

RULE 2:5. How To Appeal

2:5-1. Notice of Appeal; Order in Lieu Thereof; Case Information Statement

- **(a) Service and Filing in Judicial Proceedings.** An appeal from the final judgment of a court is taken by serving a copy of a notice of appeal and the request for transcript upon all other parties who have appeared in the action and, in adult criminal matters, upon the Appellate Section of the New Jersey Division of Criminal Justice, and by filing the originals with the appellate court and a copy of the notice of appeal and the transcript request with the court from which the appeal is taken. In criminal matters when bail pending appeal is sought, the party seeking bail shall present to the sentencing judge a copy of the notice of appeal with a certification thereon that the original has been filed with the appellate court. A notice of appeal to the Appellate Division shall have annexed thereto a Case Information Statement in the form prescribed by paragraph (f) of this rule, and the respondent shall file such a Case Information Statement within 15 days after service upon him of the notice of appeal.
- **(b) Notice to Trial Judge or Agency.** In addition to the filing of the notice of appeal the appellant shall mail a copy thereof, with a copy of the Case Information Statement annexed, by ordinary mail to the trial judge. If the appeal is taken directly from the decision or action of an administrative agency or officer, the appellant shall mail a copy of the notice of appeal, with a copy of the Case Information Statement annexed, to the agency or officer, except that if the appeal is taken from the Division of Workers' Compensation, a copy of the notice of appeal shall also be sent to the Workers' Compensation judge who decided the matter. Within 15 days thereafter, the trial judge, agency or officer, may file and mail to the parties an amplification of a prior statement, opinion or memorandum made either in writing or orally and recorded pursuant to R. 1:2-2. If there is no such prior statement, opinion or memorandum, the trial judge, agency or officer shall within such time file with the Clerk of the Appellate Division and mail to the parties a written opinion stating findings of fact and conclusions of law. The appellate court shall have jurisdiction of the appeal notwithstanding a failure to give notice to the trial judge, agency or officer, as required by this rule.
- **(c) Service in Capital Cases.** In criminal actions in which the death penalty has been imposed the defendant's attorney shall forthwith serve upon the principal keeper of the state prison a copy of the notice of appeal, certified to be a true copy by the clerk of the Supreme Court.
- **(d) Service in Juvenile Delinquency Actions.** If the appeal is from a judgment in a juvenile delinquency action, a copy of the notice of appeal shall be served, within 3 days after the filing thereof, upon the county prosecutor, who shall appear and participate in the appellate proceedings.
- **(e) Service and Filing in Administrative Proceedings.** An appeal to the Appellate Division to review the decision, action or administrative rule of any state administrative agency or officer is taken by serving copies of the notice of appeal upon the agency or officer, the Attorney General and all other interested parties, and by filing the original of the notice with the Appellate Division. Service on the Attorney General shall be made pursuant to R. 4:4-4(a)(7). On an appeal from the Division of Workers' Compensation the Division shall not be considered a party to the appeal, and the notice of appeal shall not be served upon the Attorney General unless representing a party to the appeal.
- **(f) Contents of Notice of Appeal and Case Information Statement; Form; Certifications.**
 - **1. Form of Notice of Appeal.** A notice of appeal to the Appellate Division may be in the form prescribed by the Administrative Director of the Courts as set forth in Appendix IV of these Rules. The use of said form shall be deemed to be compliance with the requirements of subparagraphs 2 and 3 hereof. A notice of appeal to the Supreme Court shall meet the requirements of subparagraph 3(i), (ii) and the portions of (iii) that address service of the notice and the payment of

fees. Notices of appeal in capital causes shall also include the appropriate attorney's certification in respect of transcripts. The notice of appeal to the Appellate Division shall have annexed thereto a Case Information Statement as prescribed by subparagraph 2 of this rule.

- **2. Form of the Case Information Statement; Sanctions.** The Case Information Statement shall be in the form prescribed by the Administrative Director of the Courts as set forth in Appendix VII and VIII of these Rules (civil and criminal appeals, respectively). The appellant's Case Information Statement shall have annexed to it a copy of the final judgment, order, or agency decision appealed from except final judgments entered by the clerk on a jury verdict. In the event there is any change with respect to any entry on the Case Information Statement, appellant shall have a continuing obligation to file an amended Case Information Statement on the prescribed form. Failure to comply with the requirement for filing a Case Information Statement or any deficiencies in the completion of this statement shall be ground for such action as the appellate court deems appropriate, including rejection of the notice of appeal, or on application of any party or on the court's own motion, dismissal of the appeal.
- **3. Requirements of Notice of Appeal.**
 - **A. Civil Actions.** In civil actions the notice of appeal shall set forth the name and address of the party taking the appeal; the name and address of counsel, if any; the names of all other parties to the action and to the appeal; and shall designate the judgment, decision, action or rule, or part thereof appealed from, the name of the judge who sat below, and the name of the court, agency or officer from which and to which the appeal is taken.
 - **B. Criminal, Quasi-Criminal and Juvenile Delinquency Actions.** In criminal, quasi-criminal and juvenile delinquency actions the notice of appeal shall set forth the name and address of the appellant; the name and address of counsel, if any; a concise statement of the offense and of the judgment, giving its date and any sentence or disposition imposed; the place of confinement, if the defendant is in custody; the name of the judge who sat below; and the name of the court from which and to which the appeal is taken.
 - **C. All Actions.** In addition to the foregoing requirements, the notice of appeal in every action shall certify service of a copy thereof on all parties, the Attorney General if necessary, and the trial judge, agency or officer. In all appeals from adult criminal convictions the notice of appeal shall certify service of a copy thereof and of a copy of the Case Information Statement upon the appropriate county prosecutor and the New Jersey Division of Criminal Justice, Appellate Section. In all actions the notice of appeal shall also certify payment of filing fees required by N.J.S.A. 22A:2. The notice of appeal shall also certify compliance with R. 2:5-1(f)(2) (filing of Case Information Statement), affixing a copy of the actual Case Information Statement to the notice of appeal. In all actions where a verbatim record of the proceedings was taken, the notice of appeal shall also contain the attorney's certification of compliance with R. 2:5-3(a) (request for transcript) and R. 2:5-3(d) (deposit for transcript), or a certification stating the reasons for exemption from compliance. Certifications of compliance shall specify from whom the transcript was ordered, the date ordered, and the fact of deposit, affixing a copy of the actual request for the transcript to the notice of appeal.
- **(g) Order in Lieu of Notice of Appeal.** An order of the appellate court granting an interlocutory appeal or, on an appeal by an indigent, waiving the payment of filing fees and the deposit for costs shall serve as the notice of appeal if no notice of appeal has been filed, and, except as otherwise provided by R. 2:7-1, the date of the order shall be

deemed to be the date of the filing of the notice of appeal for purposes of these rules. Within 10 days of the entry of such order, the appellant must file and serve the prescribed Case Information Statement in accordance with these rules. Upon the entry of such order the appeal shall be deemed pending, and the appellant, or the clerk of the appellate court if the appellant appears pro se, shall forthwith so notify all parties or their attorneys; the clerk of the court or state administrative agency or officer from which the appeal is taken; the trial judge if the appeal is from a judgment or order of a trial court sitting without a jury or if in an action tried with a jury, the appeal is from an order granting or denying a new trial or a motion for judgment notwithstanding the verdict; and the principal keeper of the state prison if the appeal is in a criminal action in which the death penalty has been imposed. The trial judge shall file an opinion or may supplement a filed opinion as provided in paragraph (b) of this rule.

- **(h) Attorney General and Attorneys for Other Governmental Bodies.** If the validity of a federal, state, or local enactment is questioned, the party raising the question shall serve notice of the appeal on the appropriate official as provided by R. 4:28-4 unless he or she is a party to the appeal or has received notice of the action in the court below. The notice shall specify the provision thereof that is challenged and shall be mailed within five days after the filing of the notice of appeal, but the appellate court shall have jurisdiction of the appeal notwithstanding a failure to give the notice required by this rule.

Note: Source - R.R. 1:2-8(a) (first, second and fifth sentences) (b) (c) (d) (h), 1:4-3(a) (second sentence), 4:61-1(d), 4:88-8 (second sentence), 4:88-10 (second, third and fourth sentences), 6:3-11(b), 7:16-3. Paragraph (f) amended and paragraph (h) adopted July 7, 1971 to be effective September 13, 1971; paragraphs (a), (b), (e) and (f) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended October 5, 1973 to be effective immediately; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (b) and (f) amended July 29, 1977 to be effective September 6, 1977; paragraph (f) amended July 24, 1978 to be effective September 11, 1978; paragraph (e) amended and paragraph (f)(1) adopted and (f)(2) amended July 16, 1981 to be effective September 14, 1981; paragraph (d) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a), (f) and (g) amended March 22, 1984, to be effective April 15, 1984; caption, paragraphs (a), (b), (e), (f)(1) and (f)(2) amended November 1, 1985 to be effective January 2, 1986; paragraphs (f)(1) and (f)(2) amended November 7, 1988 to be effective January 2, 1989; paragraph (h) amended July 14, 1992 to be effective September 1, 1992; paragraphs (b), (e) and (f)(3)(i)(ii) and (iii) amended July 13, 1994 to be effective September 1, 1994; paragraphs (f)(2) and (f)(3)(i) amended June 28, 1996 to be effective September 1, 1996; paragraph (f)(1) amended July 5, 2000 to be effective September 5, 2000; caption of paragraph (f)(2) amended, paragraphs (f)(3)(i), (ii) and (iii) redesignated (f)(3)(A), (B) and (C), and paragraph (h) amended July 27, 2006 to be effective September 1, 2006.

2:5-2. Deposits for Costs; Application for Dismissal for Default

In all civil appeals the appellant shall, within 30 days after filing the notice of appeal or after entry of an order granting leave to appeal, deposit with the clerk of the appellate court \$300 to answer the costs of the appeal. The party making the deposit shall give notice thereof to all other interested parties. If the deposit is not made within the time stated herein the appeal may be dismissed with costs on the application of any party. No deposit for costs shall be required where an appeal is taken by the State or any agency, officer or political subdivision thereof, or by an appellant who has filed a supersedeas bond or made a deposit in lieu thereof pursuant to R. 1:13-3(c), or if leave is granted to appeal as an indigent pursuant to R. 2:7-1.

Note: Source-R.R. 1:2-10, 2:2-3(b), 2:2-5 amended July 16, 1981 to be effective September 14, 1981; amended July 14, 1992 to be effective September 1, 1992.

2:5-3. Preparation and Filing of Transcript; Statement of Proceedings; Prescribed Transcript Request Form

- **(a) Request for Transcript; Prescribed Form.** Except as otherwise provided by R. 2:5-3(c), if a verbatim record was made of the proceedings before the court, agency or officer from which the appeal is taken, the appellant shall, no later than the time of the filing and service of the notice of appeal, serve a request for the preparation of an original and copy of the transcript, as appropriate, (1) upon the reporter who recorded the proceedings and upon the reporter supervisor for the county if the appeal is from a

judgment of the Superior Court, or (2) upon the clerk of the court if the appeal is from a judgment of the Tax Court or a municipal court, or (3) upon the agency or officer if the appeal is from administrative action. The appellant may, at the same time, order from the reporter, court clerk, or agency the number of additional copies required by R. 2:6-12 to file and serve. If the appeal is from an administrative agency or officer which has had the verbatim record transcribed, such transcript shall be made available to the appellant on request for reproduction for filing and service. The request for transcript shall state the name of the judge or officer who heard the proceedings, the date or dates of the trial or hearing and shall be accompanied by a deposit as required by R. 2:5-3(d). The request for transcript shall be in a form prescribed by the Administrative Director of the Courts. A copy of the request for transcript shall be mailed to all other interested parties and to the clerk of the appellate court. The provisions of this paragraph shall not apply if the original and copy of the transcript have already been prepared and are on file with the court.

- **(b) Contents of Transcript; Omissions.** Except if abbreviated pursuant to R. 2:5-3(c), the transcript shall include the entire proceedings in the court or agency from which the appeal is taken, including the reasons given by the trial judge in determining a motion for a new trial, unless a written statement of such reasons was filed by the judge. The transcript shall not, however, include opening and closing statements to the jury or voir dire examinations or legal arguments by counsel unless a question with respect thereto is raised on appeal, in which case the appellant shall specifically order the same in the request for transcript.
- **(c) Abbreviation of Transcript.** The transcript may be abbreviated in all actions either:
 - **(1)** by consent, provided all parties to the appeal agree in writing that only a stated portion thereof will be needed by the appellate court, and in such cases, only those portions of the transcript specified in the writing shall be ordered in the request for transcript, or
 - **(2)** by order of the trial judge or agency which determined the matter on appellant's motion specifying the points on which the appellant will rely on the appeal. The motion shall be filed and served no later than the time of filing and service of the notice of appeal, and service of the request for transcript prescribed by paragraph (a) of this rule shall be made within 3 days after entry of the order determining the motion.
- **(d) Deposit for Transcript; Payment Completion.** The appellant, if not the State or a political subdivision thereof, shall, at the time of making the request for the transcript, deposit with the reporter or the clerk of the court or agency from whom a transcript is ordered, either the estimated cost of the transcript as determined by the court reporter, clerk or agency, or the sum of \$ 500.00 for each day or fraction thereof of trial or hearing. If the appellant is the State or a political subdivision thereof, it shall provide a voucher to the reporter or the clerk or the agency for billing for the cost of the transcript. The reporter, clerk or agency, as the case may be, shall upon completion of the transcript, bill or reimburse the appellant, as appropriate, for any sum due for the preparation of the transcript or overpayment made therefore. If the appellant is indigent and is entitled to have a transcript of the proceedings below furnished without charge for use on appeal, either the trial or the appellate court, on application, may order the transcript prepared at public expense. Unless the indigent defendant is represented by the Public Defender or that office is otherwise obligated by law to provide the transcript to an indigent, the court may order the transcript of the proceedings below furnished at the county's expense if the appeal involves prosecution for violation of a statute and at the municipality's expense if the appeal involves prosecution for violation of an ordinance.
- **(e) Preparation and Filing.** The court reporter, clerk, or agency, as the case may be, shall promptly prepare or arrange for the preparation of the transcript in accordance with standards fixed by the Administrator Director of the Courts. The person preparing the transcript shall deliver the original to the appellant and shall deliver a copy together with a computer diskette or CD-ROM of the transcript to the court reporter supervisor in the case of an appeal from the Superior Court, to the clerk of the court in the case of an appeal from the Tax Court or a municipal court, or to the agency in the case of an

administrative appeal. The diskette or CD-ROM shall be in Microsoft Word, Microsoft Word compatible or Adobe PDF format. The person preparing the transcript shall also forthwith notify all parties of such deliveries. When the last volume of the entire transcript has been delivered to the appellant, the court reporter supervisor, clerk or agency, as the case may be, shall certify its delivery on a form to be prescribed by the Administrative Director of the Courts. That transcript delivery certification and a complete set of the transcripts and diskettes/CD-ROMs shall be forwarded immediately to the clerk of the court to which the appeal is being taken. A copy of the certification shall also then be sent to the appellant. The appellant shall serve a copy of the certification on all other parties within seven days after receipt and, if the appeal is from a conviction on an indictable offense, on the New Jersey Division of Criminal Justice, Appellate Section. The appellant shall file proof of such service with the clerk of the court to which the appeal has been taken.

- **(f) Statement of Proceedings in Lieu of Transcript.** If no verbatim record was made of the proceedings before the court or agency from which the appeal is taken, the appellant shall, within 14 days of the filing of the notice of appeal, serve on the respondent a statement of the evidence and proceedings prepared from the best available sources, including the appellant's recollection. The respondent may, within 14 days after such service, serve upon the appellant any objections or proposed amendments thereto. The appellant shall thereupon forthwith file the statement and any objections or proposed amendments with the court or agency from which the appeal is taken for settlement and within 14 days after the filing of the same the court or agency shall settle the statement of the proceedings and file it with the clerk thereof, who shall promptly provide the parties with a copy. If a verbatim record made of the proceedings has been lost, destroyed or is otherwise unavailable, the court or agency from which the appeal was taken shall supervise the reconstruction of the record. The reconstruction may be in the form of a statement of proceedings in lieu of a transcript.

Note: Source-R.R. 1:2-8(e) (first, second, third, fourth, sixth and seventh sentences), 1:2-8(g), 1:6-3, 1:7-1(f) (fifth sentence), 3:7-5 (second sentence), 4:44-2 (second sentence), 4:61-1(c), 4:88-8 (third and fourth sentences), 4:88-10 (sixth sentence). Paragraphs (a)(b)(c) and (d) amended July 7, 1971 to be effective September 13, 1971; paragraphs (b) and (d) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended June 29, 1973 to be effective September 10, 1973; caption amended and paragraph (a) caption and text amended July 24, 1978 to be effective September 11, 1978; paragraphs (c) and (d) amended July 16, 1981 to be effective September 14, 1981; paragraph (e) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended, paragraph (d) caption and text amended, former paragraph (e) redesignated paragraph (f), and paragraph (e) caption and text adopted November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (e) amended July 14, 1992 to be effective September 1, 1992; paragraphs (c), (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a) and (e) amended July 27, 2006 to be effective September 1, 2006; paragraph (d) amended July 16, 2009 to be effective September 1, 2009.

2:5-4. Record on Appeal

- **(a) Contents of Record.** The record on appeal shall consist of all papers on file in the court or courts or agencies below, with all entries as to matters made on the records of such courts and agencies, the stenographic transcript or statement of the proceedings therein, and all papers filed with or entries made on the records of the appellate court. The portions of the record that must be included in the appendix filed by appellant are set forth in Rule 2:6-1(a).
- **(b) Notice of Agency Record.** Within 30 days of the service upon it of the notice of appeal the agency or officer from which the appeal is taken shall file in the appellate court a statement of the items comprising the record on appeal and shall serve a copy thereof on each party to the appeal.
- **(c) Use of Record by Parties.** The clerk of the court below or the agency or officer from which the appeal is taken, or the clerk of the Appellate Division if the original transcript is on file there, shall on request deliver the original transcript to the appellant in exchange for a copy. The remainder of the record shall be retained by the clerk or agency except

that the attorney for any party may be permitted to make use of any portion of the record in the office of the clerk or agency and remove the original therefrom, provided a copy thereof remains on file. The failure to return such record may constitute contempt of court.

- **(d) Use of Record by Court.** On the request of a party or of a judge of the appellate court, the clerk of the court or courts below or the agency from which the appeal is taken shall deliver to the clerk of the appellate court for use by counsel at the argument or for the personal inspection by the judges thereof such portions of the record as may be designated.

Note: Source-R.R. 1:6-1(a) (b) (c), 7:16-4; paragraph (a) amended November 7, 1988 to be effective January 2, 1989.

2:5-5. Correction or Supplementation of Record

- **(a) Motion to Settle the Record.** A party who questions whether the record fully and truly discloses what occurred in the court or agency below shall, except as hereinafter provided, apply on motion to that court or agency to settle the record. The appellate court, on motion, may review such determination or may, on its own motion, order a correction of the record or may direct the court or agency to do so. The making of a motion pursuant to this rule shall toll the time for serving and filing the next brief due, but the remaining time shall again begin to run from the date of entry of an order disposing of such a motion. If the proceedings were sound or video recorded, a party, prior to moving for an order settling the record, may, on notice to all other parties, request the clerk of the court in which the appeal is pending to review the tape thereof to determine whether a particular portion of the transcript accurately transcribed what was said by a participant. The clerk shall notify all parties of the determination, requesting that any objection be submitted in writing within ten days of the notification. If no timely written objection is received, the transcript shall be deemed so corrected, and a copy of the notification shall be filed. If a party timely objects in writing, that party shall move for correction of the transcript in the court or agency from which the appeal is taken; however, if the appeal has already been calendared, the motion shall be made to the court in which the appeal is pending.
- **(b) Supplementation of Administrative Record.** At any time during the pendency of an appeal from a state administrative agency, if it appears that evidence unadduced in the proceedings below may be material to the issues on appeal, the appellate court, on its own motion or on the motion of any party, may order, on such terms as it deems appropriate, that the record on appeal be supplemented by the taking of additional evidence and the making of findings of fact thereon by the agency below or, in exceptional instances, by a judge of the Superior Court especially designated for that purpose.

Note: Source -- R.R. 1:6-6, 4:88-9, 4:88-11, 7:13-4. Paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 28, 2004 to be effective September 1, 2004.

2:5-6. Appeals From Interlocutory Orders, Decisions and Actions

- **(a) Appeals.** Applications for leave to appeal from interlocutory orders of courts or of judges sitting as statutory agents and from interlocutory decisions or actions of state administrative agencies or officers shall be made by serving and filing with the court or agency from which the appeal is taken and with the appellate court a notice of motion for leave to appeal, as prescribed by R. 2:8-1, within 20 days after the date of service of such order, administrative decision or notice of such administrative action. If, however, a motion to the trial court for reconsideration of the order from which leave to appeal is sought is filed and served within 20 days after the date of its service, the time to file and

serve the motion for leave to appeal in the Appellate Division shall be extended for a period of 20 days following the date of service of an order deciding the motion for reconsideration. The filing of a motion for leave to appeal shall not stay the proceedings in the trial court or agency except on motion made to the court or agency which entered the order or if denied by it, to the appellate court.

- **(b) Cross Appeals.** Applications for leave to cross appeal from interlocutory orders and administrative decisions or actions as to which leave to appeal has not already been granted shall be made by serving and filing with the appellate court a notice of motion within 20 days after the date of service of the court order or administrative decision appealed from or after notice of the agency or officer's action taken or, if no cross motion is filed, within 20 days following decision of a motion for reconsideration as provided by R. 2:5-6(a). If an appeal from an interlocutory order, decision or action is allowed, an application for leave to cross appeal (if the application has not been previously denied) may be made by serving and filing with the appellate court a notice of motion within 10 days after the date of service of the order of the appellate court allowing the appeal.
- **(c) Notice to the Trial Judge or Officer; Findings.** A party filing a motion for leave to appeal from an interlocutory order shall serve a copy thereof on the trial judge or officer who entered the order. If the judge or officer has not theretofore filed a written statement of reasons or if no verbatim record was made of any oral statement of reasons, the judge or officer shall, within 10 days after receiving the motion, file and transmit to the clerk of the Appellate Division and the parties a written statement of reasons for the disposition. The statement may also comment on whether the motion for leave to appeal should be granted on the ground, among others, that a controlling question of law not theretofore addressed by an appellate court of this state is involved and that the grant of leave to appeal may materially advance the ultimate resolution of the matter. Any statement of reasons previously made may also be amplified.

Note: Source -- R.R. 1:2-3(b), 2:2-3(a) (second sentence), 4:53-1 (sixth sentence), 4:61-1(d). Paragraphs (a) and (c) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (c) amended July 16, 1981 to be effective September 14, 1981; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended July 23, 2010 to be effective September 1, 2010; paragraph (c) amended July 22, 2014 to be effective September 1, 2014.