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Re: Comments of Legal Services of New Jersey on the 2026 Report of the New Jersey
 Supreme Court Civil Practice Committee

Dear Acting Administrative Director Blee,

Legal Services of New Jersey (LSNJ) respectfully submits the following comments regarding Section J of the proposed amendments in the 2026 Report of the Supreme Court Civil Practice Committee (“Proposed Amendments to the Part VI Rules of Court”).¹ For the reasons set forth below, LSNJ respectfully urges the Court to defer adoption of Section J in its currently proposed form and to allow for further refinement before implementation.

Section J comprises a 158-page set of amendments that, according to its introduction, are intended to “clarify” the Part VI rules governing Special Civil Part practice “without substantively changing, rewriting, or reorganizing them”, and to “increase fairness.” Upon review, however, the scope and nature of the proposed revisions appear to extend well beyond clarification. The amendments reflect substantial rewriting of existing provisions and introduce changes that are likely to have substantive consequences, whether intended or not.

¹ LSNJ coordinates and supports the legal services system, providing critical legal assistance to low-income individuals in every county of the state. Court users who cannot afford counsel are frequently referred to LSNJ and the regional legal services offices for assistance. As the largest provider of legal services to the low-income community in New Jersey, we are proud partners with the Judiciary in helping to ensure more equitable access to the courts, and ultimately, justice, particularly for low-income, vulnerable and unrepresented litigants.

In addition, the current draft presents concerns as to clarity, internal consistency, and ease of application. Given the volume and complexity of the proposed revisions, the presence of typographical errors, structural inconsistencies, and ambiguous phrasing creates a meaningful risk of uncertainty in interpretation and uneven application in practice. These concerns are particularly significant in the Special Civil Part, where a large proportion of litigants proceed without counsel and rely on the rules as written to navigate the process.

LSNJ is also concerned about the proposal's practical effect. In several respects, the amendments may operate in ways that advantage plaintiffs in debt collection matters without corresponding safeguards for low-income defendants.² In a setting where there are already pronounced disparities in representation and resources, even incremental rule changes can materially affect outcomes.³ Careful attention to those effects is essential to ensure that efforts to clarify the rules do not inadvertently alter the balance between parties or exacerbate the existing justice gap in debt collection cases between creditors (virtually always represented by counsel) and the individual consumers they sue, who face huge barriers to meaningful access to justice.⁴ Given these realities, LSNJ respectfully requests the court make current and future changes with an eye toward remedying the uneven playing field that already exists in Special Civil Part debt collection cases and enhancing access to justice for debt collection defendants.

Background

Some background is important to fully understand the context of the proposed amendments. In 2022, the Court replaced its Committee on Special Civil Part Practice—which for many decades included dozens of members representing the full range of stakeholders in Special Civil Part cases—with a small Special Civil Part subcommittee of the Civil Practice Committee. LSNJ's representation on the combined committees declined from a total of five representatives to a total of two; given the many substantive areas in which Legal Services attorneys practice, LSNJ has been unable to appoint a representative with expertise and experience in Special Civil Part debt collection cases. To LSNJ's knowledge, no member of the Civil Practice Committee (and thus no member of the Special Civil Part subcommittee) in the current rules cycle has significant experience representing consumer defendants in debt collection cases, while a representative

² Low-income consumers are sued in tens or even hundreds of thousands of debt collection cases filed by “assembly line plaintiffs” each year in New Jersey. Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 Harv. L. Rev. 1704, 1708 (2022) (“In courts throughout the country, just a handful of private companies are responsible for outsized portions of courts' dockets. . . . In twenty-one jurisdictions in New Jersey, the number [in 2019] was 116,000 cases filed by the top ten filers out of 281,000 total [civil] cases—over 41%.”); Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 Harv. J. on Legis. 41 (2015) (describing the process by which debt buyers acquire defaulted debt for pennies on the dollar and then bring suit in debt collection courts).

³ Annie Waldman and Paul Kiel, *Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas* (2015) (“[E]ven accounting for income, the rate of [debt collection] judgments [in each of three metro areas studied, including Essex County, NJ] was twice as high in mostly black neighborhoods as it was in mostly white neighborhoods”); see also La Voice, J. and Vamossy, D.F., *Racial Disparities in Debt Collection* (2019).

⁴ See Andrew C. Budzinski, *Power and Equity in Pro Se Procedure*, 77 Baylor L. Rev. 279, 296, 298 (2025) (“Simplifying inaccessible or unfair procedural rules does not solve the harms caused by those rules, substantively, and translating rules into language more understandable to non-lawyers, without examination of the actual requirements of the rule, will not necessarily expand access to justice;” noting the importance of including lay members on court rule advisory committees for courts in which many litigants are unrepresented)

of the New Jersey Creditors Bar Association has continued to represent the interests of debt collection attorneys on both the subcommittee and the full committee.

The relevant background to the current proposal also includes the restyling project that resulted in amendments to the Federal Rules of Civil Procedure in 2007. The goal of this project, to some extent parallel with the expressed goals of current Section J, was to “improve [the] clarity, consistency, and readability [of the Federal Rules] without making substantive changes.” Joseph Kimble, *Lessons in Drafting from the New Federal Rules of Civil Procedure*, 12 Scribes J. Legal Writing 25 (2009). The project involved more than 5 years of intensive work by the Advisory Committee on Civil Rules, and included independent review by practitioners and legal scholars who divided the proposed amendments into sections and provided detailed recommendations to the committee. “[I]t’s almost impossible to convey how excruciatingly careful our process was.” *Id.* The care that was invested in the Federal Rules project resulted in amendments that were free of basic drafting errors and that have earned their fair share of respect. Another key insight of the Federal Rules project, though, is that despite the excruciating care, the restyling inevitably resulted in substantive changes, despite the earnest efforts of all involved to avoid them. *See, e.g.*, Edward A. Hartnett, *Against (Mere) Restyling*, 82 Notre Dame L. Rev. 155, 156, 164 (2006) (observing that “the goal of preserving existing meaning is at war with the goal of [amending for] clarity and simplicity,” and noting “the near-impossibility of making significant textual changes without changing meaning”); James J. Duane, *The Federal Rule of Civil Procedure That Was Changed by Accident: A Lesson in the Perils of Stylistic Revision*, 62 S.C. L. Rev. 41, 43 (2010) (“Despite their best efforts, those involved in the Style Project accidentally changed the way [FRCP 6] now operates.”).

Several of LSNJ’s specific concerns with the amendments proposed in Section J are discussed below—as noted above, given the volume and complexity of the proposed revisions, this is not intended to be a comprehensive list.

Examples of Substantive Problems That Will Disadvantage Low-Income Litigants

Indiscriminately Replacing “Shall” With “Must.” The word “shall” is used frequently throughout the New Jersey Court Rules, including in Part VI. It is a word that has raised concerns among some commentators for being open to more than one reading. They have argued that it would be best to replace it with another word such as “must,” “may,” “should,” or “will,” or by a phrase such as “is entitled to.” *See* Bryan A. Garner, *A Dictionary of Modern Legal Usage* 939-42 (2d ed. 1995). Other commentators point out that “shall” carries the useful and accurate connotation that a decision-maker retains some degree of discretion even when a particular result is expected, and that the alternatives—particularly “must”—bring with them their own ambiguities and interpretation challenges. Steven S. Gensler, *Must, Should, Shall*, 43 Akron L. Rev. 1139, 1142 n. 16 (and accompanying text) (2010); Joseph Kimble, *The Many Misuses of Shall*, 3 Scribes J. Legal Writing 61, 75–76 (1992) (“[S]hall can mean “absolutely must” or “should” or “may.” *Must*, though, can be slippery too. Our problem has no easy solution [T]he careful drafter may wish to define the terms of authority in some documents, especially those involving . . . procedural . . . matters.”)

By LSNJ’s count, approximately 200 instances of “shall” as a term of authority appear in the Part VI rules proposed for revision. All but a tiny number of them would be replaced by a phrase including the word “must” in the Section J proposal—with no explanation, and seemingly by rote. In some instances, “must” makes sense. In many others, though, it is awkward, and likely to cause confusion, especially for

unrepresented litigants. And in a court characterized by vast disparities in representation rates, substituting a word that will raise procedural barriers by brooking no exceptions means that the likelihood of a disproportionate impact on unrepresented litigants—who face being denied the opportunity even to present arguments to the court by failing, even inadvertently, to do something that the rules say they “must” do—is palpable. By way of just a few examples:

- Proposed R. 6:1-1(g) would provide that all of the forms in Appendix XI “are approved [and] *must* be available on the Judiciary website and in Special Civil Part offices” (emphasis added). The imperative “must” is simply the wrong word here. Who is responsible for ensuring availability, and what are the consequences in the event of failure? A lay reader of the rule may rightly expect that the word “must” means “must” – and that, for instance, judgment against them should not enter if the Judiciary website is down or SCP office staff isn’t able to help them when they need a particular form, and thus fail to protect their rights. The current rule using the word “shall” is far clearer and more accurate.
- Amended R. 6:1-3(b)(2) would provide that “If the clerk determines that venue is improper after the complaint is filed and before the complaint is served, the clerk must transfer the case to the proper county. The clerk must advise the parties of the address of the Special Civil Part in the proper county.” This would inexplicably only require the clerk to send the address of the court in the transferee county (and nothing else) to all of the parties in the case (including the unserved defendants), without also calling for the clerk to provide any information about the case or the fact that it has been transferred.
- The first sentence of amended R. 6:2-3(b)(2) would provide that “In Landlord Tenant (LT) service of process *must be* by both ordinary mail and *by personal delivery*” (emphases added). The amended rule, however, would then provide for a succession of several ways to serve process *without* personal delivery whenever “the process service is unable to make personal service.” The proposed new language is far from a clarification—it is internally inconsistent and especially likely to mislead unrepresented tenants on the crucial question of whether effective service has been made.
- Proposed R. 6:7-3(a) would provide in relevant part:

Rule 4:59-1(e)(wage executions) applies to the Special Civil Part. It is modified by R.0(Requests for execution) [SIC] and as follows.

- (1) Judgment-debtor must file any objections why the wage execution should not be entered with the Special Civil Part in the county to issue the execution. The *objections must be filed and served on judgment-creditor within 10 days of service of the notice of application.*

(Emphasis added). In addition to the obvious but confusing typographical error (referencing a rule that does not exist), and the awkward wording of the crucial first sentence in subpart (1), the highlighted language presents a real risk of contentions that it should be read literally to mean that *all* objections to wage garnishments “must be filed . . . within 10 days of service of the notice of application”—despite longstanding recognition that the opposite is true, and there is no preclusive time limit on objections to wage garnishments, as reflected in the form of the wage garnishment notice itself:

You also have a *continuing* right to object to the wage execution or apply for a reduction in the amount withheld *even after it has been issued by the Court*. To object or apply for a reduction, file a written statement of your objection or reasons for a reduction with the Clerk of the Court and send a copy to the creditor’s attorney or directly to the creditor if there is no attorney. You will be entitled to a hearing within 7 days after you file your objection or application for a reduction.

Appendix XI-I (emphases added).

Contradictory Proposed Rules that Exacerbate Formal Pleading Barriers. Recent research on debt collection litigation and barriers to meaningful participation strongly suggest that it is crucial to allow defendants access to their day in court to present their case without requiring a written answer. *See, e.g.,* National Center for State Courts, *Supporting Appearance: Docketing and Process Simplification Considerations for Debt Collection Cases* 13 (2025) (“[R]equiring an answer in all cases can create barriers for defendants, especially when a defendant’s lack of an answer leads to a default judgment.”); The Pew Charitable Trusts, *How Paperwork Prevents Consumers From Participating in Lawsuits* (2026) (states that don’t require a written answer “see lower default judgment rates and higher rates of participants reaching agreements”). In Special Civil Part, no answer is required in Small Claims (SC) cases, but in DC cases (where debt collectors represented by counsel inevitably file their cases, even if they are under the SC jurisdictional cap), a written answer is required, notwithstanding ambiguity in the existing rules. *Compare* R. 6:3-1(1) *and* Appendix XI-A(1) (“If you do not answer the complaint, you may lose the case automatically and the court may give the plaintiff what the plaintiff is asking for, plus interest and court costs. You have 35 days from the date of service to file your answer. . . . IF YOU DISAGREE WITH THE PLAINTIFF’S CLAIMS, A WRITTEN ANSWER . . . MUST BE RECEIVED BY THE COURT ABOVE, ON OR BEFORE _____, OR THE COURT MAY RULE AGAINST YOU.”) *with* R. 6:3-1(5) (“in Special Civil Part actions . . . an appearance by a defendant appearing pro se shall be deemed an answer”).

Rather than resolve the existing ambiguity by clarifying that an answer is not required in DC cases, the proposed amendments to the Part VI pleading and default rules appear to double down on the answer requirement by changing the word “shall” to “must” in proposed R. 6:3-1(b)(1) (“in Special Civil Part (DC), a defendant *must* serve an answer including any counterclaim within 35 days after completion of service”) and proposed R. 6:6-2(a)(5) (“[t]he clerk *must* enter a default against a party that has. . . failed to timely file a required responsive pleading”) (emphases added), both in unexplained and confusing contradiction with existing R. 6:3-1(5) (cited above) and R. 1:1-2(a) (“Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.”).

Elimination of Document Discovery in Most Debt Collection Cases. Proposed R. 6:4-3(f) would make a substantive change effectively preventing consumers from meaningfully defending a huge swath of debt collection cases. The current rule limits the *number* of interrogatories that each party can serve in a debt collection case seeking \$5,000 or less to ten,⁵ but does not explicitly limit document requests (which are often more important than interrogatories) requests for admission, or motions seeking to take depositions. The proposed amendments, though, would state that “A party in a Special Civil (DC) action cognizable but not pending in Small Claims (SC) *is limited to serving interrogatories*” (emphasis added). Debt collection

⁵ In LSNJ’s experience, debt collection attorneys do not file cases in Small Claims, so all of their cases for \$5,000 or less are “cognizable but not pending in the Small Claims Section”.

attorneys would undoubtedly argue that this would constitute an absolute bar on document requests, requests for admission, and depositions, even by motion.

Discovery beyond interrogatories, though, is crucial. Is the case based on a misleadingly marketed medical credit card?⁶ Was this a fee-harvester card on which fees and interest vastly exceeded any possible use of the card, and that may have violated federal law?⁷ Was this a usurious loan made by a rent-a-bank lender?⁸ Without *access to the underlying documents*—which in today’s world the creditor virtually always has available at the push of a button—a consumer simply can’t participate meaningfully in the court process by presenting her defenses. And the proposed amendments would make this the mandatory rule in most DC debt collection cases, potentially benefitting debt collectors. The Court should not go down this road of further limiting access to justice for defendants in DC debt collection cases for less than \$5,000. This may seem like a “small” amount to debt collectors, but it is a huge amount of money for a low-income household.

Precluding Due Process Relief When Service By Mail Fails. Existing R. 6:2-3 (d)(4) provides rules for effective service of process by mail in debt collection cases. The current rule begins with the phrase “Consistent with due process of law,” which appropriately makes clear that all of the subsequent details about the service by mail program are subject to an overarching test of compliance with constitutional due process standards. The proposed amendment, perhaps unintentionally, would literally subvert the meaning of this key phrase by sectioning it off from the other parts of the rule in a new subpart (A). Instead of properly setting forth the Constitutional standard applicable to all of the other subparts, (B)-(E), the phrase “Consistent with due process of law” would under the proposed amendment only modify the rule providing that “service by mail pursuant to this rule has the same effect as personal services” – confusingly and incorrectly suggesting that service by mail that minimally complies with the rule is by definition “consistent with process of law.” Crucially, this could be read to preclude due process-based challenges to the effectiveness of service under subpart (B), which by its terms would purport to limit relief to situations in which “the court has reason to believe that service was not effected,” or (duplicatively) where “the mail is returned to the court by the post office with [one of five markings indicating] that it has not been delivered.”

New Mandates for Responding to Information Subpoenas. The proposed amendments to R. 6:7-2 would make it more difficult, and in some cases even impossible, for many debtors to respond to information subpoenas, thus exposing them to the real possibility of facing an arrest warrant—a result that some debt collectors would likely find advantageous. And overall, it is readily apparent that the proposed changes would do nothing to simplify the rule.

One concern is that the proposed amendments would add a requirement, in at least two places, that answers “must” be provided on the “original” information subpoena (and not the copy of the subpoena required to be served with the original, or another copy that the respondent happens to make), and “must” be returned in the prepaid, addressed courtesy envelope that the creditor is supposed to supply. The new rule would

⁶ National Consumer Law Center, *Health Care Plastic: The Risks Of Medical Credit Cards* (2023) (www.nclc.org/wp-content/uploads/2023/04/Report_Health-Care-Plastic.pdf).

⁷ A situation illustrated in LSNJ’s amicus brief in *Diana v. LVNV Funding LLC*, currently pending before the Court.

⁸ [Letter from twenty-four state Attorneys General to Office of the Comptroller of the Currency](#), Docket No. OCC-2020-0026 (Sept. 3, 2020).

provide that even if a defendant fully responds to a creditor's information subpoena, but has used a copy of the form (instead of the original), or even *a different envelope* from the one the creditor provided, the creditor can claim non-compliance, and seek to treat the defendant as if they had not responded, including but not limited to seeking an order enforcing litigant's rights and/or arrest. This is clearly a substantive change outside the scope of the committee's stated charge.

The proposed changes would also remove existing language providing that answers can be made "under oath or certification" and change the rule, without explanation, to say that answers "must be under oath and in writing." While there might be room for semantic debate about whether a document signed by way of a certification would be sufficient to meet a "must be under oath," the nature of the change—deleting the words "or certification" and making it mandatory that answers be "under oath" will inevitably give rise to assertions that a creditor need not accept information subpoena responses unless the defendant has found (and paid) a notary—a step that is difficult for many, expensive, entirely unnecessary, and, once again, a substantive change from existing rules.

Examples of Typographical and Other Drafting Errors

In addition to substantive concerns such as those addressed above, there appear to be numerous grammatical mistakes and indecipherable new phrases in Section J. Of particular concern are those drafting errors, which if left unchecked, may give rise to substantive consequences—which debt collectors (who are virtually always represented by counsel) will be ready, willing, and able to exploit, while the overwhelming majority of consumer litigants on the other side, unrepresented, will not. By way of just a few examples:

- Proposed R. 6:2-1(a) would provide "Except ejections, the content of the summons must be pursuant to R. 4:4-2." The current active-voice rule is clear, while the proposed amendment would change it to a passive construction that can't readily be construed—the content of the summons must be *what* pursuant to R. 4:4-2?
- Proposed R. 6:2-3(d)(4)(B) would provide: "Simultaneous mailing constitutes effect [SIC] service unless the court has reason to believe that service was not effected or the mail is returned to the court by the post office. . . ." This is a critical rule—and raises serious substantive concerns addressed above. But the proposed amendment also makes no grammatical sense.
- Proposed R. 6:2-3(d)(4)(D) would provide: "Process served by mail may be addressed to a post office box. Service effective when forwarded by the postal service to an address outside the county in which the action is instituted." The second sentence is not a sentence and has no obvious substantive connection to the first. Moreover, the current rule from which the second sentence is derived is obviously overbroad (service is not effective merely because it is forwarded to a different county), and is only saved by reading the phrase "Consistent with the due process of law" at the beginning of current R. 6:2-3(d)(4) to apply to all parts of subsection (d)(4) – a reading (as noted above) that would be precluded (perhaps unintentionally) by the isolation of the phrase "Consistent with the due process of law" in a new subsection (A) if the proposed amendments to R. 6:2-3 were to be adopted.
- Proposed R. 6:3-1(a)(2) would explicitly incorporate into Special Civil Part practice a rule ("R. 3-3") that does not exist. Proposed R. 6:3-1(a) is also defective – and potentially disastrous to litigants

it would affect – because it simply leaves out a number of Part IV rules that clearly do apply in DC cases under the current rules.

- Proposed R. 6:3-3(a) would provide that “Proof of service of a motion is only required for a party who is not a registered participant in the court’s electronic filing system.” It is unclear whether this substantive change would require proof of service with respect to attempted service *on* a party who is not a registered participant in the court’s electronic filing system, or attempted service *by* a party who is not a registered participant in the court’s electronic filing system – two very different things.
- This is not by any means a comprehensive list. Reviewing and proofreading this extensive set of Court rules is a task that requires sustained focus by many individuals with an incentive to ensure that all errors are identified, and that the substantive issues they raise are fully discussed before they are resolved.

Conclusion

LSNJ recognizes and appreciates the substantial effort undertaken by the Committee in developing this proposal. At the same time, the breadth of the revisions suggests that additional iteration would be beneficial to ensure that the rules function as intended in practice. In that spirit, LSNJ respectfully suggests that the Court consider:

- Deferring adoption of Section J at this time to permit further refinement;
- Inviting additional focused input on a revised draft, particularly from stakeholders with direct experience in Special Civil Part practice, including those representing unrepresented or low-income litigants;

- Considering whether certain discrete amendments that are truly clarifying and non-substantive may be advanced separately; and

- Encouraging continued evaluation of the Court Rules and remedying the uneven playing field that already exists in Special Civil Part debt collection cases in order to enhance access to justice for mostly unrepresented debt collection defendants, before adopting comprehensive revisions.

A measured, iterative approach would allow the Court to build on the Committee’s work while ensuring that any amendments ultimately adopted are clear, balanced, and workable for all who rely on them, in accordance with the Court’s stated goals in the revision. LSNJ respectfully submits that such an approach will best serve the Court’s stated goals of clarity and fairness.

Respectfully submitted,

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