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Subject: [External]Comments on Report of the Judiciary Special Committee on Landlord Tenant

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To the New Jersey Supreme Court:

Please consider the below comments in connection with the Court's consideration of the above reference report:

1. The report of the Special Committee fails to address the issue of differentiated management for commercial cases. By Order dated July 14, 2020, the Supreme Court authorized the Amendment of Landlord/Tenant Summons and Complaint Forms to specifically identify whether an action involved commercial or residential property. The Advisory Notice to the Bar, issued on the same date by the Honorable Glenn A. Grant, J.A.D., explained that this change to the form could "facilitate. . . differentiated case management." The backlog in Landlord/Tenant cases due to the Covid crisis has only further underscored the need for such differentiated case management. Commercial cases can be disposed of much more swiftly than residential cases. First, an eviction in a commercial case does not involve the potential for homelessness. Second, there are far fewer commercial Landlord/Tenant cases, than there are residential cases making docket-clearing much easier. Third, the size of courtrooms and waiting areas necessary to accommodate these commercial Landlord/Tenant litigants and their counsel would be much smaller than those necessary for residential matters. Fourth, most commercial Landlord/Tenant cases involve non-payment of rent for which there are far fewer defenses available to commercial tenants thereby streamlining trials. Fifth, as a general matter commercial tenants must be represented by counsel making settlement conferences more productive and trials more expeditious. Finally, the size of the monthly rent arrearages tend to be much greater in commercial cases justifying the need for commercial cases to be resolved quickly allowing landlords to mitigate damages for the benefit of both parties. In light of these factors, it is recommended that trial lists be separated such that Landlord/Tenant courts call commercial cases only on different days and times than residential Landlord/Tenant matters. For example, such shorter commercial case dockets could be called and disposed of in a single weekly afternoon session. Assignment judges would have more flexibility in designating any judge sitting civil to handle such shorter commercial case lists, without the need for the more specialized and time-consuming handling of residential matters. The Court should extend the differentiated management concept embodied in the civil rules applicable to complex business litigation, under RR. 4:102-1 et seq., to include differentiated management for commercial Landlord/Tenant matters.
2. Once the Covid emergency is over and the courts return to full operation, Landlord/Tenant courts should only undertake virtual trials of commercial matters with the consent of both parties.

Respectfully submitted, Mark Leonard

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