2008 REPORT

OF THE SUPREME COURT COMMITTEE

ON SPECIAL CIVIL PART PRACTICE

JANUARY 15, 2008

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to Rules 4:59-1(a) and 6:1-1(e) and (g) – Special Civil Part Officers Not to Execute Civil Part Writs Except Upon Court Order; Mandatory Forms

The Administrative Office of the Courts (AOC) and the Committee have been advised that some attorneys are directing writs of execution issued out of the Civil Part of the Superior Court, Law Division to Special Civil Part Officers. The Civil Practice Division of the AOC has taken the position that this can only happen when specifically ordered by a judge, as provided in *R.* 4:59-1(a), and that when such an order is entered it should address the question of the Court Officer's fees.

The reasoning behind this conclusion begins with the relevant legislative provisions. The Legislature contemplates that writs issued by the Civil Part are to be served by the sheriff and that writs issued by the Special Civil Part are to be served by Special Civil Part Officers, unless none are available, in which case they are to be served by the sheriff. *See*, *N.J.S.A.* 2B:6-3.

The Court Rules are more specific in allocating responsibility for serving writs issued by the Civil and the Special Civil Parts of the Law Division. An introductory provision to Part VI of the Court Rules, which pertain to the Special Civil Part, provides in *R.* 6:1-1(e) that "Officers of the Special Civil Part shall serve process in accordance with *R.* 6:2-3 and enforce judgments in accordance with *R.* 6:7." By way of contrast, *R.* 4:59-1(a), which pertains to writs issued by the Civil Part of the Law Division, provides that "Unless the court otherwise orders, every writ of execution shall be directed to a sheriff ..." Further, Appendices XII-D and XII-E to the rules, which are Civil Part forms for the writ of execution and writ of wage execution, respectively, are directed to the sheriff of a particular county.

Writs and court orders are, of course, two different things. A writ can be issued by either the court or the clerk, pursuant to *Rules* 1:6-8 and 4:59-1(a), but an order can only be issued by a judge. In the case of a wage execution, the writ is issued by the clerk pursuant to a court order that, according to *N.J.S.A.* 2A:17-50, must be signed by the judge. In Special Civil Part wage executions the order and writ have been combined into one document that is signed by both the judge and clerk. *See* Appendix XI-J.

Beyond this it should be noted that Administrative Directive #02-07, which governs the Judiciary's relationship with the Special Civil Part Officers and describes them as those individuals who serve the initial and post-judgment process issued by that court, states in paragraph V. that "Special Civil Part Officers ... shall not hold any position or employment in private business or engage in other gainful pursuit except as permitted by the Civil Presiding Judge in writing."

In short, the scheme of the relevant statutory provisions, court rules and administrative directives is understood by all who engage in civil practice and work in the courts as allocating responsibility for executing Civil Part writs to the sheriff, or, in exceptional circumstances, to some individual specifically appointed for that purpose by order of the court. If that individual happens to be a Special Civil Part Officer, the order must address the matter of the Officer's fees because no one involved in formulating this structure envisioned Special Civil Part Officers taking their statutory 10% percent of million dollar judgments pursuant to *N.J.S.A.* 22A:2-37.2.

The Committee of Special Civil Part Supervising Judges and the Conference of Civil Presiding Judges concur in the AOC's view, but have recommended that it be emphasized by amending the rules to specifically address the assignment of Civil Part writs to Special Civil Part Officers and to require that any such order must come from the Civil Presiding Judge, in keeping

with the Administrative Directive. This Committee agrees and accordingly proposes the amendments to *Rules* 4:59-1(a) and 6:1-1(e) set forth below.

In an unrelated matter, the Committee recommends a housekeeping amendment to paragraph (g) of *R.* 6:1-1. For some years *R.* 6:1-1(g) has stated that the use of the forms for summonses contained in the Appendices to the court rules is mandatory, but that the others are model forms only, even though *Rules* 6:7-2(b) through (g) specify several forms as being mandatory. This can be corrected by changing *R.* 6:1-1(g) and an appropriate amendment is therefore included with the amendment to *R.* 6:1-1(e), described above. The amendments to *R.* 4:59-1(a) and paragraphs (e) and (g) of *R.* 6:1-1 follow.

4:59-1. Execution

(a) In General. Process to enforce a judgment or order for the payment of money and process to collect costs allowed by a judgment or order, shall be a writ of execution, except if the court otherwise orders or if in the case of a capias ad satisfaciendum the law otherwise provides. The amount of the debt, damages and costs actually due and to be raised by the writ, together with interest from the date of the judgment, shall be endorsed thereon by the party at whose instance it shall be issued before its delivery to the sheriff or other officer. The endorsement shall explain in detail the method by which interest has been calculated, taking into account all partial payments made by the defendant. A copy of the fully endorsed writ shall be served, personally or by ordinary mail, upon the judgment-debtor after a levy on the debtor's property has been made by the sheriff or other officer and in no case less than 10 days prior to turnover of the debtor's property to the creditor pursuant to the writ. Unless the court otherwise orders, every writ of execution shall be directed to a sheriff and shall be returnable within 24 months after the date of its issuance, except that in case of a sale, the sheriff shall make return of the writ and pay to the clerk any remaining surplus within 30 days after the sale, and except that a capias ad satisfaciendum shall be returnable not less than eight and not more than 15 days after the date it is issued. A writ of execution issued by the Civil Part of the Law Division shall not be directed to a Special Civil Part Officer except by order of the Civil Presiding Judge and such order shall specify the amount of the Officer's fee. One writ of execution may issue upon one or more judgments or orders in the same cause. The writ may be issued either by the court or the clerk thereof.

(b) ...no change

(c) ...no change

(d) ...no change

(e) ...no change

(f) ...no change

(g) ...no change

(h) ...no change

Note: Source – *R.R.* 4:74-1, 4:74-2, 4:74-3, 4:74-4. Paragraph (c) amended November 17, 1970 effective immediately; paragraph (d) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended, new paragraph (b) adopted and former paragraphs (b), (c), (d), and (e) redesignated (c), (d), (e) and (f) respectively, July 24, 1978 to be effective September 11, 1978; paragraph (b) amended July 21, 1980 to be effective September 8, 1980; paragraphs (a) and (b) amended July 15, 1982 to be effective September 13, 1982; paragraph (d) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended and paragraph (g) adopted November 1, 1985 to be effective January 2, 1986; paragraph (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (e) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (c), (e), (f), and (g) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended June 28, 1996 to be effective June 28, 1996; paragraph (d) amended June 28, 1996 to be effective September 1, 1996; paragraph (e) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (e), and (g) amended July 5, 2000 to be effective September 5, 2000; paragraph (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a) and (d) amended, and new paragraph (h) adopted July 27, 2006 to be effective September 1, 2006; paragraph (a) amended _____, 2008 to be effective _____, 2008.

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) Service of Process and Enforcement of Judgments. Officers of the Special Civil Part shall serve process in accordance with *R.* 6:2-3 and enforce judgments in accordance with *R.* 6:7. A writ of execution issued by the Civil Part of the Law Division shall not be directed to a Special Civil Part Officer except by order of the Civil Presiding Judge and such order shall specify the amount of the Officer's fee.

(f) …no change

(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) 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 Special Civil Part.

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 _____, 2008 to be effective _____, 2008.

B. Proposed Amendments to Rules and Appendices to Implement the Supreme Court's Opinion in *Hodges v. Sasil Corp.*

On January 31, 2007, the New Jersey Supreme Court issued its opinion in the case of *Hodges v. Sasil Corp.*, 189 *N.J.* 210 (2007). The Court held that lawyers who file summary dispossess actions against tenants on a regular basis for failure to pay rent are debt collectors and must comply with the requirements of the federal Fair Debt Collection Practices Act (FDCPA). The Court directed the Special Civil Part Practice Committee to recommend rule changes to implement the opinion and provided interim instructions to guide courts and litigants. Those interim instructions require that all complaints in summary dispossess actions based on non-payment of rent must be verified in accordance with *R.* 1:4-7, must expressly state the creditor's identity, the amount of rent owed and that the amount must be paid to the landlord or the clerk before 4:30 p.m. on the day of trial for the case to be dismissed. The Court also said that the amount of rent owed for purposes of the dispossess action can include only the amount that the tenant is required to pay by federal law or, when federal law does not apply, by the lease executed by the parties or any applicable local rent control ordinance. Thus, Section 8 tenants cannot be required to pay late fees or attorney fees to get the case dismissed.

As a starting point the Committee considered a memorandum containing procedures and three forms for the implementation of *Hodges* that were sent by the AOC's Civil Practice Division to the Special Civil Part Supervising Judges and Assistant Civil Division Managers/Special Civil. These were prepared with input from judges (the Committee of Special Civil Part Supervising Judges) and managers (the Special Civil Part Management Committee, which is composed of the Special Civil Part Clerks) and were intended to guide judges, managers and litigants on an interim basis until such time as the Supreme Court approves rule changes

recommended by this Committee to implement the opinion. The forms included a notice for posting in the Special Civil Part Clerk's Office regarding the new procedures required by the Supreme Court, a model verified complaint for use by practitioners and pro se litigants and a model deficiency notice to be used in notifying plaintiffs when the complaint they have submitted does not comply with the requirements of *Hodges*. The documentation containing the procedures and forms currently in use are set forth in Appendix A to this Report. The Committee also considered an extensive set of materials on this and related subjects submitted by the Hon. Mahlon Fast, J.S.C. (Ret., t/a on recall) who is a member of the Committee and noted expert on landlord-tenant law in the State of New Jersey.

1. Proposed Amendment to *R.* 6:3-4 – Summary Actions Between Landlord and Tenant

The Committee proposes to take the current single paragraph of *R.* 6:3-4 and divide it into two parts as paragraphs (a) and (b), dealing with non-joinder of tenancy actions and title issues, respectively, and then add new paragraphs (c) and (d) to address the *Hodges* requirement of a verified complaint for tenancy actions based on nonpayment of rent and to require, for the first time, that all notices upon which the landlord intends to rely be attached to the complaint.

The first sentence of the proposed new paragraph (c) makes it clear that the *Hodges* requirements apply only to residential tenancies involving nonpayment of rent. It also makes clear that the *Hodges* requirements apply uniformly to all litigants, including attorneys and self-represented landlords, regardless of their status as "debt collectors." The Committee believes that it would be impractical to require a determination in a tenancy action that a particular attorney or landlord is or is not a "debt collector" within the meaning of the FDCPA. Moreover, whether or not the plaintiff is a debt collector, the ultimate goal is, as the Court stated, "preventing the victimization of unsophisticated tenants by deceptive ... [practices] seeking payment of amounts exceeding the statutory minimums to halt evictions." *Hodges*, *Supra* at 231, matter in brackets added.

The basic elements specified in the proposed paragraph (c), as items that must be included in the verified complaint, come from the Court's interim instructions for the implementation of the opinion. In summary, they include the landlord's identity, the amount of rent owed and the information that if this amount is paid by 4:30 on the day of trial the action will be dismissed. The paragraph limits the amount of rent that can be claimed for purposes of the eviction action to what is permitted by federal, state and local law and the lease. This means,

for example, that late fees and attorney fees cannot be included when the defendant is a public housing or Section 8 tenant.

The proposed paragraph (c) defines the amount that must be paid to get the case dismissed as the amount of rent owed as of the date of the complaint and any other rent that comes due on or before the trial date. This is intended to cover those situations in which additional rent becomes due subsequent to the filing of the complaint, but on or prior to the trial date. This presented the most difficult issue dealt with by the Committee of Special Civil Part Supervising Judges in working out the interim procedures and it was the most difficult issue discussed by this Committee. It involves balancing the Court's mandate in *Hodges* to exclude future rents with the need for judicial economy by avoiding successive tenancy actions between the same litigants. The Committee believes, for the reasons discussed in section I.B.2. of this Report, below, that it has struck the appropriate balance.

The purpose of the new paragraph (d) in the proposed amendments to *R.* 6:3-4 is to require that copies of all notices served by the landlord, primarily in actions that are not based on an alleged failure to pay rent, be attached to the complaint. While this paragraph deals primarily with actions alleging breach of other lease provisions or the landlord's rules (so-called "holdover" actions), the Committee believes that this is consistent with the spirit of *Hodges* in that it will ensure that the tenant is apprised at the outset of the proceeding as to what allegations have to be met to contest the action. The Committee notes that such a notice is also required by regulation in non-payment situations involving privately owned federally subsidized housing and so the proposed paragraph (d) applies to all summary dispossess cases, not just holdover actions.

Finally, the Committee recommends that the title of the rule should be changed from "Summary Actions Between Landlord and Tenant" to "Summary Actions for Possession of

Premises." This is because the rule was changed in 2006 to permit the plaintiff in a summary dispossess action to name as parties-defendant individuals who may be living in the premises with a tenant but with whom there is no landlord-tenant relationship. The proposed amendments to *R.* 6:3-4 follow on the next page.

6:3-4. Summary Actions For Possession of Premises **[**Between Landlord and Tenant**]**

(a) No Joinder of Actions. 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 defendants are separately identified by name or as otherwise permitted by *R*. 4:26-5(c) or (d) and *R*. 4:26-5(e), and (2) each party's interests are separately stated in the complaint.

(b) Acquisition of Title From Tenant; Option to Purchase. When the landlord acquired title from the tenant or has given the tenant an option to purchase the property, the complaint shall recite those facts.

(c) Form of Complaint in Non-Payment Cases. Complaints in summary actions for possession of residential premises based on non-payment of rent must be verified in accordance with *R*. 1:4-7, must expressly state the owner's identity, the relationship of the plaintiff to the owner, the amount of rent owed as of the date of the complaint and that if this amount and any other rent that comes due is paid to the landlord or the clerk at any time before the trial date, or before 4:30 p.m. on the day of trial, the case will be dismissed. The amount of rent owed for purposes of the dispossess action can include only the amount that the tenant is required to pay by federal, state or local law and the lease executed by the parties. The complaint shall be substantially in the form set forth in the model verified complaint contained in Appendix XI-X to these Rules.

(d) Notices. Complaints in all tenancy actions shall have attached thereto copies of all notices upon which the plaintiff intends to rely.

Note: Source – *R.R.* 7:5-12. Caption and text amended July 14, 1992 to be effective September 1, 1992; amended July 27, 2006 to be effective September 1, 2006; separated into paragraphs (a) and (b), paragraphs (c) and (d) added and title amended , 2008 to be effective , 2008.

2. Proposed Appendix XI-X. Verified Complaint – Nonpayment of Rent (New)

As noted above, the Supreme Court's interim instructions required the use of a verified complaint in tenancy actions based on nonpayment of rent and mandated that the verified complaint must expressly state the creditor/ landlord's identity, the amount of rent owed and that the amount must be paid to the landlord or the clerk before 4:30 p.m. on the day of trial for the case to be dismissed. As also noted above, the Court said that the amount of rent owed for purposes of the dispossess action can include only the amount that the tenant is required to pay by federal law or, when federal law does not apply, by the lease executed by the parties or any applicable local rent control ordinance.

With these instructions in mind, the Committee began with the text of the model verified complaint used by the AOC for the interim implementation of *Hodges*, reorganized some of its provisions, fine tuned and expanded others and borrowed from the proposed verified complaint form submitted by Judge Fast. As such, the new form will not look startlingly different from the form currently in use, but it will provide greater clarity for both the plaintiff and the defendant in tenancy actions based on nonpayment of rent. The new form, like the old one, is not intended to be one whose use is mandated, but rather to serve as a model for what must be contained in a verified tenancy complaint.

The verified complaint form proposed by the Committee is, like the one currently being used, divided into four sections. The first section, including paragraphs 1 through 9, elicits information that applies in all cases, whether eviction is sought for nonpayment of rent or other reasons. It covers such things as the identity of the owner of record, the relationship of the plaintiff to the owner of record, whether the landlord acquired title from the tenant or has given

the tenant an option to purchase, the length of the rental term, the amount of rent and how it is paid, whether the tenancy is subsidized by a federal or state program or is public housing and the registration of the property as required by *N.J.S.A.* 46:8-27.

The second section of the proposed form for the verified complaint, consisting of paragraphs 10 A, B and C, covers the allegations that relate to the failure to pay rent, a breakdown of the amount alleged to be owed, and the total amount that must be paid in order for the tenant to have the action dismissed. The breakdown set forth in paragraph 10A includes a specification of the base rent and late charges for each month alleged to be in default, the attorney fees sought, the amount of court costs and the total amount alleged to be due and owing. The categories of "late charge," "attorney fees" and "other" have asterisks that correlate to the statement "If permitted by federal, state and local law and the lease." This is designed, in conjunction with information required in the first section regarding subsidized and public housing, to preclude the inclusion of these items in the calculation of the amount that must be paid to have the action dismissed.

Paragraph 10B states that if the case is not scheduled for trial before the next rent is due, and the total amount set forth in paragraph 10A has not been paid, the total amount of rent due includes the rent for that subsequent month. The tenant will have no difficulty understanding this because the trial date is specified by the Clerk in the summons that is served with the complaint.

Paragraph 10C states that if the tenant pays the amount in paragraph 10A on or before the trial date and that trial date is before the next rent becomes due, the case will be dismissed. Paragraph 10C goes on to state that if the trial date is not before the next month's rent becomes due and the amount on paragraph 10A has not been paid before the date the next month's rent is

due, the case will be dismissed if the amount in paragraph 10B is paid on or before the trial date. Paragraph 10C goes further and states explicitly that the amounts set forth in paragraphs 10A and B cannot include late fees or attorney fees for Section 8 and public housing tenants. Paragraph 10C also states that payment can be made to the landlord or the clerk at any time before the trial date, but that on the trial date payment must be made by 4:30 p.m. to get the case dismissed.

As phrased, paragraphs 10A, B and C of the model verified complaint proposed by the Committee let the tenant know exactly how much is due on any given day to get the action dismissed, which the Committee believes was the Court's goal in *Hodges*. In its guidance to the Committee, the Court said that the clarity sought "will provide tenants with a comprehensive understanding of the debts they owe and will permit them to make informed decisions as they seek to fulfill payment obligations and utilize the FDCPA's protections." *Hodges* at 232.

As noted in section I.B.1. of this Report, the Committee's task was a difficult one because it required a balancing of the Court's admonition not to include "future rents" in the verified complaint while following the Court's guidance to consider "salient factors, including the impact on summary dispossess litigants, judicial economy and other policy considerations in developing recommendations for this Court." *Ibid.* The Committee concluded that there is a real risk of doubling the number of landlord-tenant actions filed in this state if the landlord is precluded from seeking to include rent that becomes due after the filing of the complaint but before the trial date, because tenancy actions are generally not scheduled for trial within one month of the filing of the complaint. To protect themselves, the Committee believes that landlords would file at least a second action against the same tenant. This would mean increasing the current volume from approximately 180,000 tenancy cases per year to 360,000. Even though the cases involving the same litigants can be consolidated for purposes of trial, the

damage will have been done because (1) court staff would have to input the data into the Automated Case Management System (ACMS) twice as many times, and (2) this duplication of data entry, combined with the creation of twice as many trial calendars will inevitably result in substantial delays in the resolution of these cases.

The Committee's proposed solution in paragraphs 10A, B and C, for balancing the concerns raised by the Court, analogizes tenancy actions that span two or more rental periods with continuing causes of action in which the damages can be calculated with precision. When this calculation has been included in the complaint, the defendant in a tenancy action knows at the outset exactly what has to be done to get the case dismissed.

The third section of the proposed form for the verified complaint covers those situations in which the landlord alleges additional causes of action for eviction, such as failure to comply with lease provisions other than the requirement to pay rent. The Committee noted earlier in this Report that *Hodges* does not apply to those other causes of action, but rather than having the landlord file a separate unverified complaint, judicial economy dictates that they be included in one complaint together with the count based on nonpayment of rent.

The fourth section of the proposed form for the verified complaint includes the landlord's verification of the facts alleged in the complaint and the required certification regarding the pendency of any other related actions. Keeping in mind that this is a model complaint, attorneys who represent landlords that are corporations or other business entities may have to obtain the verification from an employee and modify the form of the verified complaint accordingly. The proposed model form for the verified complaint follows.

APPENDIX XI-X. VERIFIED COMPLAINT – NONPAYMENT OF RENT

Attorney(s)/Pro Se:
Office Address:
Phone No.:

SUPERIOR COURT OF NEW JERSEY
Law Division, Special Civil Part
Any County
Docket No.: LT

Name of Plaintiff(s)/Landlord(s):

Civil Action

vs

VERIFIED COMPLAINT
LANDLORD/TENANT

Name of Defendant(s)/Tenant(s):

___ Non-payment of Rent
___ Other

Address of Rental Premises: _____
Phone No.: _____

1. The owner of record is _____.
   (name of owner)

2. Plaintiff is the (check one) ___owner, ___agent, ___assignee, ___grantee, or ___prime tenant of the owner.

3. The landlord __ did __ did not acquire ownership of the property from the tenant(s).

4. The landlord __ has __ has not given the tenant(s) an option to purchase the property.

5. Tenant(s) now reside(s) and is (are) in occupancy and possession of the premises noted above as being the address of the tenant(s).

6. The tenant(s) has (have) been in possession of these premises since _____, 20__ under (check one) __written or __oral agreement.

7. ___ Check here if the tenancy is subsidized pursuant to either a federal or state program or the apartment is public housing.

8. The (check one) __monthly or __ weekly amount that must be paid by the tenant(s) for these premises is $_____, payable on the ___ day of each __month or __week in advance.

9. The landlord has registered the leasehold and notified tenant as required by N.J.S.A. 46:8-27.

COMPLETE PARAGRAPHS 10A, 10B AND 10C IF COMPLAINT IS FOR NON-PAYMENT OF RENT

10A. There is due, unpaid and owing from tenant(s) to plaintiff/landlord $ _____ for rent as follows:

$_____ base rent for _____ (specify the period)
$_____ base rent for _____ (specify the period)
$_____ base rent for _____ (specify the period)
$_____ late charge* for _____ (specify the period)
$_____ late charge* for _____ (specify the period)
$_____ late charge* for _____ (specify the period)
$_____ attorney fees*
$_____ other* (specify _____)
$_____ court costs (fees for filing and serving the complaint)
$_____ TOTAL

* If permitted by federal, state and local law and the lease

10B. If this case is scheduled for trial on or after _____ and the amount due in
(date next rent must be paid)
paragraph 10A is not paid by _____, the total amount of rent unpaid
(day before next rent must be paid)
and owing is $_____, including court costs.

10C. The non-payment count of this complaint will be dismissed if tenant(s) pay(s) $_____, the amount listed on line 10A above, if the trial date is before _____. If the trial
(date next rent must be paid)
date is on or after _____ and the amount on line 10A has not been paid
(date next rent must be paid)

before that date, the non-payment count of this complaint will be dismissed if tenant(s) pay(s) $_____, the amount on line 10B. These amounts do not include late fees or attorney fees for Section 8 and public housing tenants. Payment may be made to the landlord or the clerk of the court at any time before the trial date, but on the trial date payment must be made by 4:30 p.m. to get the case dismissed.

CHECK PARAGRAPHS 11 AND 12 IF THE COMPLAINT IS FOR OTHER THAN OR IN ADDITION TO NON-PAYMENT OF RENT. ATTACH ALL NOTICES TO CEASE AND NOTICES TO QUIT/DEMANDS FOR POSSESSION.

11. ___ Landlord seeks a judgment for possession for the additional or alternative reason(s) stated in the notices attached to this complaint. STATE REASONS: _____
_____.

12. ___ The tenant(s) has (have) not surrendered possession of the premises and tenant(s) hold(s) over and continue(s) in possession without the consent of landlord.

WHEREFORE, plaintiff/landlord demands judgment for possession against the tenant(s) listed above, together with costs.

DATED: _____ _____
(Signature of Filing Attorney or Landlord Pro Se)

_____
(Printed or Typed Name of Attorney or Landlord Pro Se)

LANDLORD VERIFICATION

1. I certify that I am the ___ landlord, ___general partner of the partnership, or ___ authorized officer of a corporation or limited liability company that owns the premises in which tenant(s) reside(s).

2. I have read the verified complaint and the information contained in it is true and based on my personal knowledge.

3. The matter in controversy is not the subject of any other court action or arbitration proceeding now pending or contemplated and no other parties should be joined in this action except (list exceptions or indicate none): _____.

4. The foregoing statements made by me are true and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: _____ _____

(Signature of Landlord, Partner or Officer)

_____

(Printed Name of Landlord, Partner or Officer

[Note: Adopted _____,2008 to be effective_____,2008.]

3. Proposed Amendment to Appendix XI-T – Certification By Landlord

A member of the bar proposed to amend the current Certification By Landlord, set forth in Appendix XI-T to the court rules, which is used by landlords to request entry of a judgment for possession by default when a tenant fails to appear for trial. The proposed amendment would have modified the title of section B. of the Certification to read "When a Predicate Notice Is Required By Law, Lease Or Regulation," instead of the current "When the Eviction Is Based On Other Grounds." This change was intended to reflect the attorney's view that in privately owned federally subsidized housing a predicate notice is required even for a non-payment of rent case to proceed. The Committee agrees with the substance of the attorney's proposal because the Committee is interested in promoting full disclosure in tenancy actions and has thus recommended requiring the attachment of the notices to the complaint in the proposed amendment to *R*. 6:3-4, but the clerk does not normally have the complaint at hand when considering the proofs to enter a default judgment for possession. Rather than change the title of section B., however, the Committee proposes to move paragraphs 2 through 4 from section B. to section C., which is entitled "In all Cases." This will have the desired effect of requiring the attachment of the nonpayment of rent notice required for federally subsidized housing, as well as the notices to cease and quit in the so-called holdover tenancy actions that involve causes of action other than nonpayment of rent.

The Special Civil Part Management Committee also proposed to amend Appendix XI-T, but in a different way. Section C., paragraph 1 currently requires the landlord to certify that s/he is not a corporation or other business entity precluded from appearing pro se by *R*. 6:10. The form has created a new protocol or work procedure, which requires staff to check that the landlord has completed the check-off box, choosing between two different options – one that

essentially allows the landlord to appear pro se and the other box which does not. This has created significant problems when the wrong box is checked off by the pro se landlord and so the Management Committee unanimously recommended that the form should be changed to remove the check-off box, while retaining the requirement that the self-represented litigant certify that s/he owns the property either in his/her own name or in the name of a general partnership in which s/he is a partner. The Committee recommends that the form be amended accordingly.

The proposed amendments to Appendix XI-T follow.

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**

THE LANDLORD SHOULD COMPLETE PART A OR PART B OR BOTH (IF BOTH APPLY). CROSS OUT ANY PARAGRAPHS IN THOSE PARTS THAT DO NOT APPLY IN THIS CASE. PART C APPLIES TO ALL CASES AND MUST BE COMPLETED.

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

Eviction is sought because _____
_____
_____

C. IN ALL CASES:

1. I have attached a copy of all notices that have been served on the tenant.
2. These notices were served on the tenant (check one or more) _____ by ordinary mail, _____ by certified mail, _____ personally, on _____.
3. All of the facts stated in the notices are true.
4. If I proceeded without an attorney, I certify that I own the property in my own name or in the name of a general partnership of which I am a partner.
5. I have complied with the registration requirements of N.J.S.A. 46:8-27 *et seq.*
6. The tenant did not transfer ownership to me and I have not given the tenant an option to buy the property.
7. 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 July 27, 2006 to be effective September 1, 2006, amended _____, 2008 to be effective _____,2008.]

C. Proposed Amendment to R. 6:5-1 – Application of R.4:38 (consolidation) to Actions in the Special Civil Part

A member of the Committee pointed out that *R*. 6:5-1 applies *Rules* 4:37, 4:39 and 4:40 to actions filed in the Special Civil Part, but does not so apply *R*. 4:38, which deals with the consolidation of actions. The Committee proposes to change that by amending *R*. 6:5-1. There are many situations in which judges currently consolidate Special Civil Part cases despite the absence of express authority to do so. This is true even in tenancy actions where, for example, a number of tenants of the same landlord have raised habitability defenses and the cases should be consolidated for trial. The Committee observes that *R*. 6:4-1 applies *R*. 4:38 to actions pending in different courts, but does not address actions pending in the same court. The proposed amendment to *R*. 6:5-1 follows.

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

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 _____, 2008 to be effective _____, 2008.

D. Proposed Amendment to *R.* 6:6-3(d) – Time for Entry of Default Judgment

Rule 6:6-3(d) provides that if a party fails to apply for the entry of judgment by default within 6 months of the entry of default, judgment cannot be entered except on motion to the court. The Committee has been advised that confusion results when proofs in these cases are filed separately from the motion for leave to apply out of time. The Committee therefore recommends amending the rule to require that the proofs be attached to the moving papers. The proposed amendment follows.

6:6-3. Judgment by Default

(a) … no change

(b) … no change.

(c) … no change.

(d) Time for Entry. If a party entitled to a judgment by default fails to apply therefore within 6 months after entry of default, judgment shall not be entered except on motion to the court and all applicable proofs required under *R.* 6:6-3(a) through (c) shall be attached to the moving papers.

(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 July 27, 2006 to be effective September 1, 2006; paragraph (d) amended _____, 2008 to be effective _____,2008.

E. Proposed Amendment to *R.* 6:10 – Representation in Summary Actions Between Landlord and Tenant

Rule 6:10 applies the prohibition of appearance and filing of papers by business entities other than sole proprietors, contained in *R.* 1:21-1(c), to tenancy actions, but provides an exception for partners in general partnerships. The Committee proposes to modify the rule so as to include detainer actions within the scope of the rule's exception to *R.* 1:21-1(c). Detainer actions are summary in nature, like tenancy actions, but the Committee believes that the same considerations that require the use of attorneys in tenancy actions involving business entities other than a sole proprietor or a partner in a general partnership apply to detainer actions. The proposed amendments to the title and text of the rule follow.

6:10. Representation in Summary Actions For Possession of Premises **[**Between Landlord and Tenant]

The prohibition of appearances and filing of court papers by business entities other than sole proprietors, contained in *R.* 1:21-1(c), shall apply to summary actions for possession of premises **[**between landlord and tenant**]**, except that a partner in a general partnership may file papers and appear pro se.

Note: Former *R.* 6:10 (bastardy proceedings) deleted December 13, 1983 to be effective December 31, 1983; present rule adopted July 14, 1992 to be effective September 1, 1992; amended July 13, 1994 to be effective September 1, 1994; amended _____, 2008 to be effective _____, 2008.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Rejected Amendments to *R.* 6:3-1 – Applicability of Part IV Rules

Rule 6:3-1 specifies a number of Part IV Rules, dealing with pleadings, motions and parties, that are applicable to actions in the Special Civil Part. A member of the Committee proposed to amend the rule so as to:

1. Exclude tenancy actions from the *R.* 4:5-1(b)(1) requirement of a CIS (Case Information Statement),
2. Exclude tenancy actions from *R.* 4:8 (third party practice), and
3. Explicitly permit amendments to tenancy complaints on the record.

The Committee does not believe that it is necessary to specifically exempt tenancy actions from the *R.* 4:5-1(b)(1) requirement that a Case Information Statement be filed with a party's first pleading. The CIS requirement has been in effect for Civil Part actions since 1991 and there has never been any question about whether it applies to cases filed in the Special Civil Part. Moreover, the prohibition on filing answers in tenancy actions (and small claims, for that matter) makes it clear that the CIS was never intended for use in such cases since it could only be applied to the plaintiff.

The Committee also does not believe that it is necessary to exclude tenancy actions from the third party practice provisions contained in *R.* 4:8, primarily because the issue rarely, if ever, has arisen. The Committee notes that the addition of a third party is not predicated upon the filing of the claim in an answer and may be accomplished by the filing of a third party complaint by the defendant in the original action at a later time. The defendant in a tenancy action may want to add a co-tenant or subtenant as a party-defendant and presumably this would be accomplished by filing a tenancy complaint against that individual and then the two actions could be consolidated. The principles set forth in *R.* 4:8 for handling third party actions, such as

allowing the plaintiff in the original action to amend the complaint to add claims against the third party defendant, might prove useful in handling the consolidated tenancy actions. Specifically excluding tenancy actions from third party practice might inhibit the court in adapting the case management tools set forth in *R.* 4:8 to the situation.

The Committee recommends that language specifically providing for amendments to the complaint on the record not be added to *R.* 6:3-1. The practice is already covered by *R.* 4:9-1, which is applied to Special Civil Part actions by *R.* 6:3-1. The Committee notes that *R.* 4:9-2 permits the amendment of the complaint to conform to the proofs when issues that were not raised in the complaint have been tried by consent or without the objection of the parties. Adding more language on the subject to *R.* 6:3-1 could have unintended consequences to the extent that it could be interpreted to mean something other than what is already provided for in the applicable Part IV rules.

B. Proposed Amendment to *R*. 6:4-3(b) – Discovery

A Committee member proposed to amend *R.* 6:4-3(b) to permit limited discovery, in the judge's discretion, in summary actions for possession. The Committee does not believe that such an amendment is necessary. To some extent, greater discovery in tenancy actions will be afforded by the addition of the proposed paragraph (c) to *R.* 6:3-4 (see Section I.B.1. of this Report, above) which will require the complaint to identify the owner of the premises and state the exact amount of rent (and the components thereof) that must be paid to have the action dismissed and by the proposed addition of paragraph (d) to that rule, which will require the attachment to the complaint of copies of the notices upon which plaintiff intends to rely in seeking the tenant's eviction. Beyond this, the judge always has the discretionary power to order limited discovery in tenancy actions when it is required.

C. Proposed Amendments to *R*. 6:6-1 – Applicability of Part IV Rules

Rule 6:5-1 applies certain Part IV rules dealing with judgments to the Special Civil Part. A member of the Committee proposed to amend the rule to:

1. Add language to say that *R.* 4:46, which deals with motions for summary judgment, is not applicable to tenancy actions.

2. Add language to say that *R.* 4:48, dealing with satisfaction of judgments does not apply to tenancy actions.

3. Add language to shorten the *R.* 4:49-1(b) (motions for new trial) time periods to 10 days for the motion and 5 days for the response.

The Committee does not believe that a rule amendment excepting tenancy actions from the rule governing summary judgment practice is necessary. Since answers are not permitted in tenancy actions and discovery is available only by order of the court upon motion, there is no way to determine whether there is a genuine issue of material fact without holding a trial. Summary judgment is thus not available in tenancy actions under the current rules and there is thus no need for an amendment to that effect.

Rule 4:48 deals with the subject of satisfying money judgments. Since money judgments are not entered in tenancy actions, the Committee sees no need to amend *R.* 6:6-1 to state that *R.* 4:48 does not apply to tenancy actions.

The Committee believes that the time periods set forth in *R.* 4:49-1(b), which governs motions for a new trial and is applicable to the Special Civil Part by virtue of *R.* 6:5-1, are appropriate for Special Civil Part cases, including tenancy actions. Attorneys on the Committee who represent landlords and those who represent tenants agree that neither party is prejudiced by the current time frames and the Committee thus recommends that no change be made.

D. Proposed Amendment to *R.* 6:6-3(b) – Entry of Default Judgment By the Clerk

Rule 6:6-3(b) deals with the entry of default judgment by the clerk in tenancy actions and requires the submission of proofs by affidavit or certification. A Committee member proposed to amend the rule to:

1. Delete the words "between landlord and tenant" from the first sentence so that the clerk can enter default judgment in detainer actions.

2. In the last sentence of the first paragraph, add the words "any required Notice to Cease and Notice to Quit" in place of the current words "all required notices."

The Committee believes that the clerk should not be allowed to enter default judgment in detainer actions and that they should continue to be governed by *R.* 6:6-3(c), which requires entry of judgment by the court in cases not covered by paragraphs (a) and (b). Any given detainer action may require the exercise of judicial discretion when the case involves an order to re-enter the premises.

The Committee has been advised by members who are representatives of Legal Services of New Jersey (LSNJ) that there is an Appellate Division opinion which requires production of a federally-mandated10-day notice in nonpayment cases involving tenants of federally subsidized housing because the court viewed the notice as a jurisdictional prerequisite for the entry of a judgment for possession. The phrase "all required notices" covers the federally required notice, while the phrase "any required Notice to Cease and Notice to Quit" does not and so the Committee recommends that the rule not be amended as proposed.

E. Proposed Amendment to *R.* 6:6-3(e) – Notice of Entry of Judgment

A member of the Committee proposed that the Committee decide whether *R.* 6:6-3(e), the rule requiring that notice of judgment entry be given by the Special Civil Part Clerk to the plaintiff and by the plaintiff to the defendant, applies to tenancy actions and, if it does, to modify the rule to say that. The Committee has concluded that the rule does not apply to tenancy actions and thus no amendment is necessary.

F. Proposed Amendment to *R.* 6:6-6(a) – Post-Judgment Levy Exemption Claims and Applications for Relief in Tenancy Actions

Rule 6:6-6 provides litigants with a quick mechanism to seek relief from judgments for possession in tenancy actions and from asset levies to enforce monetary judgments in other cases. Paragraph (a) of the rule makes the provisions of *Rules* 4:52-1 and 4:52-2, which deal with injunctions, applicable to these applications for relief, except that briefs are not required. A Committee member proposed to delete the references to *Rules* 4:52-1 and 4:52-2 because, in his view, they do not apply to post-judgment applications for relief.

The Special Civil Part Practice Committee concluded, when it recommended adoption of *R*. 6:6-6(a), in its 2006 Report to the Supreme Court, that the two Part IV rules are applicable to post-judgment applications for relief and the Committee continues to hold that that view. *Rule* 4:52-2 applies, by its terms, "during the pendency of an action" and requires the procedures set forth in *R*. 4:52-1 to be followed even though they pertain to the commencement of an action. In the view of the Committee and the Committee of Special Civil Part Supervising Judges, which originated the proposed relief mechanism for tenants and judgment-debtors, an application for post-judgment relief is a pending action and thus invokes the Part IV rules. No change to the rule is recommended.

III. OTHER RECOMMENDATIONS – NONE

IV. LEGISLATION – NONE

V. MATTERS HELD FOR CONSIDERATION

A. Use of Credit Cards to Pay Fees and Post Deposits

A member of the Committee proposed that the rules be amended to permit the payment of filing fees and posting of deposits by credit card. The Committee endorses this idea but recognizes that formulation of the language for the rule change should await completion of the AOC's work on this project. Staff informed the Committee that the Information Technology Office, Office of Management Services and the Civil Practice Division of the Office of Trial Court Services are already deeply involved in this project.

B. Proposed Amendment to *R.* 6:1-2 – Monetary Limits Increase

The Committee discussed the possibility of raising the monetary limits for small claims and regular Special Civil Part cases. The Chair asked staff to research the effect of inflation on those limits and report back to the Committee.

A history of the Special Civil Part monetary limits over the last quarter century shows the following progression:

Year	Regular SCP Limit	Small Claims Limit
1981	$5,000.00	$1,000.00
1992	$7,500.00	$1,500.00
1994	$10,000.00	$2,000.00
2002	$15,000.00	$3,000.00

Note that the ratio of the two limits has always been maintained at 5 to 1.

Taking into account changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers, published by U.S. Department of Labor's Bureau of Labor Statistics for New York City and Northeastern New Jersey, the cost of living increased by 17.8% between September 2002 (the last time the Special Civil Part monetary limits were raised) and September 2007. This would appear to justify an increase in the monetary limits from $15,000.00 to $17,600.00 and from $3,000.00 to $3,534.00 for regular Special Civil Part cases and small claims, respectively.

Taking a look at inflation from a longer perspective, however, raises the question of whether such a change would be appropriate at this time. The value of the 1994 limits ($10,000.00 and $2,000.00) was $12, 030.00 and $2,406.00 in 2002, and those values projected to September 2007 come out at $14,171.00 and $2874.00, respectively. This indicates that we have not yet exceeded the 1994 limits when they are adjusted for inflation.

An examination of changes in the contracts caseload since 2002 suggests a need for caution when considering another increase in the monetary limits. The chart below indicates that the contracts caseload increased by 20% in Court year 2003, which is when the last monetary limit increase took effect. Between Court Year 2003 and Court Year 2007 there was another 20% increase in the caseload, despite a 12% decline in 2005. For Court Year 2008 the AOC has figures for the first 5 months and when they are projected for the entire year we can expect another 20% increase in the contacts caseload. **Note**: When that 5 month period is compared to the same period in Court Year 2006, we see an increase of almost 27%.

The most recent contract caseload increase may be due to the confluence of an economic slowdown and changes in the bankruptcy laws that preclude discharge of the debts that now appear in the contracts caseload. Whatever the cause, we know from past experience that an increase in the Special Civil Part monetary limits results in a significant increase in the caseload. This, coupled with the fact that we have not yet exceeded the 1994 monetary limits (when adjusted for inflation) suggests that this would not be a good time to raise the monetary limits again. Note that while the volume of tenancy actions and small claims has remained relatively static over the years, these cases and the greatly increased number of contract cases are being handled by 30% fewer staff than the Special Civil Part had in 1994. During the next Term, the Committee plans to explore the possibility of raising the limits for collection actions and small claims, neither of which involves the extent of discovery required for tort actions.

Court Year	Contract Filings	% Increase
2002	208,259	---
2003	249,934	20%
2004	269,989	8%
2005	236,670	-12%
2006	270,692	14%
2007	299,438	11%
2008	361,647*	20%*

***Projections based on contract filings during the first 5 months of Court Year 2008**

C. Proposed Amendment to *R*. 6:2-3(b) – Service of Original Process in Tenancy Actions

A member of the Committee perceives a discrepancy between the statute and the rule regarding service in tenancy actions. *N.J.S.A.* 2A:18-54 provides for service of the summons and complaint by posting in those situations where admission to the subject premises is refused or no person above the age of 14 is present. *R.* 6:2-3(b), on the other hand, requires service by mail and by either personal delivery or posting. In other words, there is no requirement in the rule that the Court Officer first attempt personal service before posting.

The member proposed to amend the rule to permit posting if the Court Officer is first either refused admission or is unable, after a reasonable effort, to personally serve process. Specifically, the rule would be amended by deleting the first sentence of the second paragraph of *R*. 6:2-3(b), and substituting in its place the following:

> In summary actions for the recovery of premises, service of process shall be by ordinary mail and by delivery personally pursuant to *R*. 4:4-4. Where the person serving process is refused admission to the subject premises, or after reasonable effort is unable to deliver process personally pursuant to *R*. 4:4-4, service may be effectuated by affixing a copy of the summons and complaint on the door of the unit occupied by the defendant.

In the proponent's view, this will harmonize the statute and rule. The proponent also suggested that if the proposal is adopted, a line should be added to the return of service in Appendix XI-B just above the certification line stating: "Efforts made to personally serve process:_____."

Since the proposal was submitted as an agenda item just a day or two before the last meeting of the Committee for this term, there was insufficient time to give the proposal due consideration and so the Committee decided to hold the matter for further research and discussion.

D. Proposed Amendments to *R*. 6:7-1 and Appendix XI-H – Protection of Funds Exempt From Levy

On the day of the Committee's last meeting for the term a member proposed amendments to *R*. 6:7-1 and the form for the writ of execution against goods and chattels contained in Appendix XI-H. The amendments would essentially exclude from levy any funds in a debtor's bank account (a) in which exempt funds are deposited electronically on a recurring basis, or (b) that total $1000 or less. During the Committee's discussion of this proposal it was noted that a similar proposal had been rejected during the Committee's 2004 – 2006 term in favor of an amendment to *R.* 6:6-6(a) that provided for an expedited procedure to challenge levies on exempt funds, which ultimately was adopted by the Supreme Court effective September 1, 2006. Again, the Committee felt that there was insufficient time to give the new proposal due consideration and therefore decided to hold the matter for further research and discussion.

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. F. Patrick McManimon, J.S.C., Chair
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APPENDIX - Interim Implementation of *Hodges v. Sasil Corp*.

Civil Practice Division

INTEROFFICE MEMORANDUM

To: **Special Civil Part Supervising Judges**
Assistant Civil Division Managers — Special Civil

From: **Robert D. Pitt, Esq.**
Chief - Special Civil Part Services

Subject: **Implementation of *Hodges v. Feinstein***

Date: **February 14, 2007**

This is a revision of the memorandum and model forms I sent to you on February 1 and February 5, 2007 regarding the implementation of the New Jersey Supreme Court's opinion in the case of *Hodges v. Feinstein*, issued on January 31, 2007. In that case the Court held, among other things, that lawyers who file summary dispossess actions against tenants on a regular basis for failure to pay rent are debt collectors and must comply with the requirements of the federal Fair Debt Collection Practices Act (FDCPA). The Court directed its Special Civil Part Practice Committee to recommend rule changes to implement the opinion and provided interim instructions to guide courts and litigants. Those interim instructions require that all complaints in summary dispossess actions based on non-payment of rent must be verified in accordance with *R.* 1:4-7, must expressly state the creditor's identity, the amount of rent owed and that the amount must be paid to the landlord or the clerk before 4:30 p.m. on the day of trial for the case to be dismissed. The Court said that the amount of rent owed for purposes of the dispossess action can include only the amount that the tenant is required to pay by federal law or, when federal law does not apply, by the lease executed by the parties or any applicable local rent control ordinance. Thus, Section 8 and public housing tenants cannot be required to pay late fees or attorney fees to get the case dismissed.

Until the Special Civil Part Practice Committee recommends rule changes to implement *Hodges* and the Supreme Court approves those changes, interim procedures will have to be followed. Set forth below are the procedures to follow until judges and staff have had a chance to discuss them. The Special Civil Part Management Committee will discuss *Hodges* and these procedures at its meeting on February 21 and they will be on the agenda for the March 14 meeting of the Committee of Special Civil Part Supervising Judges --- by that time we should have a better idea of how the procedures are working. Unless and until the Supreme Court relaxes *R.* 1:5-6(c) to permit the clerk to return complaints unfiled that do not comply with the requirements set forth in the opinion, staff will have to treat them as "nonconforming," which means docketing them, creating a case jacket, sending out a notice of nonconformance to the plaintiff, and then holding the filed nonconforming complaint unserved until the plaintiff sends in a conforming amended complaint. If the plaintiff fails to file a conforming amended complaint within 60 days the nonconforming complaint, it will show up on an ACMS dismissal list and be dismissed. A decision has not yet been made on whether to request that the Supreme Court relax *R.* 1:5-6(c). For now, the procedures that should be followed include:

I. Notice of New Requirements

A notice advising landlords and attorneys of the new requirements should be posted in a conspicuous place at the Special Civil Part service counter. A revised model notice is attached.

II. Prospective Application and Content of Complaint

Complaints for summary dispossess based on non-payment of rent that are filed on or after February 1, 2007 must comply with the requirements set forth in the *Hodges* opinion, which are described in the first paragraph of this memorandum and reiterated below.

III. Model Complaint

The attached model complaint has been revised in light of the comments made by both judges and managers. There are still some aspects that need further discussion by the Supervising Judges and the Assistant Civil Division Managers, but until that occurs the model should be distributed at the service counter for the use of pro se litigants and attorneys in summary dispossess actions based on non-payment of rent. Please remember that this is a <u>model</u> complaint and that litigants may file complaints that differ from the model in some respects but are nonetheless in compliance with the Supreme Court's opinion. We should be looking to see that:

(A) the complaint is verified if it is based on non-payment of rent,

(B) the landlord is identified,

(C) the complaint states the amount of rent that must be paid to the landlord or the clerk before 4:30 on the trial date to get the case dismissed, and

(D) that this amount does not include attorney fees or late charges for tenants of Section 8 and public housing.

IV. Non-Conforming Complaints

Complaints filed on or after February 1, 2007 that do not comply with the *Hodges* opinion shall be accepted for filing, as required by *R.* 1:5-6(c), but these complaints are not to be served or scheduled for trial. Instead, a deficiency notice specifying the non-conformance (revised model also attached) should be sent to the landlord's attorney or the pro se landlord and it should state that the complaint will not be served or scheduled for trial and that unless a conforming amended complaint is filed within

60 days the case will be dismissed pursuant to *R.* 1:13-7(d). Note that a copy of the model complaint should be included with the deficiency notice.

V. ACMS Entries

ACMS entries can be handled in either of two ways:

A. Preferred Method

(1) Enter the non-conforming complaint into ACMS, assign it for service and schedule it for trial.

(2) Then go back into the service maintenance screen and mark the parties as unserved by entering "RU", marking the reason as "7 (other)" and then enter: "non-conforming complaint" in the comment filed.

(3) This will cancel the trial date and, if done on the day of initial case entry, generate a postcard advising the plaintiff that the summons and complaint are unserved.

(4) Send the notice of non-conformance to the plaintiff.

(5) When the conforming amended complaint is filed, enter it into ACMS as an amended complaint, assign it for service and schedule the trial date. The filing and service fees will already have been applied to the case.

(6) If no conforming amended complaint is filed within 60 days, the case should be dismissed per *R.* 1:13-7(d) and the service fee (but not the filing fee) should be backed out of ACMS and refunded to the landlord.

B. Acceptable Method

(1) Enter the non-conforming complaint into ACMS, assign it for service and schedule the trial date.

(2) Go back into ACMS scheduling and cancel the trial date. This can be done on a mass basis and will cancel the postcard to plaintiff.

(3) Segregate the case jacket to monitor for 60-day dismissal purposes. *Note:* since the service status was not changed in ACMS, the case will not appear on the 60-day dismissal list.

(4) Send the notice of non-conformance to the plaintiff.

(5) Note that the service status in ACMS will say "served," but staff should see that the trial date was cancelled and this means that the complaint was not served.

(6) When the conforming amended complaint is filed, pull the case file from the 60-day dismissal storage, assign the amended complaint for service and schedule the new court date.

(7) If no conforming amended complaint is filed within 60 days, dismiss the case per *R.* 1:13-7(d) and back out the service fee (but not the filing fee) for refunding to the plaintiff.

Please contact me or Robert Piscopo if you have any questions regarding these procedures.

R.D.P.

RDP/dma
Attachments
c: Civil Division Managers
Opal Plummer
Jane F. Castner
Robert J. Piscopo

NOTICE TO LANDLORDS AND ATTORNEYS

THE SUPREME COURT OF NEW JERSEY, IN AN OPINION PUBLISHED ON JANUARY 31, 2007, IN THE CASE "HODGES VS. FEINSTEIN" RULED THAT LANDLORDS MUST FILE A "VERIFIED COMPLAINT"[1] (TOGETHER WITH A SUMMONS) IN ANY SUMMARY ACTION TO EVICT A TENANT BASED ON THE FAILURE TO PAY RENT.

THIS REQUIREMENT IS EFFECTIVE, COMMENCING FEBRUARY 1, 2007.

SUCH COMPLAINTS MUST EXPRESSLY ITEMIZE THE AMOUNT OF RENT[2] OWED, THE LANDLORD'S IDENTITY[3], AND STATE THAT IF THAT AMOUNT IS PAID TO THE LANDLORD OR THE CLERK BEFORE 4:30 P.M. ON THE DAY OF TRIAL THE CASE WILL BE DISMISSED. THESE INTERIM REQUIREMENTS SHALL APPLY TO ALL LANDLORDS, WHETHER REPRESENTED BY AN ATTORNEY OR NOT.

FAILURE TO COMPLY WITH THIS RULING MAY RESULT IN AN APPROPRIATE SANCTION, <u>INCLUDING DISMISSAL OF THE COMPLAINT</u>. A MODEL COMPLAINT IS AVAILABLE IN THE SPECIAL CIVIL PART CLERK'S OFFICE.

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[1] VERIFICATION REQUIRES THE PLAINTIFF TO INCLUDE THE FOLLOWING STATEMENT, WHICH MUST BE DATED AND SIGNED BY THE PLAINTIFF (WITH YOUR NAME PRINTED BELOW YOUR SIGNATURE): "I 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." THE COMPLAINT MUST BE BASED ON PERSONAL KNOWLEDGE AND THE CERTIFICATION MUST STATE THAT IT IS BASED ON PERSONAL KNOWLEDGE.

[2] "THE AMOUNT OF RENT OWED" MEANS THE AMOUNT OF RENT THAT IS LEGALLY DUE AND OWING AS OF THE DATE OF FILING THE COMPLAINT. (BUT IT MUST ALSO NOTIFY THE DEFENDANT THAT THE AMOUNT WILL INCLUDE THE RENT FOR THE FOLLOWING MONTH, IF THE RENT IS NOT PAID BY THE END OF THE MONTH IN WHICH THE COMPLAINT HAS BEEN FILED.) FOR THOSE TENANTS WHOSE RENTS ARE SUBSIDIZED BY FEDERAL OR STATE PROGRAMS, OR WHO LIVE IN PUBLIC HOUSING, "THE AMOUNT OF RENT OWED" MEANS ONLY THE RENT TO BE PAID BY THE TENANT - IT CANNOT INCLUDE THE AMOUNT THAT THE SUBSIDIZING AGENCY IS TO PAY, NOR ANY ATTORNEY FEES OR LATE CHARGES, BUT IT CAN INCLUDE THE FILING FEE PAID TO THE COURT.

FOR NON-SUBSIDIZED TENANTS, "THE AMOUNT OF RENT OWED" SHALL BE DETERMINED ACCORDING TO THEIR WRITTEN LEASE, PROVIDED THAT THE AMOUNT DOES NOT VIOLATE ANY APPLICABLE RENT CONTROL OR SIMILAR RESTRICTION, AND IS REASONABLE.

[3] THE COMPLAINT MAY BE FILED IN THE NAME OF AN AGENT OF THE LANDLORD [SEE N.J.S. 2A:18-51] (PROVIDED THAT IT IS FILED BY AN ATTORNEY LICENSED IN NEW JERSEY), BUT THE AGENT MUST STATE THE NAME OF THE LANDLORD WHOM THE AGENT IS REPRESENTING.

Attorney(s):
Office Address:
Phone No.:

SUPERIOR COURT OF NEW JERSEY
Law Division, Special Civil Part
Any County

Name of Plaintiff(s)/Landlord(s):

Docket No.: LT

vs

Civil Action

Name of Defendant(s)/Tenant(s):

VERIFIED COMPLAINT
LANDLORD/TENANT

___ Non-payment of Rent

Address of Rental Premises:

___ Other

Phone No.:

1. The landlord/creditor is _____.
(name of landlord)

2. Tenant(s) now reside(s) and is (are) in occupancy and possession of the premises owned by the landlord(s) and noted above as being the address of the tenant(s).

3. The tenant(s) has (have) been in possession of these premises since _____, 20__ under (check one) __written or __oral agreement.

4. ___ Check here if the tenancy is subsidized pursuant to either a federal or state program or the apartment is public housing.

5. The (check one) __monthly or __ weekly amount that must be paid by the tenant(s) for these premises is $_____, payable on the ___ day of each __month or __week in advance.

COMPLETE PARAGRAPHS 6A, 6B AND 6C IF COMPLAINT IS FOR NON-PAYMENT OF RENT

6A. There is due, unpaid and owing from tenant(s) to landlord(s) $ _____ for rent as follows:
_____ base rent for ____ months/weeks
_____ late charges, if permitted by federal law, local law and the lease
_____ attorney fees, if permitted by federal law, local law and the lease
_____ other (specify _____), if permitted by federal law, local law and the lease
_____ court costs (fees for filing and serving the complaint)

6B. If this case is scheduled for trial after _____, the date next rent is due, and the amount due in paragraph 6A is not paid by that date, the amount of rent unpaid and owing is $_____, including court costs.

6C. This complaint will be dismissed if tenant(s) pay(s) $_____, the amount listed on line 6A above, if the trial date is on or before _____, the date the next rent is due. If the trial date is after _____ and the amount on line 6A has not been paid by that date, this complaint will be dismissed if tenant(s) pay(s) $_____, the amount on line 6B. These amounts do not include late fees or attorney fees for Section 8 and public housing tenants. Payment may be made to the landlord(s) or the clerk of the court at any time before the trial date, but on the trial date payment must be made by 4:30 p.m. to get the case dismissed.

CHECK PARAGRAPHS 7 AND 8 IF THE COMPLAINT IS FOR OTHER THAN OR IN ADDITION TO NON-PAYMENT OF RENT. ATTACH ALL NOTICES TO CEASE AND NOTICES TO QUIT/DEMANDS FOR POSSESSION.

7. ___ Landlord(s) seek(s) a judgment for possession for the additional or alternative reason(s) stated in the notices attached to this complaint.

8. ___ The tenant(s) has (have) not surrendered possession of the premises to and tenant(s) hold(s) over and continue(s) in possession without the consent of landlord(s).

WHEREFORE, landlord(s) demand(s) judgment for possession against the tenant(s) listed above, together with costs.

DATED: _____ _____
(Signature of Filing Attorney or Landlord Pro Se)

_____
(Printed or Typed Name of Attorney or Landlord Pro Se)

LANDLORD CERTIFICATION

1. I certify that I am the ___ landlord, ___landlord's agent, ___general partner of the partnership, or ___ authorized officer of a corporation or limited liability company that owns the premises in which tenant(s) reside(s).

2. The information in this complaint is based on my personal knowledge.

3. The landlord has registered the leasehold and notified tenant as required by N.J.S.A. 46:8-27.

4. The matter in controversy is not the subject of any other court action or arbitration proceeding now pending or contemplated and no other parties should be joined in this action except (list exceptions or indicate none): _____.

5. The foregoing statements made by me are true and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: _____ _____
(Signature of Landlord or Landlord's Agent)

_____
(Printed Name of Landlord or Landlord's Agent)

NOTICE OF NONCONFORMING TENANCY COMPLAINT

Superior Court of New Jersey, Law Division

Special Civil Part _____ County

Date of Filing: _____ Docket Number: _____

_____ vs. _____

The complaint you filed in this case does not conform to the requirements mandated by the New Jersey Supreme Court in the case of Hodges v. Feinstein. The complaint in a summary action to evict a tenant based on the failure to pay rent must be verified by the landlord or a person with first-hand knowledge of the facts. Verification requires the complaint to include the following statement, which must be dated and signed by the person signing it:

> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

The complaint must be based on personal knowledge and the certification must state that it is based on personal knowledge.

In addition, the complaint must expressly state the creditor's identity, the amount of rent owed and that this amount must be paid to the landlord or the clerk before 4:30 p.m. on the day of trial for the case to be dismissed. The amount of rent claimed to be owed in a summary action to evict a tenant is limited to the amount that the tenant is required to pay by federal law or, when federal law does not apply, the amount permitted by any applicable rent control ordinance or, when neither federal law nor local ordinance apply, the amount specified in the lease. For example, Section 8 tenants cannot be required to pay late fees or attorney fees to get the case dismissed.

The non-conforming complaint you filed will not be served on the defendant and it will not be scheduled for trial. You may file an amended complaint that conforms to these requirements at no extra charge. A model complaint is enclosed for your use. It must include the docket number set forth above. If you do not file a conforming amended complaint within 60 days of the filing of your original complaint, the case will be dismissed.

Date of this Notice: _____

By: _____

Robert Pitt/AOC/Courts

05/11/2007 04:16 PM

To: Special Civil Part Management Committee

Cc: Special Civil Part Supervising Judges
Civil Presiding Judges
Civil Division Managers

Subject: Revised Model Verified Landlord-Tenant Complaint

Dear Assistant Civil Division Managers for Special Civil,

Attached please find a revision of the model verified complaint to be used in implementing the Supreme Court's opinion in Hodges v. Feinstein. This model form has been revised as directed by the Committee of Special Civil Part Supervising Judges and should be substituted for the model that I sent by e-mail dated 2/14/07. The revised model form should be distributed at the service counter for the use of pro se litigants and attorneys in summary dispossess actions and should be included with the Notice of Nonconforming Tenancy Complaint when it is sent to attorneys and litigants.

Please remind all staff who are screening tenancy complaints of the following points:

1. The Hodges requirement of a verified complaint applies only to actions for nonpayment of rent and not to holdover actions. If the complaint alleges both nonpayment of rent and a holdover, then the complaint must be verified.

2. A complaint for nonpayment of rent involving a commercial tenancy does not have to be verified. The requirement of a verified complaint applies only to residential tenancies in which the landlord alleges nonpayment of rent as a ground for eviction.

3. When complaints for nonpayment of rent in residential tenancies are not verified, they cannot be sent back to the filer. They must be docketed as nonconforming pursuant to Rule 1:5-6(c) and the procedure set forth in my February 14, 2007 memorandum for dealing with these nonconforming complaints should be followed.

Also, please remind staff that this is a model complaint and that litigants may file complaints that differ from the model in some respects but are nonetheless in compliance with the Supreme Court's opinion. We should be looking to see that:

(A) the complaint is verified if it is based on nonpayment of rent,

(B) the landlord is identified,

(C) the complaint states the amount of rent that must be paid to the landlord or the clerk before 4:30 on the trial date to get the case dismissed, and

(D) that this amount does not include attorney fees or late charges for tenants of Section 8 and public housing.

Thanks for your continued cooperation in implementing the Hodges opinion and have a nice weekend.

Sincerely,
Bob Pitt

Attorney(s)/Pro Se:
Office Address:
Phone No.:

SUPERIOR COURT OF NEW JERSEY
Law Division, Special Civil Part
Any County
Docket No.: LT

Name of Plaintiff(s)/Landlord(s):

Civil Action

vs

VERIFIED COMPLAINT
LANDLORD/TENANT

Name of Defendant(s)/Tenant(s):

___ Non-payment of Rent
___ Other

Address of Rental Premises: _____
Phone No.: _____

1. The landlord/creditor is _____.
(name of landlord)

2. Tenant(s) now reside(s) and is (are) in occupancy and possession of the premises owned by the landlord and noted above as being the address of the tenant(s).

3. The tenant(s) has (have) been in possession of these premises since _____, 20__ under (check one) __written or __oral agreement.

4. ___ Check here if the tenancy is subsidized pursuant to either a federal or state program or the apartment is public housing.

5. The (check one) __monthly or __ weekly amount that must be paid by the tenant(s) for these premises is $_____, payable on the ___ day of each __month or __week in advance.

COMPLETE PARAGRAPHS 6A, 6B AND 6C IF COMPLAINT IS FOR NON-PAYMENT OF RENT

6A. There is due, unpaid and owing from tenant(s) to landlord $ _____ for rent as follows:
_____ base rent for ____ months/weeks
_____ late charges, if permitted by federal law, local law and the lease
_____ attorney fees, if permitted by federal law, local law and the lease
_____ other (specify _____), if permitted by federal law, local law and the lease
_____ court costs (fees for filing and serving the complaint)

6B. If this case is scheduled for trial on or after _____ and the amount due in
(date next rent is due)
paragraph 6A is not paid by _____, the total amount of rent unpaid and
(day before next rent is due)
owing is $_____, including court costs.

6C. The non-payment count of this complaint will be dismissed if tenant(s) pay(s) $_____, the amount listed on line 6A above, if the trial date is before _____. If the trial date is on or
(date next rent is due)
after _____ and the amount on line 6A has not been paid before that date,
(date next rent is due)

the non-payment count of this complaint will be dismissed if tenant(s) pay(s) $_____, the amount on line 6B. These amounts do not include late fees or attorney fees for Section 8 and public housing tenants. Payment may be made to the landlord or the clerk of the court at any time before the trial date, but on the trial date payment must be made by 4:30 p.m. to get the case dismissed.

CHECK PARAGRAPHS 7 AND 8 IF THE COMPLAINT IS FOR OTHER THAN OR IN ADDITION TO NON-PAYMENT OF RENT. ATTACH ALL NOTICES TO CEASE AND NOTICES TO QUIT/DEMANDS FOR POSSESSION.

7. ___ Landlord seeks a judgment for possession for the additional or alternative reason(s) stated in the notices attached to this complaint. **STATE REASONS:** _____ _____.

8. ___ The tenant(s) has (have) not surrendered possession of the premises and tenant(s) hold(s) over and continue(s) in possession without the consent of landlord.

9. The landlord __ did __ did not acquire ownership of the property from the tenant(s).

10. The landlord __ has __ has not given the tenant(s) an option to purchase the property.

WHEREFORE, landlord demands judgment for possession against the tenant(s) listed above, together with costs.

DATED: _____ _____
(Signature of Filing Attorney or Landlord Pro Se)

_____
(Printed or Typed Name of Attorney or Landlord Pro Se)

LANDLORD VERIFICATION

1. I certify that I am the ___ landlord, ___general partner of the partnership, or ___ authorized officer of a corporation or limited liability company that owns the premises in which tenant(s) reside(s).

2. I have read the verified complaint and the information contained in it is based on my personal knowledge.

3. The landlord has registered the leasehold and notified tenant as required by N.J.S.A. 46:8-27.

4. The matter in controversy is not the subject of any other court action or arbitration proceeding now pending or contemplated and no other parties should be joined in this action except (list exceptions or indicate none): _____.

5. The foregoing statements made by me are true and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: _____ _____
(Signature of Landlord, Partner or Officer)

_____
(Printed Name of Landlord, Partner or Officer)