

#015

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

HANY A. MAWLA
JUDGE



216 HADDON AVENUE
WESTMONT, NEW JERSEY 08108
(856) 854-3493

October 14, 2020

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attention: 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
Via email Comments.Mailbox@njcourts.gov

Re: Proposed Amendments to R. 1:38-3(f) – Records of Landlord/Tenant Matters Not
Resulting in Judgment for Possession

Dear Judge Grant:

The Supreme Court Committee on Diversity, Inclusion, and Community Engagement (“SCC-DI&CE”), in its advisory role to the Court, writes in full support of the proposed changes to Rule 1:38-3(f), which proposes to remove from public record landlord/tenant matters not resulting in judgments for possession.

This proposal, presented by the Supreme Court Advisory Committee on Public Access to Court Records, harmonizes the principles of institutional transparency and individual privacy, which ground Rule 1:38, and the Court's June 5, 2020 statement “recommitting the Judiciary to the elimination of barriers to equal justice, including for individuals historically and currently excluded from and disadvantaged by court processes.” In furtherance of the June 5, 2020 statement, the Court set forth specific commitments to a series of substantive actions that reduce systemic inequities in its July 16, 2020 *Supreme Court Action Plan for Equal Justice*.

Action item (8), “reexamining access to misused court records,” recognizes that the current disclosure of certain administrative records “creates inappropriate hardships for disadvantaged populations (e.g., records of landlord/tenant complaint filings that do not note the outcome).” The current practice allows landlords and landlord representatives to harvest information from filings of prior eviction matters to determine a prospective tenant’s eligibility for residential tenancy without the benefit of any substantive detail to contextualize the matter. As a result, potentially unfair assumptions are drawn regarding a prospective tenant’s rent payment history. The proposed changes to Rule 1:38-3(f) remedy this unfairness, which disparately impacts racial and ethnic minorities, the poor, and an increasing number of working families who rent in New Jersey.

As the related Notice to the Bar states: “Reclassifying landlord/tenant records that do not result in a judgment for possession as confidential (rather than public) would ensure that tenants who successfully defend against an eviction complaint are not subject to future penalty simply because an unsuccessful complaint was filed against them. Moreover, reclassifying as confidential (rather than public) landlord/tenant records where a judgment for possession was subsequently dismissed would ensure that tenants who successfully paid in full and/or reached mutually agreeable terms with their landlord would not be subject to future penalty.” Therefore, the change in classification of the aforementioned cases from public to confidential while maintaining records of matters that result in judgments of possession as public records also assures transparency through access to court records and simultaneously protects vulnerable communities.

We thank the Court for the opportunity to provide commentary on this effort to foster fairness and eliminate structural inequities.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Hany A. Mawla', written over a horizontal line.

Hany A. Mawla, J.A.D., Chair
Supreme Court Committee on Diversity, Inclusion, and Community Engagement

cc: Steven D. Bonville, Chief of Staff
Yolande P. Marlow, Ph.D., Diversity, Inclusion, and Community Engagement Program
Director
Lisa R. Burke, Diversity, Inclusion, and Community Engagement Program Coordinator