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VIA E-MAIL TO comments.mailbox@njcourts.gov

Glenn A. Grant, J.A.D.
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RE: Comments on Proposed Amendments to Rule 1:38-3-Records of Landlord/Tenant Matters Not Resulting in Judgment for Possession

Dear Judge Grant:

I write to offer comment on the proposed amendment to R. 1:38-3 which would exclude from public access records of landlord-tenant proceedings which do not result in a judgment for possession. Though the goal sought by the proposal is both noble and necessary, the proposed amendment would conceal accurate records for the purpose of accomplishing a policy objective of indirectly assisting one type of litigant. Further, the amendment fails to address the misuse of accurate public records and while diminishing faith in the impartiality of the judicial system. For these reasons, I recommend against the adoption of the proposed amendment.

Proposed R. 1:38-3(f)(11) Is Inconsistent with the Objective Identified in the Court's July 16, 2020 Action Plan for Equal Justice

The proposed amendment is the product of the Court's action item "8. Reexamining Access to Misused Court Records" within the July 16, 2020 Action Plan for Equal Justice (the "Action Plan"). The language of the Action Plan is instructive. In identifying the *misuse of court records* the Court provided the example of "records of landlord/tenant complaint filings that *do not note the outcome.*" Emphasis added.

This action item addresses a legitimate and pressing need: The misuse of *incomplete* court records which disparately prejudice disadvantage populations. But, the problem identified by the Action Plan is not the existence of the public record. The problem is the compound effect of the misuse of an incomplete record. While the Court cannot control the misuse of a public record, it can control its completeness.

The proposed amendment does not address the completeness of records. Instead, the amendment simply obstructs access to a now-public record to prevent potential misuse. Doing so assumes that any case in which a judgment does not enter (or is later vacated) is so devoid of merit that public has no right to know of it. This is an overly blunt and injurious solution.

I respectfully suggest that the Court may accomplish the goal of the Action Plan by furnishing *complete* records of the landlord-tenant cases instead of hiding their existence. The data provided for bulk access/download should include the precise disposition of every case (e.g., "dismissed by landlord" "dismissed per statute" etc). Providing complete and accurate information is far more consistent with the Judiciary's commitment to transparency than the removal of public access.

Proposed R. 1:38-3(f)(11) Undermines Faith in the Impartiality of the Judiciary

The Rules within R. 1:38 are the product of the "Report of the Supreme Court Special Committee on Public Access to Court Records (2007)". Justice Albin's discussion of the need for transparency balanced with protection to litigants is especially relevant today. Justice Albin offered:

"The information genie already has been released from the lamp, and we cannot return to a simpler time when court records, although open to the public, were stored in the practical obscurity of the clerk's office in the county courthouse."

The public is well aware of the existence of landlord-tenant proceedings in the public record. It is no secret that New Jersey is home to an enormous volume of landlord-tenant cases. To judge that certain records (the legitimacy of which is not questioned) should not be made public for the stated purpose of giving aid to

one category of litigants is to show obvious favor to those litigants.

Such manipulation of public records to serve a policy goal is dangerous precedent. The rationale underpinning the proposed amendment could apply equally to other categories of litigants to address other harms. This obvious policy making will create "record classes" of litigants-a result totally incompatible with the fair and impartial administration of justice.

The Court's on-going commitment to equal justice and fairness makes it a true privilege to practice in this State. But, the harm caused by the proposed amendment will outweigh its admirable goal.

This goal can, and should be, accomplished by the legislature. Bills addressing this harm were introduced before. The Court should restrain itself from performing a legislative function and constructively compel the legislature to fulfill its duty. A law addressing the ill of misuse of landlord-tenant records is a far better cure for the disease of disparate treatment.

I am grateful for the Court's consideration of these comments.

Respectfully Submitted,

Thomas J. Major

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