

From Pressler, Felt & Warshaw, LLP (March 24, 2020)

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

In response to the last-minute comments by Legal Services, I am moved to respond to same.

The first statement by Mr. McMillan that, “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” is not true. Collection suits have nothing to do with the amount of a person’s income. They are not directed at low-income litigants. Collection litigation is merely relief being sought by a creditor asking that the Court make a determination as to liability and damages and nothing more. It has nothing to do with the race, creed, income or any other factor of the consumer. It is merely a creditor seeking relief from the Court.

Mr. McMillan’s reference to the Consent Order by the Consumer Financial Protection Bureau (“CFPB”) with the firm of Pressler and Pressler, LLP is totally inappropriate. The Consent Order was an amicable resolution as part of an effort by the CFPB to set industry standards in lieu of rule-making.

Mr. McMillan fails to disclose the entire Consent Order to the Supreme Court. He strategically and inappropriately fails to cite the fact that the Consent Order specifically states that it was a settlement and not an admission of any facts or conclusions of law as clearly stated in paragraph 2 of the Consent Order. So the record is clear – the CFPB rigorously and thoroughly scrutinized this Firm for more than a year and a half, and it is very telling that the settlement involved no consumer redress or restitution, no invalidation of judgments and no findings of the use of improper affidavit practices. This result is a reflection of the millions of

dollars Pressler and Pressler, LLP (now Pressler, Felt & Warshaw, LLP) has invested annually in professional human resources and technology systems to strengthen the accuracy and professionalism of its operations. The Firm is also among the first to have a dedicated Compliance Team, whose role has continued to be refined and expanded over time to meet changing standards and establish best practices.

The settlement with the CFPB was not about laws or rules that were in place at that time. Instead, the CFPB formed its own unique interpretation of existing federal and New Jersey State law and applied their interpretations retroactively to our past practices that were, at the time, in accordance with federal and state laws. This was a form of rule-making back in 2016 which we embraced and fully adopted.

Mr. McMillan does not talk about any of the other Consent Orders such as the ones with American Express, Bank of America, Citibank, JP Morgan Chase, and the multitude of other financial institutions that were all part of the CFPB effort to write rules by way of consent orders.

Mr. McMillan claims that there will be profound consequences to low-income people, but he does not explain how a creditor would know a consumer is low-income prior to filing a lawsuit and post-judgment discovery. Creditor records and credit reports do not tell the complete story of a person; income is not a public record. When we do learn a person is low-income, we offer hardship payment plans and Legal Services can attest that we have many cases where we simply close the file upon receipt of information from Legal Services that the consumer is low-income. Each case is different, each case has its own facts to review and determine a consumer's financial health.

There are rules for discovery and rules for procedure in the Special Civil Part. Increasing the limit will not take away any rights from the low-income people or from any litigants. Each

party has the same rights. In fact, Civil Part cases are more complicated and burdensome for the average low-income person. In addition, they are more expensive in the Civil Part. Compare a Special Civil Part suit filing of \$75.00 for a Complaint to the amount of \$250.00 for a Complaint in the Civil Part. Taxable costs are substantially higher in the Law Division. He makes comments about improper and over-bearing post-judgment collection tactics that continue to be common issues for Legal Services clients, but he does not explain what those are and how they are over-bearing. The post-judgment remedies in the Special Civil Part are the same remedies available in the Civil Part.

Finally, he makes inaccurate comments about the Report submitted to the Committee and about Judge Anklowitz's Report. Judge Anklowitz's Report was very detailed giving statistics and facts to support pros and cons. Mr. McMillan claims that he included ostensible comparisons. Yet I believe Mr. McMillan's comments to the Supreme Court are guilty of more. He makes general, broad allegations and conclusions without any fact-finding or documentation to support it. He refers to reports made based on racial disparity and not low-income.

Based on the foregoing, I believe that the proposed increases are fair and reasonable and that the proposed amendment should be approved.