

**COMMENTS OF LEGAL SERVICES OF NEW JERSEY
ON THE 2020 REPORT OF THE SUPREME COURT
COMMITTEE ON SPECIAL CIVIL PART PRACTICE**

March 20, 2020

Legal Services of New Jersey submits the following comments to express its grave and fundamental concerns with the proposal, by a divided Committee on Special Civil Part Practice, to increase the monetary jurisdictional limits in Special Civil Part cases – the vast majority of which are consumer debt collection cases brought against low- and moderate-income individuals – by way of an amendment to R. 6:1-2.¹ The proposal would increase the amount (exclusive of attorneys' fees) that can be awarded in regular Special Civil Part (DC docket) cases from \$15,000 to \$20,000, and the amount that can be awarded in Small Claims Section (SC docket) cases from \$3,000 to \$5,000.²

There is no doubt that increasing the SCP jurisdictional limits would increase the number, and substantially increase the amount, of debt collection judgments entered against low-income litigants. Meanwhile, in the immediately foreseeable future, low-income litigants will be subject to even greater economic uncertainty than in the past as a result of lost employment and other economic dislocations caused by the ongoing COVID-19 pandemic (which had not begun at the time of the committee's deliberations on this proposal). As explained in more detail below, Special Civil Part is a broken system that produces unfair, arbitrary, and discriminatory results. As LSNJ has repeatedly urged, SCP debt collection litigation should be reformed at a fundamental level – some aspects of which are illustrated in the consent orders arising from enforcement actions by the Consumer Financial Protection Bureau against the New Jersey debt collection law firm then known as Pressler & Pressler, the New Jersey debt buyer New Century Financial Services, and a national debt buyer (Midland Funding) that has brought thousands of debt collection cases in New Jersey – before expansion of the scope and effects of increased SCP jurisdiction can fairly be considered.

¹ LSNJ submits these comments on behalf of its low-income clients. LSNJ coordinates New Jersey's Legal Services system, a network of six independent non-profit corporations providing free essential legal services in civil matters to low-income people through offices in all 21 counties. When appropriate, LSNJ makes available information and perspectives on matters of broad public importance in the lives of people in poverty based on its experience in representing tens of thousands of low-income people each year.

² Debt collection attorneys invariably file even their smallest cases under the DC docket – where default is entered automatically, and formulaic summary judgment motions routinely lead to judgments whenever an unrepresented litigant responds – rather than under the SC docket, where a defendant's response leads to an opportunity to appear before a judge.

The proposed change would have profound consequences for low-income people because SCP's rushed and abortive process provides far less protection – and ultimately, justice – than is available in Law Division cases. In addition to the discriminatory effects described below, SCP debt collection cases raise many serious due process concerns for low-income defendants:

- Very low likelihood of counsel – which, given the nearly universal legal representation of debt collection plaintiffs, is inherently unfair
- No in-person service, as is required in Law Division cases
- Limited discovery in all cases, absent motion practice, or third-party subpoenas when debt buyer plaintiffs possess virtually none of the underlying records concerning the alleged debt
- No judicial review of default judgment applications
- Improper and overbearing post-judgment collection tactics that continue to be common issues for Legal Services clients – including some who find their homes at risk because New Jersey does not have a homestead exemption

Even more disconcertingly, there is strong empirical evidence that SCP debt collection judgments disproportionately affect minority households. A landmark study in 2015 analyzed AOC data on judgments in Essex County Special Civil Part contract cases from July 2007 through June 2012, and concluded that **“even accounting for income, the rate of judgments was twice as high in mostly black neighborhoods as it was in mostly white neighborhoods.”** A copy of the report is available online here: [Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas](#). While these quantitative results cannot tell us the precise cause of the racial disparity, they present incontrovertible evidence that Special Civil Part judgments in debt collection cases do in fact have a racially disparate impact on consumers in New Jersey. In addition to the attached report, an article about the study is here: <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>, and additional information about the data and analysis is here: [How We Analyzed Racial Disparity in Debt Collection Lawsuits](#).

These findings have recently been confirmed in the only empirical economic research study known to LSNJ, which found that, even controlling for a wide range of potential independent variables, minority households experience 40% more debt collection judgments than non-minority households. LaVoice, Jessica and Vamossy, Domonkos F., *Racial Disparities in Debt Collection* (September 2019) (available at <https://ssrn.com/abstract=3465203>).

Another source of serious concern is the process by which the proposal to increase SCP jurisdictional amounts was brought before the committee. On August 7, 2019, little more than a month before the last committee meeting scheduled for the current rules cycle, committee

members first received notice that an unspecified proposal to increase SCP limits would be considered, and that any further information to be considered by the committee must be submitted within two weeks. Committee members later learned that a letter from a debt collection attorney had requested an increase in SCP monetary limits several weeks earlier. The notice was followed on August 23, 2019 (only a few weeks before the final committee meeting), by a 300-page report authored by the judge chairing the committee (the “Anklowitz Report”), covering dozens of topics not previously considered by the committee. The committee chair acknowledged that the bulk of the report had been prepared for another purpose, and had merely been modified in some regards to address the proposal before the committee.

Not only did committee members have far too little time to read and analyze the material in the report – it also soon became apparent to those who attempted to review the report in depth that substantial portions of the report had little or no relevance to the proposal at hand (by way of example, more than 10 pages of the report were devoted to Swedish and Dutch courts before 1675; and 2 pages, much of which is in Chinese, were devoted to “China’s small claims”). To make matters worse, the report took a decidedly partisan tone, and advocated throughout in favor of the debt collector’s proposal. Taken together, the timing of the report and its lack of neutrality amounted to nothing less than an ambush. Moreover, despite clear understanding that this matter was of grave concern to many committee members, it was placed last on the agenda at the final scheduled meeting of the rules cycles. Consideration of the proposal did not begin until approximately 3 hours into the meeting, and by the time a vote was taken more than an hour later, two judges on the committee had had to leave – at least one of whom had expressed substantial concern about the proposal. The fair and reasoned deliberation that should characterize committee consideration simply did not occur.³

Despite its length, the chair’s report identified no significant issues in need of correction. Instead, the report substantially relied on vague notions of keeping up with inflation. Yet inflation has been extraordinarily low for many years (and undoubtedly will be subject to effects that cannot yet be anticipated as a result of the current COVID-19 pandemic), raising the question of why a jurisdictional limit increase is any wiser today than in prior rules cycles where the committee decided against recommending an increase. The report identified no concerns from any constituency relating to the current jurisdictional limits. The only apparent policy imperative (other than the subsequently disclosed desire of a debt collection attorney to be able to bring more and larger DC docket cases) is that there may be excess staff capacity to process DC docket cases. See Anklowitz Report at 260. DC docket filings indeed spiked in number in the aftermath of the 2008 financial crisis, and began to go down, ultimately by about 50%, in 2011. It would be surprising, however, if court staff has not already been reallocated, if indeed

³ Remarkably, the chair *sua sponte* has taken the position that the DC docket jurisdictional limit should be increased to \$25,000 rather than \$20,000. This idea was considered but not endorsed even by the committee members who voted in favor of an increase, and the Court should give it no further consideration.

SCP workload has meaningfully decreased since 2011. At the same time, developments in the past week alone with respect to the inevitable, though unknown, economic consequences arising from the effects of and responses to the COVID-19 pandemic suggest that the world of alleged consumer credit and health care debt (the sources of virtually all DC docket cases) is about to change drastically. Many new issues will arise, and the unfortunate likelihood is that much greater demands on the resources of courts handling debt collections cases lies ahead, because of events that were not and could not have been anticipated in September 2019.

There is, in addition, clear evidence that there is no upward pressure on the amount at stake in SCP debt collection litigation. The chair's report itself shows that the median SCP demand in 2018 was only \$1,792, and that since 2001, the average and median SCP demands and judgments have either decreased or remained about the same. Anklowitz Report at 296. Legal Services' experience is that today's SCP debt collection cases are almost all well under the current \$15,000 limit. Even the auto deficiency actions fit this pattern, and tend to be closer to \$10,000 than to \$15,000.

Much of the chair's report consists of ostensible comparisons with other state court systems. Anklowitz Report 87-247. These comparisons, however, are not apples-to-apples, as the structures and procedures of state court system vary widely. Brief descriptions of service requirements, default procedures, availability of discovery, application of evidence rules, court-sponsored alternative, jury trials, and other complex aspects of litigation systems, are invariably incomplete, and readily subject to selective interpretation.

For all of the foregoing reasons, the Court should not adopt the proposed increase in jurisdictional limits for Special Civil Part cases at this time. Continued efforts should be focused first and foremost on reforming the deep-seated problems in SCP practice – including but not limited to making the terms of existing CFPB consent orders applicable by rule in all debt collection cases⁴ – and adopting monitoring procedures to assure that race-based disparities in debt collection judgments are not amplified, but eliminated.

⁴ As noted above, the successor to the Pressler firm, along with debt buyers New Century Financial Services (New Jersey) and Midland Funding (nationwide), have been subject for several years to the terms of CFPB consent orders prohibiting practices deemed to be deceptive, unfair, harassing, and/or abusive. Other debt buyers and debt collection attorneys, however, do not have to comply, so these known bad practices continue to characterize SCP cases.