2006 REPORT

OF THE SUPREME COURT COMMITTEE

ON SPECIAL CIVIL PART PRACTICE

JANUARY 17, 2006

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendment to R. 6:1-2(a) (4) – Monetary Limit for Summary Proceedings for the Collection of Statutory Penalties

Rule 6:1-2(a) (1) limits civil actions filed in the Special Civil Part to $15,000. Paragraph (4) of the rule allows the filing of summary proceedings for the collection of statutory penalties in the Special Civil Part, but it does not set a monetary limit for such actions. As a consequence there have been penalty enforcement actions for substantially more than $15,000 filed in one vicinage and court officers in that vicinage have been collecting on writs of execution issued for the resulting higher amounts. These higher amounts cannot be handled by the Automated Case Management System (ACMS) and the distribution of collection work among the court officers in any given county does not contemplate commissions of 10% on amounts greater than $15,000.

The reason for this is that the last statute dealing with the monetary jurisdiction of the Special Civil Part, *N.J.S.A.* 2A:6-34(a) (repealed by *L.* 1991, *c.*119), set the same limit of $5,000 for penalty enforcement actions and civil actions filed in the Part. The language of paragraph 4 of the rule was based on the December 13, 1983 Supreme Court Order creating the Special Civil Part as the replacement for the County District Courts and the order assumed the existence of the jurisdictional statute setting the same monetary limit for civil and penalty enforcement actions. Unfortunately, paragraph (4) of the rule was never amended following the repeal of this statute. In short, penalty enforcement actions for more than the monetary limit of the Special Civil Part simply were not contemplated when the Part was created.

The Committee therefore proposes to amend the rule so as to explicitly limit penalty enforcement actions in the Special Civil Part to those "not exceeding $15,000 per complaint." When a series of alleged violations are deemed a "continuing violation" by the applicable statute and the agency has filed a single complaint, the action will be cognizable in the Special Civil Part only if the total amount of the penalty sought in the complaint is $15,000 or less. The Committee understands that the total amount sought by an agency from the defendant for a series of violations may exceed $15,000 and that several complaints may be filed by the agency and will be consolidated for trial, but separate judgments of $15,000 or less should be entered for each, rather than a single judgment for an amount greater than $15,000. The proposed amendment follows.

6:1-2. Cognizability

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

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

(2) Small claims actions in those counties that heretofore have had small claims divisions, which are defined as all actions in contract and tort (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) and actions between a landlord and tenant for rent, or money damages, 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 affect 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 proceedings for the collection of statutory penalties not exceeding $15,000 per complaint;

(5) Municipal court actions, pursuant to R. 7:1, in the counties of Bergen, Hudson and Warren.

(b) ... no change

(c) ... see following section of the Report for proposed 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; paragraphs (a)(4) and (c) amended _____, 2006 to be effective _____, 2006.

B. Proposed Amendment to R. 6:1-2(c) – Waiver of Excess Over Monetary Limit

Rule 6:1-2(c) provides that "Where the amount recoverable on a claim exceeds the monetary limit of the Special Civil Part or Small Claims Section, the party asserting the claim may waive the excess over the applicable limit and recover a sum not exceeding the limit plus costs." The Special Civil Part Management Committee, which consists of the Assistant Civil Division Managers for Special Civil, suggested that the words "may waive" be replaced with "shall be deemed to have waived" and that the word "may" be inserted before the word "recover." This will clarify the clerk's authority to treat the action as one seeking the maximum allowed for the Part or Section and charge the corresponding filing fee. The Committee agrees that the rule should be clarified, but wants it to be clear that amending the complaint, counterclaim or cross claim and transferring it to the Civil Part, or "regular" Special Civil Part in the case of what was thought to be a small claim, is not precluded when the court or a party discovers that the actual amount of the claim exceeds the monetary limit of the Part or Section. Thus the proposed amendment states that the waiver is not effective until the entry of judgment. The proposed amendment, slightly different from the Management Committee's proposal, follows.

6:1-2. Cognizability

(a) ... see preceding section of the Report for proposed change

(b) ... no change

(c) Waiver of Excess. Where the amount recoverable on a claim exceeds the monetary limit of the Special Civil Part or the Small Claims Section, the party asserting the claim shall not recover a sum exceeding the limit plus costs and shall be deemed to have waived [may waive] the excess over the applicable limit upon the entry of judgment [and may not recover a sum not exceeding the limit plus costs].

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; paragraphs (a)(4) and (c) amended _____, 2006 to be effective _____, 2006.

C. Proposed Amendments to R. 6:1-3(a) – Venue

Rule 6:1-3(a) provides that venue will lie in the county where at least one defendant in the action resides, in the county where the property is situated in actions to recover a security deposit or in the county where the cause of action arose if all defendants are non-residents of the State. The Special Civil Part Management Committee recommended that the rule be amended in two ways: (a) to allow the suit to be brought in the county where the transaction occurred and (b) to clarify that for venue purposes a corporation shall be deemed, as in the Civil Part of the Law Division, to reside in the county in which the registered office is located or in any county in which it is actually doing business.

The original purpose of the venue rule in the County District Court, the Special Civil Part's predecessor, was to preclude the filing of low value cases in a county so distant from the defendant's residence that he might default rather than bother to travel to the court to defend the action. The Management Committee thought that expanding this to include the county where the transaction took place is not likely to unduly inconvenience the defendant since s/he obviously has been there before and it may make the presentation of proofs easier because witnesses are more likely to be located at or near the site of the transaction. Some members of the Committee agree with this view and one member would broaden the rule even further to include the county where the plaintiff resides. The majority view, however, is that, except for tenancy actions, most of the litigation in the Special Civil Part consists of collection actions and allowing them to be brought where the plaintiff resides could result in huge concentrations of cases in the counties where plaintiffs' counsel deem their corporate clients to reside. Moreover, the change would vitiate the original purpose of the venue rule and probably result in even more defaults. The Committee therefore recommends no change to this aspect of the rule.

With respect to corporations, the Committee was informed that it is often difficult for the clerk, who must screen all complaints for proper venue, to tell where a corporation "resides" since it is not a

natural person and may or may not have locations where it does business in the same county as its registered office or agent. The Committee believes that there really is no reason to treat corporations differently in the Civil and Special Civil Parts when they are defendants. Accordingly, it recommends amending the venue rule to state that any business entity should be deemed to reside in the county where its registered office is located or in any county where it does business. The Subcommittee chose the term "business entity," rather than "corporation," the term used in *R.* 4:3-2(b), because there is no reason, in this context, to differentiate between corporations and limited liability companies or other forms of business organization. The proposed amendment follows.

6:1-3. Venue

(a) Where Laid. Except as otherwise provided by statute, venue in actions in the Special Civil Part shall be laid in the county in which at least one defendant in the action resides. For purposes of this rule, a business entity shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business. Actions for the recovery of a security deposit may be brought in the county where the property is situated. If all defendants are non-residents of this state, venue shall be laid in the county in which the cause of action arose.

(b) ... no change

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 _____, 2006 to be effective _____, 2006.

D. Proposed Amendment to *R.* 6:3-1 – Time to File Third Party Complaint

The Committee considered a proposal that *R.* 6:3-1 be amended to limit the time for filing a third party complaint to 30 days from service of the original answer. The proponent noted that otherwise it appears that the defendant-third-party-plaintiff has, per *R.* 4:8-1(a), 90 days within which to file the third-party complaint without leave of court. The Committee noted that *R.* 4:8-1(b) allows the plaintiff 45 days to serve an amended complaint asserting any claim against the third-party-defendant. Members agreed that application of the time periods set forth in *R.* 4:8-1(a) and (b) to the Special Civil Part would unduly delay disposition of the litigation, but felt that counsel needs sufficient time following service of a third-party complaint to sort out the potential claims against the third-party-defendant, who hitherto has not been party to the litigation. The Committee concluded that 30 days is the appropriate amount of time in both instances and, accordingly, proposes the following amendment.

6:3-1. Applicability of Part IV Rules

Except as otherwise provided by *R.* 6:3-4 (joinder in landlord and tenant actions), the following rules shall apply to the Special Civil Part: *R.* 4:2 (form and commencement of action); R. 4:3-3 (change of venue in the Superior Court), provided, however, that in Special Civil Part actions a change of venue may be ordered by the Assignment Judge of the county in which venue is laid or the Assignment Judge's designee; *R.* 4:5 to 4:9, inclusive (pleadings and motions); *R.* 4:26 to 4:34, inclusive (parties); and *R.* 4:52 (injunctions as applicable in landlord/tenant actions); provided, however, that, in Special Civil Part actions (1) a defendant who is served with process whether within or outside this State shall serve an answer including therein any counterclaim within 35 days after completion of service; (2) extension of time for response by consent provided by *R.* 4:6-1(c) shall not apply; (3) the 90-day periods prescribed by *R.* 4:6-3 (defenses raised by motion), [and] *R.* 4:7-5(c) (cross claims) and *R.* 4:8-1(a) (third party complaints) shall each be reduced to 30 days; (4) the 45-day period prescribed by *R.* 4:8-1(b) (amended complaint asserting claims against third party defendant) shall be reduced to 30 days; (5) an appearance by a defendant appearing pro se shall be deemed an answer; (6) [(5)] no answer shall be permitted in summary actions between landlord and tenant or in actions in the Small Claims Section; (7) [(6)] if it becomes apparent that the name of any party listed in the pleadings is incorrect, the court, at any time prior to judgment upon its own motion or the motion of any party and consistent with due process of law, may correct the error, but following judgment such errors may be corrected only upon motion with notice to all parties; (8) [(7)] a defendant who is served with an amended complaint pursuant to *R.* 4:9-1 shall plead in response within 35 days after the completion of service; and (9) [(8)] the double-spacing and type-size requirements of *R.* 1:4-9 do not apply.

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

amended June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994; amended July 12, 2002 to be effective September 3, 2002; amended _____, 2006 to be effective _____, 2006.

E. Proposed Amendment to R. 6:3-4 – Eviction/Ejectment of Tenants and Other Authorized Occupants

The Committee discussed a proposal to change *R.* 6:3-4 to permit the joinder of a landlord/tenant action and an action for ejectment (unlawful detainer) in cases were a tenant has sublet or assigned his lease to a third party without the knowledge or approval of the landlord. While the Committee agreed with the proponent that it would be appropriate to amend the rule to permit such actions by combining the tenancy matter with what would otherwise be a civil action in the Special Civil Part (DC-docket type) to expedite the eviction, there was considerable discussion as to whether this rule change should apply to tenants who have leases that do not prohibit assignments or subletting as well as those tenants who have sublet in violation of their lease. The proponent of the change stated that the landlord has a right to know who lives in its property and, therefore, unknown or unauthorized residents should not be permitted to pay rent and attorn to the landlord; the termination of the prime tenant's rights would also terminate the sub-tenant's rights. The Committee decided to recommend that the rule change be applicable to those tenants who either have no lease or a lease that does not prohibit subleasing or assignment. The proposed amendment follows.

6:3-4. Summary Actions Between Landlord and Tenant

Summary actions between landlord and tenant for the recovery of premises and forcible entry and detainer actions shall not be joined with any other cause of action, nor shall a defendant in such proceedings file a counterclaim or third-party complaint. A party may file a single complaint seeking the possession of a rental unit from a tenant of that party and from another in possession of that unit in a summary action for possession provided that (1) the identity of the defendants are separately identified by name or as otherwise permitted by *R.* 4:26-5(c) or (d), and (e) and (2) such party's interests are separately stated in that complaint. When the landlord acquired title from the tenant or has given the tenant an option to purchase the property, the complaint shall recite these facts.

Note: Source – R.R. 7:5-12. Caption and text amended July 14, 1992 to be effective September 1, 1992; amended _____, 2006 to be effective _____, 2006.

F. Proposed Amendments to Rules 6:4-3(b) and 6:4-4 – Discovery in Automobile Negligence and Personal Injury Actions

The Committee considered letters from a judge and a practitioner, together with the opinion in *Kellam v. Feliciano*, 375 *N.J.* Super. 580 (App. Div. 2005), which raised the question of whether *Rules* 6:4-3(b) and 6:4-4, which govern discovery in automobile negligence and personal injury actions, should be amended so as to allow the defendant to propound Form A interrogatories to the plaintiff, take the plaintiff's deposition and require plaintiff to submit to a physical examination. The Appellate Division said in *Kellam* that the current rule favors plaintiffs and disadvantages defendants in these types of cases and directed the trial court to exercise its discretion under *R.* 1:1-2 to relax *Rules* 6:4-3(b) and 6:4-4 to permit such additional discovery as might be necessary to produce a just outcome. The court expressly recommended that the rule be re-examined by the rules committee, particularly in light of the recent increase in the Special Civil Part's monetary limit from $10,000 to $15,000. The Committee of Special Civil Part Supervising Judges discussed *Kellam* and also concluded that the question of amending the rules should be referred to the Special Civil Part Practice Committee.

The Committee concluded that adding Forms A, A (1) and A (2) to the sets of interrogatories available in the Special Civil Part would not result in any undue delays in the resolution of personal injury cases (Form A), nor in any medical malpractice (Form A (1)) or products liability cases (Form A (2)) that might be brought in the Special Civil Part and thus recommends that *R.* 6:4-3(b) be amended accordingly. The Committee concluded further that the independent medical examination procedure set forth in *R.* 4:19 is essential for defending personal injury actions, but would not necessarily result in undue delays and should therefore be available in the relatively few person injury actions that are filed in the Special Civil Part. The Committee has concluded, however, that if personal injury actions continue to be cognizable in the Special Civil Part, depositions are not as critically

important as independent medical examinations and therefore should not routinely be available in these actions because their widespread use would undermine the purpose of having a court that is streamlined for the expeditious and inexpensive handling of cases involving $15,000 or less. In view of the Appellate Division's opinion in *Kellam* the Committee recommends that specific mention of the court's discretionary power to order depositions should be made in Part VI of the *Rules*. The proposed amendments to *Rules* 6:4-3 and 6:4-4 follow.

Note, however, that some members are still concerned that these changes will unduly lengthen the amount of time these cases require and that the Committee will therefore separately consider the question of whether the time frames set forth in *R.* 4:19 should be shortened for the Special Civil Part. Note further that because of these same concerns the Committee will also consider eliminating personal injury actions from the Special Civil Part. The Committee will make its recommendations on these two subjects to the Supreme Court in a supplemental report that will be filed by March 1, 2006; *see* Sections V.A and B. of this Report, below.

6:4-3. Interrogatories; Admissions; Production

(a) ... no change

(b) Automobile Negligence and Personal Injury Actions. A party in an automobile negligence or personal injury action may propound interrogatories only by demanding, in the initial pleading, that the opposing party answer the appropriate standard set of interrogatories set forth in Forms A, A (1), A (2), C, C (1) through C (4), D, and E of Appendix II to these Rules, specifying to which set of interrogatories answers are demanded and to which questions, if less than all in the set. The demand shall be stated in the propounding party's initial pleading immediately following the signature. Interrogatories shall be served upon a party appearing pro se within 10 days after the date on which the pro se party's initial pleading is received. A party making claim for property damage or personal injuries and a party defending such claim shall serve answers within 30 days after service of the answer, except that a pro se party shall serve answers within 30 days after receipt of the interrogatories. The answers shall be set forth in a document duplicating the appropriate Form, containing the questions propounded, each followed immediately by the answer thereto. Additional interrogatories may be served and enlargements of time to answer may be granted only by court order upon motion on notice, made within the 30-day period, for good cause shown, and on such terms as the court directs.

(c) Physical and Mental Examinations in Personal Injury Actions. The provisions of *R.* 4:19 shall apply to personal injury actions in the Special Civil Part.

(d) [c] Request for Admissions. The provisions of *R.* 4:22 (admission of facts and genuineness of documents) shall apply to actions in the Special Civil Part.

(e) [d] Production; Inspection. The provisions of *R.* 4:18 (production of documents, inspection) shall apply to actions in the Special Civil Part.

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

Note: Source R.R. 7:6-4A (a) (b) (c), 7:6-4B, 7:6-4C. Caption amended and paragraph (c) adopted July 7, 1971 to be effective September 13, 1971; caption amended, paragraph (a) amended, and paragraph (d) adopted July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (e) adopted July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 22, 1983 to be effective September 12, 1983; paragraphs (a), (c), (d) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended, paragraph (b) adopted and former paragraphs (b), (c), (d) and (e) redesignated as (c), (d), (e) and (f) respectively, June 29, 1990 to be effective September 4, 1990; paragraph (b) amended August 31, 1990, to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) caption and text amended, and paragraph (f) amended July 12, 2002 to be effective September 3, 2002; former paragraph (b) deleted and paragraphs (c), (d), (e) and (f) redesignated as paragraphs (b), (c), (d) and (e), respectively, July 28, 2004, to be effective September 1, 2004; paragraph (c) amended, former paragraphs (c), (d) and (e) redesignated as paragraphs (d), (e) and (f), respectively, effective _____, 2006 to be effective _____, 2006.

6:4-4. Depositions

No depositions are permitted in Special Civil Part actions except by order of the court, granted for good cause shown and upon such terms as the court directs, on motion with notice to the other parties in the action. If a party or material witness in any action or proceeding resides outside this State, or is within this State but is physically incapacitated or about to leave the State, the person's deposition may be taken in accordance with *R.* 4:10 and 4:12 to 4:16, inclusive on leave of court granted with , or for good cause, without notice.

Note: Source – R.R. 7:6-5; amended July 13, 1994 to be effective September 1, 1994; amended _____, 2006 to be effective _____, 2006.

G. Proposed Amendment to *R.* 6:6-3(b) and Appendix XI-T – Certification by Pro Se Landlord

In 2003 the Committee of Special Civil Part Clerks/Managers (now called the Special Civil Part Management Committee) discussed the problem of corporate landlords appearing in court and attempting to file papers pro se. In one county, the clerk's office found that corporate landlords were procuring registration statements that do not list the landlord as a corporation when, in fact, it is. The clerks recommended that the rules be amended to require that a pro se landlord seeking the entry of a judgment for possession by default must certify in the affidavit of proof, or on the record, that the building is not owned by a corporation or limited liability company. This Committee studied a draft amendment to *R.* 6:6-3(b) that was intended to correct the problem, but decided to give the matter further consideration and planned to report to the Supreme Court in the 2004-2006 committee term.

The Committee endorses the additional language to the rule that was under consideration during the last term, with a minor change, and has concluded that the sample form for the landlord's certification in support of the request to enter judgment for possession by default should be amended to include the statement required by the proposed amendment to *R.* 6:6-3(b). The proposed amendments to *R.* 6:6-3(b) and Appendix XI-T follow.

6:6-3. Judgment by Default

(a) ... no change

(b) Entry by the Clerk; Judgment for Possession. In summary actions between landlord and tenant for the recovery of premises, judgment for possession may be entered by the clerk on affidavit if the defendant fails to appear, plead or otherwise defend, and is not a minor or mentally incapacitated person, except where the landlord acquired title from the tenant or has given the tenant an option to purchase the property. The affidavit must state the facts establishing the jurisdictional good cause for eviction required by the applicable statute and that the charges and fees claimed to be due as rent, other than the base rent, are permitted to be charged as rent by the lease and by applicable federal, state, and local law. If the landlord is not represented by an attorney, the affidavit must state that the landlord is not a corporation or other business entity precluded from appearing pro se by *R.* 6:10. If the landlord is represented by an attorney, that attorney must also submit a certification that the charges and fees claimed to be due as rent, other than the base rent, are permitted to be charged as rent by the lease and by applicable federal, state, and local law. If the basis for eviction requires service of a notice to quit, the landlord's affidavit must have a copy of all required notices attached, and the affidavit must state that the notices were served as required by law and that the facts alleged in the notices are true.

If the landlord fails to obtain or make written application for the entry of a judgment for possession within 30 days after the entry of default, such judgment shall not be entered thereafter except on application to the court and written notice to the tenant served at least 7 days prior thereto by simultaneously mailing same by both certified and ordinary mail or in the manner prescribed for service of process in landlord/tenant actions by *R.* 6:2 3(b); provided, however,

that the 30 day period may be extended by court order or written agreement executed by the parties subsequent to the entry of default and filed with the clerk.

(c) ... no change

(d) ... no change

(e) ... no change

Note: Source – R. R. 7:9-2(a) (b), 7:9-4. Paragraphs (a) and (d) amended June 29, 1973 to be effective September 10, 1973; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a), (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b), and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 18, 2001 to be effective November 1, 2001; paragraphs (a), (b), and (c) amended, and new paragraph (e) added July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended _____, 2006 to be effective _____, 2006.

APPENDIX XI-T — CERTIFICATION BY LANDLORD

YOU MUST COMPLETE THIS PART:
NAME OF LANDLORD OR ATTORNEY: _____
ADDRESS & PHONE#: _____
_____

Plaintiff, vs. Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION SPECIAL CIVIL PART COUNTY LANDLORD-TENANT DIVISION Docket No. LT- Civil Action **CERTIFICATION BY LANDLORD**

YOU SHOULD COMPLETE PART A, PART B, OR BOTH, IF BOTH APPLY, CROSS OUT ANY PARAGRAGHS THAT DO NOT APPLY. PART C APPLIES TO ALL CERTIFICATIONS:

A. [WHEN THE EVICTION IS BASED ON UNPAID RENT]
1. The tenant has failed to pay rent now due and owing in the amount of $_____ . That amount consists of basic rent of $_____, late charges of $_____, legal fees *relating to this action for eviction* of $_____, filing fees and costs of $_____, and other (specify) _____.
2. All of the items listed above are included in the lease agreement as rent.
3. All of those items are permitted by applicable federal, state and local laws (including rent control or rent leveling, if applicable) to be charged as rent for purposes of this action.

B. [WHEN THE EVICTION IS BASED ON OTHER GROUNDS]
1. Eviction is sought because _____
2. I have attached a copy of all notices that have been served on the defendant.
3. These notices were served on the tenant (check one or more) _____ by ordinary mail, _____ by certified mail, _____ personally, on the _____ day of _____.
4. All of the facts stated in the notices are true.

C. IN ALL CASES:
1. Check one: ____ I own the property in my own name or in the name of a general partnership of which I am a partner.
____ The property is owned by a corporation or other business entity.
2. I have complied with the registration requirements of N.J.S.A. 46:8-27 *et seq.*
3. The tenant did not transfer ownership to me and I have not given the tenant an option to buy the property.
4. The tenant is not in the military service of the United State nor any of its allies, nor is the premises used for dwelling purposes of the spouse, a child or other dependent of a person in the military service of the United States.

I, THE LANDLORD, CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILFULLY FALSE, I AM SUBJECT TO PUNISHMENT.

DATE: _____
(PRINT NAME BELOW) LANDLORD

[Note: Appendix XI-T adopted July 18, 2001 to be effective November 1, 2001; amended _____, 2006 to be effective _____, 2006.]

H. Proposed Amendment to Appendix XI-B – Tenancy Summons and Return of Service (R. 6:2-1)

The summons in tenancy actions is a mandatory form, but the complaint is not. The Committee considered the possibility of having a mandatory or suggested form for the complaint in the Appendices to the court rules, but decided not to because the complaint can vary from case to case depending on the facts and the statutory provision under which the plaintiff is proceeding. It was then suggested that the amount due and owing on the landlord/tenant summons be stricken inasmuch as complaints based on non-payment of rent normally include language that permits amendments and when the complaint has been amended, the amount shown as due on the summons is often confusing. The Committee recommends this change and the proposed amendment follows.

APPENDIX XI-B. TENANCY SUMMONS AND RETURN OF SERVICE (R. 6:2-1)

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

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

_____, **Plaintiff(s)**

versus

_____, **Defendant(s)**

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

Civil Action
SUMMONS
LANDLORD/TENANT

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

__Nonpayment [Back Rent Claimed: $_____]
__Other

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

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

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

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

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

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

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

Date:_____ _____

Clerk of the Special Civil Part

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

Docket Number: _____Date: _____Time: _____
W/M ___ WF ___ BM ___ BF__ OTHER _____ HT ____ WT _____ AGE ___ MUSTACHE ___ BEARD ___ GLASSES___ NAME: _____RELATIONSHIP: _____
Description of Premises_____
_____
I hereby certify the above to be true and accurate:_____
Court Officer

[Note: Former Appendix XI-B, consisting of model tenancy complaint and summons forms, deleted, and new tenancy summons and return of service form adopted July 12, 2002 to be effective September 3, 2002; amended _____, 2006 to be effective _____, 2006.]

I. Proposed Amendment to Appendix XI-G — Warrant of Removal

A judge informed the Committee that although the warrant of removal states that a lockout can occur between the hours of 8:30 a.m. and 4:30 p.m., many tenants interpret this to mean that they have until 4:30 to vacate the premises. He suggested that this uncertainty could be eliminated by changing the language in the warrant to state that the lockout may occur anytime after 8:30 a.m.

The statute, *N.J.S.A.* 2A:42-10.16, states that except for good cause shown, a warrant of possession can be executed only between 8:00 a.m. and 6:00 p.m. The Committee notes that court hours are from 8:30 a.m. to 4:30 p.m. and the tenant cannot get any relief when the court is closed, nor does the court officer have access to the court after 4:30 p.m. The Committee agreed on language stating that the warrant of removal can be executed at any time between the hours of 8:30 a.m. and 4:30 p.m. Appendix XI-G, with the proposed amendment, follows.

APPENDIX XI-G — WARRANT OF REMOVAL

Docket No.: _____

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

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

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

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

WARRANT OF REMOVAL

To: Name of Court Officer
(Court Officer)

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

To: Name of Defendant
(Tenant(s))

You are to remove all persons and property from the above premises within three days after receiving this warrant. Do not count Saturday, Sunday and holidays in calculating the three days. If you fail to move within three days, a court officer will thereafter remove all persons from the premises at any time between the hours of 8:30 a.m. and 4:30 p.m. Thereafter, your possessions may be removed by the landlord, subject to applicable law. The 3 day provision applicable to residential tenants does not apply to commercial property. Commercial tenants may be evicted at the time the warrant is served.

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

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

Date:_____

Witness:_____
(Judge)

_____
Name of Clerk, Clerk of the Special Civil Part

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

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

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

[Note: Adopted effective January 2, 1989; amended June 29, 1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; amended July 10, 1998 to be effective September 1, 1998; amended July 12, 2002 to be effective September 3, 2002; amended July 28, 2004 to be effective September 1, 2004; amended _____, 2006 to be effective _____, 2006.]

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Rejected Amendments to *Rules* 1:9-3, 1:14, 4:4-3(a) and 6:2-3(d)(2) – Registration of Process Servers By the Judiciary

The Committee considered a proposal submitted by the New Jersey Professional Process Servers Association for the registration and regulation of private process servers by the Judiciary. This would entail the amendment of *Rules* 1:9-3, 1:14, 4:4-3(a) and 6:2-3(d)(2). The amendment to *R.* 1:9-3 would have limited the service of subpoenas in all matters --- not just civil actions --- to persons authorized by *R.* 4:4-3(a) to serve process in the State of New Jersey. *Rule* 4:4-3(a) would be amended to permit service of process only by the sheriff, a person appointed by the court for that purpose or a "registered process server." The proposed amendment to *R.* 6:2-3(d)(2) would, in cases where initial service by mail was unsuccessful, permit reservice by mail, court officer or a registered process server. The framework for the entire proposal was set forth in a proposed Code of Conduct for Registered Process Servers that would have been included in the Appendices to the *Rules* by amendment to *R.* 1-14.

The Committee was advised that the Civil Practice Committee had also considered the proposal and opposed the idea of the Judiciary regulating a new category of individuals, concluding that the operation of free market forces within the current framework of the *Rules of Court* is sufficient. This Committee concurs and thus rejected the proposal.

B. Rejected Amendment to *R.* 6:3-1 — Extension by Consent of Time to Answer

The Committee considered a letter from an attorney proposing to change *R.* 6:3-1, which prohibits extensions of time for responsive pleadings by consent, so as to allow them, as in the Civil Part of the Law Division per *R.* 4:6-1(c). The Committee noted that this subject is currently governed by *R.* 6:6-2, which allows the clerk to automatically vacate a default within 30 days of its entry upon the filing, by a party against whom a default has been entered, of a written application endorsed with the adversary's consent. At the time this rule was recommended to the Supreme Court, the Special Civil Part Practice Committee felt that it was preferable to the alternative of permitting consensual extensions of time to answer. The Committee perceives that the clerk would have difficulty tracking the time period defined by the consent so that default can be entered upon its expiration if an answer is not filed. Moreover, there is a desire to avoid unnecessary delays in the life of each case. Accordingly, the Committee concluded that the proposed amendment should not be adopted.

C. Rejected Amendment to *R.* 6:4 — Permitting Offer of Judgment Practice in the Special Civil Part

An attorney proposed to amend the rules to permit offers of judgment in the Special Civil Part. He pointed out that the court in *Bandler v. Maurice*, 352 *N.J.Super.* 158, 165 (App. Div. 2002), held that the practice is not permitted in the Special Civil Part by the rules, but he asserts that its use will deter the "over litigation" of cases due to an obstinate party. A copy of the opinion is attached as an appendix to this Report. The Committee concluded, for the reasons expressed by the Appellate Division in *Bandler*, that the practice would be inappropriate in the Special Civil Part. For the reader's information, *R.* 4:58-1 reads as follows:

4:58-1. Time and Manner of Making and Accepting Offer

Except in a matrimonial action, any party may, at any time more than 20 days before the actual trial date, serve upon any adverse party, without prejudice, and file with the court, an offer to take judgment in the offerer's favor, or as the case may be, to allow judgment to be taken against the offerer, for a sum stated therein or for property or to the effect specified in the offer (including costs). If at any time on or prior to the 10th day before the actual trial date the offer is accepted, the offeree shall serve upon the offeror and file a notice of acceptance with the court. The making of a further offer shall constitute a withdrawal of all previous offers made by that party. An offer shall not, however, be deemed withdrawn upon the making of a counter-offer by an adverse party but shall remain open until accepted or withdrawn as is herein provided. If the offer is not accepted on or prior to the 10th day before the actual trial date or within 90 days of its service, whichever period first expires, it shall be deemed withdrawn and evidence thereof shall not be admissible except in a proceeding after the trial to fix costs, interest and attorney's fee. The fact that an offer is not accepted does not preclude a further offer within the time herein prescribed in the same or another amount or as specified therein.

D. Rejected Amendment to *R.* 6:4-2 — Pretrial Exchange of Information in Cases That Have Not Been Pretried

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.

E. Rejected Amendment to R. 6:6-2 — Vacating Defaults

An attorney proposed an amendment to an unspecified rule that would permit "... the submission of a consent order to vacate the automatic entry of default by the Clerk of the Court, without the need for a formal notice of motion provided the consent order has attached the answer and proper filing fee." Substantively this appears to be the same as the existing *R.* 6:6-2 and the Committee therefore concluded that no action should be taken.

F. Rejected Proposal for New Appendix – Form of Motion to Enforce Litigant's Rights When Answers to Information Subpoena or Supplemental Proceeding Questions Are Incomplete

A member of the Committee asked if there should be a specific form of motion to deal with litigants' rights where a judgment debtor has not fully answered an information subpoena or has not completely testified at a supplemental proceeding pursuant to an Order for Discovery. In other words, should there be a separate motion and certification to ask for relief because an attorney has not received fully responsive answers from the debtor. Often attorneys will find that answers to information subpoenas are received on the last day. The Committee concluded that this is not a frequent enough problem to warrant the creation of a separate set of forms. Attorneys can, when the answers are left blank or are otherwise insufficient, send a letter explaining what needs to be answered or answered more fully. Moreover, if a good faith effort to comply has been made, a civil arrest is not in order. If the letter does not succeed in producing the desired result, the attorney can always file a motion to compel complete answers to the questions.

III. OTHER RECOMMENDATIONS

A. Proposed Recommendation to Modify ACMS So As to Generate Notices to All Parties If a Special Civil Part Responsive Pleading Is Rejected For Filing Pursuant to *R.* 1:5-6(c)

A member of the Special Civil Part Practice Committee proposed to amend *R.* 1:5-6(c)(1) so as to require the clerk to send to the adversary a copy of the notice accompanying a paper returned pursuant to *R.* 1:5-6(c)(1)(D) for failure to contain the required signature if the paper is a responsive pleading. The purpose is to alert the adversary to the fact that a responsive pleading or paper is about to be filed so that unnecessary filings, such as an affidavit of proof, can thus be avoided.

The Committee was informed that mail is ordinarily opened by staff in the Finance Division in each county and it is they who send out the deficiency notices when a pleading is rejected for filing because it lacks the requisite signature or the proper filing fee. The Committee considered the difficulties involved in requiring the Finance Division to search ACMS (Automated Case Management System) for the names and addresses of the other parties, so that they can be put on envelopes for the purpose of sending copies of the deficiency notice, and concluded that the better approach is to modify ACMS so that it will generate copies of the notice to all parties when the deficient pleading is noted in the system. The Committee is aware of the fact that such a modification to ACMS will take several months to implement because no programming changes are being made while the AOC converts the mainframe computer's operating system.

IV. LEGISLATION — NONE

V. MATTERS HELD FOR CONSIDERATION

A. Proposed Amendment to *R.* 6:1-2(a) (1) – Exclusion of Personal Injury Actions from the Special Civil Part

As noted in Section I.F. of this Report, there is concern among some members of the Special Civil Part Practice Committee that expanding the use of form interrogatories, independent medical examinations and depositions in personal injury actions brought in the Special Civil Part, as proposed in that section to satisfy the requirements of the Appellate Division's opinion in *Kellam*, will result in significant delays in the disposition of these cases. As an alternative, the Committee is considering an amendment to *R.* 6:1-2(a) (1) that would exclude all personal injury actions from the Part. The Committee will report its disposition of this proposal in a Supplemental Report to the Supreme Court that will be filed on or before March 1, 2006.

B. Proposed Further Amendment to *R.* 6:4-3(c) — Time Limits for Independent Medical Examinations

Assuming that the Committee decides to recommend keeping personal injury actions involving $15,000 or less in the Special Civil Part, the Committee will consider the question of whether the 45-day time periods set forth in *R.* 4:19 should be modified for actions filed in the Part. The Committee's supplemental report, to be filed by March 1, 2006, will address this subject. See Sections I.F. and V.A. of this Report, above.

C. Proposed Amendments to *R.* 6:7-2 and Appendix XI-R — Bank Levies

The Committee and its Post-Judgment Subcommittee have devoted a considerable amount of time over the course of several meetings, two of them with members of the New Jersey State Bar Association's Banking Law Section and representatives of the banking industry in New Jersey, to the problems court officers, the courts, litigants and the banks are experiencing with the procedures for levying on bank accounts. The Committee expects to make comprehensive recommendations on the subject in its supplemental report to the Supreme Court, which will be filed by March1, 2006.

D. Proposed Amendment to Appendix XI-H — Execution Against Goods and Chattels

The Committee is considering alternative proposals for amending the writ of execution, set forth in Appendix XI-H to the *Rules*, that would either (1) exempt from the court officer's levy certain federal benefits that are exempt from executions by law where the bank account in question consisted entirely of such deposits, or (2) exempt from levy the lesser of $1,000 or the balance of the account if any of the funds in the account are from those federal benefit programs. The Committee will address this subject in its supplemental report to the Supreme Court, to be filed by March 1, 2006.

E. Proposed Amendment to *R.* 4: 42-11 — Calculation of Interest on Judgments Following Partial Payments

The Committee has been informed that the Supreme Court Committee on Civil Practice will be proposing an amendment to *R.* 4:42-11 requiring that the calculation of interest accumulated since entry of the judgment be displayed on the writ of execution. The Committee is studying the extent to which this amendment will impact on the Special Civil Part and whether the Part should be excluded from the amendment's coverage. The subject will be addressed in the Committee's March 1, 2006 supplemental report to the Supreme Court.

F. Proposed Uniform Interrogatories in Contract and Debt Collection Actions

During the last rules committee term this Committee, acting at the direction of the Supreme Court, attempted to formulate form interrogatories for use in all actions cognizable in the Special Civil Part. The Committee succeeded in making provision for a limited set of interrogatories in cases involving $3,000 or less, but was unsuccessful with regard to actions seeking more than that amount. The Committee is now considering draft interrogatories for use in debt collection and other contract actions and will make recommendations to the Supreme Court in its March 1, 2006 supplemental report.

G. Payment of Mileage Fees to Serve Turnover Orders

The Committee is considering the question of whether court officers should be paid mileage fees for serving "turnover orders" that have been signed by the court following levy on a bank account. The Committee expects to resolve this issue in the context of its broader recommendations for streamlining bank levy procedures and will thus address it in the March 1, 2006 supplemental report.

IV. 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. James P. Courtney, Jr., J.S.C., Chair
Hon. F. Patrick McManimon, J.S.C., Vice-Chair

Gregory S. Baxter, Esq.
Mary Braunschweiger
Felipe Chavana, Esq.
Penelope E. Codrington, Esq.
Tara P. D'Amato, Esq.
Gregory G. Diebold, Esq.
Richard S. Eichenbaum, Esq.
Hon. Mahlon L. Fast, J.S.C.
Joanne Feldman
Eric H. Fields, Court Officer
John H. Fitzgerald, Esq.
Lloyd Garner, Esq.
Hon. Francis W. Gasiorowski, J.S.C.
Karimu F. Hill-Harvey, J.M.C.
Kennon Jenkins, Court Officer
Professor Denis F. McLaughlin
David McMillin
Hon. Joseph P. Perfilio, J.S.C.
Anthony F. Picheca, Jr., Esq.
Sheldon H. Pressler, Esq.
Arthur J. Raimon, Esq.
Hon. Joseph R. Rosa, Jr., J.S.C.
Hon. Ramona A. Santiago, J.S.C.
Rosalie C. Scheckel, Esq.
Stephen E. Smith, Esq.
William A. Thompson, III, Esq.
Charles B. Turner, Esq.

Robert J. Piscopo, AOC Staff
Robert D. Pitt, Esq., AOC Staff

APPENDIX - *Bandler v. Maurice*, 352 *N.J. Super.* 158 (App. Div. 2002)

352 N.J. Super. 158, *; 799 A.2d 696, **;
2002 N.J. Super. LEXIS 295, ***

DOREE BANDLER, Plaintiff-Appellant, v. DAWN MAURICE, Defendant-Respondent.

A-4744-00T1

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

352 N.J. Super. 158; 799 A.2d 696; 2002 N.J. Super. LEXIS 295

May 21, 2002, Argued
June 21, 2002, Decided

SUBSEQUENT HISTORY: [*1]** Approved for Publication June 21, 2002.

PRIOR HISTORY: On appeal from Superior Court of New Jersey, Law Division-Special Civil Part, Middlesex County, Docket No. DC-7069-00.

DISPOSITION: Affirmed in part, reversed in part, and remanded.

COUNSEL: Doree Bandler, appellant argued the cause Pro se.

Thomas M. Egan argued the cause for respondent (Egan & Novak attorneys, Mr. Egan on the brief).

JUDGES: Before Judges Pressler, Parrillo, and Payne. The opinion of the court was delivered by PAYNE, J. S.C. (temporarily assigned).

OPINIONBY: PAYNE

OPINION: [*160] [698]** The opinion of the court was delivered by

PAYNE, J. S.C. (temporarily assigned)

Plaintiff Doree Bandler and her housemate, both college students, leased a condominium unit from the defendant owner, Dawn Maurice, for a one-year term commencing on September 1, 1999. The lease provided a "1st right to lease renewal."

From the outset, certain problems with the condominium unit allegedly existed, consisting of the owner's failure to paint, adequately fumigate, **[***2]** clean the fireplace, change the locks, and fix the dryer. Notice of the problems was given to the owner. However, a timely cure was not effected, and some problems were not addressed at all. To make matters worse from a tenants' perspective, in February and again in May 2000, Maurice notified Bandler and her housemate that their lease would not be renewed because the unit was under contract for sale, and they were advised to quit the premises on August 31, 2000.

[*161]

What followed is a tangled tale fraught with error. In July 2000, Bandler, acting *pro se*, filed suit against Maurice in the Special Civil Part seeking damages for "diminution of the value of [her] tenancy" stemming from the unresolved problems with the unit as well as its sale "without regard to [her] rights as a tenant." Maurice responded by filing a counterclaim seeking back rent and a separate summary eviction action for nonpayment of rent, claiming that she had not agreed to the request of Bandler and her housemate that their security deposit be used to fulfill their final rental obligations. On August 23, 2000, Bandler's father and Maurice's lawyer agreed that Bandler would leave the unit on August 31, but that **[***3]** Bandler would "retain any rights to a continued tenancy she might already have and then to pursue that and any other claims she might have through the Courts." As consideration for the agreement, the eviction action and counterclaim were allegedly to be dismissed. In fact, dismissal of the eviction action took place. Dismissal of the counterclaim did not occur. However, Maurice's attorney acknowledged in subsequent proceedings that, since the security deposit had in fact been utilized in lieu of rent, only $ 58 remained owing. Defendant has not sought to preserve her claim to this amount, and has treated the eventual dismissal of plaintiff's action as though it disposed of all issues.

The dismissal of plaintiff's action, which occurred following multiple further proceedings, resulted from several errors on the part of the trial judge. In a hearing conducted in November 2000, the judge construed the complaints about the condition of the condominium unit that plaintiff asserted directly in Count One of her contract action as if they had been offered as a defense to a claim of nonpayment of rent in a summary eviction action, based on a breach of the landlord's warranty of habitability **[***4]** under *Marini v. Ireland*, 56 N.J. 130, 265 A.2d 526 (1970). As a consequence, the trial court severed that count and referred it to another judge for a *Marini* hearing. In characterizing plaintiff's affirmative claims for diminution of the value of her tenancy as

[*162] *Marini* claims, the trial judge erred. Plaintiff sought damages for breach of contract; she was not defending on habitability grounds against an eviction action premised on nonpayment of rent. In the context presented, the principles of *Marini*, established to safeguard a tenant from eviction when rent is withheld to ensure habitability, were inapplicable. Thus, this count of plaintiff's contract suit should not have been severed or tried as a non-jury matter, contrary to plaintiff's demand. In this case, the court's error was fatal to plaintiff's cause, since the *Marini* judge held (not without reason) that none of the **[**699]** defects claimed by plaintiff rendered her unit uninhabitable, and he therefore dismissed that portion of plaintiff's action to which he had been erroneously assigned. *See Academy Spires, Inc. v. Brown*, 111 N.J. Super. 477, 482-83, 268 A.2d 556 (Dist. Ct. 1970). That **[***5]** determination is therefore reversed, and Count One is remanded for trial as an integral element of plaintiff's contract action. *Sommer v. Kridel*, 74 N.J. 446, 454-57, 378 A.2d 767 (1977).

In the meantime, plaintiff had amended her complaint to seek damages for wrongful termination of the tenancy and denial of the right to exercise the lease's renewal option (Count Two); enforcement of the August agreement between plaintiff's father and Maurice, which plaintiff claimed relieved her of her obligation to pay rent for the last six weeks of the lease term and required return of her security deposit (Count Three); and damages consisting of the difference between the fair market value of the premises when delivered vacant and its value if encumbered by the lease that plaintiff claimed to have been wrongfully terminated (Count Four). Each of those counts was dismissed by the trial judge, who granted summary judgment in favor of defendant Maurice. In doing so, the court found the Anti-Eviction Act (AEA), N.J.S.A. 2A:18-61.1 to -61.12, upon which plaintiff placed reliance, to be inapplicable to the lease and sale of a single condominium unit, and **[***6]** it therefore rejected as a matter of law plaintiff's claim of damages resulting from defendant's alleged breach of that Act. Instead, the court focused on the option provision of the lease, ruling correctly in defendant's favor in that

[*163] regard on the ground that any rights conveyed by the option were cut off by the sale of the property and by plaintiff's failure to give 60-days' notice of her intention to exercise the option. The court did not address Count Three of the complaint, nor did he discuss Count Four.

No legal basis for Count Four has been suggested in this appeal, and we see none. Summary judgment on that Count is therefore affirmed, despite the short shrift accorded to it below. We reverse and remand as to the remainder, finding legal error in the court's failure to recognize the applicability of the AEA to plaintiff's claims in Count Two (*see, e.g., Vander Sterre Bros. v. Keating*, 284 N.J. Super. 433, 665 A.2d 779 (App. Div. 1995)) and unresolved issues of fact that preclude summary judgment on the unaddressed Count Three.

We address plaintiff's claims under the AEA in greater detail. N.J.S.A. 2A:18-61.1(*l*)(2) **[***7]** permits the Superior Court, on 60-days' notice, to remove for cause any condominium tenant upon proof that the owner of three or less condominium units "has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing." Under N.J.S.A. 2A:18-61.1(*l*)(1), a provision applicable to owners of more than three condominium units, the right to removal upon sale to an occupant-purchaser exists only if the tenant was given, at the inception of the tenancy, a prescribed statement of tenant's rights that is set forth in N.J.S.A. 2A:18- 61.9. Failure to provide this notice deprives the court of jurisdiction over an eviction action and extends the mandated notice from the sixty-day period applicable to post-conversion tenants to the three-year period applicable to pre-conversion tenants. *Vander Sterre Bros., supra*, 284 N.J. Super. at 433.

In a decision rendered after defendant's motion for summary judgment was heard, we distinguished the notice requirements imposed upon owners of more than three condominium units under N.J.S.A. 2A:18-61.1(*l*)(1) **[***8]** **[**700]** from the requirements imposed upon owners of less than three units under subsection (2), and we

[*164] held that the formal notice set forth in N.J.S.A. 2A:18-61.9 was required only of owners of more than three units. *224 Jefferson Condo Ass'n v. Paige, 346 N.J. Super. 379, 390, 788 A.2d 296 (App. Div.), certif. denied,*, N.J., (2002). The less stringent standards for eviction applicable to owners of three units or less, we held, were justified by the substantial differences between such owners and owners of a larger development. *Id.* at 386-87. We found that penalties for statutory violation applied equally to both classes of owners. *Id.*

We are uncertain whether the notice provided by defendant pursuant to N.J.S.A. 2A:18-61.1(*l*)(2) was statutorily adequate under the standards discussed in *224 Jefferson*, since no evidence was presented below to establish that defendant had entered into a contract of sale at the time notice was provided n1 or that defendant's buyer intended to occupy the unit. We therefore remand to permit the parties to present any proofs they may have **[***9]** on these issues, legal arguments related to those proofs, and any legally supportable damage claims. In this regard, we note the availability of treble damages and attorney's fees to tenants whose tenancy has been terminated in violation of the AEA. See N.J.S.A. 2A:18-61.6.

n1 A prophylactic notice of an intent to sometime sell would be statutorily inadequate.

We conclude by addressing one final error by the trial court, included in plaintiff's amended notice of appeal. After plaintiff had filed her initial appeal from the orders of dismissal entered against her, the trial judge granted a motion by defendant to modify the judgment of dismissal of Counts Two through Four to grant defendant $ 5,129.52 in attorney's fees as the result of plaintiff's failure to accept an offer of judgment that had been made pursuant to R. 4:58-1 earlier in the case. The trial judge lacked jurisdiction to enter this order at a time when plaintiff's appeal was pending. R. 2:9-1; *Manalapan Realty v. Township Committee*, 140 N.J. 366, 376, 658 A.2d 1230 (1995); **[***10]** *Sturdivant v. General Brass & Machine Corp.*, 115 N.J. Super. 224, 227, 279

[*165] A.2d 110 (App. Div.), certif. denied 59 N.J. 363, 283 A.2d 107 (1971). Further, the order had no legal foundation, since plaintiff was not awarded anything on her unliquidated damage claim, let alone an amount within the monetary range required by R. 4:58-3 as a basis for an imposition of attorney's fees; a range that "was evidently intended to protect a plaintiff from the penalizing consequences of the rule where she prosecutes the action in good faith, an offer is made by the defendant in a nominal amount, and a no-cause verdict is returned." Pressler, *Current N.J. Court Rules*, comment on R. 4:58.

Of greater importance, we hold the offer of judgment rule to be inapplicable to claims in the Special Civil Part. In this regard, we note that no provision of the Special Civil Part Rules authorizes the use of that device by adoption. However, we do not base our determination on that ground alone, preferring instead a less mechanistic approach that focuses on an analysis of the effect of this particular rule upon special civil practice.

In *Lettenmaier v. Lube Connection, Inc.*, our Supreme **[***11]** Court held that an award of statutorily-authorized attorney's fees under the Consumer Fraud Act should be excluded from a calculation of the jurisdictional limit of the Special Civil Part, since if it were included, actions otherwise cognizable in that Part would have **[**701]** to be filed in the Superior Court. Lettenmaier v. Lube Connection, Inc., 162 N.J. 134, 741 A.2d 591, 143 (1999). The Court's rationale, was that such a state of affairs would confound the purposes behind the Special Civil Part Rules, which are designed to provide "a streamlined structure and practice for the inexpensive and expeditious disposition of the many relatively minor . . . cases which make up the vast bulk of litigation in this state." *Andriola v. Galloping Hill Shopping Center*, 93 N.J. Super. 196, 200, 225 A.2d 377 (App. Div. 1966). The rules governing the Special Civil Part limit the costs of instituting and trying actions, abbreviate time periods, and restrict discovery. . . . Those devices control costs and promote the expeditions disposition of actions. *Andriola, supra*, 93 N.J. Super. at 201. They are perfect vehicles for litigation of actions that do not involve large sums of money.

[*Lettenmaier, supra, 162 N.J. at 143-44.*] **[***12]**

Importation of the offer of judgment rule into special civil practice would defeat the purpose of the Special Civil Part and its rules, as expressed in *Lettenmaier*, by creating, within the procedures

[*166] of a court designed to afford prompt and effective relief to persons appearing, in the main, without legal representation, a costly trap for those unfamiliar with the potential consequences of nonacceptance of a reasonable judgment offer. We note that the offer of judgment rule has, as its salutary purpose, the encouragement of early settlement of both liquidated and unliquidated claims. However, because of the streamlined procedures that exist in the Special Civil Part and the expeditious disposition of actions filed there, the objective of "early" settlement, so significant in Law Division actions, has little relevance in this context. Moreover, as a result of the dangers we perceive as existing if the offer of judgment rule is utilized in an unlawyered setting, we regard the goal of pretrial resolution to be better effected in the Special Civil Part by the employment of other available mediation and settlement devices.

The grant of summary judgment in defendant's **[***13]** favor on Count Four of plaintiff's complaint is affirmed. The courts' dismissals of Counts One, Two and Three are reversed, and the matter is remanded to the Special Civil Part for further proceedings consistent with this opinion.