



## NEW JERSEY STATE BAR ASSOCIATION

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Honorable Stuart Rabner, Chief Justice  
Supreme Court of New Jersey  
Hughes Justice Complex  
25 W. Market Street  
P.O. Box 970  
Trenton, NJ 08611

Re: Landlord Tenant Interim Process

Dear Chief Justice Rabner:

The New Jersey State Bar Association (NJSBA) appreciates the Judiciary's efforts to improve the process used to resolve residential landlord tenant matters to ensure fair and equal opportunities for all parties to avail themselves of available resources and to engage in efforts to resolve the dispute before final judgment. The NJSBA largely agrees with the recommendations of the Court's Special Committee on Landlord Tenant and commends the Judiciary for its comprehensive review and ultimate adoption of many of the new proposed procedures as noted in the July 14 Notice to the Bar. We believe the new procedures will increase access to our system of justice, will be fair to all parties, and treat litigants with dignity and respect.

The NJSBA is concerned, however, with mandatory settlement conferences that were implemented pursuant to the Court's July 1, 2021 Order which will remain in place until the new procedures are implemented (the Interim Process). The NJSBA's concerns are outlined below. As a result, the NJSBA urges the Court to suspend the mandatory settlement program and await the Sept. 1 implementation of the more comprehensive procedures that will benefit both parties in a landlord tenant dispute by providing for a structured exchange of information, enhanced opportunities for resolution, and, if necessary, a more focused trial.

## **Default or Dismissal of Matters Through the Interim Process May be Premature and Will Harm Both Landlords and Tenants**

The NJSBA is particularly concerned about the provisions of the Interim Process that mandate default judgment or dismissal of a matter if a party fails to appear at a mandatory settlement conference. This requirement might subject cases to default or dismissal that could be resolved under pending legislation or through the receipt of rental assistance if the mandatory conferences are delayed for just a short while.

S3691/A5685, which is awaiting the Governor's signature, prohibits evictions of low-income and moderate-income tenants who have been affected by COVID and applied for rental assistance for non-payment of rent, habitual late payment of rent or failure to pay a rent increase during the covered period (March 2020-August 2021 for households with income less than 120% of the area median income (AMI) and March 2020-December 2021 for households with income below 80% of AMI). The legislation provides that covered eviction actions shall be dismissed upon the tenant's filing of a certification asserting eligibility under the law. The bill goes on to provide that any amount of rent found by a court to be due and owing by an eligible residential tenant to a landlord during the covered period for which compensation is not otherwise provided by any public or private source, shall be considered civil debt and may be pursued as a money judgment in the appropriate division of the Superior Court.

In addition to the relief under the legislation, there are significant resources available for rental assistance through the New Jersey Department of Community Affairs (DCA) as well as some counties and municipalities. Approximately \$750 million has already been made available, with another \$750 million anticipated under the legislation. The DCA system uses sequential lotteries to select applicants for processing. As a result, some tenants may receive assistance in a few weeks, while others wait many months to hear that they have been selected. Round 2 of the COVID rental assistance program opened in March 2021. While many households have received approvals, many more continue to await word.

While we understand from the recent listening sessions that the Court will adjourn a conference if the tenant is in the process of obtaining relief, the notice does not alert the parties to this option. Further, as noted above, despite registering for benefits months ago, many tenants do not know if they will be selected to apply nor whether they will be approved. The requirement of mandatory settlement conferences in cases that may be dismissed under the legislation or settled with the payment of rental assistance is an inefficient use of court resources and the time of the litigants, and forces represented litigants to incur unnecessary legal fees.

This is particularly true when the potential outcome of a mandatory settlement conference is the entry of default/dismissal for failure to participate. Under the circumstances, that is unfair and harms both landlords and tenants.

The Interim Process provides a single opportunity to appear at a virtual settlement conference before a default judgment is entered or the case is dismissed. Litigants who did not receive the notice in time will lose their opportunity to have their case heard by a judge. Those who are unable to navigate the complex notices and access the virtual hearing platform, too, will lose their right to present their case or defenses to the court. If their case had been scheduled just a few weeks later, they likely would be in a better position, with additional opportunities for resolution.

The case management conference model that will go into effect on Sept. 1 will be more effective in assisting the parties in narrowing the issues and connecting them with rental assistance and legal help. Rather than an interim mandatory settlement conference with the threat of dismissal or default for failure to participate, it would be more effective to wait for the implementation of the July 14 Order when case management conferences will be held and additional information provided, including information about the availability of legal counsel.

### **Many Parties Will Not be able to Appropriately Exercise Their Rights under the Interim Process**

While the Interim Process requires a proof hearing prior to entry of a default judgment, in practice, such a system will not differ significantly from the current one, where the landlord provides a certification of the underlying facts. A one-sided proof hearing, held immediately upon a party's failure to appear, without adversarial testing of the landlord's claims, is unlikely to reveal the existence of any of the tenant's defenses, e.g., rent control limitations on rent, habitability defenses, or the availability of, or perhaps even receipt of, rental assistance. The system contemplated by the Interim Process does not provide due process that is critical to fair and just outcomes.

Tenants who have default judgments entered against them will lose their right to remain in their home, regardless of whether they have a defense to the action. Landlords who appear when a tenant does not will obtain a default judgment, but will lose their opportunity to work with the tenant to obtain rental assistance that could make the landlord financially whole. Again, the outcome could be very different for cases that are scheduled just a few weeks later.

Of additional concern is that litigants may enter into settlements under the Interim Process that do not take into account protections the legislation provides. Those with representation may be able to have the settlement vacated and case dismissed. Pro se tenants, however, will most likely be unable to do so and may lose the protections to which they are entitled under the law. If a tenant fails to appear and a default judgment is entered, the tenant would have to file to vacate the judgment and request dismissal. Again, for those who are not represented, this process may be an insurmountable obstacle to obtaining protections the law is designed to provide.

The NJSBA understands priority is being given to scheduling conferences in the oldest cases and those in which more than 12 months of rent is owed. While there may be a few cases that seek rent for only the period of time before March 2020, most of the cases, even the oldest ones, will be seeking rent for both covered and uncovered periods. Litigants will be understandably confused and unable to engage in meaningful settlement negotiations. Furthermore, while it

makes sense to focus efforts on the oldest cases first, these very same cases are those in which a tenant probably has not heard anything in more than a year and may not understand that the case is still pending. These tenants deserve a fair opportunity to be heard before a default judgment is entered against them.

### **The Interim Process Does Not Allow Adequate Time to Engage Counsel**

Another concern is that the allowance of only a single settlement conference, instead of an initial case management conference followed by a settlement conference, will prevent litigants from engaging counsel, particularly pro bono counsel. One of the benefits to providing time between a case management conference and a settlement conference, as contemplated under the new procedures, is that it provides a realistic opportunity to engage counsel.

Both the Court and the NJSBA have taken action to encourage pro bono attorneys to provide assistance in eviction matters. Several pro bono providers, including Legal Services offices and Volunteer Lawyers for Justice, have conducted training for potential volunteers. The NJSBA has shared those training opportunities with its membership.

In its Notice to the Bar dated October 20, 2020, the Court relaxed R. 1:12-11 for New Jersey attorneys who provide at least 25 hours of pro bono legal assistance to certain litigants in landlord/tenant matters, allowing them to claim an exemption from the Madden pro bono requirement for the subsequent year. The Court noted:

Supporting legal representation in residential landlord/tenant cases will facilitate more equitable case processes, which improvements inure to the benefit of all parties. Increased representation also will help the Judiciary to effectively and fairly handle the large number of eviction cases that are anticipated when the ongoing eviction moratorium established by Executive Order 106 concludes. Beyond those immediate COVID-19 related benefits, a Madden exemption also will support more balanced landlord/tenant processes going forward.

The Interim Process, however, with its single appearance and short notice (10 days by mail and email, if available), undermines the goal of facilitating representation. That procedure makes it difficult, if not impossible, for a litigant to obtain counsel in the short period of time between receipt of notice and the scheduled date.

As explained below, it is unlikely that many cases will benefit from settlement efforts (as opposed to case management and information on resources) during this time of uncertainty with regard to the legislation and the availability of rental assistance. The necessity of participating in mandatory settlement conferences for attorneys who are already providing representation will divert their efforts from assisting litigants in applying for and obtaining rental assistance and providing other critical legal assistance that could result in tangible benefits, i.e., housing stability for tenants and financial compensation for landlords.

Furthermore, the notice that is being sent to litigants fails to include direct contact information for Legal Services of New Jersey and the various lawyer referral programs, nor does it identify the existence of other statewide legal services organizations.

### **The Interim Process Poses Barriers to Participation that Cannot be Easily Overcome**

Finally, the Interim Process fails to recognize barriers to participation in the Mandatory Settlement Process, such as failure to receive notice of the conference and a lack of understanding about the notice's provisions.

R. 6:2-3(b) provides that in “summary actions for the recovery of premises, service of process shall be by ordinary mail and by delivery personally pursuant to R. 4:4-4. When the person serving process is unable to effectuate service by delivering process personally, service may be effectuated by affixing a copy of the summons and complaint on the door of the unit occupied by the defendant or, if that is not possible, on another conspicuous part of the subject premises.” Default judgments in the prior system could only be entered after the tenant received personal service (or posting) of the complaint.

The Interim Process provides for 10 days' notice by mail and, if available, email, of the conference date. A litigant who does not receive the notice will simply not know of the required conference. The notice could be lost in the mail or delayed. The litigant may not be at the address to receive the notice. Given the short turnaround, it is highly unlikely that undeliverable mail would be returned to the court prior to the conference date. The email address, supplied in most cases by the landlord, may also be out-of-date or inaccurate. Despite the uncertainty that a litigant actually received notice, the Interim Process allows default judgment to be entered against a tenant to whom notice has been mailed, and perhaps emailed, without any inquiry or confirmation as to whether the tenant actually received the notice.

The Court's proposed Mandatory Settlement Conference Scheduling Notice Form and Settlement Conference Information Sheet issued as part of Directive #14-21 provides a great deal of information; however, for many pro se litigants, the notice and information will be confusing and overwhelming. The notice does not provide clear instructions for how to contact the court to request an adjournment if a litigant is unable to attend and how to access a technology room if needed, nor is there information (except for a single line that only appears in Spanish) on how to request an accommodation for a disability.

Litigants who receive the notice need clear information about how to contact the court. There is a space for a telephone number on the notice for a litigant to provide an email address and daytime phone number, as well as a telephone number for interpretation and disability accommodation requests (appearing in Spanish only). It is unclear if these telephone numbers are dedicated lines that will be routinely answered or main numbers that route to an automated system. It is critical, given the consequences of not appearing for the mandatory settlement conference, that litigants have clear information and an effective means of reaching a person at the court who can help them navigate the process.

The notice provides that settlement is voluntary, however, it also states that the settlement conference is mandatory. It will be difficult for some pro se litigants to understand the difference, resulting in some not participating and others entering into unwise settlements. The concept of a mandatory settlement conference is particularly difficult during the existence of the eviction moratorium and will become even more problematic if the legislation is signed that will result in dismissal of many of the pending cases subject to the Interim Process. For those litigants who do not have an email address where they may receive the hyperlink for the meeting, or those who lack the technology or knowledge on how to access the conference, participation will be impossible. Furthermore, litigants may not have a clear understanding of the implications of their failure to participate, as the notice fails to explain what a default judgment is, or what will be required to vacate judgment should one be entered.

If the Interim Process continues after S3691/A5685 is signed, it will be critical that litigants are provided with comprehensive information on the protections of the law in the Notice itself, including eligibility criteria and a form certification. If a tenant returns the completed certification asserting eligibility, the settlement conference should be cancelled and the eviction case dismissed.

Again, the NJSBA applauds the Judiciary's efforts to improve the process used to resolve residential landlord tenant matters through its adoption of many of the recommendations of its Special Committee on Landlord Tenant. That noted, we urge the Court to delay consideration of those matters for just a few more weeks to allow for the implementation of those comprehensive, well-planned recommendations to begin.

Respectfully,



Domenick Carmagnola, Esq.  
President

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cc: Hon. Glenn A. Grant, P.J.A.D., Acting Administrative Director of the Courts  
Jeralyn L. Lawrence, Esq., NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director