

056



NEW JERSEY STATE BAR ASSOCIATION

DOMENICK CARMAGNOLA, PRESIDENT
Carmagnola & Ritardi, LLC
60 Washington Street
Morristown, NJ 07960-6859
973-267-4445 • FAX: 973-267-4456
dcarmagnola@cr-law.net

May 21, 2021

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Report of the Judiciary Special Committee on Landlord Tenant
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on Report of the Judiciary Special Committee on Landlord Tenant

Dear Judge Grant:

Thank you for the opportunity to review and provide comments on the Report of the Judiciary Special Committee on Landlord Tenant. As noted in the Notice to the Bar, the COVID-19 pandemic amplified the growing need to reform the process for the handling of landlord tenant matters. The New Jersey State Bar Association applauds the Judiciary and the members of the Special Committee for their efforts in engaging in a robust discussion and debate to develop a comprehensive set of recommendations for moving forward.

As noted by the Special Committee, housing stability is critical in our society, and our judicial system must handle eviction actions in a "manner that is fair to all parties, with appropriate procedural safeguards and reasonable timeliness to resolution." The NJSBA believes the process set forth by the Special Committee increases access to the judicial system, is fair to all parties, and treats litigants with dignity and respect. While the process that is recommended may take a little longer, both landlords and tenants will benefit from a structured exchange of information, enhanced opportunities for resolution, and, if need be, a more focused trial.

Against that backdrop, I am pleased to submit the Association's comments on each of the recommendations. These comments are offered with the goal of working cooperatively with the Judiciary to advance the interests of and access to justice.

Recommendation 1: Landlords should be required to submit a Landlord Case Information Statement (LCIS). That LCIS would capture pertinent information and would support case management and efficient, early review by staff.

Recommendation 2: Tenants should complete a Tenant Case Information Statement (TCIS).

Recommendation 3: The Judiciary should implement a process for enhanced, initial review of landlord tenant complaints. The Judiciary would commit additional resources to support this process.

NJSBA Comments (Recommendations 1-3): The NJSBA supports these recommendations. We believe the case information statements should endeavor to capture as much information as possible, including, in the TCIS, all available defenses. This will put the parties in the best position possible to engage in settlement discussions and, ultimately, proceed to trial, if appropriate. There should be no penalty for not submitting a CIS initially, and the Landlord Tenant Legal Specialist should assist any party in completing it at the first case management conference, if necessary. There should be clear guidance that the statements should not be admissible at trial.

Recommendation 4: The Judiciary should expand opportunities for resolving landlord tenant cases before trial by establishing a Landlord Tenant Legal Specialist (LTLS) Program. The program would include trained legal staff to conduct required case management conferences, confidential settlement conferences, and other administrative functions that support judicial functions.

NJSBA Comments: The NJSBA supports this recommendation.

Recommendation 5: All landlord tenant cases should be scheduled for required case management conferences. LT legal specialists should conduct these required conferences in a virtual format to the greatest extent possible. At the conference, the LTLS would solicit information about the case, reduce to writing asserted claims and defenses, and refer parties to available rental assistance and legal resources. The LTLS also would facilitate the parties in proceeding immediately to a settlement conference whenever possible.

NJSBA Comments: The NJSBA generally supports this recommendation; however, we do not believe cases should ordinarily proceed immediately to a settlement conference. Instead, we recommend that there should be time between the case management conference and the initial settlement conference to allow the litigants an opportunity to follow-up on the information provided at the case management conference, such as hiring an attorney or applying for rental assistance.

Recommendation 6: The landlord should be required to submit a copy of the lease, the landlord's registration statement (if applicable), and a certification of the landlord's lease and registration statement before the case management conference.

NJSBA Comments: The NJSBA supports this recommendation, but recommends that a rent control registration, if applicable, be included in the documents to be submitted. In addition, the NJSBA believes exceptions need to be included for situations where the documents cannot be provided, such as if the documents do not exist, if the lease cannot be found, if there are confidentiality provisions in the lease, or some other good cause why the documents cannot be produced. In addition, the NJSBA recommends that there be a clear mechanism for litigants, particularly unrepresented litigants, to provide the required information.

Recommendation 7: Case management conferences should provide benefits to both parties, including options to connect with rental assistance and legal resources. Non-appearance by a party at the required case management conference should have a consequence. At least initially, however, the consequence would not be dispositive.

- **Landlords and tenants should have incentives to appear at the required case management conference. Among other benefits, parties should have the opportunity to receive information from the LTLS, to share or update information for the case file, to resolve the case when practicable, and to connect with rental assistance, legal, and other resources.**
- **Initially, the consequence for a failure of either party to appear for a case management conference should be a rescheduled conference. The consequence for a failure of either party to appear at the rescheduled conference should be a default for a tenant or dismissal for a landlord.**
- **If one or both parties fail to appear for the scheduled case management conference, a trial notice should be sent (by mail and electronically) to all parties and attorneys. Parties should have the opportunity to appear on the trial date irrespective of a prior non-appearance.**
- **In instances of default entry, applications for entry of judgment for possession may be filed prior to the trial date but should be entertained by the court no sooner than the trial date.**

NJSBA Comments: The NJSBA supports these recommendations, but does not believe that the failure to appear at a case management conference should routinely result in further delay of moving the case forward. If one or both parties fail to appear, there should be a presumption that the case will move to the next step of a settlement conference. However, the legal specialist should have the discretion to build in more time or expedite the matter, as appropriate in extenuating circumstances.

Recommendation 8: In addition to case management conferences, the LTLS would also conduct settlement conferences, which could immediately follow a case management conference and generally would be conducted virtually. LTLS authority to review settlement agreements would be limited to: (1) cases with represented tenants; (2) commercial cases; and (3) cases where the parties enter settlement agreements without Consent Judgments for possession. All settlement agreements reviewed by an LTLS would be presented to the court for final review before entry of judgment.

NJSBA Comments: The NSBA supports this recommendation, but reiterates its comments above with respect to allowing time between a case management conference and the initial settlement conference to allow the litigants an opportunity to follow-up on the information provided at the case management conference, such as hiring an attorney or applying for rental assistance.

Recommendation 9: Appendix XI-V “Consent to Enter Judgment (Tenant Remains)” should be revised to allow for selection by the parties of one of two options: (1) immediate entry of judgment for possession; or, alternatively, (2) entry of the judgment only after receipt of the landlord’s certification of breach of the settlement, along with a date for automatic dismissal of the case if the landlord does not certify to such a breach.

NJSBA Comments: The NJSBA supports the development of templates for settlement as well as judgments, but opposes the provision that contemplates the immediate entry of judgment in the settlement template.

As the Special Committee recognized, entry of a judgment for possession can have dire consequences for tenants, not just in the existing case, but could impede the tenant’s ability to find a new rental in the future. While the recommendation contemplates that the judgment would be vacated if the tenant fulfills the terms of the settlement or upon the passage of a set period of time, the entry of the judgment itself will remain publicly accessible to landlords and data collectors at least for as long as the settlement remains active and probably much longer. The parties can always agree to the entry of judgment on their own, but the NJSBA does not believe it should be presented on the template form itself.

Recommendation 10: Rule 6:6-4 should be amended to clarify that a settlement agreement that provides for entry of judgment for possession against an unrepresented, residential tenant must be written, signed by the parties, and reviewed and approved by the court.

NJSBA Comments: The NJSBA supports this recommendation, but urges that it be taken a step further to require any settlement agreement that provides for entry of judgment for possession against an unrepresented residential tenant be confirmed and approved on the record in open court.

Recommendation 11: After the conclusion of the moratorium on residential evictions and the resumption of all landlord tenant trials, trials should be conducted virtually whenever possible. Required settlement conferences should be scheduled on the trial date.

- As in other high-volume dockets, trials should be scheduled in a remote format. The Judiciary should emphasize and encourage remote proceedings to the extent possible.
- As necessary, including to support individuals who require reasonable accommodations pursuant to the Americans with Disabilities Act, trials also could be conducted in a hybrid or in-person format.
- Required settlement conferences would be conducted by neutral settlers on the day of trial.

NJSBA Comments: The NJSBA supports these recommendations.

Recommendation 12: The *Harris* Announcement should be improved. It should provide specific instructions about the trial and post-judgment process in plain language. The *Harris* announcement also should be updated to reflect virtual operations and recent legislative enactments.

NJSBA Comments: The NJSBA supports this recommendation, but notes that the information should be available in multiple languages, including American Sign Language, and multiple formats.

Recommendation 13: The Judiciary should develop and promulgate a comprehensive “Landlord Tenant Procedures” document to advise parties of the new landlord tenant process. Using plain language, the new document should explain processes from filing through post judgment and provide information about rental assistance and legal resources.

NJSBA Comments: The NJSBA supports this recommendation.

Recommendation 14: Rule 6:3-4 should be amended to set forth a standard for the posting of a deposit where a tenant seeks an adjournment of the trial in order to raise and advance a Marini (habitability) defense.

- The rule should establish a presumption that a tenant would be required to post with the court a deposit of fifty percent (50%) of the base rent in order to obtain an adjournment.

- **Either party could rebut that 50% presumption based on the facts presented to the court.**
- **In all cases, the court should retain discretion to adjust the amount and deadline for depositing funds.**
- **The court should be required to place on the record the amount due; the deadline for payment; and the basis for its determination.**

NJSBA Comments: The NJSBA believes the court should have full discretion to determine whether a deposit is warranted, and, if so, in setting an appropriate amount, as there may be varying reasons in each situation for higher, lower, or no deposit. As an example, the NJSBA notes that requiring a set deposit amount for an adjournment request, without allowing the court discretion to evaluate the particular circumstances of an adjournment request, could unintentionally create a conflict for attorneys who may need to request an adjournment for their own extenuating circumstances, but would be faced with their client being required to provide a deposit.

Recommendation 15: Rule 6:3-4 should be amended to set forth a standard for posting with the court a deposit of the unpaid base rent when the tenant seeks to obtain a trial adjournment for reasons other than to raise and advance a Marini defense. The standard should be discretionary with the court, but the amount of the deposit should be at least the amount of undisputed base rent (excluding fees).

NJSBA Comments: The NJSBA believes the court should have full discretion to determine whether a deposit is warranted, and, if so, in setting an appropriate amount. The NJSBA notes the same potential circumstances outlined above.

Recommendation 16: New Judgment of Possession forms should be developed and tailored for use in three situations: (1) at the conclusion of trial; (2) in instances of default judgment; and (3) upon settlement by consent or after breach of a settlement agreement. Those forms should provide plain language information to tenants as to options and next steps following entry of judgment.

Recommendation 17: A Request for Warrant of Removal form should be created. The use of the form would help standardize the request procedure, so as to support case management efficiency. It also would require the plaintiff-landlord to certify as to compliance with the requirement, established by the federal CARES Act, of 30 days' notice to vacate provided for covered properties.

Recommendation 18: The Warrant of Removal (Appendix XI-G) should be amended for clarity. Separate forms should be created for residential tenancies as follows (1) Notice; and (2) Return of Service. Separate forms should be created for residential and commercial tenancies.

NJSBA Comments (Recommendations 16-18): The NJSBA supports these recommendations.

Additional Recommendations/Comments:

To ensure continued meaningful participation by all litigants, interpreters should be available for all proceedings, as well as accommodations for individuals with disabilities. Furthermore, the NJSBA recommends that there be ongoing review of the varying access to and familiarity with technological resources, and appropriate information and alternatives should continue to be made available for those who need it.

As the Special Committee acknowledged, if these recommendations are implemented, landlord tenant matters would be handled in a substantially differently manner from the pre-pandemic process. To ensure the recommended changes are working well, adequately balance fairness and efficiency, and advance the goal of increased access to justice, the NJSBA recommends that a mechanism be put in place to review the process annually for the first three years, with appropriate adjustments made at the end of each review.

In addition, many of these recommendations appear geared to address residential tenancies and may not be applicable or necessary in the context of commercial tenancies. The NJSBA recommends that consideration be given to establishing separate procedures to apply to commercial tenancies.

Finally, the NJSBA recommends that the Judiciary engage in community outreach to educate individuals about what to expect in landlord tenant proceedings and where to find resources for assistance. The NJSBA commits to do the same within the legal community, and the broader community at large.

Again, the New Jersey State Bar Association thanks the Judiciary for its efforts to improve the handling of landlord tenant matters, and for allowing the bar to submit comments and recommendations. We commend all of the Special Committee members for their efforts in contributing to a rigorous examination of the current system and formulating these recommendations for consideration. We hope that our comments represent a meaningful contribution to this process.

If you have any questions regarding these recommendations, please do not hesitate to contact me.

Respectfully yours.



Domenick Carmagnola, Esq.
President

/sab

cc: Jeralyn L. Lawrence, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director