6:3-4(d). Original process shall issue out of the court and shall require an answer or an appearance at a specific time.

(b) ...no change.

Note: Source -- R.R. 7:3 (second sentence), 7:4-2, 7:4-4; former rule amended and designated paragraph (a) and paragraph (b) adopted July 17, 1975 to be effective September 8, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 18, 2001 to be effective November 1, 2001; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended _____, 2018 to be effective September _____, 2018.

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

(a) ...no change.

(b) ...no change.

(c) ...no change.

(d) Special Civil Part. If original process in an action filed in the Special Civil Part has not been served within 60 days after the date of the filing of the complaint, the clerk of the court shall dismiss the action as to any unserved defendant and notify plaintiff that it has been marked "dismissed subject to automatic reinstatement within one year as to the non-answering defendant or defendants." The action shall be reinstated without motion or further order of the court if the complaint and summons are served within one year from the date of the dismissal. A case dismissed pursuant to this rule may be restored after one year only by order upon application, which may be made ex parte, and a showing of good cause for the delay in making service and due diligence in attempting to serve the summons and complaint. A new [page 2 of the] summons and the re-service fee shall be included with the documents submitted to support the application. The entry of such an order shall not prejudice any right the defendant has to raise a statute of limitations defense in the restored action.

Note: Source — R.R. 1:30-3(a) (b) (c) (d), 1:30-4. Amended July 7, 1971 to be effective September 13, 1971; former rule redesignated as paragraph (a) and paragraph (b) adopted July 15, 1982 to be effective September 13, 1982; paragraph (b) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; caption and paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended, former paragraph (b) deleted, and new paragraphs (b), (c), and (d) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) amended July 23, 2010 to be effective September 1, 2010; paragraph (d) amended July 19, 2012 to be effective September 4, 2012; paragraph (d) amended _____, 2018 to be effective September _____, 2018.

E. Proposed Amendment to R. 6:3-3(c) and R. 1:43 – New Motion to Turnover that would Satisfy Judgment and Waive its Filing Fee

Rule 1:43 ("Filing and Other Fees Established Pursuant to N.J.S.A. 2B:1-7") set forth the schedule of those filing fees and other fees payable to the court that were revised or established as authorized by N.J.S.A. 2B:1-7 (L. 2014, c. 31, § 12), effective November 17, 2014. Based upon the aforesaid, Special Civil Part (DC) motions require a \$25 filing fee. As a consequence, the filing fee paid specifically for a turnover motion filed in the normal course seeking to turn over funds previously levied upon by a Special Civil Part Officer are no longer recoverable by the judgment creditor if the turnover order also satisfies the judgment in full. In other words, this motion's filing fee, an otherwise permissible taxed cost, is unable to be captured on any issued goods and chattel writ used by a court officer to subsequently levy upon a judgment debtor's assets. The motion's filing fee is incurred only after the writ's issuance to a court officer. Consequently, this may also inadvertently cause a judgment to remain open inasmuch as the motion to turnover filing fee, a permissible taxed cost, remains unpaid. This issue was originally presented to the Committee in its last rule cycle by private practitioner, Arthur Raimon, Esq., and it was tabled by the Committee, as reflected in the Committee's prior *January 12, 2016 Report*.

The Committee unanimously endorsed the proposal submitted by civil practice staff to address this issue which is to create a new form of turnover motion, so that in specific instances when the particular turnover motion is one that would satisfy the underlying judgment, the applicable (DC) motion filing fee of \$25 is waived at the time of filing. Specifically, the moving party would be required to provide a sworn statement to this effect and conspicuously note on the notice of motion that accompanies the turnover motion that this is a turnover motion (if granted) that would satisfy the judgment. The Committee understood and noted that if these requirements

were satisfied, notwithstanding any instance wherein a judge might deny a judgment creditor's motion to turnover funds that would satisfy judgment, the filing fee would remain waived and the moving party would not be required to pay the motion's filing fee retroactively. The Special Civil Part Management Committee, Civil Division Managers Conference, Special Civil Part Supervising Judges, Conference of Civil Presiding Judges, Michelle Smith, Clerk of the Superior Court and Judicial Council previously endorsed this recommendation.

Thereafter, the Supreme Court issued a rule relaxation order for Rule 6:3-3(c) ("Motion Practice") and Rule 1:43 ("Filing and Other Fees Established Pursuant to N.J.S.A. 2B:1-7") dated March 7, 2017, effective immediately, that Special Civil Part motions to turnover funds in full satisfaction of the judgment will be exempt from the recently adopted \$25 motion filing fee. It applied only to turnover motions in full satisfaction of the judgment and not to other turnover motions that would not fully satisfy the judgment. As set forth in the Court's order, to be eligible for the motion filing fee exemption, such motions (1) must be captioned as "Motion to Turnover Funds in Full Satisfaction of Judgment," and (2) must include in the certification or affidavit in support of the motion a statement that "the judgment will be fully satisfied if the requested relief is granted."

The proposed rule amendments to Rule 6:3-3(c) and Rule 1:43 codifying the Court's March 7, 2017 Order follows.

6:3-3. Motion Practice

- (a) ...no change.
- (b) ...no change.
- (c) Service and Form. Motions shall be made in the form and manner prescribed by

R. 1:6, and in conformity with R. 6:6-1, provided, however, that:

- (1) ...no change.
- (2) ...no change.
- (3) ...no change.
- (4) ...no change.
- (5) ...no change.

(6) In addition to the notice contained in subparagraph (3) above, all notices of motion for turnover which will satisfy the underlying judgment if granted must also state at the top of the page “NOTICE OF MOTION TO TURNOVER THAT WILL FULLY SATISFY THE JUDGMENT,” and the filing fee shall be waived per R. 1:43 upon the inclusion of an additional statement in the affidavit or certification in support thereof which states that “the judgment will be fully satisfied if the requested relief is granted.”

(7) The party seeking an order under this rule shall submit a proposed form of order with the moving papers.

- (d) ...no change.
- (e) ...no change.

Note: Source -- R.R. 7:5-9, 7:5-10, 7:5-11(a)(b); paragraph (c) amended July 15, 1982 to be effective September 13, 1982; paragraph (c) amended November 2, 1987 to be effective January 1, 1988; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended and paragraph

(d) adopted July 14, 1992 to be effective September 1, 1992; new text of subparagraph (c)(5) added and former subparagraph (c)(5) redesignated as (c)(6) July 13, 1994 to be effective September 1, 1994; subparagraph (c)(2) amended, subparagraphs (c)(4), (c)(5), and (c)(6) redesignated as subparagraphs (c)(6), (c)(7), and (c)(8), and new subparagraphs (c)(4) and (c)(5) adopted July 5, 2000, to be effective September 5, 2000; paragraph (a) amended, paragraph (b) caption and text amended, paragraphs (c)(6) and (c)(7) amended and redesignated as paragraphs (b)(1) and (b)(2), new paragraph (b)(3) added, paragraph (c)(8) redesignated as paragraph (c)(6), paragraph (d) amended, and new paragraph (e) added July 12, 2002 to be effective September 3, 2002; subparagraph (c)(1) amended July 28, 2004 to be effective September 1, 2004; subparagraph (c)(6) redesignated as subparagraph (c)(7) and subparagraph (c)(6) amended , 2018 to be effective September , 2018.

Rule 1:43 Filing and Other Fees Established Pursuant to N.J.S.A. 2B:1-7

Superior Court, Law Division, Special Civil Part		
Fee Subject	Fee	Authority
DC Motion (including Orders to Show Cause; <u>No Fee for Turnover Motions Satisfying Judgment, per R. 6:3-3(c)(6)</u>)	\$25.00	- - -
Small Claims Complaint	\$35.00	N.J.S.A. 22A:2-37.1
Tenancy Complaint	\$50.00	N.J.S.A. 22A:2-37.1
Initial Pleading for more than \$3000	\$75.00	N.J.S.A. 22A:2-37.1
Initial Pleading for \$3000 or less	\$50.00	N.J.S.A. 22A:2-37.1
Writ of execution or replevin	\$35.00	N.J.S.A. 22A:2-37.1
Warrant of Removal	\$35.00	N.J.S.A. 22A:2-37.1
Wage Garnishment	\$35.00	N.J.S.A. 22A:2-37.1
Warrant for Arrest	\$35.00	N.J.S.A. 22A:2-37.1
DC Answer to Complaint or 3rd Party Complaint	\$30.00	N.J.S.A. 22A:2-37.1
Filing of Appearance	\$30.00	N.J.S.A. 22A:2-37.1
DC or Small Claims Jury Demand	\$100.00	N.J.S.A. 22A:2-37.1
Answer with crossclaim, counterclaim, 3rd party claim for \$3000 or less	\$50.00	N.J.S.A. 22A:2-37.1
Answer with crossclaim, counterclaim, 3rd party claim greater than \$3000	\$75.00	N.J.S.A. 22A:2-37.1
Small Claims Counterclaim	\$30.00	N.J.S.A. 22A:2-37.1
Filing Complaint or Other Initial Pleading Against Each Additional Party	\$5.00	N.J.S.A. 22A:2-37.1
Reservice of Summons or Other Original Process by Court Officer: One Defendant (Plus Mileage)	\$3.00	N.J.S.A. 22A:2-37.1

F. Proposed Amendment to R. 6:4-7(b) – Omit Outdated Reference to Arbitration

Civil practice staff requested the Committee to consider an amendment to Rule 6:4-7(b) to omit the outdated reference to arbitration inasmuch as actions filed in the Special Civil Part do not participate in this type of complimentary dispute resolution. Moreover, it violates the Court's prior adoption of the *Special Civil Part's Best Practices* (2002) which previously directed the adoption of Rule 1:40-7(c) at that time directing that settlement programs be established for the Special Civil Part which specifically omitted reference to arbitration. The Committee unanimously endorsed this recommendation. The proposed rule amendment follows.

6:4-7. Adjournment of Proceedings

(a) ...no change.

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

Note: Adopted July 12, 2002 to be effective September 3, 2002, incorporating a portion of R. 6:5-2(a) as paragraph (b); paragraph (b) amended _____, 2018, to be effective September _____, 2018.

G. Proposed Amendment to R. 6:5-1 – Incorporate Rules 4:25-7 and 4:35-1 (Pre-Jury Trial Exchange of Information)

The Committee Chair requested consideration be given to the inclusion into the Special Civil Part of certain pre-jury trial procedures that are required for civil jury trials in the Civil Part. The discussion was triggered by the Supreme Court's recent ruling in Williams v. American Auto Logistics, 226 N.J. 117 (2016). The Court held in Williams that trial courts may not deprive civil litigants of their constitutionally protected civil right to a requested jury trial as a sanction for failure to comply with a procedural rule and that Rule 4:25-7 does not apply to the Special Civil Part. The Committee Chair noted that the trial court had utilized a jury trial order that reflected that any party's failure to comply could result in sanctions which included the waiver of a jury trial. The party had failed to submit requisite pretrial information (jury instructions) per the order, so the matter proceeded to a bench trial as a consequence. The Supreme Court subsequently reversed and remanded directing the trial court to re-try the case via jury trial.

Several judicial members noted that jury trial requests made in the Special Civil Part are sometimes abused inasmuch as its true purpose is to place an additional burden upon their adversary who must now spend additional time in court and/or expense for an attorney. Consequently, this is perceived to provide that party with an advantage to obtain a settlement which is the equivalency of a nuisance payment on Special Civil Part matters that contain low demand amounts which should otherwise be disposed of quickly within this docket. Moreover, typical vicinage practice requires a judge sitting in the Civil Part to conduct the Special Civil Part jury trial anyways, as the assigned Special Civil Part Judge usually does not have the time to dedicate to selecting a jury and conducting a jury trial based upon this court's voluminous caseload. Several judiciary Committee members thought that while it might be a burden for a self-represented litigant

to comply with case management orders and/or rules that mandate the exchange of pretrial information, they should nevertheless be treated in the same manner as parties represented by attorneys.

Other members opined that the court rules should reflect deference to self-represented litigants, that difficult pre-jury trial requirements found in Part IV should not apply to Special Civil Part and that this Committee had previously decided to not include Rule 4:25-7 into the Special Civil Part. The following excerpt from this Committee's *January 17, 2006 Report* reflects the basis, at that time, for this Committee's rejection of the proposal to amend Rule 6:4-2 for the purpose to include Rule 4:25-7 into the Special Civil Part.

This item was brought to the attention of AOC staff to the Committee by a litigant. *Rules* 4:25-1 through 6 deal with the subject of pretrial conferences in the Civil Part of the Law Division and they are incorporated by reference into *R.* 6:4-2 and thus made applicable to the Special Civil Part. A new section, *R.* 4:25-7, was added in 1994 but *R.* 6:4-2 was never amended to include the new rule and the question posed was whether it should be. The new section has been applied to the Special Civil Part in at least one case. It requires attorneys to engage in an extensive exchange of information in cases that have not been pretried. Two members of the Committee felt that section 7 should be incorporated into the Special Civil Part rule because the exchange of information would both promote settlement of the case and a narrowing of the issues for trial if the case cannot be settled. A majority of the Committee, however, concluded that the typical Special Civil Part case simply does not warrant the extensive exchange of information 7 days before the scheduled trial date and that an exchange on the trial date would be just as effective and certainly less expensive for the litigants. The proposal was thus rejected. (*January 17, 2006 Supreme Court Special Civil Part Practice Committee Report*, p. 31).

The Committee also considered a member's suggestion that this proposal might not be necessary since the Special Civil Part Judge maintains discretion to craft a pretrial case management order which could incorporate most of the aforementioned civil part rule requirements pertaining to the exchange of pretrial information and the judge could also ultimately

dismiss the case without prejudice for a party's failure to comply with that order rather than waive a party's trial by jury demand. After considerable debate, the Committee ultimately approved this recommendation by vote of 18 to 5, and recommended the adoption of the proposed rule amendment for Special Civil Part jury trials only, which follows.

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

R. 4:25-7 (pre-trial exchange of information) shall also apply to Special Civil Part jury trials and to all parties; R. 4:35-1 (demand for jury trial) shall also apply to the Special Civil Part insofar as applicable. R. 4:37 (dismissal of actions), R. 4:38 (consolidation), R. 4:39 (verdicts) and R. 4:40 (motion for judgment) are applicable to the Special Civil Part. The court may order a party whose complaint is dismissed pursuant to R. 1:2-4 or R. 4:37-1(b) for failure to appear for trial or who seeks to refile such a complaint pursuant to R. 4:37-4 to pay to the aggrieved party costs, reasonable attorney's fees and expenses related to the dismissed action.

Note: Source — 1969 Revision; amended November 7, 1988 to be effective January 2, 1989; caption and text amended July 12, 2002 to be effective September 3, 2002; amended July 9, 2008 to be effective September 1, 2008; amended _____, 2018 to be effective September _____, 2018.

**H. Proposed Amendment to R. 6:6-5 – *Pro Forma* Entry of Taxed Costs by Clerk
Upon Entry of Judgment by Judge (Via Trial or Otherwise)**

Inconsistent practices were reported to civil practice staff pertaining to the automatic entry of taxed costs (filing fees) by the Special Civil Part Offices upon a judge's order or other disposition entering judgment. Some vicinage staff were requesting additional affidavit submissions while other staff entered the filing fees as taxed costs, *pro forma*, when the judge entered judgment by order such as a successful motion for summary judgment. Accordingly, civil practice staff proposed an amendment to Rule 6:6-5 to promote uniformity and consider the *pro forma* entry of the prevailing party's filing fees as taxed costs upon a judge's determination to enter judgment notwithstanding whether it is entered via trial on the merits, summary judgment order, proof hearing, etc. The Committee agreed by vote of 21 to 2 to the proposed amendment which follows.

6:6-5. Judgment [After Trial]; Costs

Upon receipt of the verdict of a jury, [or] upon determination by a judge sitting without a jury, or upon other determination by a judge, the clerk shall note the judgment on the jacket and it shall take effect forthwith. The clerk shall thereupon enter the judgment and tax the costs.

Note: Source — R.R. 7:9-6 (first two sentences), as Rule 6:6-4; redesignated as Rule 6:6-5 July 18, 2001 to be effective November 1, 2001; amended _____, 2018 to be effective September _____, 2018.

I. Proposed Amendment to R. 6:7-2(f) – Correct Outdated Reference from “Will” to “May” to Properly Reflect the Court’s Prior Amendment to this Rule

Appendices XI-M and O (motion and order to enforce litigant’s rights, respectively) were amended by the Court, effective September 1, 2016, by omitting the word “shall” and inserting the word “may” to reflect a more accurate interpretation of this process. The Committee previously recommended in its *January 12, 2016 Report*, and the Court agreed, that judgment debtors’ expectations required clarification so as to make it clear that a warrant of arrest will not issue in every instance when an order to enforce litigants rights is granted – it *may* issue. Civil practice staff recommended that Rule 6:7-2(f) be amended, omitting the word “will” and inserting the word “may,” so that it is in accord and consistent with the Court’s recently amended Appendices which provide that the Special Civil Part Court *may* issue the warrant of arrest. The Committee unanimously approved the proposed rule amendment which follows.

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

(a) ...no change.

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) ...no change.

(f) Order to Enforce Litigant's Rights. If the judgment-debtor has failed to appear in court on the return date and the court enters an order to enforce litigant's rights, it shall be in the form set forth in Appendix XI-O to these Rules and shall state that upon the judgment-debtor's failure, within 10 days of the certified date of mailing or personal service of the order, to comply with the information subpoena or discovery order, the court [will] may issue an arrest warrant. The judgment-creditor shall serve a copy of the signed order upon the judgment-debtor either personally or by mailing it simultaneously by regular and certified mail, return receipt requested. The date of mailing or personal service shall be certified on the order.

(g) ...no change.

(h) ...no change.

(i) ...no change.

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

effective September 1, 1996; subparagraph (b)(2) and paragraph (g) amended July 10, 1998 to be effective September 1, 1998; paragraph (h) adopted July 5, 2000 to be effective September 5, 2000; new paragraph (h) added, and former paragraph (h) redesignated as paragraph (i) July 12, 2002 to be effective September 3, 2002; paragraphs (f) and (g) amended July 28, 2004 to be effective September 1, 2004; paragraph (g) amended July 19, 2012 to be effective September 4, 2012; paragraph (f) amended _____, 2018 to be effective September _____, 2018.

J. Proposed Amendments to Appendices XI-E and XI-F (Answer-*Auto* and Answer-*Contract*); Proposed New Appendix Form (Answer with Counterclaim, Cross-claim and/or Third Party Complaint)

The Special Civil Part Management Committee (Assistant Civil Division Managers) had originally suggested and prepared a new form of (DC) answer, for use in the Special Civil Part (DC) docket, which contains information and ability for defendants to include a counterclaim, cross-claim and/or third party complaint in their responsive pleading, if they so desire. The assistant civil division managers expressed a need for same based upon their interaction with the public and noted that several Ombudsmen in their respective vicinages mentioned a need for such a form. The two available (DC) “straight” answer forms that appear in the Appendix to the Court rules apparently do not satisfactorily address self-represented litigants’ needs, as they typically have to doctor one of the two available straight (DC) answer forms when they wish to include one or more of these additional claims. The proposed new (DC) answer form, to include a cross-claim, counterclaim and/or third party complaint, was originally endorsed by the Conference of Civil Division Managers and the Supervising Special Civil Part Judges Committee with additional edits previously made thereon by those respective Committees. A subcommittee was formed by this Committee in the last rule cycle to examine the proposal and the matter was tabled into the next rule cycle, as reflected in the Committee’s prior *January 12, 2016 Special Civil Part Supreme Court Practice Committee Report*.

A subcommittee was established anew in this rule cycle, chaired by the Hon. Frank Covello, to continue work on this proposal. They were also charged by the Committee to examine the other two existing forms of (DC) answers currently included in the Appendix. During the full Special Civil Part Practice Committee’s discussion on this proposal presented by the

subcommittee, Judge Covello explained that they wanted self-represented litigants to be able to select check off boxes if they wanted to raise certain affirmative defenses, include facts in support of those defenses and otherwise provide more information. Other judicial members noted that it would be very helpful to know in advance if a defendant has a counterclaim or cross-claim as this often cannot be gleaned by staff or the Court from the typical narrative included in the (DC) straight answer form currently used.

A creditor's attorney disagreed entirely with the proposal to create this new form of (DC) answer as it would essentially encourage self-represented litigants to file additional meritless claims and/or raise meritless affirmative defenses on debt collection cases that would make cases unduly complex. This proposed new answer form would also make these cases very difficult to settle, increase the amount of trials that occur and expend unnecessary court time to address. Committee members from Legal Services of New Jersey thought the concept of having such a new answer pleading form was appropriate. The civil and assistant civil manager members noted that any additional claim would require a higher filing fee to be paid by a defendant and disagreed that it would encourage the filing of frivolous counterclaims, cross-claims and/or third party complaints. After considerable debate, the Committee voted in favor of the amendments to both existing forms of (DC) answers and for the inclusion of a new form of (DC) answer to include an ability for a defendant to add a cross-claim, counterclaim and/or third party complaint by a vote of 22 – 1.

The proposed amendments to Appendices forms XI-E and XI-FX and proposed new Appendix Form of (DC) Answer which includes the ability of a defendant to include a cross-claim, counterclaim and/or third party complaint follow.

NOTICE: This is a public document, which means the document as submitted will be available to the public upon request. Therefore, do not enter personal identifiers on it, such as Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, or active credit card number.

Filing Attorney Information or Pro Se Litigant:

Name _____
NJ Attorney ID Number _____
Address _____

Telephone Number _____

Plaintiff's Name

Street Address

Town, State, Zip Code

Telephone Number

vs.

Defendant's Name

Street Address

Town, State, Zip Code

Telephone Number

**Superior Court of New Jersey
Law Division: Special Civil Part**

County
Docket Number: DC- _____

**Civil Action
Answer**

Defendant denies owing the debt to the Plaintiff. Check the appropriate statement(s) below which set forth why you claim you do not owe money to the plaintiff or owe less than the Plaintiff is claiming.

- The bill has been paid
- The dollar amount claimed by the plaintiff(s) is incorrect.
- The claim or the amount of the claim is unfair. (Must explain below)
- The goods or services were not received.
- The goods or services received were defective.
- I/We did not order the goods or services.
- I am a victim of identity theft or mistaken identity.
- The time has passed for plaintiff to sue on this debt.
- This debt has been discharged in bankruptcy.
- A lawsuit was previously filed and the claim has been resolved. (Must explain below)
- Defendant is in the military on active duty.
- Plaintiff did not file this lawsuit in the proper place. (Must explain below)
- Other – Set forth any other reasons why you believe money is not owed to the plaintiff(s). (You may attach more sheets if you need to.)

- Trial by jury requested; an extra \$100 cash, check or money order is submitted.
- Trial by jury requested; and I have submitted an application for a waiver of the \$100.00 fee.

At the trial, Defendant requests:

An interpreter Yes No Indicate Language _____
An accommodation for a disability Yes No

Requested accommodation _____

Certification

I certify, to the best of my knowledge:

Must check one

- that the above matter is not the subject of any other court action or arbitration proceeding now pending or contemplated, or
- that the following actions or arbitration proceedings are pending or contemplated

AND

Must check one

- that no other parties should be joined in this action; or
- that the following persons or entities should be joined in this action

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*.

I further certify that this answer was served by me upon all existing parties.

Dated

Defendant's Signature

Defendant's Name - Typed or Printed

- DEMAND FOR PRODUCTION OF DOCUMENTS PURSUANT TO R. 4:18-2.** By checking this box, demand is made for production of all documents or papers referred to in the pleading for which this answer is provided, within 5 days of this demand.

NOTICE: This is a public document, which means the document as submitted will be available to the public upon request. Therefore, do not enter personal identifiers on it, such as Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, or active credit card number.

Filing Attorney Information or Pro Se Litigant:

Name _____
NJ Attorney ID Number _____
Address _____

Telephone Number _____

Plaintiff's Name

Street Address

Town, State, Zip Code

Telephone Number

vs.

Defendant's Name

Street Address

Town, State, Zip Code

Telephone Number

**Superior Court of New Jersey
Law Division: Special Civil Part**

County
Docket Number: DC- _____

**Civil Action
Answer
(Auto Accident)**

Defendant(s), by way of answer to the complaint, say(s):

- I / We admit deny that the accident took place on the date stated in the complaint.
- I / We admit deny that I was the owner of the vehicle on the date of the accident.
- I / We admit deny that I was the operator of the vehicle on the date of the accident.
- I / We admit deny that the accident took place at the location stated in the complaint.

The accident alleged in the complaint was not my/our fault because:

- Trial by jury requested; an extra \$100 cash, check or money order is submitted.
- Trial by jury requested; and I have submitted an application for a waiver of the \$100.00 fee.

At the trial, Defendant requests:

An interpreter Yes No Indicate Language _____

An accommodation for a disability Yes No

Requested accommodation _____

Certification

I certify, to the best of my knowledge:

Must check one

- that the above matter is not the subject of any other court action or arbitration proceeding now pending or contemplated, or
- that the following actions or arbitration proceedings are pending or contemplated

AND

Must check one

- that no other parties should be joined in this action; or
- that the following persons or entities should be joined in this action

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*.

I further certify that this answer was served by me upon all existing parties

Dated

Defendant's Signature

Defendant's Name - Typed or Printed

DEMAND FOR PRODUCTION OF DOCUMENTS PURSUANT TO R. 4:18-2. By checking this box, demand is made for production of all documents or papers referred to in the pleading for which this answer is provided, within 5 days of this demand.

NOTICE: This is a public document, which means the document as submitted will be available to the public upon request. Therefore, do not enter personal identifiers on it, such as Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, or active credit card number.

Filing Attorney Information or Pro Se Litigant:

Name _____
NJ Attorney ID Number _____
Address _____

Telephone Number _____

Plaintiff's Name

Street Address

Town, State, Zip Code

Telephone Number

vs.

Defendant's Name

Street Address

Town, State, Zip Code

Telephone Number

**Superior Court of New Jersey
Law Division: Special Civil Part**

_____ County
Docket Number: DC- _____

**Civil Action
Answer**

AND

- Counterclaim**
- Cross-claim**
- Third Party Complaint**

Defendant denies owing the debt to the Plaintiff. Check the appropriate statement(s) below which set forth why you claim you do not owe money to the plaintiff or owe less than the Plaintiff is claiming.

- The bill has been paid
- The dollar amount claimed by the plaintiff(s) is incorrect.
- The claim or the amount of the claim is unfair. *(Must explain below)*
- The goods or services were not received.
- The goods or services received were defective.
- I/We did not order the goods or services.
- I am a victim of identity theft or mistaken identity.
- The time has passed for plaintiff to sue on this debt.
- This debt has been discharged in bankruptcy.
- A lawsuit was previously filed and the claim has been resolved. *(Must explain below)*
- Defendant is in the military on active duty.
- Plaintiff did not file this lawsuit in the proper place. *(Must explain below)*
- Other – Set forth any other reasons why you believe money is not owed to the plaintiff(s).

(You may attach more sheets if you need to.)

- I have a claim against the plaintiff(s). [Counterclaim]
- I have a claim against another defendant(s). [Crossclaim] _____
- I have a claim against the following 3rd party (new party) [Third Party Complaint]:

You **must** provide a statement of facts below as to why the plaintiff(s) and/or named defendant(s) and/or third party defendant(s) are at fault: (You may attach additional sheets if necessary)

Defendant's Demand:

I have a claim and demand judgment for \$ _____, plus interest, costs, attorney fees, if any, and such other relief as the court deems proper.

Name of Third Party Defendant(s)

Street Address

Town, State, Zip Code

Telephone Number

- Trial by jury requested; an extra \$100 cash, check or money order is submitted.
- Trial by jury requested; and I have submitted an application for a waiver of the \$100.00 fee.

At the trial, Defendant requests:

An interpreter Yes No Indicate Language _____

An accommodation for a disability Yes No

Requested accommodation _____

Certification

I certify, to the best of my knowledge:

Must check one

- that the above matter is not the subject of any other court action or arbitration proceeding now pending or contemplated, or
- that the following actions or arbitration proceedings are pending or contemplated

AND

Must check one

- that no other parties should be joined in this action; or
- that the following persons or entities should be joined in this action

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b). I further certify that this answer was served by me upon all existing parties.

Dated

Defendant's Signature

Defendant's Name - Typed or Printed

- Demand for Production of Documents Pursuant to R. 4:18-2.** By checking this box, demand is made for production of all documents or papers referred to in the pleading for which this answer is provided, within 5 days of this demand.

K. Proposed Amendment to Appendices XI-G (Warrant of Removal Form) and VI (Notice to Debtor Form) – Mandatory Use of Spanish Translations

The Honorable Jeffrey J. Waldman, on behalf of the Atlantic/Cape May Minority Concerns Committee, requested consideration be given to requiring that the form of Warrant of Removal (Appendix XI-G) and Notice to Debtor (Appendix VI) be provided in Spanish as well. The form of summons used in all three docket types is currently required to contain a Spanish translation which are mandated for use. The proposal is to similarly require that these mandatory forms appearing in the Appendices to the court rules contain a Spanish version that is mandated for use by the Special Civil Part Officer or Sheriff, as the case may be.

Committee members commented that automatically providing these forms in Spanish and English would be very helpful for the increasing Spanish speaking population in New Jersey. Civil practice staff noted that both of these forms used in the Special Civil Part are system generated forms created by the court's computer programming within its automated case management system (ACMS), so enhanced programming would consequently be required to incorporate the production of these forms into additional Spanish versions after the appropriate translation work is performed. Also, that the Notice to Debtor Form (Appendix VI) falls within the purview of the Civil Practice Committee, so they will have to be given the opportunity to review and respond. The Committee unanimously endorsed this proposal.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendment to *R. 1:43* – Permit Warrant of Satisfaction Filing Fees to be a Permissible Taxed Cost and Enter as a Taxed Cost at Time of Entry of Judgment

A Creditor's Bar Committee member, and private practitioner, Mr. Sheldon Pressler, Esq., requested consideration be given to amend Rule 1:43 to allow the filing fee for a warrant of satisfaction to be included as a permissible taxed cost and to have said filing fee automatically added at the time of entry of judgment. For example, any form of post-judgment process such as an issued wage, goods and chattel writ, etc. would have the anticipated cost for the warrant of satisfaction filing fee already included thereon as it would be entered previously at the time of entry of the judgment. As a consequence, it was opined that the judiciary would not lose revenue and avoid judgments remaining open unnecessarily. Moreover, it was argued that judgment debtors are often not filing the warrants of satisfaction that are provided to them by judgment creditors' attorneys.

The Committee examined N.J.S.A. 2A:16-46 and recognized that the statutory obligation upon a judgment creditor is to either provide the clerk of a court or the judgment debtor that satisfies the judgment with an acknowledgment of satisfaction (warrant of satisfaction). Accordingly, the party that files the warrant of satisfaction is thus required to pay its applicable filing fee and it is not permitted as a taxable cost, as set forth in Rule 1:43. The Committee agreed that it would be inappropriate to allow entry of this filing fee as a taxed cost in favor of a judgment creditor when the fee might be paid by the judgment debtor and it would be in violation of Rule 1:43. Moreover, there are additional instances wherein a judgment can be satisfied of record,

dispensing with the aforementioned statutory requirement to file a warrant of satisfaction, such as when an execution return is marked fully satisfied, a judge order and/or consent order vacates a judgment, satisfies a judgment and/or dismisses a case, etc. The Committee also did not think it would be appropriate to allow for the entry of an anticipated or future filing fee as a taxed cost at the time of entry of judgment that might otherwise never be paid nor to allow any form of post-judgment process permitting collection thereon which would act as an incorrect windfall. Ultimately, no motion was made to adopt this recommendation and the suggestion was rejected by the Committee.

B. Proposed Amendments to R. 6:1-2(a)(4) and Appendix XI-Y (Writ of Possession) – Preclude the Filing of Ejectment Actions; Alternatively, Preclude Ejectment Actions by Mortgagees Only; Amend Appendix XI-Y to Omit the 14 Day Limitation for Sheriffs to Execute

The Conference of Civil Division Managers requested the Committee to consider amending Rule 6:1-2(a)(4) to preclude mortgagees from filing summary actions for the possession of real property under N.J.S.A. 2A:35-1 et seq. (ejectment actions) when the matter originally arose from a foreclosure action and to amend Appendix XI-Y (Special Civil Part’s writ of possession form) to omit the requirement thereon for a sheriff to execute and return the writ within 14 days of issuance. The basis of these requests stems from an apparent lack of uniformity between the vicinages wherein it was reported that certain Equity Judges and/or Special Civil Part Supervising Judges were not permitting the filing of these summary ejectment actions in the Special Civil Part by mortgagees who previously obtained title through a prior (yet closed) foreclosure action against the prior homeowner. It was opined that this is a form of post-judgment relief that the mortgagee should pursue under the closed foreclosure action in the Chancery Court and not by independent ejectment action in the Special Civil Part. Finally, it was reported that it is common that many sheriff offices are having difficulty adhering to the Special Civil Part’s writ of possession requirement to execute same within 14 days and Special Civil Part’s writ of possession should be the same as all other writs of possession issued by other courts and/or the Superior Court Clerk’s Office. The writ of possession issued by the Superior Court Clerk’s Office, Equity Judges in foreclosure cases, Civil Presiding Judges within independent ejectment actions filed in the Civil Part, etc. do not have any such time limitation placed upon the sheriff.

The Chair additionally opined that ejectment actions in their entirety perhaps should no longer be cognizable in the Special Civil Part on the basis of an ever increasing quantity of these actions being filed in the Special Civil Part. He requested the Committee to reexamine whether the current status of these filings would have satisfied the Court's original intent in September, 2012 when it made these actions cognizable in the Special Civil Part. After considerable discussion, the Committee formed an Ejectment Sub-Committee to examine the recommendations put forth by the Civil Division Managers and this Committee's Chair, which fortunately consisted of some of the original members whom previously sat on this Committee's former Ejectment Sub-Committee.

The Vice-Chair of the Committee at the time, the Honorable William Anklowitz, chaired the Ejectment Sub-Committee and subsequently reported its recommendations to the full Committee. The sub-committee recommended that ejectment actions remain cognizable within the Special Civil Part. The original basis within which to include this action into the Special Civil Part remain the same and various other reasons were set forth in support of retaining this action in the Special Civil Part: (1) An ability for parties to have the opportunity to summarily and more cheaply obtain this form of relief; (2) Self-represented litigants are especially served well by the avoidance of higher filing fees and ability to obtain this relief more quickly; (3) Family, Civil and Special Civil Part Practice Committees all previously endorsed the *Clarification of Divisions Working Group's Recommendation* which in part provide for the continued permissible filing of these actions in the Special Civil Part; (4) The Bar is reportedly very pleased that these actions were made cognizable in 2012 as this form of relief is demonstrably expedited in Special Civil Part; (5) The Court's published ejectment kit containing instructions and forms on how to file this type of action adopted for statewide use, which this Committee previously endorsed in its last rule

cycle (*January 12, 2016 Report*, p. 47), has improved upon the effectiveness and ease within which these actions get filed; and (6) An increase in ejectment filings does not support a basis to preclude these actions in the Special Civil Part. The Committee unanimously recommended that this form of relief remain cognizable in the Special Civil Part.

The Ejectment Subcommittee then addressed the suggestion to carve out an exemption which would preclude ejectment actions from being filed in the Special Civil Part by mortgagees who previously obtained title through foreclosure against the prior homeowners only. The recommendation of the subcommittee was to not adopt this recommendation. The Committee agreed with the subcommittee's position by vote of 16-5, with two abstentions, to not adopt this proposed exemption.

The reasons set forth against this proposal: (1) The seminal case of Chase Manhattan Bank v. Josephson, 135 N.J. 209, 225 (1994) stated that “to gain possession, the mortgagee must obtain an order for possession from the Superior Court, **either in an action for possession pursuant to N.J.S.A. 2A:35-1 or** as part of the action to foreclose the mortgage.” (Emphasis supplied). Accordingly, the subcommittee suggested that the Court had already addressed this issue and explicitly permitted mortgagees to pursue an independent ejectment action if they so choose or to seek the relief through the prior foreclosure case; (2) A plaintiff, whether they are a mortgagee, lawful tenant and/or existing property owner, must similarly prove to a judge's satisfaction the legal status of the plaintiff as lawful property owner/occupant and the defendant as unlawful occupant who has no actionable claim to title. The plaintiff (mortgagee) in this ejectment action obtained lawful possession and title pursuant to a prior foreclosure case and the prior homeowner's legal status is now equivalent to that of an unlawful occupant, so there is no basis upon which the Court should treat these plaintiffs, who are mortgagees, any differently from other plaintiffs that

file ejectment actions in the Special Civil Part; (3) As long as the prior foreclosure case has been fully disposed, there no entire controversy doctrine violation, thereby plaintiffs (mortgagees) may permissibly pursue a writ of possession through either an independent ejectment action in ejectment or as a form of post-judgment relief in the prior foreclosure case; (4) For the reasons previously expressed, the Family, Civil and Special Civil Part Practice Committees all previously endorsed the *Clarification of Divisions Working Group's Recommendation* which in part provided for the continued permissible filing of these actions in the Special Civil Part and no additional preclusion in this regard was offered; and (5) The plaintiff (mortgagee) may permissibly pursue obtaining a writ of possession, which would direct sheriffs to remove the unlawful occupant (prior homeowners), in various ways – request the Clerk of the Superior Court's Office to issue the writ of possession and this does not require an order or any form of judicial review, file an independent ejectment action in the Civil Part, file an independent ejectment action in the Chancery Division, file an independent ejectment action in the Special Civil Part or obtain the writ as a form of post-judgment relief in the prior closed foreclosure case. Accordingly, it would be incongruous to preclude an ejectment action in the Special Civil Part alone while all of the aforementioned avenues remain open to a plaintiff (mortgagee).

The subcommittee considered and rejected an argument suggesting that these particular parties may have developed a landlord/tenant relationship subsequent to the transfer of the deed to the mortgagee, forming the basis in support of precluding mortgagees from filing these actions in the Special Civil Part. Again, in this context, the defendant is the prior homeowner who lost the deed to their house pursuant to a previously filed foreclosure case that is now closed. The subcommittee opined that since this is a viable defense afforded to any defendant in these actions, there is no basis upon which to deny a plaintiff (mortgagee) the ability to file ejectment actions in

the Special Civil Part in the first instance. A defendant to these actions may raise various defenses such as the existence of a landlord/tenant relationship. The subcommittee also recognized that mortgagees take property subject to any pre-existing tenancies on that foreclosed property. The trial judge can discern the facts in the normal course in the event any defendant, including prior homeowners, allege the existence or formation of a landlord/tenant type relationship, whether the plaintiff is the true record owner, etc. which would otherwise require the ejectment action to be dismissed against any plaintiff including a plaintiff who may be a mortgagee. Accordingly, notwithstanding the various defenses or arguments a defendant can or may raise, none justify barring a plaintiff (who happens to be a mortgagee from a prior closed case), from filing an independent ejectment action in the Special Civil Part.

The subcommittee reported a lack of consensus between its members pertaining to the last recommendation which was to omit the 14 day time limitation placed upon sheriffs reflected in the writ of possession form used by Special Civil Part (Appendix XI-Y). The Committee understood that some county sheriff offices were complying with this time requirement and some were not. The Committee was also made aware of one particular county sheriff reportedly refusing to honor altogether the Special Civil Part Judge's Order of Possession and Special Civil Part's writ of possession. However, the Committee ultimately determined to retain the language on Special Civil Part's writ of possession form requiring a sheriff to execute and return writs of possession within 14 days of issuance from the Special Civil Part by vote of 16-5, with two abstentions.

The Committee was influenced by several factors which included an overall intent to maintain a faster pace of relief for these actions filed in the Special Civil Part inasmuch as this formed the original basis to make the ejectment actions cognizable in the Special Civil Part. Special Civil Part's writ of possession form should not be identical to all others, as it would defeat

the purpose behind the Court's intent which was to permit these actions to be heard more quickly in the Special Civil Part. The Committee opined that the relief sought, which is ultimately the execution of the writ of possession upon the defendant, should thus be expedited in Special Civil Part as well, so the 14 day time limitation should remain. Also, since these actions have been made cognizable and explicitly permitted to be filed summarily in the Special Civil Part, the Committee expressed a desire to maintain the 14 day time limitation placed upon a sheriff.

It was reported that most county sheriff offices are nevertheless performing the execution of Special Civil Part's writs of possession faster than those writs of possession issued from the Superior Court Clerk's Office, from an Equity Judge on a foreclosure case, etc. The Committee perceived that this is due, in large part, to the language reflected on Special Civil Part's writ form. Although many sheriffs are not executing within 14 days from the issued date, they appear to be executing Special Civil Part's writs more expeditiously and/or before those writs of possession issued outside of the Special Civil Part and commented that they are doing the best that they can to execute timely with the resources at their disposal. The Committee made no recommendation as to how the Court can obtain uniform compliance by all county sheriff offices, as constitutional officers, in order to obtain execution throughout within the 14 day time period. However, the Committee endorsed, by a vote of 18-0, with 5 abstentions, a non-rule recommendation submitted by the sub-committee: The Acting Director of the Administrative Office of the Courts issue an Assignment Judge memo for the purpose to obtain statewide uniformity that Special Civil Part ejectment actions, filed by plaintiffs who might be mortgagees that previously obtained title through prior closed foreclosure actions seeking the removal of the prior homeowners, are permissible Special Civil Part actions, should not be dismissed and/or transferred to the Chancery Division.

C. Proposed Amendment to R. 6:2-3(4)(d) – Stop Mail Forwarding

A Creditor’s Bar Committee member requested consideration be given to amend Rule 6:2-3(d)(4) and change the mail endorsement notations placed on the Special Civil Part’s mailers from “Address Service Requested” to “Return Service Requested” and/or otherwise add applicable notations thereon so that the United States Postal Service (USPS) returns mail to the Court rather than forwarding mail to the defendant. The concern posed was that when a piece of mail is addressed to a defendant at one address and the USPS has knowledge of a new forwarding address for that defendant, they automatically forward this mail to the defendant’s new address and service is considered effectuated. The USPS does not advise the Court that this occurred nor what the new address is, so the judgment creditor and the Court are unaware if the defendant’s new address is in a different county or state. Since the mail is not returned in this context, the Court considers the service of original process effectively served. As a consequence, it was argued that this can inadvertently expose the judgment creditor’s attorney or debt collector to liability under the Federal Debt Collection Practices Act (FDCPA) which limits venue to the county where the consumer resides at the commencement of the action. Also, it could potentially present a conflict with Rule 6:1-3 which states that venue be laid in the county where the defendant resides.

Civil practice staff advised that according to the Office of Management and Administrative Services (OMAS Division), it is possible to change the mailers’ notations as requested. However, as a consequence, instead of returned mailers being sent back to the applicable vicinage or county for lack of service based upon the variety of reasons delineated under Rule 6:2-3(d)(4), any returned mail would be sent back to the location where all this mail is generated from and that is the Richard J. Hughes Justice Complex. Vicinage staff would not have access to the returned mail in order to screen and assess in the normal course whether to remove service and dismiss the case

since the mail would no longer be sent to one of the applicable 21 counties. The bar codes employed for the centralized printing and mailing process would apparently cause this to occur. So, many thousands of returned mailers would then need to be sorted at the Justice Complex and then mailed back to each of the respective 21 counties for clerical staff therein to then screen for service.

Several Committee members commented that it would be impractical to try and implement this change. It would be impossible to re-stamp and/or re-mail returned mail to each of the respective 21 counties. It would be quite an expensive undertaking, has limited benefit and effective mail forwarding service should not be stopped for parties who can legitimately receive forwarded mail. Creditors' attorneys commented that they were concerned and expressed a strong need to end mail forwarding. Judicial committee members stated that avoidance to the potential of exposure to the FDCPA could be eliminated by the mailing of a demand letter prior to service with instructions to the defendant/consumer to provide any forwarding address, if any. In response, creditors' attorneys advised that they already employ this practice, wait to see if their demand letter is returned and that the letter does not always come back. Judicial committee members suggested a second demand letter at the time the complaint is filed to address this concern in lieu of dramatically changing mail service process in the Special Civil Part which has been effective and successful for over thirty years. Ultimately, the Committee did not think it prudent to incur unnecessary expense, place additional burdens upon clerical staff and decrease the effectiveness of a proven mail service system. The judiciary recently adopted a centralized printing/ mailing system which dramatically reduced costs and increased effectiveness of Special Civil Part's mail service. The Committee voted against the proposal by vote of 10-7, with four abstentions.

D. Proposed Amendment to R. 6:3-2(b) – Omit Case Caption Requirements on Assignment of Claim Cases Due to eCourts’ Limitations

A Creditor’s Bar Committee member requested consideration be given to amend Rule 6:3-2(b). The rule presently requires the inclusion of both the original creditor and current assignee’s names placement onto the pleadings’ captions on assignment of claim cases filed in the Special Civil Part. The request seeks to omit this requirement on captions reflected on various forms of post-judgment process such as statements for docketing, wage garnishments, etc. The basis of this request is due to the new electronic filing system (eCourts) and its reported inability to correctly capture the lengthy caption names that are required on assignment of claim cases onto various post-judgment forms of process due to character space constrictions.

The Committee discussed issues that some members originally experienced with the Court’s first electronic filing system in the Special Civil Part which was called the Judiciary Electronic Filing Imaging System (JEFIS). Similar to JEFIS, the new electronic system (eCourts) that replaced JEFIS will also have to be improved upon and enhanced so that it comports with the court’s rules. The court’s rules should not be amended to comport with eCourts. Accordingly, no motion was made and the Committee unanimously did not endorse this recommendation.

E. Proposed Amendment to R. 6:4-1 – Additional Reasons to Transfer (DC) Case to Law

The Committee Chair requested consideration be given to amend Rule 6:4-1 in order to permit a Special Civil Part Judge to transfer a Special Civil Part (DC) case to the Law Division akin to those reasons which currently allow the judge to transfer a landlord/tenant case to the Law Division. The Committee was asked to examine in that context the seminal case of Twp. Of Bloomfield v. Rosanna's Figure Salon, Inc., 253 N.J. Super. 551 (App. Div. 1992) and focus upon such factors as the complexity of the case, need for depositions, the need for extended discovery well beyond the typical 90 days allotted for discovery for the Special Civil Part (DC) case, backlog standards and expectations for this docket, etc., as a basis upon which a judge can transfer a Special Civil Part (DC) matter to the Law Division.

Several members commented favorably since they lack the ability to undertake extensive discovery in the Special Civil Part and it is difficult and cumbersome to obtain a court order to be able to schedule depositions within the time allotted for discovery. However, other members stated that this amendment could lead to abuse causing meritless applications to transfer on the basis of complex discovery issues when none exist. The motions filed will unnecessarily slow the docket down, the Special Civil Part Judge maintains his/her discretion to extend discovery and permit depositions, etc., as the case may be and as justice requires, notwithstanding backlog standards for this docket.

The Committee voted against the recommendation by vote of 13-7, with 1 abstention.

F. Proposed Amendment to R. 6:6-6(b) – Post-Judgment Relief for Unlawful Occupant in Ejectment Actions

The Committee Chair suggested consideration be given to the creation of a new form of post-judgment relief to be made available to defendants in ejectment actions under Rule 6:6-6 akin to the relief afforded to tenants when they apply for orders for orderly removal. Currently, when a plaintiff files an ejectment action in the Special Civil Part, the relief sought is an order for possession if they satisfactorily prove that the defendant is an unlawful occupant. To be considered an unlawful occupant, the defendant has neither a colorable claim to title nor any landlord/tenant relationship with the plaintiff. Upon receipt of the order for possession, the plaintiff can then pay the Special Civil Part Office the applicable filing fee and the Writ of Possession will issue. Thereafter, the plaintiff is responsible to take the writ to the sheriff and the sheriff is then required to execute within 14 days of issuance. Based upon this timetable, it was suggested that these defendants be afforded an opportunity to obtain a temporary 7 day stay on notice to the plaintiff on the basis that they need time to obtain shelter.

Committee members stated that the typical order for possession presently allows the judge to stay the time within which the plaintiff can request the issuance of the writ of possession from the Special Civil Part Office. Several judicial members stated that this is a common practice employed, so it is not necessary to codify into the court rules an ability for the defendant to make this stay application. Also, since it is quite common for a sheriff to perform the execution of a writ of possession far beyond the 14 day time limitation reflected on Special Civil Part's writ of possession form, there is no practical need for this rule. A motion was made but was not accepted, so the Committee ostensibly chose to reject this recommendation.

G. Proposed Amendment to R. 6:7-4(c) - Post-Judgment Asset Search Costs Allowable as Taxed Costs

Louis Greenfield, Esq. requested the Committee to consider an amendment to Rule 6:7-4(c) to allow the entry of post-judgment asset search fees as taxed costs in an application for the issuance of a goods and chattel writ of execution. He suggested that the request would be supported by an affidavit or certification. Mr. Greenfield submits that a regular part of collecting upon a judgment is the typical process of having to locate revenue and assets from judgment debtors by using an external vendor and reimbursement of this expense would make the judgment creditor whole. The utilization of information subpoenas is inadequate. A post-judgment asset search cost is just as necessary as a pre-litigation cost or attorney fee and submits that it should be treated as such. Search fees involving real property are recoverable costs under Rule 4:42-10, post-judgment costs against defaulting defendants in replevin actions are recoverable under Rule 4:42-8(b), so by analogy, Special Civil Part collection matters are preceded by demand letters, refusals to provide information and then post-judgment efforts to ascertain costs.

The Committee was not persuaded by the argument submitted by Mr. Greenfield. For example, while an explanation was provided that costs would not typically exceed \$100 in post-judgment search fee costs, that might not always be the case and could be abused. Legal Services Committee Members and Creditors' Bar Committee members agreed that fees vary between vendors, self-represented litigants should not bear the costs of same and the Committee ultimately rejected the proposal by vote of 21-0, with 1 abstention.

H. Proposed New Rule 6:7-5 – SCP Officer Can Amend Active Execution to Include Subsequent (New) Filing Fees as Taxed Costs

A Creditor's Bar Committee member requested consideration be given to a new rule which would provide Special Civil Part Officers with the ability to amend active executions already assigned to them so as to include any new additional filing fees paid to a Special Civil Part Office as additional taxed costs to be levied upon pursuant to that execution. The Special Civil Part Office is aware of any new filing fees and could advise the court officer immediately when said costs are added so that the officer could then systemically add the costs to the execution which has already been assigned to that officer.

The Committee took note that the computer programming (ACMS) automatically enters most filing fees as taxed costs onto executions issued from a Special Civil Part Office. Based upon the volume of executions issued and quantity of staff, it was commented that automation has improved and achieved great efficiencies, and to adopt this proposal would be quite impractical. The Committee rejected the proposal as no motion was made to endorse it.

III. OTHER RECOMMENDATIONS

A. Clarification and Uniformity Sought in Statewide Practice – Mortgagees may File Summary Actions in the Special Civil Part for the Possession of Real Property Against Prior Homeowners pursuant to N.J.S.A. 2A:35-1 et seq. (Ejectment Actions) in Accord with Rule 6:1-2(a)(4)

As previously expressed in this Report under proposals not recommended for adoption (Section II., B., *Proposed Amendment to Rule 6:1-2(a)(4) and Appendix XI-Y*), the Committee rejected a proposal that would have precluded the filing of ejectment actions entirely in the Special Civil Part. The Committee also rejected a proposal that would have eliminated the 14 day time limitation placed upon county sheriffs to execute Special Civil Part's writs of possession, as reflected in Appendix XI-Y. Finally, it also rejected a proposal to amend the aforementioned rule to preclude plaintiff mortgagees from filing an ejectment action against prior homeowners in the Special Civil Part.

In this context, the Committee then recommended a need for clarity and uniformity in vicinage case management practices as it pertains to ejectment actions filed in the Special Civil Part by plaintiff/mortgagees who obtained title through prior closed foreclosure actions seeking removal of the prior homeowners. The Committee recommended by vote of 18-0, with 5 abstentions, that an administrative memo, referred to as an Assignment Judge Memorandum, be issued by the Acting Administrative Director of the Administrative Office of the Courts for the purpose to make it clear that these are permissible actions that may be filed by plaintiff mortgagees in the Special Civil Part for the reasons previously expressed in this Report.

IV. LEGISLATION – NONE

V. MATTERS HELD FOR CONSIDERATION - NONE

VI. CONCLUSION

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

Respectfully Submitted,

Hon. Joseph R. Rosa, J.S.C., Chair (9/1/16 – 8/1/17)

Hon. William Anklowitz, J.S.C., Chair (8/1/17 – Present)

Hon. William Anklowitz, J.S.C., Vice Chair (9/1/16- 8/1/17)

Hon. Frank Covello, J.S.C., Vice Chair (8/1/17 – Present)

Hon. Robert A. Ballard, J.S.C.

Marc J. Bressler, Esq.

I. Mark Cohen, Esq.

Hon. Frank Covello

Debra Dadic, Civ. Div. Mgr.

William DeGuilo, Court Officer

Hon. Paul X. Escandon, J.S.C.

Joann Ezze, Asst. Civ. Div. Mgr.

Gerard J. Felt, Esq.

Eric H. Fields, Court Officer

Hon. Melvin L. Gelade, J.S.C.

Kenneth M. Goldman, Esq.

Tracey Goldstein, Esq.

Linda G. Hampton, Esq.

Dinah E. Hendon, Esq.

Dawn M. Hines, Court Officer

Jonathan H. Katz, Esq.

Yongmoon Kim, Esq.

Adolfo L. Lopez, Esq.

Omar A. Lopez, Esq.

David G. McMillin, Esq.

Jonathan Mehl, Esq.

Raymond F. Meisenbacher, Jr., Esq.

Hon. David W. Morgan, J.S.C.

Jose Ortiz, Esq.

Hon. James W. Palmer, Jr., J.S.C. (8/1/17 – Present)

Louise Pelosi, Asst. Civ. Div. Mgr. (9/1/16 – 8/1/17)

Hon. Kevin Shanahan, J.S.C. (9/1/16 – 8/1/17)

Hon. Thomas J. Shusted, Jr., J.S.C.

John N. Ukegbu, Esq.

Hon. Christine M. Vanek, J.S.C. (9/1/16 – 8/1/17)

Hon. Radames Velazquez, J.S.C. (8/1/17 – Present)

Michelle Vicari, Asst. Civ. Div. Mgr. (8/1/17 – Present)

Lloyd Garner, Esq., AOC Staff

Diane Lanza, Esq., AOC Staff