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VIA EMAIL

The Honorable Glenn A. Grant
Administrative Director of the Courts
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Re: Issues with eviction filings and court-ordered mediation and settlement conferences

Dear Judge Grant:

I write again on behalf of a coalition of advocates for the rights of tenants. This coalition includes the signatories listed at the end of this letter. We thank you for your letter of June 19 and look forward to hearing from Taironda Phoenix about the information the Court is preparing to help educate tenants about their rights in pending eviction actions. Thank you also for continuing the suspension of landlord-tenant trials indefinitely. This ongoing suspension is of vital importance to the public health and the housing stability of low-income tenants during the pandemic.

We have deep concerns, however, about both the filing of eviction actions during this period and the mandatory settlement conferences that have already begun in several vicinages.

I. Eviction Filings Without Assurance of Compliance with Federal Law

Our first concern has to do with the courts' acceptance of eviction filings without taking steps to ensure that those filings are compliant with the federal CARES Act. Section 4024 of the CARES Act prohibits the *filing* of eviction actions in a significant number of cases. This section applies to "covered properties," defined to include:

- most federally subsidized housing, including
  - public housing,
  - Section 8 project-based housing,
  - residences where the tenant holds a Section 8 Housing Choice voucher, and
  - certain housing programs for seniors, people with disabilities, people with HIV/AIDS, and people at risk of homelessness, among others;
- residences where the landlord holds a federally backed mortgage or a federally backed multifamily mortgage.

The National Low-Income Housing Coalition has constructed a searchable database of many (but by no means all) of the properties covered by the federal law.

No landlord may file an eviction action against a tenant in a covered property for nonpayment of rent, or charge fees (such as late fees or attorney's fees) related to nonpayment of rent, for 120 days from March 27, 2020 (or through July 25, 2020). After July 25, a landlord must give tenants in covered properties 30 days' notice before filing an eviction action.

Under Section 4023 of the CARES Act, similar rules apply if the owner of a multifamily building has received forbearance on a federally backed mortgage. In that case, the owner may not file an eviction action against a tenant for nonpayment of rent, or charge a tenant late fees related to nonpayment of rent, during the period when the owner is not making mortgage payments. When this period ends, the owner must give tenants 30 days' notice before filing an eviction action.

We have identified 14 states and two counties to date that have taken action to require landlords to certify compliance with the CARES Act before filing an eviction complaint. These states and counties are listed, with links to their actions, at the end of this letter. In addition, 19 states (only four of which overlap with the 14 above) and the District of Columbia have suspended eviction filings in certain circumstances: for nonpayment; except in emergencies; for COVID-related hardship; or on several of these bases. These too are listed at the end of this letter.

New Jersey has neither suspended filings nor taken steps to ensure that eviction complaints are in compliance with the CARES Act. The result is that some unknown proportion of the thousands of eviction actions pending throughout the state were filed in violation of federal law. The number of illegal filings is likely to be significant, given the breadth of the definition of "covered property" in the CARES Act. This serious problem is compounded by the initiation of settlement hearings throughout the State. Tenants summoned to these virtual conferences may be asked to enter into agreements to settle complaints that were illegally filed.

If the Court remains unwilling to suspend filings, we respectfully ask that it require landlords to submit certifications and associated evidence showing that the filing complies with the CARES Act. We seek evidence because we know from long experience that landlords and their lawyers sign certifications despite making demands in violation of the law. For example, landlords and their lawyers regularly demand fees that are unauthorized by the lease or in excess of rent-control caps or subsidy ceilings, even though the form complaint requires them to certify as follows: "The late charges, attorney fees and other charges are permitted to be charged as rent for purposes of this action by federal, state and local law (including rent control and rent leveling) and by the lease." N.J. Ct. Rs. App. XI-X, Verified Complaint − Nonpayment of Rent, at 2. Thus, it is imperative that landlords be put to their proofs and required to show that the complaint they seek to file complies with the law.

As to complaints already filed since March 27, we ask that the courts demand that the landlord submit a certification and associated evidence before the court serves the complaint or summons any party to settle it. If the landlord cannot or does not show that the filing is lawful, the complaint should be dismissed.

II. Preserving Due Process in Mandatory Settlement Conferences

The Court's Fourth Omnibus Order directs the landlord-tenant courts to "schedule conferences . . . to . . . conduct settlement negotiations in an effort to resolve matters." As you know, several vicinages have begun such conferences; the notices to the parties require their appearances; and in some vicinages, settlements have been entered in hundreds of cases already. By our letter of May 29, we expressed our objections to the courts' holding such conferences at this time, and we continue to believe that court-ordered settlement conferences threaten to pressure tenants, the vast majority of whom are unrepresented, into making agreements that are against their interests. Given that mandatory settlement conferences are now under way, however, we write to share some steps we consider essential to protect the rights of tenants. We ask you to consider enforcing these measures on a statewide basis, as the rights at issue should not depend on the particular practice in the vicinage where the tenant happens to live.

1) **Tenants must be served with the complaint at least ten days before the settlement conference, and the notice must include contact information for legal services.** Tenants and their lawyers, if any, must have an opportunity to review the complaint before attending a settlement conference. There is no small number of landlords who file complaints even though it is clear under the law that they are not entitled to an eviction, whether because the plaintiff has no standing, the complaint is based on illegal fees, or the complaint is so incomplete or deficient as to warrant a dismissal. Aside from the problem of complaints that are invalid on their face, the tenant needs to know the amount demanded (which is supposed to be itemized in section 9A, but often is not) to determine the validity of the demand. Discovering a complaint is invalid can require research and investigation. Tenants will benefit from the advice of an attorney and must be given time to reach out for legal help before entering into mediation or negotiation.

   Moreover, the Court's form settlement for landlord-tenant disputes is predicated on the immediate entry of a judgment for possession, which is supposed to be vacated if the tenant makes all payments in full and on time. N.J. Ct. Rs. App. XI-V, Consent to Enter Judgment – Tenant Remains ¶ 1 ("The Tenant shall pay to the Landlord $___, which the Tenant admits is now due and owing and AGREES TO THE IMMEDIATE ENTRY OF A JUDGMENT FOR POSSESSION.").[1] Even those rare landlord-tenant settlements that are not based on this form typically result in the entry of a judgment for possession upon a tenant's breach. As a matter of due process, however, a judgment may not be entered if no complaint was served on the defendant. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84 (1988) ("[U]nder our cases, a judgment entered without notice or service is constitutionally infirm."). Thus, settlements cannot be entered until tenants have been properly served with complaints.

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1 *Available at* https://njcourts.gov/forms/10514_appndx_xi_v.pdf. This form is extremely problematic, as many landlords do not vacate the judgment even when the tenant makes all agreed-to payments.

2) **Tenants need to be informed of their rights before and during each settlement conference.** In *Community Realty Management v. Harris*, the Supreme Court vacated a judgment for possession where a tenant entered into a consent judgment without being informed of the meaning of key terms such as "hardship stay," "judgment for possession," or "warrant for removal." 155 N.J. 212, 231 (N.J. 1998). *Harris* required the court to take on the role of informing tenants of their rights before trial, in part to remedy the commonplace situation in which unrepresented tenants had no one but the landlords' lawyers to explain their rights to them.

> By far, the most inappropriate component of Burlington County's eviction procedures is the way that *pro se* tenants obtain information crucial to their case. In the present case, Weishoff and his paralegal played an integral role in informing Harris of the amount due and her legal rights. Although we credit Weishoff for performing a significant quasi-judicial function, that procedure can no longer be tolerated. If left unabated as a substitute for the court's function, it can raise ethical and public policy concerns. Because those conversations between the landlord's lawyer and tenants are not on the record, it is difficult for a court to monitor whether pro se tenants have been properly advised of their rights. Furthermore, since the attorney giving the advice generally represents the landlord, there is an apparent conflict of interest.

Harris, 155 N.J. at 241.

To meet the standard established in *Harris*, the court must deliver relevant instructions to tenants before they enter into negotiation or mediation. Tenants cannot make informed settlement decisions without accurate information about their substantive and procedural rights.

In remote settlement conferences conducted under restrictions associated with COVID-19, tenants cannot enter voluntary and knowing settlements unless the court informs them of the following, at a minimum:

- The Governor has issued an Executive Order that prevents them from being locked out of their homes until two months after the Governor lifts the state of emergency. This will not happen before September, at the earliest.

- The Court has suspended landlord-tenant trials indefinitely. This suspension will last until the Court orders that such trials be resumed.

- Although lockouts and trials are not happening right now, tenants still owe the rent.

- Settlement is voluntary. The pre-calendar instructions based on *Harris* supply the necessary language:

  > Now I want to talk to you about settlements. After we have called the list of cases, we suggest that landlords and tenants talk to each other to try to settle your cases. Here are some important points. You do not have to settle your case, and you have the right to a trial. You should settle only if the terms are agreeable to you. A settlement must be voluntary to both parties. If you are able to agree on a settlement, please let [me] know and you will be [sent] a settlement agreement form, the landlord's certification and the certification for the landlord's attorney. I advise the parties that they are not limited to the contents of the settlement forms. You may change them as desired. Complete the forms, date and sign them, and [send them to _____]. You will receive a copy for your own records. Make sure that you understand the words in the settlement because if you agreed to entry of a judgment for possession and don't comply with the terms of the settlement, you will be evicted. Any agreement that says a judgment for possession will or may be entered must be approved by me or another judge.

- Certain fees cannot be collected as rent. Again, the pre-calendar instructions supply the language:

  > A tenant does not have to pay for attorney's fees, late fees or other charges to avoid eviction unless there is a written lease that calls these items "additional rent." Even if the lease does say that, the amount really due as rent may be limited by rent control, or if there is public assistance, the rent may be limited by federal law. For example, if the tenant gets Section 8 assistance, the landlord cannot include a late charge to determine the amount that the tenant owes.

  Given the relevant provisions the CARES Act, the courts should now add that landlords subject to that Act may not "charge fees, penalties, or other charges to the tenant related to such nonpayment of rent" during the period between March 27 and July 25. CARES Act § 4024(b)(2); *see also id.* § 4023(d) (a multifamily borrower who has received forbearance on a federally backed mortgage may not "charge any late fees, penalties, or other charges to a tenant . . . for late payment of rent" for the duration of the forbearance).

- Assistance is available. The court should provide contact information for legal services, including organizations that will assist undocumented immigrants. As set out in the pre-calendar instructions, the court should also inform tenants of the availability of social services: "We have a list of agencies that may assist you with rent, temporary shelter or legal services. A list of these agencies or legal services

> programs, and a copy of this announcement, is available, and [we will send] a copy if you do not have one."

In accordance with the Judiciary's Language Access Plan, the courts should offer these instructions in other languages for non-English speakers. Providing a link to the *Harris* video in any electronic notification of an upcoming conference would also be advisable, though alone insufficient to meet the standard.

3) **There must be mechanisms in place to allow tenants and landlords to take advantage of future sources of rental assistance or relief as laws continue to change.** The New Jersey Legislature recently created a $100 million rental assistance program for tenants who have suffered economic hardship related to the pandemic. DCA has announced that 80% of this assistance will be awarded by lottery, to be administered over the summer. Payments under the program will not begin until September. While the program does not cover rental arrears, a tenant who secures assistance may well have money to pay arrears that the tenant would otherwise have needed for ongoing rent. The state legislature is considering other bills that would affect the process by which COVID-related rental arrears may be collected, and Congress is considering the HEROES Act, a bill that would award $100 billion in rental assistance nationwide.

   A tenant who enters a settlement agreement should be allowed to revise the agreement if the tenant later receives rental assistance. This will be especially important for tenants who may have been pressured into signing unwise agreements to vacate on a date certain but who later receive assistance enabling them to pay the arrears and remain in their homes. The Court's form settlement agreement should incorporate a rider permitting amendment of agreements that pertain to arrears arising during the effective period of Executive Order 106 (March 19, 2020, "until two months following the end of the Public Health Emergency or State of Emergency established by Executive Order No. 103 (2020), whichever ends later").

4) **The Court should restrict mandatory settlement conferences to those cases in which both parties are represented by counsel.** Given the complexity and shifting nature of housing policy in the current moment, the Court can best assure due process by restricting mandatory appearances for settlement conferences to those cases in which both the landlord and the tenant have lawyers.

5) **Any electronic settlement conference should proceed only if the tenant has access to video.** If tenants are to enter into legally binding agreements, they have the right to review such agreements in writing. Tenants without a screen to view proceedings and documents would be at a profound disadvantage, especially when negotiating with landlords with such capability.

Thank you, as always, for considering these requests. We look forward to hearing back from you.

Respectfully submitted,

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s/ Richard T. Smith
President
s/ Mike McNeil
State Housing Chairman
NAACP New Jersey State Conference

s/ Jeff Wild
President
NJ Coalition to End Homelessness

Jurisdictions That Have Taken Action to Ensure Landlords' Compliance with the CARES Act

- **Arkansas:** April 28, 2020, Supreme Court order required that, until July 25, 2020, all new eviction actions must contain an affirmative pleading that the property is not a "covered dwelling" under the CARES Act. https://www.arcourts.gov/sites/default/files/articles/in-re-response-to-COVID-19-eviction-filings-PC.pdf.

- **Georgia:** April 30, 2020, Supreme Court order requires that, until August 25, 2020, landlords must file a verification indicating whether the property is exempt from the moratorium in the CARES Act. https://www.gasupreme.us/wp-content/uploads/2020/04/Sup-Ct.-Rule-49_-Dispossessory.pdf.

- **Idaho:** May 4, 2020, Supreme Court order requires a Statement of Landlord Regarding CARES Act Eviction Moratorium with every complaint for eviction. End date of July 25, 2020. https://isc.idaho.gov/EO/eviction-order.pdf.

- **Illinois:** May 22, 2020, Supreme Court order requires an affirmative statement from the landlord that the property is not covered by the CARES Act. End date of August 24, 2020. https://courts.illinois.gov/SupremeCourt/Announce/2020/052220.pdf.

- **Iowa:** May 22, 2020, Supreme Court order requires a CARES Act verification. No end date. https://www.davisbrownlaw.com/filesimages/May%2022,%202020%20Order.pdf.

- **Jackson County, Missouri:** May 7, 2020, order requires a verification of compliance with CARES Act until July 25, 2020. https://www.16thcircuit.org/Data/Sites/1/media/public-legal-notices/admin.-order--2020-082-extending-temporary-stay-regarding-writs.pdf.

- **Maryland:** June 3, 2020, Court of Appeals order requires any complaint for failure to pay rent to be accompanied by a Declaration of Compliance with the CARES Act. End date of July 25, 2020. https://www.courts.state.md.us/coronavirusinformationforpublic.

- **Michigan:** April 16, 2020, Supreme Court order requires a verification indicating whether the property is exempt under the CARES Act. End date of July 25, 2020. https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-04-16_FormattedOrder_AO2020-8.pdf.

- **New Hampshire:** Effective March 27, 2020, landlords must submit a CARES Act affidavit with all eviction filings. https://www.courts.state.nh.us/district/landlord.htm.

- **North Carolina:** May 30, 2020, Supreme Court order requires that no writ of possession may be issued without a finding that the property is not covered by the CARES Act. The AOC was directed to create a form affidavit for this issue, and it did. No obvious end date for this requirement. https://www.nccourts.gov/assets/documents/forms/cvm207.pdf?71fVRq9kVbHR7VXAVZ6bBKXXO4XnU5BO.

- **Oklahoma:** May 1, 2020, Supreme Court order requires a Verification of Compliance with the CARES Act. Though framed as "temporary," there is no obvious end date. https://www.oscn.net/images/news/SCAD-2020-38.pdf.

- **Palm Beach County, Florida:** May 13, 2020, order requires a Landlord CARES Act Information Sheet to accompany each filing. Expires August 25, 2020. https://www.15thcircuit.com/sites/default/files/administrative-orders/12.512.pdf.

- **Rhode Island:** May 22, 2020, District Court order requires that, for "Court Phase 2 – Cases Filed on or after June 2, 2020," new cases not subject to other prohibitions covered by the CARES Act may be filed, but they must be accompanied by a Certification of Compliance with the CARES Act. Any case subject to CARES Act cannot be filed until July 28, 2020. https://www.courts.ri.gov/Courts/districtcourt/PDF/20-03.pdf.

- **South Carolina:** April 30, 2020, and May 6, 2020, Supreme Court orders require a signed Certification of Compliance with the CARES Act. No obvious end date. https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-04-30-02 and https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-05-06-01.

- **Tennessee:** May 26, 2020, Supreme Court order allows eviction proceedings to restart on June 1, but all actions must be accompanied by a declaration stating that the property is not subject to the CARES Act. If no such declaration is filed, the matter is carried until after the CARES Act moratorium expires. http://www.tncourts.gov/sites/default/files/docs/tsc_order_5-26.pdf.

- **Texas:** May 14, 2020, Supreme Court order requires a CARES Act certification from landlords in evictions actions. End date of July 25, 2020. https://www.txcourts.gov/media/1447307/misc-docket-20-9066-15th-emergency-order-regarding-covid-19-state-of-disaster.pdf.

Jurisdictions That Have Suspended Eviction Filings

- **Alaska:**
  No filing if tenant has COVID hardship
- **Arizona:**
  No filing if tenant has COVID hardship
- **California:**
  No filing if tenant has COVID hardship
- **Connecticut:**
  No filing:
  - for nonpayment,
  - except in emergencies, or
  - if tenant has COVID hardship

- **Delaware:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **District of Columbia:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **Florida:**
  No filing if tenant has COVID hardship
- **Hawaii:**
  No filing:
    - for nonpayment, or
    - if tenant has COVID hardship
- **Illinois:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **Kentucky:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **Massachusetts:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **Michigan:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **Minnesota:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **Montana:**
  No filing if tenant has COVID hardship

- **Nevada:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **New Hampshire:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **North Carolina:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **Oregon:**
  No filing:
    - for nonpayment, or
    - if tenant has COVID hardship
- **Pennsylvania:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship
- **Washington:**
  No filing:
    - for nonpayment,
    - except in emergencies, or
    - if tenant has COVID hardship

Source: COVID-19 Housing Policy Scorecard, Eviction Lab, https://evictionlab.org/covid-policy-scorecard/.