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March 31, 2016

Hon. Glenn A. Grant J.A.D.
Acting Administrative Director of the Courts
Attn: Rules Comment
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625

Re: Comments on Proposed Civil Practice and Special Civil Part Practice Changes

Dear Judge Grant:

This letter is being submitted on behalf of the New Jersey Creditors Bar Association with respect to the following proposed Rule Changes.

PROPOSED AMENDMENTS TO APPENDICES XI-I AND X-J.

The reports of both the Special Civil Part and Civil Practice Committees cite as a reason for the changes to the forms that they would be "more understandable to clarify for employers the amounts they should be garnishing depending upon how frequently an employee is paid." The problem with this reasoning is that in the first place, the Notice of Application for Wage Execution (Form XI-I) is never served upon the employer. It is only served upon the judgment debtor and is not part of the paperwork served on the employer by either a Sheriff or Special Civil Part Officer. It is only filed with the Court at the time the application is submitted to the Court. As for adding the information to the Writ, it is already part of the Writ on the last page of the documents where the employer can calculate the amount to be deducted.

A second reason for not making the change is that it will confuse the judgment debtor. I, for one, receive calls from judgment debtors, as do my colleagues, complaining that they could not afford to have $217.50 per week deducted from their paychecks and I have to explain to them that if they earn less than that amount net per week there will be

no deductions. I once had to explain that to a judge at a hearing on an objection to a wage execution.

Therefore, the proposed changes to the form are unnecessary and will create more confusion for judgment debtors.

PROPOSED AMENDMENT TO APPENDIX XI-O

Throughout the history this mandatory document the word "shall" has always been a part of Paragraph 3 of this form. Changing to the word "may" will reduce the impact on a judgment debtor. This has been confirmed by the Memorandum of Judge Grant dated August 31, 2012, a copy of which is annexed hereto. He stated that a change to the use of "shall" to "may" "would weaken the perception of the court's determination to compel answers to the questions in the information subpoena . . . " This change was previously rejected by the Supreme Court in 2010.

Some practitioners may only want to proceed with the motion and the order in aid of litigant's rights but not proceed with the issuance of the warrant. This may be because a particular client does not want to proceed with the arrest of a judgment debtor or because of the substantial increase in the fees charged for the Warrant for Arrest. That possibly being the case, the following is suggested. Paragraph 3 of the Order in Aid of Litigant's Rights should be changed to have the following clause added at the end of the paragraph: "if requested by the attorney for the judgment creditor." This would give the judgment creditor the option not to proceed with the warrant for arrest if the creditor so chooses.

PROPOSED RULE 1:4-10. ASSIGNMENT OF JUDGMENT

The NJCBA opposes this rule because of the additional costs that will be imposed upon the assignee of the judgment. There will not only be a fee of $35.00 for the filing of the assignment, but there will be a fee of $35.00 for the filing of a Substitution of Attorney to the attorney representing the assignee. With the huge recent increases in court

costs this places an unwarranted burden on assignees of judgments especially if those assignees are companies that have purchased a large number of judgments from the original creditor.

In fact, the Supreme Court should abolish completely the $35.00 fee for miscellaneous documents filed with the Clerk. Such documents include the ones cited above. There is nothing to be done with such documents other than to file them. No action by the court in required. It is merely a ministerial act and the fee is imposing undue burdens on attorneys and litigants. A colleague of mine, a solo practitioner, who took over the practice of another attorney who had been suspended from the practice of law, filed approximately 100 Substitutions of Attorney and at $35.00 each it cost him $3,500.00. Another attorney that I spoke with told me that when he switched firms, he filed a Substitution of Attorney in the local vicinage after a judgment was entered in the case and he paid $35.00 fee. He was then advised by the Clerk's office in Trenton that he had to pay another $35.00 for filing it with that office. That is nothing more than double billing and price gouging. We have also heard of cases in which a DJ number was issued from a Special Civil Part case and the judgment was later vacated due to a motion by the defendant filed in the Special Civil Part where such motions are to be filed. The Clerk's office in Trenton wants $35.00 to file the Order there even though the defendant already paid a fee to file the motion to vacate the judgment.

The Court should also take into account that the costs of the filing of the assignments and the substitutions would be passed along to judgment debtors as these are taxed costs. The prior filing fee for an assignment was $5.00 and there was no filing fee for a substitution of attorney.

Any adoption of this proposed rule should specifically state that there will be no costs assessed for the filing of an assignment and the substitution of attorney and the $35.00 fee for the filing of any miscellaneous document should be abolished.

Any questions regarding these comments may be forwarded to me at my office care of Morgan Melhuish Abrutyn, 651 West Mount Pleasant Avenue, Livingston, NJ 07039, telephone number (973) 863-7651, e mail address araimon@morganlawfirm.com.

Respectfully submitted,

Arthur J. Raimon

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Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

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TO: Assignment Judges

FROM: Glenn A. Grant, J.A.D.

DATE: August 31, 2012

SUBJ: Judicial Modification of Form Order to Enforce Litigant's Rights (Rules Appendix XI-O)

Please bring this memorandum to the attention of all the trial court judges who are handling motions to enforce litigant's rights that are filed in civil matters pursuant to R. 6:7-2 when judgment debtors have failed to comply with an information subpoena. It has come to my attention that some Superior Court judges may be routinely modifying the proposed forms of orders to enforce litigant's rights that were submitted by attorneys in the format required by R. 6:7-2(f) and Appendix XI-O to the Rules, despite the fact that use of the form is mandatory. The changes substitute the word "may" for "shall" in paragraph 3 of the order, so that it tells a judgment debtor that if he or she fails to comply with an information subpoena within 10 days of the order, a warrant for arrest "may," rather than "shall," issue without further notice.

It appears that these modifications have been made by Civil Division judges who do not regularly hear Special Civil Part matters and thus may not be familiar with the history of the form and the corresponding rule. The Civil Practice Committee proposed, in its 2010 report to the Supreme Court, to amend the rule and Appendix XI-O, so as to substitute the word "may" for "shall," but those proposed amendments were rejected by the Court.

While the form of the order set forth in Appendix XI-O uses the word "shall," and while use of the form is made mandatory by R. 6:7-2(f), there are limited occasions in which a judge would, in the exercise of his or her discretion, appropriately substitute the word "may" for "shall" – for example, when the target of the order is known to be an 85-year old with a heart condition. Such a revision on a regular and routine basis, however, would weaken the perception of the court's determination to compel answers to the questions in the information subpoena as well as lead to inconsistent practices from county to county.

cc: Chief Justice Stuart Rabner
Civil Presiding Judges
Special Civil Part Supervising Judges
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Civil Division Managers
Assistant Civ. Div. Mgrs, Special Civil
Gurpreet M. Singh, Special Asst.
Taironda Phoenix, Acting Assistant