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[Via Email comments.mailbox@njcourts.gov](mailto:Via_Email_comments.mailbox@njcourts.gov)

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts,
Hughes Justice Complex
PO Box 037
Trenton, NJ 08625-0037

***Re: Comment on behalf of (i) Wilentz, Goldman & Spitzer, P.A. ("WG&S");
and (ii) NAIOP – Commercial Real Estate Development Association – New
Jersey Chapter ("NAIOP")
Landlord-Tenant: Report and Recommendation of the
Judiciary Special Committee on Landlord Tenant***

Dear Judge Grant:

Please accept this joint letter by WG&S and NAIOP with respect to the request for comments by the Judiciary's Special Committee on Landlord Tenant ("Committee"). WG&S has represented clients throughout the state for over one hundred years. The firm has a robust real estate department, representing residential and commercial clients across the twenty-one counties in transactional, corporate and litigation matters. NAIOP is the preeminent commercial real estate trade association in New Jersey and the leading organization for owners and related professionals in office, industrial and mixed-use real estate. NAIOP advocates for effective legislation and regulations on behalf of its members. [<https://www.naiopnj.org/>]

Attorneys in the WG&S litigation and real estate departments, some of whom have been active in NAIOP's legislative and regulatory committees, have reviewed the April 21, 2021 Report and Recommendation on Landlord Tenant ("Report"). WG&S offers the following comments and suggestions on behalf of the firm and on behalf of NAIOP. We applaud the Committee's recommendations with regard to residential tenancies, including the expanded hearing process with the intent to ensure full access to available programs that provide financial

and other assistance for housing relief, and compliance with requirements of federal relief legislation to effectuate settlement with residential tenants, especially given the current ongoing pandemic and the economic effect on employment and housing. However, the Report consistently addresses the issues surrounding the current residential tenancy crisis and then, without any background discussion or comment, submits recommendations applicable to both residential and commercial tenancies. The Report fails to acknowledge or fails to recognize the distinction between residential and commercial tenancies, and treats these fundamentally different tenancies as fungible. This is highlighted by the fact that while the Report indicates a necessity that additional review and oversight would ensure that landlords are represented by counsel where required, this factor should also be applicable to commercial tenants that are most often businesses. Yet the Report fails to make that simple statement, indicating a total lack of focus on commercial eviction issues. We surmise this is the case because the existing landlord tenant process does not currently make any distinctions between residential and commercial cases.

It is not clear whether the Committee included representation of the commercial real estate industry or its legal representatives amongst its members. However, having spoken to leadership of NAIOP, they were not aware of the initiative resulting in the Report which would not have been the case had the organization or attorneys actively involved in representation of commercial landlords been engaged in the Committee's work. We note that this was not the case with the residential rental real estate industry which was represented by the New Jersey Apartment Association, and perhaps by others whose affiliation was not expressly identified in the listing of the Committee's members. Otherwise, given the changes recommended by the Committee, a separate commercial track would likely have been recommended to differentiate among the various types of case management of other civil litigation matters involved with commercial tenancies.

It is respectfully submitted that the Report, as written, while salutary to residential tenancies, will result in unnecessary delays in commercial evictions and encourage the inclusion of self-help remedies by commercial landlords in their leases in an effort to avoid the lengthy Court process even when the ground for eviction is non-payment of rent.

At the outset, for years the Landlord-Tenant Part of the Law Division has been structured to allow for an expeditious removal of a nonpaying tenant – residential or commercial. The nature of the process was that a landlord, especially a commercial landlord, could file for eviction upon the nonpayment of a tenant and have a tenant removed by sheriff within six to eight weeks of the filing of the application. Despite the disparity in complexity of the lease agreements between commercial and residential tenants, both were dealt with in the same manner when it came to a request for judgment for possession for nonpayment of rent or when the lease term concluded, amongst other circumstances. As a practical matter, this also includes delays in obtaining issuance of a warrant for possession that was legislatively required only for residential tenancies.

By Order dated July 14, 2020, the Supreme Court authorized the Amendment of landlord/tenant summons and complaint forms to specifically identify whether an action involved commercial or residential property. The Advisory Notice to the Bar, issued on the same date by Your Honor, explained that this change to the form could “facilitate . . . differentiated case management.” The backlog in landlord/tenant cases due to the Covid crisis has only further underscored the need for such differentiated case management yet the Report does not seek to implement that change. Commercial cases can be disposed of much more swiftly and with greater judicial economy than residential cases. First, an eviction in a commercial case does not involve the potential for homelessness or implicate relief programs available to residential tenants. Second, there are far fewer commercial landlord/tenant cases, than there are residential cases making docket-clearing much easier. Third, most commercial landlord/tenant cases involve non-payment of rent for which there are far fewer defenses available to commercial tenants thereby streamlining trials and those few cases that may involve more complex issues are subject to removal to the Law Division under existing Rules of Court. Fourth, most commercial tenants must be represented by counsel making settlement conferences more productive and trials more expeditious. Therefore, WG&S and NAIOP propose that trial lists be separated such that landlord/tenant courts call commercial cases only on different days and times than residential landlord/tenant matters. For example, such shorter commercial case dockets could be called and disposed of in a single weekly afternoon session. Assignment judges would have more flexibility in designating any judge handling civil cases to handle such shorter commercial case lists, without the need for the more specialized and time-consuming handling of residential matters which has been proposed in the Report.

Over the past year throughout the pandemic, despite the moratorium only applying to residential evictions, because the Landlord Tenant Part was shuttered except for emergent cases, it became even more readily apparent that the Landlord Tenant Part should handle residential and commercial tenancy matters separately. Unlike a residential tenant, numerous commercial tenants were able to obtain a Payroll Protection Plan loan and continue to operate their businesses without paying their rent or paying for the other expenses related to services that continued to be provided by their landlords. Had there been a mechanism by which the Court could handle commercial tenancy matters remotely, there would neither be the backlog of the magnitude that the Court is facing nor the tidal wave of requests commercial real estate attorneys have received from clients regarding the legality of engaging in self-help remedies.

In a commercial tenancy matter, each month’s lost rent could be a five-figure or six-figure number and to allow the process to increase from six weeks to several months will only encourage commercial tenants to stop paying rent for longer periods of time without any meaningful recourse for the commercial landlord. The commercial landlord will be further damaged as a result of waiting for the tenant to submit a Case Information Statement, then waiting for the Case Management Conference, and then the scheduling of the hearing. What was once a six week process will likely now take several months, notwithstanding the optimistic timeline in the Report to the contrary.

This will also have a negative effect on future tenancies. Commercial landlords will increase rent or security deposit requirements as a result of the fear that in the event of nonpayment the process will take months rather than weeks and the need to ensure costs will be covered during that interim period. Commercial landlords will likely include language relating to self-help in lease agreements, as expeditious relief from the Court will not be available. It is likely this will also increase the number of commercial tenancy matters filed in Law Division for monetary damages with an Order to Show Cause for Possession, adding to the caseload.

It is the recommendation of WG&S and that of NAIOP that commercial and residential tenancy matters be placed on separate tracks. The residential tenancies should follow the recommendations of the Committee. Commercial tenancies should be on a separate track which can be facilitated by the requirement of the landlord or its counsel filing a Case Information Statement with the Complaint. Tenants should be advised of the option, not the requirement, to do the same prior to a hearing so that the court may have a better idea of the nature of the issues involved. Rather than schedule the matter for a Case Management Conference, the matter should be scheduled for a hearing within four weeks of the filing. This is particularly important where the sole ground for the commercial eviction is non-payment of base rent and additional rent. The parties would be required to appear for the hearing and attend a mediation session the day of the hearing. There is, however, no reason for separate mediation and hearing dates prior to the scheduling of a hearing which would only allow the tenant to remain in these commercial spaces, operating its business without paying for use and occupancy.

Both NAIOP and WG&S are grateful for the opportunity to comment on the proposals of the Report. We appreciate and understand the Judiciary's concern and wish to work with the judiciary and provide a method that would benefit both residential and commercial landlords and tenants. We offer and request a position on the Judiciary's Special Committee on Landlord Tenant. We feel we can add to the Committee by providing the voice of commercial landlords and tenants and welcome the opportunity to be part of the solution.

We thank Your Honor for your attention to this matter.

Respectfully submitted,

WILENTZ, GOLDMAN & SPITZER, P.A.

By: 
DAVID S. GORDON

For the Firm
and on behalf of NAIOP

cc: (via electronic mail)
NAIOP
Attn: Michael McGuinness, Executive Director