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February 14, 2022

(Via Regular Mail and Email: 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 – Public Access to Landlord Tenant Records More than Seven Years Old
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

RE: Comments on Proposed Amendments to Rule 1:38-3(f) – Proposal to Remove From Public Access Records of Landlord Tenant Matters In Which A Judgment For Possession Was Entered More Than Seven Years Ago

Dear Judge Grant:

As you know, Legal Services of New Jersey (LSNJ) coordinates and supports the statewide system of legal services programs providing civil legal assistance to people of low-income in all 21 counties. LSNJ fully embraces the Supreme Court's Action Plan for Ensuring Equal Justice, and specifically its commitment to improve the Landlord/Tenant process and reexamine public access to court records. Please accept these comments with regard to the proposed amendments to Rule 1:38-3(f) to remove from public access records of Landlord/Tenant matters in which a judgment for possession was entered more than seven years ago. LSNJ advocates often hear directly from tenants and household members who are denied housing due to a prior eviction record. While LSNJ supports the proposed change to remove such records from public access, we believe the proposed rule amendment could be strengthened to further protect the rights of tenants from inequitable harms related to the disclosure and misuse of their eviction records as further explained below.

Previously, on October 16, 2020, LSNJ submitted comments in response to proposed amendments to Rule 1:38-3 (pursuant to the Court's September 16, 2020 notice), addressing landlord tenant matters that did *not* result in a judgment for possession. We incorporate those comments here, generally, and attach them for reference.

Tenants who have a judgment of possession reported by commercial tenant screening agencies, documented on their tenancy records, and sold to landlords, can be subject to an informal tenant "blacklist," severely precluding their ability to find stable housing.[1] Landlords frequently use these reports to deny housing to prospective tenants with a judgment of possession in their history, without regard to the amount of time that has passed since the judgment was entered and regardless of "fault" or factual circumstances of the judgment. With fewer housing options, such tenants – who are more likely women, people of lower-income and people of color -- have no choice but to settle for subpar and unsafe housing in neighborhoods with lesser economic opportunity.[2]

1. The Court Should Consider Amending Rule 1:38-3(f) to Limit Access to All Cases Which Result in a Judgment of Possession

A. The negative impact of reporting judgments of possession in tenancy matters far outweighs the "right" of the public to have access to this information.

As tenant blacklisting is a major issue that negatively affects the lives of many low income people in New Jersey, it is our position that all matters in which a judgment of possession was entered should either be redacted, sealed or removed from public view entirely. LSNJ has seen firsthand the harm caused by unhindered access to electronic housing court case data, and the use (and often misuse) of this data by commercial tenant screening bureaus. In our observed experience, tenants often face difficulty in securing housing because of landlords' reliance on these reports which can contain old, inaccurate, and/or mismatched information.

Commercial tenant screening bureaus frequently use the "name matching" method when preparing tenant screening reports for landlords. This method is particularly likely to lead to inaccuracies, as only first and last name are used to determine whether a particular item of information relates to a prospective tenant, and not other personally identifying information such as address, date of birth, or Social Security number.[3] Matching errors are common when using the "name matching" method because many people have the same or similar names. The risk of mismatching using "name matching" is greater for Hispanic, Asian, and Black individuals because there is less last name diversity compared to non-Hispanic white individuals. As an example, 2010 census data indicated 26 last names cover a quarter of the Hispanic population vs. 319 last names required to cover a quarter of the non-Hispanic white population.[4]

In other cases, minor occupants, sometimes added to written leases as tenants but who are under the age of majority, are referenced by name in eviction filings. Though not personally responsible for rent or other potential breaches of the lease, their inclusion in the eviction filing negatively impacts their ability to secure housing when they reach the age of majority and seek housing on their own, creating a negative generational impact. Hence, these children may be "blacklisted" before they are even legally able

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[1] *Buyers & Renters United to Save Harlem v. Pinnacle Grp. N.Y. LLC*, 575 F. Supp. 2d 499, 508 (S.D.N.Y. 2008).
[2] Duke, Annette & Park, Andrea, Massachusetts Law Reform Institute, "Evicted for Life," https://www.mlri.org/publications/evicted-for-life/, (June 12, 2019).
[3] Bureau of Consumer Fin. Prot., *Fair Credit Reporting; Name-Only Matching Procedures* (Nov. 2021), https://files.consumerfinance.gov/f/documents/cfpb_name-only-matching_advisory-opinion_2021-11.pdf.
[4] U.S. Census Bureau, *Frequently Occurring Surnames from the 2010 Census*, https://www2.census.gov/topics/genealogy/2010surnames/surnames.pdf (last revised Dec. 27, 2016).

to sign a lease. It is also important to keep in mind that judgments for unpaid rent can be secured in other state court forums, and such publically available information will show up in a credit reports and can be used to help determine a tenant's credit worthiness.

B. No fault eviction judgments should never be reported as part of a public record.

It is also important for the Judiciary to consider evictions based on no-fault grounds and with owner-occupied tenancies.[5] Pursuant to the Anti-Eviction Act, there are many instances where a judgment of possession may enter due to no fault of the tenant. These include but are not limited to: (1) code violations by the landlord in which the property is deemed unsuitable for tenants due to health, safety or zoning issues, (2) where the landlord seeks to personally occupy the unit, (3) the landlord wants to retire the property from residential use, and (4) the tenant loses their job that included the rental unit as a benefit of employment.[6] In these cases, the eviction is not the fault of the tenant. In cases where the tenancy is owner-occupied, a landlord does not need to demonstrate good cause to evict. After being removed from their residence in such circumstances, tenants attempting to find subsequent housing should not be subjected to the additional obstacle of a judgment of possession and eviction record on their tenant screening report. As set forth in detail in LSNJ's October 16, 2020 comments, no-fault evictions should be sealed as a matter of course.

Accordingly, the Judiciary should consider sealing these previous filings and either sealing or redacting such identifying information moving forward, or implementing a mechanism for tenants to seal eviction court records in the interest of justice. 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, while upholding the Judiciary's commitment to transparency.

In the event the court is unwilling to exclude all housing filings and judgments from public record there are other alternatives which could help balance the equities for all parties. For the reasons stated herein, LSNJ implores the court to exclude these records but if a determination is made that it cannot, some alternative suggestions follow.

2. The Court Should Consider Amending R. 1:38-3(f) to Limit Public Access to only Cases in Which a Warrant of Removal is Executed

One alternative the court should consider is permitting only records with a judgement of possession *and* an executed Warrant of Removal to be publicly available, and even then, with limitations. There are several considerations which militate towards this solution including the often post- judgment settlement of the matter with all back rent paid, a successful defense after judgement is entered and the improvident inclusion of minor tenants and other occupants on the court record. As the court is well aware, landlords and tenants often come to a mutually agreeable settlement with the tenant ultimately staying in place. In these cases, even though the parties have agreed to resolve the matter, often with the payment in full of all rent owed and with the tenant remaining in the property, the settlement forms used might reflect the immediate entry of a judgment of possession. Tenants who are able to settle with their landlord, even if post-judgment, and remain in place should not be subjected to the negative consequences associated with a judgment of possession on their tenancy record, ultimately resulting in their inclusion on a blacklist. An eviction, as most

[5] See N.J.S.A. 2A:18-61.1 et seq. and N.J.S.A. 2A:18-53
[6] N.J.S.A. 2A:18-61.1 et seq.

laypeople understand the term, only occurs once a warrant of removal is executed. Thus, the court could limit public access to only those judgments of possession **that result in an executed warrant of removal**. Cases that result in a judgment of possession without an executed warrant of removal could be redacted or sealed. The entry of a judgment of possession is too low a threshold and exposes tenants who settle with their landlords to the inaccurate stigma of an eviction filing on their record, when no eviction has taken place.

Pursuant to N.J.S.A. 2A:42-10.16A, judgments shall be vacated if payment is made within 3 days after execution of a Warrant of Removal. Therefore, the judiciary must require both a judgement of possession and Warrant of Removal if a landlord-tenant record is to remain open for review. As proposed, the amendment will still subject tenants who invoke their right under N.J.S.A. 2A:42-10.16A to continued prejudice. The court could publicize the information online soon after the entry of judgment, which in turn would tarnish one's tenancy history. The Judiciary should ensure that "tenants who successfully defend against an eviction are not subject to future penalty simply because an unsuccessful complaint was filed against them."[7] Requiring both a judgment of possession and an executed warrant of removal for public access would be a major step towards solving this problem.

3. The Court Should Consider Amending R. 1:38-3(f) to Limit Public Access to Cases Where Judgment of Possession is Older than Two Years

If the limit on public access shall be time-based, we suggest that judgment of possession records only be made publicly available for two years (instead of the proposed seven year period). The amendment, as proposed, does reinforce the present standard under the Fair Credit Reporting Act ("FCRA") at 15 U.S.C. § 1681c. Tenant screening bureaus are already prohibited by the FCRA from including adverse non-conviction information older than 7 years in their reports to landlords. Thus, the proposed amendment will only have a minimal positive impact on tenants. In practice, it may only affect the ability of landlords who rely on eCourts and ACMS when screening prospective tenants to search records without limit.

Similar to New Jersey's Expungement Law, tenants should have the opportunity to remove information from their records when it is unnecessary or prejudicial. Under the current expungement law, most indictable convictions are eligible for expungement after 5 years from satisfaction of a term of incarceration (if any) and any supervised release. Most recently, the Fair Chance Housing Act ("FCHA") was enacted to offer important protections for tenants to substantially limit landlords from considering offenses on a prospective tenant's criminal background history. By way of example, tenants with a 4th degree indictable conviction on their record are given a "clean slate" after 1 year under the FCHA, while, as it stands, a judgment of possession is a "life sentence" for tenants.

The result is not only instability and an inability to secure quality housing, but also a feeling of hopelessness that despite all best efforts, and the passage of time, this judgment will follow them indefinitely. A judgment of possession is not criminal, nor does it mean that the tenant was actually evicted. Still, tenants with a judgment of possession in their history can find themselves blacklisted for decades-old tenancy cases. These inequitable outcomes can be remedied by removing outdated judgments of possession that have

[7] 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).

become obsolete due to the passage of time. Accordingly, the proposed amendment will ensure dated information regarding tenants does not "create indefinite obstacles to rental housing."[8]

It is also important to highlight the racial and gender disparity in eviction rates data. It is reported that people of color are evicted at higher rates than their white counterparts, and women are evicted at higher rates than men.[9] This disparity becomes clear when taking into account that the group at the highest risk of eviction are black women. Black women are disproportionally threatened with eviction and disproportionally evicted from their homes. In turn, they are disproportionally exposed to the negative consequences of eviction, including tenant blacklisting. This is true for New Jersey and the country at-large.[10] Eviction is not only a consequence of poverty, but a cause. These disparities likely contribute to racial and gender inequalities in economic, social, and health outcomes. Amending R. 1:38-3(f) to remove from public access outdated judgments of possession will be a positive step towards the Judiciary's commitment to ensure equal justice while also removing unnecessary barriers to upward mobility.

Respectfully, while the proposed seven year limit on public access to records of judgment(s) of possession is a positive step towards eradicating barriers to quality housing, LSNJ ultimately believes that the amendment, at minimum, must go further to limit all public access to a maximum of two years, in keeping with the period of time that physical case records are maintained by the court. Absent the physical court records, tenants may not have the ability to disprove an incorrect record, such as a similarly named tenant, a mismarked case or an eviction due to "no-fault" grounds. In contrast, the proposed seven-year limit will still subject tenants to long-term obstacles in their ability to secure quality housing, beyond what is relevant for landlords when assessing prospective tenants. In effect, a judgment of possession in a tenant's history will result in a longer time on the "blacklist" than a tenant convicted of a first-degree crime. The rule should also include a provision allowing for either party to request that a record be removed, upon motion of the court.

In light of the foregoing, LSNJ respectfully requests the provision be amended as follows:

(11) All records of landlord tenant cases.

In the alternative, LSNJ proposes the following:

(11) Records of landlord tenant cases in which judgment for possession **resulting in an executed warrant of removal** was entered **two years ago** or longer. **Either party may, upon motion, request that a record be sealed prior to this date, in the interest of justice.**

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

(b) Records of any Landlord Tenant matters that reference minor non-tenant occupants by name.

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[8] Notice to the Bar – "Landlord Tenant -- Proposed Amendments to Rule 1:38-3(f) to Remove from Public Access Records of Landlord Tenant Matters in Which a Judgment for Possession was Entered More than Seven Years Ago – Publication for Comment," https://www.njcourts.gov/notices/2022/n220114a.pdf, (January, 13 2022).
[9] *See generally* Princeton Eviction Lab, https://evictionlab.org/ (last visited Feb. 11, 2022).
[10] Park, Sandra, ACLU Women's Rights Project, "Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women," https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately, (March 30, 2017).

Conclusion

LSNJ commends the Judiciary for its commitment to equity and efforts to prevent the misuse of court data. We respectfully request the Judiciary consider the preceding comments in its determination how to best implement the goals of the Action Plan for Ensuring Equal Justice and Notice to the Bar. Please do not hesitate to contact us to provide further information, and thank you for the opportunity to submit these comments in support of the proposed amendment.

Respectfully submitted,

LEGAL SERVICES OF NEW JERSEY

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October 16, 2020

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

Glenn A. Grant, J.A.D.
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Comments on Proposed Amendments to Rule 1:38-3 – Records of Landlord/Tenant Matters Not Resulting in Judgment for Possession
Hughes Justice Complex
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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 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 find 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 dispossess 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=0Sf, (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 online[3], 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

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[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 twice[5], 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.SA. 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.

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[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 stock[10]. 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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