2012 REPORT OF THE SUPREME COURT COMMITTEE ON SPECIAL CIVIL PART PRACTICE

JANUARY 31, 2012

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendment to R. 1:13-7(d) – New Summons and Service Fee Required With Motion to Restore More Than One Year After Dismissal

Rule 1:13-7 deals generally with the dismissal of civil actions for lack of prosecution. Paragraph (d) of the rule deals specifically with the dismissal of Special Civil Part actions if the summons has not been served on the defendant within 60 days of the filing of the complaint. Dismissed actions are reinstated automatically if the summons and complaint are served within one year of the filing. Thereafter, the action can be restored only by court order upon a showing of good cause for the delay and due diligence in attempting to serve the summons and complaint, which can be made by *ex parte* application to the court. The Committee considered a proposal by a Committee member, who is an Assistant Civil Division Manager for the Special Civil Part in one of the vicinages, to amend R. 1:13-7(d) so as to require the inclusion of a new page 2 of the summons and the re-service fee with the documents submitted to support the motion to restore a case made more than one year after its dismissal pursuant to the rule. The proposal had been endorsed by the Special Civil Part Management Committee, whose members consist of the Assistant Civil Division Managers for Special Civil, and was approved unanimously by the Practice Committee. The text of the rule with the recommended amendment follows.

1:13-7. Service of Process

(a) ... no change

(b) … no change

(c) ... no change

(d) Special Civil Part. If original process in an action filed in the Special Civil Part has not been served within 60 days after the date of the filing of the complaint, the clerk of the court shall dismiss the action as to any unserved defendant and notify plaintiff that it has been marked "dismissed subject to automatic reinstatement within one year as to the non-answering defendant or defendants." The action shall be reinstated without motion or further order of the court if the complaint and summons are served within one year from the date of the dismissal. A case dismissed pursuant to this rule may be restored after one year only by order upon application, which may be made ex parte, and a showing of good cause for the delay in making service and due diligence in attempting to serve the summons and complaint. A new page 2 of the summons and the re-service fee shall be included with the documents submitted to support the application. The entry of such an order shall not prejudice any right the defendant has to raise a statute of limitations defense in the restored action.

Note: Source — R.R. 1:30-3(a) (b) (c) (d), 1:30-4. Amended July 7, 1971 to be effective September 13, 1971; former rule redesignated as paragraph (a) and paragraph (b) adopted July 15, 1982 to be effective September 13, 1982; paragraph (b) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; caption and paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended, former paragraph (b) deleted, and new paragraphs (b), (c), and (d) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) amended July 23, 2010 to be effective September 1, 2010; paragraph (d) amended , 2012 to be effective , 2012.

B. Proposed Amendment to R. 4:59-1(g) — When to Mail Notice to Debtor

A source of confusion in the rules has to do with exactly when the Special Civil Part Officer or sheriff's officer is required to mail the Notice to Debtor. The applicable provision is set forth in R. 4:59-1(g), which provides, in pertinent part, that the officer "... shall , on the day the levy is made, mail a notice to the last known address of the ..." debtor. In the context of a bank levy, the "day the levy is made" is arguably the day that the writ is served on the bank, because the bank is required to obey the writ from the moment it is served. On the other hand, if the bank doesn't know at the moment it is served whether the debtor has an account there and then it turns out that the debtor does not have an account at the bank, it can't be said that a levy was made. The officer who served the writ, in effect, has no way of knowing whether a levy has been effectuated until s/he is notified by the bank and thus many officers hold off on mailing the Notice to Debtor until they receive notification from the bank, which may take a week to ten days, and sometimes more. In the meantime, if the debtor does have an account at that bank, the funds in the account have been legally frozen from the day the writ was served. Checks bounce, rent payments are missed, fees and penalties are incurred and the debtor does not receive notice of their rights and possible remedies, as set forth in the Notice to Debtor, until well after the damage has been done. To prevent this from happening, the Committee of Special Civil Part Supervising Judges has taken the position that the Notice to Debtor must be mailed on the day the writ is served on the bank. The Special Civil Part Practice Committee recommends that this be incorporated into the rules by amending R. 4:59-1(g) to add a new second sentence that states the following: "If the execution is served on a bank or other financial institution as garnishee pursuant to N.J.S.A. 2A:17-63, the officer shall mail the notice to debtor on the day the officer serves the writ." The proposed amendment follows.

4:59 – 1. Execution

(a) ... no change

(b) … no change

(c) ... no change

(d) ... no change

(e) ... no change

(f) ... no change

(g) Notice to Debtor. Every court officer or other person levying on a debtor's property shall, on the day the levy is made, mail a notice to the last known address of the person or business entity whose assets are to be levied on stating that a levy has been made and describing exemptions from levy and how such exemptions may be claimed by qualified persons. If the execution is served on a bank or other financial institution as garnishee pursuant to N.J.S.A. 2A:17-63, the officer shall mail the notice to the debtor on the day the officer serves the writ. The notice shall be in the form prescribed by Appendix VI to these rules and copies thereof shall be promptly filed by the levying officer with the clerk of the court and mailed to the person who requested the levy. If the clerk or the court receives a claim of exemption, whether formal or informal, it shall hold a hearing thereon within 7 days after the claim is made. If an exemption claim is made to the levying officer, it shall be forthwith forwarded to the clerk of the court and no further action shall be taken with respect to the levy pending the outcome of the exemption hearing. No turnover of funds or sale of assets may be made, in any case, until 20 days after the date of the levy and the court has received a copy of the properly completed notice to debtor.

(h) ... no change

Note: Source — R.R. 4:74-1, 4:74-2, 4:74-3, 4:74-4. Paragraph © amended November 17, 1970 effective immediately; paragraph (d) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended, new paragraph (b) adopted and former paragraphs (b), (c), (d), and (e) redesignated (c), (d), (e) and (f) respectively, July 24, 1978 to be effective September 11, 1978; paragraph (b) amended July 21, 1980 to be effective September 8, 1980; paragraphs (a) and (b) amended July 15, 1982 to be effective September 13, 1982; paragraph (d) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended and paragraph (g) adopted November 1, 1985 to be effective January 2, 1986; paragraph (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (e) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (c), (e), (f), and (g) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended June 28, 1996 to be effective June 28, 1996; paragraph (d) amended June 28, 1996 to be effective September 1, 1996; paragraph (e) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (e), and (g) amended July 5, 2000 to be effective September 5, 2000; paragraph (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a) and (d) amended, and new paragraph (h) adopted July 27, 2006 to be effective September 1, 2006; paragraphs (a) and (f) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) redesignated as subparagraph (c)(2), new paragraph (c) caption adopted, new subparagraph (c)(1) caption and text adopted, and paragraph (g) amended July 23, 2010 to be effective September 1, 2010; paragraph (g) amended , 2012 to be effective ,2012.

C. Proposed Amendments to R. 6:1-1(e) — Accounting and Security for Civil Part Writs Issued By Order to Special Civil Part Officers

Rule 6:1-1(e) provides, in pertinent part, that writs of execution " … issued by the Civil Part of the Law Division shall not be directed to a Special Civil Part Officer except by order of the Civil Presiding Judge and such order shall specify the amount of the Officer's fee." There is no provision, however, explicitly requiring the officer to account for the money that is collected or to obtain a bond to indemnify the creditor or the Judiciary in the event of misfeasance or other loss. It is not clear that the bond and fiscal accounts required by R. 6:12-3(a) apply to writs issued by the Civil Part, which may be for amounts far in excess of the current $15,000 monetary limit of the Special Civil Part, and ACMS is not capable of tracking these writs. An amendment to correct this follows.

6:1-1. Scope and Applicability of Rules

(a) ... no change

(b) ... no change

(c) ... no change

(d) ... no change

(e) Service of Process and Enforcement of Judgments. Officers of the Special Civil Part shall serve process in accordance with R. 6:2-3 and enforce judgments in accordance with R. 6:7. A writ of execution issued by the Civil Part of the Law Division shall not be directed to a Special Civil Part Officer except by order of the Civil Presiding Judge and such order shall specify the amount of the Officer's fee, require the Officer to account to the court for all funds collected and disbursed pursuant to the writ and require the Officer to obtain and file a bond in such sum and form as the Civil Presiding Judge may deem necessary.

(f) ... no change

(g) ... no change

Note: Caption amended and paragraphs (a) through (g) adopted November 7, 1988 to be effective January 2, 1989; paragraph (c) amended July 17, 1991 to be effective immediately; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 27, 2006 to be effective September 1, 2006; paragraphs (e) and (b) amended July 9, 2008 to be effective September 1, 2008; paragraph (e) amended , 2012 to be effective , 2012.

D. Proposed Amendment to R. 6:1-2(a) — Exclusion of Professional Malpractice and Certain Other Actions From the Special Civil Part

Rule 6:1-2(a) sets forth the kinds of civil actions that are cognizable in the Special Civil Part. The Committee of Special Civil Part Supervising Judges recommended amending R. 6:1-2(a)(1) to exclude professional malpractice cases from the Special Civil Part in the same way that they are excluded from the Small Claims Section by subparagraph (2) of the rule. The Practice Committee agrees because the Special Civil Part is not set up to handle professional malpractice actions in light of the Affidavit of Merit Statute, N.J.S.A. 2A:53A-26, et seq. The time frames in that statute are not compatible with the quick turnaround time in Special Civil Part (i.e., 90 days are allowed for discovery and depositions are prohibited except by order of the court) and since no case information statement is filed in Special Civil Part, these cases cannot be identified as malpractice cases early on in order to schedule the required management conference mandated by Ferreira v. Rancocas Orthopedic, 178 N.J. 144, at 154-155 (2003).

The amendments replicate the Small Claims exclusion of probate and matters cognizable in the Family Division or the Tax Court, for obvious reasons. The amendments also include unrelated minor housekeeping changes that eliminate the provision that appears to limit small claims to "counties that heretofore had small claims divisions" and the inclusion of municipal court actions in the counties of Bergen, Hudson and Warren.

The first sentence of R. 6:1-2(a)(2) states that small claims, among other actions, are cognizable in the Special Civil Part "… in those counties that heretofore have had small claims divisions …," implying that there might be counties where small claims are not cognizable in the Special Civil Part. This was in fact the case at the time this rule was adopted and one vicinage did not create a Small Claims Section until after the Supreme Court accepted the

recommendation of the Special Civil Part Supervising Judges that all counties do so. At present the Special Civil Part in all 21 counties has a Small Claims Section and so the language that appears in quotation marks above should be deleted from the rule.

Rule 6:1-2(a)(5) states that municipal court actions in Bergen, Hudson and Warren Counties are cognizable in the Special Civil Part. When this subparagraph was adopted after the State takeover of the County District Courts, these three counties had "violations bureaus" which handled traffic tickets issued by county, parkway and state police officers. These operations were phased out over time and are no longer in existence. The Practice Committee thus recommends that the subparagraph be deleted from the rule.

The proposed amendments to R. 6:1-2(a) follow.

6:1-2. Cognizability

(a) Matters Cognizable in the Special Civil Part. The following matters shall be cognizable in the Special Civil Part:

(1) Civil actions (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) seeking legal relief when the amount in controversy does not exceed $15,000;

(2) Small claims actions **[**in those counties that heretofore have had small claims divisions**]**, which are defined as all actions in contract and tort (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) and actions between a landlord and tenant for rent, or money damages, when the amount in dispute, including any applicable penalties, does not exceed, exclusive of costs, the sum of $ 3,000. Small claims also include actions for the return of all or part of a security deposit when the amount in dispute, including any applicable penalties, does not exceed, exclusive of costs, the sum of $ 5,000. The Small Claims Section may provide such ancillary equitable relief as may be necessary to effect a complete remedy. Actions in lieu of prerogative writs and actions in which the primary relief sought is equitable in nature are excluded from the Small Claims Section;

(3) Summary landlord/tenant actions;

(4) Summary proceedings for the collection of statutory penalties not exceeding $ 15,000 per complaint;

[(5) Municipal court actions, pursuant to R. 7:1, in the counties of Bergen, Hudson and Warren.**]**

(b) … no change.

(c) … no change.

Note: Adopted November 7, 1988 to be effective January 2, 1989; caption added to paragraph (a) and paragraph (a) amended July 17, 1991 to be effective immediately; paragraphs (a)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1) and (2) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a)(1) and (a)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (a)(2) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(4) and paragraph (c) amended July 27, 2006 to be effective September 1, 2006; paragraphs(a)(1), (a)(2) and (a)(5) amended _____, 2012 to be effective _____, 2012.

E. Proposed Amendment to *R.* 6:2-3(d)(2) — Request By *Pro Se* Litigant for Reservice

Rule 6:2-3(d) sets forth the procedures to be followed by the clerk and litigants in the service by mail program. If the clerk's initial attempt to serve the summons and complaint on the defendant by certified and regular mail is unsuccessful, subparagraph (2) requires the plaintiff or attorney who requests reservice by mail at the same address "to provide a postal verification or other proof satisfactory to the court that the party to be served receives mail at that address." The Committee believes that "proof satisfactory to the court" should be defined for the guidance of pro se litigants requesting reservice since, unlike attorneys, they cannot obtain a postal verification from the USPS. This can be accomplished by adding a provision to the rule that would permit the submission of an affidavit that sets forth the source of the address used for service. The proposal is endorsed by the Special Civil Part Management Committee. The proposed amendment follows.

6:2-3. Service of Process

(a) ...no change

(b) ...no change

(c) ...no change

(d) Service By Mail Program. If the process is to be served in this State, or if substituted service of process is to be made within this state:

(1) … no change

(2) *Reservice.* Where initial service by mail is not effected, plaintiff or the attorney may request reservice by mail or by court officer personally pursuant to R. 4:4-4. 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 the summons and complaint, or other proof satisfactory to the court that the party to be served receives mail at that address.

(3) … no change

(4) … no change

(5) … no change

(e) … no change

Note: Source R.R. 7:4-6(a)(b) (first three sentences), 7:4-7. Paragraph (a) amended July 7, 1971 effective September 13, 1971; paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a)(b) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and paragraph (d) adopted November 5, 1986 to be effective January 1, 1987; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended July 17, 1991 to be effective immediately; paragraph (e) adopted

July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (d)(4) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a), (b), (d), (d)(2), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b), d(4) and (5) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 23, 2010 to be effective September 1, 2010; paragraph (d)(2) amended , 2012 to be effective , 2012.

F. Proposed Amendment to R. 6:3-2 – Caption and Complaint in Assigned Claims

At the end of June, 2011, the Judicial Council discussed issues regarding the requirements for pleadings and proofs in actions on claims that a plaintiff acquires by assignment. Particular attention was focused on credit card and consumer loan debts that are the subject of litigation by entities other than the original creditor. The Council requested that the Special Civil Part Practice Committee craft the language for rule amendments that would require the caption and/or body of the complaint to contain the name of the original creditor, so as to inform the defendant-debtor about the origin of the claim. The hope was that defendants would be less likely to ignore the summons and complaint in these cases if they recognized the plaintiff's assignor as the original creditor. The Council also requested amendatory language that would require the documents submitted to support the entry of judgment by default in such cases to include proof of the assignment. The Council asked that the proposed rule changes be submitted by the end of October.

The Committee submitted a report to the Judicial Council dated October 20, 2011. It discussed the approach to these issues in nine other states and recommended that New Jersey follow the lead of Delaware. The Report thus proposed amending R. 6: 3-2 to require that the caption in actions on consumer loan or credit card debt include the names of the original creditor, the current assignee of the debt and the vendor, if any, that appears on the credit card. The Report also proposed amending that rule to require the complaint in these cases to set forth the name of the original creditor, the last four digits of the original account number of the debt, the current owner of the debt and the full chain of the assignment of the debt if the action is not filed by the original creditor. In addition the Report recommended that R. 6:6-3(a) be amended to

require that the affidavit of proof in consumer loan or credit card debt collection actions include an attached copy of any assignment or other documentary evidence establishing that the plaintiff/creditor is the owner of the debt and, if the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership would have to be attached to establish an unbroken chain of ownership. An additional proposed requirement, that each assignment or other writing evidencing transfer of ownership of the debt must clearly show the debtor's name associated with the account, would not have taken effect until September 1, 2013, to give the industry time to arrange compliance.

The Committee's October 20, 2011 Report was then reviewed by the Judicial Council's Management and Operations Committee (hereafter referred to as the "M&O Committee"), together with a minority report submitted on behalf of eight dissenting members of the Committee and a memorandum by AOC staff setting forth the views of the Civil Division Managers and Assistant Civil Division Managers (hereafter referred to collectively as "the managers") responsible for supervising the operations of the Special Civil Part clerks' offices in each vicinage. The M&O Committee endorsed the requirement that the names of the original creditor, current assignee and the vendor be included in the caption. The minority report recommended, and the M&O Committee agreed, however, that this amendment should apply to all actions, not just actions on consumer loan and credit card debt, since there are varying definitions of the terms "consumer loan" and "credit card debt." The minority report suggested, and the M&O Committee agreed, that the complaint should also set forth the last four digits of the defendant's Social Security Number, if known, as a means of further assuring that the claim in question is a debt of the named defendant.

Both the minority report and the managers objected to the proposed requirement that documentary evidence of any assignment be attached to the affidavit of proof. The minority report contended that the requirement would be a burdensome undertaking and proposed instead that plaintiffs certify in the affidavits of proof that they are the owners of the claims. The minority stated that assignees of the creditor would be unable to procure copies of the assignments that would show the debtor's name associated with each account. The managers reasoned that requiring court staff charged with the review of filings submitted to support the entry of default judgment to sort through the many documents attached to the affidavit of proof to locate the required evidence of assignments would be a time-consuming burden that should be avoided and suggested instead that the rule amendment should require submission of a separate affidavit certifying the assignment of the claim, which would simplify the task of finding evidence of the assignment. The M&O Committee expressed concern with the proposed requirement to attach documentary evidence of assignments to the affidavit of proof, but agreed with the idea that the burden on staff could be attenuated by requiring submission of a separate affidavit that addresses assignments of the debt. The Committee concluded that a separate one-page certification setting forth the chain of assignments and the plaintiff's ownership should be sufficient to establish grounds for entry of a default judgment.

The Special Civil Part Practice Committee then considered a draft supplementary report prepared by AOC staff to reflect the actions of the M&O Committee and decided by a vote of 15 to 7 to adopt it. The proposed amendments to R. 6:3-2 are accomplished by designating the existing paragraph as (a), adding a new paragraph (b) for the caption requirements and adding a new paragraph (c) for the pleading requirements. Note that the words "or Warrant" are to be

deleted from the title because the rule has no bearing on warrants. The amendments to R. 6:3-2 follow and the proposed amendment to R. 6:6-3(a) is set forth below in section I.I. of this report.

6:3-2. Endorsement of Papers: Complaint; Summons [or Warrant]

(a) Classification of Pleading. For classification by the clerk, the caption of the summons and complaint shall state the nature of the action (e.g., "contract", "tort", "replevin", "disorderly tenant", "non-payment of rent", "holdover tenant", etc.). The clerk shall endorse upon each summons the sum demanded in the complaint, with costs.

(b) Caption In Actions On Assigned Claims. The caption in any action to collect an assigned claim shall name both the original creditor and the current assignee. The caption shall also include the name of the vendor, if any, that appears on any credit card that may be involved in the action.

(c) Pleading Requirements in Actions on Assigned Claims. The complaint in actions to collect assigned claims shall set forth with specificity the name of the original creditor, the last four digits of the original account number of the debt, the last four digits of the defendant-debtor's Social Security Number (if known), the current owner of the debt and the full chain of the assignment of the claim, if the action is not filed by the original creditor.

Note: Source-R.R. 7:5-2(a) (third sentence) (b). Caption and text amended July 10, 1998, to be effective September 1, 1998; caption amended, text designated as paragraph (a), and paragraphs (b) and (c) adopted _____, 2012, to be effective _____, 2012.

G. Proposed Amendment to R. 6:4-1(g) — Transfers to Chancery Division

Rule 6:4-1(g) provides for the transfer of a landlord-tenant action to the Law Division pursuant to N.J.S.A. 2A:18-60 when the matter is deemed to be, in the words of the statute, "of sufficient importance." The Committee of Special Civil Part Supervising Judges requested that this Committee recommend an amendment to R. 6:4-1(g) that would include the Chancery Division as an alternate to the Law Division for the transfer of tenancy actions when the relief sought involves issues that are generally handled in Chancery. The proposed amendment follows.

6:4-1(g) Transfer of Actions

(a) …no change.

(b) …no change.

(c) …no change.

(d) …no change.

(e) …no change.

(f) …no change.

(g) Transfer of Landlord/Tenant Actions. A motion to transfer a summary action for the recovery of premises to the Law Division pursuant to N.J.S.A. 2A:18-60, or to the Chancery Division, shall be made by serving and filing the original of said motion with the Clerk of the Special Civil Part no later than the last court day prior to the date set for trial. The motion shall be returnable in the Special Civil Part on the trial date, or such date thereafter as the court may determine in its discretion or upon application by the respondent for more time to prepare a response to the motion. Upon the filing of the motion, the Special Civil Part shall take no further action pending disposition of the motion. If the motion is not resolved on the original trial date, the court may require security for payment of rent pending disposition of the motion. If the motion is granted, the Clerk shall transmit the record in accordance with R. 6:4-1(d). If the motion is denied, the court shall set the action expeditiously for summary hearing.

Note: Source R.R. 7:6-1(a)(b)(c)(d)(e). Paragraph (b) adopted and former paragraphs (b)(c)(d)(e) redesignated June 29, 1973 to be effective September 10, 1973; paragraph (g) amended July 21, 1980 to be effective September 8, 1980; paragraph (f) amended November 2, 1987 to be effective January 1, 1988; paragraphs (a), (b), (c), (d), (e) and (g) and captions of paragraphs (b), (c) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (g) amended July 14, 1992 to be effective September 1, 1992; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (g) amended , 2012 to be effective , 2012.

H. Proposed Amendment to R. 6:4-5 — Time for Completion of Discovery Proceedings In Actions Cognizable But Not Pending Small Claims Section

Rule 6:4-3(a) permits the use of interrogatories pursuant to the applicable provisions of R. 4:17 in all Special Civil Part cases except forcible entry and detainer actions, summary landlord and tenant actions and actions filed in the Small Claims Section. The Part VI rule, however, reduces the time within which the parties must serve interrogatories from 40 days after service of the defendant's answer to 30 days. The rule also reduces the time within which a party served with interrogatories must answer them from 60 days after service of the interrogatories to 30 days. Pursuant to R. 4:17-6, the parties are not limited to a single set of interrogatories, but R. 6:4-5 requires pretrial discovery in Special Civil Part actions to be completed within 90 days from the service of defendant's answer. In actions that are cognizable but not filed in the Small Claims Section, however, the parties are each limited by R. 6:4-3(f) to one set of interrogatories consisting of five single-part questions, so discovery in these actions should be completed within 60 days, unless there are motions to compel answers or strike questions.

This apparent contradiction in the rules has produced confusion. Some Assistant Civil Division Managers stated that they only give 60 days of discovery for these cases because the parties are allowed only one exchange of interrogatories and with 30 days to propound interrogatories and another 30 days to answer them, the process must be completed within 60 days. Others stated that they allowed 90 days because R. 6:4-5 permits 90 days for discovery and R. 6:4-7 requires all adjournment requests to be routinely granted if they are based upon incomplete discovery, the discovery was timely commenced and the adjournment request is made within the discovery period. The Supervising Judges stated that adjournment requests in

these cases have to be handled on a case by case basis, taking into account when the interrogatories were actually sent out, whether the adjournment request was made within the discovery period and whether discovery was timely commenced.

The Special Civil Part Practice Committee believes that 90 days should be the time allowed for completion of discovery regardless of the amount involved in the case because the time frame for propounding and answering interrogatories are the same and the only differences are that in cases involving less than $3,000, the parties are limited to one set of five individual questions. The Committee also believes that the matter should be clarified for the bar, the judges and court staff by an appropriate amendment to R. 6:4-5, the text of which follows.

6:4-5. Time for Completion of Discovery Proceedings

All proceedings referred to in R. 6:4-3 and R. 6:4-4, including discovery in actions that are cognizable but not pending in the Small Claims Section, except for proceedings under R. 4:22 (request for admissions), shall be completed as to each defendant within 90 days of the date of service of that defendant's answer, unless on motion and notice, and for good cause shown, an order is entered before the expiration of said period enlarging the time for such proceedings to a date specified in the order. In actions transferred to the Special Civil Part pursuant to R. 4:3-4(c), however, the parties shall complete discovery within such time to which they would have been entitled under R. 4:24-1 had the action not been transferred.

Note: Source-R.R. 7:6-6; amended November 7, 1988 to be effective January 2, 1989; amended July 12, 2002 to be effective September 3, 2002; amended , 2012 to be effective , 2012.

I. Proposed Amendment to R. 6:6-3 — Default Judgment on Assigned Claims

The explanation for this proposed amendment to R. 6:6-3 can be found above in the discussion of actions on assigned claims, located in section I.F. of this report. The proposed amendment follows.

6:6-3(a) Judgment By Default

(a) Entry by the Clerk; Judgment for Money. If the plaintiff's claim against a defendant is for a sum certain or for a sum that can by computation be made certain, the clerk on request of the plaintiff and on affidavit setting forth a particular statement of the items of the claim, the amounts and dates, the calculated amount of interest, the payments or credits, if any, the net amount due, and the name of the original creditor if the claim was acquired by assignment, shall enter judgment for the net amount and costs against the defendant, if a default has been entered against the defendant for failure to appear and the defendant is not a minor or mentally incapacitated person. If prejudgment interest is demanded in the complaint the clerk shall add that interest to the amount due provided the affidavit of proof states the date of defendant's breach and the amount of such interest. If the judgment is based on a document of obligation that provides a rate of interest, prejudgment interest shall be calculated in accordance therewith; otherwise it shall be calculated in accordance with R. 4:42-11(a). If a statute provides for a maximum fixed amount as an attorney fee, contractual or otherwise, and if the amount of the fee sought is specified in the complaint, the clerk shall add it to the amount due, provided that in lieu of the affidavit of services prescribed by R. 4:42-9(b) the attorney files a certification that sets forth the amount of the fee sought, how the amount was calculated, and specifies the statutory provision and, where applicable, the contractual provision that provides for the fixed amount. If the claim is founded on a note, contract, check, or bill of exchange or is evidenced by entries in the plaintiff's book of account, or other records, a copy thereof shall be attached to the affidavit. The clerk may require for inspection the originals of such documents. The affidavit shall contain or be supported by a separate affidavit containing a statement, by or on behalf of the applicant for a default judgment, that sets forth the source of the address used for service of

the summons and complaint. The affidavit prescribed by this Rule shall be sworn to not more than 30 days prior to its presentation to the clerk and, if not made by plaintiff, shall show that the affiant is authorized to make it.

In any action to collect an assigned claim, plaintiff/creditor shall submit a separate affidavit certifying with specificity the name of the original creditor, the last four digits of the original account number of the debt, the last four digits of the defendant-debtor's Social Security Number (if known), the current owner of the debt and the full chain of the assignment of the claim, if the action is not filed by the original creditor.

If plaintiff's records are maintained electronically and the claim is founded on an open-end credit plan, as defined in 15 U.S.C. §1602(i) and 12 C.F.R. §226.2(a)(20), a copy of the periodic statement for the last billing cycle, as prescribed by 15 U.S.C. §1637(b) and 12 C.F.R. §226.7, or a computer-generated report setting forth the previous balance, identification of transactions and credits, if any, periodic rates, balance on which the finance charge is computed, the amount of the finance charge, the annual percentage rate, other charges, if any, the closing date of the billing cycle, and the new balance, if attached to the affidavit, shall be sufficient to support the entry of judgment.

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) ...no change.

Note: Source — R.R. 7:9-2(a) (b), 7:9-4. Paragraphs (a) and (d) amended June 29, 1973 to be effective September 10, 1973; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a), (b) and

(c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b), and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 18, 2001 to be effective November 1, 2001; paragraphs (a), (b), and (c) amended, and new paragraph (e) added July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective September 1, 2006; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; paragraph (a) amended , 2012 to be effective , 2012.

J. Proposed Amendment to Rules 6:7-3(b) and 6:7-4(c) – Requesting Additional Post Judgment Interest

Rules 6:7-3(b) and 6:7-4(c) provide that a judgment creditor who wishes to seek recovery of the additional post judgment interest that has accrued since the issuance of a wage or chattel execution "may" file an affidavit/certification with the clerk setting forth the amount of the interest sought and serve copies on the debtor and the court officer. The court officer will then collect the interest before returning the execution to the clerk. The Assistant Civil Division Managers report that the word "may" has caused some confusion with attorneys seeking additional interest who read the sentence to mean that filing and serving the affidavit/certification is optional and that if they don't file and serve it, they are still entitled to recover the interest. This can be remedied by simply amending the rule to delete the word "may" and substitute the phrase "who seeks to recover interest that has accrued subsequent to issuance of the execution must." The proposed amendment follows.

6:7-3 Wage Executions; Notice, Order, Hearing; Accrual of Interest

(a) …no change.

(b) Accrual of Interest. The judgment creditor or the judgment creditor's attorney who seeks to recover interest that has accrued subsequent to issuance of the execution must [may] file an affidavit or certification with the clerk of the court setting forth the amount of accrued interest. A copy of the affidavit or certification shall be served personally or by certified mail upon the judgment debtor's employer by the judgment creditor or attorney. A copy of the affidavit or certification shall be sent by ordinary mail by the judgment creditor or attorney to the judgment debtor at the debtor's last known address and to the court officer who served the execution upon the judgment debtor's employer. The affidavit or certification shall state that the interest and the court officer fees thereon have been imposed pursuant to R. 4:42-11 and must be collected in accordance with same by the employer. The court officer shall give to the judgment creditor or judgment creditor's attorney at least 30 days' notice of intention to return the wage execution fully satisfied. The affidavit or certification shall be filed with the clerk prior to the return of the satisfied wage execution by the court officer. An affidavit or certification filed subsequent to the return of the satisfied wage execution shall be returned by the clerk to the judgment creditor or attorney with a notation or notice that the wage execution has been fully satisfied.

Note: Source — R.R.7:11-5. Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1972 to be effective September 5, 1972; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) amended , 2012 to be effective , 2012.

6:7-4 Chattel Executions; Time at Which Levy Can be Made; Accrual of Interest

(a) …no change.

(b) …no change.

(c) Accrual of Interest. The judgment creditor or the judgment creditor's attorney who seeks to recover interest that has accrued subsequent to issuance of the execution must [may] file an affidavit or certification with the clerk of the court setting forth the amount of accrued interest. A copy of the affidavit or certification shall be sent by ordinary mail and by certified or registered mail, return receipt requested, by the judgment creditor or attorney to the judgment debtor at the debtor's last known address and by ordinary mail to the court officer to whom the writ of execution has been assigned. The affidavit or certification shall state that the interest and the court officer fees thereon have been imposed pursuant to R. 4:42-11 and must be collected in accordance with same by the officer. The court officer shall give to the judgment creditor or judgment creditor's attorney at least 30 days' notice of intention to return the chattel execution fully satisfied. The affidavit or certification shall be filed with the clerk prior to the return of the satisfied execution by the court officer. An affidavit or certification filed subsequent to the return of the satisfied execution shall be returned by the clerk to the judgment creditor or attorney with a notation or notice that the execution has been fully satisfied.

Note: Adopted July 12, 2002 to be effective September 3, 2002; caption amended and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (c) amended , 2012 to be effective , 2012.

K. Proposed Amendment to R. 6:12-1(b) – Clarify Reference to Law Division

Rule 6:12-1(b) says that transcripts of proceedings in the Special Civil Part must be prepared in accordance with the procedures applicable to proceedings "in the Law Division." This rule appears to be borrowed from a time before the creation of the Special Civil Part when the County District Court was still in existence and such references to the "Law Division" were understood to mean the Superior Court. Since the Special Civil Part has been created as a part of the Superior Court, Law Division, along with the Civil, Criminal and Probate Parts, the reference in this rule to "Law Division" should thus be changed to "Civil Part of the Law Division." The proposed amendment follows.

6:12-1 Recording and Transcript of Proceedings

(a) …no change.

(b) Use of Transcripts. Transcripts of proceedings in the Special Civil Part for use on appeal or other authorized purposes shall be prepared, insofar as practical, in accordance with the procedures applicable to the preparation of transcripts of proceedings in the Civil Part of the Law Division.

(c) …no change.

(d) …no change.

Note: Source — R.R. 7:16-1(a) (b) (c). Paragraph (c) adopted July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; amended _____, 2012 to be effective _____, 2012.

L. Proposed Amendment to R. 6:12-2 – Delete Reference to Branch Parts

This rule deals with administrative matters affecting the office of the Special Civil Part Clerk, such as location, filing of papers, filing of orders and requests for information. The second to last sentence states: "Actions may be assigned for trial or hearing to the branch parts." This is believed to be a holdover from a time when some of the County District Courts had branches at different locations. There are no "branch parts" of the Special Civil Part and the sentence should thus be deleted. The proposed amendment follows.

6:12-2 Clerk's Office; Place of Trials; Filing; Inquiries

The clerk's office shall be maintained at the principal location of the Special Civil Part. All business of the court shall be conducted there and all papers in pending actions filed there except as otherwise provided in these rules or by order of the Assignment Judge. Orders shall be filed forthwith upon signing. All inquiries shall be addressed to the clerk and answered in his or her name, and requests for information or for the return of papers shall be accompanied by an addressed stamped envelope. **[**Actions may be assigned for trial or hearing to the branch parts.**]** All fees must be paid in advance.

Note: Source — R.R. 7:12-2, 7:19-3, 7:19-5, 7:19-7, 7:19-8, 7:19-10; amended November 7, 1988 to be effective January 2, 1989; amended _____, 2012 to be effective _____, 2012.

M. Proposed Amendment to R. 6:12-3(a) – Delete Reference to the County and Municipalities Regarding the Court Officer's Bond

This rule deals with the relationship of the Judiciary with the Special Civil Part Officers and requires the officers to obtain bonds and maintain records in forms prescribed by the Administrative Director of the Courts. The second to last sentence of the rule reads as follows: "The bond shall be in addition to the bond filed as provided by law with the governing bodies of the municipalities and the boards of chosen freeholders." At one time court officers for the former County District Courts were chosen by the Presiding Judges of those courts from among the constables in the county who had been appointed by the governing bodies of the various municipalities in the county and they were considered to be employees of the county. In the early 1980s the requirement that officers be constables was abolished and the relationship of the officers to the counties was severed by the State takeover of the former County District Courts. The reference to bonds filed with the counties and municipalities is thus an anachronism that should be deleted from the rule. The proposed amendment follows.

6:12-3. Supporting Personnel

(a) Officers' Bonds; Fiscal Accounts. All officers executing writs issued out of the Special Civil Part upon which money may be collected shall, before entering upon the discharge of their duties, file in the office of the clerk a bond in such sum and form as prescribed by the Administrative Director of the Courts. **[**The bond shall be in addition to the bond filed as provided by law with the governing bodies of the municipalities and the boards of chosen freeholders.**]** Such officers shall maintain such fiscal records, subject to such audit, as the Administrative Director of the Courts prescribes.

(b) … no change

Note: Source-R.R. 7:21-4, 7:21-5; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended , 2012 to be effective , 2012.

N. Proposed Amendment to Appendix VI – Notice to Debtor

As noted in section I.B. (above) of this Report, there is confusion as to when a Special Civil Part Officer must mail the Notice to Debtor, set forth in Appendix VI to the rules, after levying on a bank account and the Special Civil Part Practice Committee has thus proposed an amendment to R. 4:59-1(g) so that it will explicitly state that the Officer must mail the Notice on the day that the bank levy is made. There is another source of confusion in the process that needs to be remedied. Once the Notice to Debtor has been received by the debtor who does not have an account at that bank, he or she may be confused and dismayed because it says that their account "has been levied upon." The Committee thus recommends amending Appendix VI – Notice to Debtor by explaining from the beginning that "an attempt has been made to levy upon your asset," and then explaining further in the first sentence of the second paragraph that, "If the levy is against an account at a bank listed below, the bank has already been notified to place a hold on any account that you may have at the bank." With this information, the debtor thus knows that there has been no levy on an account at a bank not listed in the Notice to Debtor.

The Committee recommends that further changes be made to the Notice to Debtor, both to conform it to the proposed change to R. 4:59-1(g) and to improve on the information benefitting the debtor that it conveys. Those changes include the following:

1. Amend the Officer's certification of service to state that it was mailed on the day of the levy or the day the execution was served on a bank.
2. Add the information that if any funds in the account that has been levied upon belong to a joint owner of the account, an objection to the levy can be filed to release the funds not owned by the debtor from the levy.

3. Add the information that if the underlying judgment resulted from a default, the target of the writ may apply to the court for an order vacating the default and can get help in doing so by contacting an attorney, the clerk or the Judiciary website.

4. Where the Notice lists the banks that have been served, change the word “levy” to “writ of execution.”

The proposed amendments to the Notice to Debtor follow.

APPENDIX VI – NOTICE TO DEBTOR (Rules 4:59-1(g) and 6:7-1(b))

Re:

_____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART

_____ County

v.

Docket No: _____

_____

NOTICE TO DEBTOR

TO: _____, designated defendant:

An attempt has been made to levy upon **[Y]**your asset, in an amount not to exceed $ _____ **[**has been levied upon**]** at the instruction of: _____to satisfy in whole or in part the judgment against you in the above matter. If you are an individual rather than a business entity, some property may be exempt from execution by Federal and State law, including but not limited to clothing and a total of $1,000.00 of cash and personal property, except for goods purchased as part of the transaction**[,]**which led to the judgment in this case. In addition, welfare benefits, social security benefits, S.S.I. benefits, V.A. benefits, unemployment benefits, workers' compensation benefits and child support you receive are exempt, even if the funds have been deposited in a bank account. If any funds belong to a joint owner an objection to the levy can be filed to release the funds not owned by the debtor from the levy.

If the levy is against an **[**bank**]** account at a bank listed below, the bank has already been notified to place a hold on any **[**your**]** account that you may have at the bank. However, the funds will not be taken from your account until the court so orders. If you are entitled to an exemption as an individual, you may claim your exemption by notifying the clerk of the court and the person who ordered this levy of your reasons why your property is exempt. This claim must be in writing and if it is not mailed within 10 days of service of this notice, your property is subject to further proceedings for execution. The address of the court is: _____. If this judgment has resulted from a default, you may have the right to have this default judgment vacated by making an appropriate motion to the court. Contact an attorney or the clerk of the court for information on making such a motion, or, for forms and instructions, go to: www.judiciary.state.nj.us/prose/10543_motion_spccvl.pdf.

A Writ of Execution [Levy] has been served on the following:

1. _____
2. _____
3. _____
4. _____
5. _____

The name and address of the person who ordered this levy is:

CERTIFICATION OF SERVICE

I mailed a copy of this notice to the defendant(s) and the person who requested the levy on _____ , 20_____, the same day this levy was made or the execution was served on a bank. I certify that the foregoing statements made by me are true. I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

Date: _____

_____
(Signature)

_____
(Court Officer)

Note: Amended July 14, 1992, effective September 1, 1992; amended July 13, 1994, effective September 1, 1994; amended July5, 2000, effective September 5, 2000; amended July 27, 2006 to be effective September 1, 2006; amended July 23, 2010 to be effective September 1, 2010; amended _____, 2012 to be effective _____, 2012.

O. Proposed Amendments to Appendices XI-A(1) and XI-A(2) – Summons and Return of Service

These two appendices to the rules are mandatory forms for the summonses that are used in the civil actions and small claims, respectively, filed in the Special Civil Part. At the foot of both are sections reserved for the return of service that are to be completed by a Special Civil Part Officer, if the summons was personally served on the defendant, or by an employee in the clerk's office if the summons was mailed pursuant to the service by mail program set forth in R. 6:2-3(d). Nearly all summonses and complaints, except those in tenancy actions, are served by certified mail, return receipt requested, and simultaneously by ordinary mail. The requirement of an employee's signature on the summonses that are mailed has become problematic. Before the advent of electronic filing for civil actions (those in which the amount in controversy is $15,000 or less, commonly referred to as DC docket-type cases) in the Special Civil Part, staff would have to handle each incoming summons and complaint once to enter it into ACMS (Automated Case Management System) and sign the certification of mailing before they were stuffed into the certified and regular mailers. Now when a summons and complaint come in electronically or have been scanned into JEFIS (Judiciary Electronic Filing and Imaging System), they have to be retrieved (the electronic equivalent of "handling") from JEFIS twice: once to enter the case into ACMS and a second time to electronically affix the employee's signature and the anticipated date of mailing (which has to be calculated) to the certification of mailing. Ironically, JEFIS has resulted in doubling the work involved in processing a case through this phase, but this need not happen because ACMS is capable of calculating the anticipated date of mailing and affixing it via JEFIS to the summons, and, in fact does so right now. Since ACMS is the official record (docket) of the court, there really is no need for the employee to make a certification of mailing

and if the certification were removed from the summons, the amount of work required to get the summons and complaint ready for mailing would be cut in half. The proposed revisions to the two forms of summons are attached. Note that since electronic filing has not yet been extended to small claims, but will be by September 1, 2012, a space for the system-generated date of mailing has to be added to the small claims summons. The proposed amendments to both forms of the summons follow.

APPENDIX XI-A (1)

SUMMONS AND RETURN OF SERVICE

	THE SUPERIOR COURT OF NEW JERSEY **Law Division, Special Civil Part** **SUMMONS**

YOU ARE BEING SUED!
IF YOU WANT THE COURT TO HEAR YOUR SIDE OF THIS LAWSUIT, YOU MUST FILE A WRITTEN ANSWER WITH THE COURT WITHIN 35 DAYS OR THE COURT MAY RULE AGAINST YOU. READ ALL OF THIS PAGE AND THE NEXT PAGE FOR DETAILS.

In the attached complaint, the person suing you (who is called *the plaintiff*) briefly tells the court his or her version of the facts of the case and how much money he or she claims you owe. **You are cautioned that 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. If a judgment is entered against you, a Special Civil Part Officer may seize your money, wages or personal property to pay all or part of the judgment and the judgment is valid for 20 years.
You can do one or more of the following things:

1. *Answer the complaint.* An answer form is available at the Office of the Clerk of the Special Civil Part. The answer form shows you how to respond in writing to the claims stated in the complaint. If you decide to answer, you must send it to the court's address on page 2 and pay a $15 filing fee with your answer and send a copy of the answer to the plaintiff's lawyer or to the plaintiff if the plaintiff does not have a lawyer. Both of these steps must be done **within 35 days (including weekends)** from the date you were "served" (sent the complaint). That date is noted on the next page.

AND/OR

2. *Resolve the dispute.* You may wish to contact the plaintiff's lawyer, or the plaintiff if the plaintiff does not have a lawyer, to resolve this dispute. **You do not have to do this unless you want to.** This may avoid the entry of a judgment and the plaintiff may agree to accept payment arrangements, which is something that cannot be forced by the court. Negotiating with the plaintiff or the plaintiff's attorney will not stop the 35-day period for filing an answer unless a written agreement is reached and filed with the court.

AND/OR

3. *Get a lawyer.* If you cannot afford to pay for a lawyer, free legal advice may be available by contacting Legal Services at _____. If you can afford to pay a lawyer but do not know one, you may call the Lawyer Referral Services of your local county Bar Association at _____.

If you need an interpreter or an accommodation for a disability, you must notify the court immediately.

La traducción al español se encuentra al dorso de esta página.

Clerk of the Special Civil Part

EL TRIBUNAL SUPERIOR DE NUEVA JERSEY
División de Derecho, Parte Civil Especial
NOTIFICACIÓN DE DEMANDA

¡LE ESTÁN HACIENDO JUICIO!
SI UD. QUIERE QUE EL TRIBUNAL VEA SU VERSIÓN DE ESTA CAUSA, TIENE QUE PRESENTAR UNA CONTESTACIÓN ESCRITA EN EL TRIBUNAL DENTRO DE UN PERÍODO DE 35 DÍAS O ES POSIBLE QUE EL TRIBUNAL DICTAMINE EN SU CONTRA. PARA LOS DETALLES, LEA TODA ESTA PÁGINA Y LA QUE SIGUE.

En la demanda adjunta, la persona que le está haciendo juicio (que se llama *el demandante*) da al juez su versión breve de los hechos del caso y la suma de dinero que alega que Ud. le debe. **Se le advierte que si Ud. no contesta la demanda, es posible que pierda la causa automáticamente** y que el tribunal dé al demandante lo que pide más intereses y costas. Si se registra una decisión en su contra, es posible que un Oficial de la Parte Civil Especial (Special Civil Part Officer) embargue su dinero, salario o bienes muebles para pagar toda o parte de la adjudicación, y la adjudicación tiene 20 años de vigencia.
Usted puede escoger entre las siguientes opciones:

1. *Contestar la demanda*. Puede conseguir un formulario de contestación en la Oficina del Secretario de la Parte Civil Especial. El formulario de contestación le indica cómo responder por escrito a las alegaciones expuestas en la demanda. Si Ud. decide contestar, tiene que enviar su contestación a la dirección del tribunal que figura en la página 2, pagar un gasto de iniciación de la demanda de $15 dólares y enviar una copia de la contestación al abogado del demandante, o al demandante si el demandante no tiene abogado. Tiene **35 días (que incluyen fines de semana)** para hacer los trámites a partir de la fecha en que fue "notificado" (le enviaron la demanda). Esa fecha se anota en la página que sigue.

ADEMÁS, O DE LO CONTRARIO, UD. PUEDE

2. *Resolver la disputa.* Posiblemente Ud. quiera comunicarse con el abogado del demandante, o el demandante si el demandante no tiene abogado, para resolver esta disputa. **No tiene que hacerlo si no quiere.** Esto puede evitar que se registre una adjudicación y puede ser que el demandante esté de acuerdo con aceptar un convenio de pago lo cual es algo que el juez no puede imponer. Negociaciones con el demandante o el abogado del demandante no suspenderán el término de 35 días para registrar una contestación a menos que se llegue a un acuerdo escrito que se registra en el tribunal.

ADEMÁS, O DE LO CONTRARIO, UD. PUEDE

3. *Conseguir un abogado.* Si Ud. no tiene dinero para pagar a un abogado, es posible que pueda recibir consejos legales gratuitos comunicándose con Servicios Legales (Legal Services) al _____. Si tiene dinero para pagar a un abogado pero no conoce ninguno puede llamar a Servicios de Recomendación de Abogados (Lawyer Referral Services) del Colgeio de Abogados (Bar Association) de su condado local al _____.

Si necesita un intérprete o alguna acomodación para un impedimento, tiene que notificárselo inmediatamente al tribunal.

Secretario de la Parte Civil Especial

SPECIAL CIVIL PART SUMMONS AND RETURN OF SERVICE – PAGE 2

Plaintiff or Plaintiff's Attorney Information:

Name:

Address:

Telephone No.:

Demand Amount: $

Filing Fee: $

Service Fee: $

Attorney's Fees: $

TOTAL $

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION, SPECIAL CIVIL PART

COUNTY

, Plaintiff(s)

versus

, Defendant(s)

Docket No:

(to be provided by the court)

Civil Action
SUMMONS

(Check one): ☐ **Contract or** ☐ **Tort**

Defendant(s) Information: Name, Address & Phone:

RETURN OF SERVICE (For Court Use Only)

Date Served:

RETURN OF SERVICE IF SERVED BY COURT OFFICER (For Court Use Only)

Docket Number Date Time

WM WF BM BF OTHER

HT WT AGE HAIR MUSTACHE BEARD GLASSES

NAME: RELATIONSHIP:

Description of Premises

I hereby certify the above to be true and accurate:

Court Officer

Note: Adopted July 5, 2000 to replace Appendix XI-A effective September 5, 2000; amended July 12, 2002 effective September 3, 2002; amended _____, 2012 to be effective _____, 2012.

APPENDIX XI-A(2) - SMALL CLAIMS SUMMONS AND RETURN OF SERVICE

THE SUPERIOR COURT OF NEW JERSEY

Law Division, Special Civil Part

SMALL CLAIMS SUMMONS

YOU ARE BEING SUED!

IF YOU WANT THE COURT TO HEAR YOUR SIDE OF THIS CASE, YOU MUST APPEAR IN COURT. IF YOU DO NOT, THE COURT MAY RULE AGAINST YOU. READ ALL OF THIS PAGE AND THE NEXT PAGE FOR DETAILS.

In the attached complaint, the person suing you (who is called *the plaintiff*) briefly tells the court his or her version of the facts of the case and how much money he or she claims you owe. **You are cautioned that if you do not come to court on the trial date to 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. If a judgment is entered against you, a Special Civil Part Officer may seize your money, wages or personal property to pay all or part of the judgment and the judgment is valid for 20 years.

You can do one or more of the following things:

1. *Come to court to answer the complaint*. You do not have to file a written answer, but if you dispute the complaint and want the court to hear your side of the case, you must appear in court on the date and at the time noted on the next page.

AND/OR

2. *Resolve the dispute*. You may wish to contact the plaintiff's lawyer, or the plaintiff if the plaintiff does not have a lawyer, to resolve this dispute. **You do not have to do this unless you want to.** This may avoid the entry of a judgment and the plaintiff may agree to accept payment arrangements, which is something that cannot be forced by the court. You will have to appear in court on the trial date unless a written agreement is reached and filed with the court.

AND/OR

3. *Get a lawyer*. If you cannot afford to pay for a lawyer, free legal advice may be available by contacting Legal Services at _____. If you can afford to pay a lawyer but do not know one, you may call the Lawyer Referral Services of your local county Bar Association at _____.

If you need an interpreter or an accommodation for a disability, you must notify the court immediately.

La traducción al español se encuentra al dorso de esta página.

_____

Clerk of the Special Civil Part

EL TRIBUNAL SUPERIOR DE NUEVA JERSEY
División de Derecho, Parte Civil Especial
NOTIFICACIÓN DE DEMANDA DE RECLAMACIONES MENORES

¡LE ESTÁN HACIENDO JUICIO!
SI UD. QUIERE QUE EL TRIBUNAL VEA SU VERSIÓN DE ESTA CAUSA TIENE QUE COMPARECER EN EL TRIBUNAL. SI NO COMPARECE, PUEDE SER QUE EL TRIBUNAL DICTAMINE EN SU CONTRA. PARA LOS DETALLES, LEA TODA ESTA PÁGINA Y LA QUE SIGUE.

En la demanda adjunta, la persona que le está haciendo juicio (que se llama *el demandante*) da al juez su versión breve de los hechos del caso y la suma de dinero que alega que Ud. le debe. **Se le advierte que si Ud. no viene al tribunal en la fecha del juicio, es posible que pierda la causa automáticamente** y el tribunal puede dar al demandante lo que pide más intereses y costas. Si se registra una decisión en contrade Ud., un Oficial de la Parte Civil (Special Civil Part Officer) puede embargar su dinero, salario o bienes muebles para pagar toda o parte de la adjudicación y la adjudicación tiene 20 años de vigencia.

Usted puede escoger entre las siguientes opciones:

1. *Venir al tribunal para contestar la demanda.* No hace falta que presente una contestación escrita,pero si Ud. disputa la demanda y quiere que el juez vea su versión de la causa, tiene que comparecer en eltribunal en la fecha y a la hora notadas en la página que sigue.

ADEMÁS, O DE LO CONTRARIO, USTED PUEDE

2. *Resolver la disputa.* Ud. posiblemente quiera comunicarse con el abogado del demandante, o el demandante si el demandante no tiene abogado, para resolver esta disputa. **No tiene que hacerlo si no quiere.** Esto puede evitar que se registre una adjudicación y puede ser que el demandante esté de acuerdocon aceptar un convenio de pago lo cual es algo que el juez no puede imponer. Tendrá que comparecer en el tribunal en la fecha del juicio a menos que se llegue a un acuerdo escrito que se registra en el tribunal.

ADEMÁS, O DE LO CONTRARIO, USTED PUEDE

3. *Conseguir un abogado.* Si Ud. no tiene dinero para pagar a un abogado, es posible que puedarecibir consejos legales gratuitos si se comunica con Servicios Legales (Legal Services) al .
Si tiene dinero para pagar a un abogado pero no conoce ninguo puede llamar a Servicios de Recomendación de Abogados (Lawyer Referral Services) del Colegio de Abogados (Bar Association) de su condado local al _____

Si necesita un intërprete o alguna acomodación para un impedimento, tiene que notificárselo inmediatamente al tribunal.

_____
Secretario de la Parte Civil Especial

SMALL CLAIMS SUMMONS AND RETURN OF SERVICE – PAGE 2

Plaintiff or Plaintiff's Attorney Information:

Name: _____
Address: _____
_____

Phone:_____

_____
Plaintiff(s)

versus

_____
Defendant(s)

Defendant Information:

Name:_____
Address:_____
_____

Phone:_____

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION, SPECIAL CIVIL PART

_____ **COUNTY**

_____

_____

_____

Docket Number: _____
(to be provided by the court)

Civil Action

SUMMONS

(Check one): _____ Contract _____ Tort

Demand Amount: $_____
Filing Fee: $_____
Service Fee: $_____
Attorney's Fees: $_____
TOTAL: $_____

YOU MUST APPEAR IN COURT ON THIS DATE _____ AND TIME:_____ ☐ a.m. ☐ p.m., OR THE COURT MAY RULE AGAINST YOU.
REPORT TO: _____

RETURN OF SERVICE (For Court Use Only)

Date Served: _____

COURT OFFICER'S RETURN OF SERVICE
IF SERVED BY COURT OFFICER
Docket Number: _____
Date: _____ Time: _____WM___ WF___ BM___ BF___ OTHER___
HT____ WT____ AGE___ HAIR ___ MUSTACHE___ BEARD ___ GLASSES ___
NAME: _____RELATIONSHIP:
_____
Description of Premises
_____

I hereby certify the above to be true and accurate:

Court Officer

Note: New form adopted July 5, 2000 to be effective September 5, 2000; amended_____, 2012 to be effective _____, 2012.

P. Proposed Amendments to Appendices XI-C and XI-D – Indication on Small Claims Complaints of Need For Interpreter or Disability Accommodation; Redaction of Confidential Personal Identifiers

These Appendices include two forms of complaints that serve as models for small claims actions. Appendix XI-C is for use in contract cases, actions by tenants to recover security deposits, actions by landlords for unpaid rent and actions in tort. Appendix XI-D is for use in actions for damages to property involving motor vehicles. As such they are the first opportunity that plaintiffs in small claims cases have to advise the clerk's office of the need for an interpreter or accommodation for a disability. The two complaints currently contain the sentence, "Plaintiff will use an interpreter fluent in the _____ language at the hearing." This implies that plaintiff will bring his/her own interpreter, but since the last update of this form the Judiciary has adopted a policy of providing interpreters when needed. The proposed changes to the forms reflect that policy. The changes also provide space for the plaintiff to indicate the need of an accommodation for a disability and the nature of the disability so that the accommodation that is made will be appropriate. The two model forms also must be modified to include the certification required by R. 1:38-7(b) that confidential personal identifiers have been redacted from the documents being submitted to the court and will be redacted from all documents submitted in the future. The proposed revisions to Appendices XI-C and XI-D follow. Please note that each will be a single page when published for use on the Judiciary's website or at the counter in the Special Civil Part Clerks' Offices.

APPENDIX XI-C - SMALL CLAIMS COMPLAINT (Contract, Security Deposit, Rent, or Tort)

SUPERIOR COURT OF NEW JERSEY

LAW DIVISON, SPECIAL CIVIL PART

SMALL CLAIMS SECTION

Attorney for Plaintiff (if any)

Address

Telephone No.

County

Docket No.

(to be provided by the court)

From Plaintiff

Name

Address

Telephone No.

To Defendant

Name

Address

Telephone No.

CIVIL ACTION

COMPLAINT

Check One – See Instruction A for Form A

☐ Contract

☐ Security Deposit

☐ Rent

☐ Personal Injury or Property Damage (other than motor vehicle)

COMPLAINT (See instruction B for form A)

Demand: $ plus costs.

Type or print the reasons you, the Plaintiff(s), are suing the Defendant(s): Attach additional sheets if necessary.

IMPORTANT: Plaintiffs and defendants must bring all witnesses, photos, and documents, and other evidence to the hearing. Subpoena forms are available at the Clerk's office to require the attendance of witnesses.

At the trial Plaintiff will require:

An interpreter ☐ Yes ☐ No Indicate Language: _____

An accommodation for disability ☐ Yes ☐ No Indicate Disability: _____

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding, now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

_____ _____

Date Plaintiff's Signature

_____

Plaintiff's Name Typed, Stamped or Printed

Note: Adopted effective January 2, 1989; amended June 29, 1990, effective September4, 1990; amended July 14, 1992, effective September 1, 1992; amended July 5, 2000, effective September 5, 2000; amended _____, 2012 to be effective _____, 2012.

APPENDIX XI-D - SMALL CLAIMS COMPLAINT (Motor Vehicle)

Name of Attorney for Plaintiff (if any)

Address _____

_____

Telephone No. _____

Name of Court

Address _____

_____

Telephone No. _____

From Plaintiff:

_____

Name:

Address _____

_____

Telephone No. _____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISON, SPECIAL CIVIL PART
SMALL CLAIMS SECTION

_____ **County**

Docket No. _____
(to be provided by the court)

To Defendant:

_____

Name:

Address _____

_____

Telephone No. _____

CIVIL ACTION
COMPLAINT
Motor Vehicle

COMPLAINT

Plaintiff says the negligence of the defendant operator and/or defendant owner caused a motor vehicle accident resulting in property damage to plaintiff's vehicle, in the following accident:

1. Date of Accident:_____
2. Name of Defendant(s):
   a) Owner:_____
   b) Operator:_____
3. Place of Accident:
   a) Street:_____
   b) Municipality:_____
   c) County:_____

Demand: $_____

IMPORTANT: Plaintiffs and defendants must bring all witnesses, photos, estimates, documents, other evidence and an interpreter, if necessary, to the hearing. Subpoena forms are available at the Clerk's office to require the attendance of witnesses.

At the trial Plaintiff will require:

An interpreter: yes no Indicate Language: _____
An accommodation for disability: yes no Indicate Disability: _____

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding, now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

_____ _____
Date Plaintiff Signature

Plaintiff Name – Typed, Stamped or Printed

Note: Adopted effective January 2, 1989; amended June 29, 1990, effective September 4, 1990; amended July 10, 1998 to be effective September 1, 1998; amended July 5, 2000, effective September 5, 2000; amended , 2012 to be effective , 2012.

Q. Proposed Amendments to Appendices XI-E and XI-F - Indication on Special Civil Answers of Need For Interpreter or Disability Accommodation; Redaction of Confidential Personal Identifiers; Demand for Jury Trial

These Appendices include two forms of answers for use in Special Civil Part cases other than small claims and summary tenancy actions. Appendix XI-E is for use in actions involving motor vehicle accidents. Appendix XI-F is for use in contract cases. As such they are the first opportunity that defendants in these cases have to advise the clerk's office of the need for an interpreter or accommodation for a disability. The two answers currently contain the sentence, "Defendant will use an interpreter fluent in the _____ language at the hearing." This implies that defendant will bring his/her own interpreter, but since the last update of this form the Judiciary has adopted a policy of providing interpreters when needed. The proposed changes to the forms reflect that policy. The changes also provide space for the defendant to indicate the need of an accommodation for a disability and the nature of the disability so that the accommodation that is made will be appropriate. The two model forms also must be modified to include the certification required by R. 1:38-7(b) that confidential personal identifiers have been redacted from the documents being submitted to the court and will be redacted from all documents submitted in the future. Both forms will provide a space for the defendant to request a jury trial, provided that the additional $50 jury trial fee is included in the filing. Finally, both forms should be revised to reflect an earlier rule change that provides defendants 35 days, rather than 20 days, to serve an answer on the plaintiff. The proposed revisions to Appendices XI-E and XI-F follow.

APPENDIX XI-E. — ANSWER (Auto Accident)

Name:

Address:

Telephone No.:

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION, SPECIAL CIVIL PART

_____COUNTY

Plaintiff(s)

-vs-

Defendant(s)

Civil Action

ANSWER

(Auto accident)

Defendant(s), by way of answer to the complaint, say(s) (cross out words that do not apply):

I/We admit/deny that the accident took place on the date stated in the complaint.

I/We admit/deny that I/we was/were the owner of the vehicle on the date of the accident.

I/We admit/deny that I/we was/were the operator of the vehicle on the date of the accident.

I/We admit/deny that the accident took place at the location stated in the complaint.

The accident alleged in the complaint was not my/our fault because _____
_____

___Trial by jury is requested; an extra $50 check or money order is enclosed.

At the trial Defendant requests:

An interpreter: ___Yes ___No Indicate Language:_____

An accommodation for a disability: ___Yes ___No Requested accommodation_____

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding, now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I further certify that this answer was served on plaintiff(s) within 35 days of the date the summons and complaint were mailed to me as indicated on page 2 of the summons.

DATED:_____

_____
Defendant's Signature

_____
Defendant's Name--Typed or Printed

Note: Adopted effective January 2, 1989; amended _____, 2012 to be effective _____, 2012.

APPENDIX XI-F. ANSWER (Contract)

Name:
Address:
Telephone No.:

Superior Court Of New Jersey
Law Division, Special Civil Part
_____ County
CIVIL ACTION

Plaintiff(s)

vs.

Answer

Defendant(s)

Check the appropriate statement or statements below which set forth why you claim you do not owe money to the plaintiff.

	(1)	The good or services were not received.
	(2)	The goods or services received were defective.
	(3)	The bill has been paid.
	(4)	I/We did not order the goods or services.
	(5)	The dollar amount claimed by the plaintiff(s) is incorrect.
	(6)	Other – Set forth any other reasons why you believe money is not owed to the plaintiff(s). (You may attach more sheets if you need to.)

_____

_____

_____ Trial by jury requested; an extra $50 check or money order is enclosed.

At the trial Defendant requests:
An interpreter: ___Yes ___No Indicate Language:_____
An accommodation for a disability: ___Yes ___No Requested Accommodation:_____

I certify the matter in controversy is not the subject of any other court action or arbitration proceeding now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

I further certify that this answer was served on all other parties within 35 days of the date the summons and complaint were mailed to me as indicated on page 2 of the summons.

Dated: _____

Defendant's Signature: _____

Defendant's Name – Type or Printed: _____

Note: Adopted effective January 2, 1989; amended July 13, 1994, effective September 1, 1994; amended _____, 2012 to be effective _____, 2012.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendments to R. 6:1-2 – Monetary Limits Increase

During the last rules cycle, this Committee decided not to propose any changes to the monetary limits of $3,000 for Small Claims and $15,000 for Special Civil, primarily because they were still within the boundaries set in 1994, when adjusted for inflation, and because of the large increases in the volume of collection cases since 2007. Since then it has been brought to the attention of the Administrative Office of the Courts (AOC) that New Jersey's present small claims monetary limit is lower than the limit in 44 other states, according to data collected by an organization called HALT (Help Abolish Legal Tyranny). More information about the group's study is available at http://www.halt.org/reform_projects/small_claims/2011_small_claims_rc/.

This data raised the question of whether the time has come to increase the small claims limit regardless of its historical level and that, in turn, raised the question of whether the Special Civil limit of $15,000 for DC docket-type cases should be increased. The AOC's Civil Practice Division has analyzed judgment data for both the Special Civil Part and the Civil Part to see what the potential effects of such changes might be. The analysis showed that 8,146 actions with demands over $3,000 were filed in calendar year 2010 as DC cases by pro se litigants, which resulted in 2,201 judgments. If the limit were raised to, for example, $10,000, and the 6,150 actions with demands of $3,000 to $10,000 were filed as small claims, this would result in a 12% increase over the current level of 50,000 small claims per year. The decrease in DC filings would be approximately 1.6% of the current level of 390,000 per year. It is clear that this change would primarily benefit pro se litigants, who could seek the larger amounts in their lawsuits without having to cope with the somewhat more complex procedure involved in litigating DC docket-type cases.

Based on the collective experience of the judges, court managers and attorneys who are Special Civil Part Practice Committee members and handle cases in this value range, the Committee unanimously decided to recommend leaving the small claims monetary limit at the present level of $3,000. The factors that prompted the Committee to reach this conclusion were: (1) proofs could become complicated with the restricted discovery permitted in the Small Claims Section if its monetary limit were to be raised by a significant amount, (2) witness management in small claims cases could be a problem in cases involving the more substantial amounts, (3) the loss in revenue to the State would be significant.

With regard to the monetary limit for DC docket-type cases, the AOC's Civil Practice Division analyzed judgment data for both the Special Civil Part and the Civil Part of the Law Division of Superior Court to see what the potential effects might be if the monetary limit were raised from the current $15,000 to $30,000, the average selling price of a new automobile in 2011. The data showed that 8,539 cases resulted in judgments of $30,000 or less in Civil Part actions and thus might potentially be filed as DC docket-type cases rather than L cases in the Civil Part of the Law Division. If these numbers are accurate predictors, the increased caseload for Special Civil would be about 2% and the decrease for Civil would be about 9%. The change would have the effect of reducing the costs of litigation because (1) the filing fees are lower and (2) the Special Civil procedures are less complex and generally do not involve the expense of pretrial activities such as depositions. Note, however, that predictions based on judgment data are imprecise because judgments do not necessarily measure what the plaintiffs sought to recover. Data on the amounts sought is not available since New Jersey's court rules do not require complaints in L docket-type cases to state a demand amount.

A history of the Special Civil Part monetary limits over the last quarter century shows the following progression:

Year	Regular SCP Limit	Small Claims Limit
1981	$ 5,000.00	$1,000.00
1992	$ 7,500.00	$1,500.00
1994	$10,000.00	$2,000.00
2002	$15,000.00	$3,000.00

Note that the ratio of the two limits has always been maintained at 5 to 1.

Taking into account changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers, published by U.S. Department of Labor's Bureau of Labor Statistics for New York City and Northeastern New Jersey, the cost of living increased by 30.0% between September 2002 (the last time the Special Civil Part monetary limits were raised) and November 2011, the most recent month for which statistics were available in January, 2012. This would appear to justify an increase in the monetary limit from $15,000.00 to $19,500.00 for regular Special Civil Part cases.

Taking a look at inflation from a longer perspective, however, raises the question of whether such a change would be appropriate at this time. The value of the 1994 limit ($10,000.00) was $12, 030.00 in 2002, and that value projected to November 2011 comes out at $15,639.00. This indicates that we have barely exceeded the 1994 limit when adjusted for inflation.

Coupled with an examination of changes in the contracts caseload since 2002, this suggests a need for caution when considering another increase in the monetary limits. The chart below indicates that the contracts caseload increased by 20% in Court year 2003, which is when

the last monetary limit increase took effect. Contract cases in the Special Civil Part are overwhelmingly composed of consumer debt collection actions. Between Court Year 2003 and Court Year 2011 there was another 46% increase in the caseload, despite declines in 2005 and in each of the last three years. Note that while the volume of tenancy actions and small claims has remained relatively static over the years, these cases and the greatly increased number of contract cases are being handled by 30% fewer staff than the Special Civil Part had in 1994.

Court Year	Contract Filings	% Increase
2002	208,259	---
2003	249,934	20%
2004	269,989	8%
2005	236,670	-12%
2006	270,692	14%
2007	299,438	11%
2008	383,154	28%
2009	378,068	- 1%
2010	374,888	- 1%
2010	363,818	- 3%

Other considerations have to do with changes in the nature of the caseload if the monetary limit is raised to $30,000. There might be an increase in professional malpractice cases, which are already problematic because the procedural requirements extend the life of this type of case well beyond the 120 day inventory standard for Special Civil Part into backlog status. There probably would be an increase in the number of automobile insurance cases, which also have procedural complications. For these reasons, all but one of the Committee members voted in favor of recommending no increase in the current monetary limit of $15,000.

B. Proposed Amendment to R. 6:6-3(a) – Requiring the Assignment to be Attached to the Affidavit of Proof When Applying for the Entry of Judgment By Default on Assigned Claims

The reasons for the Committee's eventual rejection of a proposed amendment to R. 6:6-3(a) to require assignments to be attached to the affidavits of proof in cases involving assigned claims are discussed at length above in section I.F. of this Report.

C. Proposed Amendment to R. 6:6-3(d) – Add Requirement of Good Cause for Delay in Requesting Entry of Judgment More Than 6 Months After Default

Rule 6:6-3(d) provides that if a party entitled to judgment by default fails to apply for it within six months of the entry of default, the judgment will not be entered except on motion to the court. The Committee considered a proposed amendment would change the rule so as to include a requirement that the moving party show good cause for the delay. During the Committee's discussion of the proposal, the following points were made:

- The purpose of the rule is only to give the defendant notice of the application and adding a good cause requirement would change that purpose.
- Creditors sometimes use the rule to delay entry of judgment in order to increase the amount of prejudgment interest, which accrues at a higher rate than post-judgment interest.
- The rules already require that all orders be entered only for good cause shown.
- Scrutinizing these motions for good cause could be problematic because of the volume.

The Committee decided not to recommend the proposed change to the rule by a vote of 18 to 5.

D. Proposed Amendments to Rules 6:7-1(c) and 4:59-1(g) - Require Bank to Notify Court Officer and Creditor If Targeted Funds Are Exempt From Levy and to Serve Debtor With Copy of Writ and Notice to Debtor

Representatives of the Creditors Bar Association submitted proposals that would amend the rules so as to require the third-party garnishee bank to serve the debtor, who presumably has an account at the bank, with a copy of the writ and the Notice to Debtor. The proponents asserted that this would eliminate any delays in getting the Notice to Debtor served promptly so that the debtor would have information about what was happening and what can be done about it to seek relief. Since the bank is already obligated by a new federal regulation to send a prescribed notice to the debtor who has exempt funds on deposit, it was argued that confusion would be reduced by sending copies of the writ and Notice to Debtor at the same time. It was pointed out by other Committee members, however, that changes in the final version from the draft of the federal regulation on this subject would increase the lag time between service of the writ and the debtor's receipt of the required federal notice to about one week, during which time the debtor's funds would be frozen. Objections to the proposal were also made on the grounds that the responsibility for bearing the cost of ensuring due process should not be shifted from the creditor and the possibility that the banks would take the position that requirements of this nature imposed upon them by a state are preempted by federal regulations. The preemption concern also applied to the proposal that the banks be required to notify the officer and creditor if the account levied upon contains funds that are exempt from levy. The Committee thus decided not to support the proposals.

E. Proposed Amendment to R. 6:7-2(b)(2) – Elimination of Requirement that Creditor First Serve Information Subpoena on Debtor Before Serving Information Subpoena on Bank

Rule 6:7-2(b)(2) currently requires the creditor who is interested in obtaining information about a debtor's bank accounts to serve the debtor with an information subpoena and get no response before serving the bank with an information subpoena for this purpose. The Creditors Bar Association proposed to eliminate this requirement in order to simplify the process of getting the information and hopefully eliminate the widespread use of the "shotgun" approach to serving writs of execution. Objections raised by other members of the Subcommittee centered around the concept that privacy concerns dictate that efforts should first be made to get this very personal information directly from the debtor rather than from third parties such as banks. For this reason the Committee decided not to recommend the proposal.

III. OTHER RECOMMENDATIONS – NONE

IV. LEGISLATION – NONE

V. MATTERS HELD FOR CONSIDERATION

A. Use of Credit Cards to Pay Fees and Post Deposits

The Committee endorses the idea of permitting the payment of filing fees and posting of deposits by credit card but recognizes that formulation of the language for the rule change should await completion of the AOC's work on this project. Staff informed the Committee that the Information Technology Office, Office of Management Services and the Civil Practice Division of the Office of Trial Court Services are already deeply involved in this project.

B. Proposed Amendment to R. 6:3-4 - Ejectment Actions in the Special Civil Part

A member of the Committee has proposed an amendment to the rules that would make explicit the fact that ejectment actions are cognizable in the Special Civil Part, so long as the attendant damages do not exceed the $15,000 monetary limit. The member suggests that the amendment be made to R. 6:3-4, which deals with summary actions for the possession of premises. The Committee has formed a subcommittee to review the proposal and will make any necessary recommendations in a supplemental report to the Supreme Court.

C. Proposed Amendment to R. 6:4-1(d) - Eliminate Certain Copying Fees and Clarify Amount to Be Paid Upon Transfer to Civil Part or General Equity Part

A member of the Committee, has proposed an amendment to R. 6:4-1(d) that would eliminate charging certain copying fees when a case is transferred from the Special Civil Part to the Civil Part or the General Equity Part. The amendment would also clarify the amount in additional filing fees that have to be paid upon transfer. The Committee will report on this proposal in its supplemental report to the Supreme Court.

D. Proposed Amendment to Rules 6:6-6 or 6:7-4 – Relief From Bank Fees When Exempt Funds Are Released From Levy

A member of the Committee has proposed amending the appropriate rule to state that an order releasing, from a levy, funds that are exempt from levy under federal or state law shall include a provision for relief from fees imposed by the bank as a result of the levy. The Committee will report on this proposal in its supplemental report to the Supreme Court.

E. Proposed Amendment to R. 6:7-2 – Service of Arrest Warrants in Another County

The Committee has received a letter from a letter from Frank J. Provenzano, Somerset County Sheriff, regarding the need to amend R. 6:7-2 to eliminate confusion as to which sheriff should execute a warrant for arrest when the defendant does not reside in the county of venue. The Sheriff's letter was directed to the Administrative Director of the Courts, who referred the matter to the Civil Practice Committee and that committee has referred it to this Committee for initial review. The Committee will report on this proposal in its supplemental report to the Supreme Court.

VI. CONCLUSION

The members of the Supreme Court Committee on Special Civil Part Practice appreciate the opportunity to have served the Supreme Court in this capacity.

Respectfully submitted,

Hon. Joseph R. Rosa, J.S.C., Chair
Hon. Fred H. Kumpf, J.S.C., Vice Chair

Mary Braunschweiger, Civ. Div. Mgr.
Felipe Chavana, Esq.
Hon. Susan L. Claypoole, J.S.C.
I. Mark Cohen, Esq.
Gregory G. Diebold, Esq.
JoAnn Ezze, Asst. Civ. Div. Mgr.
Gerard J. Felt, Esq.
Eric H. Fields, Court Officer
Lloyd Garner, Esq., Asst. Civ. Div. Mgr.
Hon. Melvin L. Gelade, J.S.C.
Tracey Goldstein, Esq.
Joanne Gottesman, Esq.
Linda G. Hampton, Esq.
Kennon Jenkins, Court Officer
Adolfo L. Lopez, Esq.
Richard A. Mastro, Esq.
David G. McMillin, Esq.
Jonathan Mehl, Esq.
Raymond F. Meisenbacher, Jr., Esq.
Hon. David W. Morgan, J.S.C.
Hon. Steven F. Nemeth, J.S.C.
Hon. Maryann L. Nergaard, J.S.C.
W. Peter Ragan, Sr., Esq.
Hon. Ned M. Rosenberg, J.S.C.
Hon. Barry P. Sarkisian, J.S.C.
Stephen E. Smith, Esq.
Clara Son, Esq.
Andrew R. Wolf, Esq.
Robert J. Piscopo, AOC Staff
Robert D. Pitt, Esq., AOC Staff