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Via e-mail: Comments.Mailbox@njcourts.gov

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Amendments to Rule 1:38-3 – Records of Landlord/Tenant Matters Not
Resulting in Judgment for Possession
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

**Re: Comments on Proposed Amendments to Rule 1:38-3 – Records of Landlord/Tenant
Matters Not Resulting in Judgment for Possession**

Dear Judge Grant:

Please accept the following comments on behalf of Legal Services of New Jersey, in response to the proposed amendment to Rule 1:38. Legal Services of New Jersey, in coordination with the five regional Legal Services programs, provides free legal assistance to low-income New Jerseyans on their civil legal problems, including eviction cases, consumer issues and other critical legal matters. Through its work, LSNJ strives to secure substantive and procedural justice for those living in poverty. LSNJ makes these comments in furtherance of those goals.

It is our belief that if implemented, the proposed rule will make a significant difference in mitigating the harm resulting from current eviction case reporting practices. Within Legal Services, we see firsthand how the record of an eviction action impedes our clients' ability to find safe and affordable housing. Tenants frequently reach out to us because they are unable to find new housing, or they have otherwise been affected by a negative credit score, due to the record of a prior eviction matter. Because the court has public access to eviction filings, judgments and other raw data, this information is routinely collected by "tenant-scoring" agencies and other credit screening agencies, which use this information to the detriment of a prospective tenant. Even landlords who don't rely upon these scoring services, have ready access to the court's records through E-Courts or ACMS, and can deny housing to a prospective renter based on a previously filed eviction case, regardless of the reason for the matter or the

outcome of the case. This practice, known as tenant blacklisting, greatly limits tenant's options in finding housing. With fewer housing options, tenants have no choice but to settle for subpar and unsafe housing in neighborhoods with lesser economic opportunity.¹ We commend the Judiciary for recognizing that the practice of tenant blacklisting poses a "future penalty"² to tenants, especially when a tenant has successfully defended against an eviction complaint, and applaud the steps taken to address this problem. Though this proposal offers great promise in eradicating those barriers imposed by online eviction records, Legal Services of New Jersey believes that additional amendments are necessary to mitigate the harm caused to tenants, particularly those who are low income and people of color.

While the proposed rule limits access for cases that do not result in a judgment, this leaves many tenants and former tenants to deal with the substantial harm caused by the prior eviction record. When taken in the context of New Jersey's summary dispossession proceedings, where most cases are between landlords represented by counsel and tenants who are unrepresented, the public release of eviction actions is outweighed by the real harms caused to tenants. These cases are for possession of the property only and not money judgments, yet these records are used to produce credit worthiness scores that can be barriers to future housing, employment and financial services. All of this is compounded by the tens of thousands of potential evictions looming as the result of the pandemic. LSNJ believes that no judgment of possession should be available for public access if used for these purposes and the Judiciary should consider sealing all such records. Absent that, we recommend the following changes:

I. The Rule Should be Amended to Protect Cases at Various Stages, When Such Cases Do Not Result in the Eviction of the Tenant.

In the Notice to the Bar, it states, "the proposed amendments would exclude from public access records of landlord of tenant actions that never generate a judgment for possession..." and therefore the Judiciary intends to exclude information regarding eviction filings and entries of default that do not result in a final entry of a judgment of possession, from public access records. In our experience, defaults enter in a variety of circumstances including cases where the parties have resolved the case before court and cases where the parties resolve the matter on the day of the trial. A default does not generate a judgment for possession until the plaintiff affirmatively makes a written application to the court to enter default judgment for possession and entry of the judgment can be prevented if the tenant makes payment by the required time. See N.J. Ct. R. 6:6-3(b). In addition there are common circumstances when a judgment of possession enters even though a case is settled. Many landlord and tenant disputes get resolved on the day of trial with the parties entering into a written settlement agreement or consent order. In these cases, even though the parties have agreed to resolve the matter and tenant remains in the property, the current court forms provide for the immediate entry of a judgment of possession. While those judgments should ultimately be vacated, they can remain as a recorded judgment if not affirmatively vacated and removed

¹ Duke, Annette & Park, Andrea, Massachusetts Law Reform Institute, "Evicted for Life," <https://www.mlri.org/publications/evicted-for-life/>, (June 12, 2019).

² Notice to the Bar – "Landlord/Tenant – Proposed Amendments to Rule 1:38-3(f) to Remove From Public Access Records of Landlord/Tenant Matters not Resulting in a Judgment for Possession - Publication for Comment," <https://www.njcourts.gov/notices/2020/n200917b.pdf?c=05f>, (September 17, 2020).

from the court record. Finally, as noted in the preamble to the proposed rule, judgments of possession may be vacated even after a Warrant of Removal has been executed.

Recommendation: We recommend that the language in the proposed amendment be clarified to include pending cases and to prevent the inclusion of cases where no Warrant of Removal has been executed. We also recommend that the court amend the settlement forms, to remove the immediate entry of a judgment of possession and instead enter a judgment only upon a breach of the agreement. The rule should also explicitly include cases where a judgment has been vacated, to ensure that those cases are not inadvertently released, contrary to the proposed rule's intent.

II. The Proposed Amendment Needs to Address Timeframes for Publicizing Judgment for Possessions Entered in Nonpayment of Rent Cases and Should Include a Mechanism for Removing a Record When Warranted.

According to the Notice to the Bar, the proposed amendment would “exclude from public access where a judgment was entered and then subsequently dismissed (e.g., because a tenant paid the rental arrearage within three business days after the eviction as permitted by N.J.S.A. 2A:42-10.16A or complied with the terms of a settlement) or vacated on appeal.” Since the proposal allow records resulting in judgment for possession to remain accessible by the public online³, tenants, who invoke their right under N.J.S.A. 2A:42-10.16A, would continue to suffer prejudice, despite the changes set forth in the amendment. The court could publicize the information online soon after the entry of judgment, which in turn would tarnish one's tenancy history. The Judiciary needs to clarify this procedure to ensure that “tenants who successfully defend against an eviction are not subject to future penalty simply because an unsuccessful complaint was filed against them.”⁴ In order to protect against the release of information for judgements that are vacated or appealed, we recommend a slight delay in the publication of these records.

Recommendation: To ensure that a record accurately reports the proper case outcome, the Judiciary should wait at least six months before publicizing records for eviction for nonpayment of rent matters, which result in a judgment for possession.

III. The Amendment Should Address Evictions Based on No-Fault Grounds

In some cases, a judgment for possession may enter due to no fault of the tenant, but a record of the eviction action can still cause lasting harm to the former tenant. The Anti-Eviction Act allows for no fault eviction grounds for various reasons. See N.J.S.A. 2A:18.61.1 et seq. In most owner-occupied

³ Notice to the Bar – “Landlord/Tenant – Proposed Amendments to Rule 1:38-3(f) to Remove From Public Access Records of Landlord/Tenant Matters not Resulting in a Judgment for Possession - Publication for Comment,” <https://www.njcourts.gov/notices/2020/n200917b.pdf?c=0Sf>, (September 17, 2020).

⁴ Notice to the Bar – “Landlord/Tenant – Proposed Amendments to Rule 1:38-3(f) to Remove From Public Access Records of Landlord/Tenant Matters not Resulting in a Judgment for Possession - Publication for Comment,” <https://www.njcourts.gov/notices/2020/n200917b.pdf?c=0Sf>, (September 17, 2020).

tenancies, a landlord does not have to demonstrate good cause to evict and there is no finding that the tenant did anything wrong to prompt the eviction. See N.J.S.A. 2A:18-53. Removing public access to these types of cases makes sense, in keeping with the proposed rule's intent.

Recommendation: We strongly urge the Judiciary to exclude judgment for possessions where fault is not at issue. To evict a tenant under one these grounds is bad enough; the tenant should not have to endure added obstacles in finding housing and securing credit due to a tenant scoring report that fails to consider the reasons for the eviction. A tenant should not be subject to punishment twice⁵, especially in an eviction action with no fault.

Judgments in the following types of cases should also be excluded:

- A. Holdover Eviction Actions Pursuant to N.J.S.A. 2A:18-53
- B. N.J.S.A. 2A:18-61.1l – Landlord Seeks to Personally Occupy or Buyer Seeks to Personally Occupy Tenant's Unit
- C. N.J.S.A. 2A: 18-61.1h – The landlord wants permanently retire the property from Residential Life
- D. N.J.S.A. 2A:18-61.1k – Conversion to Condominium
- E. N.J.S.A. 2A:18-61.1g – Housing or health code violations where 1) The landlord needs to board or tear down the building; 2) The landlord cannot correct violations without removing the tenant; 3) The landlord must end overcrowding or an illegal occupancy; and 4) A government agency wants to close a building as part of redevelopment.
- F. N.J.S.A. 2A:18-61.1m – Tenant loses a job that includes a rental unit

IV. The Judiciary Should Allow Eviction Actions to be Sealed in Other Circumstances In the Interest of Justice.

As demonstrated by the above, there are too many situations that may arise, which would cause great inequity to tenants, thereby frustrating the goal the amendment intends to achieve. The parties may resolve the situation outside of the court proceeding and the tenancy may continue, but the court is not always informed of these resolutions. Such situations include, but are not limited to, post judgment and/or post warrant settlement agreements or rent payments after the entry of a judgment or execution of a warrant. The tenant may later be out of time to make application to the court under Rule 4:50 to vacate the judgment. We have encountered tenants who years after an eviction action has been resolved, have been denied housing based on the previously resolved matter. In such circumstances, the tenant is out of time to make application to the court to vacate the judgement and without recourse to have the record changed or sealed. Allowing for such applications still enables the court to balance excluding from public access records that as currently maintained create inappropriate hardships for disadvantaged populations (e.g., records of landlord/tenant complaint filings that do not note the outcome), while upholding the Judiciary's commitment to transparency. As such, the Judiciary should consider granting tenants the right to seal eviction information. This would ensure that the information regarding the eviction would not

⁵ Notice to the Bar – “Landlord/Tenant – Proposed Amendments to Rule 1:38-3(f) to Remove From Public Access Records of Landlord/Tenant Matters not Resulting in a Judgment for Possession - Publication for Comment,” <https://www.njcourts.gov/notices/2020/n200917b.pdf?c=0Sf>, (September 17, 2020).

readily accessible to the public. Other states, including California, New York, Illinois, Delaware and Minnesota,⁶ have allowed for sealing of eviction cases in other circumstances.

- California: Allows for sealing at the time of an eviction filing. Records remain accessible to parties and to certain people connected to the case or have good cause to review.⁷
- New York, NY: Removes the names of parties from public record.⁸
- Illinois, Delaware, and Minnesota: Allows for sealing on case-by-case basis. Standards for review include the following: weighing the equities, whether sealing would be in the public interest, or in the interest of justice.⁹

Recommendation: The Judiciary should implement a mechanism for litigants to make applications to seal eviction court records. The courts should determine whether sealing would be appropriate “in the interest of justice.” The Judiciary could also consider removing the names from the public or making the names obscure by using initials instead of listing the names of the parties.

V. If a Record is not Sealed, Information Should only be Accessible for a Limited Duration

Prospective landlords use the information on E-Courts to determine a tenant’s creditworthiness and tenancy history. Currently, this information is accessible on E-Courts and ACMS for years, with no expiration date. The Judiciary should consider the lasting impact that these records have. As in other areas where recent equity focused reforms have been implemented, the Judiciary should consider a “clean slate” approach and remove records after a period of time.

Recommendation: The Judiciary should only allow eviction information to be accessible on public access for a maximum period of two years, in keeping with the period of time that case records are maintained by the court. The rule should also include a provision allowing for either party to request that a record be removed, upon motion to the court.

⁶ Caramello, Esme and Mahlberg, Nora, “Combatting Tenant Blacklisting Based on Housing Court Records,” Clearinghouse Article, Sargent Shriver National Center on Poverty Law, <http://povertylaw.org/clearinghouse>, (2017).

⁷ ibid

⁸ ibid

⁹ ibid

VI. Proposed Language to Amendment

This is the language, which we propose to add to the amendment:

(11) Records of any pending or prior landlord/tenant matter [] that did not or does not result in a final judgment for possession and executed warrant of removal, including records of cases in which a judgment for possession is or was entered but subsequently vacated.

(b) Records of any landlord/tenant matter for nonpayment of rent that result in judgment shall only be publicized six months after the date an eviction complaint was filed.

(c) Records of any landlord tenant matters that do not involve fault, which includes evictions actions pursuant to N.J.S.A. 2A:18-61-1g,h,k, l, and m and N.J.S.A. 2A:18-53.

(d) Records of any landlord/tenant matters shall be excluded after two years from the trial date. Either party may, upon motion, request that a record be sealed prior to this date, in the interest of justice.

Conclusion

Tenant blacklisting poses tremendous hardships for tenants, particularly low-income tenants, seeking housing in a market with limited housing stock¹⁰. The Judiciary, in its proposal, strives to eradicate those barriers to ensure equal access to tenants who generally appear without legal representation. LSNJ appreciates the steps that the Judiciary is taking with this rule change and respectfully requests that the Judiciary consider our comments in order to best execute the goals and objectives set forth in the Notice. Please do not hesitate to contact us to provide further information. Thank you for the opportunity to submit comments on the proposed amendment.

Respectfully submitted.

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¹⁰ National Low Income Housing Coalition, "2020 New Jersey Housing Profile," https://nlihc.org/sites/default/files/SHP_NJ.pdf, (July 13, 2020).

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