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Acting Administrative Director Michael J. Blee
Administrative Office of the Courts
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Comments on New Jersey Supreme Court Civil Practice Committee's Proposed Rule Amendments

Dear Acting Administrative Director Blee,

Thank you for the opportunity to provide comments on the New Jersey Supreme Court Civil Practice Committee's proposed rule changes. The National Center for Access to Justice at Fordham Law School (NCAJ) is a nonpartisan nonprofit organization that seeks to ensure that everyone—regardless of race, language, income level, geography, or disability— has access to justice, which we define as the right for people to have a meaningful opportunity to know the law, assert their rights, and obtain the law's protection. Our flagship project is the Justice Index, an empirical resource that illuminates the performance of all 50 states in relation to one other on a matrix of pragmatic, baseline policies we have determined in consultation with experts to be essential to ensuring access to justice.[1] In 2024, we added a new section to the Justice Index, the Consumer Debt Litigation Index, which specifically focuses on laws and practices that reduce unjust case filings and produce fairer treatment and outcomes in consumer debt cases.[2]

Our Concerns

We are writing to advise the Court of our concerns that: (1) several of the proposed changes are likely to disadvantage alleged debtors and unrepresented litigants, and (2) adoption of different

[1] *Justice Index*, National Center for Access to Justice, https://ncaj.org/state-rankings/justice-index (last visited Mar. 25, 2026).
[2] *Consumer Debt*, National Center for Access to Justice, https://ncaj.org/state-rankings/consumer-debt (last visited Mar. 25, 2026).

changes could potentially increase access to justice in New Jersey, raising the state's score in the Index and establishing the state as a national leader on issues of access to justice.

I. Some of the Proposed Changes, Even if Intended only to Modernize Language, Risk Disadvantaging Alleged Debtors and Unrepresented Litigants, and Are Unnecessary

We believe that there are a number of instances in which the proposed changes pose risk of harm to alleged debtors and unrepresented litigants. Although not an exhaustive list, the following provide illustrative examples:

1. **Rule 6:2-3**: The proposal would delete the source requirement in affidavits about the address of the party to be served. The Civil Practice Committee's 2026 report states that the proposed changes to Rule 6:2-3 would "eliminate redundant references to modes of service in the Special Civil Part."[3] However, the eliminated text would, in fact, remove the source requirement and would almost certainly make service less reliable in debt collection cases.

   More specifically, the source requirement is the provision of the current law that provides that "if reservice by mail at the same address is requested the plaintiff or attorney shall be required to provide a postal verification, affidavit containing *a statement that sets forth the source of the address used for service of summons and complaint*, or proof satisfactory to the court that the party served receives mail at that address."

   The proposed changes would remove those specific requirements for the content of the affidavit so that, going forward, plaintiff's attorney would be required to provide only "postal verification or affidavit of proof that the party to be served receives mail at that address."[4] Plaintiffs' attorney's affidavit would no longer need to state "the source of the address used for service."

   By removing Rule 6:2-3's requirement to include the "source of the address" used for service of summons and complaint, the proposed change would reduce the burden on the plaintiff to be certain service is to an accurate address, and it also would make it harder for defendants to later seek to set aside the default judgment. The law, itself, rests on the premise that someone who keeps track of the source is less likely to lie about the source, and more likely to effectuate true service.

2. **Rule 6:6-2(a):** The Civil Practice Committee Report says that the proposed changes to Rule 6:6-2(a) "reorganize the rule to clearly identify…the factors that must exist for a clerk to enter a default against a party."

   Rule 6:6-2(a), which governs entry of default judgments, provides, that the clerk "shall enter default" where a party has:

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[3] *2026 Report of the Supreme Court Civil Practice Committee*, New Jersey Supreme Court, 84 (Jan. 2026), https://www.njcourts.gov/sites/default/files/civil-practice-report-24-26.pdf.
[4] *Id*. at 92.

- failed "to appear,"
- failed "[to] plead,"
- failed "[to] defend as provided by law or these rules," or
- failed "to appear at the time fixed for trial,"
- or "if the party's answer is stricken on order of the court"

The proposed new rule, by contrast, would provide that the clerk "must enter default" where a party has:

(1) failed to make an appearance as an answer pursuant to R. 6:3-1(b)(5);
(2) failed to appear at the return of an order to show cause;
(3) failed to timely file a required responsive pleading;
(4) failed to appear at trial; or
(5) had their answer stricken or suppressed on order of the court.[5]

The newly drafted list of circumstances under which a clerk must enter a default judgment could be interpreted by some clerks as a requirement to enter a default judgment in circumstances that the current rules do not require, including when a person "failed to appear at the return of an order to show cause," or had their answer "suppressed" on order of the court." Both scenarios are new in the proposed rule changes.

Also, in replacing "shall" with "must" the proposed rule amendments would appear to change a discretionary requirement to an unequivocally mandatory requirement, reducing the role of the court in recognizing extenuating circumstances. That is the iconic distinction, recognized in caselaw, as the practical difference between the terms "shall" and "must." That type of shift should not be treated as simply updating the provision, and should not happen without full evaluation of the consequences.

3. **Rule 6:2-4:** A number of times, the proposed rule changes substitute one word for another, which may or may not be interpreted by courts as having the same meaning. For example, the proposed changes to Rule 6:2-4 would change the language from "All process *shall* be issued in the name of the State Superior Court of New Jersey and signed by or in the name of the clerk" to "All process *must* be issued in the name of the Superior Court of New Jersey and signed by or in the name of the clerk."[6]

   As with Rule 6:6-2(a) above, these are just a few examples of the proposed changes from "shall" to "must." Much ink has been spilled in caselaw about the use of "may" versus "shall," versus "must." The New Jersey Supreme Court has held, for example, that "although there is a presumption that the word 'shall' is used in a mandatory and imperative sense, 'It is also a fundamental rule of statutory construction that every requirement of the act must have the full effect the language imports unless such interpretation of the words will lead to great inconvenience or subversion of some important object of the act or would lead to an absurdity.'"[7]

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[5] *Id*. at 151.
[6] *Id*. at 96.
[7] *Harvey v. Bd. of Chosen Freeholders of Essex County*, 30 N.J. 381, 392 (1959) (quoting *Union Terminal Cold Storage Co. v. Spence*, 17 N.J. 162, 166, 110 A.2d 110, 112 (1954)).

If adopted, courts may interpret the amendments—including changes in the rules from "shall" to "must"—as clarifications, not substantive changes. It is possible, however, that some courts may construe new meanings in the amended language.

II. The Court Has the Opportunity to Engage in a Process to Amend the Rules in a Way that Could Make New Jersey a Leader on Access to Justice

Last year, recognizing that "consumer debt litigation presents a crisis for low-income individuals" and that "the State Supreme Court, through its Civil Practice Committee and Special Civil Part Practice Committee, has continuously sought to improve access to justice by examining the Rules of Court and adopting recommended reforms as appropriate," Rep. Lisa Swain introduced a resolution urging the State Supreme Court "to study the findings of the Consumer Debt Litigation Index report concerning this State, and to make all appropriate amendments to the Rules of Court in accordance with the report's findings."[8]

In the Index, New Jersey earned a score of only 29 out of a possible 100 points, a failing grade, although as compared to other states NJ was ranked 12th.[9] The Supreme Court could make a small set of rule changes, described below, that would increase New Jersey's score and move it substantially higher in the national rankings, making it a credible model for access to justice in consumer debt litigation. We would suggest prioritizing the following amendments:

1. ***Amend Rule 6:3-2 to Expand Pleading Requirements.*** Benchmark 6 of the Consumer Debt Litigation Index asks whether the state requires consumer debt complaints to allege all of the following:
   a. Name of original creditor;
   b. Basis of plaintiff's standing (e.g. chain of ownership of debt); and
   c. Itemization of amount sought including debt principal, interest, fees, costs, and other charges to date?

   The benchmarked policy seeks to ensure that debt litigation defendants will be afforded sufficient notice of the underlying facts to enable them to recognize and understand the claim against them and to formulate an Answer. New York, Washington, DC, Delaware, and New Mexico all met this benchmark. New Jersey, however, did not meet the benchmark because, although it requires that complaints on assigned claims include (a) the name of the original creditor and (b) the basis of plaintiff's standing,[10] it *does not* impose these requirements in suits brought by conventional creditors and *does not* require (c) itemization of the amount sought with regard to any consumer debt complaint. By amending Rule 6:3-2 to (a) require an itemization of the amount sought, including debt principal, interest, fees, costs, and other charges; and (b) applying these pleading requirements to conventional creditors

[8] N.J. A.R. 187 (2025).
[9] Consumer Debt Litigation Index, supra n. 2.
[10] N.J. Ct. R. 6:3-2(c).

as well, New Jersey could receive an additional 10 points on the Consumer Debt Litigation Index.

2. ***Amend Rule 6:7-2 to Limit the Frequency of Financial Examinations***. Benchmark 22 of the Consumer Debt Litigation Index asks whether the state limits financial examinations to once per year. Often, creditors require defendants to return to court frequently (as often as monthly) to undergo financial examinations intended to establish whether and how much the person can pay. Not only is compelled attendance at these hearings burdensome, requiring time off from work, child care arrangements, costly transportation, etc., but it also can impose undue pressure on a judgment debtor to settle or agree to make payments the person is unable to afford—and to incarcerate a person for missing a court date. The benchmark is designed to curtail this abusive practice.

   Two states—Illinois and Maryland—meet the benchmark. In Illinois, a party cannot pursue a second or subsequent examination without leave of the court. The court may order an additional examination,

   > but only upon a finding of the court, based upon affidavit of the judgment creditor or some other person, having personal knowledge of the facts, (1) that there is reason to believe the party against whom the proceeding is sought to be commenced has property or income the creditor is entitled to reach, or, if a third party, is indebted to the judgment debtor, (2) that the existence of the property, income or indebtedness was not known to the judgment creditor during the pendency of any prior supplementary proceeding, and (3) that the additional supplementary proceeding is sought in good faith to discover assets and not to harass the judgment debtor or third party.[11]

   Maryland met the benchmark because it limits financial examinations to no more than one exam per year, unless the court finds good cause to allow more.[12]

   Although New Jersey limits information subpoenas to no more than once every six months without leave of the court, it places no such limit on the frequency of demands for in-person examinations.[13] By amending Rule 6:7-2 to limit in-person financial examinations, either using Illinois or Maryland as a model, New Jersey could receive five more points on the Consumer Debt Litigation Index.

3. ***Amend Rule 4:5 to Provide a Factual Basis for Pleading the Timeliness of a Claim***. Benchmark 8 of the Consumer Debt Litigation Index asks whether the state places the pleading burden on the consumer debt plaintiff to allege in the Complaint the timeliness of each claim, including each of the following:

[11] Ill. Sup. Ct. R. 277.
[12] Md. R. Civ. P. Dist. Ct. 3-633.
[13] N.J. Ct. R. 6:7-2(b), 4:59-1(f).

a. applicable statute of limitations;
b. date that claim accrued; and
c. date that statute of limitations expires?

The benchmarked policy seeks to correct the problem of debt collectors pursuing time-barred lawsuits. It shifts the burden of asserting the statute of limitations from the defendant to the plaintiff, who must affirmatively plead that the action is timely and must provide a factual basis for the timeliness assertion, or face dismissal.

Calculating the statute of limitations can be complex, and the plaintiff is—or should reasonably be—in possession of the information necessary to assert that a suit is timely. Although the rule is achievable, and would reduce the burden imposed by creditors on courts and on defendants, no state has yet established this policy as law, so New Jersey could become a national model by amending Rule 4:5, the general rule of pleadings. If it did so, it would receive two additional points on the Consumer Debt Litigation Index.

If the New Jersey Supreme Court adopted just the three aforementioned amendments to its court rules, the state could gain an additional 17 points on the Consumer Debt Litigation Index, which would move it from 12th in the nation to tied with New York for second place.

III. Conclusion

We applaud New Jersey for seeking to modernize and clarify its court rules. However, we urge the Court to ensure that the current set of proposed reforms does not harm the public. In our comments above, we have sought to highlight areas where there is genuine, albeit presumably unintended, risk of harm. We also encourage the Court to consider a different set of changes to the rules, which, if adopted by the Court, would increase access to justice for debtors and unrepresented people in the Court, and would position NJ as a national leader on court modernization and access to justice.

Thank you for your time and close attention to these matters. If you have questions or would like to discuss these issues—or the Justice Index's findings and recommendations more broadly—we would be happy to do so.

Sincerely,

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