SECTION III

New Jersey Law Journal

Supreme Court Committee Reports

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Civil Practice Committee Report

1994 REPORT OF
THE SUPREME COURT
COMMITTEE ON CIVIL PRACTICE

January 18, 1994

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I. PROPOSED RULE AMENDMENTS RECOMMENDED (other than amendments solely to remove gender-specific references)

A. Proposed Amendments to R. 1:2-3 -- Exhibits

In response to an attorney's suggestion that the rules establish a standard procedure for the return of trial exhibits, the Committee proposes an amendment to *R.* 1:2-3 to make it clear that evidence ordinarily shall be returned to the proponent and so stated on the record, to be preserved pending appeal and to be made available to any party for inclusion in the record on appeal.

The proposed amendments to *R.* 1:2-3 follow:1:2–3. Exhibits

The verbatim record of the proceedings shall include references to all exhibits and, as to each, the offering party, a short description of the exhibit stated by the offering party or the court, and the marking directed by the court[, and also a record of the exhibits retained by the court at the end of the action and of the disposition then made of the other exhibits]. Following the conclusion of trial, evidence shall be returned to the proponent and so acknowledged on the record unless the court otherwise orders. The record shall note any exhibits retained by the court. All evidence shall be preserved pending direct appeal and proceedings on certification, and shall be made available for inclusion by any party in the record on appeal.

[In criminal cases following conviction evidence shall be returned to the proponent and acknowledged on the record unless, in exceptional circumstances based on good cause shown, the trial judge orders the evidence retained by the clerk. All evidence, following conviction, shall be retained pending direct appeal and proceedings on certification unless ordered by the court.]

Note: Source—R.R. 3:7–5A, 4:45B; amended November 2, 1987 to be effective January 1, 1988; amended to be effective .

B. Proposed Amendments to R. 1:4-9 -- Size, Weight and Format of Filed Papers

In response to a proposal from Mayor Sharpe James of Newark, the Committee recommends amending *R.* 1:4-9 to promote more ecologically responsible use of paper by explicitly permitting use of recycled paper and two-sided copying in court documents, provided legibility is maintained.

The proposed amendments to *R.* 1:4-9 follow:1:4–9. Size, Weight and Format of Filed Papers

Except as otherwise provided by R. 2:6–10, pleadings and other papers filed with the court, including letter briefs and memoranda but excluding preprinted legal forms and documentary exhibits, shall

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be prepared on letter size (approximately 8½ × 11 inches) paper of customary weight and quality and shall be double spaced with a type size of pica or larger. Both sides of the paper and recycled paper may be used, provided legibility can be maintained.

Note: Source—R.R. 1:27C; caption and text amended June 29, 1990 to be effective September 4, 1990; amended to be effective .

C. Proposed Amendments to R. 1:5-2 -- Manner of Service

An attorney suggested a revision of *R.* 1:5-2 expressly authorizing service by mail addressed to a post office box. Often, a post office box is the only known or ascertainable address for a party. In certain areas, too, the post office will not deliver to a street address. Accordingly, in conjunction with its proposed revision of the rules governing service of process, the Committee recommends the suggested amendment of *R.* 1:5-2. See section I. O., below.

The proposed amendments to *R.* 1:5-2 follow:1:5-2. Manner of Service

Service upon an attorney of papers referred to in R. 1:5-1 shall be made by mailing a copy to [him] the attorney at his or her office by ordinary mail, by handing it to [him] the attorney, or by leaving it at [his] the office with a person in [his] the attorney's employ, or, if [his] the office is closed or [he] the attorney has no office, in the same manner as service is made upon a party. Service upon a party of such papers shall be made as provided in R. 4:4-4 or by registered or certified mail, return receipt requested, to [his] the party's last known address; or if the party refuses to claim or to accept delivery, by ordinary mail to [his] the last known address; or if no address is known, by ordinary mail to the clerk of the court. Mail may be addressed to a post office box in lieu of a street address only if the sender cannot by diligent effort determine the addressee's street address or if the post office does not make street-address delivery to the addressee. Where mailed service is made upon a party, the modes of service may be made simultaneously.

Note: Source—R.R. 1:7-12(d), 1:10-10(b), 1:11-2(c), 2:11-2(c), 3:11-1(b), 4:5-2(a) (first four sentences); amended July 16, 1981 to be effective September 14, 1981; amended to be effective .

D. Proposed Amendments to R. 1:5-4 -- Service by Mail: When Complete

The Committee proposes two amendments to *R.* 1:5-4. The first, to paragraph (b), excepts motions from the provision making mailed service complete upon mailing by ordinary mail. This is in accordance with proposed amendments to *R.* 1:6-3, which would make service of motion papers complete upon receipt. See section I. G., below.

The second proposed amendment, adding new paragraph (c), recognizes the common practice among attorneys of using an overnight or same-day express delivery service to serve papers. Under the present rule, service is complete only upon mailing or actual receipt. Thus, transmission to a commercial courier does not now constitute completed service, even though such operations are quicker and often more reliable than the mail. The Committee is of the view that the convenience and dependability of commercial couriers, as defined within the proposed amendment, support adoption of a provision making service complete upon the courier's receipt of the paper from the sender.

The proposed amendments to *R.* 1:5-4 follow:1:5-4. Service by Mail or Courier: When Complete

(a) ...no change

(b) Service Complete on Mailing. Except for motions, which are governed by R. 1:6-3, [S]service by mail of any paper referred to in R. 1:5-1, when authorized by rule or court order, shall be complete upon mailing of the ordinary mail. If no ordinary mailing is made, service shall be deemed complete upon the date of acceptance of the certified or registered mail.

(c) Service by Commercial Courier. Service by a commercial courier of a paper referred to in R. 1:5-1, except for motions, which are governed by R. 1:6-3, shall be complete upon the courier's receipt of the paper from the sender, provided the courier's regular business is delivery service, and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender.

Note: Source—R.R. 4:5-2(a) (fifth sentence). Paragraph (a) adopted and former rule designated (b) June 29, 1973 to be effective September 10, 1973; amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended and paragraph (c) added to be effective .

E. Proposed Amendments to R. 1:5-6 -- Filing

The Committee proposes two substantive changes to *R.* 1:5-6. The first, in response to a recommendation from the Conference of Civil Presiding Judges and the Conference of Civil Division Managers, would permit the clerk to return as non-conforming an answer presented by a defendant against whom default has already been entered. At present, an answer from a defaulted defendant must be accepted for filing. A case will not be scheduled for dismissal under *R.* 1:13-7, however, if an answer -- even one submitted by a defaulted defendant -- has been filed. Consequently, such a case will linger in limbo awaiting the plaintiff's application for default judgment, which may come after six months or a year, or never. The proposed amendment calls for the clerk to return the answer with a notice that defendant may move to vacate the default. The case may then be dismissed for lack of prosecution if, after six months, the default has not been vacated and the plaintiff has not applied for default judgment.

The second proposed amendment to the rule would start the ten-day "cure" period for non-conforming papers at the date of the clerk's deficiency notice rather than on the date the clerk received the deficient pleading. This change addresses delays that sometimes occur in the clerk's office, between receipt of a deficient pleading and notice of the deficiency sent to the attorney or party submitting the pleading. The practice followed in most counties, in fact, allows ten days from the date of the clerk's notice to cure the defect.

The Superior Court Clerk endorses both proposed amendments.

The proposed amendments to *R.* 1:5-6 follow:

1:5-6. Filing

(a) ...no change

(b) What Constitutes Filing With the Court: Copies. Except as otherwise stated in this rule or in R. 6:12-2 (filing in the Special Civil Part), a paper is filed with the trial court if the original is filed with the clerk of the court. In civil actions in the Superior Court a clear copy of each paper shall also be filed with the Clerk of the Superior Court, who shall forthwith forward the copy to the Clerk of the appropriate county. In probate actions the original of the paper shall be filed with the Surrogate of the appropriate county as deputy clerk of the Superior Court, Chancery Division, Probate Part. In all criminal actions, except those in a municipal court or in the Special Civil Part, papers shall be filed with the county clerk as deputy clerk of the Superior Court. Motion papers, orders to show cause, and orders in the trial divisions of the Superior Court shall be filed as prescribed by R. 1:6-4. In any case the judge or[, at the judge's chambers,] a member of [his or her] the judge's staff may accept papers for filing if they show filing date and the initials of the judge's name and office. The filed papers shall be forthwith forwarded to the clerk.

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules[. If, however], except that (1) if a paper is presented for filing without the Case Information Statement required by R. 4:5-1 or without payment of the required filing fee, the clerk shall return the same stamped "Received but not Filed (date)" with notice that if the paper is retransmitted together with the Case Information Statement or filing fee, as appropriate, within ten days after the [receipt date stamped thereon] date of the clerk's notice, filing will be deemed to have been made on [said] the stamped receipt date; and (2) if an answer is presented by a defendant against whom default has been entered, the clerk shall return the same stamped "Received but not Filed (date)" with notice that the defendant may move to vacate the default.

(d) ...no change

Note: Source—R.R. 1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a) (first and second sentences), 4:5-7 (first sentence), 5:5-1(a). Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended to be effective .

F. Proposed Amendments to R. 1:6-2 -- Form of Motion; Hearing

In the last term, the Committee deferred consideration of an attorney's suggestion that the "phone call requirement" be eliminated from *R.* 1:6-2(c). The current rule demands that a discovery or calendar motion be accompanied by a certification stating that the movant's attorney has conferred orally (or has made a good faith attempt to confer orally) with the adversary in an effort to resolve the problems that are the subject of the motion, and that this effort at resolution has been unsuccessful. In theory, this requirement provides a mechanism for resolving the dispute and obviating the need for the motion. The majority of the Committee is of the view that in practice the requirement is ineffective and often results in a frustrating game of telephone tag. Nonetheless, the Committee does not favor eliminating the consultation requirement altogether. Rather, it proposes an amendment permitting either an oral consultation or a written offer to confer.

A similar amendment is proposed to *R.* 4:23-5(a)(1), regarding the motion to dismiss without prejudice for failure to answer interrogatories. See section I. W., below.

The proposed amendments to *R.* 1:6-2 follow:1:6-2. Form of Motion; Hearing

(a) ...no change

(b) ...no change

(c) Civil and Family Part Discovery and Calendar Motions. Every motion in a civil case or a case in the Chancery Division, Family Part, not governed by paragraph (b), involving any aspect of pretrial discovery or the calendar, shall be listed for disposition only if accompanied by a certification stating that the attorney for the moving party has either (1) personally conferred orally or has made a specifically described good faith attempt to confer orally with the attorney for the opposing party in order to resolve the issues raised by the motion by agreement or consent order and that such effort at resolution has been unsuccessful, or (2) advised the attorney for the opposing party by letter, after the default has occurred, that continued non-compliance with a discovery obligation will result in an appropriate motion being made without further notice. The moving papers shall also set forth the date of pretrial conference, calendar call or trial date, or state that no such dates have been fixed. Discovery and calendar motions shall be disposed of on the papers unless, on at least two days notice, the court specifically directs oral argument on its own motion or, in its discretion, on a party's request. A movant's request for oral argument shall be made either in the moving papers or reply; a respondent's request for oral argument shall be made in the answering papers.

(d) ...no change

(e) ...no change

(f) ...no change

Note: Source—R.R. 3:11-2, 4:8-5(a) (second sentence). Amended July 14, 1972 to be effective September 5, 1972; amended November 27, 1974 to be effective April 1, 1975; amended July 24, 1978 to be effective September 11, 1978; former rule amended and redesignated as paragraph (a) and paragraphs (b), (c), (d), and (e) adopted July 16, 1981 to be effective September 14, 1981; paragraph (c) amended July 15, 1982 to be effective September 13, 1982; paragraph (c) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a) and (c) amended and paragraph (f) adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended and paragraph (d) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended to be effective .

G. Proposed Amendments to R. 1:6-3 -- Time for Serving and Filing Motions, Cross Motions and Affidavits

For some time, the Committee has grappled with a very real problem faced by practitioners. When motion papers are served by mail fourteen days prior to the return date, the responding party might not actually receive the papers for several days, leaving insufficient time to prepare answering papers and serve them eight days before the return date, as *R.* 1:6-3 requires. Even if actual delivery occurs fourteen days before the return date, this could be at 4:58 p.m. on a Friday, after the attorney or the secretary has left the office, thus effectively postponing work on the response until the following Monday. This problem affects the court as well, in the form of a constant stream of requests to adjourn motions. The Motions Subcommittee, chaired by the Hon. Maurice J. Gallipoli, studied the problem and proposed a solution that the full Committee endorses. The solution calls for amending *R.* 1:6-3 to provide:

1) that motion papers must be served and filed sixteen days prior to the return date;
2) that service of motion papers is complete only on receipt; and
3) that if service is by ordinary mail, receipt will be presumed on the third business day after mailing.

See section I. D., above, for related proposed amendments to *R.* 1:5-4.

The proposed amendments to *R.* 1:6-3 follow:

1:6-3. Time for Serving and Filing Motions, Cross Motions and Affidavits

Except as otherwise provided by R. 4:46-1 (motion for summary judgment) and R. 5:5-4(b) (post judgment motions), a notice of motion, other than an ex parte motion, shall be served and filed not later than [14] 16 days before the time specified for the return date unless otherwise provided by rule or court order. For cause shown, such an order may be made on ex parte application. For example, a motion must be served and filed on Wednesday for a motion date falling on Friday sixteen days later. If a motion is supported by affidavit or certification, the affidavit or certification shall be served and filed with the motion; and, except as provided by R. 4:49-1(b) (motion for new trial), any opposing affidavits [and], certifications, cross-motions or objections filed pursuant to R. 1:6-2 shall be served and filed not later than 8 days before the return date unless the court permits them to be served at a later time. For example, a response must be served and filed on Thursday for a motion date falling on Friday of the following week. Answers or responses to any opposing affidavits, certifications and cross-motions shall be served and filed not later than 4 days before the return date unless the court otherwise orders. For example, such papers would have to be served and filed on Monday for a motion date falling on Friday of the same week. For purposes of this rule, service of motion papers is complete only on receipt at the office of adverse counsel or the address of a pro se party. See R. 1:5-4(b). If service is by ordinary mail, receipt will be presumed on the third business day after mailing.

Note: Source—R.R. 3:11-1, 4:6-3(a); amended July 24, 1978 to be effective September 11, 1978; amended July 16, 1979 to be effective September 10, 1979; amended July 16, 1981 to be effective September 14, 1981; amended November 1, 1985 to be effective January 2, 1986; amended June 29, 1990 to be effective September 4, 1990; amended to be effective .

H. Proposed Amendments to Rules 1:10-1, 1:10-2. 1:10-3, 1:10-4, 1:10-5 and 2:9-5 -- re Contempt

The Subcommittee on Summary Contempt, chaired by the Hon. Sylvia B. Pressler, was established to consider the Law Revision Commission's *Tentative Report on Contempt*. The subcommittee's concern was that the tentative draft revision of the summary contempt statute, *N.J.S.A.* 2A:10-1 to -8, would, by requiring a separate hearing and adjudication in every case and the right to counsel in some, strip the court of its power to respond peremptorily to contempt *in facia curiae*. The subcommittee met with John Cannel, Executive Director of the Law Revision Commission, and Maureen Garde, counsel to the Commission, and prepared proposed amendments to *R.* 1:10 that would leave intact the court's power to take immediate adjudicative and dispositional action in response to egregious conduct and threats to its integrity and safety, while addressing possible perceived abuse of the summary contempt power.

The full Committee considered and unanimously approved the subcommittee's proposal at a meeting that Mr. Cannel and Ms. Garde attended. The Committee takes the position that the issue of contempt *in facie curiae* is historically an area of judicial concern and as such should best be dealt with by court rule. In addition to the proposed amendments to the rules governing contempt, the Committee also recommends that an administrative directive be issued requiring judges making findings of summary contempt to report these to the Administrative Office of the Courts, so that the extent of the procedure's use can be monitored.

The report of the Subcommittee on Summary Contempt is included as Appendix A to this report.

The proposed amendments to *Rules* 1:10-1, 1:10-2, 1:10-3, 1:10-4, 1:10-5 and 2:9-5 follow:

1:10-1. Summary Contempt in Presence of Court

[Contempt in the actual presence of a judge may be adjudged summarily by the judge without notice or order to show cause. The order of contempt shall recite the facts and contain a certification by the judge that he saw or heard the conduct constituting the contempt.]

A judge conducting a judicial proceeding may adjudicate contempt summarily without an order to show cause if:

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(a) the conduct has obstructed, or if continued would obstruct, the proceeding;
(b) the conduct occurred in the actual presence of the judge, and was actually seen or heard by the judge;
(c) the character of the conduct or its continuation after an appropriate warning demonstrates its willfulness;
(d) immediate adjudication is necessary to permit the proceeding to continue in an orderly and proper manner; and
(e) the judge has afforded the alleged contemnor an immediate opportunity to respond.

e order of contempt shall recite the facts and contain a certification by the judge that he or she saw or rd the conduct constituting the contempt and that the contemnor was willfully contumacious. nishment may be determined forthwith or deferred. Execution of sentence shall be stayed for five days lowing imposition and, if an appeal is taken, during the pendency of the appeal, provided, however, that judge may require bail if reasonably necessary to assure the contemnor's appearance.

Note: Source—R.R. 4:87-1, 8:8; amended to be effective .

0-2. [Institution of Proceedings]Summary Contempt Proceedings on Order to Show Cause or Order for Arrest

(a) Institution of Proceedings. Every [other] summary proceeding to punish for contempt er than proceedings under R. 1:10-1 shall be on notice and instituted only by the court upon an order arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. e proceedings shall be captioned "In the Matter of _____ Charged with Contempt of Court."

(b) Release Pending Hearings. A person charged with contempt under R. 1:10-2 shall be dmitted to bail pending the hearing.] released on his or her own recognizance pending the hearing unless judge determines that bail is reasonably necessary to assure appearance. The amount and sufficiency bail shall be reviewable by a single judge of the Appellate Division.

(c) Prosecution and Trial. A proceeding under R. 1:10-2 may be prosecuted on behalf of court only by the Attorney General, the County Prosecutor of the county or, where the court for good use designates an attorney, then by the attorney so designated. Except with the consent of the person harged, the matter may not be heard by the judge allegedly offended or whose order was allegedly ntemned. Unless there is a right to a trial by jury, the court in its discretion may try the matter without jury. If there is an adjudication of contempt, the provisions of R. 1:10-1 as to stay of execution of ntence shall apply.

Note: Source—R.R. 4:87-2; former R. 1:10-2 redesignated R. 1:10-2(a), former R. 1:10-3 mended, recaptioned and redesignated R. 1:10-2(b) and former R. 1:10-4 amended, recaptioned and designated R. 1:10-2(c) to be effective .1:10-3.

[Bail Pending Hearings]

[A person charged with contempt under R. 1:10-2 shall be admitted to bail pending the hearing. he amount and sufficiency of bail shall be reviewable by a single judge of the Appellate Division.]

[Note: Source—R.R. 4:87-3.]

1:10-4. Contempt; Prosecution; Trial]

[A proceeding under R. 1:10-2 may be prosecuted on behalf of the court only by the Attorney eneral, the County Prosecutor of the county, or where the court for good cause designates an attorney, hen by the attorney so designated. Except with the consent of the person charged, the matter may not be eard by the judge allegedly offended or whose order was allegedly contemned. Unless there is a right a trial by jury, the court in its discretion may try the matter without a jury.]

[Note: Source—R.R. 4:87-4. Amended July 7, 1971 to be effective September 13, 1971.]

1:10-5.] Relief to Litigant

Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any ction may seek relief by application in the action. A judge shall not be disqualified because he or she igned the order sought to be enforced. If an order entered on such an application provides for ommitment, it shall specify the terms of release. The court in its discretion may make an allowance for ounsel fees to be paid by any party to the action to a party accorded relief under this rule. An application y a litigant may be tried with a proceeding under R. 1:10-2(a) only with the consent of all parties and ubject to the provisions of [R. 1:10-4] R. 1:10-2(c).

Note: Source—R.R. 4:87-5; amended July 26, 1984 to be effective September 10, 1984; former R. 1:10-3 recaptioned and redesignated R. 1:10-2(b), former R. 1:10-4 recaptioned and redesignated R. 1:10-2(c), and former R. 1:10-5 amended and redesignated R. 1:10-3 to be effective .

2:9-5. Stay of Judgment in Civil Actions and in Contempts

(a) Stay on Order; Bond or Cash Deposit. Except as otherwise provided by R. 1:10 (Contempt), [N]neither an appeal, nor motion for leave to appeal, nor a proceeding for certification, nor any other proceeding in the matter shall stay proceedings in any court in a civil action or summary contempt proceeding, but a stay with or without terms may be ordered in any such action or proceeding in accordance with R. 2:9-5(b). If a stay is denied after conviction in a summary contempt proceeding, bail shall be allowed as provided by R. 2:9-4. A judgment or order in a civil action adjudicating liability for a sum of money or the rights or liabilities of parties in respect of property which is the subject of an appeal or certification proceedings shall be stayed only upon the posting of a bond pursuant to R. 2:9-6 or a cash deposit pursuant to R. 1:13-3(c) unless the court otherwise orders on good cause shown. Such posting or deposit may be ordered by the court as a condition for the stay of any other judgment or order in a civil action.

(b) ...no change

Note: Source—R.R. 1:4-5, 1:4-6, 1:4-7, 1:10-6(b), 2:4-3 (first three sentences). Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended to be effective .

I. Proposed Amendments to R. 1:13-9 -- Amicus Curiae

The Clerk of the Supreme Court proposed amendments to specify certain requirements for *amicus* briefs. The Committee endorses such amendments.

The proposed amendments to *R.* 1:13-9 follow:1:13-9. Amicus Curiae

(a) Motion; Grounds for Relief. An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall define with specificity the permitted extent of participation by the amicus and shall, where appropriate, fix a briefing schedule. An amicus curiae who has been granted leave to appear in a cause may, without seeking further leave, file a brief in an appeal taken to any court from the judgment therein entered.

(b) Format of Briefs; Covers. Briefs filed by an amicus curiae shall comply with the format requirements of R. 2:6-10. The cover of each such brief shall be green.

(c) Number of Copies. Two copies of the brief shall be served on each party. In the trial courts, one copy shall be filed with the trial judge. In the Appellate Division, five copies shall be filed with the clerk of that court. In the Supreme Court, nine copies shall be filed with the clerk of that court.

Note: Adopted July 16, 1979 to be effective September 10, 1979; paragraph (a) caption added and new paragraphs (b) and (c) added to be effective .

J. Proposed Amendments to R. 1:21-1 -- Who May Practice; Appearance in Court

The New Jersey Corporate Counsel Association suggested an amendment to *R.* 1:21-1(c) to make it clear that corporations may be represented by in-house attorneys, both in and out of court. The Committee agrees that such representation is permissible and proposes revising *R.* 1:21-1 accordingly.

Further, the Communications Workers of America and the Public Employment Relations Commission support an amendment to *R.* 1:21-1(e), proposed by the Attorney General's Office, that would permit non-attorney union representatives to represent union employees in certain adversarial proceedings before the New Jersey Public Employment Relations Commission, a long-standing practice. The Committee endorses such an amendment, and proposes new subsection (9) to *R.* 1:21-1(e).

The proposed amendments to *R.* 1:21-1 follow:

1:21-1. Who May Practice; Appearance in Court

(a) ...no change

(b) ...no change

(c) Prohibition on Business Entities. Except as otherwise provided by paragraph (d) of this rule and by R. 1:21-1A (professional corporations), R. 6:10 (appearances in landlordtenant actions), R. 6:11 (appearances in small claims actions), R. 7:4-2(b) (pleas in municipal court), R. 7:4-4(a) (presence of defendant in municipal court) and by R. 7:7-4 (municipal court violations bureau), a business entity other than a sole proprietor shall [not] neither appear nor file any paper in any action in any court of this State except through an attorney authorized to practice in this State. [The fact that an officer, trustee, director, agent or employee of a corporation shall be an attorney authorized to practice in this State shall not be held to entitle such individual or corporation to do any act prohibited by these rules.]

(d) ...no change

(e) Appearances Before Office of Administrative Law and Administrative Agencies. Subject to such limitations and procedural rules as may be established by the Office of Administrative Law, an appearance by a non-attorney in a contested case before the Office of Administrative Law or an administrative agency may be permitted, on application, in any of the following circumstances:

(1) ...no change
(2) ...no change
(3) ...no change
(4) ...no change
(5) ...no change
(6) ...no change
(7) to assist an individual who is not represented by an attorney provided (i) the presentation appears likely to be enhanced by such assistance, (ii) the individual certifies that he or she lacks the means to retain an attorney and that representation is not available through a Legal Services program and (iii) the conduct of the proceeding by the Office of Administrative Law will not be impaired by such assistance;
(8) ...no change
(9) to represent union members in proceedings before the Office of Administrative Law, the Department of Personnel, and the Public Employment Relations Commission, provided the appearance is by a union representative.

Note: Source—R.R. 1:12-4(a) (b) (c) (d) (e) (f). Paragraph (c) amended by order of December 16, 1969 effective immediately; paragraphs (a) and (c) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (a) amended September 21, 1981 to be effective immediately; paragraph (c) amended and paragraph (d) adopted July 15, 1982 to be effective September 13, 1982; paragraph (a) amended August 13, 1982 to be effective immediately; paragraph (e) adopted July 22, 1983 to be effective September 12, 1983; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended and paragraph (d) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended and paragraph (e)(8) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (c), (e), and (e)(7) amended, and paragraph (e)(9) added to be effective .

K. Proposed Amendments to Rules 1:21-7 and 4:42-11 -- re Contingent Fees

In response to repeated requests to consider amendments to various aspects of the contingent fee rule, the Committee established in the previous term a Subcommittee on Contingent Fees, chaired by Harold A. Sherman, Esq. The work of the subcommittee carried over into the current term and included the preparation, receipt and analysis of questionnaires sent to all other states concerning restrictions on contingent fees generally, and in particular types of cases. The results of this survey indicate that New Jersey is one of only four states that impose general restrictions on the award of contingent fees.

The subcommittee proposed and the Committee unanimously (with one abstention) recommends the following amendments to *R.* 1:21-7:

- Inclusion of prejudgment interest in the contingent fee calculation. Allowance of prejudgment interest "...is compensatory, to indemnify the claimant for the loss of what the moneys due him would presumably have earned if payment had not been retained." *Busik v. Levine*, 63 *N.J.* 351, 358 (1987). When an attorney is paid at the close of a case under a contingent fee arrangement rather than being paid as legal services are rendered, the attorney suffers the same loss of the interest that the moneys due him would have earned as does the client. Moreover, an attorney in a case handled under a contingent fee arrangement traditionally advances substantial sums of money for litigation expenses that are not reimbursed until the conclusion of the case. Therefore, in the view of the Committee, including prejudgment interest in the contingent fee calculation will offset attorneys' losses suffered and expenses incurred. In addition, this proposed rule amendment would eliminate the present perceived inconsistency in the calculation of contingent fees between cases that are settled and those that are tried to verdict. The inconsistency is viewed as anomalous since greater attorney effort is ordinarily involved in trying the case to judgment than in settling. This amendment necessitates a companion amendment to *R.* 4:42-11(b).
- Elimination of the disparate calculation of contingent fees in cases involving minors or incompetents. At present, contingent fees in cases involving minor or incompetent plaintiffs is limited to 25%. Neither the subcommittee nor the Committee found any rationale for this limitation -- quite the opposite. When the client is a minor or incompetent, the costs of preparing the case and of the post-settlement work that is required are often substantially greater than in cases involving adult, competent clients. Further, court review of every settlement in such cases, which is required by rule and statute, will protect these clients.
- Elimination of the current sliding scale and adoption of a fixed formula for calculating contingent fees -- 33⅓% on the first million recovered, 20% thereafter -- that would neither require nor permit application to the court for allowance of fees in excess of those provided by the formula. It should be noted that this proposal does away with the present necessity for the court to fix fees on amounts awarded in excess of one million dollars. As to the formula proposed, if adopted, it would still provide New Jersey with the lowest contingent fee structure in the nation. As to the removal of any opportunity for an attorney to apply to the court to establish fees in excess of those permitted under the rule and on awards over one million dollars, both the subcommittee and the Committee conclude that such applications are extremely destructive of the attorney-client relationship and should be eliminated.

The report and supplemental report of the Subcommittee on Contingent Fees are included as Appendix B to this report.

See section III. B., below, for discussion of the Committee's rejection of a proposal to alter the retainer agreement.

The proposed amendments to *Rules* 1:21-7 and 4:42-11 follow:1:21-7.

Contingent Fees

(a) ...no change

(b) An attorney shall not enter into a contingent fee arrangement without first having advised the client of the right and afforded the client an opportunity to retain [him] the attorney under an arrangement [whereby he would be compensated] for compensation on the basis of the reasonable value of [his] the services.

(c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims, and the client is not a subrogee, an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits:

(1) 33⅓% on the first [$250,000] $1,000,000 recovered;
(2) [25%] 20% on [the next $250,000 recovered] all amounts in excess thereof;
[(3) 20% on the next $500,000 recovered; and
(4) on all amounts recovered in excess of the above by application for reasonable fee in accordance with the provisions of paragraph (f) hereof; and]

(3) [(5)] where the amount recovered is for the benefit of a client who was a[n infant] minor or incompetent when the contingent fee arrangement was made, the foregoing limits shall apply[, except that the fee on any amount recovered by settlement without trial shall not exceed 25%].

(d) The permissible fee provided for in paragraph (c) shall be computed on the net sum recovered after deducting disbursements in connection with the institution and prosecution of the claim, whether advanced by the attorney or by the client, including investigation expenses, expenses for expert or other testimony or evidence, and the cost of briefs and transcripts on appeal[, and any interest included in a judgment pursuant to R. 4:42-11(b)]; but no deduction need be made for pre-judgment or post-judgment interest or for liens, assignments or claims in favor of hospitals or for medical care and treatment by doctors and nurses, or similar items. The permissible fee shall include legal services rendered on any appeal or review proceeding or on any retrial, but this shall not be deemed to require an attorney

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Civil Practice

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to take an appeal. Where representation is undertaken on behalf of both a husband and wife or parent (or guardian) and child in a derivative action, or where a claim for wrongful death is joined with a claim on behalf of a decedent, the contingent fee shall be calculated on the aggregate sum of the recovery.

(e) ...no change

[(f) If at the conclusion of a matter an attorney considers the fee permitted by paragraph (c) to be inadequate, an application on written notice to the client may be made to the Assignment Judge for the hearing and determining of a reasonable fee in light of all the circumstances. A copy of any such application and of all papers filed in support of or in opposition thereto, together with a copy of the court order fixing the fee shall be filed with the Administrative Office of the Courts. This rule shall not preclude the exercise of a client's existing right to a court review of the reasonableness of an attorney's fee.]

(f) [(g)] Where the amount of the contingent fee is limited by the provisions of paragraph (c) of this rule, the contingent fee arrangement shall be in writing, signed both by the attorney and the client, and a signed duplicate shall be given to the client. Upon conclusion of the matter resulting in a recovery, the attorney shall prepare and furnish the client with a signed closing statement. Such contingent fee arrangement and closing statement, if any, shall be in the form prescribed by the Administrative Director of the Courts.

(g) [(h)] Calculation of Fee in Structured Settlements. As used herein the term "structured settlement" refers to the payment of any settlement between the parties or judgment entered pursuant to a proceeding approved by the Court, the terms of which provide for the payment of the funds to be received by the plaintiff on an installment basis. For purposes of paragraph (c), the basis for calculation of a contingent fee shall be the value of the structured settlement as herein defined. Value shall consist of any cash payment made upon consummation of the settlement plus the actual cost to the party making the settlement of the deferred payment aspects thereof. In the event that the party paying the settlement does not purchase the deferred payment component, the actual cost thereof shall be the actual cost assigned by that party to that component. For further purposes of this rule the party making the settlement shall disclose to the party receiving the settlement its actual cost and, if it does not purchase the deferred payment aspect of the settlement, the factors and assumptions used by it in assigning actual cost.

(h) [(i)] Calculation of Fee in Settlement of Class or Multiple Party Actions. When representation is undertaken on behalf of several persons whose respective claims, whether or not joined in one action, arise out of the same transaction or set of facts or involve substantially identical liability issues, the contingent fee shall be calculated on the basis of the aggregate sum of all recoveries, whether by judgment, settlement or both, and shall be charged to the clients in proportion to the recovery of each. [Counsel may, however, make application for modification of the fee pursuant to paragraph (f) of this rule in appropriate cases.]

Note: Source R. 1:21-6(f), as adopted July 7, 1971 to be effective September 13, 1971 and deleted December 21, 1971 to be effective January 31, 1972. Adopted December 21, 1971 to be effective January 31, 1972. Amended June 29, 1973 to be effective September 10, 1973. Paragraphs (c) and (e) amended October 13, 1976, effective as to contingent fee arrangements entered into on November 1, 1976 and thereafter. Closing statements on all contingent fee arrangements filed as previously required between January 31, 1972 and January 31, 1973 shall be filed with the Administrative Office of the Courts whenever the case is closed; paragraph (c) amended July 29, 1977 to be effective September 6, 1977; paragraph (d) amended July 24, 1978 to be effective September 11, 1978; paragraph (c) amended and new paragraphs (h) and (i) adopted January 16, 1984, to be effective immediately; paragraph (d) amended July 26, 1984 to be effective September 10, 1984; paragraph (e) amended June 29, 1990 to be effective September 4, 1990.; paragraphs (b), (c) and (d) amended, paragraph (f) deleted and former paragraphs (g), (h) and (i) redesignated (f), (g) and (h) respectively to be effective .

4:42-11. Interest; Rate on Judgments; in Tort Actions

(a) ...no change

(b) Tort Actions. Except where provided by statute with respect to a public entity or employee, and except as otherwise provided by law, the court shall, in tort actions, including products liability actions, include in the judgment simple interest, calculated as hereafter provided, from the date of the institution of the action or from a date 6 months after the date the cause of action arises, whichever is later, provided that in exceptional cases the court may suspend the running of such prejudgment interest. Prejudgment interest shall be calculated in the same amount and manner provided for by paragraph (a) of this rule except that for all periods prior to January 1, 1988 interest shall be calculated at 12% per annum. [The contingent fee of an attorney shall not be computed on the interest so included in the judgment.]

Note: Adopted December 21, 1971 to be effective January 31, 1972. Paragraph (b) amended June 29, 1973 to be effective September 10, 1973; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a) and (b) amended July 29, 1977 to be effective September 6, 1977; paragraphs (a) and (b) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 2, 1987 to be effective January 1, 1988; paragraph (b) amended to be effective .

Publisher's Note

Pursuant to paragraph (a)(ii) of Rule 4:42-11, the annual rate of interest commencing January 2, 1986 and for the remainder of 1986 was 9.5%; the rate for calendar year 1987 was 7.5%; the rate for calendar year 1988 was 6%; the rate for calendar year 1989 was 7%; the rate for calendar year 1990 was 8%; the rate for calendar year 1991 was 8.5%; the rate for calendar year 1992 is 7.5%; the rate for calendar year 1993 will be 5.5%.

L. Proposed Amendments to Rules 1:36-1, 1:36-2 and 1:36-3 -- re Publication of Opinions

The Subcommittee on Publication of Opinions, chaired by the Hon. Richard S. Cohen, studied the process by which opinions are selected for publication. In its final report to the Committee, the subcommittee did not recommend an expansion of the Committee on Opinions. It did, however, recommend that bar input into the process be facilitated; that the standards for publication be made public; that the Committee on Opinions should ordinarily have no role in deciding which Appellate Division opinions should be published; and that trial court opinions should be considered for publication only after the period for appeal has expired or the appeal has been decided.

The Committee adopted these recommendations, with two modifications:

1) with respect to Appellate Division opinions, the majority of the Committee voted that the Appellate Division Part should have the final say as to those cases for which the Committee of Opinions wishes to publish an opinion and the Part does not; and
2) with respect to trial court opinions, publication of opinions on appeal should be permitted in exceptional circumstances.

The proposed amendments to *Rules* 1:36-1 and 1:36-2 incorporate the subcommittee's recommendations as modified in discussion by the full Committee.

With respect to the proposed amendments to *R.* 1:36-3, the Supreme Court requested the preparation of an amendment that would prohibit the use of unpublished opinions by counsel, which prohibition would be co-extensive with existing limitations on the citation of unpublished decisions in court opinions.

The report of the Subcommittee on Publication of Opinions is included as Appendix C to this report.

The proposed amendments to *Rules* 1:36-1, 1:36-2 and 1:36-3 follow:

1:36-1. Filing of Opinions

The original of each written opinion handed down in each court, including letter opinions and memorandum decisions, shall be filed with the clerk of the court in which rendered and copies thereof shall be sent to counsel and, on all appeals, to the court or agency below. [All opinions, except those of the Supreme Court,] Opinions of the Appellate Division shall have typed or stamped thereon the following notice: "Not for Publication Without the Approval of the Appellate Division." Opinions of the trial courts shall have typed or stamped thereon the following notice: "Not for Publication Without the Approval of the Committee on Opinions."

Note: Source—R.R. 1:32(a) (b); amended to be effective

1:36-2. Publication

[The Chief Justice shall appoint a Committee on Opinions which shall review all formal written opinions, except those of the Supreme Court, to determine which shall be approved for publication in any series of reports, official or unofficial. The Supreme Court shall fix appropriate standards to guide the Committee on Opinions in determining which opinions shall be approved for publication. Three plainly legible copies of each written opinion, excluding transcripts of oral determinations, opinion letters and memorandum decisions, shall be filed with the Administrative Office of the Courts for use of the Committee on Opinions. All opinions of the Supreme Court shall be published except where otherwise directed by the Court.]

(a) Appellate Opinions. All opinions of the Supreme Court shall be published except where otherwise directed by the Court. Opinions of the Appellate Division shall be published only upon the direction of the panel issuing the opinion.

(b) Committee on Opinions; Trial Court Opinions. The Chief Justice shall appoint a Committee on Opinions to review formal written opinions submitted for publication by a trial judge. Except in extraordinary circumstances, the Committee shall not review a trial court opinion until the time for appeal from the final judgment in the cause has expired. If an appeal has not been taken, the Committee shall determine whether to approve publication of the trial court opinion. If an appeal has been taken, the Appellate Division panel shall determine, when it decides the appeal, whether the trial court opinion shall be published. A trial judge submitting an opinion for review for publication shall file it with the Administrative Office of the Courts in triplicate with the notation on its face that it is being submitted for publication.

(c) Request for Publication. Any person may request publication of an opinion by letter to the Committee on Opinions explaining the basis of the request with specificity and with reference to the guidelines prescribed by paragraph (d). In the case of Appellate Division opinions, the Committee shall transmit the request to the presiding judge of the panel together with its recommendation, but the court shall retain the publication decision.

(d) Guidelines for Publication. An opinion in appropriate form, excluding letter opinions and transcripts of oral opinions, shall be published where the decision (1) involves a substantial question under the United States or New Jersey Constitution, or (2) determines a new and important question of law, or (3) changes, reverses, seriously questions or criticizes the soundness of an established principle of law, or (4) determines a substantial question on which the only case law in this State antedates September 15, 1948, or (5) is based upon a matter of practice and procedure not theretofore authoritatively determined, or (6) is of continuing public interest and importance, or (7) resolves an apparent conflict of authority, or (8) although not otherwise meriting publication, constitutes a significant and nonduplicative contribution to legal literature by providing an historical review of the law, or describing legislative history, or containing a collection of cases that should be of substantial aid to the bench and bar.

Note: Source—R.R. 1:32(c) (d); amended July 29, 1977, to be effective September 6, 1977; text deleted and paragraphs (a)(b)(c) and (d) substituted to be effective .

1:36-3. [Opinions Not Approved for Publication] Unpublished Opinions

No unpublished opinion shall constitute precedent or be binding upon any court. Except to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court or to any court. [No unpublished opinion shall be cited or to any court by counsel unless all other parties are served with a copy of the opinion and of all other relevant unpublished opinions known to counsel including those adverse to the position of his client].

Note: Adopted July 16, 1981 to be effective September 14, 1981; caption and rule amended to be effective .

M. Proposed Amendments to R. 1:39-6 -- Effect of Certification

The Committee was asked by a Certified Civil Trial Attorney to consider amending *R.* 1:39-6(d) to make it clear that a referral fee may be paid to the representatives of the estate of a deceased referring attorney. The Advisory Committee on Professional Ethics also considered the issue and advised that payment of such a referral fee is permissible. Accordingly, the Committee recommends clarifying, amendatory language to the rule.

The proposed amendments to *R.* 1:39-6 follow:1:39-6. Effect of Certification

(a) ...no change

(b) ...no change

(c) ...no change

(d) Division of Fees. A certified trial attorney who receives a case referral from a lawyer who is not a partner in or associate of the certified attorney's law firm or law office may divide a fee for legal services with the referring attorney or the referring attorney's estate. The fee division may be made without regard to services performed or responsibility assumed by the referring attorney, provided that the total fee charged the client relates only to the matter referred and does not exceed reasonable compensation for the legal services rendered therein.

Note: Adopted January 26, 1979 as Rule 1:39-7 to be effective April 1, 1979; amended and redesignated Rule 1:39-6 May 15, 1980 to be effective September 8, 1980; amended December 13, 1983 to be effective January 3, 1984; paragraph (d) adopted November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (d) amended to be effective .

N. Proposed Amendments to Rules 2:5-1, 2:5-3, 2:6-1, 2:6-2, 2:6-8, 2:6-10, 2:8-3, 2:11-3, 2:12-7 and 2:13-3 -- re Appellate Practice

The Committee recommends a package of amendments to numerous rules governing appellate practice. The Appellate Division Rules Committee, the Clerk of the Supreme Court and the Administrator of the Appellate Division were consulted in the preparation of these rules, as appropriate.

- *R.* 2:5-1: the proposed amendments to subsection (b) would make explicit the requirement that the appellant must forward to the judge who decided the matter below a copy of the notice of appeal with a copy of the Case Information Statement annexed. The amendments also specify the procedure for appeals from the Division of Workers' Compensation. The remaining amendments to subsections (b), (e) and (f) remove gender-specific references and correct references to the amended service rules.
- *R.* 2:5-3: the proposed amendments to subsection (e) require that a computer diskette of the transcript, in addition to a hard copy, be delivered to the court reporter supervisor and the clerk of the court to which the appeal is being taken. The remaining amendments throughout the rule remove gender-specific language.
- *R.* 2:6-1: the proposed amendments would require the jury verdict sheet, if any, to be included in the appendix to appellant's brief.
- *R.* 2:6-2: the proposed amendments conform the citation requirements of the rule to those of the Judiciary Style Manual.
- *R.* 2:6-8: the proposed amendments eliminate the requirement to provide line references when citing to a brief or appendix, consistent with previous amendments to *Rules* 2:6-1(b) and 2:6-2(a).
- *R.* 2:6-10: the proposed amendments permit a compressed format to be used when trial transcripts are submitted on appeal. An example of the compressed format authorized by the amendment is included as Appendix D to this report. See also section IV. D., below, for the Committee's recommendation on the use of a compressed format for deposition transcripts.
- *R.* 2:8-3: the proposed amendments make clear that the Supreme Court may summarily dispose of any appeal on its own motion.
- *R.* 2:11-3: the proposed amendments reformulate the standard for appellate affirmance in criminal cases, without discussion of meritless arguments.
- *R.* 2:12-7: the proposed amendments provide for alternative periods for calculating the time within which copies of the petition for certification must be served and filed.
- *R.* 2:13-3: The proposed amendments include Morristown as an authorized location for the Appellate Division to sit.

The proposed amendments to *Rules* 2:5-1, 2:5-3, 2:6-1, 2:6-2, 2:6-8, 2:6-10, 2:8-3, 2:11-3, 2:12-17 and 2:13-3 follow:2:5-1. Notice of Appeal; Order in Lieu Thereof; Case Information Statement

(a) ...no change

(b) Notice to Trial Judge or Agency. In addition to the filing of the notice of appeal the appellant shall mail a copy thereof, with a copy of the Case Information Statement annexed, by ordinary mail to the trial judge. If the appeal is taken directly from the decision or action of an administrative agency or officer, the appellant shall mail a copy of the notice of appeal, with a copy of the Case

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Information Statement annexed, to the agency or officer, except that if the appeal is taken from the Division of Workers' Compensation, a copy of the notice of appeal shall also be sent to the Workers' Compensation judge who decided the matter. Within 15 days thereafter, the trial judge, agency or officer, may file and mail to the parties an amplification of a prior statement, opinion or memorandum made [by him] either in writing or orally and recorded pursuant to R. 1:2-2. If [he has made] there is no such prior statement, opinion or memorandum, [he] the trial judge, agency or officer shall within such time file with the Clerk of the Appellate Division and mail to the parties a written opinion stating [his] findings of fact and conclusions of law. The appellate court shall have jurisdiction of the appeal notwithstanding a failure to give notice to the trial judge, agency or officer, as required by this rule.

(c) ...no change

(d) ...no change

(e) Service and Filing in Administrative Proceedings. An appeal to the Appellate Division to review the decision, action or administrative rule of any state administrative agency or officer is taken by serving copies of the notice of appeal upon the agency or officer, the Attorney General and all other interested parties, and by filing the original of the notice with the Appellate Division. Service on the Attorney General shall be made pursuant to [R. 4:4-4(f)] R. 4:4-4(a)(7). On an appeal from the Division of Workers' Compensation the Division shall not be considered a party to the appeal, and the notice of appeal shall not be served upon the Attorney General unless [he represents] representing a party to the appeal.

(f) Contents of Notice of Appeal and Case Information Statement; Form; Certifications.

1. ...no change

2. ...no change

3. Requirements of Notice of Appeal.

(i) Civil Actions. In civil actions the notice of appeal shall set forth the name and address of the party taking the appeal [and his address or the address of his attorney, if he is represented,]; the name and address of counsel, if any; the names of all other parties to the action and to the appeal[,]; and shall designate the judgment, decision, action or rule, or part thereof appealed from, the name of the judge who sat below, and the name of the court, agency or officer from which and to which the appeal is taken. The notice of appeal shall further state whether or not the matter is entitled to a hearing preference pursuant to R. 1:2-5, and if so, the basis for such preference.

(ii) Criminal, Quasi-Criminal and Juvenile Delinquency Actions. In criminal, quasi-criminal and juvenile delinquency actions the notice of appeal shall set forth the name and address of the appellant [and his address or the address of his attorney, if he is represented,]; the name and address of counsel, if any; a concise statement of the offense and of the judgment, giving its date and any sentence or disposition imposed[,]; the place of confinement, if the defendant is in custody[,]; the name of the judge who sat below[,]; and the name of the court from which and to which the appeal is taken.

(iii) All Actions. In addition to the foregoing requirements, the notice of appeal in every action shall certify service of a copy thereof on all parties, the Attorney General if necessary, and the trial judge, agency or officer. In all appeals from adult criminal convictions the notice of appeal shall certify service of a copy thereof and of a copy of the Case Information Statement upon the appropriate county prosecutor and the New Jersey Division of Criminal Justice, Appellate Section. In all actions the notice of appeal shall also certify payment of filing fees required by N.J.S.A. 22A:2. The notice of appeal shall also certify compliance with R. 2:5-1(f)(2) (filing of Case Information Statement), affixing a copy of the actual Case Information Statement to the notice of appeal. In all actions where a verbatim record of the proceedings was taken, the notice of appeal shall also contain the attorney's certification [that he has complied] of compliance with R. 2:5-3(a) (request for transcript) and R. 2:5-3(d) (deposit for transcript), or [his] a certification stating [why he is exempt] the reasons for exemption from compliance. Certifications of compliance shall specify from whom the transcript was ordered, the date ordered, and the fact of deposit, affixing a copy of the actual request for the transcript to the notice of appeal.

(g) ...no change

(h) ...no change

Note: Source—R.R. 1:2-8(a) (first, second and fifth sentences) (b) (c) (d) (h), 1:4-3(a) (second sentence), 4:61-1(d), 4:88-8 (second sentence), 4:88-10 (second, third and fourth sentences), 6:3-11(b), 7:16-3. Paragraph (f) amended and paragraph (h) adopted July 7, 1971 to be effective September 13, 1971; paragraphs (a), (b), (e) and (f) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended October 5, 1973 to be effective immediately; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (b) and (f) amended July 29, 1977 to be effective September 6, 1977; paragraph (f) amended July 24, 1978 to be effective September 11, 1978; paragraph (e) amended and paragraph (f)(1) adopted and (f)(2) amended July 16, 1981 to be effective September 14, 1981; paragraph (d) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a), (f) and (g) amended March 22, 1984, to be effective April 15, 1984; caption, paragraphs (a), (b), (e), (f)(1) and (f)(2) amended November 1, 1985 to be effective January 2, 1986; paragraphs (f)(1) and (f)(2) amended November 7, 1988 to be effective January 2, 1989; paragraph (h) amended July 14, 1992 to be effective September 1, 1992; paragraphs (b), (e) and (f)(3)(i)(ii) and (iii) amended to be effective .

2:5-3. Preparation and Filing of Transcript; Statement of Proceedings; Prescribed Transcript Request Form

(a) ...no change

(b) ...no change

(c) Abbreviation of Transcript. The transcript may be abbreviated in all actions either:

(1) ...no change

(2) by order of the trial judge or agency which determined the matter on appellant's motion specifying the points on which [he] the appellant will rely on the appeal. The motion shall be filed and served no later than the time of filing and service of the notice of appeal, and service of the request for transcript prescribed by paragraph (a) of this rule shall be made within 3 days after entry of the order determining the motion.

(d) ...no change

(e) Preparation and Filing. The court reporter, clerk, or agency, as the case may be, shall promptly prepare or arrange for the preparation of the transcript in accordance with standards fixed by the Administrative Director of the Courts. The person preparing the transcript shall deliver the original to the appellant and a copy, together with a computer diskette of the transcript in WordPerfect, WordPerfect-compatible, ASCII or ASCII-compatible format, to the court reporter supervisor in the case of an appeal from the Superior Court, to the clerk of the court in the case of an appeal from the Tax Court or a municipal court, or to the agency in the case of an administrative appeal. The person preparing the transcript shall also forthwith notify all parties of such deliveries. When the last volume of the entire transcript has been delivered to the appellant, the court reporter supervisor, clerk or agency, as the case may be, shall certify its delivery on a form to be prescribed by the Administrative Director of the Courts. That transcript delivery certification and a complete set of the transcripts and diskettes shall be forwarded immediately to the clerk of the court to which the appeal is being taken. A copy of the certification shall also then be sent to the appellant. The appellant shall serve a copy of the certification on all other parties within seven days after receipt and, if the appeal is from [the] a conviction [of] on an indictable offense, on the New Jersey Division of Criminal Justice, Appellate Section. The appellant shall file proof of such service with the clerk of the court to which the appeal has been taken.

(f) Statement of Proceedings in Lieu of Transcript. If no verbatim record was made of the proceedings before the court or agency from which the appeal is taken, the appellant shall, within 14 days of the filing of the notice of appeal, serve on the respondent a statement of the evidence and proceedings prepared from the best available sources, including [his] the appellant's recollection. The respondent may, within 14 days after such service, serve upon the appellant any objections or proposed amendments thereto. The appellant shall thereupon forthwith file the statement and any objections or proposed amendments with the court or agency from which the appeal is taken for settlement and within 14 days after the filing of the same the court or agency shall settle the statement of the proceedings and file it with the clerk thereof, who shall promptly provide the parties with a copy. If a verbatim record made of the proceedings has been lost, destroyed or is otherwise unavailable, the court or agency from which the appeal was taken shall supervise the reconstruction of the record. The reconstruction may be in the form of a statement of proceedings in lieu of a transcript.

Note: Source—R.R. 1:2-8(e) (first, second, third, fourth, sixth and seventh sentences), 1:2-8(g), 1:6-3, 1:7-1(f) (fifth sentence), 3:7-5 (second sentence), 4:44-2 (second sentence), 4:61-1(c), 4:88-8 (third and fourth sentences), 4:88-10 (sixth sentence). Paragraphs (a) (b) (c) and (d) amended July 7, 1971 to be effective September 13, 1971; paragraphs (b) and (d) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended June 29, 1973 to be effective September 10, 1973; caption amended and paragraph (a) caption and text amended July 24, 1978 to be effective September 11, 1978; paragraphs (c) and (d) amended July 16, 1981 to be effective September 14, 1981; paragraph (e) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended, paragraph (d) caption and text amended, former paragraph (e) redesignated paragraph (f), and paragraph (e) caption and text adopted November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (e) amended July 14, 1992 to be effective September 1, 1992; paragraphs (c), (e) and (f) amended to be effective .

2:6-1. Preparation of Appellant's Appendix; Joint Appendix; Contents

(a) Contents of Appendix. The appendix prepared by the appellant or jointly by the appellant and the respondent shall contain (1) in civil actions, the complete pretrial order, if any, and the pleadings; (2) in criminal, quasi-criminal or juvenile delinquency actions, the indictment or accusation and, where applicable, the complaint and all docket entries in the proceedings below; (3) the judgment, order or determination appealed from or sought to be reviewed or enforced, including the jury verdict sheet, if any; (4) the trial judge's charge to the jury, if at issue, and any opinions or statement of findings and conclusions; (5) the statement of proceedings in lieu of record made pursuant to R. 2:5-3(f); (6) the notice or notices of appeal; (7) the transcript delivery certification prescribed by R. 2:5-3(e); and (8) such other parts of the record, excluding the stenographic transcript, as are essential to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised.

(b) ...no change

(c) ...no change

(d) ...no change

Note: Source—R.R. 1:7-1(f), 1:7-2 (first six sentences), 1:7-3. Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 22, 1983 to be effective September 12, 1983; paragraphs (a), (b) and (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended to be effective .

2:6-2. Contents of Appellant's Brief

(a) Formal Brief. Except as otherwise provided by R. 2:6-4(c)(1) (statement in lieu of brief), by R. 2:9-11 (sentencing appeals), and by paragraph (b) of this rule, the brief of the appellant[,] shall contain the following material, under distinctive titles, arranged in the following order:

(1) ...no change

(2) ...no change

(3) ...no change

(4) ...no change

(5) The legal argument for the appellant, which shall be divided, under appropriate point headings, distinctively printed or typed, into as many parts as there are points to be argued. New Jersey decisions shall be cited to the official New Jersey reports by volume number but if not officially reported that fact shall be stated and unofficial citation made. All other state court decisions shall be cited to [the official reports, if any, and also to] the National Reporter System, if reported therein and, if not, to the official report. In the citation of all cases the court and year shall be indicated in parentheses except that the year alone shall be given in citing the official reports of the United States Supreme Court, the Supreme Court of New Jersey, and the highest court of any other jurisdiction.

(b) ...no change

(c) ...no change

(d) ...no change

Note: Source—R.R. 1:7-1(a) (b) (d) (e) (g); amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended, former paragraphs (a) (b) (c) and (e) redesignated subparagraphs (1) (2) (3) and (5), subparagraph (4) and paragraphs (b) and (c) adopted July 24, 1978 to be effective September 11, 1978; paragraph (b) amended January 10, 1979 to be effective immediately; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended July 15, 1982 to be effective September 13, 1982; paragraph (a)(5) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a) and (b) amended November 2, 1987 to be effective January 1, 1988; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; new paragraph (d) added July 14, 1992 to be effective September 1, 1992; paragraph (a)(5) amended to be effective .

2:6-8. References to Briefs; Appendices; Transcripts

References to a brief[,] or appendix [or stenographic transcript] shall be made to the appropriate pages, and references to the stenographic transcript shall be made to the appropriate pages and lines thereof, by the following abbreviations:

"Pb8[-3]" for plaintiff's brief, page 8[, line 3];
"Db8[-1]" for defendant's brief, page 8[, line 1];
"Pa8[-3]" for plaintiff's appendix, page 8[, line 3];
"Da12[-6]" for defendant's appendix, page 12[, line 6];
"Ja15[-4]" for joint appendix, page 15[, line 4];
"Prb8[-6]" for plaintiff's reply brief, page 8[, line 6];
"Pra7[-5]" for plaintiff's reply appendix, page 7[, line 5];
"T8-3" for transcript, page 8, line 3.

If there is more than one plaintiff or defendant, the appropriate party's name or initial or other identifying designation should precede the abbreviation.

Note: Source—R.R. 1:7-8; amended to be effective .

2:6-10. Format of Briefs and Other Papers

All briefs, appendices, petitions, motions, transcripts and other papers may be reproduced by any method capable of providing plainly legible copies. Paper shall be of good quality, opaque and unglazed. Coated paper may be used. Where the method of reproduction permits, color of paper shall be India eggshell. Copy may be printed on both sides provided duplicating or text paper of not less than 50 lb. weight is used. Papers shall be approximately 8.5 inches by 11 inches and, unless a compressed transcript format is used, shall contain no more than 26 double-spaced lines of no more than 65 characters including spaces, each of no less than 10-pitch or 12-point type. Footnotes and indented quotations may, however, be single-spaced. When a compressed transcript format is used, four transcript pages may be reproduced on a single page, provided that no compressed page contains more than 25 lines of no more than 55 characters including spaces, each of no less than 9-pitch type. Except for compressed transcript format pages, [M]margins shall be approximately one inch. [The stenographic transcript or other p]Papers on file or in evidence may be reproduced [without retyping in which event the page size, but not the margin requirements, shall be observed]. Papers shall be securely fastened, either bound along the left margin or stapled in the upper left-hand corner. Covers shall conform to R. 2:6-6(b).

Note: Source—R.R. 1:7-10. Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1992 to be effective September 1, 1992; amended to be effective .

2:8-3. Motion for Summary Disposition

(a) Supreme Court. On an appeal taken to the Supreme Court as of right from a judgment of the Appellate Division, any party may move at any time following the service of the notice of appeal for a summary disposition of the appeal. Such motion shall be determined on the motion papers and on the briefs and record filed with the Appellate Division and may result in an affirmance, reversal or modification. The pendency of such motion shall toll the time for the filing of briefs and appendices on the appeal. The court may summarily dispose of any appeal on its own motion at any time, and on such prior notice, if any, to the parties as the court directs.

(b) ...no change

Note: Source—Adopted December 21, 1971 to be effective January 31, 1972. Paragraph (a) designation added and paragraph (b) adopted July 24, 1978 to be effective September 11, 1978; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended to be effective .

2:11-3. Opinion, Judgment; Stay After Judgment

(a) ...no change

(b) ...no change

(c) ...no change

(d) ...no change

(e) Affirmance Without Opinion:

(1) ...no change

(2) Criminal, Quasi-Criminal and Juvenile Appeals. When in an appeal in a criminal, quasi-criminal or juvenile matter, the Appellate Division determines that some or all of the [issues raised are clearly without merit, the court may affirm by an opinion which, as to such issues, specifies them and quotes this rule and paragraph] arguments made are without merit and do not warrant discussion in a written opinion, the court may affirm by specifying such arguments and quoting this rule and paragraph.

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Civil Practice

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Note: Source—R.R. 1:9–1(a) (second sentence) (b), 2:4–2, 2:9–1(a); paragraph (e) adopted May 2, 1975, to be effective May 19, 1975; paragraph (e)(2) amended July 21, 1980 to be effective September 8, 1980; paragraph (d) amended November 1, 1985 to be effective January 2, 1986; paragraph (e)(2) amended to be effective .

2:12–7. Form, Service and Filing of Petition for Certification

(a) ...no change

(b) Service, Filing and Time. Within 10 days after the filing of the notice of petition for certification or 30 days after the entry of the final judgment, whichever is later, 2 copies of the petition shall be served on each opposing party and 9 copies thereof together with 9 copies of petitioner's Appellate Division brief and appendix shall be filed with the Clerk of the Supreme Court.

Note: Source—R.R. 1:10–9, 1:10–10(a). Paragraph (a) amended March 5, 1974 to be effective immediately; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended January 19, 1989 to be effective February 1, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended to be effective .

2:13–3. Places of Sitting

The Supreme Court shall sit in Trenton, and the Appellate Division shall sit in Trenton, Newark, Morristown and Hackensack, unless the Chief Justice or a presiding judge deems it temporarily necessary or desirable to convene court elsewhere.

Note: Source—R.R. 1:1–3, 2:1–4; amended November 27, 1974 to be effective April 1, 1975; amended to be effective .

O. Proposed Amendments to Rules 4:4-3, 4:4-4 and 4:4-5 -- re Service of Process

The Service of Process Subcommittee, chaired by the Hon. Murry D. Brochin, proposed and the Committee endorsed several changes to the rules governing service of process as well as a complete reorganization of the format of *R.* 4:4-4.

- *R.* 4:4-3: three changes to the rule are proposed. The rule was amended effective September 1, 1992 to permit private service of process if the summons and complaint have not been served within 40 days "after delivery of the summons and complaint to the sheriff." In some counties, however, the Sheriff's office may be weeks behind in processing mail, and the County Clerks are interpreting the rule to mean that the 40-day period begins to run from the date the summons and complaint are stamped "received" in the Sheriff's office. The Committee proposes amending *R.* 4:4-3(b) to make it clear that the 40-day period runs from the transmittal, by mailing or hand-delivery, of the summons and complaint to the Sheriff.
  The second change to *R.* 4:4-3(b) explicitly recognizes the validity of mailed service, return receipt requested, to a person authorized by rule or law to accept service for the defendant.
  The third change provides for mailed service to be addressed to a post office box in certain circumstances, in accordance with proposed amendments to *R.* 1:5-2. See section I. C., above.
- *R.* 4:4-4: the most significant change proposed to this rule provides for its reorganization into three sections -- proposed paragraph (a) governing primary methods for obtaining in personam jurisdiction over various categories of persons and entities; proposed new paragraph (b) governing in personam jurisdiction by substituted or constructive service; and proposed new paragraph (c) governing optional mailed service. Nothing from current *R.* 4:4-4 is omitted. This reorganization of the rule necessitates the correction of references to *R.* 4:4-4 in other rules. See section I. P., below.
  In addition, at the suggestion of a trial judge, the Committee recommends the addition of a provision (included in the reorganized rule as paragraph (b)(1)(B)) specifying that personal service outside the territorial jurisdiction of the United States must be made in accordance with governing international treaties and conventions. A similar provision is proposed for *R.* 4:12-3, governing the taking of depositions in a foreign country. See section I. T., below.
  Finally, provision is made in proposed new paragraph (b)(1)(C) for mailed service to be addressed to a post office box in certain circumstances, in accordance with proposed amendments to *R.* 1:5-2. See section I. C., above.
- *R.* 4:4-5: the proposed revisions eliminate the text that now makes up paragraphs (a) and (b) and substitutes appropriate references to *R.* 4:4-4, as proposed to be amended. Gender-specific references have also been eliminated.

The proposed amendments to *Rules* 4:4-3, 4:4-4 and 4:4-5 follow:

4:4–3. By Whom Served; Copies

(a) ...no change

(b) Failure of Sheriff's Service. If the sheriff has returned the summons and complaint to plaintiff or plaintiff's attorney unserved or if 40 days have elapsed after [delivery] transmittal, by mailing or hand delivery, of the summons and complaint to the sheriff without plaintiff or plaintiff's attorney having received a sheriff's return of service, service may be made within this State (1) personally, by plaintiff's attorney or the attorney's agent or any other competent adult not having a direct interest in the litigation, or (2) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the [defendant's] usual place of abode of the defendant or a person authorized by rule or law to accept service for the defendant or, with postal instructions to deliver to addressee only, to defendant's place of business or employment. If the addressee refuses to claim or accept delivery of registered or certified mail, service may be made by ordinary mail addressed to the defendant's usual place of abode. The party making service may, at the party's option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee refuses to claim or accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service. Return of service shall be made as provided by R. 4:4–7. Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2.

Note: Source—R.R. 4:4–3, 5:5–1(c), 5:2–2; amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended to be effective .

4:4-4. Summons; Personal Service; In Personam Jurisdiction

Service of summons, writs and complaints shall be made as follows:

[(a) Individuals Generally.

(1) Personal Service. Upon an individual other than a minor under 14 years of age or an incompetent person, by delivering a copy of the summons and complaint to the individual personally; or by leaving a copy thereof at the dwelling house or usual place of abode with a competent member of the household of the age of 14 years or over then residing therein; or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the individual's behalf; or as provided by R. 4:4–3(b).

(2) Optional Mailed Service. In lieu of personal service prescribed by subparagraph (1), service may be made by registered, certified or ordinary mail, which shall be effective only if the party served answers or otherwise appears in response thereto. If defendant does not appear within 60 days following mailed service, service shall be made as is otherwise required by this rule, and the time prescribed by R. 4:4–1 for issuance of the summons shall then begin to run anew.

(b) Minors Under 14 and Incompetents.

(1) Minors. Upon a minor under 14 years of age, by delivering a copy of the summons and complaint personally to the minor's father, mother or guardian of the person or a competent adult member of the household with whom the minor resides; or as provided by R. 4:4–3(b); or if service cannot be made upon any of them, then as provided by court order. The requirement of service of process or notice upon a father, mother, guardian or adult, common to more than one minor defendant in any action, shall be deemed complied with by service upon such person of one copy of the summons and complaint or other notice served.

(2) Incompetents. Upon an incompetent person, by delivering a copy of the summons and complaint personally to the guardian of the person or a competent adult member of the household with whom the incompetent resides; or, if the incompetent is living in an institution, then to the director or chief executive officer of the institution; or as provided by R. 4:4–3(b); or if service cannot be made upon any of them, then as provided by court order; and, unless the court otherwise orders, also to the incompetent.

(c) Corporations, Partnerships and Associations.

(1) Corporations. Upon a domestic or foreign corporation, by serving, in the manner prescribed in paragraph (a), either an officer, director, trustee, or managing or general agent; or any person authorized by appointment or by law to receive service of process on behalf of the corporation; or the person at the registered office of the corporation in charge thereof. If service cannot be made upon any of the foregoing, then it may be made upon the person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then upon any servant of the corporation within this State acting in the discharge of his duties. If it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts that after diligent inquiry and effort personal service cannot be made upon any of the foregoing and if the corporation is a foreign corporation, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office.

(2) Associations and Partnerships. Upon an unincorporated association which is subject to suit under a recognized name and upon a partnership, by serving, in the manner prescribed in paragraph (a), an officer, a managing or general agent, or, in the case of a partnership, also a partner, or, if it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts, that after diligent inquiry and effort, service cannot be made upon any of the foregoing, then, consistent with due process of law, by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office.

(3) Alternate Mode of Service. If the addressee refuses to claim or to accept delivery of registered or certified mail, service may be made by ordinary mail addressed to him. If for any other reason delivery cannot be made, then service of a copy of the summons and complaint may be made outside this State as provided in R. 4:4–5(a) upon any person upon whom service is authorized by the law of this State or of the state wherein service is effected.

(d) Individuals Doing Business or Having Interest in Real Property.

(1) Proprietorships. Upon an individual engaged in a business, within this State in an action arising out of the conduct of such business, by serving, in the manner prescribed in paragraph (a), the individual, or a managing or general agent of the individual employed in such business; or if service cannot be made upon any of the foregoing, by serving any servant of the individual within this State acting in the discharge of his duties in connection with such business.

(2) Persons Having an Interest in Real Property. Upon an individual owning or having an interest in real property in this State in an action arising out of such ownership or interest, by serving, in the manner prescribed in paragraph (a), the individual, or a managing or general agent of the individual employed in the management of such real property.

(e) Substituted Service on Certain Individuals. On the filing of an affidavit of the attorney for the plaintiff or of any person having knowledge of the facts, that, after diligent inquiry and effort, an individual cannot be served in this State under any of the preceding paragraphs of this rule, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to the individual addressed to his dwelling house or usual place of abode or, with postal instructions to deliver to addressee only, to his place of business or employment. If the addressee refuses to claim or to accept delivery of registered or certified mail, service may be made by ordinary mail addressed to him at his dwelling house or usual place of abode. The party making service may, at his option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee refuses to claim and accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service. If for any other reason delivery cannot be made, then service may be made outside the State as provided in R. 4:4–5(a) upon any person upon whom service is authorized by the law of this State or of the state wherein service is effected.

(f) State of New Jersey. Upon the State of New Jersey, by registered, certified or ordinary mail or by delivering a copy of the summons and complaint personally pursuant to R. 4:4–4(a)(1) to the Attorney General or to any person in his office designated by him in a writing filed with the Clerk of the Superior Court. No default shall be entered for failure to appear unless personal service has been made under this paragraph. In an action under N.J.S. 2A:45–1 et seq. (lien or encumbrance held by the State) the notice in lieu of summons shall be in the form, manner and substance prescribed by N.J.S. 2A:45–2, and shall be served, together with a copy of the complaint upon the Attorney General or any person in his office designated by him in writing filed with the Clerk of the Superior Court, but if the lien or encumbrance arises by reason of a recognizance entered into in connection with any proceeding in any county court or any criminal judgment rendered in such court, the notice, together with a copy of the complaint shall be served upon the county prosecutor or upon any person in his office designated by him in writing filed with the county court.

(g) Public Bodies. Upon any county, municipality, or other public body, by delivering a copy of the summons and complaint personally pursuant to R. 4:4–4(a)(1) to the presiding officer or to the clerk or secretary thereof.

(h) As Provided by Law. Upon any defendant, as may be provided by law.

(i) Court Order. If service can be made by any of the modes provided by this rule, no court order shall be necessary. If service cannot be made by any of the modes provided by this rule, any defendant may be served as provided by court order, consistent with due process of law.]

(a) Primary Method of Obtaining In Personam Jurisdiction. The primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State pursuant to R. 4:4-3, as follows:

(1) Upon a competent individual over the age of 14, by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual's dwelling place or usual place of abode with a competent member of the household of the age of 14 or over then residing therein, or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the individual's behalf;

(2) Upon a minor under the age of 14, by delivering a copy of the summons and complaint personally to a parent or the guardian of the minor's person or to a competent adult member of the household with whom the minor resides;

(3) Upon an incompetent, by delivering a copy of the summons and complaint personally to the guardian of the incompetent's person or to a competent adult member of the household with whom the incompetent resides, or if the incompetent resides in an institution, to the director or chief executive officer thereof;

(4) Upon individual proprietors and real property owners, provided the action arises out of a business in which the individual is engaged within this State or out of any real property or interest in real property in this State owned by the individual, by delivering a copy of the summons and complaint to the individual if competent, or, whether or not the individual proprietor or property owner is competent, to a managing or general agent employed by the individual in such business or for the management of such real property, or if service cannot be made in that manner, then by delivering a copy of the summons and complaint to any employee or agent of the individual within this State acting in the discharge of his or her duties in connection with the business or the management of the real property;

(5) Upon partnerships and unincorporated associations subject to suit under a recognized name, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on an officer or managing agent or, in the case of a partnership, a general partner;

(6) Upon a corporation, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on any officer, director, trustee or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, or on a person at the registered office of the corporation in charge thereof, or, if service cannot be made on any of those persons, then on a person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then on any employee of the corporation within this State acting in the discharge of his or her duties, provided, however, that a foreign corporation may be served only as herein prescribed subject to due process of law;

(7) Upon the State of New Jersey, by registered, certified or ordinary mail of a copy of the summons and complaint or by personal delivery of a copy of the summons and complaint to the Attorney General or to the Attorney General's designee named in a writing filed with the Clerk of the Superior Court. In an action under N.J.S.A. 2A:45-1 et seq. (lien or encumbrance held by the State), the notice in lieu of summons shall be in the form, manner and substance prescribed by N.J.S.A. 2A:45-2, and shall be served, together with a copy of the complaint, on the Attorney General or designee as herein provided, but if the lien or encumbrance arises by reason of a recognizance entered into in connection with any proceeding in the Superior Court or any criminal judgment rendered in such court, the notice, together with a copy of the complaint, shall be served on the county prosecutor or the prosecutor's designee named in a writing filed with the Clerk of the Superior Court;

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(8) Upon other public bodies, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on the presiding officer or on the clerk or secretary thereof;

(b) Obtaining In Personam Jurisdiction by Substituted or Constructive Service.

(1) By mail or personal service outside the State. If it appears by affidavit satisfying the requirements of R. 4:4-5(c)(2) that despite diligent effort and inquiry personal service cannot be made in accordance with paragraph (a) of this rule, then, consistent with due process of law, in personam jurisdiction may be obtained over any defendant as follows:

(A) personal service in a state of the United States or the District of Columbia, in the same manner as if service were made within this State, except that service shall be made by a public official having authority to serve civil process in the jurisdiction in which the service is made or by a person qualified to practice law in this State or in the jurisdiction in which service is made or by a person specially appointed by the court for that purpose; or

(B) personal service outside the territorial jurisdiction of the United States, in accordance with any governing international treaty or convention to the extent required thereby, and if none, in the same manner as if service were made within the United States, except that service shall be made by a person specially appointed by the court for that purpose; or

(C) mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, and, simultaneously, by ordinary mail to: (i) a competent individual over the age of 14, addressed to the individual's dwelling house or usual place of abode; (ii) a minor under the age of 14 or an incompetent, addressed to the person or persons on whom service is authorized by paragraphs (a)(2) and (a)(3) of this rule; (iii) a corporation, partnership or unincorporated association that is subject to suit under a recognized name, addressed to a registered agent for service, or to its principal place of business, or to its registered office. Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2.

(2) As provided by law. Any defendant may be served as provided by law.

(3) By court order. If service can be made by any of the modes provided by this rule, no court order shall be necessary. If service cannot be made by any of the modes provided by this rule, any defendant may be served as provided by court order, consistent with due process of law.

(c) Optional Mailed Service. In lieu of personal service prescribed by paragraph (a)(1) of this rule, service may be made by registered, certified or ordinary mail, provided, however, that such service shall be effective for obtaining in personam jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto. If defendant does not answer or appear within 60 days following mailed service, service shall be made as is otherwise prescribed by this rule, and the time prescribed by R. 4:4-1 for issuance of the summons shall then begin to run anew.

Note: Source—R.R. 4:4–4. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended July 14, 1972 to be effective September 5, 1972; paragraph (f) amended July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a), (f) and (g) amended November 5, 1986 to be effective January 1, 1987; paragraph (i) amended November 2, 1987 to be effective January 1, 1988; paragraph (e) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; text deleted and new text substituted to be effective .

4:4-5. Summons; Service on Absent Defendants; In Rem or Quasi In Rem Jurisdiction

Whenever, in actions affecting specific property, or any interest therein, or any res within the jurisdiction of the court, or in matrimonial actions over which the court has jurisdiction, wherein it shall appear by affidavit of the plaintiff's attorney or other person having knowledge of the facts, that a defendant cannot, after diligent inquiry, be served within the State, service may, consistent with due process of law, be made [upon him] by any of the following 4 methods:

(a) [In a state of the United States or the District of Columbia in the same manner as if service were made within this State, except that service shall be made by a public official having authority to serve civil process in the jurisdiction in which the service is made or by a person qualified to practice law in this State or in the jurisdiction in which service is made or by a person specially appointed by the court for that purpose; outside of the states of the United States and the District of Columbia, in the same manner as if service were made within the State, except that service shall be made by a person specially appointed by the court for that purpose;] personal service outside this State as prescribed by R. 4:4-4(b)(1)(A) and (B); or

(b) [Or by simultaneously mailing a copy of the summons and complaint, by registered or certified mail, return receipt requested, and by ordinary mail: (1) to an individual other than an infant under 14 years of age or incompetent person, addressed to his dwelling house or usual place of abode; (2) to an infant or to an incompetent person, under 14 years of age, addressed to the person or persons upon whom service is authorized by R. 4:4–4(b); (3) to a corporation, partnership, or unincorporated association which is subject to suit under a recognized name, addressed to a registered agent for service, or to its principal place of business or to its registered office. If for any other reason delivery cannot be made, then service may be made as is otherwise provided in this rule;] service by mail as prescribed by R. 4:4-4(b)(1)(C); or

(c) [Or by publishing] by publication of a notice once in a newspaper published in the county in which the venue is laid, or, if there is none, in a newspaper published in this State circulating in such county; and also by mailing, within 7 days after publication, a copy of the notice as herein provided and the complaint to the defendant, prepaid, to [his] the defendant's residence or the place where [he] the defendant usually receives [his] mail, unless it shall appear by affidavit that such residence or place is unknown, and cannot be ascertained after inquiry as herein provided or unless the defendants are proceeded against as unknown owners or claimants pursuant to R. 4:26–5(c). But if defendants are proceeded against pursuant to R. 4:26–5(c), a copy of the notice shall be posted upon the lands affected by the action within 7 days after publication;

(1) ...no change

(2) The inquiry required by this rule shall be made by the plaintiff, [his] plaintiff's attorney actually entrusted with the conduct of the action, or by the agent of the attorney; it shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the defendant's residence or address or the matter inquired of; the inquiry shall be undertaken in person or by letter enclosing sufficient postage for the return of an answer; and the inquirer shall state that an action has been or is about to be commenced against the person inquired for, and that the object of the inquiry is to give [him] notice of the action[,] in order that [he] the person may appear and defend it. The affidavit of inquiry shall be made by the inquirer fully specifying the inquiry made, of what persons and in what manner, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice; or

(d) [Or as] as may be provided by court order.

Note: Source—R.R. 4:4–5(a) (b) (c) (d), 4:30–4(b) (second sentence). Paragraph (c) amended July 7, 1971 to be effective September 13, 1971; paragraph (c) amended July 14, 1972 to be effective September 5, 1972; amended July 24, 1978 to be effective September 11, 1978; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a), (b), (c) and (d) amended to be effective .

P. Proposed Amendments to Rules 4:26-2, 4:28-4, 4:64-7 and 4:87-4 -- re Correction of References to Service Rules

With the proposed reorganization of *R.* 4:4-4 (see section I. O., above), certain references to that rule currently appearing in other rules must be corrected. Gender-specific references are also eliminated in the proposed amendments.

The proposed amendments to *Rules* 4:26-2, 4:28-4, 4:64-7 and 4:87-4 follow:4:26–2. Minor or Incompetent Person

(a) ...no change

(b) Appointment of Guardian Ad Litem.

(1) ...no change

(2) ...no change

(3) Appointment on Party's Motion. On motion by a party to the action, the court may appoint a guardian ad litem for a minor or alleged incompetent person if no petition has been filed and either default has been entered by the clerk or, in a summary action brought pursuant to R. 4:67 or in a probate action, 10 days have elapsed after service of the order. Notice of the motion shall be served at least 10 days before the return date fixed therein upon the appropriate persons designated in [R. 4:4–4(a) or (b)] R. 4:4-4(a)(1)(2)(3) or (c) either personally, at the time of service of process or thereafter, or by registered or certified mail, return receipt requested. The court on ex parte motion may, in lieu thereof, fix such notice of the motion, given to such persons in such manner as it deems appropriate.

(4) ...no change

(c) ...no change

Note: Source—R.R. 4:30–2(a)(b)(c), 7:12–6; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a), (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b)(3) amended to be effective .

4:28–4. Notice to Attorney General and Attorneys for Other Governmental Bodies

(a) ...no change

(b) Actions Involving Charities, Trusts and Estates. In addition to the notices to the Attorney General required by R. 4:80–3(c) (complaint for administration in absence of known next of kin) and 4:80–6 (notice of probate), the party seeking relief therein shall also give notice to the Attorney General of any action (except a negligence action) to which a charitable corporation or the trustee of an inter vivos charitable trust is a party and of any other action involving a will by which property is devoted to a present or future charitable use or purpose; but no notice need be given to the Attorney General in any such action involving a will unless [he] the Attorney General has given written notice to the executor or administrator [that he desires] of a request to be notified of any action in connection with the estate.

(c) Form and Service of Notice. The notice required by this rule may be served by ordinary mail and, where required by paragraph (a) of this rule, shall have attached thereto a copy of all pleadings then filed. Where notice is required to be served upon the Attorney General, it shall be served [upon him personally or upon his designee appointed pursuant to R. 4:4–4(f)] as prescribed by R. 4:4-4(a)(7).

(d) ...no change

Note: Source—R.R. 4:37–2, 4:117–6. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended to be effective .

4:64–7. In Rem Tax Foreclosure

(a) ...no change

(b) Publication; Contents of Notice. The plaintiff shall publish once a notice of foreclosure in a newspaper generally circulated in the municipality where the lands affected are located stating (1) that it has commenced an action in the Superior Court by filing a complaint on a specified date to foreclose and forever bar any and all rights of redemption of the parcels described in the tax foreclosure list contained in the notice and that the action is brought against the land only and no personal judgment may be entered therein; (2) that any person desiring to protect a right, title or interest in any said parcel by redemption or to contest plaintiff's right to foreclose, must do so by paying the amount required to redeem (which shall be set forth in the notice) plus interest to the date of redemption and such costs as the court may allow, prior to the entry of judgment therein, or by filing and serving an answer to the complaint setting forth defendant's answer within 45 days after the date of publication of the notice; and (3) that in the event of failure of redemption or answer by a person having the right to redeem or answer, such person shall be forever barred and foreclosed of all [his] right, title and interest and equity of redemption in and to the parcels of land described in the tax foreclosure list. The notice shall contain a copy of the tax foreclosure list.

(c) Service. The plaintiff shall, within 7 days after the date of publication of the notice of foreclosure, serve a copy thereof in the manner hereinafter provided on each person whose name appears as an owner in the tax foreclosure list at his or her last known address as it appears on the last municipal tax duplicate. The plaintiff shall also make such service upon all other persons having an ownership or lien interest recorded in the office of the Superior Court Clerk or the county recording officer on the date of the filing of the complaint and upon all other persons who, pursuant to N.J.S.A. 54:5–104.48, as amended, have filed a notice with the tax collector specifying a title, lien, claim or interest in any of the lands sought to be affected by said complaint. Such service shall be made in the manner provided by [R. 4:4–4(a)] R. 4:4-4(a)(1) or (c) or by simultaneously mailing to the last known address by registered or certified mail, return receipt requested, and by ordinary mail. In addition to the foregoing, the plaintiff shall mail a copy of the notice of foreclosure, by ordinary mail, to the Attorney General.

(d) ...no change

(e) ...no change

(f) Answer. Any person having or claiming to have a right, title or interest in or to, or lien upon any parcel of land described in the complaint may file an answer within 45 days after the date of publication of the notice of foreclosure setting forth in detail the nature of [his] the interest and the grounds of [his] the defense. The caption of such answer shall refer to the cause or causes of action applicable to the land affected. Upon the filing of the answer the action shall proceed in accordance with R. 4:64–6.

(g) ...no change

Note: Source—R.R. 4:82–7(a) (b) (c) (d) (e) (f) (g) (h) (i); paragraph (c), (e) and (g) amended July 29, 1977 to be effective September 6, 1977; paragraph (c) amended July 16, 1981 to be effective September 14, 1981; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (b), (c) and (f) amended to be effective .

4:87–4. Service

(a) Process shall be the order to show cause. The order to show cause together with a copy of the complaint, both certified by plaintiff's attorney to be true copies, shall be mailed by registered or certified mail, return receipt requested, to all persons interested therein who reside in the State at least 20 days before the return date; to all such persons who reside outside this State but within a state of the United States or the District of Columbia, at least 30 days before the return date; and at least 60 days to all other interested persons. If any person interested is a minor or incompetent and except as otherwise provided by R. 4:26–3 (virtual representation), service shall be made on the person or persons upon whom a summons would have to be served pursuant to [R. 4:4–4(b)] R. 4:4-4(a)(2) and (3) unless a guardian ad litem is required under R. 4:26–2. A surety on the fiduciary's bond shall be deemed an interested person. Upon the request of any interested party a copy of the account shall be furnished by the fiduciary prior to the date of hearing.

(b) ...no change

(c) ...no change

Note: Source—R.R. 4:106–3. Former R. 4:87–3 deleted and new R. 4:87–4 adopted June 29, 1990 to be effective September 4, 1990; paragraph (a) amended to be effective .

Q. Proposed Amendments to Rules 4:5-1 and 4:25-4 -- re Designation of Trial Counsel

The Committee endorses an attorney's suggestion that designation of trial counsel be permitted in the initial pleadings, a practice that often occurs now.

The proposed amendments to *Rules* 4:5-1 and 4:25-4 follow:4:5–1. General Requirements for Pleadings

(a) ...no change

(b) ...no change

(c) Designation of Trial Counsel. Designation of trial counsel may be made in the party's first pleading. If trial counsel is not designated in the pleading, designation shall be made as required in R. 4:25-4.

Note: Source—R.R. 4:7–1; amended July 26, 1984 to be effective September 10, 1984; caption and text amended November 26, 1990 to be effective April 1, 1991; paragraph (c) amended to be effective .

4:25–4. When No Pretrial Conference Held; Designation of Trial Counsel

If no pretrial conference is held, counsel shall [in writing], either in the first pleading or in a writing submitted prior to the weekly call, notify the Assignment Judge that a member or associate, or outside counsel is to try the case, and set forth the name specifically. No change in such designated counsel shall be made without leave of court if such change will interfere with the trial schedule. If the name of trial counsel is not specifically set forth, the court and opposing counsel shall have the right to expect any partner or associate to proceed with the trial of the case, when reached on the calendar.

Note: Source—R.R. 4:29–3A(a); amended to be effective .

R. Proposed Amendments to R. 4:6-1 -- When Presented

In preparing a revised version of the civil summons form, the Committee came to the conclusion that there was no need to perpetuate the differentiated answer period for in-state, personal service (now, 20 days to answer) as opposed to service by mail, service on an agent, or out-of-state service (now, 35 days to answer). Accordingly, the Committee redrafted the summons and proposes an amendment to *R.* 4:6-1 to provide for a single 35-day answer period no matter what the form of service. A copy of the revised summons form is included in section IV. A., below.

See section I. S., below, for other rules in which the 20/35 day dichotomy is proposed to be eliminated.

In addition, the Committee suggests revisions to correct the reference to *R.* 4:4-4 as proposed to be reorganized; to remove gender-specific references; and to include a cross-reference to *R.* 1:5-4, providing for completion of service.

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The proposed amendments to *R.* 4:6-1 follow:4:6-1. When Presented

(a) Time; Presentation. Except as otherwise provided by R. 4:7-5(c) (crossclaims), 4:8-1(b) (third-party joinder), 4:9-1 (answer to amended complaint), and 4:64-1(g) (governmental answer in foreclosure actions), the defendant shall serve an answer, including therein any counterclaim, within [20] 35 days after service of the summons and complaint on that defendant [but that time shall be enlarged to 35 days (1) if service is made by mail, publication, or posting, or (2) if the defendant is served outside this State by any mode, or (3) if service is made on defendant by service on a registered, statutory or court appointed agent]. If service is made as provided by court order, pursuant to [R. 4:4-4(i)] R. 4:4-4(b)(3), the time for service of the answer may be specified therein. [Service by mail shall be complete upon mailing of the ordinary mail. If no ordinary mailing is made, service shall be deemed complete upon the date of the acceptance of the registered or certified mail.] Service of the answer shall be complete as provided by R. 1:5-4. A party served with a pleading stating a counterclaim or crossclaim against that party shall serve an answer thereto within 20 days after the service upon that party. A reply to an answer, where permitted, shall be served within 20 days after service of the answer.

(b) ...no change

(c) ...no change

(d) Certificate of Service. The party filing the responsive pleading or [his] the party's attorney shall certify thereon, or in an acknowledgment, proof or certificate of service, that the pleading was served within the time period allowed by R. 4:6 or other rule specified in the certificate.

Note: Source—R.R. 4:12-1(a) (b) (c) (e), 4:96-2(c); paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (d) amended to be effective ——.

S. Proposed Amendments to Rules 4:51-1, 4:52-1, 4:60-10, 4:63-2 and 4:67-5 -- re Elimination of 20/35 Day Dichotomy

The Committee proposes amending numerous other rules to reflect the proposed elimination of the 20/35 day dichotomy from *R.* 4:6-1. Gender-specific references have been removed from these rules as well.

- *R.* 4:51-1: provides the defendant with 35 days to answer, after arrest on a writ of *ne exeat* or *capias ad respondendum.*
- *R.* 4:52-1: provides for the continuation of temporary restraints for a maximum of 35 days regardless of whether the defendant is a resident or non-resident of the state.
- *R.* 4:60-10: provides defendants served personally or by publication with a notice of attachment with 35 days to file an answer or move against the attachment or levy.
- *R.* 4:63-2: provides that both in-state and out-of-state parties must be served with a notice of application for sale free from dower and curtesy rights 35 days prior to the application.
- *R.* 4:67-5: expands from 20 to 35 days the period within which a defendant must file an answer in a summary action.

The proposed amendments to *Rules* 4:51-1, 4:52-1, 4:60-10, 4:63-2 and 4:67-5 follow:4:51-1. Issuance; Service

The writ of ne exeat or capias ad respondendum, serving as original or mesne process, shall issue only on court order after application supported by affidavit and, if the court directs, by the taking of oral testimony. The writ may issue against one or more of the defendants and shall be returnable at such time as the court directs. If issuing as original process it shall be served with the complaint and the defendant arrested and the writ shall state that the defendant's answer shall be served within [20] 35 days after the arrest or within such further time as is permitted by these rules where a summons is served. The court shall fix the amount of bail, which shall be stated on the writ and shall direct the executing officer to release the defendant upon [his] furnishing the officer with a bond or cash deposit in the amount of the bail as provided by R. 4:51-2(b) and shall further direct the executing officer that in the event the defendant is unable or refuses to furnish said bond or deposit, to bring [him] defendant forthwith to the judge issuing the writ or to any other judge therein named. R. 4:51 does not supersede the ne exeat provisions of N.J.S.A. 49:3-45 (Real Estate Syndication Offerings Law).

Note: Source—R.R. 4:66-1. Amended July 7, 1971 to be effective September 13, 1971; amended to be effective ——.

4:52-1. Temporary Restraint and Interlocutory Injunction--Application on Filing of Complaint

(a) Order to Show Cause With Temporary Restraints. On the filing of a complaint seeking injunctive relief, the plaintiff may apply for an order requiring the defendant to show cause why an interlocutory injunction should not be granted pending the disposition of the action. The proceedings shall be recorded verbatim provided that the application is made at a time and place where a reporter or sound recording device is available. The order to show cause shall not, however, include any temporary restraints or other interim relief [against the defendant] unless [he] the defendant has either been given notice of the application or consents thereto or it appears from specific facts shown by affidavit or verified complaint that immediate and irreparable damage will probably result to the plaintiff before notice can be served or informally given and a hearing had thereon. If the order to show cause includes temporary restraints or other interim relief and was issued without notice to the defendant, provision shall be made therein that the defendant shall have leave to move for the dissolution or modification of the restraint on 2 days' notice or on such other notice as the court fixes in the order. The order may further provide for the continuation of the restraint until the further order of the court and shall be returnable within such time after its entry as the court fixes but not exceeding [20] 35 days after the date of its issuance [in the case of a resident defendant or 35 days in the case of a non-resident defendant], unless within such time the court on good cause shown extends the time for a like period or unless the defendant consents to an extension for a longer period.

(b) Order to Show Cause as Process; Service. If the order to show cause issues upon the filing of the complaint, no summons shall issue in the action if the order contains the name and address of plaintiff's attorney, if any, otherwise plaintiff's address; the time within which defendant shall serve and file [his] an answer upon plaintiff or [his] plaintiff's attorney as provided by these rules; and a notice to defendant that [if he fails] upon failure to so file and serve [his] an answer, judgment by default may be rendered against [him] the defendant for the relief demanded in the complaint. The order shall be served upon defendant together with a copy of the complaint and any supporting affidavits at least 10 days before the return date and in the manner prescribed by R. 4:4-3 and 4:4-4 for service of summons, unless the court orders a shorter or longer time or other manner of service.

(c) ...no change

Note: Source—R.R. 4:67-2. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended effective July 26, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended to be effective ——.

4:60-10. Time to Defend

(a) Where No Summons Is Served. A defendant who has not been served with summons in the action shall serve and file [his] an answer, or move against the complaint, the writ of attachment or the sheriff's levy thereunder within [20] 35 days after [personal] service or publication of the notice of attachment [if service is made within this State, or within 35 days after service of the notice of attachment if service is made outside this State or by registered or certified mail, or within 35 days after the publication if service is made by publication alone], or within such time as has been fixed by order of the court.

(b) Where Summons Is Served. A defendant who has been served with summons in the action but has not appeared therein or has failed to defend the same shall move against the attachment or the sheriff's levy thereunder within [20] 35 days after service of the notice of the attachment and levy, or if service is made by publication alone, then within [20] 35 days after the publication.

(c) ...no change

Note: Source—R.R. 4:77-15(a) (b) (c). Paragraphs (a) and (b) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended to be effective ——.

4:63-2. Notice of Motion for Sale Free From Dower and Curtesy

In proceedings for the sale of real estate by a fiduciary or for partition, notice of an application to sell free and clear of a right or estate of dower or curtesy shall be served within this State in accordance with R. 1:5-2 at least [20] 35 days prior to the application; or if it shall appear by affidavit made pursuant to R. 4:4-5 that the party entitled to notice cannot be served within this State, the notice may be served pursuant to R. 4:4-5, provided that service is completed at least 35 days prior to the application.

Note: Source—R.R. 4:81-4. Amended July 7, 1971 to be effective September 13, 1971; amended to be effective ——.

4:67-5. Hearing; Judgment; Briefs

The court shall try the action on the return day, or on such short day as it fixes. If no objection is made by any party, or the defendants have defaulted in the action, or the affidavits show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon. If any party objects to such a trial and there may be a genuine issue as to a material fact, the court shall hear the evidence as to those matters which may be genuinely in issue, and render final judgment. At the hearing or on motion at any stage of the action, the court for good cause shown may order the action to proceed as in a plenary action wherein a summons has been issued, in which case the defendant, if [he has] not already having done so, shall file [his] an answer to the complaint within [20] 35 days after the date of the order or within such other time as the court therein directs. In contested actions briefs shall be submitted.

Note: Source—R.R. 4:85-4 (third sentence), 4:85-5 (first three sentences), 4:85-7; amended to be effective ——.

T. Proposed Amendments to R. 4:12-3 -- In Foreign Countries

In response to a suggestion from a trial judge, the Committee proposes amendments to *R.* 4:12-3 to make it clear that the taking of depositions in a foreign country must comply with the requirements of any applicable treaty or convention.

See section I. O., above, for discussion of a similar proposal concerning international service of process.

The proposed amendments to *R.* 4:12-3 follow:4:12-3. In Foreign Countries

Unless an international treaty or convention otherwise requires, [I]in a foreign country depositions shall be taken (a) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (b) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued on application and notice, and on such terms and with such directions as are appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)".

Note: Source—R.R. 4:18-3. Amended July 22, 1983 to be effective September 12, 1983; amended to be effective ——.

U. Proposed Amendments to Rules 4:17-1. 4:17-2, 4:17-3 and 4:17-6 -- re Uniform Interrogatories

The State Bar's Civil Courts Task Force and the Supreme Court committee appointed to review the Task Force recommendations both favored the development of standard form interrogatories for certain categories of cases, as well as placing limitations on the number of interrogatories that can be propounded. In considering these recommendations, the Supreme Court noted that Differentiated Case Management procedures do impose various limitations on interrogatories. The Court referred to the Discovery Subcommittee of the Civil Practice Committee the task of drafting standard form interrogatories and of proposing specific limitations on the number of interrogatories that can be propounded.

In accordance with this charge, the subcommittee, chaired by the Hon. Leonard N. Arnold, drafted standard form interrogatories for plaintiffs and defendants in auto and personal injury cases other than those involving issues of products liability, toxic torts, medical malpractice or wrongful death. See section VI. A., below, for additional work the subcommittee intends to undertake in this area.

In considering the form interrogatories, the Committee focussed on when answers should be submitted and if any action by the adversary is necessary to trigger submission. The Committee voted unanimously against requiring answers to be filed with the pleadings (*i.e.*, automatic discovery).

With respect to the form interrogatories, the subcommittee proposed:

1. that the form interrogatories should replace those now included in Appendix II to the Rules of Court;
2. that responses to these interrogatories should not be provided automatically, but rather must be demanded;
3. that the form of the demand for responses to the form interrogatories should simply be a letter, thereby eliminating the current practice of propounding interrogatories;
4. that the timing of the demand for responses and the provision of the responses should be in accordance with current *Rules* 4:17-2 and 4:17-4;
5. that each party may as of right propound ten supplemental interrogatories, without subparts, at any time in accordance with current rules; and
6. that any interrogatories additional to the form set plus ten supplemental questions may be propounded only upon motion granted by the court.

The Committee endorses these proposals and recommends amending *Rules* 4:17-1, 4:17-2, 4:17-3 and 4:17-6 accordingly. The Committee also recommends the replacement of Forms A and C in Appendix II of the Rules with the form interrogatories drafted by the subcommittee. See section IV. B., below.

The proposed amendments to *Rules* 4:17-1, 4:17-2, 4:17-3 and 4:17-6 follow:4:17-1. Service, Scope of Interrogatories

(a) Generally. Any party may serve upon any other party written interrogatories relating to any matters which may be inquired into under R. 4:10-2. The interrogatories may include a request, at the propounder's expense, for a copy of any paper.

(b) Uniform Interrogatories in Certain Actions.

(i) Limitations on Interrogatories. In all actions seeking recovery for property damage to automobiles and in all personal injury cases other than those involving issues of products liability, toxic torts, medical malpractice or wrongful death, the parties shall be limited to the interrogatories prescribed by Forms A, B and C of Appendix II, as appropriate, provided, however, that each party may propound ten supplemental questions, without subparts, without leave of court. Any additional interrogatories shall be permitted only by the court in its discretion on motion.

(ii) Demand in Lieu of Service. A party required or desiring to propound uniform interrogatories as provided for by this rule shall do so by a letter of demand served upon all adverse parties in lieu of service of the interrogatories themselves.

Note: Source—R.R. 4:23-1, 4:23-9. Last clause of second sentence and third and fourth sentences deleted (see R. 4:10-2(d) and R. 4:17-3) July 14, 1972 to be effective September 5, 1972; new caption for paragraph (a) and new paragraphs (b)(i) and (ii) adopted to be effective ——.

4:17-2. Time to Serve Interrogatories

Interrogatories may, without leave of court, be served upon the plaintiff or answers demanded pursuant to R. 4:17-1(b) after commencement of the action and served upon or demanded from any other party with or after service of the summons and complaint upon that party. Initial interrogatories shall be served or answers to uniform interrogatories demanded within 40 days after the expiration of the time allowed for service of the last permissible responsive pleading as to each defendant.

Note: Source—R.R. 4:23-2(a) (b) (c). Amended and last two sentences deleted July 14, 1972 to be effective September 5, 1972; amended to be effective ——.

4:17-3. Number of Copies Served; Form of Interrogatories

Except as otherwise provided by R. 4:17-1(b),

(a) ...no change

(b) Form. The interrogatories shall be so arranged that after each separate question shall appear a blank space reasonably calculated to enable the answering party to have [his] the answer typed in.

[(c) Automobile Negligence Actions. In actions arising out of an automobile accident, other than death actions, in which a claim is made for damages for personal injuries or property damage to a motor vehicle, the initial interrogatories of the party against whom such claim is made shall be those set forth in Interrogatory Forms A and B, respectively, in the Appendix to these Rules. Additional and supplementary interrogatories may be served subject to the limitations of R. 4:17-6.]

Note: Source—R.R. 4:23-3(a) (b). Amended July 14, 1972 to be effective September 5, 1972 (paragraph (a) formerly in R. 4:17-1); paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended June 29, 1990 to be effective September 4, 1990; introductory sentence

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ided, paragraph (b) amended and paragraph (c) deleted to be effective .
:17-6. Limitation of Interrogatories

Except as otherwise provided by R. 4:17-1(b), [T]the number of interrogatories or of sets of terrogatories to be served is not limited except as required to protect the party from annoyance, expense, mbarrassment, or oppression. The party to whom interrogatories are propounded may apply for a protective order in accordance with R. 4:10-3.

Note: Source—R.R. 4:23-11. Amended and first sentence deleted (see R. 4:10-4) July 14, 1972 o be effective September 5, 1972; amended to be effective .

V. **Proposed Amendments to R. 4:18-1 -- Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes; Prelitigation Discovery**

An attorney brought to the Committee's attention the fact that some attorneys will attempt to obtain liscovery in multi-party litigation without providing notice to all other parties to the litigation. This can be accomplished using a Notice to Produce which, under *R.* 4:18-1 as it now reads, need not be served on ll other parties. The Committee agrees that such a procedure is inconsistent with *Rules* 4:14-7(c) and 4:17-4(c), which provide that all parties to the litigation must be served with notice of the issuance of a subpoena and copies of answers to interrogatories, respectively. Accordingly, the Committee proposes an amendment to *R.* 4:18-1(b) to ensure that copies of the request to produce are served on all parties to the action. Gender-specific references have also been removed from the rule.

The proposed amendments to *R.* 4:18-1 follow:4:18-1.

Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes; Pre-litigation Discovery

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on [his] behalf of that party, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained and translated, if necessary, by the respondent through electronic devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of R. 4:10-2 and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of R. 4:10-2.

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. A copy of the request shall also be simultaneously served on all other parties to the action. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. On motion, the court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under R. 4:23 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) ...no change

Note: Source—R.R. 4:24-1. Former rule deleted and new R. 4:18-1 adopted July 14, 1972 to be effective September 5, 1972; rule caption and paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (b) amended to be effective .

W. **Proposed Amendments to R. 4:23-5 -- Failure to Serve Answers to Interrogatories**

An attorney raised for the Committee's consideration practical problems with the rule's requirement that counsel consult before a party files a motion to dismiss a pleading with prejudice. Where, within the 90-day period granted by the rule, the delinquent party has failed to make any effort to reinstate the pleading or to provide responsive answers to interrogatories, the Committee agreed that it is unfairly burdensome to require the non-delinquent party to contact the delinquent party before filing the motion to dismiss. Accordingly, the Committee proposes an amendment that would require an oral consultation or written offer to confer prior to the motion to dismiss without prejudice only. The "written offer to confer" mirrors a proposed amendment to *R.* 1:6-2. See section I. F., above.

The proposed amendments to *R.* 4:23-5 follow:4:23-5.

Failure to Serve Answers to Interrogatories

(a) Dismissal.

(1) ...no change

(2) ...no change

(3) General Requirements. All motions made pursuant to this rule shall be accompanied by an appropriate form of order[, and a]. All affidavits in support of relief under paragraph (a)(1) shall include a certification of prior consultation with or notice to opposing counsel as required by R. 1:6-2(c). An order of dismissal or suppression shall be entered only in favor of the moving party.

(b) ...no change

Note: Source—R.R. 4:23-6(c) (f), 4:25-2 (fourth sentence); paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) caption amended and subparagraphs (a)(1) captioned and amended, and (a)(2) and (3) captioned and adopted, June 29, 1990 to be effective September 4, 1990; paragraph (a)(3) amended to be effective .

X. **Proposed Amendments to Rules 4:25-3 and 4:25-7 -- re Pretrial Conferences**

The State Bar's Civil Courts Task Force and the Supreme Court committee appointed to review the Task Force recommendations both supported premarking of trial exhibits and portions of deposition transcripts intended to be read into evidence, as well as the encouragement of stipulations. The Supreme Court approved these recommendations and referred them to the Committee for incorporation into the rules.

The Committee proposes amendments to *R.* 4:25-3 to narrow the focus of that rule to pretrial memoranda. The Committee further proposes a new rule -- *R.* 4:25-7 (attorney conferences) -- that requires premarking of exhibits and deposition transcripts and that specifically encourages stipulations.

The proposed amendments to *Rules* 4:25-3 and 4:25-7 follow:4:25-3.

[Conference of Attorneys;] Form of Pretrial Memoranda

[(a) Conference. The attorneys shall confer before the date assigned for the pretrial conference to reach agreement upon as many matters as possible.]

[(b) Pretrial Memoranda.] Pretrial memoranda shall include the 16 items enumerated in R. 4:25-1(b), set forth in the same sequence and with corresponding numbers, and the following additional items, numbered as indicated:

(17) The date the attorneys for the parties conferred and matters then agreed upon;

(18) A certification that all pretrial discovery has been completed or, in lieu thereof, a statement as to those matters of discovery remaining to be completed;

(19) A statement as to which parties, if any, have not been served and which parties, if any, have defaulted.

Note: Source—R.R. 4:29-3(a) (b) (c) (d) (e). Caption amended, paragraph (b) adopted, and former paragraphs (b), (c) and (d) deleted July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 14, 1972 to be effective September 5, 1972; caption amended, paragraph (a) deleted and caption of paragraph (b) deleted to be effective .

4:25-7. Attorney Conferences

(a) Prior to Pretrial. In cases that are to be pretried, the attorneys shall confer before the date assigned for the pretrial conference in order to reach agreement on as many matters as possible.

(b) Prior to Trial. Whether or not the case has been pretried, the attorneys shall confer as close to the commencement of trial as is practical for the purpose of premarking exhibits and portions of deposition transcripts intended to be read into evidence and for the purpose of reaching stipulations on contested procedural, evidential and substantive matters. The trial judge shall afford the attorneys the opportunity to conduct such a conference prior to the commencement of trial and to place on the record the premarking information and all stipulations reached. The attorneys shall have the ongoing obligation during trial to attempt to stipulate to specific matters remaining in dispute.

Note: Source of paragraph (a)--R. 4:25-3(a). New rule adopted to be effective .

Y. **Proposed Amendments to R. 4:30A -- Entire Controversy Doctrine**

By its recommendation that the word "parties" be eliminated from *R.* 4:30A, the entire controversy rule, the Committee is aware that it is respectfully requesting the Court to reconsider the implications of *Cogdell v. Hospital Center at Orange*, 116 *N.J.* 7 (1989), which extended the entire controversy doctrine to germane claims against non-parties. Based on the following considerations, the Committee has concluded that despite the conceptual appeal of the *Cogdell* rule, it has, as a matter of practice, created many more difficulties than it has resolved.

As commentators have pointed out, *Cogdell* has produced "an avalanche of decisions redefining the contours of the entire controversy doctrine." Kevin Duffy, *State Court Rule Amendments at a Glance*, *N.J.L.J.* (August 10, 1992). Many of these problems have come to the Committee's attention and have impelled the Committee to propose recommendations for rule amendments in order to resolve *Cogdell* difficulties. Moreover, the Appellate Division judges on the Committee have reported misconceptions and misuses of the *Cogdell* rule on the part of the trial bench that have generated a number of appeals, adding significantly to the cost and delay of litigation. Finally, as practitioners have become more familiar with the existence of the *Cogdell* rule, they have become more loathe to omit parties whom they otherwise would not have joined. Generally, the joinder request is made fairly late in the pretrial process as discovery discloses additional potentially liable persons. The attempted and actual addition of parties makes the litigation more complicated and cumbersome, more expensive, longer to complete, and generally imposes to an unjustifiable extent both on those who are appropriately parties and those who are not but who are added anyway.

The Committee has concluded that the non-joinder of non-parties against whom related claims may be made creates less trouble for the public and the judicial system than a rule which apparently mandates wholesale joinder. This is so because the compulsory joinder rules on the one hand and such preclusive doctrines as *res judicata* and collateral estoppel on the other effectively counterbalance the prospect of successive duplicative litigation. More significantly, the Committee is of the view that because of the litigation burdens imposed by multi-party actions (and the more parties, the geometrically greater the burdens), the error, if any, should be on the side of multiple simple litigations rather than on the side of single complex litigation. Moreover, the outcome of the main action, whether by settlement or judgment, is apt, in the generality of cases, to moot potential claims against non-parties. In that event, the litigation will not have been burdened by the presence of those who are not appropriately parties, nor will there be the threat of successive litigation. In short, the scourges of modern litigation are the breadth of the discovery process and the problems of the multi-party action. These should be discouraged, not encouraged.

By way of further particulars, the Committee points to the following:

A. Foreclosure

The first problem presented by *Cogdell* arose in foreclosures governed by *N.J.S.A.* 2A:50 *et seq.* The decision and the subsequent adoption of *R.* 4:30A led certain members of the foreclosure bar to join in foreclosure all parties potentially liable in a later deficiency action, leading to backlogs in the foreclosure calendar. Jeffrey Kanige, *Entire Controversy Rule Could Exempt Foreclosures*, *N.J.L.J.* July 11, 1991, p. 10. When this was brought to the attention of the Court, it revised *R.* 4:7-1 (mandatory or permissive counterclaims), *R.* 4:30A (entire controversy) and *R.* 4:64-5 (joinder of claims in foreclosure). Non-germane claims need not be joined in foreclosure, and counterclaims and cross-claims need not be joined in *R.* 4:67 summary proceedings. Two writers have contended that notwithstanding these changes, *R.* 4:28-1 and *Cogdell* still require joinder of potential deficiency action parties in foreclosure matters, at least for the purpose of fixing the amount due on the mortgage. Francis X. O'Brien and Douglas S. Witte, *Foreclosures Need Deficiency-Action Parties*, *N.J.L.J.*, April 26, 1993, p. 10. To the degree that perception is reality, *Cogdell* continues to cause problems in foreclosure.

B. Case Management

There is now empirical data available from the Camden Differentiated Case Management Project. See *Report of the Supreme Court Committee for the Evaluation of the Camden Civil Differentiated Case Management Project*, *N.J.L.J.*, March 23, 1992, p. 71; H. Gottlieb, *Takeover Dream: 15 Vicinages, One System*, *N.J.L.J.*, May 17, 1993, p. 3; Rudolph Rossetti, *DCM: More than Differentiation*, *N.J.L.J.*, February 22, 1993, p. 16.

Differentiated case management assigns each civil case to one of three management tracks (expedited, standard or complex) based on information supplied by the attorneys in the case information statement. Following screening and assignment to a track, attorneys are notified by an assignment and scheduling notice as to the track, cutoff dates for discovery and anticipated trial date for each case. Camden has three expedited subtracks -- for declaratory judgments, prerogative writs and PIP cases. Declaratory judgment cases are assigned to a single judge and a case management conference is held within 30 days of track assignment; prerogative writ cases are assigned to a single judge when the complaint is filed and a case management conference is held within 45 days of filing, with a pretrial conference within 60 days of joinder; PIP cases allow 130 days for discovery and depositions.

The complex track is for cases needing early and continuous judicial supervision. A case management conference is held early and a sequence of pretrial events is negotiated and memorialized in a case management order.

All other cases go on the standard track. Interrogatories are limited and discovery time is 200 days. In Camden, discovery events are set forth in a case scheduling plan, memorialized in a case scheduling order. Cases on the asbestos/standard subtrack have a management conference within 210 days of assignment and discovery must be complete within 330 days. Complicated/standard cases (such as medical malpractice, products liability and accidents involving serious injury) are allowed 300 days for discovery and a management conference is held within 150 days of track assignment.

Amended complaints, third-party complaints and late-answering defendants are described as the major unresolved problem of the Camden project. Since parties joinable under a broad vision of *Cogdell* are often not identified until discovery has proceeded to near-completion, they will be added to the litigation late. With the addition of new parties, the managing judge is compelled to reissue the case scheduling order to allow ample time for the new parties. *Cogdell*, unless limited, may work to vitiate differentiated case management.

Difficulties with *R.* 4:30A that might be resolved by simplification of the doctrine are further illustrated in the following areas:

- Arbitration. See *Jersey City Police v. Jersey City*, 257 *N.J. Super.* 6 (App. Div. 1992).
- Special Civil Part. See *Cafferata v. Peyser*, 251 *N.J. Super.* 256 (App. Div. 1991).
- Control of Litigation by Carriers. See *Kozyra v. Allen*, 973 *F.2d* 1110 (3rd Cir. 1992).

Beyond these matters, the Committee has received periodic inquiries from practitioners respecting joinder problems created by *Cogdell* in other areas, such as summary actions and probate matters. As a result, the Committee has come to the conclusion that the mandatory joinder of parties now called for under *R.* 4:30A should be eliminated.

The proposed amendments to *R.* 4:30A follow:

RULE 4:30A. ENTIRE CONTROVERSY DOCTRINE

Non-joinder of claims [or parties] required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine, except as otherwise provided by R. 4:64-5 (foreclosure actions) and R. 4:67-4(a) (leave required for counterclaims or cross-claims in summary actions).

Note: Adopted June 29, 1990 to be effective September 4, 1990; amended July 14, 1992 to be effective September 1, 1992; amended to be effective .

Z. **Proposed Amendments to Rules 4:43-1 and 4:43-2 -- re Entry of Default and Default Judgment**

The current rules governing entry of default and final judgment by default call for application to the court on written notice to the party in default served at least five days prior to the hearing on the application. The Committee observed that five days' notice does not afford any meaningful opportunity to respond. Research provided no rationale for the brevity of the notice period. As an application to the court for an order is quite simply the definition of a motion, the Committee recommends that entry of default and default judgment be accomplished in accordance with motion practice. This would lengthen the notice period from five to sixteen days (see section I. G., above) but the Committee can foresee no harm resulting from this change. On the contrary, sixteen days would provide adequate time to respond if defendant chose to do so.

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Civil Practice

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The proposed amendments to *Rules* 4:43-1 and 4:43-2 follow:4:43-1. Entry of Default

If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or court order, or if [his] the answer has been stricken, the clerk shall enter a default on the docket as to such party. Except where the default is entered on special order of the court, the moving party shall make a formal written request of the clerk for the entry of the default, supported by [his] the attorney's affidavit. The affidavit shall recite the service of the process and copy of complaint on the defendant or defendants (if more than one, naming them), the date of service as appears from the return of the process, and that the time within which the defendant or defendants may answer or otherwise move as to the complaint, counterclaim, cross-claim, or third-party complaint has expired and has not been extended. The request and affidavit for entry of default shall be filed together [in duplicate] within 6 months of the actual default, and the default shall not be entered thereafter except on [application to the court and on written notice to] notice of motion filed and served in accordance with R. 1:6 on the party in default [served at least 5 days prior to the hearing of the application] .

Note: Source—R.R. 4:56-1(a) (b) (c) (d); amended to be effective .

4:43-2. Final Judgment by Default

When a default has been entered in accordance with R. 4:43-1, except as otherwise provided by R. 4:64 (foreclosures), a final judgment may be entered in the action as follows:

(a) By the Clerk. If the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit setting forth a particular statement of the items of the claim, their amounts and dates, a calculation in figures of the amount of interest, the payments or credits, if any, and the net amount due, shall sign and enter judgment for the net amount and costs against [the] such defendant, [if he has been defaulted for failure to appear and] if [he is] not [an infant] a minor or incompetent 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. 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 Rule 4:42-11(a). If the claim is founded upon a note, 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.

(b) ...no change

(c) ...no change

(d) Failure to Apply for Judgment Within 6 Months. If a party entitled to a judgment by default fails to apply therefor within 6 months after the entry of the default, judgment shall not be entered except on notice of motion filed and served in accordance with R. 1:6 [application to the court and on written notice to the party in default served at least 5 days prior to the hearing of the application].

Note: Source—R.R. 4:55-4 (first sentence), 4:56-2(a) (b) (first three sentences) (c), 4:79-4. Paragraph (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 15, 1982 to be effective September 13, 1982; text and paragraph (a) amended January 19, 1989 to be effective February 1, 1989; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (d) amended to be effective .

AA. Proposed Amendments to Rules 4:58-2 and 4:58-3 -- re Offer of Judgment

The State Bar's Civil Courts Task Force and the Supreme Court committee appointed to review the Task Force recommendations both endorsed a strengthening of the offer of judgment rule. The Supreme Court approved this recommendation and referred the matter to the Committee for incorporation into the rules. The Committee proposes amendments strengthening the offer of judgment process by removing the current cap on attorneys' fees awarded under the rule and permitting the award of such attorneys' fees as may be compelled by non-acceptance of the offer.

The proposed amendments to *Rules* 4:58-2 and 4:58-3 follow:4:58-2.

Consequences of Non-acceptance of Claimant's Offer

If the offer of a claimant is not accepted and [he] the claimant obtains a verdict or determination at least as favorable [to him as his] as the rejected offer, [he] the claimant shall be allowed, in addition to costs of suit, eight per cent interest on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, and also a reasonable attorney's fee, which shall belong to the client, [not exceeding $750.00] for such subsequent services as are compelled by the non-acceptance. In an action for negligence or unliquidated damages, however, no attorney's fee shall be allowed to the offeror unless the amount of the recovery is in excess of 120% of the offer. A claimant entitled to interest under R. 4:42-11(b) shall be allowed interest under this rule only to the extent it may exceed the interest allowed under R. 4:42-11(b). If there are multiple defendants against whom a joint and several judgment is sought, and one of the defendants offers in response less than [his] a pro rata share, [he] that defendant shall, for the purposes of the allowance of interest and attorney's fee, be deemed not to have accepted the claimant's offer.

Note: Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1972 to be effective September 5, 1972; amended July 17, 1975 to be effective September 8, 1975; amended to be effective .

4:58-3. Consequences of Non-Acceptance of Offer of Party Not a Claimant

If the offer of a party other than the claimant is not accepted and the determination is at least as favorable to the offeror as [his] the offer, [he] the offeror shall be allowed, in addition to costs of suit, a reasonable attorney's fee[, not exceeding $750.00] for such subsequent services as are compelled by the non-acceptance, which shall belong to the client and constitute a prior charge upon the judgment. In an action for negligence or other unliquidated damages, however, no attorney's fee shall be allowed to such offeror unless the amount awarded to the claimant is in excess of $750.00 and is less than 80 per cent of the offer.

Note: Source—R.R. 4:73; amended to be effective .

BB. Proposed Amendments to R. 4:59-1 -- Execution

A trial judge reported to the Committee instances of abuse of the supplemental proceedings procedure, whereby large batches of depositions upon written questions may be served upon debtors. The Committee noted that in the previous term *R.* 4:59-1(e) was amended to make applicable to Law Division-Civil cases the information subpoena practice introduced into the Special Civil Part by the 1990 amendment of *R.* 6:7-2. (The information subpoena and the questions permitted thereunder are contained in Appendix XI-K of the Rules.) The Committee proposes a further amendment of *R.* 4:59-1(e) to permit only those questions on the Special Civil Part's information subpoena (as prescribed by *R.* 6:7-2 and contained in Appendix XI-K to the Rules) to be used if the judgment creditor chooses to employ the practice of depositions on written questions in supplementary proceedings conducted pursuant to *R.* 4:59-1(e). Gender-specific references have also been eliminated from the amended rule.

The Committee also endorses a revised Notice to Debtor form for Appendix VI to the Rules. See section IV. C., below.

The proposed amendments to *R.* 4:59-1 follow:4:59-1. Execution

(a) In General. Process to enforce a judgment or order for the payment of money and process to collect costs allowed by a judgment or order, shall be a writ of execution, except if the court otherwise orders or if in the case of a capias ad satisfaciendum the law otherwise provides. The amount of the debt, damages and costs actually due and to be raised by the writ, together with interest from the date of the judgment, shall be endorsed thereon by the party at whose instance it shall be issued before its delivery to the sheriff or other officer. Unless the court otherwise orders, every writ of execution shall be directed to a sheriff and shall be returnable 12 months after the date of its issuance, except that in case of a sale, the sheriff shall make return of the writ and pay to the clerk any remaining surplus [in his hands] within 30 days after the sale, and except that a capias ad satisfaciendum shall be returnable not less than 8 and not more than 15 days after the date it is issued. One writ of execution may issue upon one or more judgments or orders in the same cause. The writ may be issued either by the court or the clerk thereof.

(b) ...no change

(c) Execution First Made Out of Property of Party Primarily Liable. If a writ of execution is issued against several parties, some liable after the others, the court before or after the levy may, on application of any of them and on notice to the others and the execution creditor, direct the sheriff or other officer that, after levying upon the property liable to execution, [he raise] the money be raised, if possible, out of the property of the parties in a designated sequence.

(d) ...no change

(e) Supplementary Proceedings. In aid of the judgment or execution, the judgment creditor or successor in interest appearing of record, may examine any person, including the judgment debtor, by proceeding as provided by these rules for the taking of depositions or as provided by R. 6:7-2, except that service of an order for discovery or an information subpoena shall be made as prescribed by R. 1:5-2 for service on a party. [If the deposition is taken on written questions, the notice of the taking thereof may contain a statement that the judgment debtor or deponent need not appear pursuant to the notice, provided before the time fixed therein, the deponent serves upon the judgment creditor or the judgment creditor's attorney answers under oath to the written questions served.] The court may make any appropriate order in aid of execution.

(f) Sheriff's Costs. The sheriff shall file [his] a bill of taxed costs with the clerk of the court from which execution issued within 20 days after the date of the sale.

(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 person 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. The notice shall be in the form prescribed by Appendix VI to these rules and a copy thereof shall be promptly filed by the levying officer with the clerk of the court. 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, [he] it shall [forthwith forward it] be forthwith forwarded to the clerk of the court and [shall take] 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.

Note: Source—R.R. 4:74-1, 4:74-2, 4:74-3, 4:74-4. Paragraph (c) 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 to be effective .

CC. Proposed Amendments to R. 4:65-2 -- Posting of Notice of Sale; Mailing

In accordance with the Supreme Court's mandate in *New Brunswick Savings Bank v. Markouski*, 123 *N.J.* 402 (1991), the Committee proposes amendments to *R.* 4:65-2 to require that at least 10 days notice of sale of real or personal property be given to all persons with a recorded lien or ownership interest in the property. The amended rule expressly applies to execution as well as judgment sales. The proposed amendment does not specify when the lien or ownership interest must have been recorded (*e.g.*, as of the date of the commencement of the action), as doing so might suggest that updated searches are not necessary.

See section VI. B., below, for a discussion of research the Committee intends to undertake in connection with this rule in the next term.

The proposed amendments to *R.* 4:65-2 follow:4:65-2. [Posting of Notice of Sale; Mailing

If, in any action, real or personal property is authorized or ordered to be sold at public sale, the notice of the sale shall be posted in the office of the sheriff of the county or counties where the property is located, and also, in the case of real property, on the premises to be sold, but need not be posted in any other place. At least 10 days prior to the date set for sale, a notice of sale of real property shall be mailed by registered or certified mail, return receipt requested, by the party who has procured the execution or order for sale to every party who has appeared in the action or served a pleading and to the owner of record of the property as of the date of the commencement of the action whether or not he has appeared in the action. Failure to mail such notice shall not affect the title to the property.]

Notice of Sale; Posting and Mailing

If real or personal property is authorized by court order or writ of execution to be sold at public sale, notice of the sale shall be posted in the office of the sheriff of the county or counties where the property is located, and also, in the case of real property, on the premises to be sold, but need not be posted in any other place. The party who obtained the order or writ shall, at least 10 days prior to the date set for sale, serve a notice of sale by registered or certified mail, return receipt requested, upon (1) every party who has appeared in the action giving rise to the order or writ and (2) the owner of record of the property as of the date of commencement of the action whether or not appearing in the action, and (3) every other person having an ownership or lien interest which is to be divested by the sale and is recorded in the office of the Superior Court Clerk or the county recording officer, and in the case of personal property, recorded or filed in pertinent public records of security interests, provided, however, that the name and address of the person in interest is reasonably ascertainable from the public record in which the interest is noted.

Note: Source—R.R. 4:83-2; caption and rule amended to be effective .

DD. Proposed Amendments to Rules 4:72-1 and 4:72-4 -- re Name Changes

The Committee proposes amendments to the rules governing name changes to comport with recent legislative amendments (*N.J.S.A.* 2A:52-1 and -2) enacted to streamline the procedures for obtaining a change of name. It should be noted that although the legislation calls for the plaintiff's social security number to be included in the affidavit accompanying the verified complaint as well as in the judgment, this requirement is intentionally omitted from the proposed amendments so as not to run afoul of the Federal Privacy Act. The Attorney General's Office, which drafted the legislative amendments, has provided the Committee with its written agreement that the rule should *not* require inclusion of the plaintiff's social security number in any of the pleadings.

The proposed amendments to *Rules* 4:72-1 and 4:72-4 follow:4:72-1. Complaint

An action for change of name shall be commenced by filing a verified complaint with the Clerk of the Superior Court setting forth the grounds of the application. The complaint shall contain the date of birth of the plaintiff and shall state: (a) that the application is not made with the intent to avoid creditors or to obstruct criminal prosecution or for other fraudulent purposes; (b) whether plaintiff has ever been convicted of a crime [within the last 10 years] and if so, the nature of the crime and the sentence imposed; (c) whether any criminal charges are pending against [him;] plaintiff and if so, such detail regarding the charges as is reasonably necessary [(c) if plaintiff has been so convicted or there are such charges pending, the circumstances of the crime or the charges in such manner as] to enable the Division of Criminal Justice or the appropriate county prosecutor to identify the matter. If criminal charges are pending, [A]a copy of the complaint shall, at least 20 days prior to the hearing, be served upon the [Attorney General] Director of the Division of Criminal Justice to the attention of the Records and Identification Section if the charges were initiated by the Division, and otherwise upon the appropriate county prosecutor. Service upon the Division or a prosecutor[, the county prosecutor of the county in which the action is filed and, if the plaintiff has been charged with or convicted of crime, upon the prosecutor of the county or counties in which the conviction occurred or the charges are pending at least 20 days prior to the hearing. Service upon the Attorney General and prosecutor] shall be accompanied by a request that the official make such response as [he deems] may be deemed appropriate.

Note: Source—R.R. 4:91-1. Amended July 11, 1979 to be effective September 10, 1979; amended July 15, 1982 to be effective September 13, 1982; amended November 1, 1985 to be effective January 2, 1986; amended to be effective .

4:72-4. Hearing; Judgment; Publication; Filing

On the date fixed for hearing the court, if satisfied from the filed papers, with or without oral testimony, that there is no reasonable objection to the assumption of another name by plaintiff, shall by its judgment authorize plaintiff to assume such other name from and after the time fixed therein, which shall be not less than 30 days from the entry thereof. Within 20 days after entry of judgment, a copy thereof shall be published in a newspaper of general circulation in the county of plaintiff's residence, and within 45 days after entry of judgment, the judgment and affidavit of publication of the judgment shall be filed with the Clerk of the Superior Court and a certified copy of the judgment shall be filed with the Secretary of State. If plaintiff has been convicted of a crime or if criminal charges are pending, [T]the clerk shall mail a copy of the judgment to the State Bureau of Identification.

Note: Source—R.R. 4:91-4; amended July 24, 1978 to be effective September 11, 1978; amended July 11, 1979 to be effective September 10, 1979; amended July 22, 1983 to be effective September 12, 1983; amended July 14, 1992 to be effective September 1, 1992; amended to be effective .

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Proposed Amendments to R. 4:74-7 -- Civil Commitment

The Committee proposes numerous changes to *R.* 4:74-7, in response to the recommendations of al Commitments Subcommittee. That subcommittee, chaired by Deborah T. Poritz, Esq., directed its effort in the past term to the issue of the commitment of minors. This is an area not covered e, since *N.J.S.A.* 30:4-27.1 *et seq*, enacted in 1988, repealed but did not replace previous legislation with juvenile commitments.

A majority of the subcommittee proposed a standard for the commitment of minors that would a finding that the patient suffers from mental illness *and either* that the mental illness causes the to be dangerous to self, others or property *or* that the patient is in need of intensive psychiatric that can only be provided at a psychiatric facility. The majority rejected adopting any definition tal illness for minors other than the basic definition now included in the statute, at *N.J.S.A.* .2(r). In recommending this standard, under which a minor could be committed involuntarily the finding of dangerousness necessary for an adult commitment, the majority of the subcommittee zed the need to provide needed treatment to minors who are mentally ill but not dangerous.

A minority of the subcommittee, however, echoed the Public Advocate's concern that children who ntally ill but in no way dangerous could be institutionalized because their families cannot handle when other, less restrictive treatment alternatives are available. The minority proposed a differentitandard for the commitment of minors -- for those 14 and over, a finding of mental illness and rousness is necessary; for those under 14, mental illness and either dangerousness or, in the tive, a need for intensive psychiatric therapy must be found. Further, in order for the alterative on to apply, there should be a finding that 1) a recent history of out-patient treatment was unsucl and 2) the current symptoms of mental illness cannot be treated in a non-hospital setting. Finally, s under the age of 14, who are not dangerous, should not be involuntarily committed without parental nt.

A copy of the Mental Commitments Subcommittee report is included as Appendix E to this report.

The Committee discussed the subcommittee's report at length, and was sharply divided in its s. The Committee as a whole feels strongly, however, that *R.* 4:74-7 must be amended in this rules to make provision for the commitment of minors, especially as no legislative standard is anticipated forthcoming in the near future. Accordingly, the majority of the Committee recommends the wing standard for the commitment of minors:

- for minors 14 or older, mental illness *and* dangerousness to self, others or property must be found;
- for minors under the age of 14, a finding of mental illness *and either* dangerousness *or* a need for intensive psychiatric therapy that can only be provided at a psychiatric hospital is necessary.

ubstantial minority of the Committee, however, would not differentiate between minors 14 and over minors under 14, and would provide for the alternative of a need for intensive psychiatric therapy in cases.

The Committee does not recommend that the rule specify a definition of mental illness in minors, would rely on the general statutory definition.

The subcommittee proposed several other amendments to *R.* 4:74-7 that were unanimously dorsed by the Committee. These are:

paragraphs (c)(1) and (k): the proposed amendments would require commitment hearings for minors within 14 days of the initial inpatient admission to the facility, with an adjournment of no more than seven days possible in exceptional circumstances.. The rules now provide for a commitment hearing for adults and minors within 20 days of the initial inpatient admission, with the possibility of a 14-day adjournment.

paragraph (c)(4): the proposed amendment would require the service of notice no less than five days prior to the hearing, in the case of a minor. This change from 10 days is necessitated by the proposed accelerated hearing date for minors, above.

paragraphs (e) and (h)(2): proposed amendments would require any expert who is to testify and the hospital employee who has primary responsibility for placing the patient to prepare written reports and make these available to the court and all counsel two business days prior to the commitment and CEPP hearings, respectively. This procedure is now used in several south Jersey facilities, where the benefits are found to far outweigh any burden. See section IV. F., below, in which forms for these reports are proposed.

The proposed amendments to *R.* 4:74-7 follow:4:74-7. Civil Commitment

(a) ...no change

(b) Commencement of Action. An action for commitment shall be commenced ther through a screening service referral or upon independent application for a temporary court order.

(1) ...no change

(2) Independent Applications. If the screening service procedure is not employed, roceedings for involuntary commitment may be initiated by filing an application supported by two clinical ertificates, at least one of which is prepared by a psychiatrist, stating that the person is in need of voluntary commitment. The originals shall be filed with the court and copies with the office of the ounty adjuster. If the application is made after a voluntary patient requests discharge from a facility or ospital, the patient may be detained for not more than 48 hours after the request or until the end of the ext working day, whichever is later. If proceedings are instituted by independent application, there shall e no involuntary commitment prior to entry of a temporary commitment order by the court.

All clinical and screening certificates shall be in the form prescribed by the Department of Human ervices subject to approval by the Administrative Director of the Courts. If the patient is an adult, the ertificates shall state with particularity the facts upon which the psychiatrist, physician or mental health creener relies in concluding that (1) the patient is mentally ill, (2) that mental illness causes the patient o be dangerous to self or others or property as defined by N.J.S.A. 30:4-27.2h and -.2i, and (3) ppropriate facilities or services are not otherwise available. If the patient is a minor under the age of 14, he certificates [may alternatively] shall state with particularity the facts upon which the psychiatrist, hysician or mental health screener relies in concluding that the patient is mentally ill and either that the nental illness causes the patient to be dangerous to self or others or property, or that the patient is in need f intensive psychiatric therapy [which] that can be provided at a psychiatric hospital and that cannot ractically or feasibly be rendered in the home or in the community or on [any] an outpatient basis. A erson who is a relative by blood or marriage of the person being examined shall not execute any ertificate required by this rule. If the screening service referral procedure is used, the same psychiatrist hall not sign both the screening certificate and the clinical certificate unless that psychiatrist has made a easonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the ertificate.

(c) Temporary Commitment. The court may enter an order of temporary commitment uthorizing the admission to or retention of custody by a facility pending final hearing if it finds probable ause, based on the certificates filed in accordance with paragraph (b) of this rule, to believe that the erson is in need of involuntary commitment. The order of temporary commitment shall include the ollowing terms:

1. A place and day certain for the commitment hearing, which shall be within 20 days after he initial inpatient admission to the facility. In the case of a minor, the hearing shall be within 14 days fter the initial inpatient admission to the facility. The date shall not be subject to adjournment except that n exceptional circumstances and for good cause shown in open court and on the record the hearing may e adjourned for a period of not more than 14 days for an adult and not more than seven days for a minor.

2. ...no change

3. ...no change

4. The persons to be notified by the county adjuster of the admitting county of the time nd place of hearing, the mode of service of the notice, and the time within which notice must be served. n no case, however, shall notice be served less than [10] ten days prior to the date of the hearing, nor shall ny mode of service of the notice on the patient be permitted other than personal service. In the case of minor, notice shall be served no less than five days prior to the hearing. In addition to the patient, [his] he patient's counsel, and [his] the patient's guardian or guardian ad litem, if any, notice shall also be given o the county counsel, the nearest relatives of the patient, the county adjuster of the county in which the atient has legal settlement, and the director, chief executive officer or other individual who has custody f the patient. The court may order notice to be served on any other person. The form of notice served pon the patient and [his] the patient's counsel or guardian ad litem shall include a copy of the temporary ourt order, a statement of the patient's rights at the hearing and the screening or clinical certificates and upporting documents.

(d) ...no change

(e) Hearing. No final order of commitment shall be entered except upon hearing onducted in accordance with the provisions of these rules. The application for commitment shall be upported by the oral testimony of a psychiatrist on the patient's treatment team who has conducted a personal examination of the patient as close to the court hearing date as possible, but in no event more than five calendar days prior to the court hearing. If a licensed psychologist has examined the patient, the court may also require the psychologist to appear and testify in the matter. Any expert witness who is to testify shall prepare a written report and shall make it available to the court and all counsel no later than two business days prior to the hearing. The report shall be in a form prescribed by the Department of Human Services and subject to approval by the Administrative Director of the Courts. Other members of the patient's treatment team may also testify at the hearing, as may the patient's next-of-kin if the court so determines. The patient shall have the right to appear at the hearing, but may be excused from the courtroom during all or any portion thereof if the court determines that because of the patient's conduct at the hearing it cannot reasonably continue while the patient is present. In no case shall the patient appear pro se. The patient, through counsel, shall have the right to present evidence and to cross-examine witnesses. The hearing shall be held in camera, except as otherwise provided by R. 3:19-2 (acquittal by reason of insanity).

(f) Final Order of Commitment, Review. The court shall enter an order authorizing the involuntary commitment of an adult patient if it finds, by clear and convincing evidence presented at the hearing that the patient is in need of continued involuntary commitment by reason of the fact that [he is] (1) the patient is mentally ill, (2) mental illness causes [him] the patient to be dangerous to self or dangerous to others or property as defined in N.J.S.A. 30:4-27.2h and -.2i, (3) [he] the patient is unwilling to be admitted to a facility for voluntary care, and (4) [he] the patient needs care at a short-term care[,] or psychiatric facility or special psychiatric [facility] hospital because other services are not appropriate or available to meet [his] the patient's mental health care needs. [Alternatively, if] If, however, the patient is a minor under the age of 14, the order may also be entered if the court finds that [he] the patient is mentally ill and either that the mental illness causes the patient to be dangerous to self or others or property, or that the patient is in need of intensive psychiatric therapy [which] that can be provided at a psychiatric hospital and that cannot practically or feasibly be rendered in the home or in the community or on [any] an outpatient basis.

If the patient is an adult, the order shall provide for periodic reviews of the commitment no later than (1) three months from the date of the first hearing, and (2) nine months from the date of the first hearing, and (3) 12 months from the date of the first hearing, and (4) at least annually thereafter, if the patient is not sooner discharged. The court may schedule additional review hearings but, except in extraordinary circumstances, not more than once every 30 days. If the court determines at a review hearing that involuntary commitment shall be continued, it shall execute a new order. If the patient is a minor, the commitment shall be reviewed every three months from the date of its entry until the minor is discharged or reaches [his] majority. All reviews shall be conducted in the manner required by paragraph (e) of this rule except that if the patient has been diagnosed as suffering from either severe mental retardation or severe irreversible organic brain syndrome, all reviews after the expiration of two years from the date of judgment may be summary, provided all parties in interest are notified of the review date and provided further that the court and all interested parties are furnished with the report of a physical examination of the patient conducted no less than three months prior thereto. The court may, in its discretion, at a review hearing, where the advanced age of the mental patient or where the cause or nature of the mental illness renders it appropriate, and where it would be impractical to obtain the testimony of a psychiatrist (as required in paragraph (e)), support its findings by the oral testimony of a physician on the patient's treatment team who has personally conducted an examination of the patient as close to the hearing date as possible, but in no event more than five days prior to the hearing date. A scheduled periodic review, as set forth above, shall not be stayed pending appeal of a prior determination under this rule.

(g) ...no change

(h) Discharge.

(1) ...no change

(2) Order of Conditional Extension Pending Placement. If a patient otherwise entitled to discharge, cannot be immediately discharged due to the unavailability of an appropriate placement, the court shall enter an order conditionally extending the patient's hospitalization and scheduling a placement review hearing within 60 days thereafter. If the patient is not sooner discharged, a second placement review hearing shall be held no later than six months after the initial placement review hearing and subsequently at no greater than six-month intervals. At all placement review hearings the court shall inquire into and receive evidence of the patient's placement as is necessary to support the entry of an order conditionally extending the patient's hospitalization. At all placement review hearings, the hospital employee who has primary responsibility for placing the patient shall prepare a written report and shall make it available to the court and all counsel no later than two business days prior to the hearing. The report shall be in a form prescribed by the Department of Human Services and subject to approval by the Administrative Director of the Courts. If the court is advised at a hearing that an appropriate placement is available, it shall forthwith order such placement. If an appropriate placement becomes available during the interval between scheduled hearings, the patient may be administratively discharged to said placement.

The patient shall have the right to counsel in all placement review proceedings. Notice of the date, time and place of all hearings shall be given the patient and patient's counsel no later than ten days prior to the hearing. The patient's counsel shall be entitled to inspect and copy all records relating to the patient's condition including the patient's clinical chart and all records relating to placement, to introduce evidence and to cross-examine adverse witnesses.

(3) ...no change

(i) Order for Payment.

(1) The patient's legal settlement and provision for payment of the expenses of the patient's care and treatment shall be determined by the court on petition of the county adjuster, which shall be accompanied by a report stating the results of [his] the county adjuster's investigation and [his] the county adjuster's recommendations. The county adjuster's petition and report shall be served upon the patient or [his] the patient's legal guardian if any, [his] the patient's attorney, and any person who may be legally responsible for payment. The petition shall set forth the name and address of the county adjuster and the address of the court and shall state that any objection to the recommendations of the county adjuster shall be filed with the court and served upon the county adjuster within 20 days after service of the petition and report. The petition shall further state that if no objection is filed within the 20-day period, the court may enter an order imposing liability in accordance with the recommendations of the report of the county adjuster. If no objection is filed, the court may enter an appropriate order based on the petition. If an objection is filed, an order may be entered only after a hearing on notice, which may be summary in nature.

(2) The person or public body charged with the responsibility for payment of the expenses of the patient's care and treatment shall also be charged with the fee of assigned counsel and guardian ad litem and reasonable costs, including the costs of experts, incurred by either of them in representing the patient. If the assigned counsel or guardian ad litem is employed by a legal services project, [his] counsel's fee shall be ordered payable thereto. If [he] counsel is employed by the State or county, no fee allowance shall be made.

(j) ...no change

(k) Institutionalization of Minors. A minor shall be institutionalized for the treatment of mental illness only upon court order entered in accordance with the procedures prescribed by paragraphs (b) through (g), inclusive, of this rule except that [(1) I], irrespective of whether [or not he meets] the standard of involuntary commitment stated by this rule is met, any minor 14 years of age or over may request [his] admission to an institution for psychiatric treatment provided the court on a finding that the minor's request is voluntary, enters an order approving the admission. If an order approving a voluntary admission of a minor is entered, the minor may discharge himself or herself from the institution in the same manner as an adult who has voluntarily admitted himself or herself. An order approving a voluntary admission shall be reviewable as provided by paragraph (f) of this rule, however, said review may be summary[, and].

[(2)] This rule shall not be construed to require any court procedure or approval for the admission of a minor by [his] the minor's parent, parents, or other person in loco parentis to any institution for the evaluation or diagnosis of a mental condition provided the admission does not exceed seven days. If further hospitalization is then required, the applicant shall proceed in accordance with paragraph (e) of this rule. If an application for commitment is made during such admission, the final hearing shall be held within 20 days [from such admission,] of the initial inpatient admission to the facility, adjournable only in accordance with subparagraph (c)(1) of this rule.

Note: Source—paragraphs (a) (b) (c) (d) (e) (f) and (g), captions and text deleted and new text adopted July 17, 1975 to be effective September 8, 1975; paragraphs (a), (b), (c), (e), (f) amended *and (j)* caption and text deleted and new caption and text adopted September 13, 1976, to be effective *September* 13, 1976; paragraphs (b), (d), and (f) amended July 24, 1978, to be effective *September 11*, 1978; paragraph (f) amended July 16, 1981 to be effective September 14, 1981; paragraph *(b)* amended July 22, 1983 to be effective September 12, 1983; paragraphs (e) and (f) amended *and* paragraphs (g) and (h)

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caption and text amended November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (b) amended, subparagraphs (b)(1) and (2) adopted, paragraphs (c), (d) and (e) amended, caption and text of paragraph (f) amended, and caption and text of subparagraphs (g)(1) and (2) amended November 7, 1988 to be effective immediately; November 7, 1988 amendments rescinded February 21, 1989 retroactive to November 7, 1988; November 7, 1988 amendments reinstated June 6, 1989 to be effective June 7, 1989; subparagraph (c)(2) amended June 6, 1989 to be effective June 7, 1989; paragraph (g) recaptioned and text adopted and paragraphs (g) (h) (i) and (j) redesignated (h) (i) (j) and (k) June 29, 1990 to be effective September 4, 1990; paragraphs (c)(e) and (g) amended July 14, 1992 to be effective September 1, 1992; paragraphs (b)(2), (c)(1) and (4), (e), (f), (h)(2), (i)(1) and (2) and (k) amended to be effective .

FF. Proposed Amendments to R. 4:83-2 -- Filing of Papers

In response to an attorney's suggestion, the Committee proposes amending *R.* 4:83-2 to make it clear that jurisdiction for matters under the Uniform Transfers to Minors Act lies in the Probate Part of the Chancery Division.

The proposed amendments to *R.* 4:83-2 follow:4:83-2. Filing of Papers

In all matters relating to estates of decedents, trusts [and], guardianships and custodianships, other than those set forth in R. 4:80 and R. 4:81, all papers shall be filed with the Surrogate of the county of venue as the deputy clerk of the Superior Court, Chancery Division, Probate Part, pursuant to R. 1:5-6.

Note: Source—R.R. 4:117-2. Former R. 4:99-2 deleted and new R. 4:83-2 adopted June 29, 1990 to be effective September 4, 1990; amended to be effective .

GG. Proposed Amendments to Rules 4:86-2, 4:86-4 and 4:86-6 -- re Guardianships

The Supreme Court approved and authorized implementation of three rule changes proposed by the Judiciary-Surrogates Liaison Committee in its report on guardianships. The Committee was asked to prepare the necessary amendments.

- *R.* 4:86-2: the proposed amendments require that the affidavits of the examining physicians should contain the alleged incompetent's age, sex, weight and a physical description to ensure that the alleged incompetent is the same individual who was examined. The affidavits should also state whether the physician is a treating or examining physician, the date and place of the examination, the diagnosis and prognosis, and the factual basis therefor. Finally, the affidavits should contain an opinion as to whether the individual is capable of attending the hearing and if unable, the reasons for the inability.
- *R.* 4:86-4: the proposed amendments provide that the report of the attorney representing the alleged incompetent should indicate if less restrictive alternatives, *e.g.*, a limited guardianship, are suitable. It should also contain a statement that reasonable efforts were made to locate any will, powers of attorney and advance healthcare directives. If such documents were found by the attorney, the attorney's report should describe their impact, if any, upon the guardianship proceeding.
- *R.* 4:86-6: the proposed amendments provide that, within 60 days of appointment, the guardian must file with the court and serve upon all interested parties an inventory of the incompetent's estate. The court may dispense with this requirement, if it is clear that the alleged incompetent has no estate.

The proposed amendments to *Rules* 4:86-2, 4:86-4 and 4:86-6 follow:

4:86-2. Accompanying Affidavits

The allegations of the complaint shall be verified as prescribed by R. 1:4-7 and shall have annexed thereto:

(a) ...no change

(b) Affidavits of two reputable physicians, having qualifications set forth in N.J.S.A. 30:4-27.2t. If an alleged incompetent has been committed to a public institution and is confined therein, one of the affidavits shall be that of the chief executive officer, the medical director, or the chief of service providing that person is also the physician with overall responsibility for the professional program of care and treatment in the administrative unit of the institution. However, where an alleged incompetent is domiciled within this State but resident elsewhere, the affidavits may be those of physicians who are residents of the state or jurisdiction of the alleged incompetent's residence. Each affiant shall have made a personal examination of the alleged incompetent not more than 30 days prior to the filing of the complaint, but said time period may be relaxed by the court on an ex parte showing of good cause. To support the complaint, each affiant shall state [that in his or her]: (1) the date and place of the examination; (2) whether the physician is a treating or examining physician; (3) whether the physician is disqualified under R. 4:86-3; (4) the diagnosis and prognosis and factual basis therefor; (5) for purposes of ensuring that the alleged incompetent is the same individual who was examined, a physical description of the person examined, including but not limited to sex, age and weight; and (6) the affiant's opinion that the alleged incompetent is unfit and unable to govern himself or herself and to manage his or her affairs and shall set forth with particularity the circumstances and conduct of the alleged incompetent upon which this opinion is based, including a history of the alleged incompetent's condition. The affidavit should also include an opinion whether the alleged incompetent is capable of attending the hearing and if not, the reasons for the individual's inability. [Each affiant shall have made a personal examination of the alleged incompetent not more than 30 days prior to the filing of the complaint, and the affidavit shall set forth the date of the examination, include a physical description sufficient to identify the alleged incompetent, and state that the physician is not disqualified pursuant to R. 4:86-3. The time period herein prescribed may be relaxed by the court on an ex parte showing of good cause.]

(c) ...no change

Note: Source—R.R. 4:102-2; former R. 4:83-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended to be effective .

4:86-4. Order for Hearing

(a) ...no change

(b) Appointment of Counsel. The order shall include the appointment by the court of counsel for the alleged incompetent. Counsel shall be responsible to meet with the alleged incompetent; to make inquiry of persons having knowledge of the alleged incompetent's circumstances, his or her physical and mental state and his or her estate; and to file, in lieu of an [A]answer, a written report of findings and recommendations to the court at least three days prior to the hearing. The report shall indicate what if any less restrictive alternatives are suitable. It shall also state that reasonable inquiry was made to locate any will, powers of attorney, trusts and any advance healthcare directives and shall describe the impact of such documents, if any, upon the guardianship proceeding. A copy of the report shall be served on the plaintiff's attorney and other parties who may have formally appeared at least three days prior to the hearing. If the alleged incompetent obtains other counsel, such counsel shall notify the court and appointed counsel at least five days prior to the hearing. The compensation of appointed counsel may be fixed by the court to be paid out of the estate of the alleged incompetent or in such other manner as the court shall direct.

(c) ...no change

Note: Source—R.R. 4:102-4(a)(b). Paragraph (b) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; caption of former R. 4:83-4 amended, caption and text of paragraph (a) amended and in part redesignated as paragraph (b) and former paragraph (b) redesignated as paragraph (c) and amended, and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (b) amended to be effective .

4:86-6. Hearing; Judgment

(a) ...no change

(b) ...no change

(c) Appointment of Guardian. If a guardian is to be appointed, letters shall be granted to the spouse or next of kin, or if none of them will accept the letters or it is proven to the court that no appointment from among them will be in the best interests of the incompetent or his or her estate, then to such other proper person as will accept them. Before letters of guardianship shall issue, the guardian shall accept the appointment in accordance with R. 4:96-1. The judgment appointing the guardian shall fix the amount of the bond, unless dispensed with by the court. The order of appointment shall require the guardian to file with the court within 60 days of appointment an inventory specifying all property and income of the incompetent's estate, unless the court dispenses with this requirement. Within said time period, the guardian shall also serve copies of the inventory on all next of kin and such other interested parties as the court may direct.

Note: Source—R.R. 4:102-6(a) (b) (c), 4:103-3 (second sentence). Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (c) of former R. 4:83-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (c) amended to be effective .

HH. Proposed Amendments to Rules 4:21A-7, 4:44-1, 4:44-2, 4:44-3, 4:48-2, 4:64-1, 4:72-2 and 4:72-3 -- re Correction of Reference to "Infants"

To complete an effort begun when the probate rules were revised several years ago, the Committee recommends changing all remaining references to "infants" throughout the rules to "minors". Gender-specific references are also eliminated in the proposed amendments.

The proposed amendments to *Rules* 4:21A-7, 4:44-1, 4:44-2, 4:44-3, 4:48-2, 4:64-1, 4:72-2 and 4:72-3 follow:4:21A-7. Arbitration of [Infant's] Minor's and Incompetent's Claims

If all parties to the action accept the arbitration award disposing of the claim of [an infant] a minor or incompetent, the attorney for the guardian ad litem shall forthwith so report to the Assignment Judge and a proceeding for judicial approval of the award pursuant to R. 4:44 shall be held as expeditiously as possible.

Note: Adopted November 1, 1985 to be effective January 2, 1986; amended to be effective .

4:44-1. Venue; Filing

Actions brought in the Superior Court on behalf of [an infant] a minor or incompetent, instituted without process, for the purpose of obtaining the court's approval of a settlement shall be brought in any county in which the venue might be laid under R. 4:3-2, and in such actions in the Superior Court, the papers shall, unless the court otherwise orders, be filed with the clerk of the court before the hearing on the application for approval.

Note: Source—R.R. 4:56A(a) (b); amended July 26, 1984 to be effective September 10, 1984; amended to be effective .

4:44-2. Medical Testimony

Medical testimony as to the injuries of [an infant] a minor or incompetent person given in proceedings to obtain the approval of a settlement shall be that of the attending or consulting physician and may be submitted by affidavit unless the court, for good cause shown, permits the testimony of other medical experts or in its discretion requires the physician's personal appearance.

Note: Source—R.R. 4:56A(c); amended to be effective .

4:44-3. Hearing; Order; Expenses

All proceedings to enter a judgment to consummate a settlement in matters involving [infants] minors and incompetents shall be heard by the court without a jury. The court shall determine whether the settlement is fair and reasonable as to its amount and terms. In the case of a structured settlement providing for deferral of all or part of the proceeds thereof, the court shall also satisfy itself, based on the financial security of the obligor or surety and such other relevant facts as may be adduced, of the reasonable certainty that all future payments will be made as proposed by the settlement. If the court approves the settlement it shall enter an order reciting the action taken and directing the appropriate judgment in accordance with R. 4:48A, whose provisions shall also apply to deferred payments under structured settlements. The court, on the request of the claimant or the claimant's attorney or on its own motion, may approve the expenses incident to the litigation, including attorney's fees. If the fees of the attorney representing the guardian ad litem are to be paid by the defendant, the defendant shall upon the court's request make available to it defendant's complete file in the action.

Note: Source—R.R. 4:56A(e). Amended July 7, 1971 to be effective September 13, 1971; amended May 3, 1988 to be effective immediately; amended to be effective .

4:48-2. Entry of Satisfaction

(a) By Clerk. On the filing of a warrant, or the return, fully paid or satisfied, by the sheriff or other officer of any execution issued on any judgment, the clerk shall forthwith enter satisfaction on the record, provided, however, that satisfaction of a judgment in favor of [an infant] a minor for more than $5000 shall not be entered except on court order, unless a guardian has been appointed for [his] the minor's property or [he] the minor has come of age. The clerk may enter satisfaction on the record as to any co-defendant filing a warrant stating that [he] the party has paid [his] the full share of the judgment even though a portion of the total judgment remains unsatisfied.

(b) ...no change

Note: Source—R.R. 4:60-3. Paragraph (a) amended by order of September 5, 1969 to be effective September 8, 1969; paragraph (a) amended July 22, 1983 to be effective September 12, 1983; paragraph (a) amended to be effective .

4:64-1. Uncontested Judgment: Foreclosures Other Than In Rem Tax Foreclosures

(a) ...no change

(b) ...no change

(c) ...no change

(d) ...no change

(e) Security Interest Foreclosure. [If the] A plaintiff in the mortgage foreclosure action who also holds a security interest in personal property located on the subject real estate and who elects to have the personal property sold by the sheriff at public sale together with the real property[, he] may, by separate count, seek to foreclose the security interest in the mortgage foreclosure action, and the judgment of foreclosure shall direct a single public sale of the real estate and personal property. Notice of the sale of such personal property shall be given to the debtor and the secured creditors pursuant to N.J.S.A. 12A:9-504. If necessary the court shall apportion the proceeds of sale, and the proceeds allocated to the personal property shall be distributed pursuant to N.J.S.A. 12A:9-504 whether or not the persons entitled thereto are parties to the foreclosure action.

(f) [Infants] Minors; Incompetents; Military Service. Except as otherwise provided by law or by R. 4:26-3 (virtual representation) no judgment or order for redemption shall be entered under this rule against [an infant] a minor or incompetent who is not represented by a guardian or guardian ad litem appearing in the action. No judgment or order for redemption shall be entered against a defendant in military service of the United States who has defaulted by failing to appear unless that defendant is represented in the action by an attorney authorized by the defendant or appointed to represent [him] defendant in the action and who has appeared or reported therein.

(g) ...no change

Note: Source—R.R. 4:82-1, 4:82-2. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended to be effective .

4:72-2. Guardian Ad Litem

An action for the change of name of [an infant] a minor may be commenced by [his] a parent without the appointment of a guardian ad litem.

Note: Source—R.R. 4:91-2; amended to be effective .

4:72-3. Notice of Application

The court by order shall fix a date for hearing not less than 30 days after the date of the order. Notice of application shall then be published in a newspaper of general circulation in the county of plaintiff's residence once, at least 2 weeks preceding the date of the hearing. The court may also require, in the case of [an infant] a minor plaintiff, that notice be served by registered or certified mail, return receipt requested, upon a non-party parent at [his] that parent's last known address.

Note: Source—R.R. 4:91-3. Amended July 7, 1971 to be effective September 13, 1971; amended to be effective .

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I. PROPOSED RULE AMENDMENTS RECOMMENDED (for removal of gender-specific references only)

In response to a recommendation of the Committee on Women in the Courts, the Supreme Court directed that gender-specific references be removed from the Rules of Court. Accordingly, the Committee proposes changes to the following rules in order to eliminate gender-specific references:

1:4-1	1:17-3	1:37-3	2:15-13
1:4-4	1:19-8	1:39-2	2:15-15
1:4-5	1:19A-7	1:39-5	2:15-18
1:4-8	1:20-3	1:39-9	2:15-20
1:6-5	1:20-4	2:3-2	4:4-1
1:6-8	1:20-7	2:5-5	4:4-7
1:7-1	1:20-9	2:5-6	4:5-2
1:7-2	1:20-11	2:6-3	4:5-3
1:7-3	1:20B-3	2:6-4	4:5-6
1:8-1	1:21-1A	2:6-11	4:6-4
1:8-2	1:21-2	2:6-12	4:6-5
1:8-3	1:21-3	2:7-1	4:6-6
1:9-1	1:21-8	2:7-4	4:7-3
1:9-3	1:24-2	2:9-3	4:7-4
1:9-5	1:27-3	2:9-4	4:7-5
1:9-6	1:27B-3	2:11-4	4:8-1
1:11-1	1:28-3	2:11-6	4:8-2
1:11-3	1:28-6	2:12-3	4:9-1
1:12-1	1:28-8	2:12-5	4:9-2
1:12-3	1:28A-3	2:12-9	4:9-3
1:13-2	1:28A-4	2:13-1	4:9-4
1:13-3	1:29-2	2:13-2	4:10-2
1:13-6	1:29-3	2:14-2	4:11-1
1:15-1	1:30-3	2:15-9	4:14-2
1:15-3	1:31-2	2:15-10	4:14-3
1:15-4	1:32-1	2:15-11	4:14-5
1:16-1	1:35-1	2:15-12	4:14-6
4:14-8	4:29-1	4:46-5	4:61-2
4:14-9	4:29-2	4:46-6	4:61-3
4:15-1	4:31	4:48-1	4:61-4
4:16-1	4:32-2	4:48-3	4:61-5
4:16-3	4:32-5	4:48-4	4:62-2
4:17-4	4:33-1	4:49-1	4:62-4
4:17-5	4:33-2	4:50-1	4:64-2
4:19	4:34-2	4:51-2	4:64-3
4:20-4	4:34-4	4:51-3	4:64-4
4:20-5	4:35-1	4:51-4	4:64-6
4:20-6	4:37-1	4:53-3	4:65-5
4:20-7	4:37-2	4:53-4	4:65-6
4:20-10	4:37-4	4:53-5	4:67-2
4:20-11	4:38-1	4:53-6	4:67-4
4:21A-1	4:39-1	4:53-7	4:68-1
4:21A-5	4:39-3	4:53-9	4:68-2
4:22-1	4:40-2	4:55	4:70-2
4:22-2	4:41-1	4:56-1	4:70-4
4:23-1	4:41-2	4:56-2	4:70-5
4:23-2	4:41-3	4:57-3	4:73-3
4:23-3	4:41-4	4:58-1	4:73-11
4:24-1	4:41-5	4:59-2	4:74-2
4:25-1	4:42-1	4:59-3	4:74-3
4:26-1	4:42-5	4:60-8	4:74-9
4:26-4	4:42-6	4:60-9	4:80-3
4:26-5	4:42-8	4:60-12	4:100
4:26-7	4:42-9	4:60-13	
4:27-2	4:42-10	4:60-15	
4:28-1	4:45-2	4:60-19	
4:28-2	4:46-1	4:61-1	

The proposed amendments follow:

Copies of any or all of the rules amended solely to eliminate gender-specific references may be obtained by writing to:

Civil Practice Division
Administrative Office of the Courts
CN-981
Trenton, New Jersey 08625

III. PROPOSED AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Amendments to R. 1:21-2 -- Appearance Pro Hac Vice

In the 1990-92 term, the Supreme Court asked the Committee to study the operation of *R.* 1:21-2, to determine whether standards for *pro hac vice* admission should be made more stringent. In order to assist the Committee in its study, the Administrative Director issued a memo to Assignment Judges on June 21, 1991, with a reminder issued on May 12, 1993, asking that *pro hac vice* data be reported to the AOC.

After examining the data collected over a two-and-half-year period, the Committee determined against recommending any changes in *R.* 1:21-2. The Committee is of the view that the criteria enumerated in the current rule provide a suitable standard for *pro hac vice* admission.

B. Proposed Amendments to R. 1:21-7 -- Contingent Fees

The Committee recommends the adoption of the proposals of the Subcommittee on Contingent Fees (see section I. K., above). In discussing the matter, it was suggested that attorneys might be required to advise clients in the contingent fee agreement that they may go to fee arbitration if dissatisfied with the fee arrangement -- a provision that is used in Wyoming. The Committee voted unanimously against this proposal as unfairly singling out negligence cases as the one type of action in which clients are expressly advised of their right to contest fees.

C. Proposed Amendments to R. 2:6-2 -- Contents of Appellant's Brief

An attorney proposed reinstating the requirement of numbering every tenth (or even fifth) line of appellate briefs. The Committee disagreed with the proposal, noting that this requirement had been eliminated from *Rules* 2:6-1(b) and 2:6-2(a) in 1988. It noted, however, the need to amend *R.* 2:6-8 to remove the line reference there with respect to briefs. See section I. N., above. Transcript lines, however, will continue to be numbered.

D. Proposed Amendments to R. 4:4-3 and 4:4-4 -- re Service of Process

The Subcommittee on Service of Process, chaired by the Hon. Murry D. Brochin, gathered information from the State and County bar associations concerning the efficiency and timeliness of Sheriff's service. Responses indicated some minor dissatisfaction, but nothing that would lead the subcommittee to conclude or recommend that responsibility for service of Law Division-Civil process should be removed from the Sheriffs beyond the scheme adopted in the 1992 revision of *R.* 4:4-3. The Committee concurs in this view.

See section I. O., above, for a discussion of the service rule amendments recommended.

E. Proposed Amendments to R. 4:14-6 -- Certification and Filing by Officer; Exhibits; Copies

An attorney suggested that *R.* 4:14-6(c) be clarified as to who gets free copies of the deposition transcript. The Committee, however, determined that no change is necessary; the wording of the current rule is clear and poses no problems.

F. Proposed Amendments to R. 4:28-3 -- Claims By or Against Spouse

An attorney recommended changing *R.* 4:28-3(b) expressly to permit spouses to file separate complaints for separate injuries arising from the same course of negligent conduct. The Committee noted that although *R.* 4:28-3 was adopted prior to the abolition of spousal immunity, it nevertheless declined to amend the rule. Any claim required to be joined may later be severed and reserved upon application to the court.

G. Proposed Amendments to R. 4:23-5 -- Failure to Serve Answers to Interrogatories

A trial judge had advised of a problem in the operation of *R.* 4:23-5, namely, that respondents to motions for dismissal with prejudice under the rule do not appear on the return date, despite the fact that such appearance is mandatory under the rule. The Committee determined that no change in the rule is needed as more tailored solutions are available, *e.g.*, issuance of an order to show cause compelling the attorney to appear on the next return date and explain the earlier absence, or a form letter to be sent to absent attorneys.

H. Proposed Amendments to R. 4:35-1 -- Demand for Jury Trial

An Assignment Judge suggested that *R.* 4:35-1(d) be modified to eliminate the requirement that once a jury trial is demanded by any party, it can be waived only on consent of all parties. The Committee voted unanimously not to recommend such an amendment.

I. Proposed Amendments to R. 4:42-9 -- Counsel Fees

An attorney would like to see the current $350 limit on counsel fees in actions to foreclose a tax certificate raised to $1,500. The Committee declined to recommend such an amendment, noting that the limit had recently been raised from $150 and that the court can order increased fees in individual cases, for good cause shown.

J. Proposed Amendments to R. 4:42-11 -- Interest; Rate on Judgments; in Tort Actions

In the last term, the Committee deferred consideration of a proposal -- one that crops up periodically -- to increase the prejudgment interest rate as an incentive to encourage settlements. After some discussion, the Committee agreed that no such change in the rule should be considered at this time. Further, the Director of the Division of Law proposed an amendment to *R.* 4:42-11 to clarify how payments on judgments are applied to principal and interest. The Committee determined that no rule change is necessary as the customary commercial practice is for payments, even partial payments, to be first applied against interest.

K. Proposed Amendments to R. 4:48 -- Satisfaction or Cancellation of Judgment

A constituent of Assemblyman McEnroe complained that he was not notified by the Superior Court Clerk when a lien against his property was satisfied. The Committee was asked to consider including in *R.* 4:48 a requirement that such notice be given directly to the judgment debtor in all cases.

At present, *R.* 4:48 requires that the warrant of satisfaction be sent to the judgment debtor's attorney; if he or she is unrepresented, the warrant is sent to the judgment debtor. While the Committee agreed that the debtor should be notified when the judgment is satisfied, the onus to do so is properly on the judgment debtor's attorney and not on the Superior Court Clerk. The Committee declined to amend the rule to require attorneys to communicate with their clients; this is implicit in the attorney-client relationship and explicit in RPC 1.4.

L. Proposed Amendments to Rules 4:52 and 4:67 -- re Orders to Show Cause

An attorney proposed that orders to show cause be eliminated except in very limited situations. The Committee rejected the proposal, taking the position that orders to show cause, to the extent presently permitted by the rules, are an effective procedure in appropriate circumstances.

M. "Certificates of Merit" in Medical Malpractice Cases

A Civil Presiding Judge, as well as the Vice President for Claims of the Medical Inter-Insurance Exchange of New Jersey, suggested a court rule requiring that a "certificate of merit" accompany each medical malpractice complaint. The Committee opposed this suggestion as unnecessary and burdensome.

N. Proposed Rule to Limit Joinder of Defendants

An attorney representing one of over 600 defendants in a landfill case asked the Committee to develop a court rule that would limit joinder of multiple defendants. Although the problem of indiscriminate joinder is a real one, the Committee is of the view that it cannot be resolved by court rule. See section I. Y., above, for proposed amendments to *R.* 4:30A entire controversy doctrine)

IV. OTHER RECOMMENDATIONS

A. Proposed Amendments to Civil Summons

In its 1990-92 report to the Supreme Court, the Committee recommended a revised, plain-language summons form. When published with the report for comment, numerous suggestions for improving the summons further were submitted. Additional suggestions for modifications came before the Committee in the current term. The Committee has incorporated many of these suggestions into the re-revised summons form proposed here. Note also that the form provides for a single, 35-day answer period, in accordance with the proposed amendments to *R.* 4:6-1 (see section I. R., above).

The proposed amendments to the summons form follow:

Attorney(s):
Office Address & Tel. No.:

CONTINUED ON **Next Page**

Civil Practice

CONTINUED FROM **Preceding Page**

Attorney(s) for Plaintiff(s)

NEW JERSEY : SUPERIOR COURT OF

COUNTY :

DIVISION :

Plaintiff(s) :

: Docket No.

vs. : CIVIL ACTION

Defendants(s) :

: SUMMONS

From The State of New Jersey
To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the county clerk of the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each county clerk is provided.) An $80.00 filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the county clerk) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee and completed Case Information Statement) if you want the court to hear your case.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

DONALD F. PHELAN
Clerk of the Superior Court

DATED:

Name of Defendant to be Served:

B. Proposed Amendments to Appendix II -- Forms A, B and C

Upon considering the proposals of the Discovery Subcommittee, chaired by the Hon. Leonard N Arnold, the Committee recommended numerous changes to *R.* 4:17 to provide for the use of limited, standard form interrogatories in certain types of cases (see section I. U., above). The subcommittee also prepared, and the Committee recommends the use of, uniform interrogatories to be answered by plaintiff and defendant, respectively, in personal injury cases that do not involve products liability, toxic torts, medical malpractice or wrongful death. These uniform interrogatories are recommended to replace those now found in Appendix II, as Forms A and C. Further, the Committee proposes minor changes to the interrogatories now included in Appendix II, as Form B, to make their use compatible with new Forms A and C.

The proposed amendments to Appendix II, Forms A, B and C follow:

FORM A. UNIFORM INTERROGATORIES TO BE ANSWERED BY PLAINTIFF: PERSONAL INJURY: SUPERIOR [AND COUNTY] COURT

(Caption)

[1. Full name, present address and date of birth.
2. Date, approximate time and condition of weather at time of accident.
3. Detailed description of nature, extent and duration of any and all injuries.
4. Detailed description of injury or condition claimed to be permanent together with all present complaints.
5. If confined to hospital, state name and address of same, date of admission and discharge therefrom.
6. If X-rays were taken, state the name and address of the place where they were taken, the name and address of the person who took them, the date each was taken and what it disclosed.
7. If treated by doctors, state the name and present address of each doctor, the dates and places where treatments were received and the date of last treatment. Annex true copies of all written reports rendered to you by any such doctors whom you propose to have testify in your behalf.
8. If still being treated, the name and address of each doctor rendering treatment, where and how often treatment is received and the nature thereof.
9. If a previous injury, disease, illness or condition is claimed to have been aggravated, accelerated or exacerbated, specify in detail the nature of each and the name and present address of each doctor, if any, who rendered treatment for said condition.
10. If employed at the time of accident, state:
(a) The name and address of the employer.
(b) Position held and nature of work performed.
(c) Average weekly wages for past year.
(d) Period of time lost from employment, giving dates.
(e) Amount of wages lost, if any.
11. If other loss of income, profit or earnings is claimed:
(a) State total amount of said loss.
(b) Give a complete detailed computation of said loss.
(c) State nature and source of loss of such income, profit and earnings and date of deprivation thereof.
12. If there has been a return to employment or occupation, state:
(a) Name and address of present employer.
(b) Position held and nature of work being performed.
(c) Present weekly wages, earnings, income or profit.
13. Itemize in complete detail any and all moneys expended or expenses incurred for hospitals, doctors, nurses, X-rays, medicines, care and appliances and state the name and address of each payee and the amount paid or owed each payee.
14. Itemize any and all other losses or expenses incurred not otherwise set forth.
15. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.
16. State the names and addresses of any and all proposed expert witnesses and annex true copies of all written reports rendered to you by any such proposed expert witnesses.
With respect to all expert witnesses, including treating physicians, who are expected to testify at trial, and with respect to any person who has conducted an examination pursuant to R. 4:1 9, who may testify, state such witness's name, address, and area of expertise, and annex a true copy of all written reports rendered to you. If a report is not written, supply a summary of any oral report rendered to you.]

1. Full name, present address and date of birth.
2. Describe in detail your version of the accident or occurrence setting forth the date, location, time and weather.
3. Detailed description of nature, extent and duration of any and all injuries.
4. Detailed description of injury or condition claimed to be permanent together with all present complaints.
5. If confined to a hospital, state its name and address, and dates of admission and discharge.
6. If any diagnostic tests were performed, state the type of test performed, name and address of place where performed, date each test was performed and what each test disclosed. Attach a copy of the test results.
7. If treated by any health care provider, state the name and present address of each health care provider, the dates and places where treatments were received and the date of last treatment. Attach true copies of all written reports rendered to you by any such health care provider whom you propose to have testify in your behalf.
8. If still being treated, the name and address of each doctor or health care provider rendering treatment, where and how often treatment is received and the nature of the treatment.
9. If a previous injury, disease, illness or condition is claimed to have been aggravated, accelerated or exacerbated, specify in detail the nature of each and the name and present address of each health care provider, if any, who ever rendered treatment for the condition.
10. If employed at the time of the accident, state: (a) name and address of employer; (b) position held and nature of work performed; (c) average weekly wages for past year; (d) period of time lost from employment, giving dates; and (e) amount of wages lost, if any.
11. If there has been a return to employment or occupation, state: (a) name and address of present employer; (b) position held and nature of work performed; and (c) present weekly wages, earning, income or profit.
12. If other loss of income, profit or earnings is claimed: (a) state total amount of the loss; (b) give a complete detailed computation of the loss; and (c) state the nature and source of the loss of income, profit and earnings, and the dates of the deprivation.
13. Itemize in complete detail any and all moneys expended or expenses incurred for hospitals, doctors, nurses, diagnostic tests or health care providers, x-rays, medicines, care and appliances and state the name and address of each payee and the amount paid and owed each payee.
14. Itemize any and all other losses or expenses incurred not otherwise set forth.
15. State the names and addresses of all persons who have knowledge of any facts relating to the case.
16. If you claim that the defendant made any admissions as to the subject matter of this lawsuit, state: (a) the date made; (b) the name of the person by whom made; (c) the name and address of the person to whom made; (d) where made; (e) the name and address of each person present at the time the admission was made; (f) the contents of the admission; and (g) if in writing, attach a copy.
17. If you or your representative and the defendant have had any oral communication concerning the subject matter of this lawsuit, state: (a) the date of the communication; (b) the name and address of each participant; (c) the name and address of each person present at the time of such communication; (d) where such communication took place; and (e) a summary of what was said by each party participating in the communication.
18. If you have obtained a statement from any person not a party to this action, state: (a) the name and present address of the person who gave the statement; (b) whether the statement was oral or in writing and if in writing, attach a copy; (c) the date the statement was obtained; (d) if such statement was oral, whether a recording was made, and if so, the nature of the recording and the name and present address of the person who has custody of it; (e) if the statement was written, whether it was signed by the person making it; (f) the name and address of the person who obtained the statement; and (g) if the statement was oral, a detailed summary of its contents.
19. If you claim that the violation of any statute, rule, regulation or ordinance is a factor in this litigation, state the exact title and section.
20. State the names and addresses of any and all proposed expert witnesses and attach true copies of all written reports rendered to you by any such proposed expert witnesses.

With respect to all expert witnesses, including treating physicians, who are expected to testify at trial and with respect to any person who has conducted an examination pursuant to Rule 4:19, who may testify, state each such witness's name, address and area of expertise and attach a true copy of all written reports rendered to you. If a report is not written, supply a summary of any oral report rendered to you.

State the subject matter on which your experts are expected to testify.

State the substance of the facts and opinions to which your experts are expected to testify and a summary of the grounds for each opinion.

TO BE ANSWERED ONLY IN AUTOMOBILE ACCIDENT CASES

21. Are you afforded liability insurance coverage and/or PIP benefits by an applicable policy or policies of automobile insurance? As to each such policy provide the name and address of the insurance carrier, policy number, the named insured and attach a copy of the declaration sheet.

If you are making a claim for property damage to a motor vehicle, provide answers to the uniform interrogatories contained in Form B, questions 1 through 18.

Note: Amended July 17, 1975 to be effective September 8, 1975; entire text deleted and new text added to be effective .

CERTIFICATION

I hereby certify that the copies of the reports annexed hereto rendered by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said doctors or experts, written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

FORM B. UNIFORM INTERROGATORIES: PROPERTY DAMAGE TO MOTOR VEHICLE: SUPERIOR [AND COUNTY] COURT*

(Caption)

1. Was the claimant the sole owner of the motor vehicle involved in the alleged accident?
2. State the name and address of the person, firm or corporation, from whom the claimant purchased said motor vehicle and the date of purchase.
3. Was the said motor vehicle new or used at the time of purchase?
4. State make, model and year of motor vehicle.
5. State amount paid by claimant for the said motor vehicle.
6. State whether said motor vehicle has been repaired since the accident.
7. If so, give name and address of person, firm, or corporation making said repairs.
8. If so, state specifically the part or parts of said motor vehicle alleged to have been damaged in the said accident and furnish a copy of the repair bill.
9. State date upon which claimant authorized the repair of said motor vehicle.
10. State date on which repairs were completed.
11. State the market value of this motor vehicle immediately before the said accident.
12. State the market value of this said motor vehicle in its damaged condition immediately after the said accident.
13. State the market value of motor vehicle in its repaired condition.
14. Was said motor vehicle used in connection with claimant's business and, if so, state whether claimant was obliged to hire another motor vehicle for use in connection with said business, giving the name and address of person, firm or corporation from whom claimant hired said motor vehicle, the dates during which it was hired and the amount paid for said hiring.
15. If no repairs have been made, but an estimate of the said repairs has been obtained, attach a copy of such estimate to the answers to these Interrogatories, stating further the name and address of the person, firm or corporation who made such estimate.
16. Has the claimant sold or otherwise disposed of the said motor vehicle.
17. If so, give the name and address of the person, firm or corporation to whom the said motor vehicle was transferred, and the date of such transfer, and the amount of consideration paid to the claimant therefor.

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18. If it is alleged that the claimant incurred any other expenses or losses as a result of the alleged damage to the said motor vehicle, set forth such additional alleged losses in detail, giving an itemized statement of same.

19. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

20. State the names and addresses of any and all proposed expert witnesses and annex true copies of all written reports rendered to you by any such proposed expert witnesses.

CERTIFICATION

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Note: Amended July 7, 1971 to be effective September 13, 1971; amended _____ to be effective _____.

FORM C. UNIFORM INTERROGATORIES TO BE ANSWERED BY DEFENDANT: [IN MOTOR VEHICLE COLLISION CASE INVOLVING] PERSONAL INJUR[IES]Y: [COUNTY DISTRICT] SUPERIOR COURT

(Caption)

[1. State:
(a) Full name
(b) Present address
(c) Date of birth
(d) Marital status at time of accident

2. State the following facts with respect to the collision:
(a) Date
(b) Time
(c) Condition of weather
(d) Condition of visibility
(e) Condition of roadway

3. Give a detailed description of the nature, extent and duration of any and all injuries.

Note: If Form A is not used, questions 1, [and] 2 and 3 of Form A should be added to Form B.

4. Give a detailed description of the injury or condition claimed to be permanent, together with all present complaints.

5. If confined to hospital, state name and address of same, and the date of admission and discharge therefrom.

6. If X-rays were taken, state the name and address of the place where they were taken, the name and address of the person who took them, the date each was taken and what it disclosed.

7. If treated by doctors, state the name and present address of each doctor, the dates and places where treatments were received and the date of last treatment. Annex true copies of all written reports rendered to you by any such doctors whom you propose to have testify in your behalf.

8. If still being treated, state the name and address of each doctor rendering treatment, where and how often treatment is received and the nature thereof.

9. If a previous injury, disease, illness or condition is claimed to have been aggravated, accelerated, or exacerbated, specify in detail the nature of each and the name and present address of each doctor, if any, who rendered treatment.

10. If employed at time of accident, state:
(a) The name and address of the employer.
(b) Position held and nature of work performed.
(c) Average weekly wages for past year.
(d) Period of time lost from employment, giving dates.
(e) Amount of wages lost, if any.

11. If other loss of income, profit or earnings is claimed:
(a) State total amount of the loss.
(b) Give a complete detailed computation of the loss.
(c) State nature and source of loss of income, profit and earnings and date of deprivation thereof.

12. If there has been a return to employment or occupation, state:
(a) Name and address of present employer.
(b) Position held and nature of work being performed.
(c) Present weekly wages, earnings, income or profit.

13. Itemize in complete detail any and all moneys expended or expenses incurred for hospitals, doctors, nurses, X-rays, medicines, care and appliances and state the name and address of each payee and the amount paid or owed each payee.

14. Itemize any and all other losses or expenses incurred not otherwise set forth.

15. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

16. State the names and addresses of any and all proposed expert witnesses and annex true copies of all written reports rendered to you by any such proposed expert witnesses.

With respect to all expert witnesses, including treating physicians, who are expected to testify at trial, and with respect to any person who has conducted an examination pursuant to R. 4:19, who may testify, state such witness's name, address, and area of expertise, and annex a true copy of all written reports rendered to you. If a report is not written, supply a summary of any oral report rendered to you.

17. State the name and address of:
(a) The operator of your vehicle.
(b) The owner of your vehicle.
(c) Each of the other occupants of your vehicle.

(Note: The term "your vehicle" in this and other questions herein has reference to the vehicle in which you were an occupant at the time of the collision.)

18. State in what municipality, county and state the collision occurred.

19. State on what street, highway, road or other place (designate which) and in what general direction (north, south, east or west) your vehicle was proceeding immediately prior to the collision. (You may include a sketch for greater clarity.)

20. With respect to fixed objects at the location of the collision, state as nearly as possible the point of impact. If you included a sketch, place an X thereon to denote the point of impact.

(Note: The term "point of impact" as used in this and other questions has reference to the exact point on the street, highway, road or other place where the vehicles collided.)

21. Describe in detail your version of how the collision occurred.

22. If you allege a violation of statute as a factor to be considered in establishing negligence, state the title, section and paragraph of the statute.

23. State whether there were any traffic control devices, signs or police officers at or near the place of the collision. If there were, describe them (i.e., traffic lights, stop sign, police officers, etc.) and state the exact location of each.

24. If the collision occurred at an uncontrolled intersection state:
(a) Which vehicle entered the intersection first.
(b) Whether your vehicle came to a full stop before entering the intersection.
(c) If your vehicle did not come to a full stop before entering the intersection, the speed of your vehicle when it entered the intersection.

25. State in terms of feet the distance between:
(a) The front of your vehicle and the point of impact at the time you first observed the other vehicle or vehicles collided with, and state the speed of your vehicle at that time.
(b) The front of the other vehicle or vehicles collided with and the point of contact at the time you first observed it or them, and state its or their speed at that time.

Address of defendant to Be Served:

ATLANTIC COUNTY:
Lori Mooney, Clerk
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:
Kathleen A. Donovan, Clerk
119 Justice Center
10 Main St.
Hackensack, NJ 07601-7698
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:
Edward A. Kelly, Jr., Clerk
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY:
Michael S. Keating, Clerk
1st Fl., Hall of Records
501 Fifth St.
Camden, NJ 08103
LAWYER REFERRAL
(609) 964-4520
LEGAL SERVICES
(609) 964-2010

CAPE MAY COUNTY:
Angela F. Pulvino, Clerk
(Law Division Filings)
Box DN-209
Cape May Court House, NJ 08210
or
(General Equity Filings)
Box DN-209A
Cape May Court House, NJ 08210
LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:
John G. Nardelli, Clerk
Court House, Direct Filing
Broad & Fayette Sts.
Bridgeton, NJ 08302
LAWYER REFERRAL
(609) 452-5291
LEGAL SERVICES
(609) 451-0003/935-8024

ESSEX COUNTY:
Patricia McGarry Drake, Clerk
236 Hall of Records
465 Dr. Martin Luther King, Jr. Blvd.
Newark, NJ 07102
LAWYER REFERRAL
(201) 533-1779
LEGAL SERVICES
(201) 624-4500

GLOUCESTER COUNTY:
Joseph H. Hoffman, Clerk
First Fl., Court House
1 North Broad Street., P.O. Box 129
Woodbury, NJ 08096
LAWYER REFERRAL
(609) 848-4589
LEGAL SERVICES
(609) 848-5360

HUDSON COUNTY:
Frank E. Rodgers, Clerk
Superior Court, Civil Records Dept.
Brennan Court House
583 Newark Ave.,
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:
Dorothy K. Tirpok, Clerk
Hall of Records
71 Main Street
Flemington, NJ 08822
LAWYER REFERRAL
(609) 788-6112
LEGAL SERVICES
(609) 782-7979

MERCER COUNTY:
Albert E. Driver, Jr., Clerk
P.O. Box 8068
209 South Broad St.
Trenton, NJ 08650
LAWYER REFERRAL
(609) 989-8880
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:
Herbert P. Lashomb, Clerk
Court House, East Wing
Lobby Floor
1 Kennedy Sq., P.O. Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(908) 828-0053
LEGAL SERVICES
(908) 249-7600

MONMOUTH COUNTY:
Jane Clayton, Clerk
P.O. Box 1262
Court House, East Wing
Freehold, NJ 07728-1262
LAWYER REFERRAL
(908) 431-5544
LEGAL SERVICES
(908) 747-7400

MORRIS COUNTY:
Alfonse W. Scerbo, Clerk
CN-900
30 Schuyler Pl.
Morristown, NJ 07960
LAWYER REFERRAL
(201) 267-5882
LEGAL SERVICES
(201) 285-6911

OCEAN COUNTY:
M. Dean Haines, Clerk
119 Court House
CN-2191
Toms River, NJ 08754
LAWYER REFERRAL
(908) 240-3666
LEGAL SERVICES
(908) 341-2727

PASSAIC COUNTY:
William L. Kattak, Clerk
Court House
77 Hamilton St.
Paterson, NJ 07505
LAWYER REFERRAL
(201) 278-9223
LEGAL SERVICES
(201) 345-7171

SALEM COUNTY:
John W. Cawman, Clerk
92 Market St., P.O. Box 18
Salem, NJ 08079
LAWYER REFERRAL
(609) 678-8363
LEGAL SERVICES
(609) 451-0003

SOMERSET COUNTY:
R. Peter Widin, Clerk
Civil/General Equity
New Court House, 3rdFl.
P.O. Box 3000
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:
Helen C. Ackerman, Clerk
Superior Court, Law Division
49 High Street
Newton, NJ 07860
LAWYER REFERRAL
(201) 267-5882
LEGAL SERVICES
(201) 383-7400

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UNION COUNTY:
Walter G. Halpin, Clerk
1st Fl., Court House
Elizabeth, NJ 07207
LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:
Terrance D. Lee, Clerk
Court House
Belvidere, NJ 07823
LAWYER REFERRAL
(201) 267-5882
LEGAL SERVICES
(908) 475-2010

(c) Your vehicle and the vehicle or vehicles collided with at the time you first saw it or them.

26. State where each vehicle came to rest after the impact. Include the distance in terms of feet from the point of impact to the point where each vehicle came to rest.

27. State what part of your vehicle came into contact with what part of the other vehicle or vehicles involved.]

1. State: (a) the full name and residence address of each defendant; (b) if a corporation, the exact corporate name; and (c) if a partnership, the exact partnership name and the full name and residence of each partner.

2. Describe in detail your version of the accident or occurrence setting forth the date, location, time and weather.

3. If the accident or occurrence took place in or about any particular premises, area or location, or involved the use or presence of any object, thing, vehicle, equipment or property, state the name and address of the owner thereof.

4. If anyone other than the owner had any interest, custody or possession or was in charge of such premises, area, location, object, thing, vehicle equipment or property, state: (a) the name and address of such person, firm or corporation; and (b) the nature and extent of such interest, custody, possession or charge.

5. If defendant was not present at the time of the accident or occurrence, state: (a) whether defendant had notice or knowledge thereof; and (b) when, where, in what manner and from whom such notice or knowledge was received or acquired.

6. If prior to the accident or occurrence, defendant had actual notice or knowledge of the conditions, artificial or natural, alleged by the plaintiff to have caused or resulted in the accident or occurrence, state: (a) on what date defendant had such actual notice or first acquired such knowledge; and (b) the manner in which such notice or knowledge was received or acquired.

7. If the complaint or any answers to interrogatories by plaintiff allege that artificial conditions caused or resulted in the accident or occurrence or was causally related thereto, state when and by whom such artificial conditions were created.

8. If such defendant had notice of or was in any manner made aware of any such artificial conditions, state when and what steps defendant took to eliminate them or render them safe or give any notice of their existence.

9. If you intend to set up or plead or have set up or pleaded negligence or any other separate defense as to the plaintiff or if you have or intend to set up a counterclaim or third-party action, state the facts upon which you intend to predicate such defenses, counterclaim or third-party action.

10. State in detail: (a) what proofs will be offered by defendant at the trial of this action, to support any defense, counterclaim, third-party action or any other allegations set forth in these answers; and (b) attach thereto a copy of every writing, record or paper forming a part of such proof.

11. If any photographs, sketches, reproductions, charts or maps were made with respect to anything that is relevant to the subject matter of the complaint, describe: (a) what each shows; (b) the date taken or made; (c) the names and addresses of the persons who made them; and (d) in whose possession they are at present.

12. If you received any written communication pertaining to this action from plaintiff or anyone acting on behalf of plaintiff, attach a true copy of the communication. If the original or a copy is no longer in existence, set forth the date and substance of each such communication and from whom received.

13. If you or any parties to this action or any witnesses made any statements or admissions, set forth: (a) what was said; (b) by whom said; (c) date and place where said; and (d) in whose presence, giving names and addresses of any persons having knowledge thereof.

14. Set forth the names and present residence addresses of all eye witnesses to the accident or occurrence, their relationship to you and their interest in this action.

15. State the names and addresses of all persons who have knowledge of any facts relating to the case.

16. If you claim that the plaintiff made any admissions as to the subject matter of this lawsuit, state: (a) the date made; (b) the name of the person by whom made; (c) the name and address of the person to whom made; (d) where made; (e) the name and address of each person present at the time the admission was made; (f) the contents of the admission; and (g) if in writing, attach a copy.

17. If you or your representative and the plaintiff have had any oral communication concerning the subject matter of this lawsuit, state: (a) the date of the communication; (b) the name and address of each participant; (c) the name and address of each person present at the time of such communication; (d) where such communication took place; and (e) a summary of what was said by each party participating in the communication.

18. If you have obtained a statement from any person not a party to this action, state: (a) the name and present address of the person who gave the statement; (b) whether the statement was oral or in writing and if in writing, attach a copy; (c) the date the statement was obtained; (d) if such statement was oral, whether a recording was made, and if so, the nature of the recording and the name and present address of the person who has custody of it; (e) if the statement was written, whether it was signed by the person making it; (f) the name and address of the person who obtained the statement; and (g) if the statement was oral, a detailed summary of its contents.

19. If you claim that the violation of any statute, rule, regulation or ordinance is a factor in this litigation, state the exact title and section.

20. Pursuant to R. 4:10-2(b), state whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. YES ( ) or NO ( ).

If the answer is "yes", attach a copy of each insurance agreement or policy, or in the alternative state: (a) number; (b) name and address of insurer or issuer; (c) inception and expiration dates; (d) names and addresses of all persons insured thereunder; (e) personal injury limits; (f) property damage limits; (g) medical payment limits; (h) name and address of person who has custody and possession thereof; and (i) where and when each policy or agreement can be inspected and copied.

Note: Amended July 17, 1975 to be effective September 8, 1975; entire text deleted and new text added to be effective .

CERTIFICATION

I hereby certify that the copies of the reports annexed hereto rendered by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

C. **Proposed Amendments to Appendix VI -- Notice to Debtor**

The Committee endorses the revised Notice to Debtor form prepared by the Special Civil Part Practice Committee. The revised form

- includes child support among the list of exemptions;
- clarifies that *all* the benefits listed are exempt from levy;
- explains that the benefits are exempt even if they have been deposited into a bank account;
- explains that even though an account has been levied upon, the funds are still there and have not been removed; and
- includes a certification of mailing and filing by the officer.

The proposed revised Notice to Debtor form follows:

APPENDIX VI. NOTICE TO DEBTOR
RULES 4:59-1(g) AND 6:7-1(b)
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION/LAW DIVISION, SPECIAL CIVIL PARt

Re: v. Docket No.

To: , designated defendant:

Your asset, automobile (plate number), or account no. in the amount of $ at the has been levied upon at the instruction of to satisfy in whole or in part the judgment against you in the above matter. 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 the levy is against a bank account, the bank has already been notified to place a hold on your account. However, the funds will not be taken from your account until the Court so orders. 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: . The address of the person who ordered this levy is: .

CERTIFICATION OF SERVICE

I mailed a copy of this notice to the defendant(s) with a copy forwarded to the Clerk of the above named Court on , 19__, the same day this Levy was made. I certify that the foregoing statements made by me are true. I am aware that if the foregoing statements made by me are wilfully false, I am subject to the punishment.

Date: , 19

(Signature)

(Court Officer)

D. **Proposed Compressed Format for Deposition Transcripts**

The Committee recommends an amendment to *R.* 2:6-10, permitting use of a compressed format for transcripts submitted on appeal -- *i.e.*, a 4-page format with no more than 25 lines per page and with a minimum 9-pitch type size as specified in the proposed amendment (see section I. N., above).

The Committee also recommends that a similar compressed format be permitted for deposition transcripts. No rule change is needed in this instance; rather the Committee recommends that the Administrative Director expressly authorize the usage.

E. **Proposed Pilot -- Modified Summary Judgment Procedure**

The Motions Subcommittee, chaired by the Hon. Maurice J. Gallipoli, recommended amendments to *Rules* 4:46-1 and 4:6-2 that would alter the procedure for filing a summary judgment motion. The proposal is designed to eliminate the frequent requests for adjournment that plague and delay summary judgment motion practice by providing that moving, responding and reply papers are not to be filed with the court separately, but all together, as a package. Thus, when the judge receives the motion for handling, he or she knows that the package is complete, the motion is ready to be decided, and no further submissions will come straggling in. This procedure was developed by the Hon. Alfred Lechner in the Federal Court and is now widely used throughout the District of New Jersey.

The Committee was split on the subcommittee's proposal that the new procedure be adopted statewide, but voted overwhelmingly to recommend it on a pilot basis. It should be noted that the Motions Subcommittee was of the view that the procedure should be implemented statewide or not at all; that it would generate confusion if put into effect in just a few locations. It should also be noted that the Conference of General Equity Judges was approached about implementing the procedure for summary judgment motions filed in General Equity, but declined to support such a pilot.

The proposed amendments to *Rules* 4:46-1 and 4:6-2, necessary to implement the procedure on a pilot basis, follow:4:46-1. Time for Making, Filing, and Serving Motion

(a) A party seeking any affirmative relief, including a declaratory judgment may, at any time after the expiration of 20 days from the service of [his] the pleading claiming such relief, or after service of a motion for summary judgment by the adverse party, move for a summary judgment or order [in his favor] upon all or any part thereof or as to any defense. A party against whom a claim for such affirmative relief is asserted may move at any time for a summary judgment or order [in his favor] as to all or any part thereof. Except as otherwise provided by R. 6:3-3 (motion practice in Special Civil Part) or unless the court otherwise orders, [a motion for summary judgment shall be served and filed not later than 28 days before the time specified for the return date; opposing affidavits, briefs, objections, and cross-motions, if any, shall be served and filed not later than 10 days before the return date; and answers or responses to opposing papers shall be served and filed not later than 4 days before the return date] the procedures set forth in this rule shall govern all motions and all cross motions governed by this rule and R. 4:6-2.

The moving party will prepare its notice of motion, brief, affidavits and other supporting documentation. The notice of motion shall not contain an actual return date, but must contain a proposed filing date. The moving papers will be served upon all adversaries. A copy of the notice of motion only shall be sent to the Clerk's Office. Receipt of such a notice of motion by the Clerk's Office will be sufficient to evidence the extension of the time for filing a responsive pleading (e.g., an answer) pursuant to Rules 4:6-1 and 4:6-2. If no judge has been assigned to the case, upon receipt of the notice of motion, the Clerk's Office shall assign the motion to a judge. The moving party shall contact the Clerk's Office to request the identification of the assigned judge and shall then promptly notify all adversaries of the assignment.

If the opposition papers cannot be prepared within the time period provided by R. 4:46-1(b), the parties may agree to a reasonable extension. If the parties cannot so agree, they should telephone the chambers of the assigned judge to obtain the time within which the opposition papers must be prepared. An original and two copies of all opposition papers are to be served on the moving party and one copy is to be served on all other parties. The reply submissions, if any, are due from the moving party within the time period provided by R. 4:46-1(b), unless the parties agree otherwise or obtain another date from the assigned judge's chambers. One copy of each reply submission is to be served on all parties. Only briefs in support, in opposition or in reply may be submitted. No other papers shall be exchanged without prior permission of the assigned judge.

After the expiration of the briefing schedule agreed to by the parties or fixed by the

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assigned judge, the motion shall be deemed ready for filing. The filing with the Clerk's Office shall contain the original notice of motion with the return date inserted and a cover letter which shall list separately each document (brief, affidavit, etc.) exchanged by the parties. The original documents shall be filed with the Clerk's Office and a copy of the cover letter and each document identified in the cover letter shall be delivered to the assigned judge. The return date inserted in the filed notice of motion is to be the next regularly scheduled motion day which is at least 16 days from the date of filing, unless the parties agree to a later date or otherwise ordered by the assigned judge.

A statement must be included on the cover of the moving, opposition or reply brief as to whether oral argument is requested. Only those parties submitting a moving, opposition or reply brief may participate in oral argument. Absent a request for oral argument, the matter will be decided on the papers, unless the assigned judge directs otherwise.

(b) Unless otherwise agreed to by the parties or ordered by the assigned judge, a motion for summary judgment made pursuant to this rule or R. 4:6-2 shall be served on all parties and a notice of motion sent to the Clerk's Office not later than 28 days before the proposed filing date as specified in paragraph (a); opposing affidavits, briefs, objections, and cross motions, if any, shall be served on all parties not later than 10 days before the proposed filing date as specified in paragraph (a); and answers or responses to opposing papers shall be served on all parties not later than four days before the proposed filing date as specified in paragraph (a). For purposes of this rule, service of motion papers is complete only on receipt at the office of adverse counsel or the address of a pro se party. See R. 1:5-4(b).

Note: Source—R.R. 4:58-1, 4:58-2. Caption and text amended November 1, 1985 to be effective January 2, 1986; amended November 5, 1986 to be effective January 1, 1987; amended November 7, 1988 to be effective January 2, 1989; text amended and designated as paragraph (a) and paragraph (b) added _____ to be effective _____.

4:6-2. How Presented

Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, (f) failure to join a party without whom the action cannot proceed, as provided by R. 4:28-1. If a motion is made raising any of these defenses it shall be made before pleading if a further pleading is to be made. No defense or objection is waived by being joined with one or more other defenses in an answer or motion. Special appearances are superseded. [If, on a motion to dismiss based on the defense numbered (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion.] All motions pursuant to this rule shall comply with the procedures set forth in R. 4:46.

Note: Source—R.R. 4:12-2 (first, second and fourth sentences). Amended _____ to be effective _____.

F. Proposed Civil Commitment Forms

In accordance with the recommendations of the Mental Commitments Subcommittee, chaired by Deborah T. Poritz, Esq., the Committee proposes amendments to *R.* 4:74-7(e) and (h)(2). See section I. EE., above. The former amendment would require any expert witness who is to testify at a commitment hearing to prepare a written report and make it available to court and counsel prior to the hearing. The latter amendment would require the social worker who has primary responsibility for placing the patient to prepare a written report and make it available to court and counsel prior to the CEPP hearing. The form of each required report is to be prescribed by the Department of Human Resources and subject to approval by the Administrative Director of the Courts. The report of the Mental Commitments Subcommittee is included as Appendix E to this report.

The subcommittee also proposed, and the Committee endorses, the forms to be used for the required reports. The Committee recommends that these forms be forwarded to the Department of Human Resources, for promulgation.

The proposed forms follow:

EXPERT TESTIMONY
COURT SUMMARY FOR COMMITMENT HEARINGS

PATIENT'S NAME: Date of Hearing:
Date of Admission: Ward:
Identifying Information:

Onset of Illness, Previous Hospitalization, and Circumstances of This Admission:

Hospital Course (Progress, Incidents, etc.):

Medical Issues:

Current Mental Status and Behavior:

Diagnosis:

Medications:

Relevant History (Substance Abuse, Education, Employment, Military Service, Living Arrangement and Income, Family Circumstances, Legal Issues, etc.):

Prognosis:

Other:

Recommendation (Discharge, C.E.P.P., Conditional Release, Voluntary, Involuntary Commitment):

Professional Opinion (your assessment of the patient's dangerousness or lack thereof and the reasons for your recommendation):

Certification: I certify that I am board certified or board eligible in psychiatry, that I am licensed to practice medicine in the State of New Jersey, that on I personally examined the subject of this report and reviewed the current medical records and that I am a member of this patient's treatment team.

Signature:
Name:
Date:

PSYCHIATRIC HOSPITAL
SOCIAL SERVICE DEPARTMENT
CEPP COURT SUMMARY

CEPP Review Hearing: Previous CEPP Hearing(s):
(date)
(date)

PATIENT'S NAME:
ID#: Ward: Age:
Date of Admission: Date Made CEPP:
Patient's Expressed Placement Preferences:

PLACEMENT EFFORTS MADE SINCE LAST CEPP REVIEW HEARING:
Pre-placement referral packets mailed (specify dates & facilities):

Telephone follow-up to referrals (specify dates & outcomes):

Pre-placement visits attempted/accomplished (specify dates & outcomes):

Actual placement made (specify why unsuccessful):

(Date) Signature
Placement Social Worker/
Ward Social Worker

V. LEGISLATION

The Committee does not propose any legislative changes.

VI. MATTERS HELD FOR CONSIDERATION

A. Uniform Interrogatories

As discussed in sections I. U. and IV. B., above, the Committee proposes amendments to *R.* 4:17 to require the use of standard form interrogatories in most personal injury cases. The Committee recommends that the interrogatories developed by the Discovery Subcommittee, chaired by the Hon. Leonard N. Arnold, replace those now included as Forms A and C in Appendix II to the Rules of Court.

The Discovery Subcommittee intends to prepare standard form interrogatories for numerous other case categories -- *e.g.*, products liability, medical malpractice, commercial -- over the course of the next six to nine months, and to present these as they are completed to the Committee for review. If endorsed by the Committee, the form interrogatories will then be submitted to the Supreme Court for approval and promulgation.

B. Proposed Amendments to R. 4:65-2 -- Posting of Notice of Sale; Mailing

In section I. CC., above, the Committee proposes various changes to *R.* 4:65-2 to require that notice of sale of real or personal property be given to all persons with a lien or ownership interest in the property, as mandated in *New Brunswick Savings Bank v. Markouski*, 123 *N.J.* 402 (1991). The proposed amendment does not include a date by which the lien or ownership interest must be recorded in order to preserve the judgment creditor's rights. Several Committee members felt that such a provision would be unconstitutional in that it would affect substantive rights. The Committee agreed to research and consider this issue more fully in the next term.

C. Proposed Amendments to R. 4:69 -- Actions in Lieu of Prerogative Writs

A proposal developed by the State Bar's Land Use Section and endorsed by the Board of Trustees called for the adoption of new *R.* 4:69-8 to address the settlement of actions in lieu of prerogative writs. The proposed new rule would permit actions described in *R.* 4:69-6(b)(3) or actions challenging a municipal ordinance or master plan to be settled only upon the approval of the court after considering many factors, including the public interests involved. The new rule would also establish public notice and hearing requirements, and clarify that "settlement orders" are final and may be enforced without the need of any implementing action by a municipal agency.

The New Jersey Institute of Municipal Attorneys opposed the State Bar's proposal; the State Bar thereupon issued a response. In discussing the issue, the Committee considered the two organizations' positions as well as a 1993 *Seton Hall Law Review* article on the subject ("Settling Land Use Litigation While Protecting the Public Interest: Whose Lawsuit is This Anyway", vol. 23, pages 844-871). Recognizing that the proposal raises complex and competing issues, the Committee determined to defer its recommendation until all issues could be fully explored and addressed. It expects to resolve the matter early in the next term and, if appropriate, to submit its recommendation to the Supreme Court on an expedited basis.

The various proposals and position papers submitted by the State Bar and the Institute of Municipal Attorneys are included as Appendix F to this report.

D. Frivolous Litigation Subcommittee

With the Supreme Court decision in *McKeown-Brand v. Trump Castle Hotel and Casino*, 132 *N.J.* 541 (1993), the Committee has commenced a study of the situations in which counsel fees and costs may be imposed on attorneys who engage in frivolous litigation. This study is being undertaken by the Frivolous Litigation Subcommittee, chaired by M. Karen Thompson, Esq. Its work will be completed in the next term.

E. Subcommittee on Publication of Opinions

The Subcommittee on Publication of Opinions, chaired by the Hon. Richard S. Cohen, has made proposals for amending *Rules* 1:36-1, 1:36-2 and 1:36-3 (see section I. L., above). At the end of the term, the subcommittee was asked to consider two issues relating to opinions published in *New Jersey Administrative Reports 2d*: 1) should these opinions be citable under *R.* 1:36-3; and 2) how can appellate affirmances or reversals of these decisions be tracked? The subcommittee will undertake an examination of these questions in the next term.

VII. MISCELLANEOUS MATTERS

A. Subcommittee on Appointment of Attorney-Trustees (R. 1:20-12)

This subcommittee, chaired by Edwin J. McCreedy, Esq., was established in a previous term to consider the effectiveness of *R.* 1:20-12 in a "catastrophic" situation, *i.e.*, when an attorney-trustee appointed under the rule is faced with managing a large number of very complex and/or disorganized files of a suspended, disbarred, disabled or deceased attorney. The subcommittee included several State Bar representatives and sought the views of the New Jersey Lawyers' Fund for Client Protection, the Office of Attorney Ethics and the Administrative Office of the Courts.

The subcommittee concluded that, except in very unusual situations, the current procedure under *R.* 1:20-12 works well; no rule changes are proposed. The subcommittee did, however, make several suggestions for improving the procedure, which the Committee endorses. These are:

1. Immediate evaluation of the circumstances and size of the practice of a sole practitioner who dies, is disbarred or suspended, or becomes disabled.
2. Renumeration for the appointed attorney's time, if possible, and for all out-of-pocket expenses.
3. Law student assistance to appointed attorneys.
4. Development of forms for use by the appointed attorney, *e.g.*, checklists, sample letters to clients.
5. Development of specific guidelines for the disposition of files not picked up by clients.
6. Development of step-by-step guidelines for the appointed attorney.
7. Possible legislation providing for a six-month tolling of the statutes of limitation to protect clients' rights in the event of their attorney's death, disbarment, suspension or disability.

The report of the subcommittee is included as Appendix G to this report.

B. Subcommittee on Post-Trial Interviews with Jurors

The Subcommittee on Post-Trial Interviews with Jurors, chaired by Jack M. Sabatino, Esq., was established in the previous term to consider relaxing *R.* 1:16-1, which permits attorneys to interview jurors at the conclusion of civil trials only upon leave of court based on a showing of good cause. The subcommittee undertook extensive research on juror interview practices in other jurisdictions, and considered the benefits and disadvantages of more readily allowing juror interviews. The subcommittee unanimously opposed any contact with a juror in any case in which deliberations were begun, even if mistrial or settlement subsequently occurred. A minority, however, favored post-trial contact with jurors, through interviews or questionnaires, in cases that end in mistrial or settlement before deliberations commenced.

The position of the majority of the subcommittee, which was endorsed by the full Committee, was that the potential problems that might arise from attorney contact with jurors -- whether through interviews or questionnaires, and even in cases that end in mistrial or settlement before deliberations begin -- far outweigh any possible benefits, and that the existing rule requiring leave of court for such contacts should not be relaxed.

The report of the subcommittee is included in Appendix H to this report.

C. Non-Attorneys on Rules Committees

The Committee was asked for its opinion on whether non-attorney representatives should be

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Complementary Dispute Resolution Committee Report

REPORT OF THE
NEW JERSEY SUPREME COURT
COMMITTEE
ON
COMPLEMENTARY DISPUTE RESOLUTION

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appointed to the Committee. The Committee was unanimous in the view that non-attorneys would have little interest in and little to contribute to the practice and procedural issues that are the subject of the Committee's work.

D. Proposed Constitutional Amendment

Article VI, section 3, paragraph 3 of the New Jersey Constitution provides for only three divisions of the Superior Court -- Appellate, Law and Chancery. The Conference of General Equity Judges proposed an amendment that would establish five divisions of the Superior Court -- Appellate, Civil, Criminal, Family and Chancery (General Equity and Probate). Such an amendment would mitigate the confusion that now arises from placing Family and General Equity matters under the Chancery Division umbrella, and would also recognize the distinction between the criminal and civil justice systems. The Committee rejected the proposal as unnecessary.

E. Pro Hac Vice Billing

The Supreme Court sought the Committee's view on whether an out-of-state attorney admitted *pro hac vice* must pay the assessment of the New Jersey Lawyers' Fund for Client Protection for the year during which the Supreme Court reserved decision in his case. The majority of the Committee took the position that continued payment by the out-of-state attorney was appropriate, as long as he or she remains the attorney of record in the case.

F. Consent Orders Governing Fees

At an attorney's request, the Committee considered whether, under *R.* 4:42-9, a Family Part judge has the authority to sign a Consent Order relating solely to payment of fees due from a client to his or her attorney. In the Committee's view, a judge does not have this authority. The court must not put its imprimatur on an arrangement that is outside its jurisdiction. Fee disputes, and their resolution, should be left to the fee arbitration process. This view, and the inquiry that generated the discussion, were forwarded to the Family Division Practice Committee for its information.

G. Publication of Unreported Appellate Division Opinions on the Verbal Threshold

The Supreme Court sought the Committee's view on ICLE's plan to publish a quarterly "Reporter on the Verbal Threshold", which would include Appellate Division opinions not approved for publication. While the Committee has always been concerned about the many problems posed by the proliferation of unofficial reporters, it also acknowledges that such reporters do provide the benefit of equalizing access to judicial decisions. The Committee, therefore, recommends that the Supreme Court neither endorse nor prohibit unofficial reporters but rather that the decision be left to law book publishers who are free to make whatever use they wish of opinions that are in fact public information.

H. Evidence Rule 609

The Supreme Court invited the Committee's views on whether New Jersey Evidence Rule 609 should be revised for application in the civil context, in light of *State v. Brunson*, 132 *N.J.* 377 (1993). The Committee is of the view that the issue raised is exclusively evidential, and beyond its expertise and mandate. Accordingly, the Committee recommends that the matter be referred to the Evidence Committee for its review.

I. Proposed Amendments to R. 4:10-2 -- Scope of Discovery

In *Graham v. Gielchinsky*, 126 *N.J.* 361 (1991), the Supreme Court asked the Committee to consider whether *R.* 4:10-2 should be amended to clarify procedures for the discovery and use of opinion evidence of an expert consulted by an adversary. The Committee concluded that the discovery rules involving experts do not require any change to cover the question that arose in *Graham* (whether a litigant may use at trial the opinions of experts consulted by the adversary, when this information was obtained through means other than discovery). The Committee recognized, however, that the question is essentially evidentiary, implicating such matters as attorney-client privilege and the admissibility of opinion evidence. Accordingly, the Committee recommends that the matter be referred to the Evidence Committee.

J. Orders for Wage Execution

Rule 4:59-1, as amended in 1992, requires that an order for wage execution may not be signed until the defendant is afforded ten days to notify the County Clerk and the plaintiff in writing of any objection to the order. In most counties, the County Clerk merely stamps on the draft order a notation that no objection was filed. In a few counties, however, the plaintiff is required to obtain a separate letter to this effect from the County Clerk.

The rule also requires that the order for wage execution must be entered within thirty days after service of the notice of application for wage execution. Because of the delay by County Clerks in issuing the letter stating that no objection was filed, many lawyers find themselves unable to get the order within thirty days and must renotice.

The Committee strongly urges that Assignment Judges and County Clerks be advised by administrative directive that the local practice of requiring plaintiff to submit a "no objection filed" letter from the County Clerk should be eliminated. The judge to whom the order for wage execution is submitted does need to know that the judgment debtor has filed no objection, but this can be accomplished by means of an appropriate stamp or notation on the documents forwarded to the judge.

K. Interpretation of R. 1:5-6 -- Filing

An attorney brought to the Committee's attention an apparent aberrant interpretation of *R.* 1:5-6(c) by two County Clerks, who refused to file motion papers as of the original date of receipt, wheh a filing fee deficiency was cured within ten days. The Committee concluded that no rule change was necessary, and referred the matter to the Superior Court Clerk to ensure that all County Clerks adhere to the procedures set forth in the rule.

L. Civil Commitments -- Conversion of Krol Patients

The Mental Commitments Subcommittee, chaired by Deborah T. Poritz, Esq., considered whether *R.* 4:74-7 should be amended to require that *Krol* patients (patients found not guilty of a crime by reason of insanity) should be converted to involuntary civil committees upon the expiration of the maximum possible sentence that could have been imposed had the patient been imprisoned for the crime. This issue was brought to the subcommittee's attention through an unpublished Appellate Division opinion, *In the Matter of the Commitment of G.G.* (A-1489-91T3).

The subcommittee, faced with numerous questions relating to the computation of the maximum sentence, sought and received the Committee's approval to forward the issue to the Criminal Practice Committee.

The report of the Mental Commitments Subcommittee is included as Appendix E to this report. See particularly Appendix B to subcommittee report, which deals with the conversion of *Krol* patients to involuntary civil commitment status.

Respectfully submitted,

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Dated: January 18, 1994

Copies of the Appendices to this report may be obtained by writing to:

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