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Newark

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VIA EMAIL ONLY (Comments.Mailbox@njcourts.gov)
Honorable Glenn A. Grant, Administrative Director of the Courts
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RE: Comments on Report and Recommendations of the Judiciary Special Committee on Landlord Tenant

Dear Judge Grant:

I thank you and Chief Justice Stuart Rabner for recognizing the need to reexamine and reform New Jersey's landlord-tenant docket for purposes of ensuring equal justice for all. By allowing public commentary, you have made it clear that this necessary endeavor must be purposeful. I also thank you for giving me the opportunity to serve on the extremely important Judiciary Special Committee on Landlord Tenant.

Below, please find my comments on the Committee's recently published Report and Recommendations.

Race/Class Disparities in the Judicial System

New Jersey is one of the most racially diverse states in the country. Yet, it is important for the judiciary to recognize the race and class disparities existing in New Jersey's judicial system – particularly in the County of Essex where my office is located. In my near two decades of practicing law, I have continually observed that Black and Brown people of low income continue to represent the overwhelming majority of pro se tenants answering the landlord-tenant calendar call in the County of Essex. Many of these litigants do not speak English, some are hard of hearing, and some have multiple disabilities.

President John Adams famously said that ours is a "government of laws, not of men." This means that every litigant in our courts must be treated fairly and with dignity. The mere perception of bias in the judiciary erodes the notion that our courts provide equal justice for all, thereby undermining faith in our legal system. Thus, when reimagining the landlord-tenant docket, the judiciary must not overlook the realities of race and class disparities in New Jersey's evictions phenomenon and the historic disparate treatment and often maltreatment that come with those disparities.

The TCIS

For several reasons, I stringently object to making the Tenant Case Information Statement (TCIS) a required, evidentiary document. First, doing so would go against the letter and spirt of the burden apportionment to the plaintiff-landlord. If the plaintiff fails to present sufficient evidence, then their claim must fail. Obliging the defendant-tenant to complete a CIS amounts to burden shifting.

Second, the Report says that, "The [TCIS] document is drafted so as to not request that the tenant make admissions related to the case," but making the TCIS evidentiary refutes this purpose. Further, the fact that admissions are not *requested* does not mean that admission will not be made. As the judiciary is well aware, the vast majority of New Jersey's tenants continue to be unrepresented by counsel and many lack sufficient savvy to prepare an effective legal defense and/or avoid making admissions. Therefore, making the TCIS evidentiary can severely harm and prejudice multiple, pro se tenants – especially if they make statements on the TCIS that could harm them in their tenancy case and in other legal arenas.

Third, it has been my understanding that the TCIS would be treated like settlement negotiations for the purpose of facilitating off-the-record case resolution. Like parties involved in settlement negotiations, defendant-tenants who complete a TCIS must be free to make statements on that TCIS without a fear that those statements will be used to their disadvantage if their case goes to trial. Making the TCIS evidentiary will no doubt have a **chilling effect** on the tenant's candor and free speech.

Finally, I recommend **deleting** from the LTCIS (which is the CIS for plaintiff-landlords) all the grounds of the Anti-Eviction Act because keeping this information absolves the landlord of her burden of proving her case. This especially concerns me since the judiciary already and very comprehensively describes the grounds of the Anti-Eviction Act on its website – essentially walking landlords through the process of how to evict a New Jersey tenant.

If the judiciary decides to retain this information, then the judiciary must concomitantly provide a similar informational document for tenants that includes their defenses and that would mitigate the above-mentioned inequity.

Cooperation with Rental-Assistance Programs

The judiciary must make plaintiff-landlords aware that their refusal to cooperate with rental assistance will create a (albeit rebuttable) presumption that their nonpayment claim is illegitimate. The plaintiff-landlord's cooperation with rental-assistance programs that the tenant has applied to should be dispositive of the legitimacy of the plaintiff-landlord's nonpayment claim. Confirming said cooperation should be part and parcel of the judiciary's case-review process as well as the LTHO's investigation.

Written Case-Dismissals.

The judiciary is already proposing the issuance of written judgements for possession. I ask the judiciary to concomitantly issue written judgements of dismissal for the similar purpose of ensuring finality and transparency in a case.

Recorded Agreements

The judiciary is proposing that settlement agreements be placed on the record as a substitute for obtaining the signatures of parties on a written document because landlord tenant matters are and will continue to be conducted virtually. I ask that this be exception and not the rule. A contemporaneous written-agreement ensures clarity and minimizes ambiguity. I understand that the written agreement will be mailed to the parties at some point but I question who will be responsible for its transcription and how soon the parties can expect to receive it since time is always of essence in summary proceedings.

I propose that remote settlement conferences only proceed if the tenant has access to video in order to ensure that the tenant can fully review any proposed agreements in writing. Further, I propose that no

agreements are finalized until all parties have had the opportunity to review the agreements in written form.

Similar to the manner in which non-dissolution agreements are generated in family court, a remedy to the concerns I discuss above could be to have a tenancy court clerk type up the tenancy agreements in real time via shared screen (assuming all parties are appearing by Zoom or similar videoconferencing platform) immediately after the agreement is orally placed on the record and before the parties leave the proceeding. Taking these steps will allow all parties on the case to see and comment on the written agreement before it is finalized and delivered by email and regular mail.

Additionally, the court clerk could contemporaneously email the written agreement to litigants with the technology to contemporaneously review and sign it electronically. Currently available are multiple apps that allow users to sign documents electronically.

Rule 6:6-4

Rule 6:6-4 provides in relevant part that:

> A stipulation of settlement or an agreement that provides for entry of a judgment for possession must be written, signed by the parties, and reviewed, approved and signed by a judge for approval on the day of the court proceeding[.]

NJ R. Law Div. Civ. Pt. R. 6:6-4. I interpret the previously mentioned to mean that the judiciary must review and have a judge sign all settlement agreements to which a pro se tenant is a party. This interpretation stems from the fact that any other type of resolution would be not be a settlement agreement. (Eg. If the plaintiff agrees that the defendant shall no longer face the prospect of eviction via the pending case, then that is a dismissal, not a settlement.) The *Harris* Instructions must reference the requirements of Rule 6:6-4.

Proposed Amendment Rule 6:3-4

The proposed amendment to this Rule must clearly state that the judiciary is not *sua sponte* requiring that a tenant deposit back rent into court in order to successfully assert a habitability defense. *Marini* does not require such a deposit and provides in relevant part that, "It is therefore *suggested* that if the trial of the matter is delayed the defendant *may* be required to deposit the full amount of unpaid rent in order to protect the landlord if he prevails." *Marini*, 56 N.J. 130, 147 (emphasis mine).

The judiciary must make clear that a deposit is required only after a tenant has affirmatively **requested an adjournment** of her case.

The judiciary must also make starkly clear that the assertion of a *Marini* defense does not and should not automatically trigger a trial adjournment. Further, the judiciary should make every effort to ensure that eviction cases are not delayed simply because a tenant asserts a *Marini* defense which a tenant has every right to do and defendant tenants should not be blamed when the court adjourns cases *sua sponte*.

Hearing Officers and Case "Settlors"

Since the judiciary has not made clear which pool its imminent hearing officers and case "settlors" will be drawn from, then I beseech the judiciary to ensure that all of these new hires demonstrate an exceptional ability to be neutral and to strive for fairness in light of the historic power imbalance between landlords and tenants in New Jersey.

Outreach and Community Engagement

I applaud the judiciary's ongoing efforts to provide information and support for all parties in landlord tenant cases. I therefore beseech the court to help ensure that every defendant-tenant has had ample opportunity to secure the assistance of an attorney prior to trial. This can be done by allowing designated pro bono, tenant-defense attorneys to have a daily presence in the tenancy courtrooms (both virtual and physical) in order to be on standby at all proceedings to provide free legal services to pro se defendant-tenants upon request.

Thanking Your Honor for his courtesies.

Respectfully submitted,

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Coordinator