

PART VI. RULES GOVERNING PRACTICE IN THE
LAW DIVISION, SPECIAL CIVIL PART

RULE 6:1. SCOPE, COGNIZABILITY AND VENUE

6:1-1. Scope and Applicability of Rules

The rules in Part VI govern the practice and procedure in the Special Civil Part, heretofore established within and by this rule continued in the Law Division of the Superior Court.

(a) Jurisdictional References. The jurisdictional requirements of R. 6:2-3 shall be deemed to be venue requirements and all other references in Part VI to jurisdiction shall be deemed to refer, as appropriate, to venue or cognizability.

(b) Caption. In addition to the requirements set forth in R. 6:3-2, actions brought in the Special Civil Part shall be captioned with the name of the part and the nature of the action as follows: Special Civil Part, (Civil, Landlord/Tenant, Small Claims, Statutory Penalties or Concurrent Municipal) and shall state, on the face of the pleading and summons, the amount in controversy.

(c) Fees. The fees charged for actions in the Special Civil Part shall be in accordance with N.J.S.A. 22A:2-37.1, provided that the face of the pleading and summons alleges the amount in controversy does not exceed \$10,000, and the fees for actions which are not filed in the Special Civil Part shall be in accordance with N.J.S.A. 22A:2-6 et seq. Checks for fees and all other deposits shall be made payable to the Clerk, Special Civil Part.

(d) Filings. All papers filed in the Special Civil Part shall be filed in accordance with R. 6:12 at the principal location of the Part in each county.

(e) Service of Process and Enforcement of Judgments. Officers of the Special Civil Part shall serve process in accordance with R. 6:2-3 and enforce judgments in accordance with R. 6:7.

(f) Judgments. R. 4:101 shall not apply to judgments of the Special Civil Part unless a statement for docketing is filed with the Clerk of the Superior Court. A statement for docketing shall issue on request to the Clerk of the Special Civil Part, on ex parte application of the party requesting docketing and payment of the statutory fees.

(g) Forms. The forms contained in Appendix XI to these rules are approved and, except as otherwise provided in R. 6:2-1 (form of summons), suggested for use in the Special Civil Part. Samples of each form shall be made available to litigants by the Clerk of the Special Civil Part.

Note: Caption amended and paragraphs (a) through (g) adopted November 7, 1988 to be effective

January 2, 1989; paragraph (c) amended July 17, 1991 to be effective immediately; paragraph (c) amended July 13, 1994 to be effective September 1, 1994.

6:1-2. Cognizability

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

(1) Civil actions seeking legal relief when the amount in controversy does not exceed \$10,000;

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

(3) Summary landlord/tenant actions;

(4) Summary proceedings for the collection of statutory penalties;

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

(b) Distinct Negligence Claims. An action for damages resulting from negligence composed of several distinct claims may be brought in the Special Civil Part if the amount recoverable on each claim is within the monetary limit even though the amount recoverable on all claims exceeds that limit.

(c) Waiver of Excess. Where the amount recoverable on a claim exceeds the monetary limit of the Special Civil Part or the Small Claims Section, the party asserting the claim may waive the excess over the applicable limit and recover a sum not exceeding the limit plus costs.

Note: Adopted November 7, 1988 to be effective January 2, 1989; caption added to paragraph (a) and paragraph (a) amended July 17, 1991 to be effective immediately; paragraphs (a)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1) and (2) amended July 13, 1994 to be effective September 1, 1994.

6:1-3. Venue

(a) Where Laid. Except as otherwise provided by statute, venue in actions in the Special Civil

Part shall be laid in the county in which at least one defendant in the action resides. Actions for the recovery of a security deposit may be brought in the county where the property is situated. If all defendants are non-residents of this state, venue shall be laid in the county in which the cause of action arose.

(b) Improperly Venued Complaints. If a Special Civil Part complaint is presented for filing in a county where venue does not lie, and the error is apparent prior to acceptance of the complaint for filing and processing, the complaint shall be date stamped and returned to the plaintiff with instructions to file it in the county in which venue is properly laid. The original stamped date shall be considered the filing date only if the complaint is filed within 15 days thereof with the Clerk of the Special Civil Part in the appropriate county. The stamp bearing the filing date shall so inform the plaintiff.

If, however, the complaint has been filed and it becomes apparent before service is effectuated that venue is improper, the clerk shall forward the complaint and all other documents filed in the matter to the proper county and advise the litigants of the correct county of venue as well as the address of the Special Civil Part Clerk of the county.

Note: Adopted November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 14, 1992 to be effective September 1, 1992.

RULE 6:2. PROCESS

6:2-1. Form of Summons

The form of the summons shall conform with the requirements of R. 4:4-2 and shall be in the form set forth in Appendix XI-A(1) to these Rules or, for small claims, in the form set forth in Appendix XI-A(2). However in landlord and tenant actions for the recovery of premises, forcible entry and detainer actions and actions in the Small Claims Section, in lieu of directing the defendant to file an answer, it shall require the defendant to appear and state a defense at a certain time and place, to be therein specified, which time shall be not less than 10 days in summary dispossession actions, and 5 days in other actions, nor more than 30 days from the date of service of the summons, and shall notify the defendant that upon failure to do so, judgment by default may be rendered for the relief demanded in the complaint.

Note: Source—R.R. 7:4-1(a) (b), 7:17B2. Amended July 16, 1979 to be effective September 10, 1979; amended July 15, 1982 to be effective September 13, 1982; amended November 7, 1988 to be effective January 2, 1989; amended July 10, 1998 to be effective September 1, 1998; amended July 5, 2000 to be effective September 5, 2000.

6:2-2. Process; Filing and Issuance

(a) Delivery to Clerk; Issuance. The plaintiff shall, when filing the complaint, furnish the clerk in tenancy actions with the summons to be issued and in all other actions with page 2 of the summons as set forth in Appendices XI-A(1) and (2) to these Rules, and two copies with the complaint annexed for each defendant, together with two additional copies for each incompetent defendant. The clerk shall issue the summons except as otherwise provided by law and, in tenancy actions, shall attach to the summons and complaint for service on each defendant English and Spanish copies of the announcement contained in Appendix XI-S to these rules. Original process shall issue out of the court and shall require an answer or an appearance at a specific time.

(b) Non-resident Defendants; Filing. If no defendant can be served with process within this State, the plaintiff may file the complaint with the clerk of the Special Civil Part of the county in which the subject transaction or occurrence took place.

Note: Source—R.R. 7:3 (second sentence), 7:4-2, 7:4-4; former rule amended and designated paragraph (a) and paragraph (b) adopted July 17, 1975 to be effective September 8, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 18, 2001 to be effective November 1, 2001.

6:2-3. Service of Process

(a) By Whom Served. Personal service of process within this State may be made by sergeants-at-arms of the court and such other persons authorized by law to serve such process as the Assignment Judge designates. Persons so designated shall receive in payment for their services the fees allowed therefor. If the process is to be served in a county of this State other than that in which the action is instituted, the clerk of the Special Civil Part in which the action has been instituted shall serve it by mail pursuant to R. 6:2-3(d). Service of all process outside this State may be made in accordance with R. 4:4-4 and R. 4:4-5. After the filing of a complaint and receipt of a docket number, service may be made by mail pursuant to either R. 4:4-4(c) by plaintiff or, in those counties which have established a service by mail program pursuant to R. 6:2-3(d), by the clerk, without the payment of mileage fees.

(b) Manner of Service. Service of process within this State shall be made in accordance with R. 4:4-4, or in accordance with R. 6:2-3(d) if the complaint is filed in a county which has established a service by mail program, or as otherwise provided by court order consistent with due process of law, or in accordance with R. 4:4-5, except that, in landlord and tenant actions, service of process shall be by ordinary mail and by either delivery personally pursuant to R. 4:4-4 or by affixing a copy of the summons and complaint on the door of the subject premises. Substituted service within this State shall be made pursuant to R. 6:2-3(d). Substituted or constructive service outside this State may be made pursuant to the applicable provisions in R. 4:4-4 or R. 4:4-5.

(c) Notice of Service. Except in landlord and tenant actions for recovery of the premises and actions in the Small Claims Section, upon the return of service of original process, the clerk shall inform the plaintiff or attorney of the date of service.

(d) Service by Mail Program. If the process is to be served in a county of this State other than that in which the action is instituted, or if substituted service of process is to be made within this state, or, if the action is instituted in a county where the Assignment Judge, with the approval of the Chief Justice, has established a service by mail program pursuant to this rule and guidelines promulgated by the Supreme Court:

(1) Initial Service. The clerk of the court shall simultaneously mail such process by both certified and ordinary mail. Attorneys shall submit to the clerk the mailing addresses of parties to be served and the appropriate number of copies of the summons and complaint. The clerk shall furnish postage, envelopes, and return receipts and shall address same. Mail service on each defendant shall be placed in separate envelopes by the clerk regardless of marital status or address. Process shall be mailed within 12 days of the filing of the complaint. The clerk thereafter shall send a postcard to plaintiff or the attorney showing the docket number, date of mailing and a statement that, unless the plaintiff is otherwise notified, default will be entered on the date shown. If service cannot be effected by mail, the clerk shall send a second card to the plaintiff or attorney stating the reasons for incomplete service and requesting instructions for reservice.

(2) Reservice. Where initial service by mail is not effected, plaintiff or the attorney may request reservice by mail or by court officer personally. If reservice by mail at the same address is requested the plaintiff or attorney shall be required to provide a postal verification or other proof satisfactory to the court that the party to be served receives mail at that address.

(3) Fees. The fees for service by mail shall be as provided by N.J.S.A. 22A:2-37.1.

(4) Effective Service. Consistent with due process of law, service by mail pursuant to this rule shall have the same effect as personal service, and the simultaneous mailing shall constitute effective service unless the mail is returned to the court by the postal service marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," "forwarding order expired," or the court has other reason to believe that service was not effected. Process served by mail may be addressed to a post office box. Service shall be effective when forwarded by the postal service to an address outside the county in which the action is instituted. Where process is addressed to the defendant at a place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom process was mailed.

(5) Vacation of Defaults. If process is returned to the court by the postal service subsequent to entry of default and displays any of the notations listed in the preceding paragraph, or other reason exists to believe that service was not effected, the clerk shall vacate the default or default judgment and shall immediately notify the plaintiff or attorney of the action taken.

(e) General Appearance; Acknowledgement of Service. A general appearance or an acceptance of the service of a summons, signed by the defendant's attorney or signed and acknowledged by the defendant (other than a minor or incompetent), shall have the same effect as if the defendant had been properly served.

Note: Source—R.R. 7:4–6(a)(b) (first three sentences), 7:4–7. Paragraph (a) amended July 7, 1971 effective September 13, 1971; paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a)(b) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and paragraph (d) adopted November 5, 1986 to be effective January 1, 1987; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended July 17, 1991 to be effective immediately; paragraph (e) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (d)(4) amended July 5, 2000 to be effective September 5, 2000.

6:2–4. Issuance and Signing of Process

All process shall be issued in the name of the State and signed by or in the name of the clerk. The clerk may designate subordinates to sign the clerk's name to such process.

Note: Source—R.R. 7:4–3 (first unnumbered paragraph); amended November 7, 1988 to be effective January 2, 1989; amended June 29, 1990 to be effective September 4, 1990.

RULE 6:3. PLEADINGS, MOTIONS AND PARTIES

6:3–1. Applicability of Part IV Rules

Except as otherwise provided by R. 6:3–4 (joinder in landlord and tenant actions), the following rules shall apply to the Special Civil Part: R. 4:2 (form and commencement of action); R. 4:3–3 (change of venue in the Superior Court), provided, however, that in Special Civil Part actions a change of venue may be ordered by the Assignment Judge of the county in which venue is laid or the Assignment Judge's designee; R. 4:5 to 4:9, inclusive (pleadings and motions); R. 4:26 to 4:34, inclusive (parties); and R. 4:52 (injunctions as applicable in landlord/tenant actions); provided, however, that, in Special Civil Part actions, (1) a defendant who is served with process within this State shall serve an answer including therein any counterclaim within 20 days after completion of service; (2) extension of time for response by consent provided by R. 4:6–1(c) shall not apply; (3) the 90–day

periods prescribed by R. 4:6–3 (defenses raised by motion) and R. 4:7–5(c) (cross claims) shall each be reduced to 30 days; (4) an appearance by a defendant appearing pro se shall be deemed an answer; (5) no answer shall be permitted in summary actions between landlord and tenant or in actions in the Small Claims Section; (6) if it becomes apparent that the name of any party listed in the pleadings is incorrect, the court, at any time prior to judgment upon its own motion or the motion of any party and consistent with due process of law, may correct the error, but following judgment such errors may be corrected only upon motion with notice to all parties; (7) a defendant who is served with an amended complaint pursuant to R. 4:9–1 shall plead in response within 20 days after the completion of service; and (8) the double spacing and type size requirements of R. 1:4–9 do not apply.

Note: Source—R.R. 7:2, 7:3, 7:5–1, 7:5–3, 7:5–4(a)(b), 7:5–5, 7:5–6, 7:5–7, 7:5–8, 7:12–5(a)(b), 7:12–6. Amended June 29, 1973 to be effective September 10, 1973; amended July 24, 1978 to be effective September 11, 1978; amended November 5, 1986 to be effective January 1, 1987; amended November 2, 1987 to be effective January 1, 1988; amended November 7, 1988 to be effective January 2, 1989; amended June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994.

6:3–2. Endorsement of Papers: Complaint; Summons or Warrant

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

Note: Source—R.R. 7:5–2(a) (third sentence) (b). Caption and text amended July 10, 1998, to be effective September 1, 1998.

6:3–3. Motion Practice

(a) Serving and Filing Motion Papers. On motions to which R. 6:3–3(c) is applicable, moving papers including proof of service shall be filed forthwith after service. On all other motions, except ex parte applications, moving papers including proof of service shall be served and filed within the time prescribed by R. 1:6–3. Ex parte applications shall be filed with the clerk at the principal location except that in actions assigned to branch parts, they shall be filed with the clerk of the part.

(b) Where and When Heard. Motions shall be heard on days designated by the Assignment Judge or designee and at the principal location of the court, except that in actions assigned to branch parts they shall be made to the part unless the court otherwise orders.

(c) Service and Form. Motions shall be made in the form and manner prescribed by R. 1:6, and in conformity with R. 6:6–1, provided, however, that:

(1) The notice of motion shall not state a time and place for its presentation to the court. No oral argument of a motion shall be permitted unless specifically demanded by a party or directed by the court.

(2) The notice of motion shall also state the court's address and that the order sought will be entered in the discretion of the court unless the attorney or pro se party upon whom it has been served notifies the clerk of the court and the attorney for the moving party or the pro se party in writing within ten days after the date of service of the motion that the responding party objects to the entry of the order.

(3) Every notice of motion shall include the following language: "NOTICE. IF YOU WANT TO RESPOND TO THIS MOTION YOU MUST DO SO IN WRITING. Your written response must be in the form of a certification or affidavit. That means that the person signing it swears to the truth of the statements in the certification or affidavit and is aware that the court can punish him or her if the statements are knowingly false. You may ask for oral argument, which means you can ask to appear before the court to explain your position. If the court grants oral argument, you will be notified of the time, date, and place. Your response, if any, must be in writing even if you request oral argument. Any papers you send to the court must also be sent to the opposing party's attorney, or the opposing party if they are not represented by an attorney."

(4) In addition to the notice contained in subparagraph (3) above, all notices of motion for summary judgment must also state: "We are asking the court to make a final decision against you without a trial or an opportunity for you to present your case to a judge. We are requesting that a decision be entered against you because we say that the important facts are not in dispute and the law entitles us to a judgment. If you object to the motion, you must file a written response stating what facts are disputed and why a decision should not be entered against you."

(5) In addition to the notice contained in subparagraph (3) above, all notices of motion to dismiss or suppress for failure to answer interrogatories must also state: "We are requesting that your complaint be dismissed or your answer not be considered for failure to answer the interrogatories (questions) we sent you. In order to avoid this you must, within 10 days, either (a) send us answers to the questions and inform the court in writing that you have fully answered the questions; or, (b) respond to the motion. If you choose to respond, you must state your opposition in writing and send copies to us and to the court."

(6) Upon receipt of such objection and a request for oral argument, or at the direction of the court, the clerk shall set the motion down for hearing and shall notify the parties or their attorneys by mail of the time and place thereof.

(7) A party who has not requested oral argument may waive in writing the right to appear at the hearing and rely on the papers.

(8) The party seeking an order under this rule shall submit a proposed form of order with the

moving papers.

(d) Transfer of Landlord/Tenant Actions; Enforcement of Discovery Orders and Information Subpoenas. Motions to transfer landlord/tenant actions to the Law Division shall be governed by R. 6:4-1(g). Motions to enforce discovery orders and information subpoenas shall be governed by R. 6:7-2.

Note: Source—R.R. 7:5-9, 7:5-10, 7:5-11(a)(b); paragraph (c) amended July 15, 1982 to be effective September 13, 1982; paragraph (c) amended November 2, 1987 to be effective January 1, 1988; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended and paragraph (d) adopted July 14, 1992 to be effective September 1, 1992; new text of subparagraph (c)(5) added and former subparagraph (c)(5) redesignated as (c)(6) July 13, 1994 to be effective September 1, 1994; subparagraph (c)(2) amended, subparagraphs (c)(4), (c)(5), and (c)(6) redesignated as subparagraphs (c)(6), (c)(7), and (c)(8), and new subparagraphs (c)(4) and (c)(5) adopted July 5, 2000, to be effective September 5, 2000.

6:3-4. Summary Actions Between Landlord and Tenant

Summary actions between landlord and tenant for the recovery of premises and forcible entry and detainer actions shall not be joined with any other cause of action, nor shall a defendant in such proceedings file a counterclaim or third-party complaint. When the landlord acquired title from the tenant or has given the tenant an option to purchase the property, the complaint shall recite those facts.

Note: Source—R.R. 7:5-12. Caption and text amended July 14, 1992 to be effective September 1, 1992.

RULE 6:4. PROCEEDINGS BEFORE TRIAL

6:4-1. Transfer of Actions

(a) Consolidation With Actions in Other Courts. An action pending in the Special Civil Part may be transferred to another court for consolidation with an action pending in such other court in accordance with R. 4:38-1.

(b) Transfer When Recovery Will Exceed Monetary Limit. A plaintiff, after commencement of an action in the Special Civil Part, but before the trial date, may apply for removal of the action to the Law Division, on the ground that it appears likely that the recovery will exceed the Special Civil Part monetary limit by (1) filing and serving in the Special Civil Part an affidavit or that of an authorized agent

stating that the affiant believes that the amount of the claim, when established by proof, will exceed the sum or value constituting the monetary limit of the Special Civil Part and that it is filed in good faith and not for the purpose of delay; and (2) filing in the Law Division and serving a motion for transfer. The Law Division shall order the transfer if it finds that there is reasonable cause to believe that the amended claim is founded on fact and that it has reasonable chance for success upon the trial thereof.

(c) Transfer When Counterclaim Exceeds Monetary Limit. A defendant filing a counterclaim in excess of the Special Civil Part monetary limit may apply for removal of the action to the Law Division by (1) filing and serving in the Special Civil Part the counterclaim together with an affidavit or that of an authorized agent stating that the affiant believes that the amount of such claim, when established by proof, will exceed the sum or value constituting the monetary limit of the Special Civil Part and that it is filed in good faith and not for the purpose of delay; and (2) filing in the Law Division and serving a motion for transfer. The Law Division shall order the transfer if it finds that there is reasonable cause to believe that the counterclaim is founded on fact and that it has reasonable chance for success upon the trial thereof.

(d) Transmission of Record; Costs. Upon presentation of an order transferring an action to the Law Division, the clerk of the Special Civil Part shall transmit the papers on file in the court, together with copies thereof, to the deputy clerk of the Superior Court in the county of venue upon payment by the party applying for the transfer of the Special Civil Part fees prescribed by law for said copies.

(e) Remand to Special Civil Part. Upon the settlement or dismissal of a Law Division action with which a Special Civil Part action has been consolidated, the Law Division on its own motion or the motion of a party may remand the action for trial in the Special Civil Part, provided, however, that no such action shall be remanded to a county other than that in which the consolidated Law Division action would have been tried. If the plaintiff in a Special Civil Part action so transferred or consolidated is the prevailing party, the Law Division on plaintiff's or its own motion may remand the action to the Special Civil Part for the county in which it was instituted for the entry of judgment and taxation of costs.

(f) Fees on Transfer to Special Civil Part. If the plaintiff in an action transferred to the Special Civil Part thereafter prevails, \$15.00 of the fee paid to the clerk of the court from which the action was transferred shall be taxed as part of the costs whether the transfer was to the Special Civil Part of the same or another county.

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

6:4-1(d). If the motion is denied, the court shall set the action expeditiously for summary hearing.

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

6:4-2. Pretrial Conference

The pretrial conference procedure provided by R. 4:25-1 to R. 4:25-6, inclusive, may be employed in the court's discretion on its own motion or the motion of a party.

Note: Source—R.R. 7:6-3.

6:4-3. Interrogatories; Admissions; Production

(a) Generally. Except as otherwise provided by R. 6:4-3(c) interrogatories may be served pursuant to the applicable provisions of R. 4:17 in all actions except forcible entry and detainer actions, summary landlord and tenant actions for the recovery of premises and actions commenced or pending in the Small Claims Section. The 40- and 60-day periods prescribed by R. 4:17-2 and 4:17-4, respectively, for serving and answering interrogatories shall, however, be each reduced to 30 days in Special Civil Part actions.

(b) Dismissal or Suppression. If timely answers to interrogatories are not served and no formal motion for an extension has been made pursuant to R. 4:17-4(b), the complaint, counterclaim or answer of the delinquent party may be dismissed or stricken by the court upon motion accompanied by a certification stating such failure and a form of order of dismissal or suppression. Thereafter, on formal motion made by the delinquent party within 30 days after service of the order, the court may vacate the order provided fully responsive answers to the propounded interrogatories are presented and the delinquent party pays costs in the amount of \$25.00 to the Clerk of the Special Civil Part. An order of dismissal or suppression shall be entered only in favor of the moving party.

(c) Automobile Negligence Actions. A party in an automobile negligence action may propound interrogatories only by demanding, in the initial pleading, that the opposing party answer the appropriate standard set of interrogatories set forth in Forms C, D, and E of the Appendix to these Rules, specifying to which set answers are demanded and to which questions, if less than all in the set. The demand shall be stated in the propounding party's initial pleading immediately following the signature. Interrogatories shall be served upon a party appearing pro se within 10 days after the date on which the pro se party's

initial pleading is received. A party making claim for property damage or personal injuries shall serve answers within 30 days after the date of service of the pleading containing the demand, and a party defending such claim shall serve answers within 30 days after such date. The answers shall be set forth in a document duplicating the appropriate Form, containing the questions propounded, each followed immediately by the answer thereto. Additional interrogatories may be served and enlargements of time to answer may be granted only by court order on timely motion on notice, for good cause shown, and on such terms as the court directs.

(d) Request for Admissions. The provisions of R. 4:22 (admission of facts and genuineness of documents) shall apply to actions in the Special Civil Part.

(e) Production; Inspection. The provisions of R. 4:18 (production of documents, inspection) shall apply to actions in the Special Civil Part.

(f) Actions Cognizable in Small Claims Section, Discovery. Any action where the demand does not exceed the monetary limit of the Small Claims Section of the Special Civil Part shall proceed without discovery, except pursuant to formal motion and good cause shown.

Note: Source—R.R. 7:6–4A(a) (b) (c), 7:6–4B, 7:6–4C. Caption amended and paragraph (c) adopted July 7, 1971 to be effective September 13, 1971; caption amended, paragraph (a) amended, and paragraph (d) adopted July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (e) adopted July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 22, 1983 to be effective September 12, 1983; paragraphs (a), (c), (d) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended, paragraph (b) adopted and former paragraphs (b), (c), (d) and (e) redesignated as (c), (d), (e) and (f) respectively, June 29, 1990 to be effective September 4, 1990; paragraph (b) amended August 31, 1990, to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992.

6:4-4. Depositions

If a party or a material witness in any action or proceeding resides outside this State, or is within this State but is physically incapacitated or about to leave this State, the person's deposition may be taken in accordance with R. 4:10 and 4:12 to 4:16, inclusive on leave of court granted with, or for good cause, without notice.

Note: Source—R.R. 7:6–5; amended July 13, 1994 to be effective September 1, 1994.

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

The provisions of R. 4:24–1 (completion of discovery proceedings) shall apply to actions in the

Special Civil Part except that the time for completion of discovery shall be 100 days. In actions transferred to the Special Civil Part pursuant to R. 4:3–4(c), however, the parties shall complete discovery within such time to which they would have been entitled under R. 4:24–1 had the action not been transferred.

Note: Source—R.R. 7:6–6; amended November 7, 1988 to be effective January 2, 1989.

6:4–6. Sanctions

The provisions of R. 4:23 (sanctions for failure to make discovery), insofar as applicable and to the extent not already incorporated or modified pursuant to R. 6:4–3(a), shall apply to actions in the Special Civil Part.

Note: Adopted July 29, 1977 to be effective September 6, 1977; amended November 7, 1988 to be effective January 2, 1989.

RULE 6:5. TRIALS

6:5–1. Applicability of Part IV Rules

R. 4:37 (dismissal of actions), R. 4:39 (verdicts) and R. 4:40 (motion for judgment) are applicable to the Special Civil Part.

Note: Source—1969 Revision; amended November 7, 1988 to be effective January 2, 1989.

6:5–2. Notice of Trial; Assignment for Trial

(a) Notice by Clerk; Adjournment to Complete Discovery. Except for summary actions brought under R. 6:2–1, the clerk shall inform the parties or their attorneys of the trial date at least 30 days before trial. If a case in which discovery is permitted is listed for arbitration, mediation, or trial before the expiration of the time allowed by these rules or court order for discovery, an adjournment to complete discovery shall routinely be granted without necessity of an appearance or the consent of the adversary if the request is made within the discovery period and discovery was timely commenced, as required by these rules, and 5 days' notice of the request has been given to the adversary. For good cause shown, the court may order a longer or shorter notice in any action.

(b) Landlord and Tenant Actions. Summary actions between landlord and tenant shall be placed on a separate list on the calendar and shall be heard on the return day unless adjourned by the

court, or by consent with the approval of the court. At the beginning of the calendar call and again at the end of the calendar call for latecomers, the judge presiding at the call shall provide instructions substantially conforming with the announcement contained in Appendix XI-S to these rules. Written copies of that announcement also shall be available to litigants in the courtroom. A videotape, prepared either by the Administrative Office of the Courts or by the vicinage, may be used for the second reading when the judge deems its use necessary. In those counties having a significant Spanish-speaking population, the announcement also shall be given in Spanish both orally and in writing; the oral presentation may be given by videotape or other audio-visual device or by the judge presiding at the call.

(c) Assignment to Particular Judge; Common Issues. If common issues of law or fact are involved in 2 or more actions pending in the Special Civil Part, all such actions shall be assigned for hearing or trial to the same judge. If issues previously determined are involved in a subsequent action, such subsequent action shall be assigned for hearing or trial to the same judge who previously determined such issues unless otherwise ordered by the Assignment Judge or designee.

Note: Source—R.R. 7:7-3, 7:7-4, 7:7-11, 7:7-12; paragraph (a) amended November 27, 1974 to be effective April 1, 1975; amended July 17, 1975 to be effective September 8, 1975; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) caption and text amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 18, 2001 to be effective November 1, 2001.

6:5-3. Trial by Jury

(a) How Demanded. In actions commenced in the Special Civil Part a written demand for trial by jury shall be filed with the clerk at the principal location of the court and served upon opposing parties not later than 10 days after the time provided for the defendant to answer; or in the case of a counterclaim the plaintiff may make such demand not later than 10 days after the time provided for the service of a defensive pleading to the counterclaim. In actions in the Small Claims Section the demand may be filed and served by the defendant and the fee paid at least five days before the return day of the summons, whereupon the clerk shall transfer the action to the Special Civil Part.

(b) Waiver. A trial by jury shall be deemed to be waived unless a demand therefor has been filed in the time and manner herein provided and unless the party demanding the same has, at the time of making such demand, paid the required fee therefor. Trial by jury shall also be deemed to be waived in actions in which a judgment is entered prior to a demand therefor.

(c) On Court's Order. The court may, in its discretion, order a trial by jury at the plaintiff's expense, to be taxed in the costs of the action notwithstanding the failure of all parties to have made demand therefor.

(d) Mode of Trial. If a jury is demanded and the demand is not withdrawn by consent, or if trial by jury is ordered by the court, the action shall be tried by jury.

(e) Consolidated Actions. Where 2 or more actions are consolidated for trial, there need be only one demand for jury and only one jury fee shall be required.

Note: Source—R.R. 7:8–2(a) (c) (d) (e) (f) (g) (h). Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended November 7, 1988 to be effective January 2, 1989.

RULE 6:6. JUDGMENT

6:6–1. Applicability of Part IV Rules

R. 4:42 (insofar as applicable), R. 4:43–3, R. 4:44 to 4:46, inclusive, and R. 4:48 to 4:50, inclusive, shall apply to the Special Civil Part, except that the requirements of a statement of material facts and a responding statement contained in R. 4:46-2(a) and (b) shall not apply.

Note: Source—R.R. 7:9–5, 7:9–6 (third sentence), 7:10–1, 7:10–2, 7:12–1, 7:12–2, 7:12–3, 7:12–4. Amended by order of September 5, 1969 effective September 8, 1969; amended November 7, 1988 to be effective January 2, 1989; amended July 5, 2000 to be effective September 5, 2000.

6:6–2. Entry of Default and Automatic Vacation Thereof

When a party against whom affirmative relief is sought has failed to appear, plead or otherwise defend as provided by law or these rules, or has failed to appear at the time fixed for trial, or if the party's answer is stricken on order of the court, the clerk shall enter the party's default. A party against whom a default has been entered for failure to plead or enter an appearance may have same automatically removed by the clerk provided there is filed with the clerk within 30 days of its entry a written application with the consent of the adversary endorsed thereon consenting to the vacation of the default, which application shall have annexed thereto the answer or other responsive pleading of the party in default.

Note: Source—R.R. 7:9–1; caption and text amended November 2, 1987 to be effective January 1, 1988; amended July 13, 1994 to be effective September 1, 1994.

6:6–3. Judgment by Default

(a) Entry by the Clerk; Judgment for Money. If the plaintiff's claim against a defendant is for a sum certain or for a sum 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, the calculated 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 defendant, if a default has been entered against the defendant for failure to appear and the defendant is not 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 and the amount of such interest. If the judgment is based on a document of obligation that provides a rate of interest, prejudgment interest shall be calculated in accordance therewith; otherwise it shall be calculated in accordance with R. 4:42-11(a). If the claim is founded upon a note, contract, check or bill of exchange or is evidenced by entries in the plaintiff's book of account, or other records, a copy thereof shall be attached to the affidavit or, if attached to the complaint, verified by reference in the affidavit. The clerk may require for inspection the originals of such documents. The affidavit prescribed by this Rule shall be sworn to not more than 30 days prior to its presentation to the clerk and, if not made by plaintiff, shall show that the affiant is authorized to make it.

If plaintiff's records are maintained electronically and the claim is founded upon an open-end credit plan, as defined in 15 U.S.C. § 1602(i) and 12 C.F.R. § 266.2(a)(20), a copy of the periodic statement for the last billing cycle, as prescribed by 15 U.S.C. § 1637(b) and 12 C.F.R. § 266.7, or a computer-generated report setting forth the financial information required to be contained in the periodic statement, if attached to the affidavit, or if attached to the complaint, and verified by reference in the affidavit, shall be sufficient to support the entry of judgment.

(b) Entry by the Clerk; Judgment for Possession. In summary actions between landlord and tenant for the recovery of premises, judgment for possession may be entered by the clerk on affidavit if the defendant fails to appear, plead or otherwise defend, and is not a minor or incompetent person, except where the landlord acquired title from the tenant or has given the tenant an option to purchase the property. The affidavit must state the facts establishing the jurisdictional good cause for eviction required by the applicable statute and that the charges and fees claimed to be due as rent, other than the base rent, are permitted to be charged as rent by the lease and by applicable federal, state, and local law. If the landlord is represented by an attorney, that attorney must also submit a certification that the charges and fees claimed to be due as rent, other than the base rent, are permitted to be charged as rent by the lease and by applicable federal, state, and local law. If the basis for eviction requires service of a notice to quit, the landlord's affidavit must have a copy of all required notices attached, and the affidavit must state that the notices were served as required by law and that the facts alleged in the notices are true.

If the landlord fails to obtain or make written application for the entry of a judgment for possession within 30 days after the entry of default, such judgment shall not be entered thereafter except on application to the court and written notice to the tenant served at least 7 days prior thereto by simultaneously mailing same by both certified and ordinary mail or in the manner prescribed for service of process in landlord/tenant actions by R. 6:2-3(b); provided, however, that the 30 day

period may be extended by court order or written agreement executed by the parties subsequent to the entry of default and filed with the clerk.

(c) Entry by the Court; Particular Actions. In all actions to which paragraphs (a) or (b) do not apply, the party entitled to a judgment by default shall apply to the court therefor. No judgment by default shall be entered against a minor or incompetent person without 5 days' written notice to the guardian or a guardian ad litem appointed for the minor or incompetent person; nor against any other party without written notice to that party, if the court, in the interest of justice, orders such notice. When a landlord acquired title from the defendant or has given the tenant an option to purchase the property, a judgment for possession by default shall not be entered without proof in open court. If application is made for the entry of judgment by default in deficiency suits or claims based directly or indirectly on the sale of a chattel that has been repossessed peaceably or by legal process, the plaintiff shall prove entitlement to a judgment by affidavit containing a description of the property, the amount realized at the sale or credited to the defendant, the costs of sale and such other proof as required by law. If the plaintiff's claim is for an unliquidated sum that the court finds is susceptible of proof through personal knowledge (as opposed to opinion or expert testimony) it shall enter judgment by default against a defendant either upon oral testimony in open court, or upon affidavit containing the qualifications of the affiant and the information that would be required in the case of oral proof. In all negligence actions involving damage to property, proof of negligence of the defendant shall be by affidavit of the person with knowledge of the negligence of the defendant. In automobile negligence actions and insurance subrogation cases proof of the property damage shall be given by an affidavit of an automobile mechanic or an insurance adjuster or appraiser setting forth the affiant's occupation and business address; if employed, the name of the employer and the affiant's position; the date of inspection of the property involved and, if a vehicle, specifying its make or model, its condition at that time, and its mileage if available; the repairs actually made and the estimated cost thereof; a statement that the repairs were necessary and the charges therefor reasonable; and the amount actually paid for repairs, if completed. The plaintiff may request or the court, after review of the affidavits submitted in accordance with this rule, may require oral testimony in open court.

(d) Time for Entry. If a party entitled to a judgment by default fails to apply therefor within 6 months after entry of default, judgment shall not be entered except on application to the court and on written notice to the party in default served at least 5 days prior thereto.

Note: Source—R.R. 7:9–2(a)(b), 7:9–4. Paragraphs (a) and (d) amended June 29, 1973 to be effective September 10, 1973; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a), (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b), and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 18, 2001 to be effective November 1, 2001.

6:6-4. Consent Judgments for Possession and Stipulations of Settlement

Notwithstanding any consent by a tenant, no warrant of removal may be issued or executed unless in compliance with all provisions of law.

(a) Entry by the Court. A stipulation of settlement or an agreement that provides for entry of a judgment for possession must be written, signed by the parties, and presented to a judge for approval on the day of trial or as the judge otherwise directs, but if it requires the tenant to both pay rent and vacate the premises, the judge shall review it in open court. It must also be accompanied by the affidavit of the landlord and the certification of the landlord's attorney required by R. 6:6-3(b).

(b) Entry by the Clerk. When the tenant is represented by an attorney and the attorney has signed the agreement, the clerk may enter judgment for possession upon receipt of the signed consent of the parties and the affidavit of the landlord and the certification of the landlord's attorney specified in R. 6:6-3(b).

Note: Adopted July 18, 2001 to be effective November 1, 2001.

6:6-5. Judgment After Trial; Costs

Upon receipt of the verdict of a jury, or upon determination by a judge sitting without a jury, the clerk shall note the judgment on the jacket and it shall take effect forthwith. The clerk shall thereupon enter the judgment and tax the costs.

Note: Source—R.R. 7:9-6 (first two sentences), as Rule 6:6-4; redesignated as Rule 6:6-5 July 18, 2001 to be effective November 1, 2001.

6:6-6. Issuance by Clerk of Certificate of Satisfaction of Judgment

In cases where a judgment debtor has fully satisfied a judgment, but the clerk has not entered satisfaction on the record pursuant to R. 4:48-2(a) because either the party receiving full satisfaction has not given a warrant for satisfaction or no execution issued on the judgment has been returned fully paid, the judgment debtor may make written application to the clerk for the issuance of a certificate of satisfaction of judgment. Upon receipt of such written application along with proof of payment, the clerk shall send to the attorney for the judgment creditor or the judgment creditor, if pro se, a letter setting forth that the judgment debtor has filed a written application seeking the issuance of a certificate of satisfaction of judgment and that said certificate will be issued within 10 days, unless written objection is received by the clerk with a copy sent to the judgment debtor. The letter sent by the clerk shall include a copy of the written application and proof of payment filed by the judgment debtor. If no objection is received within 10 days from the date of the letter, the clerk shall issue the certificate of satisfaction of judgment to the judgment debtor and enter satisfaction on the record. If an objection is received, the clerk shall set the matter down for a hearing and notify all parties as to the date of the

hearing.

Note: Adopted November 7, 1988 to be effective January 2, 1989; redesignated as Rule 6:6-6 July 18, 2001 to be effective November 1, 2001.

RULE 6:7. PROCESS TO ENFORCE JUDGMENTS

6:7-1. Requests for Issuance of Writs of Execution; Notice to Debtor; Claim for Exemption; Warrant of Removal; Enforcement of Consent Judgments and Stipulations of Settlement in Tenancy Actions

(a) Requests for Issuance; Intention to Return. All requests for issuance of writs of execution and other process for the enforcement of judgments shall be made in writing to the clerk at the principal location of the court. A request for the issuance of a writ of execution other than wage execution shall be accompanied by a statement of the amount due. The court officer shall give to the judgment-creditor or judgment-creditor's attorney at least 30 days' notice of an intention to return a wage execution or an unexpired writ of execution, marked unsatisfied or partially satisfied and may so return the writ unless further instructions are furnished within that time period.

(b) Notice to Debtor. The provisions of R. 4:59-1(g) respecting notice to debtor, exemption claims and deferment of turnover and sales of assets shall apply to all writs of execution issued by the Law Division, Special Civil Part. The notice to debtor shall be in the form prescribed by Appendix VI to these rules.

(c) Warrant of Removal; Issuance, Execution. If a judgment for possession is entered in a summary action for the recovery of premises and the landlord fails to apply in writing for a warrant of removal within 30 days after the entry of the judgment, or if the warrant is not executed within 30 days of its issuance, such warrant shall not thereafter, be issued or executed, as the case may be, except on application to the court and written notice to the tenant served at least 7 days prior thereto by simultaneously mailing same by both certified and ordinary mail or in the manner prescribed for service of process in landlord/tenant actions by R. 6:2-3(b); provided, however, that either 30 day period may be extended by court order or written agreement executed by the parties subsequent to the entry of the judgment and filed with the clerk. For purposes of this rule, entry of judgment shall be defined as the date upon which the right to request a warrant for removal accrues.

(d) Enforcement of Consent Judgments and Stipulations of Settlement in Tenancy Actions. A request to enforce a settlement agreement or consent judgment in a tenancy action shall be by certification. It must state the facts upon which the claim of breach is based and the desired relief. The certification must be filed with the clerk and a copy must be sent to the adverse party and the adverse party's attorney, if any, by ordinary mail or alternatively, if directed to a tenant, by posting on the door

of the premises.

Note: Source—R.R. 7:11–1; former rule redesignated as paragraph (a) and paragraph (b) adopted and caption amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; caption amended and paragraph (c) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; caption and paragraph (c), caption and text, amended July 13, 1994 to be effective September 1, 1994; paragraph (a) caption and text amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (d) adopted July 18, 2001 to be effective November 1, 2001.

6:7–2. Orders for Discovery; Information Subpoenas

(a) Order for Discovery. The court may, upon the filing by the judgment creditor or a successor in interest (if that interest appears of record) of a petition verified by the judgment creditor or the creditor's agent or attorney stating the amount due on the judgment, make an order, upon good cause shown, requiring any person who may possess information concerning property of the judgment debtor to appear before the attorney for the judgment creditor or any other person authorized to administer an oath and make discovery under oath concerning that property at a time and place therein specified. The location specified shall be in the county where the person to be deposed lives or works.

No more than one appearance of any such person may be required without further court order. The time and place specified in the order shall not be changed without the written consent of the person to be deposed or upon further order of the court.

(b) Information Subpoena

(1) To Judgment Debtor. An information subpoena may be served upon the judgment debtor, without leave of court, accompanied by an original and copy of written questions and a prepaid, addressed return envelope. The information subpoena and written questions shall be in the form and limited to those set forth in Appendix XI-L to these Rules. Answers shall be made in writing, under oath or certification, by the person upon whom served, if an individual, or by an officer, director, agent or employee having the information sought, if a corporation, partnership or sole proprietorship. The original subpoena, with the answers to the written questions annexed thereto shall be returned to the judgment creditor, if pro se, or judgment creditor's attorney within 14 days after service thereof.

An information subpoena shall not be served on a judgment debtor more frequently than once in any six-month period without leave of court.

(2) To Other Person or Entity. An information subpoena may be served upon banking institutions possibly used by the judgment-debtor without leave of court or upon possible employers or account-debtors (who are business entities) of the judgment-debtor upon ex-parte application,

supported by certification, and court order, if the judgment-debtor has failed to fully answer an information subpoena served pursuant to subparagraph (1) within 21 days of service. The application shall be granted if the court determines that the information subpoena is reasonably necessary to effectuate a post-judgment judicial remedy and that the party receiving the subpoena may have in their possession information about the debtor that will assist the creditor in collecting the judgment. The information subpoena shall be accompanied by an original and copy of written questions and a prepaid, addressed return envelope. The information subpoena and written questions shall be in the form and limited to those set forth in Appendix XI-R to these Rules, except that an information subpoena served upon a banking institution shall contain a certification by the judgment-creditor or the creditor's attorney that the debtor has failed to fully answer an information subpoena served pursuant to R. 6:7-2(b)(1) within 21 days of service, that the information subpoena is reasonably necessary to effectuate a post-judgment judicial remedy, and that the bank may have in its possession information about the debtor that will assist the creditor in collecting the judgment. Answers shall be made in writing, under oath or certification, by the person served, if an individual, or by an officer, director, agent or employee having the information sought, if a corporation, partnership or sole proprietorship. The original subpoena, with the answers to the written questions annexed thereto, shall be returned to the judgment creditor, if pro se, or judgment creditor's attorney within 14 days after service thereof.

(c) Service of Proceedings. A copy of the order for discovery as provided in paragraph (a) of this rule shall be served personally or by registered or certified mail, return receipt requested, and simultaneously by regular mail, at least 10 days before the date for appearance fixed therein. The information subpoena, as provided for in paragraph (b) of this rule shall be served personally or by registered or certified mail, return receipt requested, and simultaneously by regular mail.

Service of an order for discovery or an information subpoena shall be effective as set forth in R. 6:2-3(d)(4). Upon completion of service, the failure to comply with an information subpoena shall be treated as a failure to comply with an order for discovery entered in accordance with paragraph (a) of this rule.

(d) Enforcement Against Other Person or Entity. Proceedings to seek relief pursuant to R. 1:10-3, when a person who is not a party fails to obey an order for discovery or an information subpoena, may be commenced by order to show cause or notice of motion.

(e) Enforcement by Motion. Proceedings to seek relief pursuant to R. 1:10-3, when a judgment-debtor fails to obey an order for discovery or an information subpoena, shall be commenced by notice of motion supported by affidavit or certification. The notice of motion and certification shall be in the form set forth in Appendices XI-M and N to these Rules. The notice of motion shall contain a return date and shall be served on the judgment-debtor and filed with the clerk of the court not later than 10 days before the time specified for the return date. The moving papers shall be served on the judgment-debtor either in person or simultaneously by regular and certified mail, return receipt requested. The notice of motion shall state that the relief sought will include an order:

(1) adjudicating that the judgment-debtor has violated the litigant's rights of the

judgment-creditor by failing to comply with the order for discovery or information subpoena;

(2) compelling the judgment-debtor to immediately furnish answers as required by the order for discovery or information subpoena;

(3) directing that if the judgment-debtor fails to appear in court on the return date or to furnish the required answers, he or she shall be arrested and confined to the county jail until he or she has complied with the order for discovery or information subpoena;

(4) directing the judgment-debtor, if he or she fails to appear in court on the return date, to pay the judgment-creditor's attorney fees, if any, in connection with the motion to enforce litigant's rights; and

(5) granting such other relief as may be appropriate.

The notice of motion shall also state, in the case of an information subpoena, that the court appearance may be avoided by furnishing to the judgment-creditor written answers to the information subpoena and questionnaire at least 3 days before the return date.

(f) Order for Arrest. If the judgment-debtor has failed to appear in court on the return date and the court enters an order for his or her arrest, it shall be in the form set forth in Appendix XI-O to these Rules and shall state that upon the judgment-debtor's failure, within 10 days of the certified date of mailing or personal service of the order, to comply with the information subpoena or discovery order, the court will issue a warrant for his or her arrest. The judgment-creditor shall serve a copy of the signed order upon the judgment-debtor either personally or by mailing it simultaneously by regular and certified mail, return receipt requested. The date of mailing or personal service shall be certified on the order.

(g) Warrant for Arrest. Upon the judgment-creditor's certification, in the form set forth in Appendix XI-P to these Rules, that a copy of the signed order for arrest to enforce litigant's rights has been served upon the judgment-debtor as provided in this rule, that 10 days have elapsed and that there has been no compliance with the information subpoena or discovery order, the court may issue an arrest warrant. If the judgment-debtor is to be arrested in a county other than the one in which the judgment was entered, the warrant shall have annexed to it copies of the order for arrest and the certification in support of the application for the warrant. The warrant shall be in the form set forth in Appendix XI-Q to these Rules and, except for good cause shown and upon such other terms as the court may direct, shall be executed by a Special Civil Part Officer or Sheriff only between the hours of 7:30 a.m. and 3:00 p.m. on a day when the court is in session. If the notice of motion and order for arrest were served on the judgment-debtor by mail, the warrant may be executed only at the address to which they were sent. In all cases the arrested judgment-debtor shall promptly be brought before a judge of the Superior Court in the county where the judgment-debtor is arrested and released upon compliance with the order for discovery or information subpoena. When the judgment-debtor has been arrested for failure to answer an information subpoena, the clerk shall furnish the judgment-debtor with

a blank form containing the questions attached to the information subpoena, as set forth in Appendix XI–L to these Rules.

(h) Expiration of Unserved Warrants. If the warrant for arrest is not executed within 24 months after the date of the entry of the order authorizing it, both the order and the warrant shall be deemed to have expired and to be of no further effect.

Note: Source—R.R. 7:11–3(a)(b), 7:11–4. Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 17, 1975 to be effective September 8, 1975; amended July 21, 1980 to be effective September 8, 1980; caption amended, paragraph (a) caption and text amended, paragraph (b) adopted and former paragraph (b) amended and redesignated as paragraph (c) June 29, 1990 to be effective September 4, 1990; paragraph (a) amended and paragraphs (d), (e) and (f) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (b), (d), (e) and (f) amended July 13, 1994 to be effective September 1, 1994; former paragraph (b) redesignated as subparagraph (b)(1), subparagraph (b)(2) adopted, paragraph (c) amended, paragraph (d) adopted, former paragraph (d) amended and redesignated as paragraph (e), former paragraphs (e) and (f) redesignated as paragraphs (f) and (g) June 28, 1996 to be effective September 1, 1996; subparagraph (b)(2) and paragraph (g) amended July 10, 1998 to be effective September 1, 1998; paragraph (h) adopted July 5, 2000 to be effective September 5, 2000.

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

(a) Notice, Order, Hearing. The provisions of R. 4:59–1(d) (wage execution) are applicable to the Special Civil Part, except that the judgment-debtor shall notify the clerk of the Special Civil Part named in the notice of execution and the judgment-creditor in writing within 10 days after service of the notice of any reasons why the order should not be entered and the judgment-creditor may waive in writing the right to appear at the hearing on the objection and rely on the papers.

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

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

RULE 6:8. SPECIAL ACTIONS: ATTACHMENT, CAPIAS AND REPLEVIN; RETURN OF ORDERS FOR POSSESSION

Writs of capias ad respondendum, attachment and replevin shall be issued and proceeded upon in accordance with R. 4:51, 4:60 and 4:61, respectively, and in accordance with applicable law. An officer assigned to execute an order for possession in a replevin action shall make return thereof to the clerk within 30 days from the issuance of such order, and the officer shall not thereafter execute such order without the further order of the court.

Note: Source—R.R. 7:12–7, 7:12–8; amended July 13, 1994 to be effective September 1, 1994.

RULE 6:9. PROCEDURE FOR COLLECTION OF STATUTORY PENALTIES AND FOR CONFISCATION OF CHATTELS

The provisions of R. 4:70 (procedure for collection of statutory penalties and confiscation of chattels) are applicable to the Special Civil Part.

Note: Source—R.R. 7:13, 7:14; amended November 7, 1988 to be effective January 2, 1989.

RULE 6:10. REPRESENTATION IN SUMMARY ACTIONS BETWEEN LANDLORD AND TENANT

The prohibition of appearances and filing of court papers by business entities other than sole proprietors, contained in R. 1:21–1(c), shall apply to summary actions between landlord and tenant, except that a partner in a general partnership may file papers and appear pro se.

Note: Former R. 6:10 (bastardy proceedings) deleted December 13, 1983 to be effective December 31, 1983; present rule adopted July 14, 1992 to be effective September 1, 1992; amended July 13, 1994 to be effective September 1, 1994.

RULE 6:11. SMALL CLAIMS SECTION; PRACTICE

The general rules of practice and procedure in the Special Civil Part, including the provisions of R. 1:40–6, shall apply to the Small Claims Section except that any authorized officer or employee may prosecute and defend on behalf of a party which is a business entity, whether formally incorporated or not, claims originating with and not held by transfer or assignment to that business entity, provided that such officer or employee is neither a suspended or disbarred attorney nor one who has resigned. This exception shall apply to every action cognizable in the Small Claims Section whether or not the complaint has been filed in the Small Claims Section. Notice in the Small Claims Section shall be by summons as provided by R. 6:2–1, and actions in such Section shall be disposed of on the return day unless adjourned by the court. Upon the filing of a counterclaim for a sum in excess of the monetary limit of the Small Claims Section, the action shall be transferred to the Special Civil Part proper upon payment by the defendant of the required fees.

Note: Source—R.R. 7:17–1, 7:17–2, 7:17–3. Amended June 29, 1973 to be effective September 10, 1973; amended November 27, 1974 to be effective April 1, 1975; amended November 1, 1985 to be effective January 2, 1986; amended November 7, 1988 to be effective January 2, 1989; amended July 14, 1992 to be effective September 1, 1992.

RULE 6:12. GENERAL PROVISIONS; RULES OF ADMINISTRATION

6:12–1. Recording and Transcript of Proceedings

(a) Taking of Record. The Administrative Director is authorized to provide for the verbatim recording of all proceedings in the Special Civil Part either by an official or temporary stenographic reporter appointed pursuant to law or by sound recording device. Such device shall be operated and any required transcripts prepared by personnel assigned by the court for that purpose, all in accordance with procedures established by the Administrative Director.

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

(c) Request of Party. When the proceedings are sound recorded, in addition thereto, at the request and expense of any party, the court shall permit a record of the proceedings to be made by a certified shorthand reporter.

(d) When No Record Is Made. In the absence of a stenographic or sound record of any proceeding, in the event of an appeal, a statement of proceedings shall be prepared as provided for by

R. 2:5–3(e).

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

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

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

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

6:12–3. Supporting Personnel

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

(b) Substitution for Officer Deceased or Otherwise Unable to Act. When an officer dies or becomes incapacitated or for any other reason is unable to act, the court shall by order appoint another officer on the approved list of the court to proceed with and complete the execution of all writs which had been delivered to the deceased or incapacitated officer for execution with the same power in all things yet to be done as the officer would have had, had the executions been delivered to the officer originally and had the officer done what was done by the officer's predecessor, except that the officer shall not be liable for any error or default of the officer to whom the executions were originally delivered.

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

6:12-4. Accounting System

The Administrative Director of the Courts shall prescribe the docketkeeping, indices, bookkeeping and accounting procedures for the various types of financial transactions in the clerk's office.

Note: Source—R.R. 7:23, 7:24, 7:25.