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**From:** Brian Yoder <Brian.Yoder@phelanhallinan.com>  
**Sent:** Friday, December 14, 2018 4:26 PM  
**To:** Comments Mailbox  
**Subject:** Comments on Proposed Foreclosure Rule Amendments

Attention: Honorable Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts

Pursuant to the Court's November 14, 2018 Notice to the Bar, Phelan Hallinan Diamond & Jones, PC (PHDJ) respectfully submits the below comments on the proposed Court Rule amendments.

#### Rule 4:4-4. Summons; Personal Service; In Personam Jurisdiction

With respect to the proposed amendments to R. 4:4-4, PHDJ seeks clarification of the manner in which junior judgment creditors in a foreclosure action shall be served. As the proposed changes are currently drafted, specific language setting forth that junior judgment creditors may also be served in the manner prescribed by paragraph (a)(1) is omitted. PHDJ proposes that the addition of section (a)(9) also contain specific language providing for service in the manner prescribed by paragraph (a)(1) allowing junior judgment creditors to be served via personal service or via mail by the manner prescribed in Rule 4:4-3.

PHDJ also seeks clarification on the Court's definition of junior judgment creditor in a foreclosure action. It is unclear if the court intends to limit this definition only to defendants who hold judgments docketed and identified on a Superior Court judgment search or whether this definition would also extend to junior mortgage holders or junior lien holders.

Finally, if section (a)(9) is specific to service of junior judgment creditor defendants in a foreclosure action, PHDJ respectfully recommends additional language that (a)(9) supersedes any other manner of service on parties identified in preceding paragraphs R. 4:4-4(a) where the manner in which service is prescribed may be contradictory. For example, the State of New Jersey or a corporation may routinely hold junior judgments and be joined as a defendant in a foreclosure action, potentially creating a conflict in the prescribed manner of service under this amended Rule.

#### Rule 4:64-3. Surplus Moneys

With respect to the proposed amendments to R. 4:64-3, PHDJ proposes that section (c) clarify that the required proofs under (c)(1)(b) are not applicable if the motion for surplus moneys is filed under subsection (b), as subsection (b) provides for motions by others who were not a party to the underlying foreclosure action.

#### Rule 4:64-8. Dismissal of Foreclosure Actions for Lack of Prosecution

With respect to the proposed amendments to R. 4:64-8, PHDJ respectfully requests that the Court Rules provide a remedy for the Plaintiff to apply to the vicinage for reinstatement in instances where reinstatement through the Office of Foreclosure have been exhausted as opposed to a per se rule requiring the filing of a new

complaint. As the current proposed changes are drafted, there is no consideration given or remedy for a Plaintiff who may face dismissal and restart of the action due to lack of prosecution as a result of federally regulated mandatory holds imposed upon the foreclosing Plaintiff, such as prohibitions against dual tracking where loss mitigation has been initiated by the borrower.

Thank you for your courtesy in allowing comment on the proposed amendments. We are available at your convenience to discuss any questions or concerns you may have.

Very truly yours,

**Brian J. Yoder, Esquire**

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