

## **RULE 1:13. Miscellaneous Rules As To Procedure**

### **1:13-1. Clerical Mistakes**

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight and omission may at any time be corrected by the court on its own initiative or on the motion of any party, and on such notice and terms as the court directs, notwithstanding the pendency of an appeal.

*Note: Source-R.R. 3:7-14, 4:62-1, 8:7-12.*

### **1:13-2. Proceedings by Indigents**

**(a) Waiver of Fees.** Except when otherwise specifically provided by these rules, whenever any person by reason of poverty seeks relief from the payment of any fees provided for by law which are payable to any court or clerk of court including the office of the surrogate or any public officer of this State, any court upon the verified application of such person, which application may be filed without fee, may in its discretion order the payment of such fees waived. In any case in which a person is represented by a legal services or public interest organization or law school clinical or pro bono program approved under R. 1:21-11(b)(2), private counsel representing indigents in cooperation with any of the preceding entities, the Office of the Public Defender, or counsel assigned in accordance with these rules, all such fees and any charges of public officers of this State for service of process shall be waived without the necessity of a court order.

**(b) Compensation of Attorneys.** Except as provided by any order of the court, no attorney assigned to represent a person by reason of poverty shall take or agree to take or seek to obtain from the client, payment of any fee, profit or reward for the conduct of such proceedings for office or other expenses; but no attorney shall be required to expend any personal funds in the prosecution of the cause.

*Note: Source-R.R. 1:27E, 4:98-2(c). Paragraph (a) amended and paragraph (b) adopted July 7, 1971 to be effective September 13, 1971; paragraph (a) amended July 29, 1977 to be effective September 6, 1977; amended May 3, 1982 to be effective immediately; paragraph (a) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 22, 2014 to be effective January 1, 2015.*

### **1:13-3. Approval and Filing of Surety Bond; Judgment Against Principal and Surety**

**(a) Approval by the Court.** Neither the clerk of the court, the sheriff, nor any other person shall accept a surety bond in any action or proceeding pending in the court, other than a bond for costs given by a non-resident claimant, unless the same has been approved as to form and sufficiency by a judge of any court of this State except that a surrogate may approve and accept a bond, and in the absence of a judge the clerk may approve and accept a bail bond. Bonds need not be filed in duplicate.

**(b) Contents.** All surety and bail bonds given in any court shall provide that the principal and surety thereby submit themselves to the jurisdiction of the court (or to the jurisdiction of the trial court, if the bond is given in an appellate court); that they irrevocably appoint the clerk of the court having jurisdiction as their agent upon whom papers affecting their liability on the bond may be served; that they waive any right to a jury trial; that the liability of the principal and surety may be enforced by motion in the action, if one is pending, without the necessity of an independent action; and that the motion may be served on the principal and surety by mailing it, by ordinary mail, to the

clerk of the court, or to the surrogate in the case of a bond approved by the Chancery Division, Probate Part or the surrogate, who shall forthwith mail copies thereof by ordinary mail to the principal and surety at the addresses stated in the bond.

**(c) Cash Deposit.** Whenever a bond with sureties is required, the court, including the Surrogate, may by order allow a cash deposit in lieu thereof.

**(d) Registry of Insurers.** No surety bond for purposes of bail shall be accepted by any court unless the insurer has first filed with the Clerk of the Superior Court a Bail Program Registration Form in the form prescribed by the Administrative Director of the Courts on the recommendation of the Clerk of Superior Court. Said form shall include the insurer's certification that it is authorized or admitted to transact surety business by the New Jersey Department of Banking and Insurance and shall include the name and address of each of its bail agents and agencies, any other person or entity who has provided it with a guarantee to satisfy forfeited bail or a bail forfeiture judgment, and any other person or entity authorized by the insurer to administer or manage its bail bond business. The bail agents and agencies so registered by the insurer shall be licensed as insurance producers or limited lines insurance producers. The insurer shall have a continuing obligation to update its Bail Program Registration Form as changes occur in order to assure that the information is complete and accurate.

**(e) Removal from Bail Registry.**

**(1) Licensure.** A registered insurer shall be removed from the Bail Registry on 30 days notice if it fails to provide complete and accurate information as required by the Bail Program Registration Form. A registered insurer who fails to maintain its authorization or admission to transact surety business in this State or a registered bail agent or agency, guarantor, or other person administering or managing an insurer's bail bond business if it fails to maintain any license required by the Department of Banking and Insurance shall be forthwith removed from the Bail Registry.

**(2) Failure to Satisfy Judgment.** If a registered insurer fails to satisfy a judgment entered pursuant to *R. 3:26-6(c)* or *R. 7:4-5(c)*, the Clerk of the Superior Court shall forthwith send the insurer a notice informing it that if it fails to satisfy the judgment within fifteen days of the notice, it shall be removed from the Bail Registry until satisfaction is made. Further, the insurer's bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it. Their names, as acting for the insurer, will be removed from the Bail Registry. In addition, the bail agent or agency, guarantor, or other person or entity authorized by the insurer to administer or manage its bail bond business in this State who acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied.

**(3) Habitual Noncompliance.** Unless the court orders otherwise, nothing herein shall preclude the Clerk of the Superior Court, on 30 days' notice, from removing from the Bail Registry any person or entity habitually failing to perform the obligations imposed by the bail bonds.

**(4) Notice.** All notices required by this rule shall be sent by certified mail, return receipt requested, to the address listed on the Bail Program Registration Form.

Note: Source -- R.R. 1:4-8(b), 1:4-9, 3:9-7(c) (second, third and fourth sentences), 4:72-2, 4:118-6(a)(b). Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; new sections (d) and (e) added July 5, 2000 to be effective September 5, 2000; paragraph (d) amended May 20, 2003 to be effective immediately; paragraph (a) amended, former paragraph (d) deleted and new paragraph (d) adopted, text of paragraph (e) deleted and new text adopted July 28, 2004 to be effective September 1, 2004; paragraph (d) amended July 19, 2012 to be effective September 4, 2012.

#### **1:13-4. Transfer of Actions**

**(a) On Motion.** Subject to the right to be prosecuted by indictment, if any court is without jurisdiction of the subject matter of an action or issue therein or if there has been an inability to serve a party without whom the action cannot proceed as provided by R. 4:28-1, it shall, on motion or on its own initiative, order the action, with the record and all papers on file, transferred to the proper court or administrative agency, if any, in the State. The action shall then be proceeded upon as if it had been originally commenced in that court or agency.

**(b) After Appeal.** If any action transferrable under paragraph (a) because of lack of jurisdiction over the subject matter is appealed without having been transferred, the appellate court may decide the appeal and direct the appropriate judgment or decision to be entered in the court or agency to which the action should have been transferred.

**(c) Payment of Fees.** Where pursuant to this rule an action is ordered transferred to or judgment or decision ordered entered in the proper court or agency, the order shall be conditioned upon the payment by the parties to the clerk of such court or to such agency of the fees that would have been payable had the action originally been instituted in such court or agency. Payments to the clerk of any court shall be made payable to the "Treasurer, State of New Jersey."

Note: Source - R.R. 1:27D; paragraphs (a), (b) and (c) amended July 24, 1978 to be effective September 11, 1978; paragraph (c) amended July 27, 2006 to be effective September 1, 2006.

#### **1:13-5. Tables of Mortality and Life Expectancy**

The tables of mortality and life expectancy printed as an Appendix to these rules shall be admissible in evidence as prima facie proof of the facts therein contained.

Note: Source-R.R. 4:45A.

#### **1:13-6. Military Lists**

If it appears by affidavit or other competent proof that a party to an action pending on the trial calendar in any court is in the military service of the United States, and if in the opinion of the court the party's ability to prosecute the action or conduct a defense is materially affected by reason of the military service and the party's attendance may not be secured within a reasonable time without undue inconvenience, the action shall be placed on the Military List. The affidavit or other proof shall show the place where the party is stationed and, upon information and belief, the duration of that assignment and shall establish that the party cannot be available for the trial of the action within a reasonable time and without undue inconvenience. Such actions shall be automatically returned to the active trial calendar by the court at the end of 6 months unless it is made to appear by further affidavit or other competent proof that the ability of the party to prosecute the action or to conduct the defense continues to be materially affected by reason of the party's military service. A similar procedure shall be followed at the expiration of every 6-month period until the action is restored to the active trial calendar.

### **1:13-7. Dismissal of Civil Cases for Lack of Prosecution**

**(a)** Except in receivership and liquidation proceedings and in condemnation and foreclosure actions governed by R. 4:64-8 and except as otherwise provided by rule or court order, whenever an action has been pending for four months or, if a general equity action, for two months, without a required proceeding having been taken therein as hereafter defined in subsection (b), the court shall issue written notice to the plaintiff advising that the action as to any or all defendants will be dismissed without prejudice 60 days following the date of the notice or 30 days thereafter in general equity cases unless, within said period, action specified in subsection (c) is taken. If no such action is taken, the court shall enter an order of dismissal without prejudice as to any named defendant and shall furnish the plaintiff with a copy thereof. After dismissal, reinstatement of an action against a single defendant may be permitted on submission of a consent order vacating the dismissal and allowing the dismissed defendant to file an answer, provided the proposed consent order is accompanied by the answer for filing, a case information statement, and the requisite fee. If a defendant has been properly served but declines to execute a consent order, plaintiff shall move on good cause shown for vacation of the dismissal. In multi-defendant actions in which at least one defendant has been properly served, the consent order shall be submitted within 60 days of the order of dismissal, and if not so submitted, a motion for reinstatement shall be required. The motion shall be granted on good cause shown if filed within 90 days of the order of dismissal, and thereafter shall be granted only on a showing of exceptional circumstances. In multi-defendant actions, if an order of dismissal pursuant to this rule is vacated and an answering pleading is filed by the restored defendant during or after the discovery period, the restored defendant shall be considered an added party, and discovery shall be extended pursuant to Rule 4:24-1(b). Nothing in this rule precludes the court with respect to a particular defendant from imposing reasonable additional or different procedures to facilitate the timely occurrence of the next required proceeding to be taken in the case with respect to that defendant.

**(b)** The following events constitute required proceedings that must be timely taken to avoid the issuance by the court of a written notice of dismissal as set forth in subsection (a):

- (1)** proof of service or acknowledgment of service filed with the court; or
- (2)** filing of answer; or
- (3)** entry of default; or
- (4)** entry of default judgment. However, in any case involving multiple defendants in which at least one defendant has answered, no defaulted defendant will be noticed for dismissal due to the plaintiff's failure to timely convert a default into a default judgment as required by R. 4:43-2.

In the event the answer of any defendant is suppressed under R. 4:23-5(a) or otherwise and the plaintiff takes no further action, the court will place the defendant on the dismissal list 120 days from the date of the order of suppression.

No defendant will be automatically noticed for dismissal if a motion has been filed by or with respect to that defendant during the four-month period, unless the court in a particular case directs otherwise.

**(c)** The order of dismissal required by paragraph (a) shall not be entered if, during the period following the notice of dismissal as therein prescribed, one of the following actions is taken:

**(1)** a proof of service or acknowledgment of service is filed, if the required action not timely taken was failure to file proof of service or acknowledgment of service with the court;

**(2)** an answer is filed or a default is requested, if the required action not timely taken was failure to answer or enter default;

**(3)** a default judgment is obtained, if the required action not timely taken was failure to convert a default request into a default judgment;

**(4)** a motion is filed by or with respect to a defendant noticed for dismissal. If a motion to remove the defendant from the dismissal list is denied, the defendant will be dismissed without further notice.

**(d) Special Civil Part.** If original process in an action filed in the Special Civil Part has not been served within 60 days after the date of the filing of the complaint, the clerk of the court shall dismiss the action as to any unserved defendant and notify plaintiff that it has been marked "dismissed subject to automatic reinstatement within one year as to the non-answering defendant or defendants." The action shall be reinstated without motion or further order of the court if the complaint and summons are served within one year from the date of the dismissal. A case dismissed pursuant to this rule may be restored after one year only by order upon application, which may be made ex parte, and a showing of good cause for the delay in making service and due diligence in attempting to serve the summons and complaint. A new page 2 of the summons and the re-service fee shall be included with the documents submitted to support the application. The entry of such an order shall not prejudice any right the defendant has to raise a statute of limitations defense in the restored action.

Note: Source — R.R. 1:30-3(a) (b) (c) (d), 1:30-4. Amended July 7, 1971 to be effective September 13, 1971; former rule redesignated as paragraph (a) and paragraph (b) adopted July 15, 1982 to be effective September 13, 1982; paragraph (b) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; caption and paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended, former paragraph (b) deleted, and new paragraphs (b), (c), and (d) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) amended July 23, 2010 to be effective September 1, 2010; paragraph (d) amended July 19, 2012 to be effective September 4, 2012.

### **1:13-8. Priorities of Liens and Encumbrances Determined as of Commencement of Action**

The priorities of parties' liens and encumbrances are fixed and determined as of the date of the commencement of the action, unless the parties otherwise agree or it is otherwise adjudicated in the action or any other action.

Note: Source-R.R. 4:64-2(b). Adopted July 7, 1971 to be effective September 13, 1971.

### **1:13-9. Amicus Curiae; Motion; Grounds for Relief; Briefs**

(a) An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall define with specificity the permitted extent of participation by the amicus and shall, where appropriate, fix a briefing schedule.

(b) Briefs filed by an amicus curiae in any court shall comply with all applicable rules.

(c) Except as provided in subsection (f), motions for leave to appear as an amicus curiae in the Appellate Division shall be accompanied by the proposed amicus curiae brief and shall be filed on or before the day when the last brief is due from any party.

(d) An amicus curiae who has been granted leave to appear in a cause may, without seeking further leave:

(1) file a brief in an appeal taken to any court from a final judgment or appealable interlocutory order, provided that the brief is filed on or before the day on which the last brief is due from any party;

(2) file a brief in support of or in opposition to a motion for leave to appeal, provided that the brief is filed on or before the day on which the last brief is due from any party;

(3) file a brief in the Supreme Court in support of or in opposition to a petition for certification, provided that the brief is filed on or before the day on which the last brief is due from any party; and

(4) file a brief on the merits after the Supreme Court has granted a petition for certification or a motion for leave to appeal, or after a notice of appeal has been filed, provided that the brief is filed in compliance with the time frames fixed in subsection (e) of this Rule.

(e) An amicus curiae who has not been granted leave to appear in a cause may file a motion for leave to appear in the Supreme Court in connection with a petition for certification, a motion for leave to appeal, or an appeal, provided that the motion is accompanied by the proposed amicus curiae brief. Except as provided in Subsection (f) of this Rule, motions for leave to appear as an amicus curiae in the Supreme Court in connection with a petition for certification or a motion for leave to appeal shall be filed on or before the day on which the last brief is due from any party. Motions for leave to appear as an amicus curiae in connection with an appeal shall be filed within seventy-five (75) days of the date when the Supreme Court posts on its public website a notice of:

(1) an order granting certification;

(2) an order granting leave to appeal; or

(3) the filing of a notice of appeal.

Untimely motions may be granted by the Supreme Court only on a showing of good cause demonstrated to the satisfaction of the Court.

(f) In the event that the Supreme Court, or the Appellate Division, has directed the parties to submit briefs in accordance with an accelerated schedule, an amicus curiae shall file its motion for leave to appear, accompanied with its brief, on or before the date fixed for the last brief due from any party.

**Note:** Adopted July 16, 1979 to be effective September 10, 1979; caption and text amended July 13, 1994 to be effective September 1, 1994; former text reallocated as paragraphs (a) and (b), paragraph (a) amended, and new paragraphs (c), (d), (e) and (f) adopted July 23, 2010 to be effective September 1, 2010; paragraph (f) amended March 24, 2011 to be effective immediately; paragraph (e) amended July 22, 2014 to be effective September 1, 2014.

### **1:13-10. Payment of Fees, Penalties, and Sanctions**

Checks in payment of any fees, penalties, and sanctions required by these rules to be paid directly to the court shall be made payable to Treasurer, State of New Jersey.

**Note:** Adopted July 27, 2006 to be effective September 1, 2006.