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May 24, 2021

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Report of the Judiciary Special
Committee on Landlord Tenant
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Submitted via email to: Comments.Mailbox@njcourts.gov

Re: LSNJ Comments on the Special Committee Landlord Tenant Report

Your Honor:

Please accept the following comments on behalf of Legal Services of New Jersey and the Legal Services Statewide network. Legal Services of New Jersey appreciates the Court's commitment to improving the Landlord Tenant court process, and all the consideration, time and attention reflected by the Report of the Judiciary Special Committee on Landlord Tenant. We share the Judiciary's goal of court reform, to better ensure equity, fairness and efficiency, and appreciate the Judiciary's willingness to hear from a diverse set of interests in order to arrive at the reforms outlined in the report. The following highlight both LSNJ's support for the recommendations and addresses areas of concern with some of the proposed changes.

The report correctly begins with a recognition that housing stability is a fundamental societal need. The public health crisis, resulting economic crisis and the necessary eviction moratorium, have combined to create a looming eviction cliff that must be addressed by every branch of government in New Jersey, with specific challenges for New Jersey's Judiciary. Not only is the court faced with the potential for tens of thousands – if not hundreds of thousands of eviction filings, the events of the last year have brought more clearly to light, the racial and economic disparities that exist across New Jersey and in particular, that exist in the area of housing. While the pandemic has highlighted the vulnerability that tenants face, these problems existed long before the pandemic. Ensuring a full and fair process in the tens of thousands of eviction cases filed or expected to be filed, at a time of both a public health and economic crisis, is daunting. While the sheer number of potential evictions is alarming, this number tells only part of the story. Evictions – and the need for change – must also be considered in light of the disproportionate impact of evictions on tenants and tenant communities of color.¹ Even before the current crisis, people of color, particularly Black women and their children, were disproportionately evicted and harmed—experiencing evictions at twice the rate of white renters.² With Black and Latinx communities disproportionately shouldering the burden of the pandemic, this disparity will only grow.³

The pandemic and anticipated flood of evictions give rise to specific challenges – both because of the volume of cases and the need to conduct such proceedings safely. This flood of cases is not, however, the core problem to be addressed, but instead, it raises the urgency for the court to modify court practices and implement new strategies to address both the expected number of new filings now and the eviction practices beyond the pandemic and post-moratorium reopening.

Central to any reform seeking to ensure equity, fairness and efficiency, the court must

¹ “Racial and Gender Disparities among Evicted Americans” Peter Hepburn, Renee Louis, Matthew Desmond; <https://evictionlab.org/demographics-of-eviction/>

² <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>

³ U.S. Census Household Pulse Survey, Week 23. See also: Aspen Institute: The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk, August, 2020. www.aspeninstitute.org

continue to recognize that the issue in the overwhelming majority of cases is poverty and a lack of funds to pay rent.⁴ In such cases, a successful resolution for both tenant and landlord is payment – based on a reasonable payment agreement in some cases, or as will be the case for a multitude of tenants affected by the pandemic, rental assistance from governmental and charitable sources. Therefore, the Court must make every effort to implement court practices and procedures that give every opportunity for the rent to get paid, resulting in successful outcomes for both tenants and landlords.

In our experience, the goal of access to justice is best achieved when the Court takes into account that in the majority of eviction cases, tenants appear without legal representation, while landlords have the benefit of counsel. Even when unrepresented by an attorney, in our experience, the majority of landlords have some familiarity with the landlord-tenant court process. In almost all cases, evictions result in harm to both landlords and tenants, and must be seen as the outcome of last resort. Without minimizing the harm to a landlord seeking to evict a tenant, the court must also recognize the incomparable harm of homelessness for tenants facing eviction, and weigh the gravity of this situation when envisioning changes to the judicial process. In this context, equity and fairness will not always mean identical policies and procedures for both tenants and landlords. Additional procedural protections must be considered, in order to balance the scales of justice and reach an outcome equitable to all parties.

⁴ The lack of affordable housing in New Jersey and the insufficiency of the safety net are key factors. See:LSNJ Poverty Research Institute’s forthcoming report – “True Poverty: What it Takes to Avoid Poverty and Deprivation in the Garden State.” (2021.)

LSNJ submits the following section by section review of the report and includes comments regarding both specific report recommendations and in some instances, recommendations for additional areas of consideration, necessary to fully address the goals set forth in the report. As always, LSNJ is available to discuss these comments and any other matters, and look forward to continuing our work to ensure the success of any reforms to further equity and fairness in New Jersey's Landlord Tenant Court.

Respectfully submitted:

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Maura Sanders

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Legal Services of New Jersey's Comments on the Special Committee on Landlord Tenant Report

FILING: Recommendations 1-3

Recommendation 1: Landlords should be required to submit a Landlord Case Information Statement (LCIS). That LCIS would capture pertinent information and would support case management and efficient, early review by staff.

LSNJ Comment: LSNJ supports the requirement for a Landlord Case Information Statement, and the requirement that the form and required attachments be provided prior to the scheduling of a Case Management Conference. As the party filing the complaint for eviction, landlords should be required to provide certain basic information, necessary to support their claim, at the outset of the case. This provision is reasonable and will support an ultimate goal of resolution of the matter.

Recommendation 2: Tenants should complete a Tenant Case Information Statement (TCIS). The TCIS would use plain language questions to solicit and capture key information. It also would contain a section for an optional narrative.

LSNJ Comment: LSNJ supports an optional Tenant Case Information Statement, with additional safeguards. Tenants should have the option to provide additional information, in order to facilitate identification of the issues in the case, and in order to raise issues in defense of an eviction. Tenants should not be penalized if they do not provide information contained on the TCIS form and the form must make clear that all information does not need to be completed. The landlord has the burden to prove the allegations contained in the complaint, and tenants do not have an obligation to provide information in support of the landlord's claim. Additionally, as the majority of tenants are unrepresented and unfamiliar with both the elements of the landlord's claim and the range of potential defenses, particularly early on in the eviction process when the TCIS is submitted, additional considerations must be taken to ensure fairness. These considerations include that the form must clearly explain that tenants do not have to provide any information that would support the landlord's claim, and that responding to the form in writing is

not mandatory. If not submitted prior to the Case Management conference, tenants should be given the opportunity to complete the form orally at the outset of the Case Management Conference.

The optional Tenant Case Information Statement should not become mandatory in the future if the consequence of a failure is entry of default, particularly in traditionally high-volume counties with lower-income cities. If a TCIS is to be required and was not provided before the case management conference, then the LTLS should help the tenant complete the form. From our experience representing tenants during the foreclosure crisis, we learned that many people did not file an answer because they expected that they would be notified of a court date and simply appear in court. This is true even though defendants in foreclosure actions have always been required to file answers. In tenancy matters, where the completion of the TCIS and the Case Management Conference are both new procedures, we can expect similar misunderstandings and a lack of submissions.

As described, the TCIS would be used to provide information for the initial stages of the case and will be used to inform the case management conference and settlement conference. The report further explains that the form is drafted (or should be drafted) in a way to avoid admissions, especially important since this form will be requested very early in the proceeding – before most tenants have sought legal advice. The form should clearly state that the information is for pre-trial settlement purposes only, but should also make clear if it will be part of the public case record. LSNJ strongly believes that for the reasons identified, this form, should not be part of the public case record. Finally, if there is a narrative portion as proposed, that section should again clearly advise tenants of their right to seek legal advice before completing it, and must advise tenants that they are not required to make any admissions regarding the landlord's claims.⁵

Recommendation 3: The Judiciary should implement a process for enhanced, initial review of landlord tenant complaints. The Judiciary would commit additional resources to support this process.

⁵ The TCIS form should include legal resources and should specifically include the LSNJLAW Legal Hotline.

LSNJ Comment: LSNJ is supportive of an enhanced review to ensure completeness of the complaint, and to note any potential jurisdictional deficiencies. This review should not, however be dispositive as to the sufficiency of notices, or as to whether or not notices or other information is required. Final determinations on those matters must be made by a judge prior to the entry of any judgement.

It is essential that all court staff conducting such reviews are thoroughly trained and that procedures are in place to monitor and evaluate this process going forward. Communications between court staff and the plaintiff-landlord regarding this enhanced review should be part of the case record.

BEFORE TRIAL: Recommendations 4-10.

LSNJ Comment: The expected volume of cases – a demonstration of the depth of the housing crisis, requires additional resolution strategies by the court outside of the traditional summary trial, including pre-trial case management, offered well in advance of a scheduled trial date. LSNJ believes that these pre-trial conferences should be focused on mediation and resolution, and not just settlement and early disposition of the matter. This should be an opportunity to identify the issues in the case and explore possible solutions, in an effort to prevent an unnecessary eviction and address the reason for the case filing in the first place. In cases where this is not possible, mediation should work to mitigate the substantial harm caused by an eviction. Landlord Tenant Legal Specialists must be well trained, housing specialist court staff with a substantive knowledge of not just landlord tenant law but of the inequities between the parties, the particular hardships faced by impoverished individuals and their communities, the rent resources available, and their specific role in conduction case management conferences and settlement discussions, with all of those issues in mind.

Both landlords and tenants, particularly those who are unrepresented, must be given clear information about the upcoming case management conference, explaining the purpose of the meeting, how it will be conducted, and must be notified of the opportunity for a *voluntary* settlement discussion following the case management conference.

Even with safeguards in place and information about the process, unrepresented tenants will still be at a substantial disadvantage and these conferences must go forward with care. In our experience, low-income unrepresented litigants simply do not – and will not – understand the voluntary nature of settlement agreements and therefore, the focus at these sessions must be on resolution of the problem instead of on the swift execution of a written order. We know from similar pre-hearing practices in numerous administrative hearings and other court proceedings, that many unrepresented individuals, particularly low-income individuals in high-stress situations, will mistake these conference sessions as their only opportunity to present their case. In the landlord-tenant context, where tenants are directed to meet with their landlords in the hallway outside of the courtroom, tenants enter into agreements to move, even agreeing to pay over substantial sums to their landlords while still agreeing to move within days or weeks, without having their case considered by a judge. Unrepresented individuals in desperate situations feel powerless and confused about whether or not they can or should reject what the opposing party is telling them to do in these situations – exactly the inequitable situation the court sought to address in Community Realty vs. Harris, 155 N.J. 212 (1998.)⁶

In this context, pre-trial conferences must have safeguards in place to ensure as fair a process as possible.

- 1) At the commencement of any pre-trial session, the complaint for eviction and required evidentiary attachments must be reviewed by well- trained Landlord Tenant Legal Specialists in order to understand the nature of the complaint and ensure that the tenant fully understands the matter as well. If the tenant has not received a document necessary for the case management or settlement to proceed successfully, or has been unable to access it if provided electronically, they should be offered an adjournment of the conference so that this information can be provided and reviewed.
- 2) There must be a record of Case Management Conferences and Settlement Conferences, for the purpose of monitoring, reviewing and evaluating this new process.

⁴ See also: Mani, A., Mullainathan, S., Shafir, E., & Zhao, J. (2013). Poverty Impedes Cognitive Function. *Science*, 341(6149), 976–980. <https://doi.org/10.1126/science.1238041>

- 3) Habitability issues should be explored in every case and enforcement of the warranty of habitability must be a core function of pre-trial case management in any nonpayment of rent case.

Recommendation 4: The Judiciary should expand opportunities for resolving landlord tenant cases before trial by establishing a Landlord Tenant Legal Specialist (LTLS) Program. The program would include trained legal staff to conduct required case management conferences, confidential settlement conferences, and other administrative functions that support judicial functions.

LSNJ Comment: As noted above, LTLS specialists must be well-trained. Landlord Tenant Legal Specialists should receive extensive training on complex issues involving subsidized housing and holdover matters. The Court should consider specialization for these types of matters, with designated LTLS staff assigned to these types of cases.

The “Factual Background” and “Hearing Officer Statement” sections of the proposed Case Management Conference Information Sheets invite hearsay and should be eliminated or modified so as not predispose the court to any proposed findings of facts that should only be determined by sworn, admissible testimony.

Recommendation 5: All landlord tenant cases should be scheduled for required case management conferences. LT legal specialists should conduct these required conferences in a virtual format to the greatest extent possible. At the conference, the LTLS would solicit information about the case, reduce to writing asserted claims and defenses, and refer parties to available rental assistance and legal resources. The LTLS also would facilitate the parties in proceeding immediately to a settlement conference whenever possible.

LSNJ Comment: Case management sessions should address the possibility of available rent assistance. Social Service agencies, rental assistance program representatives, and mortgage assistance resources should all be available at the time of these pre-trial conferences, so that tenants and landlords can connect directly with available assistance providers, complete applications and supply necessary information. The availability of resource providers should

not, however, result in agreements to enter judgments of possession that are conditioned upon a speculative expectation that funds will be provided within a certain timeframe. If potential assistance is identified, case management should be continued while these resources are pursued.⁷

The Special Committee Report recommends block scheduling as an accommodation for landlords and their attorneys, but omitted tenants and their attorneys. Where possible, scheduling should take into account a tenant's work schedule to minimize the potential consequences to the tenant from an extended absence of work and loss of income. Moreover, where a tenant case information statement indicates that the tenant is represented by a legal services program, efforts should be made to block schedule those matters for the case management conference in the interest of efficiency.

Recommendation 6: The landlord should be required to submit a copy of the lease, the landlord's registration statement (if applicable), and a certification of the landlord's lease and registration statement before the case management conference.

LSNJ Comment: LSNJ supports the requirement that the LCIS and Lease (or certification that no written lease exists) be submitted and served on the tenant prior to the scheduling of a case management conference. If these materials are not submitted and served within 30 days, the matter should be dismissed. Landlords retain the right to refile their case.

In addition, LSNJ strongly urges that landlords be required to provide additional information at or before a case management conference:

- 1) In all nonpayment of rent matters, a ledger documenting the amount due and showing the application of rent payments and any fees added to the account. Many if not most landlords apply rent payments to the oldest balance due and carry forward any arrears. As such, a complaint might allege nonpayment of the current month's rent when in fact the rent went

⁷ Several other states follow this practice and continue matters so that applications for assistance can be pursued, or include broader pre-trial requirement. In Massachusetts, matters may not be scheduled if an application for rental assistance is pending. Philadelphia requires both pre-filing mediation and proof from the landlord that rental assistance has been applied for, before a complaint can be filed.

unpaid several months earlier. The confusion can be compounded when a landlord compounds late fees. This makes it difficult for tenants to determine the origin and calculation of the amount due and may result in an overcharge.

- 2) Like required initial disclosures in Federal Court, the parties in holdover actions should be required to exchange certain information as a matter of course (e.g., witness list, photographs and/or video tapes, any documentary or physical evidence.) Landlords should have the information necessary to establish their claim for eviction and should be prepared to identify this information at the Case Management Conference.

Recommendation 7: Case management conferences should provide benefits to both parties, including options to connect with rental assistance and legal resources. Non-appearance by a party at the required case management conference should have a consequence. At least initially, however, the consequence would not be dispositive.

LSNJ Comment: LSNJ strongly supports the statement that Case Management conferences should provide a benefit to both parties, and as discussed above, supports the idea of connecting both parties to rent and mortgage assistance, and other resources. However, failure to attend a case management conference should not result in default or dismissal. Given the importance of housing and the consequences of losing that housing, default should not be entered lightly. From our experience with tenancy matters, tenants may rely on conversations with their landlord and think that a matter has been resolved prior to a hearing date, resulting in the entry of a default. It's reasonable to assume that this practice will continue in the case management context, especially as this process is new and unfamiliar to tenants. Default judgments generally should be vacated on a showing of good cause, and not a higher standard of excusable neglect or proofs of a meritorious defense.

Recommendation 8: In addition to case management conferences, the LTLS would also conduct settlement conferences, which could immediately follow a case management conference and generally would be conducted virtually. LTLS authority to review settlement agreements would be limited to: (1) cases with represented tenants; (2) commercial cases; and (3) cases where the parties enter settlement agreements without Consent Judgments for possession. All settlement

agreements reviewed by an LTLS would be presented to the court for final review before entry of judgment.

LSNJ Comment: In order for a Settlement Conference to have benefits for both parties, the process must not induce either party to unknowingly waive rights. Parties should be advised again before any Settlement Conference of their right to seek legal advice, and offered an adjournment. In addition, as is the case in certain Family Court matters, eviction cases with particular complexities should not proceed in this manner unless both parties have legal representation. No settlement conference should be conducted in a holdover or subsidized rent matter where one party is represented and the other is not.

Recommendation 9: Appendix XI-V “Consent to Enter Judgment (Tenant Remains)” should be revised to allow for selection by the parties of one of two options: (1) immediate entry of judgment for possession; or, alternatively, (2) entry of the judgment only after receipt of the landlord’s certification of breach of the settlement, along with a date for automatic dismissal of the case if the landlord does not certify to such a breach.

LSNJ Comment: LSNJ supports the expansion of the Consent to Enter Judgment (Tenant Remains) that includes entry of judgment only upon landlord certification of breach, but recommends elimination of immediate entry of a judgment for possession when the agreement contemplates payment and the tenant remaining, for all of the reasons articulated by the Committee for the expansion. If the purpose of the pre-trial settlement conference is to resolve cases without the need for trial, then there must be consideration for a tenant to enter into such an agreement. In any agreement where a judgement of possession enters at settlement – *before* the trial date, it can only be in situations where there’s sufficient consideration and must only be entered into when there’s a benefit to the tenant, since they are giving up rights to a trial and a later date for entry of judgment if they are unable to make a payment under a “pay and stay” agreement.. If in extraordinary circumstances a settlement agreement is reached that results in a judgment of possession at settlement, the agreement must be reviewed by a judge and consideration must be demonstrated.

Recommendation 10: Rule 6:6-4 should be amended to clarify that a settlement agreement that provides for entry of judgment for possession against an unrepresented, residential tenant must be written, signed by the parties, and reviewed and approved by the court.

LSNJ Comment: LSNJ supports this recommendation.

TRIAL AND JUDGMENT: Recommendations 11-18

LSNJ Comment: The Special Committee report addresses some significant issues regarding trial and judgment including adjournments, rent posting, trial formats and the entry of judgement. LSNJ believes that additional reforms should be implemented to address the systemic inequities that exist in the current landlord-tenant court process, where tenants often appear without legal representation. Whether remote or in-person, trial procedures must also reflect the court's commitment to fundamental fairness and resolution that considers the seriousness of the outcomes and the inequities and disparities between landlords and tenants. Our comments include additional proposed changes to effectuate the Committee's stated goals.

1) Accommodations and Court Procedures: Calendar Call:

- a. While the report contemplates a new system for scheduling cases which limits the size and scope of the calendar call, additional guidelines must be in place for both remote and in-person proceedings. The numbers of virtual proceedings scheduled at one time must be substantially limited. Even when technology resources are available, appearing with large numbers of other people can be confusing and for individuals with certain disabilities, it can be especially challenging. These cases should be limited to no more than 5-10 cases at a time.
- b. Cases should not be defaulted if a party does not appear remotely, unless there has been an effort to ensure that there is not a technology issue first. Parties must be given a number to call ahead of time, in case they are unable to connect or maintain a connection.
- c. Similarly, for in-person hearings, defaults should not automatically proceed if a tenant arrives 20 minutes late, if the landlord is still available that day.

2) Trial Practices to Ensure Due Process for Unrepresented Parties

Fundamentally, the court must ensure that they have a jurisdictionally sufficient basis for entry of judgment – including defaults. Judges must make a legal determination as to whether or not the elements necessary for the entry of a judgment of possession have been met. This review and ultimate determination must be made by the judge and cannot be seen as a procedural step to be disposed of prior to the court proceeding.

Trial practice should include basic procedures are in place in all cases, demonstrating fairness and sufficient procedural safeguards for unrepresented tenants.

- a. At the beginning of a trial. There must be a judicial review of the complaint, attached notices and any other evidence necessary on the face of the complaint, including notices, and relevant lease provisions. Cases not meeting the required jurisdictional prerequisites must be dismissed.
- b. Aside from the “Harris” instructions, judges should begin each case with a uniform explanation of the proceeding (whether it is a summary dispossession trial, an Order to Show Cause to vacate, or another matter) and give an overview of basic courtroom procedures. The judge must be satisfied that both parties – particularly unrepresented tenants, understand what is happening and how the case will proceed.
- c. Unrepresented parties should be provided with a general guideline or script for authenticating and entering documents or other evidence, questioning witnesses, etc.
- d. Tenants should be asked directly if they have a defense.⁸
- e. Advise tenants appearing without counsel that they have a right to cross-examine witnesses and specifically ask them if they wish to do so.
- f. Prior to the entry of judgment, findings as to jurisdictional sufficiency and the satisfaction of the elements of complaint should be entered into the trial record.

⁸ See: Recommendations from New Jersey Court Opening Doors Report: (Illinois court survey found that tenants were twice as likely to assert a defense if the judge asked and gave them an opportunity to raise it.)

- g. In order to address the inherent challenges caused by a high-volume tenancy court with summary proceedings, the court should consider judicial tenancy teams where judges with tenancy expertise can rotate the tenancy docket.⁹
- h. Adjournments to obtain counsel should be liberally granted.

3) Accommodations to protect the right of payment of rent, regardless of source.

As a fundamental principle, reflected in New Jersey statutes that protect and support the payment of rent assistance to prevent eviction, the court must recognize and preserve tenant source of income and source of rent protections.¹⁰ In the current climate, the multitude of rental assistance programs expected to be implemented soon, require additional procedural protection and accommodation to ensure a strong governmental interest to prevent eviction, while also ensuring that landlords receive payments. Therefore, prior to any judgment, the court must consider if the rent due is in fact due from the tenant and if payment is available from another source. Tenants in subsidized housing, for example, may be entitled to a rent recertification and base rent adjustment. Thousands more tenants – likely tens of thousands of tenants, may be eligible for rental assistance through the Department of Community Affairs CVERAP program, or from one of the similar rent assistance programs in development by municipalities across New Jersey. These new programs are unprecedented in their scope; tenants, landlords and the governmental agencies administering these programs must all overcome logistical challenges before payments can be made. Eviction procedures must recognize the extraordinary realities of this situation prior to the entry of any judgment.

- a. Require the completion of any rent recertification process for tenants receiving Section 8, SRAP or other subsidized housing program, prior to the entry of judgment.
- b. Require the cooperation and completion of required paperwork by both parties and adjourn matters until a final eligibility determination about eligibility and payment is made.

⁹ A version of this exists in some but not all courts.

¹⁰ N.J.S.A. 46:8-49.3, N.J.S.A. 10:5-4.

- c. Recognize that an agency confirmation of approval and intended payment is sufficient to satisfy a nonpayment of rent claim and dismiss, or at least adjourn the matter.
- d. Dismiss complaints, as a rejection of payment, if a landlord fails to cooperate in completing required paperwork for available rental assistance.

Recommendation 11: After the conclusion of the moratorium on residential evictions and the resumption of all landlord tenant trials, trials should be conducted virtually whenever possible. Required settlement conferences should be scheduled on the trial date. • As in other high-volume dockets, trials should be scheduled in a remote format. The Judiciary should emphasize and encourage remote proceedings to the extent possible. • As necessary, including to support individuals who require reasonable accommodations pursuant to the Americans with Disabilities Act, trials also could be conducted in a hybrid or in-person format. • Required settlement conferences would be conducted by neutral settlors on the day of trial.

LSNJ Comment: The Court must ensure that there are appropriate spaces available for in-person hearings in order to accommodate those who cannot participate fully remotely. Our experiences during the pandemic provide some examples of why additional resources must be made available.

- 1) Courthouses must have sufficient space available. During the pandemic, most courthouses have only had one or two computers available for parties needing to use court-provided technology for remote hearings. As a result, on busy days, there are more people needing to use the resource, than spaces available. With the addition of tenancy and an increase in other high-volume proceedings, this need will grow and additional space and computer access must be available – or in person hearing must be offered.
- 2) Court technology access must go beyond the provision of wi-fi or a computer. Many individuals lack the experience or capability to access remote proceedings or navigate the use of computer and software needed, including individuals with disabilities and the elderly. Courts must make staff available to monitor proceedings and assist with technology challenges.

Recommendation 12: The Harris Announcement should be improved. It should provide specific instructions about the trial and post-judgment process in plain language. The Harris announcement also should be updated to reflect virtual operations and recent legislative enactments.

LSNJ Comment: LSNJ supports this recommendation and believes that further review and revision may be needed to reflect additional changes. LSNJ requests input regarding any additional revisions. The Harris Announcement information must be provided in multiple, accessible formats that take into account disability, reading comprehension and limited English proficiency. The instruction should be read and available visually. After the recitation, tenants must be given an opportunity to raise questions and given clear directions about how to raise issues before trial.

Recommendation 13: The Judiciary should develop and promulgate a comprehensive “Landlord Tenant Procedures” document to advise parties of the new landlord tenant process. Using plain language, the new document should explain processes from filing through post judgment and provide information about rental assistance and legal resources.

LSNJ Comment: LSNJ supports the development of additional materials to explain court procedures and provide information about resources, but believes that in order to make this information meaningful, it must be integrated into the court process and resources should be accessible in real-time. As recommended for Case Management Conferences, resources should be available on the day of trial and integrated into the proceedings. With an eye towards resolution and harm mitigation for all parties, resources should be available during a remote proceeding or at the courthouse, including linkages to social service agencies, NJHMFA housing counselors and mortgage assistance information, rent assistance providers, homelessness prevention services, county welfare agencies and the Department of Community Affairs Office of Homeless Services. For example, tenants seeking Emergency Assistance for rent arrears, should be screened for eligibility and provided information prior to settlement. Landlords could be similarly advised about the documentary requirements for receiving such assistance.

Recommendation 14: Rule 6:3-4 should be amended to set forth a standard for the posting of a deposit where a tenant seeks an adjournment of the trial in order to raise and advance a Marini (habitability) defense. • The rule should establish a presumption that a tenant would be required to post with the court a deposit of fifty percent (50%) of the base rent in order to obtain an adjournment. • Either party could rebut that 50% presumption based on the facts presented to the court. • In all cases, the court should retain discretion to adjust the amount and deadline for depositing funds. • The court should be required to place on the record the amount due; the deadline for payment; and the basis for its determination.

LSNJ Comment: Part of the rental housing crisis in New Jersey are the tens of thousands of units, especially in lower income communities and communities of color that are in serious disrepair. As a policy matter, ensuring that rental housing is kept habitable essential for New Jersey. Contractual fairness also requires that tenants be able to raise these issues in nonpayment of rent eviction proceedings and obtain determinations of the actual rent due and owing due to a lack of repairs or other habitability issues.

Given that the summary dispossess proceeding is the mechanism for landlords to enforce lease agreements or obtain possession, fairness dictates that for tenants, the tenancy court summary proceeding be a mechanism for obtaining repairs or a rent abatement based on the housing conditions and lease violations they are suffering.

As a result of the current procedures, many tenants are thwarted in their ability to assert that they do not owe the rent claimed due, before being faced with a judgment against them. The habitability defense, essential for low income tenants and the preservation of rental housing, is therefore no longer available to the vast majority of tenants. The following reforms would help rebalance the process:

- 1) Provide an opportunity for tenants to assert habitability claims during case management conferences, and provide clear guidance on how to proceed, before any posting of rent is required.
- 2) Posting of claimed rent arrears should not be required before a habitability claim can be fully heard. Tenants must have the right to have their claim heard on the day of trial without posting. If a matter is adjourned by the court or by the landlord, the tenant must not be penalized and there should be no posting requirement.

- 3) If, on a case by case basis the court deems the posting of some funds is warranted after briefly considering the nature of the defenses being asserted and a determination about what if any undisputed rent amount should be posted, tenants should be afforded a fair and reasonable mechanisms, and time for doing so. This must include the acceptance by the court of attorney trust account checks and electronic fund transfer.¹¹
- 4) Posting should never act as mechanism to force payment of disputed back-rent due, and if required at all, should only be required for future rents accruing during the pendency of the action, similar to the requirements in a bankruptcy stay proceeding.
- 5) The courts should coordinate with the Department of Community Affairs and/ or municipal code enforcement to develop streamlined procedures for inspection and code enforcement, when habitability claims are raised.
- 6) Abatement must recognize the fundamental nature of the claim and rent should be reduced accordingly. (for example, housing without a working toilet is unlivable, and abatement should reflect this.)
- 7) The Court should maintain a registry of all habitability complaints against a landlord, in order to determine a pattern of abuse, and to deter filings if a habitability issue has been raised and not resolved.
- 8) Pre-trial mailings should include information about habitability defenses and the court procedures for asserting a defense.

Recommendation 15: Rule 6:3-4 should be amended to set forth a standard for posting with the court a deposit of the unpaid base rent when the tenant seeks to obtain a trial adjournment for reasons other than to raise and advance a Marini defense. The standard should be discretionary with the court, but the amount of the deposit should be at least the amount of undisputed base rent (excluding fees).

¹¹ Many low-income households do not have traditional brick and mortar bank accounts and instead rely upon other electronic money accounts such as PayPal or Cash-App.

LSNJ Comment: Simply getting to court or arranging time and opportunity for an in-person or remote proceeding can be a significant challenge for tenants in lower-income communities. Many work at hourly-wage jobs and don't have the paid leave needed to take time away from work for a day to sit in LL/T court. Many live in small, crowded spaces with limited services, making remote proceedings particularly difficult. Another set of challenges exist for tenants who are elderly or who may need accommodations due to disability or limited English proficiency. In addition, families facing eviction have particular crises and emergency situations that lead to the filing of the eviction action in the first place. All of these circumstances are compounded by lack of childcare options, lack of transportation, language access barriers, and fears among immigrant communities about appearing in court, the court must recognize that reasonable adjournments and other flexibilities must be built into the process for all tenants.

- 1) At least one adjournment should be granted as of right for all parties, without requiring a rent posting.
- 2) In any circumstances where a posting of rent is determined necessary, such posting should only be for undisputed rents expected to accrue during the pendency of an adjournment or continuance.
- 3) The court should outreach and confirm that the tenant understands the format for the proceedings and that needed accommodations due to their individual circumstances are available. When circumstances allow, tenants should be able to request an alternative format if good cause exists.
- 4) Provide for alternative hearing times, such as evening hearings, for tenants who are unable to take off work during traditional business hours.

Recommendation 16: New Judgment of Possession forms should be developed and tailored for use in three situations: (1) at the conclusion of trial; (2) in instances of default judgment; and (3) upon settlement by consent or after breach of a settlement agreement. Those forms should provide plain language information to tenants as to options and next steps following entry of judgment.

LSNJ Comment:-The Judgement of Possession must clearly state that any amounts due relate only to the amount found due and owing to support and/or vacate the entry of a judgment for eviction. There is no res judicata in a tenancy action and this finding is not a determination of amounts due in a civil debt action, where counterclaims and other offsets are available to tenants, and where landlords can seek recovery of other amounts due, including rent due under a prior lease period.

POST-JUDGMENT

LSNJ Comment: For various reasons, the court process does not end with the entry of judgment. Because of the summary nature of tenancy proceedings, coupled with the complexities of some rental assistance programs, post-judgment satisfaction and relief is common. Orders to Show Cause to vacate judgments must therefore also be re-examined as part of any judiciary review.

- 1) Ensure Opportunities for Broad Rule 4:50 Post Judgment Relief for litigants. Eliminate any language in the Harris instructions that preclude post-judgment applications more than ten days after execution of a judgment.¹²
- 2) Ensure that rent posting is not a prerequisite to a hearing on an Order to Show Cause.
- 3) Provide Notice to tenants on the Warrant of Removal that the judgment shall be vacated as of right, if the rent is paid within three days post-lockout, in accordance with N.J.S.A. 46:8-49.3. Provide for payment into court and automatic dismissal if paid. Provide a simple pro-se form for a court motion to vacate if rent is paid within the requisite time period and the landlord fails to vacate and dismiss the claim.

¹² The existing Harris instructions correctly distinguish between the Rule 4:50 time limitations for an Order to Show Cause and an application for a Hardship Stay pursuant to N.J.S.A. 2A:42-10.1. Proposed changes in the Special Civil Part Committee December 2020 report would combine these two and state that Orders to Show Cause to vacate judgments would be limited to ten days post-judgment.

Recommendation 17: A Request for Warrant of Removal form should be created. The use of the form would help standardize the request procedure, so as to support case management efficiency. It also would require the plaintiff-landlord to certify as to compliance with the requirement, established by the federal CARES Act, of 30 days' notice to vacate provided for covered properties.

LSNJ Comment: LSNJ supports the creation of this form and the CARES Act Certification.

Recommendation 18: The Warrant of Removal (Appendix XI-G) should be amended for clarity. Separate forms should be created for residential tenancies as follows (1) Notice; and (2) Return of Service. Separate forms should be created for residential and commercial tenancies.