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April 13, 2016

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Comments on the 2014-16 Report of the Committee on the Tax Court

Dear Judge Grant:

I am writing in response to the Notice requesting comments on the 2014-16 Report of the Committee on the Tax Court. I have the following comments on the proposed changes to *R.* 8:5-3(a)(8) and *R.* 8:5-5 and a related suggestion for a rule change for *R.* 8:3-6.

COMMENTS ON PROPOSED REVISIONS TO *R.* 8:5-3(a)(8):

I agree that the Committee's proposal to broaden the scope of the Rule to include non-owner plaintiffs other than tenants. A more generic approach which addresses "taxpayers" is more consistent with the tax statutes and the case law interpreting them.

Naming the Record Owner in the Caption: Rather than require including the name of the record owner in the caption, I believe that it is more appropriate to include the owner's name in the Case Information Statement. Ordinarily, names in the caption are reserved for parties in the litigation. *See R.* 1:4-1(a). If it is not the Committee's intention to make the record owner a party, the rule should be clearer. If that is the purpose, however, I believe it is unnecessary and can create some confusion in the management of the tax appeal. First, the current rule provides the owner with notice and the ability to intervene. The interests of the owner are adequately protected in this way. Second, in many cases the owner may not have the right to participate or any interest in participating, such as in the case of a landlord that has contracted away its right to file tax appeals to its tenant, or an owner whose property is subject to a court-appointed rent receiver, or where a mortgagee or tax lienholder that has paid all of the taxes. If an owner is a party but does not have the right or the interest to pursue the appeal, it may default in a discovery obligation to the detriment of the real party in interest (*i.e.,* tenant or mortgagee who has paid the taxes). Would the owner's failure become the basis for a dismissal of the appeal? Third, the final sentence of the current rule states that the court may permit an owner to intervene. If it is a named party, is this sentence still necessary?

Service of Counterclaims: The proposed requirement to have the plaintiff-taxpayer serve the record owner with the municipality's counterclaim is contrary to normal court procedure and creates duplicative work. This proposal is a departure from the universal rule that a party serves its own pleadings. *See R.* 1:5-2. The municipality is already required to file a proof of service in any event (demonstrating that it has served the non-owner plaintiff) and could easily serve the record owner at the same time (the record owner's address is included in the proof of service accompanying the complaint). There is simply no reason to shift the responsibility for service from the municipality to the non-owner plaintiff and to require both the municipality and the non-owner plaintiff serve a municipality's counterclaim.

I would propose the following language:

> (8) A ~~tenant~~ plaintiff who is not the record owner of a property who files a complaint to contest a local property tax assessment, whether such complaint is by direct review pursuant to N.J.S.A. 54:3-21, 54:4-63.11, 54:4-63.28, or 54:4-63.39, or to review the action of a County Board of Taxation pursuant to N.J.S.A. 54:51A-1, shall caption the complaint with [DELETED PHRASE] the name of the plaintiff and the relationship of the plaintiff to the record owner of the property. In such cases, any party that files a complaint, answer or counterclaim shall serve a copy [DELETED PHRASE] on the record owner of the property. The court, on application or on its own motion, may permit the owner to intervene as a party plaintiff, may require service on other tenants, or may take such action as it deems appropriate under the circumstances.

[As compared to the proposed Rule, I have deleted the phrase "the name of the record owner of the property," from the first sentence and the phrase ", as well as any counterclaim," from the second sentence.]

COMMENTS ON PROPOSED REVISIONS TO *R.* 8:5-5:

I agree with the Committee's proposal to amend to rule to require the name and address of the record owner in order to ensure that the defendant has this information. I disagree with the requirement that the plaintiff should be required to serve the municipality's counterclaim. As stated in my comments on *R.* 8:5-3(a)(8) above, the municipality is still required to file a proof of service on the plaintiff pursuant to *R.* 8:3-7. Since the municipality will have the record owner's address from the plaintiff's proof of service, it could easily include the record owner in its service. No purpose is served by requiring both the plaintiff and the defendant to serve proofs of service whenever a counterclaim is filed.

I would propose the following alternative language:

> Proof of service shall be submitted at the time a complaint is filed unless service is by mail and is not effected initially, in which case subsequent proof of service by simultaneous mailing by certified or registered mail, return receipt requested, and ordinary mail shall be submitted when service is effected. For purposes of R. 8:5-3(a)(8), a plaintiff who is not the record owner of the property shall [DELETED PHRASE] include in the proof of service [DELETED PHRASE] the name and address of the record owner of the property.

[As compared to the proposed Rule, I have substituted "include in the" for "also file a" in the second sentence and have deleted "of the counterclaim, if any, when the same is served by plaintiff on the record owner of the property. Such proof should include the date of service, the method of service utilized, and" from the second sentence.]

ADDITIONAL COMMENT ON *R.* 8:3-6:

In reviewing the proof of service requirement while responding the proposed rule changes, I noticed that while there are express requirements to service a complaint (*R.* 8:5-5) and a counterclaim (*R.* 8:3-7), there is no requirement to serve an answer (*R.* 8:3-6). The Committee should consider amending this rule so that is similar to *R.* 8:3-7.

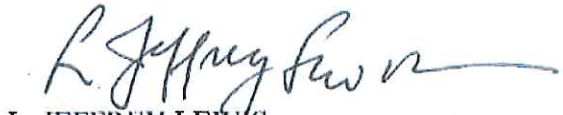
I would propose replacing the current rule with the following language:

> ***R.* 8:3-6.** An answer, if filed, shall accord, as to form, with R. 4:5-3 and as to service, with R. 8:5-2 through 5 inclusive.

* * *

Thank you for your attention in this matter. Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,
McKIRDY AND RISKIN, P.A.



L. JEFFREY LEWIS

LJL/ms