NOTICE TO THE BAR

CIVIL PRACTICE COMMITTEE SUPPLEMENTAL REPORT – PUBLICATION FOR COMMENT

This notice publishes for written comment the March 2008 Supplemental Report of the Supreme Court Civil Practice Committee. The report supplements the Practice Committee's 2006-2008 Report, which was published for comment – along with three other committee reports – by notice dated February 25, 2008. This Supplemental Report also will be available for downloading on the Judiciary's Internet web site at http://www.judiciary.state.nj.us/reports2008/index.htm.

Please send any comments on the Civil Practice Committee's Supplemental Report and recommendations in writing by Monday, April 21, 2008 to:

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

Comments on the committee's report and recommendations may also be submitted via Internet e-mail to the following address: Comments.Mailbox@judiciary.state.nj.us.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). However, comments submitted in response to this notice will be maintained in confidence if the author specifically requests confidentiality. In the absence of such a request, the author's identity and his or her comments may be subject to public disclosure after the Court has acted on the Committee reports and supplemental reports.

The Supreme Court will be acting on these reports and recommendations in June 2008, with any rule amendments likely to become effective September 1, 2008.

/s/ Philip S. Carchman

Philip S. Carchman, P.J.A.D.
Acting Administrative Director of the Courts

Dated: March 6, 2008

2008 Supplemental Report of the Supreme Court Civil Practice Committee

March 2008

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APPENDICES

I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to *R.* 1:8-3 and New Appendix XXVII-A through -C

It was suggested that the Model Jury Selection Questions for Civil, as approved by the Supreme Court and promulgated by Administrative Directives #4-07 and #21-06, be placed in an appendix to the court rules and that *R*. 1:8-3 be amended to include a reference to the new appendix. The Committee agreed that the Administrative Directives, as well as the model questions, should be included in the appendix. The Committee further proposed that *R*. 1:8-3 be amended to provide that, in addition to the standard questions, a judge must ask open-ended questions at *voir dire* although the use of the questions may be waived with the approval of the court and the consent of all parties.

The proposed amendments to *R*. 1:8-3 and new Appendix XXVII-A through -C follow.

1:8-3. Examination of Jurors; Challenges

(a) Examination of Jurors. For the purpose of determining whether a challenge should be interposed, the court shall interrogate the prospective jurors in the box after the required number are drawn without placing them under oath. The court's interrogation shall include the Standard Questions set forth in Appendix XXVII as well as open-ended questions, and may include additional specific or open-ended questions. In civil cases, the Standard Questions may be waived with the approval of the court and consent of all parties. The parties or their attorneys may supplement the court's interrogation in its discretion. At trials of crimes punishable by death, the examination shall be made of each juror individually, as his name is drawn, and under oath.

(b) …no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) …no change.

Note: Source — *R.R.* 3:7-2(b)(c), 4:48-1, 4:48-3. Paragraphs (c) and (d) amended July 7, 1971 to be effective September 13, 1971; paragraph (d) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended September 28, 1982 to be effective immediately; paragraph (d) amended July 22, 1983 to be effective September 12, 1983; paragraph (d) amended July 26, 1984 to be effective September 10, 1984; paragraph (d) amended November 5, 1986 to be effective January 1, 1987; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (e) added July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (f) added July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended _____ to be effective _____.

New Appendix XXVII-A

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

PHILIP S. CARCHMAN, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR
OF THE COURTS

HUGHES JUSTICE COMPLEX
P.O. BOX 037
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DIRECTIVE #4-07
[SUPPLEMENTS AND MODIFIES DIRECTIVE #21-06]

[Questions or comments may be directed to 609-292-2634.]

TO: **SUPERIOR COURT JUDGES**

FROM: **PHILIP S. CARCHMAN, JAD**

SUBJ: **JURY SELECTION – MODEL *VOIR DIRE* QUESTIONS PROMULGATED BY DIRECTIVE #21-06 – REVISED PROCEDURES AND QUESTIONS**

DATE: **MAY 16, 2007**

This Directive supplements Directive #21-06 (issued December 11, 2006). That earlier Directive promulgated the Jury Selection Standards (Standards), including model jury *voir dire* questions, as approved by the Supreme Court. This Directive provides additional explanation or further direction from the Court with regard to juror questioning at *voir dire*. Where this Directive modifies *voir dire* procedures set forth in Directive #21-06, it supersedes the relevant portions of that Directive.

The standard *voir dire* questions approved by the Court and promulgated by the earlier Directive – as stated in the underlying Report by the Supreme Court Special Committee on Peremptory Challenges and Jury *Voir Dire* (Special Committee) and in the promulgated Standards – are intended to provide for a full and complete *voir dire* of prospective jurors so that reasons for any appropriate challenges for cause can be discovered and so that counsel is provided with information that may be relevant to their lawful exercise of peremptory challenges. The use of the standard *voir dire* questions required certain new procedures, as provided for in the Standards and the earlier Directive. The explanations discussed and modifications set forth in this Directive are reflections of the complexity of the jury selection process and of those procedures.

Following implementation of the procedures required by Directive #21-06, trial judges reported regarding their experience with the application of the Standards, incorporating comments from attorneys and jurors in some instances. Those were offered in a cooperative spirit that demonstrated a common interest in serving justice and a shared concern for efficient court operations. Such efforts are appreciated and

encouraged and provide benefits not just for judges, but for others involved at trial, including jurors.

A key focus of comments involved judges being required to repeat the same question to each juror, with general agreement that such action is not necessary to ensure that jurors have heard, understood, and can fully respond to the *voir dire* questions being asked. Although they understood that to be the intent of the questioning using the standard *voir dire* questions, many judges throughout the state indicated their belief that the procedures set forth in the Standards, particularly the questioning method, could be adjusted so as to assure thorough and complete questioning of prospective jurors without requiring excessive repeated readings of questions to jurors.

The matter was considered by the newly established Supreme Court Committee on Jury Selection in Criminal and Civil Trials (Committee), which is chaired by Appellate Division Judge Joseph F. Lisa and includes experienced judges and attorneys. After thorough consideration the Committee reached a broad consensus and issued a report to the Supreme Court dated March 30, 2007, recommending adjustments to the jury selection procedures and setting forth its proposed changes in this Supplemental Directive. The Committee agreed that the requirement that each prospective juror be verbally asked each question is unnecessary and, to some extent, counterproductive to the goals of the jury selection standards. The Committee was of the view that the modified procedure, if implemented, will provide a format that ensures that each prospective juror will furnish the information requested by each question, in a more expeditious and streamlined fashion, but nevertheless in a manner designed for reliability in eliciting the information and not dependent upon the juror's recollection of questions asked of other jurors. The modified procedure recommended by the Committee also would require that a judge ask a limited number of open-ended questions at *voir dire*, in order to require verbal responses from, and interaction with, prospective jurors, which will provide valuable information and insight during the selection process. The Committee also recommends that the waiver of the full use of the standard questions be approved for use at criminal trials. The Committee is of the view that the modified procedures will continue to adhere to the goals and purposes of the Jury Selection Standards that the Court previously approved.

After careful review, the Supreme Court has accepted the recommendations of the Committee, with the exception of that regarding waiver in criminal trials. Accordingly, the Court hereby modifies the procedures set forth in the Jury Selection Standards promulgated by Directive #21-06, as set forth below.

A. The first modification authorizes judges, as an alternative procedure, to conduct jury *voir dire* without being required to verbally ask each question to each juror. Under this alternate procedure the questions must be provided to jurors in print and, at a minimum, the *voir dire* elements described below must be part of the process.

1. At the beginning of the *voir dire* process, each prospective juror in the panel shall be furnished with a printed copy of the *voir dire* questions, which shall consist of all the standard questions for the case type, as supplemented and determined by the judge at the Rule 1:8-3 conference. The form of these questions calls for a yes or no answer. The names of witnesses shall be included in print, either on the form after question #4, or on a separate paper. All prospective jurors shall also be furnished with a pencil or pen.

2. Questions 1 though 6 may be addressed to the entire array in any trial, not just lengthy trials, and excusals may be made of those disqualified by their responses at the outset of the proceeding. Question 2a, pertaining to the length of the trial, may be included in this questioning regardless of the expected length of the trial.

3. The judge must read and review each question *en banc* with the first jurors seated in the box. The judge should instruct all jurors in the array to pay close attention and may tell them to mark their printed copy of the questions with their yes or no responses. The judge should instruct that, unless requested by a particular juror, the questions will not be read again, thus making this the appropriate opportunity for jurors to note their answers. The judge should also instruct that if a juror is unsure of his or her answer or is uncertain as to the meaning of the question, the juror should bring that to the judge's attention when called upon. Jurors will not place their names on the printed copies, and when a juror has completed the process, the printed copy will be returned to court staff and destroyed if written upon or damaged.

4. When reading the questions to the jurors in the box and the array, judges are encouraged to provide some explanatory commentary, in their own words, about the intent and meaning of some or all of the questions.

5. In addition to the printed questions, the judge shall also inform the jurors in the box and the array that jurors will also be individually asked several questions that they will be required to answer in narrative form. One such question will be the biographical question contained in the standard questionnaire. In addition to the biographical question, several other open-ended questions will be posed to prospective jurors, as will be discussed below. The judge may, but is not required to, distribute copies of these questions to the jurors in the box and in the array.

6. The judge may read all of the questions one time before addressing each juror in the box individually. The judge shall verify that the juror understood all of the printed questions and inquire whether the juror answered yes or uncertain to any of them. If so, appropriate follow up questions shall be asked. The judge will then ask that juror each of the open-ended questions, to which a verbal response shall be given and for which appropriate follow up questions will be asked. Each juror must then be verbally asked the two omnibus qualifying questions that follow the biographical question in the lists of standard questions for civil *voir dire*

and criminal *voir dire*. Questioning shall be in open court or at sidebar, in the discretion of the court, with input from counsel.

7. As jurors are challenged for cause or peremptorily and excused from the box, the judge will seat the replacement juror(s). The judge will preliminarily ask each replacement juror if he or she understood the questions when they were read earlier. If the juror requests clarification or rereading of any one or more of the questions, the judge shall do so. The judge will then ask whether the juror answered yes or uncertain to any question and, if so, ask appropriate follow up questions. When questioning the jurors about the written form, the judge must refer to questions by number or description, sufficient to establish for the record the question to which the juror is responding. An unmarked copy of the printed form should be made part of the record as a court exhibit.

8. Some open-ended questions must be posed verbally to each juror to elicit a verbal response. The purpose of this requirement is to ensure that jurors verbalize their answers, so the court, attorneys and litigants can better assess the jurors' attitudes and ascertain any possible bias or prejudice, not evident from a yes or no response, that might interfere with the ability of that juror to be fair and impartial. Open-ended questions also will provide an opportunity to assess a juror's reasoning ability and capacity to remember information, demeanor, forthrightness or hesitancy, body language, facial expressions, etc. It is recognized that specific questions to be posed verbally might appropriately differ from one case to another, depending upon the type of case, the anticipated evidence, the particular circumstances, etc. Therefore, rather than designating specific questions to be posed verbally to each juror, the determination is left to the court, with input from counsel, in each case.

The verbal questions should be selected based upon what is deemed particularly important in the jury selection process in that case. They could be derived from the standard list of questions or be developed without regard to the standard questions by the judge, with input from counsel, to address case-specific issues. The verbal questions should elicit open-ended answers. The judge must ask at least three such questions, in addition to the biographical question and the two omnibus qualifying questions. This is a minimum number and judges are encouraged to ask more where such action would be appropriate. If questions are derived from the standard list of questions, they must be reformulated to elicit open-ended answers.

Appended to this Supplemental Directive is a list of sample open-ended questions, provided here only for the purpose of assisting judges and counsel by illustrating the type of questions contemplated. These are examples; they are not model, or standard, open-ended questions. Some of the examples are reformulations of standard questions, and others are not. There is no requirement that any of these examples be used in any case, although they may be used. The open-ended questions shall be asked either at sidebar or in open court, in the discretion of the court, with input from counsel.

B. The following is clarification regarding Directive #21-06.

With regard to the ability of jurors to read *voir dire* questions that are displayed or provided in print, trial judges should keep in mind that jurors are asked on their qualification questionnaire (which they return in advance of service) whether they can read and understand the English language. Although some jurors nonetheless may raise language issues for the first time during *voir dire*, the Jury Management Office will have addressed any language questions that the juror indicated on his or her qualification questionnaire. Consistent with the Americans with Disabilities Act (ADA), the Judiciary will, upon request, provide reasonable accommodations regarding the printed questions, such as providing a larger print size.

While use of the standard *voir dire* questions is mandatory, judges in their discretion may alter the sequence of the questions as they determine is appropriate – including whether to ask key challenge for cause questions early on, to incorporate questions suggested by counsel, or to integrate case type specific questions. The earlier Report of the Special Committee suggested that judges should not be required to follow a "rigid script" in conducting *voir dire*. The *voir dire* questions to be asked, including the sequence in which to ask them, modifications of wording on a case-appropriate basis, the inclusion of supplemental questions requested by counsel, and the proposed open-ended questions, should be part of the Rule 1:8-3 conference. The promulgated standard *voir dire* questions are posted on the Judiciary's Internet site in Word format.

With regard to asking the "biographical" question as separate parts rather than as a whole, that question is intended to be asked as a single question so that jurors must select the topic that they want to answer first. As noted in the earlier Special Committee Report (Report at page 35): "The jurors, in responding in narrative fashion to the variety of subjects presented in the question, will also provide important information by self-selecting what they choose to talk about."

Criminal Standard Question #25 (renumbered on the attached revision as #27) was the subject of a number of specific comments. A criminal defendant may waive the inclusion of this question, which deals with that defendant's decision not to testify. Where that question is waived by defendant, the trial judge must not only ensure that the question is not asked, but also that neither the question nor any reference to the question is included in the list of questions that is distributed. The note that is included with that question in the standard criminal questions includes the following: "The defendant's decision in that regard should be discussed during the *voir dire* conference."

As part of its charge, the Committee on Jury Selection in Criminal and Civil Trials will be responsible for considering and making recommendations regarding any changes to the standard *voir dire* questions, the introduction of possible additional case type questions, the drafting of a *voir dire* manual, development of training programs for

judges and attorneys, and other related efforts. While the membership of that committee is necessarily limited in number, the Court trusts that every judge and every attorney, not just those appointed to the Committee, will continue to be involved in our ongoing efforts to improve the trial process.

C. Also attached to this supplemental directive are revised standard *voir dire* questions, which supersede those earlier promulgated by Directive #21-06.

Any questions or comments regarding this Supplemental Directive (Directive #4-07), the underlying Directive (Directive #21-06), or any related materials, including standard *voir dire* questions and open-ended *voir dire* questions, may be directed to Michael F. Garrahan, Esq., of the AOC's Office of Trial Court Services (and staff to the Committee on Jury Selection) by e-mail (Michael.Garrahan@judiciary.state.nj.us) or by phone (609-292-2634).

P.S.C.

attachments
cc: Chief Justice James R. Zazzali
Associate Justices
Hon. Joseph F. Lisa
Assignment Judges
Assignment Judge Designate Travis L. Francis
Civil and Criminal Presiding Judges
Theodore J. Fetter, Deputy Admin. Director
AOC Directors and Assistant Directors
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Directive #21-06

[Questions or comments may be directed to 609-292-2634.]

TO: **Superior Court Judges**

FROM: **Philip S. Carchman, JAD**

SUBJ: **APPROVED JURY SELECTION STANDARDS, INCLUDING MODEL *VOIR DIRE* QUESTIONS**

DATE: **DECEMBER 11, 2006**

Attached are the Jury Selection Standards ("Standards") approved by the Supreme Court. The Court indicated its approval of these Standards in its September 15, 2006 Administrative Determinations regarding the recommendations of the Special Committee on Peremptory Challenges and Jury *Voir Dire*. The attached Standards include the relevant commentary from the Report of the Special Committee ("Report") as well as the *voir dire* questions to be used for all civil jury trials, all criminal jury trials, as well as *voir dire* questions for certain specific civil case types. The Supreme Court in its Administrative Determinations directed the distribution of these materials to all trial court judges.

As set forth in the Standards, use of the model *voir dire* questions is mandatory. Keep in mind that these model questions are a base. As noted in the Report, you may ask additional *voir dire* questions, including supplemental questions suggested by trial counsel at the Rule 1:8-3 conference. The Standards and model questions promulgated by this Directive are to be used during each jury selection for trials that begin on or after Monday, January 22, 2007. That date will allow time for trial judges to review these materials and prepare for the conferences that will need to occur in advance of that date. While the model questions may be used for jury selections beginning prior to that date, as I understand that many judges are already doing, their use during this interim period is not required. The January 22, 2007 effective date also will allow additional time to address any procedural questions that trial judges may raise, including any questions raised at the recent Judicial College.

The Court in its Administrative Determinations also approved the Special Committee's recommendation for creation of a standing committee on the jury selection process and procedures. Formation of the Supreme Court Committee on Jury Selection in Civil and Criminal Trials is underway. Part of that committee's initial charge will be to review the model *voir dire* questions promulgated by this Directive for any necessary revisions or refinements, e.g., suggestions by the Judiciary Advisory Committee on Americans with Disabilities Act Compliance.

Additionally, please also be aware that the Court, in accordance with the Special Committee's recommendation has amended Rule 1:8-3(f), effective September 1, 2006, to require that attorneys submit any proposed supplemental *voir dire* questions in writing and that trial judges rule on the record regarding questions requested by attorneys and any attorney participation at *voir dire*.

Any questions regarding this Directive or the underlying Standards may be directed to Michael F. Garrahan, Esq., of the AOC's Office of Trial Court Services by e-mail or by phone (609-292-2634).

P.S.C.

Attachments (Jury Selection Standards; Model *Voir Dire* Questions)

cc: Chief Justice James R. Zazzali
Assignment Judges
Criminal and Civil Presiding Judges
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AOC Directors and Assistant Directors
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Michael F. Garrahan, Jury Programs
Steven D. Bonville, Special Assistant
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STANDARDS FOR JURY SELECTION

As Approved by the Supreme Court

Promulgated by Directive #21-06 (December 11, 2006)

The Supreme Court, as reflected in its September 15, 2006 Administrative Determinations on the report and recommendations of the Special Committee on Peremptory Challenges and Jury *Voir Dire*, approved these Standards for Jury Selection. The Special Committee developed these Standards in accordance with the Court's charge to make recommendations on ways to improve current jury selection practice. In developing the Standards, the Special Committee engaged in extensive discussions with and received input from trial judges, organized bar association groups, and individual members of the bar. The Special Committee also reviewed case law, noting, however, that in the rare instances where jury selection issues have been the subject of reported decisions, those instances have nearly always occurred in capital trials.

The purpose of jury selection is to obtain a jury that can decide the case without bias against any of the involved parties, that will evaluate the evidence with an open mind, and that will apply the law as instructed by the judge. *Voir dire* practices must be geared to eliciting meaningful information from prospective jurors so those with a real potential for bias can be excused. The process should be designed to provide the attorneys and judge with sufficient information to appropriately excuse jurors for cause. The process should also provide the attorneys with sufficient information to intelligently exercise peremptory challenges.

It should be noted that in many courtrooms, judges are currently conducting *voir dire* in a thorough and meaningful manner. However, some judges conduct the process in a more perfunctory manner, which is not properly geared to achieve the purpose of *voir dire*. In those courtrooms, a more expansive practice is required. The role of counsel in proposing questions and participating in the *voir dire* process should not be unduly restricted. Judges and counsel should be mindful that the jury selection process is an important part of the trial. Indeed, in the eyes of many attorneys, it is the most important part of the trial. Attorneys have also noted that they are more familiar than the court with the cases prior to trial and that their requests regarding *voir dire* should be duly considered for that reason.

Over the last decade or more, several committees and task forces have evaluated the number of peremptory challenges allowed in trials in New Jersey. Each such study made recommendations to reduce the number of challeges. Each study also has recommended that improvements be made in the *voir dire* process, which in

turn would reduce the need for the number of peremptory challenges currently permitted. Judicial education programs have been presented on this subject. The collective result of these efforts is that some strides have been achieved in improving the process. More, however, needs to be done, though, as noted above and which has been recognized by practicing attorneys, many judges already conduct the process in an exemplary manner.

The Special Committee developed these standards for use in all civil and non-capital criminal trials. The standards incorporate and require use of features that are reasonably suited to achieving a meaningful and thorough *voir dire* process. The standards, once fully implemented, will establish uniform practices, while retaining a reasonable measure of flexibility for the exercise of judicial discretion in the jury selection process. This process is a fluid one, and utilization of a rigid "script" would be counterproductive. There must be the ability for the trial judge and attorneys to deal with circumstances as they evolve during the process. Some degree of latitude to allow for variation in style is acceptable, so long as the essential ingredients of a thorough and meaningful *voir dire* are included.

Compliance with the standards requires accountability. Assignment Judges and Presiding Judges shall be responsible for implementing, monitoring, and assuring continued compliance with the standards.

Adherence to these standards will provide a sufficient measure of uniformity and predictability to the jury selection process throughout the State, will ensure that the process is thorough and meaningful, and will allow for reasonable flexibility and exercise of judicial discretion. The Special Committee was of the view that compliance with these standards should not add significant time to jury selection. Finally, compliance will further the interests of justice because jurors will be selected in a process that elicits sufficient meaningful information about jurors, their background, relevant views, opinions and life experiences to ensure, as best we can, that they will be able to decide the case before them in a fair and impartial manner. It will be a process that attorneys, litigants, and citizens called to jury service will recognize as sensible, serious, meaningful, and geared to its purpose -- selection of a fair jury.

The Court also asked the Special Committee for recommendations as to whether the number of peremptory challenges presently allowed should be changed. After careful consideration of the issue and much discussion and debate, the Committee recommended substantial reductions, especially in criminal trials. While the Court in its September 15, 2006 Administrative Determinations specifically did not act on that particular recommendation, instead holding it in abeyance for a year, a significant factor informing that recommendation was the anticipated improvement of the quality of the *voir dire* process that will be achieved by the implementation of these standards. The two work hand-in-hand. With improved and more expansive *voir dire* and more liberal excusals for cause, the need for peremptory challenges should be significantly diminished.

STANDARD 1. *VOIR DIRE* METHOD

The method chosen to conduct voir dire must assure a thorough and meaningful inquiry into jurors' relevant attitudes so the court and counsel can identify jurors who may possess a bias, prejudice, or unfairness with regard to the trial matter or anyone involved in the trial.

Unlike some other jurisdictions, in New Jersey, the trial judge presides over and is responsible for the conduct of the jury selection process. The judge is vested with discretion in the manner in which the process is conducted. That discretion, however, is not unbridled and must be exercised in a manner that will achieve the important purpose of the process.

Our practice provides, in non-capital cases, that jurors shall be examined as follows: "For the purpose of determining whether a challenge should be interposed, the court shall interrogate the prospective jurors in the box after the required number are drawn without placing them under oath. The parties or their attorneys may supplement the court's interrogation in its discretion." R. 1:8-3(a). Two basic practices have evolved. Some judges, after calling the required number to the box, question those jurors en banc, with jurors raising their hands to respond in a particular manner as directed by the judge. Where appropriate, follow-up questions are posed to those jurors. Other judges, after calling the required number to the box, address each juror in turn, asking specific questions. Either method may be utilized, subject, however, to the following.

No method may rely on jurors' memory of questions previously posed to other jurors. Such a practice is unreliable in eliciting the required information from each juror. Each juror must be asked each question, either individually, en banc, or a combination of the two. Judges may, in their discretion, reduce the questions to written form (hand-out or easel) or projected form as an aid, but this may not serve as a substitute for orally asking each question to each juror.

Thus, for example, the originally-seated panel may be questioned en banc, with appropriate follow-up questions posed to those who respond affirmatively to particular questions. Additionally, as discussed in Standard 2, each juror who gets through the initial screening should be asked at least one or more open-ended questions intended to elicit narrative responses. These questions, of course, must be directed to and answered by each juror individually. Also, each juror should be asked individually whether there is anything about the nature of the case or the participants in the trial that would make it difficult or impossible for that juror to judge the case fairly or impartially or whether there is anything in the juror's mind (whether or not covered by the questions)

that the juror thinks the judge or attorneys ought to know about before deciding whether that juror should serve.

As jurors are excused, the newly-seated jurors must be questioned in the same manner. If, for example, three new individuals are seated at the same time, it is permissible to question those three as a group, with the same two exceptions as noted in the preceding paragraph. It is not permissible, however, as the sole basis for eliciting responses, to simply ask whether the newly-seated juror(s) heard the questions asked of previous jurors and would answer any of them differently. There is nothing wrong with posing that type of question as an initial inquiry, because it might elicit a response that results in an expeditious disqualification and thus conserve time. But if the question is utilized and does not result in disqualification, all of the questions must be posed.

The judge shall not pose the questions to the entire array, before seating the original panel in the box. The one exception to this prohibition is that for a particularly long trial, the judge may address the issue of hardship excusals to the entire array before seating the initial panel in the box. When addressing the array, the judge should inform jurors that it is important that, when called to the box, they answer all questions truthfully, accurately, and fully. The jurors should be told that if any question is of a personal or sensitive nature, they can simply ask that they discuss it with the judge (and attorneys) at sidebar.

After making the introductory comments to the array, including the remarks approved by the Supreme Court, the initial panel should be drawn and called to the box. At that point, the judge should instruct those remaining in the gallery to listen closely and carefully to the questions so that if one of them is called upon to replace an excused juror they will be able to bring to the court's attention the questions to which they would have answered yes. Then the judge should begin questioning the jurors seated in the box. As stated, under no circumstances should the questions be posed to the entire array as a substitute for asking the questions to each juror in the box, nor may the asking of each question to each juror in the box be dispensed with before that juror is qualified.

Left to the judge's discretion is the extent to which sidebar discussions are conducted. Of course, when requested by a juror because of the sensitive or personal nature of the question, sidebar should be utilized. Sidebar should also be utilized when deemed appropriate to avoid discussion of subject matter that has the capacity to taint the remainder of the panel. Generally, however, the give-and-take in the process should be conducted in open court. Challenges for cause should be conducted at sidebar if requested by counsel.

The use of written questionnaires – i.e., those answered in writing by prospective jurors – is a permitted practice but should be used only in exceptional circumstances. This practice is routinely used in capital trials, where an extremely thorough voir dire is

required to evaluate death-eligibility. These trials are very lengthy and the voir dire process usually spans several weeks or months, with jurors scheduled to return for voir dire on a specific date. The judge and attorneys typically receive and review the answered questionnaires in advance to enable them to prepare for the voir dire of each juror. In non-capital criminal trials and in civil trials, the time required and administrative burdens attendant to this practice are not generally warranted. If the process is rushed, without allowing the attorneys and judge time for advance review of the answered questionnaires, the process is inefficient and ineffective. In addition, the effort involved can be made unnecessary if counsel still want to observe the jurors responding verbally to questions in order to get a better "feel" regarding the jurors. The Special Committee did not receive a widespread request for the use of this practice in routine cases. The practice should be used, in the judge's discretion, only in substantial, complex cases that require unusually probing voir dire and only where, in relation to the overall trial, the time and administrative burden are warranted.

STANDARD 2. STANDARD QUESTIONS

When questioning prospective jurors, the judge must include the model jury selection questions approved by the Supreme Court for that type of trial, which are attached hereto.

The approved questions provide a common basis for voir dire questioning but are not intended to constitute all of the questions asked of jurors. These questions are intended as a base and are provided, at this time, for (a) all criminal trials, (b) all civil trials, and (c) additional questions for civil trials relating to (1) slip and fall cases, (2) auto cases, and (3) medical malpractice cases. Included within the model questions are inquiries of each juror whether he or she meets the juror qualifications set forth in N.J.S.A. 2B:20-1. Even though these questions are contained on the qualification questionnaire returned by prospective jurors and generally asked of jurors while in the juror assembly area, they are included here as a further safeguard to ensure that all trial jurors are fully qualified.

The model questions were developed after extensive debate and discussion, and with particular attention to the specific wording utilized. In developing the model questions, the Special Committee had the benefit of standard questions that were submitted by trial judges in response to the committee's survey of judges' voir dire practices.

As indicated above, judges conducting voir dire are not required to follow a rigid "script." However, while some deviation thus would not be objectionable, judges are encouraged to use the wording prescribed in the model questions. It is important that, as part of the process, each prospective juror who gets through the initial screening and appears to be potentially qualified must be asked one or more open-ended questions. Before being qualified, each juror has to be asked questions intended to have them open up and talk about such things as their background, their attitudes about the subject matter of the trial, their feelings about the court system generally, and the like. The jurors, in responding in narrative fashion to the variety of subjects presented in the question, will also provide important information by self-selecting what they choose to talk about. If a juror is not responsive, it is expected that the judge will again attempt to elicit a response to the summary question.

It is also important to ask appropriate follow-up questions where a "yes" response is given to standard questions. Intrusive questions, which unnecessarily invade the privacy interest of jurors, should be avoided.

In some civil cases, the parties may wish to expedite the voir dire process, either because the nature of the case, in their view, does not warrant an extended process, because they are near settlement, or for any other reason. These are private disputes, and, with the consent of counsel and the approval of the judge, full use of the model questions in civil trials may be waived. Of course, the waiver discussion and determination should be on the record.

STANDARD 3. SUPPLEMENTAL QUESTIONS

Counsel shall be encouraged to submit relevant supplemental questions for the court's consideration at the pre-voir dire conference; the judge shall review all proposed questions and determine whether to include each one, setting forth the determination on the record.

Supplemental questions are those not included in the model questions but relevant to the particular trial, including questions about trial issues, the parties, or other relevant issues. Supplemental questions should be submitted in writing and discussed

and ruled upon at the pre-voir dire conference. R. 1:8-3(f). See also R. 4:25-7(b) (requiring in civil trials written submission of proposed voir dire questions.)

Supplemental questions should be balanced and neutral, should not be geared to "conditioning" the jury to a party's position in the case, and should not be duplicative or of limited relevance. However, it is desirable to include supplemental questions, proposed by the parties or by the court, which will assist in selecting a fair jury.

Many judges have accumulated a stockpile of supplemental questions they ask in particular circumstances. For example, in criminal trials, judges typically have certain questions they ask in trials involving drugs, sexual assaults, instances where the defendant and victim are of different races, etc. Such supplemental questions, of course, are appropriate and should be included. Attorneys, with knowledge of the expected evidence, may be aware of issues of which the judge is not aware and which should be explored in the voir dire. This circumstance often leads to important supplemental questions. The other side of the coin is that attorneys sometimes present to the court a long list of boilerplate proposed supplemental questions, many or most of which are repetitive, of little significance or relevance to the case, etc. When presented with such proposals, judges are understandably not receptive. Attorneys should tailor their proposed supplemental questions to the case, with a view to model questions to avoid repetition, and they should keep the questions neutral and balanced.

STANDARD 4. ATTORNEY PARTICIPATION

At the discretion of the trial judge, if requested by counsel, at least some participation by counsel in the questioning of jurors should be permitted.

Since 1969, the conduct of jury voir dire, which had previously allowed extensive attorney participation, has been primarily in the hands of the trial judge. State v. Manley, 54 N.J. 259 (1969). There is no suggestion that we should revert to the pre-Manley practices or anything close to them. During the course of the Special Committee's work, there was no outcry from the bar to allow attorney participation. However, in some cases practitioners have requested at least some involvement. Rule 1:8-3(a) allows attorney participation, and Rule 1:8-3(f) requires discussion of the practice, if requested by counsel, during the pre-voir dire conference.

The admonitions of the Court in Manley are as true today as they were when that opinion was written. The undue consumption of time and the undesirable practice of juror indoctrination as consequences of attorney participation must be avoided. The judge thus should continue to exercise the primary role in questioning jurors.

The Special Committee in its report encouraged the allowance of some attorney participation if requested. But whether to allow it and, if allowed, the manner and scope

of the practice must remain discretionary with the trial judge. The most common aspect of attorney participation used by some judges involves follow-up questions. This occurs mostly at sidebar, but sometimes also in open court. When a prospective juror is called to sidebar, it is typically to discuss an issue that calls for follow-up questioning. This fluid process makes subsequent questions appropriate based upon answers given by the juror. Attorneys should be permitted, if they wish, to participate in these sidebar discussions with jurors. Typically, sidebar discussions are more conversational and much less formal than colloquy that is conducted in open court. With the court's permission, they should also be permitted limited participation in follow-up questioning in open court.

Greater restraint should be placed on requests for attorney participation in initial questioning. In this regard, all of the initial questions will have been resolved in the pre-voir dire conference, and there is no demonstrable reason why the questions would be better posed by counsel than by the judge. This remains a discretionary issue. However, the standards do not envision widespread use of attorney participation in initial questioning.

STANDARD 5. CHALLENGES FOR CAUSE

Jurors should be excused for cause, either by the court sua sponte or upon a party's request, when it appears that it will be difficult or impossible for the juror to be fair and impartial in judging the case.

The Special Committee found that in courtrooms where judges liberally grant challenges for cause, the jury selection process moves along more quickly, the use of a large number of peremptory challenges is avoided, and the parties' satisfaction with the final composition of the jury is high. While the appropriate legal standard should be applied for excusing a prospective juror for cause, liberality is encouraged. Judges should avoid extensive efforts to "rehabilitate" a juror or to reject reasons given implicitly or explicitly by the juror for not serving, recognizing that such efforts indicate that there are significant issues about that juror. When there is something particular about the juror that raises a red flag in a particular case type (e.g. a police officer in a criminal case, a nurse in a medical malpractice case, etc.), follow-up questioning should be sufficiently probative to ferret out the ability of the individual to fairly judge the case; merely asking whether, notwithstanding the apparent impediment, he or she could be fair and impartial, with a conclusory answer, is not sufficient. Jurors who express hardship problems (childcare issues, absence from work without pay, etc.) should be liberally excused, particularly where the trial is anticipated to require more than two or three days or extend into the following week.

As noted, the Special Committee recommended substantial reductions in the number of peremptory challenges allowed, especially in criminal trials. As also noted, however, the Court in its September 15, 2006 Administrative Determinations specifically did not act on that particular recommendation, instead holding it in abeyance for a year.

Presuming the Court later acts on that recommendation, with fewer peremptory challenges available, excusals for cause would become more important. There has been a practice, at least implicitly, in which judges have withheld excusals for cause where the issue is reasonably debatable, because the attorney seeking the excusal has a large number of peremptory challenges available. With the proposed reduction in the number of peremptory challenges, this practice would necessarily end. "As the defendant approaches the exhaustion of his or her peremptory challenges, the trial court should become increasingly sensitive to the possibility of prejudice from its failure to dismiss the juror for cause. That heightened sensitivity should lead to a more generous exercise of discretion as defendant approaches the exhaustion of his or her peremptory challenges." State v. Bey, 112 N.J. 123, 155 (1987). If the number of peremptory challenges eventually is reduced, judges should be more liberally disposed to excusing jurors for cause where the issue is a close one.

Trial judges are given substantial deference in their determination of the suitability of individuals to serve as jurors. This is because the judge is, in effect, making a credibility determination whenever there is a cause challenge. Obviously, if the juror says that he or she cannot judge the case fairly, the juror will be excused. It is in those cases where the jurors give the "right" answer, i.e., that they can be fair, where the judge must evaluate the reliability of that answer in light of all of the other answers the juror has given, the juror's background, and the juror's demeanor. Judges must not mechanistically accept the "right answer" if it is placed in significant doubt by the other relevant circumstances.

EXAMPLES OF OPEN-ENDED QUESTIONS - CRIMINAL

1. How do you feel about testimony of law enforcement officers as opposed to testimony by other witnesses who are not law enforcement officers? For example, do you think a law enforcement officer is more likely, less likely, or as likely to tell the truth as a witness who is not in law enforcement? What makes you feel the way you do about this?

2. What do you think about the principle that the defendant on trial is presumed to be innocent and must not be found guilty unless each and every essential element of an offense is proved by the State beyond a reasonable doubt? Would you have any difficulty follow that principle? What makes you feel the way you do about this?

3. What was your reaction when you first heard me explain the nature of the charges against the defendant in this case? Is there anything about the nature of the charges that will make it difficult for you to consider the evidence, the arguments of the attorneys, and my instructions on the law, with an open mind? What makes you feel the way you do about this?

4. Do you have any feelings about the fact that the defendant was arrested and charged with a criminal offense in an indictment? Do these circumstances cause you to have any preconceived notions about the defendant's guilt? What makes you feel the way you do about this?

5. Do you understand that a defendant in a criminal trial does not have to prove his or her innocence, does not have to present any evidence, does not have to testify, and does not even have to be present during the trial if he or she chooses not to be? How do you feel about these principles of our legal system? Will you be able to abide by them in deciding this case?

6. Do you believe the criminal justice system is fair and effective? Please explain.

7. How do you feel about the so-called war on drugs? For example, do you think the amount of resources the government devotes to enforcing the criminal drug laws and prosecuting suspected offenders is too much, not enough, or about right? Do you think resources could be more effectively used in other ways to address the drug problem? Why do you feel this way?

8. How do you feel about gun control laws?

9. Do you believe that you will make a good juror for this case? Please explain.

EXAMPLES OF OPEN-ENDED QUESTIONS - CIVIL

1. What do you think about large corporations that are named as defendants in law suits? Would you consider the legal rights and responsibilities of a corporation differently than those of an actual person? Why do you feel this way?

2. Do you have any feelings about whether or not our society is too litigious, that is, that people sue over things too often that they should not sue over; or do you think, on the other hand, there are too many restrictions on the right of people to sue for legitimate reasons; or do you think our system has struck the right balance in this regard? Have you heard of the concept of "tort reform" (laws that restrict the right to sue or limit the amount that may be recovered)? How do you feel about such laws?

3. There may be expert witnesses in this case. If there are, I will instruct you in more detail, but let me say for now that you do not have to accept their opinions, but you should consider their opinions with an open mind. The expected field of expertise of these witnesses is _____. How do you feel about experts in that field? Will you be able to evaluate their opinions fairly and with an open mind? Why do you feel the way you do about this?

4. Do you have any particular feelings about whether people should be allowed to sue doctors, hospitals, and other health care providers if they are dissatisfied with the results of medical treatment? Tell me how you feel about this and about what kind of circumstances you think should have to be proven before a dissatisfied patient should be allowed to recover damages?

5. How do you feel about the jury system? Do you think law suits would be better decided by some sort of professional hearing officers, arbitration panels, or judges? In our country, under our constitution, in cases such as this one, people have the right to a jury trial. If it were up to you, should that right continue to exist or be eliminated?

6. Do you believe that you will make a good juror for this case? Please explain.

New Appendix XXVII-B

MODEL JURY SELECTION QUESTIONS

Standard Jury Voir Dire

Civil

[Revised as Promulgated by Directive #4-07]

1. In order to be qualified under New Jersey law to serve on a jury, a person must have certain qualifying characteristics. A juror must be:

   - Age 18 or older
   - A citizen of the United States
   - Able to read and understand the English language.
   - A resident of _____ county (*the summoning county*)

   Also, a juror must not:

   - Have been convicted of any indictable offense in any state or federal court
   - And must not have any physical or mental disability which would prevent the person from properly serving as a juror.

     Please consider that the Judiciary will provide reasonable accommodations consistent with the Americans with Disabilities Act.

   Is there any one of you who does not meet these requirements?

2. a. This trial is expected to last for _____. Is there anything about the length or scheduling of the trial that would interfere with your ability to serve?

b. Do you have any medical, personal or financial problem that would prevent you from serving on this jury?

c. Do any of you have a special need or require a reasonable accommodation to help you in listening, paying attention, reading printed materials, deliberating, or otherwise participating as a fair juror? The court will provide reasonable accommodations to your special needs but I will only be aware of any such needs if you let me know about them. My only purpose in asking you these circumstances relates to your ability to serve as a juror. If you have any such request, please raise your hand and I will speak to you at sidebar.

[Note: If a juror makes a request, contact the ADA Coordinator to see if the TCA can meet the request right away (e.g., a portable speaker system available immediately) or if the juror's service should be deferred so that the TCA can arrange the accommodation timely (e.g., an ASL interpreter that may require three or four months' reservation in advance).]

3. *Introduce the lawyers and the parties.* Do any of you know either/any of the lawyers? Has either / any of them or anyone in their office ever represented you or brought any action against you? Do you know
Mr./Ms _____?
Names of Parties

4. *Read names of potential witnesses.* Do you know any of the potential witnesses?
[Note: List witnesses' names here or attached a separate sheet.]

5. I have already briefly described the case. Do you know anything about this case from any source other than what I've just told you?

6. Are any of you familiar with the area or address of the incident?

7. Have you or any family member or close personal friend ever filed a claim or a lawsuit of any kind?

8. Has anyone ever filed a claim or a lawsuit against you or a member of your family or a close friend?

9. Have you or a family member or close personal friend either currently or in the past been involved as a party …as either a plaintiff or a defendant…in a lawsuit involving damages for personal injury?

10. A plaintiff is a person or corporation [or other entity] who has initiated a lawsuit. Do you have a bias for or against a plaintiff simply because he or she has brought a lawsuit?

11. (a) A defendant is a person or corporation [or other entity] against whom a lawsuit has been brought.
Do you have a bias for or against a defendant simply because a lawsuit has been brought against him or her?

[Ask if applicable]
(b) The defendant is a corporation. Under the law, a corporation is entitled to be treated the same as anyone else and is entitled to be treated the same as a private individual. Would any of you have any difficulty in accepting that principle?

12. The court is aware that there has been a great deal of public discussion about something called Tort Reform (laws that restrict the right to sue or limit the amount recovered). Do you have an opinion, one way or the other, on this subject?

13. If the law and evidence warranted, would you be able to render a verdict in favor of the plaintiff or defendant regardless of any sympathy you may have for either party?

14. Based on what I have told you, is there anything about this case or the nature of the claim itself, that would interfere with your ability to be fair and impartial and to apply the law as instructed by the court?

15. Can you accept the law as explained by the court and apply it to the facts regardless of your personal beliefs about what the law is or should be?

16. Have you ever served on a trial jury before today, here in New Jersey

17. Do you know anyone else in the jury box other than as a result of reporting here today?

18. Would your verdict in this case be influenced in any way by any factors other than the evidence in the courtroom such as friendships or family relationships or the type of work you do?

19. Have you ever been a witness in a civil matter, regardless of whether it went to trial?

20. Have you ever testified in any court proceeding?

21. New Jersey law requires that a plaintiff has to prove fault of a defendant before he or she is entitled to recover money damages from that defendant. Do you have any difficulty accepting that concept?

Biographical Question

The following questions should be asked of each potential juror, one by one, in the jury box:

You have answered a series of questions about civil trials and civil cases. Now we would like to learn a little bit about each of you. Please tell us the type of work you do; whether you have ever done any type of work which is substantially different from what you do now; whether you've served in the military; what is your educational history; who else lives in your household and the type of work they do, if any; whether you have any children living elsewhere and the type of work they do; which television shows you watch; any sources from which you learn the news, i.e. the newspapers you read or radio or TV news stations you listen to; if you have a bumper sticker that does not pertain to a political candidate, what does it say? What you do in your spare time and anything else you feel is important.

[Note: This question is intended to be an open-ended question which will allow and encourage the juror to speak in a narrative fashion, rather than answer the question in short phrases. For that reason, it is suggested that the judge read the question in its entirety, rather than part by part. If the juror omits a response to one or more sections, the judge should follow up by asking, in effect: "I notice you didn't mention [specify]. Can you please tell us about that?"]

Omnibus Qualification Questions (Two)

1. Is there anything, whether or not covered in the previous questions, which would affect your ability to be a fair and impartial juror or in any way be a problem for you in serving on this jury?

2. Is there anything else that you feel is important for the parties in this case to know about you?

STANDARD JURY VOIR DIRE
(AUTO, SLIP & FALL, MEDICAL MALPRACTICE)

Auto

1. How many of you are licensed drivers?

2. Have you or any family member or close personal friend ever been involved in a motor vehicle accident in which an injury resulted?

3. (a) Have you or a family member or close personal friend ever been involved in litigation or filed a claim of any sort?

   (b) Has anyone ever filed a claim or lawsuit against you or a family member or close personal friend?

4. Have you or a family member or close personal friend sustained an injury to the _____ or have chronic problems with _____?

5. [Ask if applicable] Have you or a family member or close personal friend utilized the services of a chiropractor?

6. The court is aware that there has been a great deal of public discussion in print and in the media about automobile accident lawsuits and automobile accident claims. Do you have an opinion, one way or the other on this subject?

Slip and Fall

1. Is anyone a tenant?

2. Is anyone a landlord?

3. Is anyone a homeowner?

4. Have you or a family member or close personal friend ever been involved …as either a plaintiff or a defendant…in a slip and fall accident in which an injury resulted?

5. Have you or a family member or close personal friend ever been involved in litigation or filed a claim of any sort?

6. Have you or a family member or close personal friend sustained an injury to the _____ or have chronic problems with _____?

Medical Malpractice

Note: This information is not to be included on printed copies provided to jurors.

It is expected that the parties will submit a few specific questions seeking juror attitudes towards particular injury claims, such as pecuniary loss for wrongful death or a claim for emotional distress, if applicable, or juror attitudes about other particular types of claims, such as wrongful birth or informed consent issues. In particular, wrongful birth claims might require a questionnaire or separate voir dire to address attitudes about termination of pregnancy.

Before asking the questions below, explain that the trial involves a claim of medical negligence, which people sometimes refer to as medical malpractice and that the terms both mean the same thing.

1. Have you, or family member, or a close personal friend, ever had any experience, either so good or so bad, with a doctor or any other health care provider, that would make it difficult for you to sit as an impartial juror in this matter?

2. If the law and the evidence warranted, could you award damages for the plaintiff even if you felt sympathy for the doctor?

3. Regardless of plaintiff's present condition, if the law and evidence warranted, could you render a verdict in favor of the defendant despite being sympathetic to the plaintiff?

4. Have you, any family member, or close personal friend ever worked for:
   Attorneys
   Doctors, Hospitals or Physical Therapists
   Any type of health care provider
   Any ambulance / EMT / Rescue

5. Have you, or any members of your family, been employed in processing, investigating or handling any type of medical or personal injury claims?

6. Is there anything that you may have read in the print media or seen on television or heard on the radio about medical negligence cases or caps or limits on jury verdicts or awards that would prevent you from deciding this case fairly and impartially on the facts presented?

7. This case involves a claim against the defendant for injuries suffered by the plaintiff as a result of alleged medical negligence. Do you have any existing opinions or strong feelings one way or another about such cases?

8. Have any of you or members of your immediate family ever suffered any complications from [specify the medical field involved]?

9 Do you have any familiarity with [specify the type of medical condition involved] or any familiarity with the types of treatment available?

10. Are you, or have you ever been, related (by blood or marriage) to anyone affiliated with the health care field?

11. Have you or any relative or close personal friend ever had a dispute with respect to a health care issue of any kind with a doctor, chiropractor, dentist, nurse, hospital employee, technician or other person employed in the health care field?

12. Have you or any relative or close personal friend ever brought a claim against a doctor, chiropractor, dentist, nurse or hospital for an injury allegedly caused by a doctor, dentist, nurse or hospital?

13. Have you or any relative or close personal friend ever considered bringing a medical or dental negligence action but did not do so?

14. Have you or any relative or close personal friend ever been involved with treatment which did not produce the desired outcome?

New Appendix XXVII-C

MODEL JURY SELECTION QUESTIONS

Standard Jury Voir Dire

Criminal

[Revised as Promulgated by Directive #4-07]

1. In order to be qualified under New Jersey law to serve on a jury, a person must have certain qualifying characteristics. A juror must be:

   - Age 18 or older
   - A citizen of the United States
   - Able to read and understand the English language.
   - A resident of _____ county (*the summoning county*)

   Also, a juror must not:

   - Have been convicted of any indictable offense in any state or federal court
   - And must not have any physical or mental disability which would prevent the person from properly serving as a juror.

     Please consider that the Judiciary will provide reasonable accommodations consistent with the Americans with Disabilities Act.

   Is there any one of you who does not meet these requirements?

2. a. This trial is expected to last for _____. Is there anything about the length or scheduling of the trial that would interfere with your ability to serve?

   b. Do you have any medical, personal or financial problem that would prevent you from serving on this jury?

c. Do any of you have a special need or require a reasonable accommodation to help you in listening, paying attention, reading printed materials, deliberating, or otherwise participating as a fair juror? The court will provide reasonable accommodations to your special needs but I will only be aware of any such needs if you let me know about them. My only purpose in asking you these circumstances relates to your ability to serve as a juror. If you have any such request, please raise your hand and I will speak to you at sidebar.

[Note: If a juror makes a request, contact the ADA Coordinator to see if the TCA can meet the request right away (e.g., a portable speaker system available immediately) or if the juror's service should be deferred so that the TCA can arrange the accommodation timely (e.g., an ASL interpreter that may require three or four months' reservation in advance).]

3. *Introduce the lawyers and the defendant.* Do any of you know either/any of the lawyers? Has either / any of them or anyone in their office ever represented you or brought any action against you? Do you know Mr./ Ms. _____?
Name of defendant

4. *Read names of potential witnesses.* Do you know any of the potential witnesses?
[Note: List witnesses' names here or attach a separate sheet.]

5. I have already briefly described the case. Do you know anything about this case from any source other than what I've just told you?

6. Are any of you familiar with the area or address of the incident?

7. Have you ever served on a jury before today, here in New Jersey or in any state court or federal court?

8. Have you ever sat as a grand juror?

9. Do you know anyone else in the jury box other than as a result of reporting here today?

10. Would your verdict in this case be influenced in any way by any factors other than the evidence in the courtroom, such as friendships or family relationships or the type of work you do?

11. Is there anything about the nature of the charge itself that would interfere with your impartiality?

12. Have you ever been a witness in a criminal case, regardless of whether it went to trial?

13. Have you ever testified in any court proceeding?

14. Have you ever applied for a job as a state or local police officer or with a sheriff's department or county jail or state prison?

15. Have you, or any family member or close friend, ever worked for any agency such as a police department, prosecutor's office, the FBI, the DEA, or a sheriff's department, jail or prison, either in New Jersey or elsewhere?

16. As a general proposition, do you think that a police officer is more likely or less likely to tell the truth than a witness who is not a police officer?

17. Would any of you give greater or lesser weight to the testimony of a police officer merely because of his or her status as a police officer?

18. Have you or any family member or close friend ever been accused of committing an offense other than a minor motor vehicle offense?

19. Have you or any family member or close friend ever been the victim of a crime, whether it was reported to law enforcement or not?

20. Would you have any difficulty following the principle that the defendant on trial is presumed to be innocent and must be found not guilty of that charge unless each and every essential element of an offense charged is proved beyond a reasonable doubt?

21. The indictment is not evidence of guilt. It is simply a charging document. Would the fact that the defendant has been arrested and indicted, and is here in court facing these charges, cause you to have preconceived opinions on the defendant's guilt or innocence?

22. I have already given you the definition of reasonable doubt, and will explain it again at the end of the trial. Would any of you have any difficulty in voting not guilty if the State fails to prove the charge beyond a reasonable doubt?

23. If the State proves each element of the alleged offense(s) beyond a reasonable doubt, would you have any difficulty in returning a verdict of guilty?

24. The burden of proving each element of a crime beyond a reasonable doubt rests upon the prosecution and that burden never shifts to the defendant. The defendant in a criminal case has no obligation or duty to

prove his/her innocence or offer any proof relating to his/her innocence. Would any of you have any difficulty in following these principles?

25. Would you have any difficulty or reluctance in accepting the law as explained by the court and applying it to the facts regardless of your personal beliefs about what the law should be or is?

26. Is there anything about this case, based on what I've told you, that would interfere with your ability to be fair and impartial?

27. A defendant in a criminal case has the absolute right to remain silent and has the absolute right not to testify. If a defendant chooses not to testify, the jury is prohibited from drawing any negative conclusions from that choice. The defendant is presumed innocent whether he testifies or not. Would any of you have any difficulty in following these principles?

[Note: The defendant has the right to waive this question. The defendant's decision in that regard should be discussed during the voir dire conference.]

Biographical Question

The following questions should be asked of each potential juror, one by one, in the jury box:

You have answered a series of questions about criminal trials and criminal charges. Now we would like to learn a little bit about each of you. Please tell us the type of work you do; whether you have ever done any type of work which is substantially different from what you do now; whether you've served in the military; what is your educational history; who else lives in your household and the type of work they do; whether you have any children living elsewhere and the type of work they do; which television shows you watch; any sources from which you learn the news, i.e., the newspapers you read or radio or TV news stations you listen to; if you have a bumper sticker that does not pertain to a political candidate, what does it say; what you do in your spare time and anything else you feel is important.

[Note: This question is intended to be an open-ended question which will allow and encourage the juror to speak in a narrative fashion, rather than answer the question in short phrases. For that reason, it is suggested that the judge read the question in its entirety, rather than part by part. If the juror omits a response to one or more sections, the judge should follow up by asking, in effect: "I notice you didn't mention [specify]. Can you please tell us about that?"]

Omnibus Qualification Questions (Two)

1. Is there anything, whether or not covered by the previous questions, which would affect your ability to be a fair and impartial juror or in any way be a problem for you in serving on this jury?

2. Is there anything else that you feel is important for the parties in this case to know about you?

B. Proposed Amendments to *R.* 1:15-1 — Limitation on Practice of Attorneys Serving as Judges and Surrogates

The Advisory Committee on Judicial Conduct recommended that *R.* 1:15-1 be amended to clarify that the proscription against Surrogates and Deputy Surrogates practicing law in estate or trust matters extends to the preparation of wills or trust documents. This recommendation stems from the possibility of varying interpretations of the language of the rule, as currently constituted. The Administrative Director had issued a memo reminding Surrogates and Deputy Surrogates of this proscription, but asked the Committee to recommend inclusion of the clarifying language in its 2006-2008 Report.

The Committee supported the proposed recommendation as a means to clarify the limitation on the practice of law by Surrogates and Deputy Surrogates.

The proposed amendments to *R.* 1:15-1 follow.

1:15-1 Limitation on Practice of Attorneys Serving as Judges and Surrogates

(a) …no change.

(b) …no change.

(c) Surrogates. An attorney who is a surrogate or deputy surrogate in any county, or who is in the employ of any such official, shall not practice law in any estate or trust matter, including the preparation of wills, trust documents or any other probate documents, in or out of court. Furthermore, a surrogate or deputy surrogate shall not practice law in any criminal, quasi-criminal or penal matter, whether judicial or administrative in nature, in that county, nor in the Superior Court, Chancery Division, Probate Part in any county.

Note: Source — *R.R.* 1:26-1(a)(b)(c)(d)(e)(f), 8:13-7(b). Paragraph (d) amended November 22, 1978 to be effective December 7, 1978; paragraph (c) amended July 16, 1981 to be effective September 14, 1981, except that, as to part-time municipal court judges outside of Atlantic City, the last sentence shall be effective December 26, 1981; paragraph (d) amended February 17, 1983 to be effective immediately; former paragraph (b) deleted and former paragraphs (c) and (d) redesignated to paragraphs (b) and (c) July 26, 1984 to be effective September 10, 1984; paragraphs (a) and (b) 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 to be effective .

C. Proposed Amendments to *R*. 4:25-4 — Designation of Trial Counsel

The Conference of Civil Presiding Judges noted that *R*. 4:25-4, as currently constituted, allows the court to waive trial counsel designation, on notice, in tort cases pending for more than three years "if unavailability of designated counsel will delay trial." In recognition of the facts that the civil caseload is getting younger due to the reduction in backlog, and that the backlog standard for Track 2 cases, which include auto negligence and personal injury matters, is 18 months, the Conference overwhelmingly recommended that *R*. 4:25-4 be amended to allow the court to waive trial counsel designation in Track 1 and Track 2 tort cases after two years, subject to the current restrictions (*e.g.,* notice). The Committee acknowledged that it inures to the benefit of the parties, especially the plaintiffs, to be able to have the cases heard earlier. Clarifying that the change recommended by the Conference applies only to tort cases on Tracks 1 and 2 and that the waiver requirement is discretionary rather than mandatory, the Committee recommends implementation of the Conference's proposal in these limited circumstances.

The proposed amendments to *R*. 4:25-4 follow.

4:25-4 Designation of Trial Counsel

Counsel shall, either in the first pleading or in a writing filed no later than ten days after the expiration of the discovery period, notify the court that designated counsel is to try the case, and set forth the name specifically. If there has been no such notification to the court, the right to designate trial counsel shall be deemed waived. No change in such designated counsel shall be made without leave of court if such change will interfere with the trial schedule. In tort cases assigned to Track 1 or 2 pending for more than [three] two years, and in tort cases assigned to Track 3 or 4 pending for more than three years, the court, on such notice to the parties as it deems adequate in the circumstances, may disregard the designation if the unavailability of designated counsel will delay trial. If the name of trial counsel is not specifically set forth, the court and opposing counsel shall have the right to expect any partner or associate to proceed with the trial of the case, when reached on the calendar.

Note: Source — *R.R.* 4:29-3A(a); amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; caption and text amended July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended _____ to be effective _____.

D. Proposed Amendments to *R*. 4:43-2 — Final Judgment by Default

In the last rules cycle, *R*. 4:43-2(b) was amended to require a party seeking a default judgment to make application to the court by notice of motion. The rule notes that the court may, "on notice to the defaulting defendant…, conduct such proof hearings … as it deems appropriate." The rule says further that the notice of the proof hearing shall be by ordinary mail and that the proof of service of the notice of motion and notice of proof hearing shall certify that the plaintiff has no actual knowledge that the defaulting defendant's address has changed after service of original process.

A Civil Presiding Judge inquired if the notice of proof hearing must be made by notice of motion or if a letter from the plaintiff to the court requesting a proof hearing at a particular date and time, copied to the defendant at the same address at which original process was served, would be sufficient. The suggestion was that the rule be amended to clarify whether or not a notice of motion is necessary in this situation.

The practitioners on the Committee indicated that they have experienced differing approaches to this issue and urged that the rule be more specific. Accordingly, the Committee proposes adding language to the rule to clarify that a proof hearing may be requested by a party without the necessity of a formal motion.

The proposed amendments to *R*. 4:43-2 follow.

4:43-2 Final Judgment by Default

After a default has been entered in accordance with *R*. 4:43-1, except as otherwise provided by *R*. 4:64 (foreclosures), but not simultaneously therewith, a final judgment may be entered in the action as follows:

(a) …no change.

(b) By the Court. In all other cases, except Family Part matters recognized by Part V of these Rules, the party entitled to a judgment by default shall apply to the court therefor by notice of motion pursuant to *R*. 1:6, served on all parties to the action, including the defaulting defendant or the representative who appeared for the defaulting defendant. No judgment by default shall be entered against a minor or mentally incapacitated person unless that person is represented in the action by a guardian or guardian ad litem who has appeared therein. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any allegation by evidence or to make an investigation of any other matter, the court may, on its own motion or at the request of a party on notice to the defaulting defendant or defendant's representative, conduct such proof hearings with or without a jury or take such proceedings as it deems appropriate. The notice of proof hearing shall be by ordinary mail addressed to the same address at which process was served unless the party entitled to judgment has actual knowledge of a different current address for the defaulting defendant. Proof of service of the notice of motion and notice of any proof hearing shall certify that the plaintiff has no actual knowledge that the defaulting defendant's address has changed after service of original process or, if the plaintiff has such knowledge, the proof shall certify the underlying facts. In tort actions involving multiple defendants whose percentage of liability is subject to comparison and actions in which fewer

than all defendants have defaulted, default judgment of liability may be entered against the defaulting defendants but such questions as defendants' respective percentages of liability and total damages due plaintiff shall be reserved for trial or other final disposition of the action. If application is made for the entry of judgment by default in deficiency suits or claims based directly or indirectly upon the sale of a chattel which has been repossessed, the plaintiff shall prove before the court the description of the property, the amount realized at the sale or credited to the defendant and the costs of the sale. In actions for possession of land, however, the court need not require proof of title by the plaintiff. If application is made for the entry of judgment by default in negligence actions involving property damage only, proof shall be made as provided by *R*. 6:6-3(c).

(c) …no change.

(d) …no change.

Note: Source — *R.R*. 4:55-4 (first sentence), 4:56-2(a) (b) (first three sentences) (c), 4:79-4. Paragraph (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 15, 1982 to be effective September 13, 1982; text and paragraph (a) amended January 19, 1989 to be effective February 1, 1989; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraphs (b) and (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (d) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 12, 2002 to be effective September 3, 2002; introductory text and paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended and paragraph (d) caption and text amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended September 11, 2006 to be effective immediately; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; paragraph (b) amended to be effective .

E. Proposed Amendments to *R.* 4:46-1 — re: Timing for Filing Summary Judgment Motions

In the last rules cycle, the Committee recommended and the Supreme Court adopted the proposal that *R*. 4:36-3(a) be amended to increase the notice of trial from eight weeks to a minimum of ten weeks. This change was necessary to implement amendments to *R*. 4:46-1 providing that, in cases assigned to Tracks 1, 2, and 3, summary judgment motions must be made returnable at least 30 days prior to the scheduled trial date. In responding to (and supporting) these amendments regarding the timing for filing summary judgment motions, the New Jersey State Bar Association suggested a further requirement that "…all dispositive motions must be returnable at least 10 days prior to the trial date and that if a summary judgment motion is not returned within this timeframe the trial date is adjourned."

The Committee recognized that the reason underlying this request is that, in order to properly prepare for trial, the attorney needs to know the decision on a dispositive motion within a reasonable time before the actual trial date and agreed that, if a decision is not rendered, an adjournment request should be entertained. Many Committee members, however, were reluctant to recommend a rule that would constrain a judge's discretion on the setting of a trial date or direct the judge to grant adjournment requests. The Committee ultimately agreed to propose the addition of language to *R*. 4:46-1 to provide that if a decision on a dispositive motion were not made within 10 days of the scheduled trial date, an application for an adjournment would be liberally granted.

The proposed amendments to *R*. 4:46-1 follow.

4:46-1. Time for Making, Filing, and Serving Motion

A party seeking any affirmative relief may, at any time after the expiration of 35 days from the service of the pleading claiming such relief, move for a summary judgment or order on all or any part thereof or as to any defense. Said motion, however, shall be returnable no later than 30 days before the scheduled trial date, unless the court otherwise orders for good cause shown, and if the decision is not communicated to the parties at least 10 days prior to the scheduled trial date, an application for adjournment shall be liberally granted. A party against whom a claim for such affirmative relief is asserted may move at any time for a summary judgment or order as to all or any part thereof. Except as otherwise provided by *R.* 6:3-3 (motion practice in Special Civil Part) or unless the court otherwise orders, a motion for summary judgment shall be served and filed not later than 28 days before the time specified for the return date; opposing affidavits, certifications, briefs, and cross-motions for summary judgment, if any, shall be served and filed not later than 10 days before the return date; and answers or responses to such opposing papers or to cross-motions shall be served and filed not later than four days before the return date. No other papers may be filed without leave of court.

Note: Source — *R.R.* 4:58-1, 4:58-2. Caption and text amended November 1, 1985 to be effective January 2, 1986; amended November 5, 1986 to be effective January 1, 1987; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; amended July 27, 2006 to be effective September 1, 2006; amended to be effective .

F. Proposed Amendments to *Rules* 4:59-1 and 6:1-1 — re: Execution

The Committee recommends two proposed amendments to *R*. 4:59-1 and a corresponding change to *R*. 6:1-1:

1. The Sheriff's Association had asked the Committee to amend subsection (f) of *R*. 4:59-1(Sheriff's Costs) to permit the bill of taxed costs to be included in the sheriff's final report to the court rather than requiring the bill to be filed within 20 days after the date of the sale, as the rule currently reads. The Association claimed that it is difficult to obtain accurate figures within the stated timeframe, largely because the successful bidder has at least 30 days in which to complete the sale, during which period the figures are constantly changing. That time period may also be enlarged if a party applies to the court to extend the period of redemption, which frequently occurs. Because this is an issue that arises most often in the foreclosure context, the advice of the Office of Foreclosure was sought. The Office of Foreclosure was not opposed to this change and, in fact, recognized that it is responsive to the realities of the foreclosure practice. The Committee agreed that such an amendment would streamline the foreclosure practice and, accordingly, supports the proposal.

2. The Committee of Special Civil Part Supervising Judges has asked that *Rules* 4:59-1 and 6:1-1 be amended to expressly prohibit the direction of Civil Part writs to Special Civil Part Officers except upon order of the Civil Presiding Judge. *Rule* 4:59-1 currently provides that all writs shall be directed to the Sheriff "unless the court otherwise orders," but the Special Civil Part Supervising Judges take the position that the language needs to be more emphatic on the subject in

view of recent efforts by some attorneys to circumvent the rule. The Civil Presiding Judge is specified because, pursuant to Administrative Directive #02-07, he or she must authorize any remunerative activity by Special Civil Par Officers outside the scope of serving Special Civil Part process. The Special Civil Part Practice Committee has endorsed these rule amendments.

The Committee agreed that the prohibition needs to be spelled out and, accordingly, endorses the recommendation of the Special Civil Part Practice Committee.

The proposed amendments to *Rules* 4:59-1 and 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. The judgment-creditor shall serve a [A] copy of the fully endorsed writ [shall be served,] personally or by ordinary mail, [up]on 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 appointing the Officer and specifying the amount of the 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) Sheriff's Costs. The sheriff shall file a bill of taxed costs with the final report with the clerk of the court [from which execution issued within 20 days after the date of the sale].

(g) Notice to Debtor. Every court officer or other person levying on a debtor's property shall, on the day the levy is made, mail a notice to the person whose assets are to be levied on stating that a levy has been made and describing exemptions from levy and how such exemptions may be claimed. The notice shall be in the form prescribed by Appendix VI to these rules; shall be mailed to the debtor's residence or, if the debtor is an entity, to the debtor's principal place of business; and copies thereof shall be promptly filed by the levying officer with the clerk of the court and mailed to the person who requested the levy. If the clerk or the court receives a claim of exemption, whether formal or informal, it shall hold a hearing thereon within 7 days after the claim is made. If an exemption claim is made to the levying officer, it shall be forthwith forwarded to the clerk of the court and no further action shall be taken with respect to the levy pending the outcome of the exemption hearing. No turnover of funds or sale of assets may be made, in any case, until 20 days after the date of the levy and the court has received a copy of the properly completed notice to debtor.

(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; paragraphs (a), (f),and (g) amended to be effective .

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) …no change

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

G. Proposed Amendments to *Rules* 4:52-1, 4:67-2, and 4:83-1 and New Appendices XII-F through -I — re: Orders to Show Cause

The 2002 Report of the Conference of General Equity Presiding Judges on General Equity Standardization called for the development of standard provisions to be included in all Orders to Show Cause used as original process. At the direction of the Judicial Council, the Conference of General Equity Presiding Judges conferred with other Presiding Judge Conferences and developed model Orders to Show Cause for use in those divisions when Orders to Show Cause are used as original process. The Judicial Council approved these forms for immediate use on September 15, 2005 and they have been available on the Judiciary's website since 2006. It should be noted that use of the forms themselves is not mandatory — they are model forms intended to guide the practitioner by providing the necessary elements that should be included in an Order to Show Cause when used as original process.

The Supreme Court asked the Committee to draft and submit proposed amendments to the Rules of the Court so as to include these forms in the Appendices and to provide the necessary references to the existence of the forms in the relevant rules. This issue was carried over from the 2004-2006 term because of the Committee's concern that the forms were not suitable for Probate Part actions. The Committee then drafted a model Order to Show Cause to be used as original process in probate matters. The Committee now recommends that all four model forms be included in the Appendix to the court rules and that appropriate references to the forms be included in *Rules* 4:52-1, 4:67-2, and 4:83-1.

The proposed amendments to *Rules* 4:52-1, 4:67-2 and 4:83-1 and new Appendices XII-F through -I follow.

4:52-1. Temporary Restraint and Interlocutory Injunction-Application on Filing of Complaint

(a) Order to Show Cause With Temporary Restraints. On the filing of a complaint seeking injunctive relief, the plaintiff may apply for an order requiring the defendant to show cause why an interlocutory injunction should not be granted pending the disposition of the action. The proceedings shall be recorded verbatim provided that the application is made at a time and place where a reporter or sound recording device is available. The order to show cause shall not, however, include any temporary restraints or other interim relief unless the defendant has either been given notice of the application or consents thereto or it appears from specific facts shown by affidavit or verified complaint that immediate and irreparable damage will probably result to the plaintiff before notice can be served or informally given and a hearing had thereon. If the order to show cause includes temporary restraints or other interim relief and was issued without notice to the defendant, provision shall be made therein that the defendant shall have leave to move for the dissolution or modification of the restraint on 2 days' notice or on such other notice as the court fixes in the order. The order may further provide for the continuation of the restraint until the further order of the court and shall be returnable within such time after its entry as the court fixes but not exceeding 35 days after the date of its issuance, unless within such time the court on good cause shown extends the time for a like period or unless the defendant consents to an extension for a longer period. The order to show cause may be in the form in Appendices XII-G and -H to the extent applicable.

(b) …no change.

(c) …no change.

Note: Source — *R.R.* 4:67-2. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended effective July 26, 1984 to be effective September

10, 1984; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended _____ to be effective _____.

4:67-2. Complaint; Order to Show Cause; Motion

(a) Order to Show Cause. If the action is brought in a summary manner pursuant to *R.* 4:67-1(a), the complaint, verified by affidavit made pursuant to *R.* 1:6-6, may be presented to the court ex parte and service shall be made pursuant to *R.* 4:52-1(b), except that if the action is pending in the Law Division of the Superior Court, it shall be presented to the Assignment Judge or to such other judge as the Assignment Judge designates. The proceeding shall be recorded verbatim provided that the application is made at a time and place where a reporter or sound recording device is available. The court, if satisfied with the sufficiency of the application, shall order the defendant to show cause why final judgment should not be rendered for the relief sought. No temporary restraints or other interim relief shall be granted in the order unless the defendant has either been given notice of the action or consents thereto or it appears from the specific facts shown by affidavit or verified complaint that immediate and irreparable damage will result to the plaintiff before notice can be served or informally given. The order shall be so framed as to notify the defendant fully of the terms of the judgment sought, and subject to the provisions of *R.* 4:52, it may embody such interim restraint and other appropriate intermediate relief as may be necessary to prevent immediate and irreparable damage. The order to show cause may be in the form set forth in Appendix XXII-F through -H to the extent applicable.

(b) …no change.

Note: Source — *R.R.* 4:85-2. Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended _____ to be effective _____.

4:83-1. Method of Proceeding

Unless otherwise specified, all actions in the Superior Court, Chancery Division, Probate Part, shall be brought in a summary manner by the filing of a complaint and issuance of an order to show cause pursuant to *R*. 4:67. The Surrogate, as Deputy Clerk, may fix the return date of the order to show cause and execute the same unless the procedure in a particular case raises doubt or difficulty. Service shall be made and the action shall proceed thereafter in accordance with that rule. The order to show cause may be in the form in Appendix XII-I to the extent applicable.

Note: Source — *R.R.* 4:105-3, 4:117-1. Former *R*. 4:99-1 deleted and new *R*. 4:83-1 adopted June 29, 1990 to be effective September 4, 1990; amended June 28, 1996 to be effective September 1, 1996; amended _____ to be effective _____.

NEW APPENDIX — XII - F

OSC AS ORIGINAL PROCESS – SUMMARY ACTION
PURSUANT TO *R* 4:67-1(A)
FAMILY PART *R*. 5:4-3(b)
SUBMITTED WITH NEW COMPLAINT
FORM CAN ALSO BE FOUND AT
WWW.NJCOURTSONLINE.COM

SUPERIOR COURT OF NEW JERSEY
_____ DIVISION _____ COUNTY
_____ PART

[I*nsert the plaintiff's name*], Plaintiff(s), v. [I*nsert the defendant's name*], Defendant(s).	Docket No.: CIVIL ACTION ORDER TO SHOW CAUSE SUMMARY ACTION

THIS MATTER being brought before the Court by _____, attorney for plaintiff, [*insert the plaintiff's name*], seeking relief by way of summary action pursuant to *R.* 4:67-1(a), based upon the facts set forth in the verified complaint filed herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to [*insert the statute or court rule that permits the matter to be brought as a summary action*] and for good cause shown.

IT IS on this _____ day of _____, 20__, *ORDERED* that the defendant(s), [*insert defendant's name(s)*], appear and show cause on the _____day of _____, 20___ before the Superior Court at the _____ County Courthouse in _____, New Jersey at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, why judgment should not be entered for:

A. [*Set forth with specificity the return date relief that the plaintiff is seeking.*];

B. _____;

C. _____;

D. Granting such other relief as the court deems equitable and just.

And it is further *ORDERED* that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the defendant(s), [personally *or alternate: describe form of substituted service*] within ____ days of the date hereof, in accordance with *R*. 4:4-3 and *R*. 4:4-4, this being original process.

2. The plaintiff must file with the court his/her/its proof of service of the pleadings on the defendant(s) no later than three (3) days before the return date.

3. Defendant(s) shall file and serve a written answer, an answering affidavit or a motion returnable on the return date *[Family Part alternate:* appearance or response] to this order to show cause and the relief requested in the verified complaint and proof of service of the same by _____, 20__. The answer, answering affidavit or a motion [*Family Part alternate:* appearance, response], as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge _____.

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____, 20__. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If the defendant(s) do/does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendant(s) take notice that the plaintiff has filed a lawsuit [*Family Part alternate:* divorce action] against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date to the order to show cause [*Family Part alternate*: appearance or response] and proof of service before the return date of the order to show cause.

These documents must be fled with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a $ _____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer, answering affidavit or motion [*Family Part alternate*: appearance or response] to the plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion [*Family Part alternate*: appearance or response] with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

_____

J.S.C.

ATLANTIC COUNTY:
Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:
Deputy Clerk of the Superior Court
Case Processing Section, Room 119
Justice Center, 10 Main St.
Hackensack, NJ 07601-0769

LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:
Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060

LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY:
Deputy Clerk of the Superior Court
Civil Processing Office
1st Fl., Hall of Records
101 S. Fifth St.
Camden, NJ 08103

LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:
Deputy Clerk of the Superior Court
9 N. Main Street
Box DN-209
Cape May Court House, NJ 08210

LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:
Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Sts., P.O. Box 615
Bridgeton, NJ 08302

LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY:
Deputy Clerk of the Superior Court
50 West Market Street
Room 131
Newark, NJ 07102

LAWYER REFERRAL
(973) 622-6207
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:
Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street, P.O. Box 129
Woodbury, NJ 08096

LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY: Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House-- 1st Floor
583 Newark Ave.
Jersey City, NJ 07306

LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:
Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822

LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:
Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 S. Broad Street, P.O. Box 8068
Trenton, NJ 08650

LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY: Deputy Clerk of the Superior Court Administration Building Third Floor 1 Kennedy Sq., P.O. Box 2633 New Brunswick, NJ 08903-2633	LAWYER REFERRAL (732) 828-0053 LEGAL SERVICES (732) 249-7600
MONMOUTH COUNTY: Deputy Clerk of the Superior Court Court House 71 Monument Park P.O. Box 1269 Freehold, NJ 07728-1269	LAWYER REFERRAL (732) 431-5544 LEGAL SERVICES (732) 866-0020
MORRIS COUNTY: Deputy Clerk of the Superior Court Civil Division 30 Schuyler Pl., P.O. Box 910 Morristown, NJ 07960-0910	LAWYER REFERRAL (973) 267-5882 LEGAL SERVICES (973) 285-6911
OCEAN COUNTY: Deputy Clerk of the Superior Court Court House, Room 119 118 Washington Street Toms River, NJ 08754	LAWYER REFERRAL (732) 240-3666 LEGAL SERVICES (732) 341-2727
PASSAIC COUNTY: Deputy Clerk of the Superior Court Civil Division Court House 77 Hamilton St. Paterson, NJ 07505	LAWYER REFERRAL (973) 278-9223 LEGAL SERVICES (973) 345-7171
SALEM COUNTY: Deputy Clerk of the Superior Court 92 Market St., P.O. Box 18 Salem, NJ 08079	LAWYER REFERRAL (856) 935-5628 LEGAL SERVICES (856) 451-0003
SOMERSET COUNTY: Deputy Clerk of the Superior Court Civil Division Office New Court House, 3rd Fl. P.O. Box 3000 Somerville, NJ 08876	LAWYER REFERRAL (908) 685-2323 LEGAL SERVICES (908) 231-0840
SUSSEX COUNTY: Deputy Clerk of the Superior Court Sussex County Judicial Center 43-47 High Street Newton, NJ 07860	LAWYER REFERRAL (973) 267-5882 LEGAL SERVICES (973) 383-7400
UNION COUNTY: Deputy Clerk of the Superior Court 1st Fl., Court House 2 Broad Street Elizabeth, NJ 07207-6073	LAWYER REFERRAL (908) 353-4715 LEGAL SERVICES (908) 354-4340
WARREN COUNTY: Deputy Clerk of the Superior Court Civil Division Office Court House 413 Second Street Belvidere, NJ 07823-1500	LAWYER REFERRAL (973) 267-5882 LEGAL SERVICES (973) 475-2010

NEW APPENDIX — XII-G

OTSC AS ORIGINAL PROCESS –
SUBMITTED WITH NEW COMPLAINT
PRELIMINARY INJUNCTIVE RELIEF
PURSUANT TO RULE 4:52-1 – NO TRO
FORM CAN ALSO BE FOUND AT
WWW.NJCOURTSONLINE.COM

SUPERIOR COURT OF NEW JERSEY
_____ Division _____ County

_____ PART

[*Insert the plaintiff's name*], Plaintiff(s), v. [*Insert the defendant's name*], Defendant(s).	Docket No.: CIVIL ACTION ORDER TO SHOW CAUSE PRELIMINARY INJUNCTION PURSUANT TO RULE 4:52

THIS MATTER being brought before the Court by _____, attorney for plaintiff, [*insert the plaintiff's name*], seeking relief by way of preliminary injunction at the return date set forth below pursuant to *R*. 4:52, based upon the facts set forth in the verified complaint filed herewith and for good cause shown.

It is on this ____ day of _____ *ORDERED* that defendant(s), [*insert the defendant's name*], appear and show cause before the Superior Court at the _____ County Courthouse in _____, New Jersey at _____ o'clock in the _____ noon or as soon thereafter as counsel can be heard, on the _____day of _____, 20 __ why an order should not be issued preliminarily enjoining and restraining [*insert the defendant's name*] from

A. [*Set forth with specificity the return date relief that the plaintiff is seeking.*];

B. _____;

C. _____;

D. Granting such other relief as the court deems equitable and just.

And it is further *ORDERED* that:

1. A copy of this order to show cause, verified complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the defendant(s) [personally *or alternate: describe form of substituted service*] within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The plaintiff must file with the court his/her/its proof of service of the pleadings on the defendant no later than three (3) days before the return date.

3. Defendant(s) shall file and serve a written response to this order to show cause and the request for entry of injunctive relief and proof of service by _____, 20__. The original documents must be filed with the clerk of the Superior Court in the county listed above. A list of these offices is provided. You must send a copy of your opposition papers directly to Judge _____, whose address is _____, New Jersey. You must also send a copy of your opposition papers to the plaintiff's attorney whose name and address appears above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of $ _____ and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the plaintiff is seeking.

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____, 20__. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If the defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendant take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written

answer to the complaint and proof of service within 35 days from the day of service of this order to show cause; not counting the day you received it.

These documents must be fled with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a $_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

_____

J.S.C.

ATLANTIC COUNTY:
Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:
Deputy Clerk of the Superior Court
Case Processing Section, Room 119
Justice Center, 10 Main St.
Hackensack, NJ 07601-0769

LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:
Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060

LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY:
Deputy Clerk of the Superior Court
Civil Processing Office
1st Fl., Hall of Records
101 S. Fifth St.
Camden, NJ 08103

LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:
Deputy Clerk of the Superior Court
9 N. Main Street
Box DN-209
Cape May Court House, NJ 08210

LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:
Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Sts., P.O. Box 615
Bridgeton, NJ 08302

LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY:
Deputy Clerk of the Superior Court
50 West Market Street
Room 131
Newark, NJ 07102

LAWYER REFERRAL
(973) 622-6207
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:
Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street, P.O. Box 129
Woodbury, NJ 08096

LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY: Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House-- 1st Floor
583 Newark Ave.
Jersey City, NJ 07306

LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:
Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822

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Local Filing Office, Courthouse
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1 Kennedy Sq., P.O. Box 2633
New Brunswick, NJ 08903-2633

LAWYER REFERRAL
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(732) 249-7600

MONMOUTH COUNTY:
Deputy Clerk of the Superior Court
Court House
71 Monument Park
P.O. Box 1269
Freehold, NJ 07728-1269

LAWYER REFERRAL
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(732) 866-0020

MORRIS COUNTY:
Deputy Clerk of the Superior Court
Civil Division
30 Schuyler Pl., P.O. Box 910
Morristown, NJ 07960-0910

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(973) 285-6911

OCEAN COUNTY:
Deputy Clerk of the Superior Court
Court House, Room 119
118 Washington Street
Toms River, NJ 08754

LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:
Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton St.
Paterson, NJ 07505

LAWYER REFERRAL
(973) 278-9223
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(973) 345-7171

SALEM COUNTY:
Deputy Clerk of the Superior Court
92 Market St., P.O. Box 18
Salem, NJ 08079

LAWYER REFERRAL
(856) 935-5628
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:
Deputy Clerk of the Superior Court
Civil Division Office
New Court House, 3rd Fl.
P.O. Box 3000
Somerville, NJ 08876

LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:
Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:
Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:
Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 475-2010

NEW APPENDIX — XII-H

OSC AS ORIGINAL PROCESS –
SUBMITTED WITH NEW COMPLAINT
PRELIMINARY INJUNCTIVE RELIEF AND
TEMPORARY RESTRAINING ORDER

PURSUANT TO RULE 4:52
FORM CAN ALSO BE FOUND AT
WWW.NJCOURTSONLINE.COM

SUPERIOR COURT OF NEW JERSEY
_____ DIVISION _____ COUNTY
_____ PART

[*Insert the plaintiff's name*] Plaintiff(s), v. [*Insert the defendant's name*] Defendant(s).	Docket No.: CIVIL ACTION ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS PURSUANT TO *RULE* 4:52

THIS MATTER being brought before the Court by _____, attorney for plaintiff, [*insert the plaintiff's name*], seeking relief by way of temporary restraints pursuant to *R*. 4:52, based upon the facts set forth in the verified complaint filed herewith; and it appearing that [the defendant has notice of this application] *or* [defendant consent's to plaintiff's application] *or* [immediate and irreparable damage will probably result before notice can be given and a hearing held] and for good cause shown.

It is on this ____ day of _____ *ORDERED* that defendant, [*insert the defendant's name*], appear and show cause before the Superior Court at the _____ County Courthouse in _____, New Jersey at _____ o'clock in the _____ noon or as soon thereafter as counsel can be heard, on the _____day of _____, 20 __ why an order should not be issued preliminarily enjoining and restraining defendant, [*insert the defendant's name*], from

A. [*Set forth with specificity the return date relief that the plaintiff is seeking.*];

B. _____;

C. _____;

D. Granting such other relief as the court deems equitable and just.

And it is further *ORDERED* that pending the return date herein, the defendant is [*temporarily*] enjoined and restrained from:

A. [S*et forth with specificity the temporary restraints that the plaintiff is seeking.*];

B. _____;

C. _____.

And it is further *ORDERED* that:

1. The defendant may move to dissolve or modify the temporary restraints herein contained on two (2) days notice to the [plaintiff's attorney *or alternate:* plaintiff].

2. A copy of this order to show cause, verified complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the defendant [personally *or alternate: describe form of substituted service*] within ____ days of the date hereof, in accordance with *R*. 4:4-3 and *R*. 4:4-4, this being original process.

3. The plaintiff must file with the court his/her/its proof of service of the pleadings on the defendant no later than three (3) days before the return date.

4. Defendant shall file and serve a written response to this order to show cause and the request for entry of injunctive relief and proof of service by _____, 20__. The original documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. You must send a copy of your opposition papers directly to Judge _____, whose address is _____, New Jersey. You must also send a copy of your opposition papers to the plaintiff's attorney whose name and address appears above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of $ _____ and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the plaintiff is seeking.

5. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____, 20__. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

6. If the defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default,

provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

7. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

8. Defendant take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be fled with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a $_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

9. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

10. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than ___ days before the return date.

_____

J.S.C.

ATLANTIC COUNTY:
Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL
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BERGEN COUNTY:
Deputy Clerk of the Superior Court
Case Processing Section, Room 119
Justice Center, 10 Main St.
Hackensack, NJ 07601-0769

LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:
Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060

LAWYER REFERRAL
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LEGAL SERVICES
(609) 261-1088

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Deputy Clerk of the Superior Court
Civil Processing Office
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Camden, NJ 08103

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Deputy Clerk of the Superior Court
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Box DN-209
Cape May Court House, NJ 08210

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Civil Case Management Office
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Attn: Intake
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Civil Division
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Deputy Clerk of the Superior Court
Civil Division
30 Schuyler Pl., P.O. Box 910
Morristown, NJ 07960-0910

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Court House, Room 119
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PASSAIC COUNTY:
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Civil Division
Court House
77 Hamilton St.
Paterson, NJ 07505

LAWYER REFERRAL
(973) 278-9223
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(973) 345-7171

SALEM COUNTY:
Deputy Clerk of the Superior Court
92 Market St., P.O. Box 18
Salem, NJ 08079

LAWYER REFERRAL
(856) 935-5628
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:
Deputy Clerk of the Superior Court
Civil Division Office
New Court House, 3rd Fl.
P.O. Box 3000
Somerville, NJ 08876

LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:
Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL
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LEGAL SERVICES
(973) 383-7400

UNION COUNTY:
Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:
Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 475-2010

New Appendix XII-I

OSC AS ORIGINAL PROCESS – SUMMARY ACTION
PURSUANT TO *R.* 4:67-1
PROBATE PART *R.* 4:83-1
SUBMITTED WITH NEW COMPLAINT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION _____ COUNTY
PROBATE PART

[Caption: See Rule 4:83-3 for Probate Part Actions]

IN THE MATTER OF

Docket No.:

CIVIL ACTION

ORDER TO SHOW CAUSE
SUMMARY ACTION

THIS MATTER being brought before the Court by _____, attorney for plaintiff, [*insert the plaintiff's name*], seeking relief by way of summary action based upon the facts set forth in the verified complaint filed herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to R.4:83-1 and for good cause shown.

IT IS on this _____ day of _____ , 20__ , *ORDERED* that the parties in interest named in paragraph __ of the verified complaint appear and show cause on the _____ day of _____, 20__ before the Superior Court, Chancery Division, Probate Part [*and fill in, or leave an appropriate blank to be filled in by the Court or Surrogate, if the matter is to be heard by a specified Judge*] at the _____ County Courthouse [*provide the address*] in _____, New Jersey at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, why judgment should not be entered for:

A. [*Set forth with specificity the return date relief that the plaintiff is seeking*.];

B. _____;

C. _____;

D. Granting such other relief as the court deems equitable and just.

And it is further *ORDERED* that:

1. Any party in interest who wishes to be heard with respect to any of the relief requested in the verified complaint served with this order to show cause shall file with the Surrogate of _____ County and serve upon the attorney for the plaintiff at the address set forth above, a written answer, an answering affidavit, a motion returnable on the date this matter is scheduled to be heard, or other response to this order to show cause and to the relief requested in the verified complaint by _____, 20___. Filing shall be made with the Surrogate of _____ County at [*insert address of Surrogate in the County where action is being brought*)]. Such responding party in interest shall also file with such Surrogate by the foregoing date a proof of service upon the plaintiff. [A copy of such response shall also be filed directly with the chambers of Judge _____ at the following address: _____.]

2. Any party in interest who fails to timely file and serve a response in the manner provided in paragraph 1 of this order to show cause shall be deemed in default, the matter may proceed to judgment without any further notice to or participation by such defaulting party in interest, and the judgment shall be binding upon such defaulting party in interest.

3. Parties in interest are hereby advised that a telephone call to the plaintiff, to the plaintiff's attorney, to the Surrogate, or to the Court will not protect your rights; you must file and serve your answer, answering affidavit, motion or other response with the filing fee required by statute. The check or money order for the filing fee shall be made payable to the Surrogate of the County where this matter is being heard. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney or are not eligible for free legal assistance through the Legal Services office (or such office does not provide services for this particular type of proceeding), you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these office numbers is also provided.

4. If no party in interest timely files and serves a response to this order to show cause as provided for above, the application may be decided by the Court on or after the date this matter is scheduled to be heard, and may be decided on the papers without a hearing, provided that the plaintiff has filed a proof of service and a proposed form of judgment as required by paragraphs 7 and 9 of this order to show cause.

5. If a party in interest timely files a response as provided for above, the court may entertain argument [*add if appropriate:* "and may take testimony" *or* "but will not take testimony"] on the date this matter is scheduled to be heard.

6. The plaintiff must file and serve any written reply to the response of a party in interest by _____, 20__. The reply papers together with a proof of service must be filed with the Surrogate in the county listed above [and a copy of the reply papers must be sent directly to the chambers of Judge _____].

7. Plaintiff shall submit to the Surrogate an original and two copies of a proposed form of judgment addressing the relief sought on the date this matter is scheduled to be heard (along with a postage-paid return envelope) no later than _____ (__) days before the date this matter is scheduled to be heard.

8. A copy of this order to show cause, the verified complaint, and [*insert a description of any other filed papers, such as an accounting*], and all affidavits submitted in support of this application, all of which shall be certified thereon by plaintiff's attorney to be true copies, shall be served upon the parties in interest listed in paragraph __ of the complaint, by certified mail, return receipt requested (or by registered mail, return receipt requested with respect to any party in interest who resides outside the United States) [, and by regular mail] [*or alternatively*: shall be personally served upon the parties in interest listed in paragraph __ of the complaint] within __ days of the date hereof, in accordance with *R.* 4:67-3, *R.* 4:4-3 and *R.* 4:4-4, this order to show cause being original process.

9. The plaintiff shall file with the Surrogate of _____ County a proof of service of the documents required by paragraph 8 above to be served on the parties in interest no later than _____ (__) days before the date this matter is scheduled to be heard.

10. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

11. [*In many proceedings in the probate part, an interested party will be a minor or incapacitated, which will require that a guardian ad litem be appointed, and/or an attorney be appointed as counsel to represent the minor or incapacitated person. See generally R.4:26-2. In such matters, it may be appropriate to add an additional paragraph or paragraphs*

to this order to show cause to appoint, or provide for the procedure to appoint, such counsel or guardian ad litem.]

_____

J.S.C.

Atlantic County Surrogate Atlantic County Civil Courthouse 1201 Bacharach Blvd. Atlantic City, NJ 08401	ATLANTIC COUNTY: LAWYER REFERRAL: (609) 345-3444 LEGAL SERVICES: (609) 348-4200
Bergen County Surrogate Bergen County Justice Center 10 Main Street, Room 211, P.O. Box 600, Hackensack, NJ 07601-7691	BERGEN COUNTY: LAWYER REFERRAL (201) 488-0044 LEGAL SERVICES (201) 487-2166
Burlington County Surrogate Burlington County Court Complex 49 Rancocas Road, 1st floor PO Box 6000, Mt. Holly, NJ 08060-1827	BURLINGTON COUNTY: LAWYER REFERRAL (609) 261-4862 LEGAL SERVICES (800) 496-4570
Camden County Surrogate Camden County Surrogate Office 415 Federal Street, Camden, NJ 08103-1122	CAMDEN COUNTY: LAWYER REFERRAL: (856) 964-4520 LEGAL SERVICES: (856) 964-2010
Cape May County Surrogate 4 Moore Rd., POB 207 Cape May Court House, NJ 08210	CAPE MAY COUNTY: LAWYER REFERRAL: (609) 463-0313 LEGAL SERVICES :(609) 465-3001
Cumberland County Surrogate Cumberland County Courthouse 60 West Broad Street, Suite A111 Bridgeton, NJ 08302	CUMBERLAND COUNTY: LAWYER REFERRAL: (856) 692-6207 LEGAL SERVICES: (856) 451-0003
Essex County Surrogate 206 Hall of Records 465 Dr. Martin Luther King, Jr. Blvd., Newark, NJ 07102	ESSEX COUNTY: LAWYER REFERRAL: (973) 622-6207 LEGAL SERVICES: (973) 624-4500
Gloucester County Surrogate Surrogate Building 17 North Broad Street, 1st flr. P.O. Box 177, Woodbury, NJ 08096-7177	GLOUCESTER COUNTY: LAWYER REFERRAL: (856) 848-4589 LEGAL SERVICES: (856) 848-5360
Hudson County Surrogate Administration Bldg. 595 Newark Ave., Room 107 Jersey City, NJ 07306	HUDSON COUNTY: LAWYER REFERRAL: (201) 798-2727 LEGAL SERVICES: (201) 792-6363
Hunterdon County Surrogate Hunterdon County Justice Center 65 Park Avenue P.O. Box 2900, Flemington, NJ 08822-2900	HUNTERDON COUNTY: LAWYER REFERRAL: (908) 263-6109 LEGAL SERVICES: (908) 782-7979
Mercer County Surrogate Mercer County Courthouse 175 So. Broad Street P.O. Box 8068,Trenton, NJ 08650-0068	MERCER COUNTY: LAWYER REFERRAL: (609) 585-6200 LEGAL SERVICES: (609) 695-6249
Middlesex County Surrogate Administration Building 75 Bayard Street, PO Box 790 New Brunswick, NJ 08903-0790	MIDDLESEX COUNTY: LAWYER REFERRAL: (732) 828-0053 LEGAL SERVICES: (732) 249-7600
Monmouth County Surrogate Hall of Records 1 East Main Street P.O. Box 1265, Freehold, NJ 07728-1265	MONMOUTH COUNTY: LAWYER REFERRAL: (732) 431-5544 LEGAL SERVICES: (732) 866-0020
Morris County Surrogate Administrative & Records Bldg, 5th Fl. Court Street P.O. Box 900 Morristown, NJ 07963-0900	MORRIS COUNTY: LAWYER REFERRAL: (973) 267-5882 LEGAL SERVICES: (973) 285-6911

Ocean County Surrogate Ocean County Courthouse 118 Washington Street P.O. Box 2191 , Toms River, NJ 08754-2191	OCEAN COUNTY: LAWYER REFERRAL: (732) 240-3666 LEGAL SERVICES: (732) 341-2727
Passaic County Surrogate Passaic County Courthouse 77 Hamilton Street Paterson, NJ 07505	PASSAIC COUNTY: LAWYER REFERRAL: (973) 278-9223 LEGAL SERVICES: (973) 523-2900
Salem County Surrogate Salem County Surrogate's Court 92 Market Street Salem, NJ 08079	SALEM COUNTY: LAWYER REFERRAL: (856) 678-8363 LEGAL SERVICES: (856) 451-0003
Somerset County Surrogate Somerset Co. Surrogate's Office 20 Grove Street P.O. Box 3000, Somerville, NJ 08876	SOMERSET COUNTY: LAWYER REFERRAL: (908) 685-2323 LEGAL SERVICES: (908) 231-0840
Sussex County Surrogate Sussex County Surrogate's Court 4 Park Place, 2nd flr., Newton, NJ 07860	SUSSEX COUNTY: LAWYER REFERRAL: (973) 267-5882 LEGAL SERVICES: (973) 383-7400
Union County Surrogate Union County Courthouse 2 Broad Street, 2nd flr. Elizabeth, NJ 07207-6001	UNION COUNTY: LAWYER REFERRAL: (908) 353-4715 LEGAL SERVICES: (908) 354-4340
Warren County Surrogate Warren County Courthouse 413 Second Street Belvidere, NJ 07823-1500	WARREN COUNTY: LAWYER REFERRAL: (908) 387-1835 LEGAL SERVICES: (908) 475-2010

H. Proposed Amendments to *Rules* 4:5-1, 1:34-6, New *R*. 4:64-9, 4:64-3, 4:4-5(c), 4:64-1(d), 4:64-2, 4:65-2, 4:26-2 and New Appendices (Foreclosure Case Information Statement and Amount Due Schedule) — re: Mortgage Foreclosure

The Conference of General Equity Presiding Judges proposed a series of amendments designed to refine and reorganize the court rules governing mortgage foreclosures. The specific recommendations are:

- Amend *R*. 4:5-1(b) to require a Case Information Statement for foreclosure actions and include such a Foreclosure Case Information Statement (FCIS) in the Appendices to the court rules. It is anticipated that information requested on the FCIS will speed data entry, increase the accuracy of the court's foreclosure data, and make it more amenable to public access.

- Amend *R*. 1:34-6 to authorize the Office of Foreclosure to recommend entry of orders (1) correcting venue, (2) substituting plaintiff where, during the course of the foreclosure action, the plaintiff merges with another entity, is acquired by another entity, or reorganizes or assigns the mortgage to another entity, (3) entering default, (4) extending time to answer, (5) permitting the filing of an amended complaint after an answer has been filed (provided no substantive new relief or cause is set forth in the amended complaint), and (6) addressing uncontested surplus money applications by original parties. It is expected that expanding the variety of orders and articulating the limits of the Office's responsibilities will benefit judges, the foreclosure bar, and litigants.

- Recommend adoption of new *R*. 4:64-9 making it clear that the Office of Foreclosure does not conduct hearings and directing defendants to file written opposition to motions. Many of the matters in *R*. 1:34-6 require a notice of motion under the Rules of Court, and defendants, unaware of the procedure to object to a motion, often appear in person at the Office of Foreclosure expecting a hearing so that they may voice their objections. This proposed amendment will clarify the procedure.

- Amend *R*. 4:64-3 to implement the authority proposed in the amendment to *R*. 1:34-6 for the Office of Foreclosure to handle uncontested surplus money applications by original parties. Surplus moneys are deposited into the Superior Court Clerk's Trust Fund. The current procedure to withdraw these funds requires an applicant to make a motion to the General Equity judge in the county of venue. Directing such motions to be filed with the Office of Foreclosure and permitting the Office to enter an order of withdrawal, as proposed in this

amendment, will streamline the procedure in those instances in which the motion is uncontested and made by an original party.

- Amend *R*. 4:4-5(c) to simplify the notice of publication to absent defendants. It is anticipated that specifying what is to be included in the notice will streamline and expedite the process.

- Amend *R*. 4:64-1 to require serving of an affidavit of amount due with the notice of motion requesting a final judgment of foreclosure. This amendment is intended to put the mortgagor, borrower, and other named parties obligated on the debt, regardless of whether they have appeared, on notice of the specific amount due and how it was computed.

- Amend *R*. 4:64-2 to require legible copies of the note, mortgage and assignments. Frequently, copies of documents offered into evidence by plaintiffs are hard to read. Requiring legible copies of all assignments makes identification of the owner of the note and mortgage easier to discern.

- Adopt new subparagraphs (b) and (c) of *R*. 4:64-2 to delineate what must be included in the affidavit of amount due and the Amount Due Schedule. The rule, as currently constituted, does not specify the contents the schedule and this proposed amendment is intended to regularize the practice and create efficiencies for judges and the Office of Foreclosure. The form Amount Due Schedule is proposed for inclusion in the Appendices to the rules.

- Amend *R*. 4:65-2 to require a notice of potential surplus money. Many defendants, mortgagors and owners are unaware that sheriff sales may produce surplus money that they can apply to receive. Requiring that a notice of potential surplus moneys be inserted into the Amount Due Schedule and the Notice of Sale will put parties on notice and alert them as to the procedure to claim the moneys from the Superior Court Clerk.

- Amend *R*. 4:26-2 to direct filing of guardian ad litem (GAL) reports, which do not object or dispute the right to foreclosure, to the Superior Court Clerk's Office in Trenton. This proposed amendment will eliminate the necessity of filing reports that raise no objection with the judge in the county of venue. Reports that raise an objection, however, shall be filed with the judge.

The Committee endorsed each of the proposals as it was presented and concurred with the Conference's appraisal that implementation of this package of rule amendments will streamline the foreclosure practice, making it more uniform and efficient.

Relevant portions of the "Conference of General Equity Presiding Judges Foreclosure Rules, Practices and Model Pleading Proposal" are included in the Appendix to this Report.

The proposed amendments to *Rules* 4:5-1, 1:34-6, new *R.* 4:64-9, 4:64-3, 4:4-5(c), 4:64-1(d), 4:64-2, 4:65-2, 4:26-2 and new appendices follow.

4:5-1. General Requirements for Pleadings

(a) …no change.

(b) Requirements for First Pleadings.

(1) Case Information Statement. Except in civil commitment actions brought pursuant to *R*. 4:74-7, probate actions [and in actions in probate, foreclosure] and all other general equity actions except foreclosure, a Case Information Statement in the form prescribed by Appendix XII-B(1) (Civil Actions General) or XII-B(2) (Foreclosure Actions) to these rules, as appropriate [to these rules] shall be annexed as a cover sheet to each party's first pleading. [The form shall be as prescribed in Appendix XII.]

(2) …no change.

(c) …no change.

Note: Source — *R.R.*4:7-1; amended July 26, 1984 to be effective September 10, 1984; caption and text amended November 26, 1990 to be effective April 1, 1991; paragraph (c) added July 13, 1994 to be effective September 1, 1994; paragraph (b)(2) amended July 10, 1998 to be effective September 1, 1998; paragraph (b)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (b)(1) amended _____ to be effective _____.

1:34-6. Office of Foreclosure

There shall be an Office of Foreclosure within the Administrative Office of the Courts. This office shall be responsible for recommending the entry of orders or judgments in uncontested foreclosure matters pursuant to *R*. 4:64-1 and *R*. 4:64-7 subject to the approval of a Superior Court Judge designated by the Chief Justice. The Office of Foreclosure may also recommend the entry of the following orders in uncontested actions:

(1) correcting a clerical error in orders or judgments;

(2) correcting the defendant's name;

(3) [vacating a default entered by the clerk;] correcting venue;

(4) [vacating judgment and execution, reinstating bond or note and mortgage and, with the consent of answering defendants, dismissing the proceedings;] substituting the plaintiff if, during the course of the foreclosure action, the original plaintiff merges with another entity, is acquired by another entity or reorganizes or assigns the mortgage to another entity;

(5) [authorizing sheriff to collect additional lawful sums;] entering default;

(6) [dismissing the tax foreclosure action as to any parcel redeemed; and] extending time to answer;

(7) [vacating an *in rem* foreclosure judgment upon application of the municipality owner.] filing an amended complaint provided no new cause of action or claim for relief is set forth in the amended complaint;

[(3)] (8) vacating a default entered by the clerk;

[(4)] (9) vacating judgment and execution, reinstating a bond or note and mortgage and, with the consent of the answering defendants, dismissing the proceedings;

[(5)] (10) authorizing the sheriff to collect additional sums;

[(6)] (11) dismissing the tax foreclosure action as to any parcel redeemed; [and]

[(7)] (12) vacating an *in rem* foreclosure judgment upon application of the municipality owner;

(13) correcting minor technical irregularities in the mortgage, note or legal description, if a substantial right of a party is not prejudiced;

(14) substituting heirs and personal representative for deceased defendants; and

(15) disbursing surplus foreclosure money.

Note: Adopted July 22, 1983 to be effective September 12, 1983; numerical sequence renumbered and expanded to be effective .

4:64- 9. Motions in Uncontested Matters

A notice of motion filed with the Office of Foreclosure shall not state a time and place for its resolution. The notice of motion shall state the Office of Foreclosure's address and that the order sought will be entered in the discretion of the court unless the attorney or *pro se* party upon whom it has been served notifies the Office of Foreclosure and the attorney for the moving party or the *pro se* party in writing within ten days after the date of service of the motion that the responding party objects to the entry of the order. Upon receipt of an objection or at the direction of the court, the Office of Foreclosure shall deliver the foreclosure case file to the judge in the county of venue who shall schedule such further proceedings and notify the parties or their attorneys of the time and place thereof.

Every notice of motion in a foreclosure action shall include the following language: "IF YOU WANT TO OBJECT TO THIS MOTION YOU MUST DO SO IN WRITING WITHIN 10 DAYS AFTER THE DATE OF YOUR RECEIPT OF THIS MOTION. YOU MUST FILE YOUR OBJECTION WITH THE OFFICE OF FORECLOSURE, PO BOX 971, 25 MARKET STREET, TRENTON, NEW JERSEY 08625 AND THE MOVING PARTY. THE OFFICE OF FORECLOSURE IS NOT A HEARING OFFICE AND A PERSONAL APPEARANCE AT THE OFFICE WILL NOT SERVE AS AN OBJECTION. IF YOU FILE AN OBJECTION, THE CASE WILL BE SENT TO A JUDGE FOR RESOLUTION AND YOU WILL BE ADVISED BY THE JUDGE OF THE TIME AND PLACE OF THE HEARING."

Note: Adopted _____ to be effective _____.

4:64-3. Surplus Moneys

(a) Applications Made by Parties Named in the Judgment of Foreclosure. [Petitions] Applications for withdrawal of surplus moneys in foreclosure actions may be presented at any time after the sale [and may be heard by the court] on motion in accordance with *R.* 1:6-3, and notice to all parties, including defaulting defendants whose claims are not directed in the execution to be paid out of the proceeds of sale. Such motions made by a party named in the judgment of foreclosure shall be filed with the Office of Foreclosure. The Office of Foreclosure shall report on and recommend the entry of surplus money withdrawal orders provided the motion is unopposed. The report of the Office of Foreclosure shall include the amounts due any lien holder who has filed a claim to surplus money supported by proofs required by *R.* 4:64-2 and the priority of all lien claims

(b) Motions by Others. If the motion is not made by a party named in the judgment of foreclosure, it shall be filed in the vicinage. A motion for a payment of surplus money prior to the delivery of the deed shall also be filed in the vicinage. [If any order is made for the payment of such surplus before the delivery of the deed,] T[t]he sheriff or other officer making the sale shall accept the receipt or order of the person to whom such surplus, or any part of it, is ordered to be paid, as payment to that extent of the purchase money, or may pay the same to such person. Payments shall be made in accordance with *R.* 4:57-2.

Note: Source — *R.R.* 4:82-4; amended July 29, 1977 to be effective September 6, 1977; amended July 16, 1981 to be effective September 14, 1981; amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; new paragraph (a) and caption added and text amended and new paragraph (b) and caption and text added. to be effective .

4:4-5. Summons; Service on Absent Defendants; *In Rem* or Quasi *In Rem* Jurisdiction

Whenever, in actions affecting specific property, or any interest therein, or any res within the jurisdiction of the court, or in matrimonial actions over which the court has jurisdiction, wherein it shall appear by affidavit of the plaintiff's attorney or other person having knowledge of the facts, that a defendant cannot, after diligent inquiry, as required by this rule be served within the State, service may, consistent with due process of law, be made by any of the following 4 methods:

(a) personal service outside this State as prescribed by *R*. 4:4-4(b)(1)(A) and (B); or

(b) service by mail as prescribed by *R*. 4:4-4(b)(1)(C); or

(c) by publication of a notice to absent defendants once in a newspaper published or of general circulation in the county in which the venue is laid; and also by mailing, within 7 days after publication, a copy of the notice as herein provided and the complaint to the defendant, prepaid, to the defendant's residence or the place where the defendant usually receives mail, unless it shall appear by affidavit that such residence or place is unknown, and cannot be ascertained after inquiry as herein provided or unless the defendants are proceeded against as unknown owners or claimants pursuant to *R*. 4:26-5(c). [But] If defendants are proceeded against pursuant to *R*. 4:26-5(c), a copy of the notice shall be posted upon the lands affected by the action within 7 days after publication[;]. [(1)] The notice of publication to absent defendants required by this rule shall be in the form of a summons, without a caption[,]. The top of the notice shall include the docket number of the action, the court, and county of venue. [and] The notice shall state briefly:

(1) the object of the action, the name of the judgment-plaintiff and judgment-defendant followed by *et al*, if there are additional parties, [and] [t]he name of the person or

persons to whom the notice [it] is addressed, and [why] the basis for joining such person [is] as [made] a defendant; and

(2) [where] if the action concerns real estate, [the municipality in which the street on which the real estate is situate, and, if the property is improved, the street number of the same, if any,] the municipality in which the property is located, its street address, if improved, or the street on which it is located, if unimproved, and its tax map lot and block numbers; and

(3) if the action is to foreclose a mortgage, tax sale certificate, or lien of a condominium or homeowners association, [is to be foreclosed] the parties to the instrument [thereto] and the date thereof, and the recording date and book and page of a recorded instrument; and

(4) the information required by *R*. 4:4-2 regarding the availability of Legal Services and Lawyer Referral Services together with telephone numbers of the pertinent offices in the vicinage in which the action is pending or the property is located; or

(d) as may be provided by court order.

[(2)] The inquiry required by this rule shall be made by the plaintiff, plaintiff's attorney actually entrusted with the conduct of the action, or by the agent of the attorney; it shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the defendant's residence or address or the matter inquired of; the inquiry shall be undertaken in person or by letter enclosing sufficient postage for the return of an answer; and the inquirer shall state that an action has been or is about to be commenced against the person inquired for, and that the object of the inquiry is to give notice of the action in order that the person may appear and defend it. The affidavit of inquiry shall be made by the inquirer fully specifying the inquiry

made, of what persons and in what manner, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice[; or].

Note: Source — *R.R.* 4:4-5(a)(b)(c)(d), 4:30-4(b) (second sentence). Paragraph (c) amended July 7, 1971 to be effective September 13, 1971; paragraph (c) amended July 14, 1972 to be effective September 5, 1972; amended July 24, 1978 to be effective September 11, 1978; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) (b) (c) (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; introductory paragraph, paragraphs (c), (c)(1), (c)(2), and (c)(3) amended, new paragraph (c)(4) adopted and former paragraph (c)(2) relocated as final paragraph of rule to be effective .

4:64-1. Uncontested Judgment: Foreclosures Other Than *In Rem* Tax Foreclosures

(a) …no change.

(b) …no change.

(c) …no change.

(d) Procedure to Enter Judgment. If the action is uncontested as defined by paragraph (c) the court, on motion on 10 days notice if there are no other encumbrancers and on 30 days notice if there are other encumbrancers, and subject to paragraph (h) of this rule, may enter final judgment upon proof establishing the amount due. Notice shall be served on mortgagors and all other named parties obligated on the debt and all parties who have appeared in the action including defendants whose answers have been stricken or rendered noncontesting. The notice shall have annexed a copy of the affidavit of amount due filed with the court. Any party having the right of redemption who disputes the correctness of the affidavit may file an objection stating with specificity the basis of the dispute and asking the court to fix the amount due. Defaulting parties shall be noticed only if application for final judgment is not made within six months of the entry of default. The application for entry of judgment shall be accompanied by proofs as required by *R*.4:64-2 and in lieu of the filing otherwise required by *R*. 1:6-4 shall be only filed with the Office of Foreclosure in the Administrative Office of the Courts. The Office of Foreclosure may recommend entry of final judgment pursuant to *R*. 1:34-6.

(e) …no change.

(f) …no change.

(g) …no change.

(h) …no change.

(i) …no change.

Note: Source — *R.R.* 4:82-1, 4:82-2. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended to be effective .

4:64-2. Proof

(a) Proof required by *R*. 4:64-1 may be submitted by affidavit, unless the court otherwise requires. The moving party shall produce the original mortgage, evidence of indebtedness, assignments, claim of lien (*N.J.S.A*. 46:8B-21), and any other original document upon which the claim is based. In lieu of an original document, the moving party may produce a legible copy of a recorded or filed document, certified as a true copy by the recording or filing officer or by a New Jersey attorney, or a copy of an original document, if unfiled or unrecorded, certified as a true copy by a New Jersey attorney.

(b) Contents of Proof of Amount Due. If the action is uncontested, the plaintiff shall file with the Office of Foreclosure an affidavit of amount due, which shall have annexed a schedule as set forth in Appendix XII-J of these rules. The schedule shall state the principal due as of the date of default; advances authorized by the note or mortgage for taxes, hazard insurance and other stated purposes; late charges, if authorized by the note or mortgage, accrued to the date of the filing of the complaint; a computation of accrued interest; a statement of the *per diem* interest accruing from the date of the affidavit; and credit for any payments, credits, escrow balance or other amounts due the debtor. Prejudgment interest, if demanded in the complaint, shall be calculated on rate of interest provided by the instrument of indebtedness. A default rate of interest, if demanded in the complaint and if reasonable, may be used to calculate prejudgment interest from the date of default to the judgment. The schedule shall include notice that there may be surplus money and the procedure for claiming it. The proof of amount due affidavit may be supported by computer-generated entries.

(c) Time; signatory. The affidavit prescribed by this rule shall be sworn to not more than 60 days prior to its presentation to the court or Office of Foreclosure. If the affidavit is not

made by plaintiff, it shall state that the affiant has personal knowledge of all the facts therein and is authorized to make it on the plaintiff's behalf.

Note: Source — *R.R.* 4:82-3. Caption amended and paragraph (b) deleted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; original rule designated paragraph (a), new paragraphs (b) and (c) adopted to be effective .

4:65-2. Notice of Sale; Posting and Mailing

If real or personal property is authorized by court order or writ of execution to be sold at public sale, notice of the sale shall be posted in the office of the sheriff of the county or counties where the property is located, and also, in the case of real property, on the premises to be sold, but need not be posted in any other place. The party who obtained the order or writ shall, at least 10 days prior to the date set for sale, serve a notice of sale by registered or certified mail, return receipt requested, upon (1) every party who has appeared in the action giving rise to the order or writ and (2) the owner of record of the property as of the date of commencement of the action whether or not appearing in the action, and (3) except in mortgage foreclosure actions, every other person having an ownership or lien interest that is to be divested by the sale and is recorded in the office of the Superior Court Clerk, the United States District Court Clerk or the county recording officer, and in the case of personal property, recorded or filed in pertinent public records of security interests, provided, however, that the name and address of the person in interest is reasonably ascertainable from the public record in which the interest is noted. The notice of sale shall include notice that there may be surplus money and the procedure for claiming it. The party obtaining the order or writ may also file the notice of sale with the county recording officer in the county in which the real estate is situate, pursuant to *N.J.S.A.* 46:16A-1 *et seq.*, and such filing shall have the effect of the notice of settlement as therein provided.

Note: Source — *R.R.* 4:83-2; caption and rule amended July 13, 1994 to be effective September 1, 1994; amended July 3, 1995, to be effective immediately; amended _____ to be effective _____.

4:26-2. Minor or Mentally Incapacitated Person

(a) …no change.

(b) …no change.

(c) …no change.

(d) Notwithstanding the appointment of a guardian *ad litem* in a foreclosure action to represent the interests of a minor or incapacitated person by a vicinage judge, if the written report of the guardian *ad litem* raises no objection or dispute as to the right to foreclosure, the report shall be filed with the Superior Court Clerk in Trenton. Reports which raise an objection or dispute shall be filed with the vicinage judge who appointed the guardian *ad litem*.

Note: Source — *R.R.* 4:30-2(a)(b)(c), 7:12-6; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a), (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b)(3) amended July 13, 1994 to be effective September 1, 1994; caption amended, and paragraphs (a), (b)(1), (b)(2), (b)(3), and (b)(4) amended July 12, 2002 to be effective September 3, 2002; new paragraph (d) added _____ to be effective _____.

New Appendix XII-B2

FORECLOSURE
CASE INFORMATION STATEMENT
(FCIS)

Use for initial Chancery Division — General Equity foreclosure pleadings (not motions) under Rule 4:5-1.

Pleading will be rejected for filing, under Rule 1:5-6(c), if information is not furnished or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY
PAYMENT TYPE: CK CG CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

CAPTION	COUNTY OF VENUE
	NAME OF FILING PARTY (*e.g.*, John Doe, Plaintiff)
DOCKET NUMBER (When available) **F-**	DOCUMENT TYPE ☐ COMPLAINT ☐ ANSWER
ATTORNEY/SELF REPRESENTED NAME	TELEPHONE NUMBER ( )
FIRM NAME (If applicable)	ADDRESS

FORECLOSURE CASE TYPE NUMBER ☐ 088 IN PERSONAM TAX FORECLOSURE ☐ 089 IN REM TAX FORECLOSURE ☐ 0RF RESIDENTIAL MORTGAGE FORECLOSURE ☐ 0CF COMMERCIAL MORTGAGE FORECLOSURE ☐ 0CD CONDOMINIUM OR HOMEOWNER'S ASSOCIATION LIEN FORECLOSURE ☐ 091 STRICT FORECLOSURE ☐ OPTIONAL FORECLOSURE PROCEDURE (NO SALE)	DEFENDANT (S) NAMES (i.e., debtors, mortgagors, subordinate mortgages, judgment creditors *et seq.*)
PROPERTY STREET ADDRESS: MUNICIPALITY: COUNTY: MUNICIPAL BLOCK: LOT (S):	MORTGAGE FORECLOSURE TYPE ☐ RESIDENTIAL ☐ COMMERCIAL PURCHASE MONEY MORTGAGE ☐ YES ☐ NO RELATED PENDING CASE ☐ YES ☐ NO IF YES, LIST DOCKET NUMBERS:

ATTORNEY SIGNATURE	PRINT ATTORNEY NAME	DATE

New Appendix XII-J

AMOUNT DUE SCHEDULE

NOTE AND MORTGAGE DATED _____
Recorded on _____, in _____ County, in Book ____ at Page _____
Property Address: _____
Mortgage Holder: _____

STATEMENT OF AMOUNT DUE:

Unpaid Principal Balance as of _____		$ _____
Interest from _____ to _____		$ _____
(Interest rate = _____% per year; $ _____ per day x _____days)		
Late Charges from _____ to _____		
($ _____/mo. x _____ mos.)		$ _____
Advances through _____ for:		
Real Estate Taxes	$ _____	
Home Owners Insurance Premiums	$ _____	
Mortgage Insurance Premium	$ _____	
Inspections	$ _____	
Winterizing/Securing	$ _____	
Sub-Total of Advances	$ _____	
Less Escrow Monies	($_____)	
Net Advances	$ _____	$ _____
Interest on advances from _____ to _____		$ _____
Other charges (specify)		$_____
TOTAL DUE AS OF _____		$ _____

/s/ _____
Type or Print Lender's or Servicing Agent's Employee's Name

Date: [*insert date*]

I. Proposed Amendments to Appendices XII-D and XII-E — Writ of Execution and Writ of Wage Execution

A practitioner had commented that the language on the writs regarding the requirement that the method used to calculate simple interest be explained is more in the nature of an instruction, rather than part of the attorney's certification. The language states, "Post-judgment interest applied pursuant to *Rule* 4:42-11 must be calculated as simple interest. As required by *Rule* 4:59-1, explain in detail the method by which interest has been calculated, taking into account all partial payments made by the defendant." He suggested that the language be amended to reflect that the attorney is certifying to the amount and the method of calculations. The Committee agreed with the practitioner that the language of the writ should be phrased as statements appropriate for a certification. Accordingly, the Committee proposes that the language be amended to reflect that the attorney has calculated the post-judgment interest as simple interest and has attached the method by which interest has been calculated.

Proposed amendments to Appendices XII-D and XII-E follow.

Appendix XII-D
WRIT OF EXECUTION

Attorney for Plaintiff
_____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: _____COUNTY

Plaintiff

D**OCKET NO.**

vs.

WRIT OF EXECUTION

Defendant
_____

THE STATE OF NEW JERSEY
TO THE SHERIFF OF _____

WHEREAS, on the _____ day of _____, judgment was recovered by Plaintiff in an action in the Superior Court of New Jersey, Law Division, _____ County, against Defendant, for damages of $ _____ and costs of $; and

WHEREAS, on _____, the judgment was entered in the civil docket of the Clerk of the Superior Court, and there remains due thereon $_____.

THEREFORE, WE COMMAND that you satisfy said Judgment out of the personal property of said Judgment debtor(s) within your County; and if sufficient personal property cannot be found, then out of the real property in your County belonging to the judgment debtor(s) at the time when the judgment was entered or docketed in the office of the Clerk of this Court or at any time thereafter, in whosesoever hands the same may be, and that you pay the said monies realized by you from such property to _____, Esq., attorney in this action; and that within twenty-four months after the date of its issuance you return this execution and your proceedings thereon to the Clerk of the Superior Court of New Jersey at Trenton.

WE FURTHER COMMAND YOU, that in case of a sale, you make your return of this Writ with your proceedings thereon before this court and you pay to the Clerk thereof any surplus in your hands within thirty days after the sale.

WITNESS, the HONORABLE _____, a Judge of the Superior Court, at _____ this _____ day of _____, 200_.

_____,CLERK

ENDORSEMENT

Levy Damages:	$_____
Additional Costs:	$_____
Costs:	$_____
Credits:	$_____
Sheriff's Fees:	$_____
Sheriff's Commissions:	$_____
TOTAL	$_____

Post-judgment interest applied pursuant to *Rule* 4:42-11 [must be] has been calculated as **simple interest**. As required by *Rule* 4:59-1, [explain in detail] attached is the method by which interest has been calculated, taking into account all partial payments made by the defendant

_____
Attorney for Plaintiff

Dated:_____, 200__

Note: Form adopted as Appendix XII-D July 27, 2006 to be effective September 1, 2006; amended _____ to be effective _____.

Appendix XII-E
WRIT OF WAGE EXECUTION

Attorneys for Plaintiff

_____

SUPERIOR COURT OF NEW JERSEY
DIVISION, COUNTY

Plaintiff,

DOCKET NO:

vs.

WRIT OF WAGE EXECUTION

Defendant.

_____

THE STATE OF NEW JERSEY

TO THE SHERIFF OF _____COUNTY

YOU ARE HEREBY COMMANDED that of the weekly earnings which the Defendant _____receives from employer _____ whose address is _____, you take the sum of 10% of the gross weekly pay or 25% of disposable earnings for that week or the amount by which the designated Defendant's disposable weekly earnings exceed $175.50 [$154.50] per week, pursuant to the Order for Wage Execution entered with this Court on _____, a copy of which is attached hereto and Certification of the Court entered in the sum of $ _____ plus interest and fees until $ _____ plus interest and fees is paid and satisfied, and that you pay weekly to the Plaintiff's duly authorized attorney said amount of reservation of salary.

YOU ARE FURTHER COMMANDED that the employer shall immediately give the designated defendant a copy of this order. The designated defendant may object to the wage execution or apply for a reduction in the amount withheld at any time. To object or apply for a reduction, a written statement of the objection or reasons for a reduction must be filed with the

Clerk of the Court and a copy must be sent to the creditor's attorney or directly to the creditor if there is no attorney. A hearing will be held within seven days after filing the objection or application for a reduction. According to law, no employer may terminate an employee because of a garnishment.

YOU ARE HEREBY FURTHER COMMANDED that upon satisfaction of Plaintiff's damages, costs and interests, plus subsequent costs, or upon termination of the Defendant's salary, you will immediately thereafter return this Writ to the Court with a statement as to the execution annexed.

WITNESS, the Honorable _____, Judge of the Superior Court, this _____day of , 200 .

_____, CLERK

ENDORSEMENT

Levy Damages……	$
Additional Costs…….	$
Interest thereon…….....	$
Credits……	$
Sheriff's Fees…….	$
Sheriff's Commissions……..	$
TOTAL:	$

Post Judgment Interest applied pursuant to *Rule* 4:42-11 [must be] has been calculated as **simple interest**. As required by *Rule* 4:59-1, [explain in detail] attached is the method by which interest has been calculated, taking into account all partial payments made by the defendant.

_____
Attorney for Plaintiff

Dated: _____ , 200 __

Note: Form adopted as Appendix XII-E July 27, 2006 to be effective September 1, 2006; amended July 3, 2007, to be effective July 24, 2007; amended to be effective .

J. Housekeeping Amendments

The Committee recommends the following "housekeeping" amendments:

Rule 1:4-1 — to eliminate outdated references to the special captioning of medical malpractice cases and the requirement of covers and backers for briefs filed in the trial courts.

Rule 4:4-4 — to provide the alternative of obtaining *in personam* jurisdiction by means of ordinary mail service, as permitted in *R*. 4:4-3, and to add a cross-reference to *R*. 4:4-3

Rule 4:86-10 — to replace an outdated reference to the Public Defender with the correct reference to the Public Advocate.

1:4-1 Caption: Name and Addresses of Party and Attorney; Format

(a) Caption.

[(1) Generally.] Every paper to be filed shall contain a caption setting forth the name, division and part thereof, if any, of the court, the county in which the venue in a Superior Court action is laid, the title of the action, the docket number except in the case of a complaint, the designation "Civil Action" or "Criminal Action", as appropriate, and a designation such as "complaint", "order", or the like. In a complaint in a civil action, the title of the action shall include the names of all the parties, but in other papers it need state only the name of the first party on each side with an appropriate indication that there are other parties. Except as otherwise provided by *R*. 5:4-2(a), the first pleading of any party shall state the party's residence address, or, if not a natural person, the address of its principal place of business.

[(2) In Particular Causes. A pleading alleging medical malpractice shall be so designated in its caption. Any action in which such a pleading is filed shall be given a special identifying letter by the clerk.]

(b) Format; Addresses. At the top of the first page of each paper filed, a blank space of approximately 3 inches shall be reserved for notations of receipt and filing by the clerk. Above the caption at the left-hand margin of the first sheet of every paper to be filed there shall be printed or typed the name of the attorney filing the paper, office address and telephone number or, if a party is appearing pro se, the name of such party, residence address and telephone number. No paper shall bear an attorney's post office box number in lieu of a street address. An attorney or pro se party shall advise the court and all other parties of a change of address or telephone number if such occurs during the pendency of an action. [Papers filed in the trial courts shall have no backer or cover sheet.]

Note: Source — *R.R.*. 4:5-8, 4:10-1, 5:5-1(e), 7:5-2(a) (first two sentences); paragraph (a) amended December 20, 1983 to be effective December 31, 1983; paragraph (a) redesignated as paragraph (a)(1) and paragraph (a)(2) added November 7, 1988 to be effective January 2, 1989; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(1) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; amended to be effective .

4:4-4 Summons; Personal Service; *In Personam* Jurisdiction

Service of summons, writs and complaints shall be made as follows:

(a) Primary Method of Obtaining *In Personam* Jurisdiction. The primary method of obtaining *in personam* jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State pursuant to *R*. 4:4-3, as follows:

(1) …no change.

(2) …no change.

(3) …no change.

(4) …no change.

(5) …no change.

(6) …no change.

(7) …no change.

(8) …no change.

The foregoing notwithstanding, in personam jurisdiction may be obtained by mail under the circumstances and in the manner provided by *R*. 4:4-3.

(b) …no change.

(c) …no change.

Note: Source-R.R. 4:4-4. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended July 14, 1972 to be effective September 5, 1972; paragraph (f) amended July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a), (f) and (g) amended November 5, 1986 to be effective January 1, 1987; paragraph (i) amended November 2, 1987 to be effective January 1, 1988; paragraph (e) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; text deleted and new text substituted July 13, 1994 to be effective September 1, 1994; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a)(3), (b)(1)(A), (b)(1)(C), and (c) amended July

12, 2002 to be effective September 3, 2002; paragraph (a) amended to be effective _____.

4:86-10. Appointment of Guardian for Persons Receiving Services From the Division of Developmental Disabilities

An action pursuant to *N.J.S.A.* 30:4-165.7 *et seq*. for the appointment of a guardian for a person over the age of 18 who is receiving services from the Division of Developmental Disabilities shall be brought pursuant to these rules insofar as applicable, except that:

(a) The complaint may be brought by the Commissioner of Human Services or a parent, spouse, statutory partner, relative or other party interested in the welfare of such person.

(b) …no change.

(c) …no change.

(d) …no change.

Note: Adopted July 7, 1971 to be effective September 13, 1971; amended July 24, 1978 to be effective September 11, 1978. Former rule deleted and new rule adopted November 5, 1986 to be effective January 1, 1987; caption amended and paragraphs (b), (c) and (d) of former R. 4:83B10 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraphs (b), (c), and (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended to be effective .

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendments to *R.* 1:5-6 — Filing

Rule 1:5-6(c) directs that the clerk shall file **shall** file all papers presented with limited and specific exceptions as listed in the rule. These exceptions **must** be rejected and returned to the filer. The rule also includes a category of "non-conforming documents" that must be accepted for filing but about which the court **may**, but is not required to, notify the filer of the deficiency (*e.g.*, a complaint or answer submitted without a required certification). The Conference of Civil Division Managers discussed the issue of notifying filers of non-conforming documents and took the position that the category should be eliminated from the rule. That is, *R.* 1:5-6(c) should be amended to refer to two types of documents only, namely, the limited and specific list of those documents that are so flawed that they are rejected and returned to the filer, and all other documents, which must be accepted for filing.

At present, different counties handle non-conforming documents that may not be rejected in different ways. Because the rule does not require that court staff notify the filer of the deficiency, many counties do not do so and leave it to the adversary to spot the defect and bring it to the court's attention. In other counties, staff notify the filer and/or the court of the deficiency.

The Conference of Civil Presiding Judges supported the proposed rule amendments, noting that eliminating from the rule reference to non-conforming documents that may not be rejected does not preclude staff from flagging a deficiency in ACMS to alert the judge to a potential problem.

The Committee discussed this issue at length, recognizing that the rule as currently constructed gives a measure of discretion to court staff and that, consequently, the practice in

dealing with non-conforming documents is not uniform across the state. In some counties, staff are required to provide filers with the reason(s) why a document is non-conforming, while in others no explanation is given. Some Committee members supported the practice of providing an explanation as a matter of courtesy and good customer service. Others were of the opinion that it placed an extra burden on staff and that it should be left to the adversary to bring issues about the inadequacy of pleadings to the judge. On a vote, a majority of the Committee favored leaving the language of the rule alone. Accordingly, no rule amendment is proposed at this time.

B. Proposed Amendments to *R*. 4:5A-2 — Notice of Track Assignment; Change of Assignment

One of the mass tort judges has encountered a rather peculiar problem which at present seems to be confined to mass torts. Specifically, the defendant in a particular case subscribes to an Internet service that provides it with the docket numbers of cases filed against it before the out-of-state plaintiff receives the docket number and Track Assignment Notice (TAN) from the New Jersey Superior Court. The defendant then rushes to remove the case from the State to the Federal court before even being served with the complaint. This is possible because, under *R*. 4:5A-2, a plaintiff must await the issuance of the TAN to serve process on the defendant, and this may take a day. Thus, the defendant is able to defeat the plaintiff's choice of forum. (There have been two contradictory Federal District Court rulings as to whether is procedure is permissible.) The mass tort judge's approach is to issue an immediate order waiving the requirement that the TAN accompany the complaint at the time of service, allowing it (the TAN) to be sent to the defendant by regular and certified mail within 10 days of its receipt by plaintiff.

The Conference of Civil Presiding Judges supports this approach, and recommended an amendment to *R*. 4:5A-2 specifically to authorize it.

The Committee recognized that this problem arises mainly in mass tort cases and determined that the judge handling such cases may, pursuant to *R*. 1:1-2, relax *R*. 4:5A-2 to deal with the problem when it arises. Therefore, the Committee concluded that no rule amendment is necessary at this time.

C. Proposed Amendments to *R*. 4:14-7 — Subpoena for Taking Depositions

An attorney who represents plaintiffs in medical malpractice and other complex personal injury cases had requested that the Committee consider proposing an amendment to *R*. 4:14-7(b)(2) specifically to permit the alternative of videoconferencing for taking the deposition of out-of-state experts. He asserted that both alternatives now presented in *R*. 4:14-7(b)(2) — paying the expert's expenses to appear in New Jersey or paying the expenses of defense attorneys to depose the witness out-of-state — are costly and unnecessary, given the technology currently available. He suggested that the expert deposition set-up would include videoconference centers in New Jersey and at the expert's location, a court reporter at the expert's location, and document viewers in each conference center. He noted that he has used this method successfully, and cited the opinion in *Haynes v. Ethicon*, 315 *N.J. Super*. 338 (*L.Div*. 1998) in support of deposing an expert via videoconferencing. However, he claimed that even though the current rule grants the trial judge discretion to allow this approach, judges have generally rejected his proposal when the defense attorneys object. He urged the specific inclusion in the rule of the videoconferencing option as a means of saving time and money and increasing productivity.

When the Committee originally considered this proposal, it raised a number of issues, *e.g.,* how to deal with documents, who should pay the expert's expenses if a party objects to videoconferencing, does deposition of an out-of-state expert by videoconferencing tend to subvert the policy of using in-state experts? It was decided to refer this issue to the Discovery Subcommittee to consider all the issues and develop a recommendation for the full Committee to consider.

The subcommittee was unanimous in its rejection of this proposal. It maintained that the right to confront an expert in person is critical and noted that the party selecting an out-of-state expert should know that the witness must be produced in the forum for deposition and trial. Accordingly, it declined to recommend inclusion of the videoconferencing option in the court rule, but specifically referenced *Haynes v. Ethicon, supra*, that gives the court discretion to order videoconferenced depositions of out-of-state experts provided appropriate technical facilities are available in all locations.

The Committee supported the subcommittee's recommendation and, accordingly, does not propose the requested amendment to *R*. 4:14-7.

D. Proposed Rule Amendments — re: Posting of Civil Orders on the Judiciary Website

There are a number of judges statewide who post their orders on the Judiciary's Internet website, in lieu of providing the attorneys with paper copies. They report that the attorneys like this, as they have access to the order more quickly, and the judges like it because it can save them and their staff a significant amount of time. A paper copy of the order is placed in the case file. The Court approved posting of judicial decisions in 2001, and directed that such decisions be available on the website for six weeks. It was suggested that the appropriate rules be amended to provide for this procedure.

The Committee was of the view that no such amendment is needed and agreed that the decision of whether to utilize such a practice should be left up to the individual judge. Accordingly, no rule amendment is proposed.

III. MATTERS HELD FOR CONSIDERATION

A. Proposed Amendments to *R.* 4:14-6 — Certification and Filing by Officer; Exhibits; Copies

An attorney requested on behalf of a New Jersey-based court reporting service that *R.* 4:14-6(c) be amended to provide that each party pay for its own copy of a deposition transcript. The rule, as currently constituted, states that the party taking the deposition must furnish a copy of the transcript to the witness or adverse party. This provision, as asserted by the attorney, is contrary to the Federal rule (*F.R.Civ.P.* 30(f)(3)) and to the rules of other states that provide that any party ordering a copy of the transcript shall pay for that copy. The attorney cited several reasons why the rule should be amended:

- The rule dates back to 1948 and, while originally proposed to conform to the Federal rule, was revised without explanation or rationale for the change.
- There is no good reason to diverge from Federal practice; allocation of costs of depositions should not depend upon whether an action was filed in the Federal courthouse or the state courthouse.
- Modern litigation with its multiplicity of lengthy depositions can represent a huge expense and a huge burden on the party seeking the discovery.
- New Jersey is in a small minority of states that place the burden on the party taking the deposition.
- The rule is inequitable when one side takes more depositions than the other and superfluous if both sides take approximately the same number of depositions.
- The rule encourages waste because, even if the deposition yields nothing relevant or worthwhile, the adversary is not likely to decline a free copy.
- The rule is not a fair or effective means of controlling litigation costs because the "free" copy is reflected either in direct billing, absorbed by the court reporter, or incorporated in the per page rate that court reporters charge their clients.

The attorney suggested that *R*. 4:14-6(c) be amended to mirror the Federal rule, *i.e.*, "When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent." Appended to the letter requesting the change were letters from out-of-state court reporting services submitted in support of the proposed rule amendment.

The Committee recognized that this is an issue that requires more study. Accordingly, the matter has been tabled and will be considered in the next rules cycle.

IV. MISCELLANEOUS MATTERS

A. Proposed Amendments to *R*. 1:16-1 — Interviewing Jurors Subsequent to Trial

A practitioner had requested an amendment to *R*. 1:16-1 to prohibit all *ex parte* post-trial communication between judges and jurors. The rule, as currently constituted, prohibits attorneys, parties or investigators and anyone acting for them from interviewing, examining, or questioning jurors after a trial. The attorney suggests that the prohibition be extended to judges as well in order to avoid problems, such as the appearance of impropriety and the tainting of a juror for future service. The Committee agreed that there should be no *ex parte* communication between judges and jurors about the issues in the case. It was proposed that a judge may communicate with jurors after a trial on matters having nothing to do with the verdict, but must do so either on the record or in the presence of counsel, or on the record and in the presence of counsel. It was further suggested that a survey to be completed by the jurors following the completion of their service may be helpful in getting feedback on the jury process itself. A subcommittee was established to make a recommendation on the proposal to prohibit or restrict judicial communication with the jury, to study the utility of a standard survey and to develop a survey, if warranted.

The subcommittee agreed that judges should not have any *ex parte* communication with jurors after a verdict except in cases where there is no possibility for appeal. The subcommittee also agreed that in those cases where a judge is required by the circumstances of the case to interview jurors outside the presence of counsel, the interview should be done on the record. There was no consensus among the subcommittee members on whether this prohibition should

be memorialized by way of a rule amendment. The subcommittee rejected the idea of subjecting jurors to a survey following their time of service.

The Committee agreed that the benefit of having a rule delineating the parameters of *ex parte* discussions with jurors would be to set standards for judges and ensure that jurors would not be asked to discuss their deliberations. The Committee considered three possible approaches to the issue: 1) no rule amendment, 2) a rule limiting *ex parte* discussions with jurors to certain circumstances, and 3) a blanket prohibition against any discussions with jurors. With respect to the first approach, it was suggested that no rule amendment should be recommended because communication with the jurors is beneficial, demystifying the jury system, fostering greater confidence on the part of the jurors and leading to improvements in the process. Conversely, it was argued that, as the potential for abuse outweighs any benefit to the judicial system, any post-trial discussion by the judge with the jurors would be explicitly prohibited. Finally, supporters of a consistent policy advocated a rule that would lay out what may and may not be discussed with respect to jurors.

Following the discussion, the Chair reported that the ABA has developed a Model Code of Judicial Conduct and that there is an *ad hoc* judicial committee studying this code. With respect to communication with jurors, the Model Code states, "A judge shall not commend or criticize jurors for their verdict, other than in a court order or opinion in a proceeding." The New Jersey Code of Judicial Conduct contains those same words in Canon 3, but adds "…but may express appreciation to jurors for their service to the judicial system and the community." Under the current code, New Jersey judges can do no more than express their thanks to jurors. The comment to the ABA model code states, "A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to

discuss the merits of the case." While it was acknowledged that there are many differing views among the Committee members on this topic, the Committee agreed that it should alert the *ad hoc* committee of the one thing on which there is consensus, *i.e*. that a judge should have no discussions with jurors in cases where there is a possibility of appeal. The Chair drafted a statement of the Committee's position and forwarded it to the *ad hoc* committee.

Respectfully submitted,

Hon. Sylvia B. Pressler (Ret.), Chair
Hon. Stephen Skillman, P.J.A.D., Vice-Chair
Hon. Allison E. Accurso, P.J.Cv.
David F. Bauman, Esq.
Hon. Rachel N. Davidson, J.S.C.
Hon. Hector E. DeSoto, J.S.C.
Professor Howard M. Erichson
Stacy A. Fols, Esq.
Hon. Maurice J. Gallipoli, A.J.S.C.
Professor Suzanne Goldberg
Jeffrey J. Greenbaum, Esq.
William S. Greenberg, Esq.
Kenneth S. Javerbaum, Esq.
Richard Kahn, Esq.
Hon. Harriet Farber Klein, J.S.C.
Carl E. Klotz, Esq.
Ralph J. Lamparello, Esq.
Linda Lashbrook, Esq.
Gary J. Lesneski, Esq.
Howard J. McCoach, Esq.
Hon. Anne McDonnell, P.J.Cv.
Hon. Carmen Messano, J.A.D.
Melville D. Miller, Esq.
Kenneth I. Nowak, Esq.
Hon. Thomas P. Olivieri, P.J.Ch.
Hon. Edith K. Payne, J.A.D.
Gary Potters, Esq.
James A. Schragger, Esq.
William J. Volonte, Esq.
Jonathan D. Weiner, Esq.
Tiffany M. Williams, Esq.
Jane F. Castner, Esq., AOC Staff
Mary F. Rubinstein, Esq., AOC Staff

Dated: March 2008

LMJ

APPENDIX A

Final Conference of General Equity Presiding Judges
Foreclosure Rules, Practices and Model Pleading Proposal

January 22, 2008

Only the proposed rules and two documents, the foreclosure case information statement and the proof of amount due schedule, follow. The practice changes and model pleadings referred to in the introduction are not included.

Introduction

Judges Gerald Escala, Neil Shuster, Thomas Lyons and James Clyne met on January 24, 2006 with several plaintiff foreclosure law firms and attorneys from the New Jersey Legal Services to discuss the *Draft Proposal for Reorganizing Mortgage Foreclosure Practices and Procedures*. The foreclosure law firms were in general agreement with the thrust of the proposal and rule amendments.

Because the two-year Civil Practice Committee cycle was ending and its report to the Supreme Court was being prepared, the Conference, through its chair, Judge Neil Shuster, proposed to the Civil Practice Committee in early January 2006 that three of ten foreclosure rules amendments proposed in the *Draft Proposal for Reorganizing Mortgage Foreclosure Practices and Procedures* be included in its report to the Supreme Court. The Committee recommended and the Supreme Court adopted rules mandating a title search before a mortgage , *in personam* tax or condominium lien/ homeowner's association foreclosure action is filed (*R.* 4:64-1(a)), a mandate that complaints include a certification of the title search (*R.* 1:5-6(c)(1)(E)) and the contents of a mortgage foreclosure complaint (*R.* 4:64-1(b)). The Supreme Court adopted the Conference's rule amendments and, since the start of the court year in September 2006, the character of mortgage foreclosure complaints has significantly improved.

At the April 26, 2006 Conference of General Equity Presiding Judges regularly scheduled meeting, the Conference again took up the *Draft Proposal for Reorganizing Mortgage Foreclosure Practices and Procedure*. Judge Shuster commented that reworking the foreclosure practice would be more difficult than Civil Best Practices, since Best Practices was, in many ways, merely narrowing generally accepted practices. Foreclosure practice changes involve, to a large measure, a cultural change for the plaintiff's foreclosure bar. Judge Shuster proposed, and the Conference agreed, that a small *ad hoc* foreclosure working group (working group) would frame the discussion and rule proposals for the Conference's consideration. This report and the rules proposed is the outcome of the working group's efforts.

A working group consisting of Judges Shuster and Lyons, along with Judges Olivieri and Todd, who were made members because of the retirement of Judges Escala and Clyne, was formed. The initial meeting was June 7, 2006 in Freehold, New Jersey. Subsequent meetings were held at the Justice Complex in Trenton. Subsequent meetings were held on June 20, 2006 and February 20, 2007. A final conference call was conducted on November 13, 2007.

The methodology chosen by the Conference to structure its discussion is to follow the events outline contained in the *Foreclosure Process Manual*, Residential Mortgage Foreclosure Outline

that was issued by the Conference of General Equity Judges in 2000. The *Foreclosure Process Manual* was prepared by Judge James D. Clyne and a small group of practitioners and James Colasurdo, then Chief of the Office of Foreclosure, to identify, in chronological order, the major procedural events in a mortgage foreclosure action and then identify for each event the task of the plaintiff/mortgagee, defendant/mortgagor and Superior Court Clerk's Office/Office of Foreclosure staff.

This methodology focused the discussions on what rule or practice changes are needed and what amendments to *R.* 1:34-6 are needed. In addition to reviewing the *Draft Proposal for Reorganizing Mortgage Foreclosure Practices and Procedure*, the working group also reviewed the January 13, 2006-letter from Myron Weinstein (Garden State Legal Services) proposing several Court Rule amendments.

The Conference's discussions have focused on ten rule or rule amendments that the Conference endorses and recommends for adoption by the Civil Practice Committee. These recommendations are made by the Conference without consideration of the staffing or operational issues that they may engender. The Conference recognizes that the adoption of these rules requires that the scope of the work for the Office of Foreclosure be analyzed and sufficient professional and clerical staff hired to handle the workload

Electronic Filing

It is the Conference's recommendation that the Administrative Office of the Courts give priority status to electronic filing for the foreclosure docket. The foreclosure docket is ideal for electronic filing. The docket is centrally filed in Trenton. Foreclosure pleadings are, for the most part, standardized. The small number of mortgage foreclosure firms (approximately 15 firms) and tax foreclosure firms (approximately 8) are experienced with electronic filing because of their federal bankruptcy practice. The benefits of electronically filed foreclosure pleadings with an imaging component include decreased data entry and case processing time; elimination of the retention, archiving and maintenance of a large volume of paper currently occupying valuable office space, pleadings availability to attorneys and the public over a web-based database, thereby furthering the Judiciary's transparency goal, and access to foreclosure documents from the bench or courthouse location eliminating transfers between the central office and vicinages when disputes require adjudication.

SECTION ONE - COURT RULES

Case Information Statement (*R.* 4:5-1(b))

The Conference recommends adoption of a foreclosure case information statement (FCIS) to allow the identification (in addition to the case type – mortgage, *in personam* tax, *in rem* tax, strict or condominium/ homeowner's association lien foreclosure) of the property address, municipal block and lot and municipality. Information on a FCIS will speed data entry, increase accuracy of foreclosure data and the information thereon can be placed onto the Judiciary's planned data warehouse website where interested persons can access it. Electronic case filing, when implemented, will transfer the data entry operation to plaintiffs.

Rule 4:5-1(b) requires case information statements except in specified kinds of actions. General Equity actions, including foreclosure actions, are among the exceptions. Consequently, it is necessary to except foreclosure from the General Equity exclusion.

> **Recommendation 1** Amend *R.* 4:5-1(b) to require a case information statement for foreclosure actions.
>
> Rule 4:5-1. General Requirements for Pleadings
> (a) . . .
> (b) Requirements for First Pleadings.
> (1) Case Information Statement. Except in civil commitment actions brought pursuant to R. 4:74-7 and in actions in probate~~, foreclosure~~ and all other general equity actions except foreclosure, a Case Information Statement in the form prescribed by Appendix XII to these rules shall be annexed as a cover sheet to each party's first pleading. The form shall be as prescribed in Appendix XII.
>
> [*A draft FCIS is part of this report. If adopted, the Court Rule appendices will set out a CIS and a FCIS*].

Office of Foreclosure (*Rule* 1:34-6)

The Office of Foreclosure authority to recommend judgments and orders is specified in *R.* 1:34-6. Duties that are ministerial or administrative can and should be assigned to the Office of Foreclosure to lessen the demands on General Equity judges. Indeed, the Office of Foreclosure has broadly interpreted its authority under *R.* 1:34-6 to fulfill its role of handling the ministerial aspects of foreclosure actions. The Conference examined the nature and type of orders entered by the Office of Foreclosure and concluded that many of these applications are certain, unambiguous and do not involve the exercise of any judicial discretion. The Conference concluded that the rule should be expanded to expressly authorize the Office of Foreclosure to handle an increased range of orders. Expanding the variety of orders and articulating the

bright lines marking the outer limits of the Office's responsibilities will benefit judges, the foreclosure bar and litigants.

The proposed rule adds authority for the Office to recommend orders (1) correcting venue, (2) substituting plaintiff where, during the course of the foreclosure action, the plaintiff merges with another entity, is acquired by another entity or reorganizes or assigns the mortgage to another entity, (3) entering default, (4) extending time to answer, (5) permitting the filing of an amended complaint after an answer has been filed (provided no substantive new relief or cause is set forth in the amended complaint) and (6) uncontested surplus money applications by original parties. The Office is authorized to recommend orders correcting insignificant irregularities in the mortgage, note or legal description, if a substantial right of a party is not prejudiced.

Current limitations on the Office of Foreclosure handling motions to appoint guardians *ad litem*; attorneys for defendants in military service; stay sheriff sales or evictions; applications related to extending redemption rights or time; motions to intervene, establish the validity, perfection or priority of lien holder security; approve a forbearance or settlement agreement; reform a mortgage to add a metes and bounds description; establish terms of lost notes, mortgages or assignments or debt, waive or modify the procedural requirements for a foreclosure action or procedural or disposition motions in contested foreclosure matters shall continue.

> **Recommendation 2** Amend *R.* 1:34-6 to authorize the Office of Foreclosure to recommend entry of an expanded list of orders.
>
> *Rule* 1:34-6, Office of Foreclosure
>
> There shall be an Office of Foreclosure within the Administrative Office of the Courts. This office shall be responsible for recommending the entry of orders or judgments in uncontested foreclosure matters pursuant to Rules 4:64-1 and 4:64-7 subject to the approval of a Superior Court Judge designated by the Chief Justice. The Office of Foreclosure may also recommend the entry of the following orders in uncontested actions:
> (1) correcting a clerical error in orders or judgments;
> (2) correcting defendant's name;
> (3) correcting venue;
> (4) substituting plaintiff where, during the course of the foreclosure action, the plaintiff merges with another entity, is acquired by another entity or reorganizes or assigns the mortgage to another entity;
> (5) entering default;
> (6) extending time to answer;
> (7) filing of an amended complaint after an answer has been filed, provided no substantive new relief or cause of action is set forth in the amended complaint,
> ~~(3)~~ (8) vacating a default entered by the clerk;

~~(4)~~ (9) vacating judgment and execution, reinstating bond or note and mortgage and, with the consent of answering defendants, dismissing the proceedings;
~~(5)~~ (10) authorizing sheriff to collect additional sums;
~~(6)~~ (11) dismissing the tax foreclosure action as to any parcel redeemed; and
~~(7)~~ (12) vacating an *in rem* foreclosure judgment upon application of the municipality owner
(13) correcting insignificant irregularities in the mortgage, note or legal description, if a substantial right of a party is not prejudiced;
(14) substituting heirs and personal representative for deceased defendants;
(15) disbursing surplus foreclosure money

Subsection Commentary:

(1) In orders or judgments. *Rule* 1:34-6(1), clerical error rule, is not a provision authorizing attorneys to correct pleading mistakes. See for example, the comment to *R.* 1:13-1, clerical mistakes, wherein the comment states, "[t]his rule has been held inapplicable to clerical errors other than those appearing in the judgment or order itself." The proposal is to limit correcting clerical orders to judgments and orders thus limiting "housekeeping orders" to the court fixing its orders and judgments and not allowing attorneys to *ex parte* amend/correct deficient pleadings.

(3) Venue. The Office of Foreclosure should be authorized to recommend orders correcting venue to match the property's legal description set forth in the mortgage.

(4) Substituting plaintiff. *Rule* 4:34 recognizes that a person to whom an interest is transferred may be substituted in the action. The Office of Foreclosure should be authorized to substitute the plaintiff where, during the course of the foreclosure action, the plaintiff merges with another entity, is acquired by another entity or reorganizes or assigns the mortgage to another entity. Supported by an adequate certification and documentation, the Office of Foreclosure is equipped to handle routine substitution of plaintiff applications. However, occasionally, a foreclosure action is filed naming as the plaintiff a financial institution that is not the owner of the note and mortgage (and never was an owner, *i.e.*, a stranger to the transaction). In such circumstances, the Office of Foreclosure cannot recommend substituting the plaintiff. Indeed, it appears that under *R.* 4:34 a substitution is not allowed (no interest to substitute), and, consequently the complaint must be dismissed and a new complaint with the owner of the indebtedness named as plaintiff filed and served.

(5) entering default *Rule* 4:43-1 requires a notice of motion to file a default after six months. These routine applications, if unopposed, should be handled ministerially by the Office of Foreclosure.

(6) extending time to answer Such motions are routinely entered; the Office of Foreclosure should be authorized to recommend entry if a default judgment has not been entered.

(7) filing of an amended complaint *Rule* 4:9-1 allows a party to freely amend any pleading before a responsive pleading is served. Thereafter, either a written consent or leave of court (which shall be freely given in the interest of justice) is required. Frequently, the plaintiff amends complaints to correct a defendant's name or other inconsequential fix. The Office of Foreclosure should be authorized to recommend entry where no substantive new relief or cause of action is sought.

(13) correcting insignificant irregularities If insignificant irregularities in the property description are pleaded as a separate count to reform the description, then Office of Foreclosure should be authorized to recommend entry of default judgments which include reformed property descriptions. This authority is restricted to matters where no question about property pledged for a loan is open.

(14) substituting heirs and personal representative Such motions are routinely entered; the Office of Foreclosure should be authorized to recommend entry where a party defendant is dead.

(15) surplus foreclosure money See discussion *infra*.

Foreclosure Notice of Motion Rule (New Rule)

Many of the orders in *R.* 1:34-6 require a notice of motion under the Rules of Court. The Office of Foreclosure is not a hearing office. The Office of Foreclosure's handling of uncontested motions requires language indicating how the motion practice is conducted. The Conference recommends that a new rule directing parties to file written opposition, but not personally appear, be adopted. Language, corresponding to the Special Civil Part motion rule, *R.* 6:3-3(c), is recommended for adoption.

> **Recommendation 3** Recommend adoption of a new rule alerting defendants that the Office of Foreclosure does not conduct hearings.
>
> Rule 4:64- 9. Motions in Uncontested Matters
>
> A notice of motion filed with the Office of Foreclosure shall not state a time and place for its resolution. The notice of motion shall state the Office of Foreclosure's address and that the order sought will be entered in the discretion of the court unless the attorney or self represented party upon whom it has been served notifies the Office of Foreclosure and the attorney for the moving party or the self represented party in writing within ten days after the date of service of the motion that the responding party objects to the entry of the order. Upon receipt of an objection or at the direction of the court, the Office of Foreclosure shall deliver the foreclosure case file to the appropriate vicinage judge for

scheduling of further proceedings and who shall notify the parties or their attorneys of the time and place thereof.

Every foreclosure action notice of motion shall include the following language: "NOTICE. IF YOU WANT TO OBJECT TO THIS MOTION YOU MUST DO SO IN WRITING WITHIN 10 DAYS OF THE DATE OF YOUR RECEIPT OF THIS MOTION. FILE YOUR OBJECTION WITH THE OFFICE OF FORECLOSURE, PO BOX 971, 25 MARKET STREET, TRENTON, NEW JERSEY 08625 AND THE MOVING PARTY. THE OFFICE OF FORECLOSURE IS NOT A HEARING OFFICE AND A PERSONAL APPEARANCE AT THE OFFICE WILL NOT SERVE AS AN OBJECTION. IF YOU FILE AN OBJECTION, THE CASE WILL BE SENT TO A JUDGE FOR RESOLUTION AND YOU WILL BE ADVISED BY THE JUDGE OF THE TIME AND PLACE OF THE HEARING."

Applications to Withdraw Surplus Money

The majority of surplus money motions by lien holders or holders of the equity of redemption are unopposed. Foreclosure surplus money withdrawal applications are fixed according to the priorities of the lien holders or, if money remains after satisfaction of lien holders' claims, then to the holder or holders of the equity of redemption. The determination of lien holder priorities is made by examining the various recording dates of the lien holders' instruments or docketing of creditors' judgments. When motions are unopposed, the other claimants to the moneys are regarded as abandoning and waiving their right to such surplus. The claim must contain the name of the claimant, the nature of the claim, the date the claim arose, and a calculation of the amount claimed. The court enters orders, made on motion to all interested parties pursuant to *R.* 4:64-3, authorizing the Superior Court Clerk's Trust Fund Unit to disburse the amount due lien holders or the entire balance to the equity redemption holders.

The Office of Foreclosure has ready access to the foreclosure action case jackets and pleadings to help resolve any party in interest question. The Office of Foreclosure will scrupulously examine the proof of service. The proposed rule mandates that lien holder claimants, *i.e.*, subordinate mortgagees or judgment creditors *et cetera*, must provide certifications of the amount due. If the applicant is the holder of the equity of redemption, no such proofs need accompany the motion.

Opposition claiming priority or some other right to the proceeds, *e.g.*, asserting of an equitable mortgage, judgment lien extinguished by 20 year statute of limitation, disputes as to ownership of surplus funds, which establishes a dispute will be handled by the vicinage General Equity judge. If no application is made for the surplus money the money is transferred to the New Jersey Unclaimed Property Administrator after ten-years. *N.J.S.A.* 46:30B-41.

Applications filed with the Office of Foreclosure are limited to the original parties to the foreclosure action, since assignments or powers of attorney or other transactions granting authority or rights to recover surplus money require scrutiny to avoid various scams and frauds

prevalent with foreclosure actions. For that reason, non-parties must file motions for surplus money with the appropriate vicinage General Equity judge.

> **Recommendation 4** Amend *R.* 4:64-3 to implement authority proposed in *R.* 1:34-6 for the Office of Foreclosure to recommend entry of uncontested surplus money applications by original parties.

Rule 4:64-3. Surplus Money (Revised)

> ~~Petitions~~ Motions for surplus moneys in foreclosure actions may be presented at any time after the sale ~~and may be heard by the court~~ on motion and notice, in accordance with *R.* 1:6-3, to all parties, including defaulting defendants whose claims are not directed in the execution to be paid out of the proceeds of sale. Foreclosure surplus money withdrawal motions by original parties to the foreclosure action shall be filed with the Office of Foreclosure. The Office of Foreclosure shall be responsible for reporting on and recommending the entry of surplus money withdrawal orders for unopposed surplus money matters filed pursuant to R. 4:64-3 by original parties to the foreclosure action. The Office of Foreclosure shall report on the amounts due any person or entity which has a lien and who or which has filed a claim to such surplus money, or any part thereof, and the priority of the liens or claims upon the surplus moneys realized upon the sale of a premises. Where an application is not made by an original party to the foreclosure action, the application in the first instance shall be filed in the vicinage. If any order is made for the payment of such surplus before the delivery of the deed it shall be made by the court and, the sheriff or other officer making the sale shall accept the receipt or order of the person to whom such surplus, or any part of it, is ordered to be paid, as payment to that extent of the purchase money, or may pay the same to such person. Payments shall be made in accordance with R. 4:57-2.
>
> Subordinate lien holder applications shall include the proofs required by R. 4:64-2. Applicants shall submit an affidavit or certification of proof of amount due with a schedule setting forth the computation of the amount claimed payable to the lien holder.

Note. These recommendations are made without consideration of staffing or other operational issues that may involve the Office of Foreclosure. The adoption of this rule will require that the scope of the work for the Office of Foreclosure is analyzed and sufficient professional and clerical staff hired to handle the surplus money workload.

Service of Summons - Rule 4:4-5

The Conference recommends that *R.* 4:4-5(c) be amended to conform the rule to the actual practice regarding the form of the notice of publication to absent defendants. The current rule requires that the notice of publication to absent defendants "shall be in the form of a summons without a caption." Taken literally, this means that the docket number of the action does not appear at the top of the notice, which is and always has been the actual practice. Further, under the present form of summons a listing, by county, of telephone numbers of the Legal Services Office and Lawyer Referral Office serving each county must be set forth (*R.* 4:4-2). This, of course, is not practical for the notice of publication and the proposed rule alters that requirement for the published notice. The proposal rewords the property address descriptors.

Recommendation 5 Amend *R.* 4:4-5(c) to conform the rule to the practice and simplify the notice.

4:4-5. Summons; Service on Absent Defendants; In Rem or Quasi In Rem Jurisdiction

(c) by publication of a notice to absent defendants once in a newspaper published or of general circulation in the county in which the venue is laid; and also by mailing, within 7 days after publication, a copy of the notice as herein provided and the complaint to the defendant, prepaid, to the defendant's residence or the place where the defendant usually receives mail, unless it shall appear by affidavit that such residence or place is unknown, and cannot be ascertained after inquiry as herein provided or unless the defendants are proceeded against as unknown owners or claimants pursuant to *R.* 4:26-5(c). But if defendants are proceeded against pursuant to *R.* 4:26-5(c), a copy of the notice shall be posted upon the lands affected by the action within 7 days after publication;

(1) The notice of publication to absent defendants required by this rule shall be in the form of a summons, without a caption[,]. The docket number of the action and the court and county of venue shall be set forth at the top of the notice which [and] shall state briefly (1) the object of the action, the name of the first party on each side with et al, if there are additional parties, [~~and~~] [t]he name of the person or persons to whom the notice [~~it~~] is addressed and why specifically such person or persons are [~~is~~] made a defendant; and (2) where the action concerns real estate, [~~the municipality in which the street on which the real estate is situate, and, if the property is improved, the street number of the same, if any,~~] the street address of the property and municipality where located or, if the property is not improved, the street on which the property is located, if any, and in all cases the tax lot and block of the property; and (3) if a mortgage, tax sale certificate, condominium or homeowners association lien is to be foreclosed the parties thereto and the date thereof, with the recording date and book and page

of the recorded mortgage, tax sale certificate or other lien being foreclosed, if such instrument is recorded; and (4) the appropriate information set forth in *R.* 4:4-2 regarding the availability of Legal Services for an individual who cannot afford to pay an attorney and Lawyer Referral services through which an individual may obtain a referral to an attorney and the county telephone numbers of the pertinent offices an individual may call for assistance, except that a list of telephone numbers for each county is not required; and in an action involving real estate, the telephone number of the Legal Service Office and Lawyer Referral Office of the county or counties where the real estate is located.

Amount Due Disputes

Rule 4:64-1(c)(2) states that an action to foreclose a mortgage is deemed uncontesting if "none of the pleadings responsive to the complaint either contest the validity or priority of the mortgage or lien being foreclosed or create an issue with respect to the plaintiff's right to foreclose it[.]" The comment to the rule states, "[t]hus, a challenge by the mortgagor to the asserted amount due does not constitute a contesting answer for purposes of this rule" Citing *Metlife v. Washington Ave. Assoc*., 159 *N.J.* 484 (1999).

In an ordinary default situation or, less frequently, when an uncontesting answer by the defendant or defendants (usually fee owners, mortgagors, or both) has been filed, the proof of amount due is submitted to the Office of Foreclosure by the plaintiff's attorney in the form of an affidavit or certification of a person with knowledge, for example, an officer from mortgage lender or mortgage lender's servicer. Supporting exhibits, for example, computerized bank statements and payment history schedule are typically not attached to the affidavits or certifications.

Occasionally, defendants file answers which deny, unsupported by specific allegations of fact, the amount due on the mortgage. As noted, a dispute over the amount due is not a defense to a mortgage foreclosure action, however, an owner's or a mortgagor's equitable right of redemption requires that the owner or mortgagor tender the amount due on mortgage debt. If a dispute arises as to the amount due, *i.e.*, the amount to redeem, then the court must ascertain and determine the amount due. A substantial percentage of answers deemed contesting by the Office of Foreclosure involve amount due disputes. Certifications of amount due are frequently difficult to decipher and comprehend and raise legitimate concern by owners/debtors that take substantial judicial time to resolve.

Contesting answers which appear to raise a dispute over the amount due will be referred to vicinage judges. Thus, the Office of Foreclosure practice will treat most *pro forma answers* which deny the amount due allegation as contesting and refer the same to vicinage judges.

If a foreclosure action is referred to a vicinage judge because the complaint's averment as to the amount due is denied, plaintiffs' attorneys move to strike the answer. The court may address

the amount due dispute in several ways: the court may (1) hear and determine the amount due dispute along with a motion to strike the answer or motion for summary judgment; (2) fix a special return date for an amount due hearing and direct limited discovery (the exchange of the lender's account statement and the defendants cancelled checks or other evidence of payment) or (3) return the case file to the Office of Foreclosure under an order which directs the plaintiff to deliver a copy of the certification of amount due to the defendant when the motion to enter judgment is filed and impose upon the defendant the duty to affirmatively move to dispute the certification.

The Conference concluded that *Rule* 4:64-1(d), Procedure for Entry of Judgment, should explicitly state that notice of the amount due (and a summary of how the amount due is computed, *i.e.*, the schedule) be included with the *R.* 4:64-1(d) notice sent prior to entry of judgment. The mortgagors, borrowers, all other named parties obligated on the debt and all parties who have appeared in the action will receive a copy of the proof of amount due along with the notice of motion. If a defendant then files a motion objecting to the amount claimed due, the foreclosure action will be sent to the vicinage judge for resolution.

> **Recommendation 6** Amend *R.* 4:64-1(d) language to require serving proof of amount due with the notice of motion required by this rule.
>
> (d) Procedure to Enter Judgment. If the action is uncontested as defined by paragraph (c) the court, on motion on 10 days notice if there are no other encumbrancers and on 30 days notice if there are other encumbrancers, and subject to paragraph (h) of this rule, may enter final judgment upon proof establishing the amount due. Notice shall be served on <u>mortgagors, borrowers, all other named parties obligated on the debt</u> and all parties who have appeared in the action including defendants whose answers have been stricken or rendered noncontesting. <u>The notice shall have attached the certification or the affidavit of amount due filed with the court and any party entitled to redeem disputing the correctness of the amount due certification may file an objection with specificity asking the court to fix the amount due.</u> Defaulting parties shall be noticed only if application for final judgment is not made within six months of the entry of default.

Proof of Amount Due Schedule

Rule 4:64-2 states that the proofs required by *R.* 4:64-1, including the proof of amount due, may be submitted by affidavit. This is the means typically used by plaintiffs. The *Rules* do not specify the elements of a proof of amount due certification. The manner has, however, been delineated in case law. "The schedule should contain a breakdown or itemization of the amount due. Thus, the schedule should itemize: (1) principal due at time of default; (2) interest, specifying the period with "from" and "to" dates, and the rate used; (3) late charges, not beyond the filing of the complaint, setting forth the number of charges and amount of each charge; (4)

advances, separately itemizing amounts paid for taxes, insurance, property maintenance and the like; (5) escrow advances, separately itemizing what the advances were used for; and (6) the total or net balance due." *Cho Hung Bank v. Kim,* 361 *N.J. Super.* 331, 342 (App. Div. 2003). The affidavit or certification should be contemporaneous with the application for judgment and must contain a recital of the affiant's authority to execute the affidavit on behalf of the plaintiff.

To further regularize the practice and create efficiencies for judges and the Office of Foreclosure an official schedule should be adopted and promulgated. Attached as part of the model pleadings is a schedule adopted from the local federal bankruptcy practice, which was suggested by the foreclosure bar, as a practical and straightforward form.

> **Recommendation 7.** Amend *Rule* 4:64-2 to delineate the contents of a foreclosure proof of amount due and promulgate an official account schedule.
>
> R. 4:62-2(b) Content of Proof of Amount Due. If the action is uncontested, the plaintiff shall file with the Office of Foreclosure an affidavit of amount due computation which shall have attached a schedule as set forth in Appendix ?? of these rules. The schedule shall set out the principal due as of the date of default, advances for taxes, hazard insurance and other advances, if authorized by the note or mortgage, late charges, if authorized by the note or mortgage, up until the filing of the complaint, a computation of accrued interest and a statement of the per diem interest accruing from the date of the affidavit and credit for any payments, credits, escrow balance or other amounts due the debtor. Prejudgment interest, if demanded in the complaint, shall be calculated on the indebtedness instrument's contract rate of interest. If a default rate of interest is demanded in the complaint, such interest, if reasonable, may be used to calculate prejudgment interest from the date of default to the judgment. The schedule shall include notice of the potential for surplus money.
>
> The proof of amount due affidavit may be supported by a copy of the computer generated entries in the plaintiff's records setting forth the principal balances, the amount of interest, the identification of all advances, credits and other charges, if any, along with the dates, amounts and nature of the transactions. The affidavit prescribed by this Rule shall be sworn to not more than 60 days prior to its presentation to the Court or Office of Foreclosure and, if not made by plaintiff, shall demonstrate that the affiant has personal knowledge and is authorized to make it on the plaintiff's behalf.

Legible Copy

The Court Rules mandate that the moving party produce the original mortgage, evidence of indebtedness, claim of lien (*N.J.S.A.* 46:8B-21) and any other original document upon which the claim is based or, in lieu thereof, copies certified as a true copies. Frequently, the copy of the

document offered into evidence by plaintiff is hard to read and the Court or the Office of Foreclosure cannot locate the relevant terms on largely illegible copies. The rule should mandate that when copies are provided, they must be legible. The Conference recommends that 4:64-2 be amendment to mandate legible copies of these instruments. Additionally, the rule should explicitly reference assignments. In recent years, securitized mortgage debt has created distinct investor ownership of mortgage debt. Establishing to whom the mortgage debt was transferred, whether the securitization trust or some other investor, is essential to show that a plaintiff has standing to pursue a foreclosure. Requiring legible copies of all assignments will identify who indeed is the owner of the note and mortgage when the foreclosure was filed.

> **Recommendation 8** Amend *R.* 4:64-2 to require legible copies of the note, mortgage and assignments. Designate as Paragraph "a".
>
> *R*. 4:64-2. Proof
> (a) Proof required by R. 4:64-1 may be submitted by affidavit, unless the court otherwise requires. The moving party shall produce the original mortgage, evidence of indebtedness, assignments, claim of lien (*N.J.S.A.* 46:8B-21), and any other original document upon which the claim is based. In lieu of an original document, the moving party may produce a legible copy of a recorded or filed document, certified as a true copy by the recording or filing officer or by a New Jersey attorney, or a copy of an original document, if unfiled or unrecorded, certified as a true copy by a New Jersey attorney.

Notice of Potential Surplus Money

Many defendants, mortgagors and owners are unaware that sheriff sales produce surplus money that they can apply to receive. The Conference believes that a procedure to notify interested parties of the potential existence of surplus money must be created. The Conference recommends that notice of potential surplus moneys be inserted into the Affidavit of Amount Due's Schedule (see Recommendation 7 *Rule* 4:64-2 for amount due schedule provision), which this report recommends be sent to all appearing defendants and mortgagors, borrowers and all other named parties obligated on the debt and also the Notice of Sale.

> **Recommendation 9** Amend *R*. 4:65-2 to require a notice of potential surplus money and promulgate model notice language.
>
> *Rule* 4:65-2. Notice of Sale; Posting and Mailing
>
> If real or personal property is authorized by court order or writ of execution to be sold at public sale, notice of the sale shall be posted in the office of the sheriff of the county or counties where the property is located, and also, in the case of real property, on the premises to be sold, but need not be posted in any other place. The party who obtained the order or writ shall, at least 10 days prior to the date

set for sale, serve a notice of sale by registered or certified mail, return receipt requested, upon (1) every party who has appeared in the action giving rise to the order or writ and (2) the owner of record of the property as of the date of commencement of the action whether or not appearing in the action, and (3) except in mortgage foreclosure actions, every other person having an ownership or lien interest that is to be divested by the sale and is recorded in the office of the Superior Court Clerk, the United States District Court Clerk or the county recording officer, and in the case of personal property, recorded or filed in pertinent public records of security interests, provided, however, that the name and address of the person in interest is reasonably ascertainable from the public record in which the interest is noted. The notice of sale shall include notice of the potential for surplus money and the procedure to claim the same from the Superior Court Clerk. The party obtaining the order or writ may also file the notice of sale with the county recording officer in the county in which the real estate is situate, pursuant to *N.J.S.A.* 46:16A-1 *et seq*., and such filing shall have the effect of the notice of settlement as therein provided.

SUGGESTED NOTICE OF SALE SURPLUS MONEY LANGUAGE

THIS SALE MAY GENERATE MONEY WHICH YOU MAY POSSIBLY CLAIM

At the sale, the premises shall be sold to the highest bidder in conformance with the terms of sale set forth in the foreclosure notice. If money remains after payment of the amount due on the judgment and lawful costs, the sheriff [*person conducting the sale*][1] shall deposit any surplus money with the Superior Court Clerk's Trust Fund Unit in Trenton, NJ to await further order of the court. Information concerning any surplus money can be obtained from the Sheriff's office [*person conducting the sale*] after the sale. Defendant property owners and other party defendants or others with a lien claim may file a motion, on notice to all foreclosure action defendants and others who have made claim, seeking disbursement of all or a portion of the surplus sale money.

SUGGESTED CERTIFICATION OF AMOUNT DUE SCHEDULE LANGUAGE

If the premise is sold, money may remain after payment of the amount due which the sheriff [*person conducting the sale*][2] must deposit with the Superior Court Clerk's Trust Fund Unit in Trenton, NJ to await further order of the court. Information concerning any surplus money can be obtained from the Sheriff's office [*person conducting the sale*] after the sale. Defendant property owners and other party defendants or others with a lien claim may file a motion, on notice to

[1] If a third party is authorized to conduct the sale, then substitute the third party auctioneer's name for the sheriff.
[2] If a third party is authorized to conduct the sale, then substitute the third party auctioneer's name for the sheriff.

all party-defendants and others who have made claim, seeking disbursement of all or a portion of the surplus sale money.

Guardian *Ad Litem* Report

As stated earlier in this report, all guardian *ad litem* appointments are entered by vicinage judges. Typically, a GAL files a brief report recognizing that the mortgage payments are delinquent and the minor/ incapacitated person has no defense. These uncontesting reports are frequently sent to Trenton for filing with the case jacket. The Conference recommends that, absent an order from the court, a rule articulate the practice that guardian *ad litem* reports, which do not object to the foreclosure relief, be filed with the Superior Court Clerk's Records Unit in Trenton and not sent to the vicinage judge who appointed the guardian *ad litem*. Conversely, guardian *ad litem* reports that raise issues or disputes requiring adjudication are to be filed with the vicinage judge.

Recommendation 10 Amend *R.* 4:26-2 to direct filing of guardian *ad litem* reports, which do not object or dispute the right to foreclosure, to the Superior Court Clerk's Record Unit in Trenton.

R. 4:26-2

. . .

(d) Notwithstanding the appointment of a guardian *ad litem* in a foreclosure action to represent the interests of a minor or incapacitated person by a vicinage judge, if the written report of the guardian *ad litem* raises no objection or dispute as to the right to foreclosure, the report shall be filed with the Superior Court Clerk in Trenton. Reports which raise an objection or dispute shall be filed with the vicinage judge who appointed the guardian *ad litem*.

FORECLOSURE
CASE INFORMATION STATEMENT
(FCIS)

Use for initial Chancery Division — General Equity foreclosure pleadings (not motions) under Rule 4:5-1.

Pleading will be rejected for filing, under Rule 1:5-6(c), if information is not furnished or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY
PAYMENT TYPE: CK CG CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

CAPTION	COUNTY OF VENUE
	NAME OF FILING PARTY (*e.g.*, John Doe, Plaintiff)
DOCKET NUMBER (When available) **F-**	DOCUMENT TYPE ☐ COMPLAINT ☐ ANSWER
ATTORNEY/SELF REPRESENTED NAME	TELEPHONE NUMBER ( )
FIRM NAME (If applicable)	ADDRESS

FORECLOSURE CASE TYPE NUMBER ☐ 088 IN PERSONAM TAX FORECLOSURE ☐ 089 IN REM TAX FORECLOSURE ☐ 0RF RESIDENTIAL MORTGAGE FORECLOSURE ☐ 0CF COMMERCIAL MORTGAGE FORECLOSURE ☐ 0CD CONDOMINIUM OR HOMEOWNER'S ASSOCIATION LIEN FORECLOSURE ☐ 091 STRICT FORECLOSURE ☐ OPTIONAL FORECLOSURE PROCEDURE (NO SALE)	DEFENDANT (S) NAMES (i.e., debtors, mortgagors, subordinate mortgages, judgment creditors *et seq.*)
PROPERTY STREET ADDRESS: MUNICIPALITY: COUNTY: MUNICIPAL BLOCK: LOT (S):	MORTGAGE FORECLOSURE TYPE ☐ RESIDENTIAL ☐ COMMERCIAL PURCHASE MONEY MORTGAGE ☐ YES ☐ NO RELATED PENDING CASE ☐ YES ☐ NO IF YES, LIST DOCKET NUMBERS:

ATTORNEY SIGNATURE	PRINT ATTORNEY NAME	DATE

SCHEDULE "A" AMOUNT DUE

NOTE AND MORTGAGE DATED _____
Recorded on _____, in _____ County, in Book ____ at Page _____
Property Address: _____
Mortgage Holder: _____

STATEMENT OF AMOUNT DUE:

Unpaid Principal Balance as of _____		$ _____
Interest from _____ to _____		$ _____
(Interest rate = _____% per year; $ _____ per day x _____days)		
Late Charges from _____ to _____		
($ _____/mo. x _____ mos.)		$ _____
Advances through _____ for:		
Real Estate Taxes	$ _____	
Home Owners Insurance Premiums	$ _____	
Mortgage Insurance Premium	$ _____	
Inspections	$ _____	
Winterizing/Securing	$ _____	
Sub-Total of Advances	$ _____	
Less Escrow Monies	($_____)	
Net Advances	$ _____	$ _____
Interest on advances from _____ to _____		$ _____
Other charges (specify)		$_____
TOTAL DUE AS OF _____		$ _____

/s/ _____
Type or Print Lender's or Servicing Agent's Employee's Name

Date: [*insert date*]