

The Insider's Guide to the New Jersey Appellate Courts

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I. Top Tips for Out-of-State Practitioners²

1. With few exceptions (*see R. 2:2-3*), there is a right to appeal only from a final judgment of a court or a final order of an administrative agency, which disposes of all issues as to all parties. Appellate court review of an interlocutory judgment or order is available only at the discretion of the reviewing court and must be sought by motion to that court for leave to appeal. If you cannot determine whether the judgment or order is final, consider filing both a notice of appeal and motion for leave to appeal.
2. An emergent stay of an order or judgment pending appeal must be sought in the first instance before the agency or court by which it was issued. If such relief has been denied by the trial court, you should contact the law clerk for the appellate judge assigned to handle emergent matters. Judicial assignments for appellate emergent matters are posted on the court's website. Generally, you will be asked to fax your supporting papers directly to the judge, without

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2. All rules referenced are to the Rules Governing the Courts of the State of New Jersey, searchable to subscribers at (<http://www.gannlaw.com>).

having to go through the usual process of filing an original and four copies with the clerk. Except in extraordinary situations, notice should be given to all other parties; ordinarily, telephone notice will suffice.

3. Appendices and formal briefs for the appellant, respondent, and amici must have the appropriate colored firm cover as prescribed by the rules. Glassine covers will result in the brief/appendix being bounced. *R. 2:6-6*. Printing may appear on both sides provided legibility is not impaired. You should comply strictly with the detailed requirements for format and contents specified in *R. 2:6*. The clerk's office will frequently reject briefs if the character and font requirements are not strictly observed as specified in *R. 2:6-10*.
4. Briefs may also be rejected if they fail to include discrete sections for the procedural history and for the statement of facts with references to the appendix (*R. 2:6-2* and *R. 2:6-4*). A statement of facts is optional for respondents, but highly recommended. Briefs may also include "an optional preliminary statement for the purpose of providing a concise overview of the case." *R. 2:6-2(a)(6)*. Artfully done, the preliminary statement can be useful in orienting the reviewing judges to your perspective on the case.
5. The policy of the Appellate Division is to give a 30-day extension for the filing of briefs without need for a formal motion, if a request made by letter is unopposed.

II. Appellate Resources

A. Court Websites and Dockets. The official website of the New Jersey Judiciary is (<http://www.judiciary.state.nj.us>). The main page has separate links for the Appellate Division and the New Jersey Supreme Court. On the Appellate Division page, there is an overview of the court and the appellate process. On the Supreme Court's homepage, there are biographies of the Supreme Court justices, an oral argument schedule, the orders granting certification, and a link to archived Supreme Court oral arguments. Opinions from both courts are available on the website for 10 business days from the date of publication (including unpublished opinions from the Appellate Division). On the opinions page, there is a link to the Rutgers Camden Law School website, which contains the archived opinions of both courts dating from March 1994 through the present.

B. Practice Guides. The court's website provides a wealth of information. The site includes a link to the "New Jersey Standards for Appellate Review," an extensive compilation of authority on numerous appellate scenarios. It also contains a link to the "New Jersey Manual on Style for Judicial Opinions." See (<http://www.judiciary.state.nj.us/appdiv/manualonstyle.pdf>). This manual is a useful guide to the accepted New Jersey style for citations, references to the litigants (e.g., as plaintiff and defendant, not as appellant and respondent), and the like.

C. *Contacting the Clerk's Office.* Depending on your issue, the clerk's office may be quite helpful. Once a matter has been docketed, it will be assigned to one of several teams of case managers, each of which is headed by an attorney. The docket number of your matter will reflect the team assignment (T-1, T-2, etc.). Further inquiries should be made directly to the team leader assigned to your matter.

D. *Electronic Notices.* The Appellate Division provides electronic distribution of opinions to all counsel who have provided an e-mail address to the clerk's office. Counsel are advised to provide an e-mail address on briefs and other papers filed with the Appellate Division. Hard copies of opinions will be distributed to counsel without an e-mail address. Orders are not yet distributed electronically.

E. *Legislative History Resources.* The New Jersey State Library, located near the State House in Trenton, is a great resource for legislative histories. The library's website, (<http://www.njstatelib.org>), contains legislative histories from 1998 through the present, with the legislative histories for years 1974 through 1997 currently being populated. Practitioners may contact the library for copies and should be prepared to provide the year and chapter to the librarian. There is a charge for photocopying.

F. *Rule Amendments.* The current rules in effect for the New Jersey Appellate Division and New Jersey Supreme Court and the date of the last amendments to the rules can be found on the "Rules" page of the New Jersey Judiciary website (<http://www.judiciary.state.nj.us/rules/index.html>).

III. Admission to Practice and Representation of Counsel

A. *General.* All attorneys licensed to practice law in New Jersey are admitted to practice in the state's appellate courts.

B. *Admission Pro Hac Vice.* An application for *pro hac vice* admission must be made on motion, supported by an affidavit stating that the attorney is in good standing with the bar of the highest court of the state in which he or she is admitted to practice, that the attorney is associated with a New Jersey attorney, that the attorney's client has requested representation by the out-of-state attorney, and that no disciplinary proceedings are pending against the attorney in any jurisdiction and that no discipline has previously been imposed on the attorney in any jurisdiction. *R.* 1:21-2(b). The affidavit must also state "good cause" for admission, which may be found if (1) the case involves complex law regarding which the attorney is a specialist, (2) the attorney and client have a long-standing relationship, (3) local counsel lacks expertise in the relevant field of law, (4) the case involves the law of the jurisdiction in which the attorney is licensed, (5) extensive discovery or proceedings will take place in the jurisdiction where the attorney is licensed, or (6) other "similar" reasons. *R.* 1:21-2(b)(3). To be admitted *pro hac vice*, an attorney must comply with *R.* 1:20-1(b), *R.* 1:28-2 and *R.* 1:28B-1(e), including paying the required fees.

An attorney who is admitted *pro hac vice* by a trial court may be admitted to appear before the appellate courts by filing a copy of the trial court's order with the clerk of the Appellate Division, along with a certification stating that the attorney has complied and will continue to comply with all conditions of the order for admission to practice entered by the trial court. *R.* 1:21-2(d).

C. *Appearance of Counsel on Appeal.* The attorney of record for the adverse party in the trial court is automatically deemed the attorney of record for the respondent on appeal, and notice and papers served on that attorney are deemed good service on the respondent unless and until new counsel enters an appearance or the respondent gives written notice naming a new attorney. *R.* 1:11-3.

D. *Withdrawal and Substitution of Counsel on Appeal.* If substituting counsel files the first papers on behalf of a party in the Appellate Division, the filing will be treated as an informal substitution of counsel. However, if substitution takes place after papers have been filed in the Appellate Division, both the withdrawing and superseding counsel must execute a substitution of counsel and file it with the clerk of the Appellate Division. 40 N.J. Prac., Appellate Practice, § 9.8 (2d ed. 2005).

E. *Ethical Rules and Standards.* The New Jersey Rules of Professional Conduct apply to practice in New Jersey's appellate courts; there are no special ethical rules governing appellate practice.

IV. The Appellate Court System

A. *Structure.* New Jersey has a two-tier appellate court system. The Appellate Division is the intermediate court and the Supreme Court is the highest court.

B. *Jurisdiction.* The Appellate Division hears appeals from final judgments of the trial courts of general jurisdiction and the tax court, and from final decisions or actions of state administrative agencies. *R.* 2:2-3. In limited circumstances, the Appellate Division may, by grant of leave, hear appeals in matters reviewable as of right in a trial court. *R.* 2:2-3(b). Appeals of civil cases may be taken to the Supreme Court from final judgments as of right in cases determined by the Appellate Division that involve federal or state constitutional issues and in cases where there is a dissent in the Appellate Division. *R.* 2:2-1. In other cases, final judgments of the Appellate Division are reviewable only by certification at the discretion of the Supreme Court. Motions for certification of an appeal pending unheard in the Appellate Division and notices of petition for certification to review final judgments of the Appellate Division may be filed with the Supreme Court, pursuant to *R.* 2:12-2 and 2:12-3, respectively. For the 2008–2009 court term, approximately 63 percent of the new appeals filed were civil, and 37 percent were criminal.

C. Certification to Other Courts. New Jersey does not have a rule or statute that provides for a New Jersey court to certify a question to a court in another jurisdiction. As for responding to questions of law, the rules provide that “[t]he Supreme Court may answer a question of law certified to it by the United States Court of Appeals for the Third Circuit, if the answer may be determinative of an issue in litigation pending in the Third Circuit and there is no controlling appellate decision, constitutional provision, or statute in” New Jersey. *R. 2:12A-1*.

V. Commencing the Appeal

A. Notice of Appeal. The notice of appeal must be filed within 45 days after the entry of a final judgment or order of a court or 45 days after the date of service of a final decision or notice of quasi-judicial action taken by a state administrative agency.³ *R. 2:4-1*. An appeal from quasi-legislative action of a state administrative agency (e.g., rule-making) is not subject to the 45-day limitation, but may be subject to laches and the one-year limitation prescribed by the Administrative Procedure Act, *N.J.S.A. 2:14B-1, et seq.* A form notice is available on the Appellate Division’s website. *See* (<http://www.judiciary.state.nj.us/appdiv/forms/forms.htm>). The time for filing a notice of appeal is tolled by the timely filing of a notice for reconsideration or for a new trial. *R. 2:4-3*. The appellate court may grant a 30-day extension of the time for filing a notice of appeal or petition for certification and a 15-day extension of the time to move for leave to appeal, provided that the application for such extension is made within the period to which the time could be extended. *R. 2:4-4*. The notice must include all of the information and certifications listed in *R. 2:5-1(f)(3)*. An application for leave to appeal from an interlocutory order must be filed within 20 days after the date of service of the order (or from service of the order denying reconsideration of that underlying order, if a motion for reconsideration was filed). *R. 2:5-6*. If the Appellate Division has granted leave to file an interlocutory appeal, the appellate court’s order serves as the notice of appeal. *R. 2:5-1(g)*. Within 10 days after the date of entry of the order granting leave, the appellant must file and serve the order and a case information statement. A notice of cross-appeal (as of right) from a final judgment or order must be filed within 15 days after service of the notice of appeal. *R. 2:4-2*. The time within which an application for leave to cross-appeal from an interlocutory order must be made depends on whether the initial motion for leave is still pending or has been granted. *R. 2:5-6(b)*.

The notice of appeal must be accompanied by a \$200 filing fee, payable to the Treasurer, State of New Jersey (or authorizing a debit from an attorney collateral account). *N.J.S.A. 22A:2-1; N.J.S.A. 22A:2-5*. If the fee is not paid at the time of filing, the appellate

3. The day of an event from which a designated period begins to run is not included in the calculation of time. The last day is included unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the next business day. *R. 1:3-1*. The time to appeal is tolled by a timely filed motion for reconsideration. *R. 2:4-3(b)*. The Appellate Division has the discretion to grant a limited extension of time to appeal for good cause shown and in the absence of prejudice. *R. 2:4-4*.

clerk will mark the filing as “Received but not Filed (date),” and allow the filing party to remit payment within a 10-day cure period. *R. 1:5-6(c)*. If the fee is then timely received, the filing will be deemed filed on the original date of receipt. *Id.*

B. *Docketing Statement.* The appellant must file a case information statement with the notice of appeal. *R. 2:5-1(a)*. The case information statement must be in the prescribed form, which is available on the Appellate Division’s website. *See* (<http://www.judiciary.state.nj.us/appdiv/forms/forms.htm>). A copy of the final judgment, order, or agency decision appealed from, except final judgments entered by the clerk on a jury verdict, must be annexed to the appellant’s case information statement. *R. 2:5-1(f)(2)*. The respondent must file a case information statement within 15 days after receiving service of the notice of appeal. *R. 2:5-1(a)*.

C. *Bonds and Stays.* The appellant must, within 30 days after filing the notice of appeal or entry of an order granting leave to appeal, deposit \$300 with the clerk of the Appellate Division for costs. *R. 2:5-2*. The deposit is not required from an appellant granted leave to appeal as an indigent or who has filed a supersedeas bond. *Id.* A judgment or order adjudicating liability for a sum of money or rights in respect to property will be stayed only upon the posting of a supersedeas bond or cash deposit. *R. 2:9-5(a)*.

D. *Other Initial Documents.* If a verbatim record was made of the proceeding below, the notice of appeal must be accompanied by one or more transcript request forms directed to the court reporter(s) who transcribed the proceeding or to the tax or municipal court or administrative agency having a record of the proceeding. *R. 2:5-3(a)*. The court reporter will send a certification to the appellant after the complete transcript has been forwarded to the court. The appellant must serve the certification on all parties within seven days and file proof of service with the court. *R. 2:5-3(e)*. If no verbatim record was made, the appellant must serve a statement of the evidence and proceedings on the respondent within 14 days after filing the notice of appeal. *R. 2:5-3(f)*.

E. *Docketing of the Appeal.* After all required papers and the filing fee are received, the clerk of the Appellate Division will send the parties a notice of docketing, including the docket number, the date the appeal was filed, and the name of the assigned case manager.

F. *Intervention in Pending Appeals.* Only an interested party who is aggrieved by a judgment may appeal it. *In re Atlantic City*, 3 N.J. Super. 62 (App. Div. 1949). A non-party objector directly affected by an administrative action may also have the right to appeal therefrom. *See In re App. for Certif. of Pub. Convenience*, 134 N.J. Super. 500 (App. Div. 1975). In some cases, a real party in interest who did not take part at the trial court level or a non-party who will be affected by the Appellate Division’s decision may be permitted or invited to intervene. *R. 4:33-1*; *see also, e.g., Herman v. Sunshine Chem.*, 257 N.J. Super. 533 (App. Div. 1992), *rev’d on other grounds*, 133 N.J. 329 (1993).

VI. Record Composition and Transmittal

A. Form of Record. The record consists of papers from the court or agency below, transcripts or statements of the proceedings below, and all papers filed with the appellate court. *R. 2:5-4*. For those portions that must be included in the appellant's appendix, *see Rule 2:6-1(a)*.

B. Requesting, Selecting, Compiling, and Transmitting the Record. Within 30 days of service of the notice of appeal, the clerk of the court below or agency officer must file in the appellate court a statement of items that constitute the record and serve the parties with same. *R. 2:5-4(b)*. The clerk or agency below retains the record but any party may access the record, including the originals, so long as a copy remains on file. *R. 2:5-4(c)*. Because the appellate courts ordinarily will not consider evidence that is not contained in the record, either party may move to settle the record, pursuant to *Rule 2:5-5*, which tolls the timing and filing of the next brief due. *See R. 2:5-5(a)*.

C. Transcripts and Trial Exhibits. No later than the time of filing and service of the notice of appeal, the appellant must serve a request for the transcript on the following: the court reporter (if on appeal from superior court); the clerk (if on appeal from the tax court or municipal court); or the agency or officer (if on appeal from administrative agency). *R. 2:5-3(a)*. Transcription costs are normally borne by the appellant. A transcript request form is available on the judiciary's website. *See* (http://www.judiciary.state.nj.us/appdiv/forms/10504_transcript_req.pdf). Within 10 days after the filing of a complete set of transcripts by the court reporter, the appellant must file three additional copies with the clerk and serve one copy on any one respondent for use by all respondents. *See Rules 2:5-3(e)*, *2:6-11* and *2:6-12(d)*.

VII. Appellate Mediation or Conference Programs

The case information statement, which is required to be filed along with the notice of appeal, has a check-off box for parties requesting mediation or conferencing. However, the court may direct the parties to mediate even when not requested, although this directive is given infrequently. When mediation is ordered, the judge will typically be well prepared and may be successful in resolving the matter.

VIII. Filing and Service Requirements

A. Filing and E-filing. The original notice of appeal and case information statement (and a copy of the transcript request form) must be filed with the clerk of the Appellate Division by no later than 5:00 p.m. on the last day for filing. A copy of each document must also be filed with the court from which the appeal is taken. *R. 2:5-1(a)*. Although only one copy of each document is required, you must include a second copy if you want the clerk to return a copy stamped as "filed" to you. Copies of the notice of appeal and case

information statement must also be sent to the trial court judge (or administrative agency or officer) by ordinary mail. *R. 2:5-1(b)*.

An appeal may be initiated by electronic filing *only* in cases where the filing fee has been waived or if the appellant's attorney has a collateral account with the superior court that can be charged the filing fee. *See* (<http://www.judiciary.state.nj.us/appdiv/e-file/instructions.htm>). *Only* a notice of appeal and supporting documents may be filed electronically, and they may not be accompanied by a motion. The Appellate Division does not accept any other documents by electronic filing. *See* (<http://www.judiciary.state.nj.us/appdiv/notices/an001025c.htm>). The documents must be transmitted by 5:00 p.m. on a regular business day and will be deemed received as of the time stamped by the attorney's Internet Service Provider. *Id.* All documents that are uploaded must be in a Microsoft Word or Adobe Acrobat (.pdf) format. The e-filing transmittal form is located at (<http://www.judiciary.state.nj.us/appdiv/e-file/appfile.htm>).

Electronic filing also serves as filing and service on the trial court and judge. *See* (<http://www.judiciary.state.nj.us/appdiv/notices/an001025c.htm>).

B. Service. The appellant must serve copies of the notice of appeal, case information statement, and transcript request form on all parties who have appeared in the action, as well as on the trial court and judge. *R. 2:5-1(a)*. If the appeal is from a decision of a state agency or officer, the agency or officer must be served. *R. 2:5-1(e)*. An attorney may be served by mail or by personal service or by leaving the papers at the attorney's office with an employee. *R. 1:5-2*. A party may be served in accordance with *Rule 4:4-4* or by registered or certified mail, return receipt requested, and simultaneously by regular mail to the party's last known address. *Id.* Two copies of briefs and appendices must be served on each party (and one copy of the transcript shall be served on any one respondent for the use of all respondents), with proof of service filed simultaneously. *R. 2:6-12(a)*; *R. 1:5-3* (methods for making proof of service).

IX. Motions

A. Motions in General. *Rule 2:8-1* sets forth the general requirements for motions filed in the Appellate Division. Every motion must include (1) a notice of motion, which sets forth the specific relief a party is seeking from the court; (2) a brief or letter brief; (3) an appendix; and (4) proof of service. *See Rules 2:6-2, 2:6-10 and 2:8-1(a)*. (<http://www.judiciary.state.nj.us/appdiv/forms/introprc.htm#mot>). The appendix should include the judgment or order, any opinion or statements of findings from below, and any other essential portions of the record upon which the movant or the opposing party will rely. *Id.* A proposed order is not required.

If the motion is opposed, then, within 10 days after service of the movant's papers, the opposing party may file an answering brief, explicitly setting forth the grounds of opposition, and an appendix, containing copies of any papers relied on which are not included in the moving party's appendix. *R. 2:8-1(a), (b)*. If the opposing party does not

respond within 10 days, then the court may consider the motion unopposed. *R. 2:8-1(a)*. Reply briefs are not permitted without leave of court. *R. 2:8-1(b)*.

Both the moving and answering brief may not exceed 25 pages, exclusive of tables of contents and tables of citations and appendix, unless leave of court is obtained. *R. 2:8-1(a)*. The moving party's brief cover must be white and the brief of any responding party must be blue. *See* (<http://www.judiciary.state.nj.us/appdiv/forms/introprc.htm#form>). File an original and four copies of the papers with the clerk of the Appellate Division and serve two copies of the papers on all other parties. *R. 2:8-1(b)*.

Civil motions are decided by a single judge, except motions for bail, stay of any order or judgment, summary disposition, and leave to appeal, which are decided by a panel of at least two judges. *R. 2:8-1(c)*. Motions are generally decided on the papers without oral argument, unless the court directs otherwise. The court rarely permits oral argument on a motion. *See R. 2:8-1(b)*; (<http://www.judiciary.state.nj.us/appdiv/forms/introprc.htm#mot>). Although there is no specific timeframe during which a motion will be decided, if there are no deficiencies, a motion will generally be decided within four weeks. *See* (<http://www.judiciary.state.nj.us/appdiv/forms/introprc.htm#mot>).

B. Motion for Extension of Time. A motion may be filed to extend the time period for taking an appeal. *See R. 2:4-4; R. 2:9-2*. The time period may not be extended by consent of the parties. *See R. 2:9-2*. Upon a "showing of good cause and absence of prejudice," the Appellate Division may grant an extension of time to file a notice of appeal from a final judgment or a final state administrative decision for a period not exceeding 30 days, and it may extend the time to file a motion for leave to appeal from an interlocutory order for a period not exceeding 15 days. *R. 2:4-4(a); R. 2:4-4(b)(1)*. To benefit from the extension of time to file a notice of appeal, a party must serve and file the notice within the time as extended. *R. 2:4-4(a)*. The court may also extend the time to file a cross-appeal "for such period as it deems reasonable." *R. 2:4-4(c)*.

With respect to briefing schedules, a party may obtain one extension of up to 30 days without a motion, if its adversary does not object. *See* (<http://www.judiciary.state.nj.us/appdiv/forms/introprc.htm#mot>). To request such an extension, a party need only send a letter setting forth the reason for the request and representing that its adversary consents. *Id.* In the absence of consent or for any additional extension beyond 30 days, you must file a formal motion. The motion should state the new date requested as the extension to file the brief. *Id.*

C. Motion for Extension of Length. A party may file a motion seeking relaxation of the applicable page limits for its brief. *R. 2:6-7*. With respect to an extension of length for a motion brief, you may file an ex parte motion seeking relaxation of the page limitations. *R. 2:8-1(a)*.

D. Motion to Stay Appeal. At any time prior to the date of oral argument or of submission to the appellate court for consideration without oral argument, a motion to stay a civil action pending appeal must first be made to the court that entered the judgment or order. *R. 2:9-5(b)*. Thereafter, a motion for a stay pending appeal must be made directly to

the Appellate Division. *Id.* If the trial court denies the motion for a stay, then the moving party may remake its application to the Appellate Division, or, if the motion is granted by the trial court, then the Appellate Division may consider a motion to dissolve the stay. *Id.* Similarly, on or after filing a notice of appeal from a decision of a state administrative agency or officer, a motion for a stay must first be made to the agency whose decision is being appealed and, if denied, to the Appellate Division. *See R. 2:9-7.* A party seeking a stay of an Appellate Division judgment must file a motion within 20 days, unless that time period is enlarged by court order. *See R. 2:11-3(d).*

E. *Emergency Motions.* If a party needs urgent relief with regard to an entered order or judgment, then an emergent application may be made to the Appellate Division. *See R. 2:9-8.* A party seeking emergent relief should contact the clerk's office, visit the judiciary's website or review the New Jersey Law Journal to determine which Appellate Division judge is on emergent duty for the county where the underlying action is pending. *See* Notice to the Bar, Appellate Division Guidelines for Entertaining Emergent Applications, dated February 19, 2009, available at (<http://www.judiciary.state.nj.us/notices/2009/n090226b.pdf>). Counsel or the litigant should then contact the chambers of the judge who is on duty to handle the emergent application. *Id.* The judge's chambers will arrange for the completion of an intake fact sheet entitled "Application for Permission to File Emergent Motion." *Id.*

Based on this completed application, the judge will determine whether or not to permit the party to file an emergent motion. When an application is made during trial, the court will only entertain an emergent application upon a showing of a likelihood of success on the merits and that "immediate and irreparable harm" will result if the court does not hear the emergent motion. *Id.* Applications not made during trial will be permitted on an emergent basis upon a showing that an event will occur or an action is required on a date prior to when the Appellate Division would consider a motion made in the ordinary course. *Id.* If the judge determines that the application is not eligible for emergent review, then he or she will endorse its denial on the application form. *Id.* If the judge determines that the application is eligible for emergent review, then the judge's chambers will advise the litigant or counsel about the required filing fee, necessary notice to adversaries, required motion or other papers, scheduling, and whether or not oral argument will be heard. *Id.*

F. *Motions for Reconsideration.* A party may file a motion for reconsideration (from an adverse appellate decision or Supreme Court decision) within 10 days after entry of judgment or order. *R. 2:11-6(a).* Specific requirements for the motion are set forth in *Rule 2:11-6(a).* A party may only file an answer to such a motion if one is requested by the court; oral argument will not be heard. *Id.* To the extent practicable, motions for reconsideration in the Appellate Division are decided by the judges who decided the original matter. *R. 2:8-1(c).* A motion for reconsideration will be granted only if "it is moved by a . . . judge who concurred in the judgment or decision, and a majority of the court so determines." *R. 2:11-6(b).* If the motion is granted, the moving party must file a brief, pursuant to *Rule 2:6-2,* within 30 days of the order granting the motion. *Id.* The relevant procedures for original appeals then apply.

G. Local Practice. A party may seek to skip intermediate appellate review by filing a motion for direct certification to the Supreme Court of an appeal pending unheard in the Appellate Division. *See R. 2:12-2(a)*. Such a motion must be served and filed with both the Supreme Court and the Appellate Division within 10 days after the filing of all briefs with the Appellate Division. An opposing party may respond and file a statement in opposition within five days. The motion and the statement may not exceed five pages. *Id.*

X. Briefing Schedule

A. Rules and Scheduling Orders. *Rule 2:6-11(a)* sets forth the specific timing requirements for the filing of briefs. In most cases, the moving party has 45 days to file its brief and appendix following receipt of the transcript from the proceedings below. However, the 45-day time period may be triggered at a different time, if there was no verbatim record made of the proceedings below, if the transcript was filed prior to the filing of the notice of appeal, if no transcript will be filed, or if the appeal is from a state administrative agency. Following receipt of the moving brief, the respondent must serve and file its answering brief and appendix, if any, within 30 days after service of the appellant's brief. The appellant may then serve and file a reply brief within 10 days after service of the respondent's brief. Notwithstanding these specific timing requirements, the Appellate Division may enter a separate scheduling order in any case, which supersedes the normal timing requirements. *R. 2:6-11(c)*.

B. Cross-Appeals. If a cross-appeal is filed, then the appellant/cross-respondent must file and serve the first brief and appendix within 30 days following service of the notice of the cross-appeal or within the time periods specified for appellants when no cross-appeal is taken, whichever is greater. *R. 2:6-11(b)*. Within 30 days of the service of such brief, the respondent/cross-appellant must then file and serve a brief and appendix, if any, that responds to the appellant's brief and sets forth its cross-appeal. Within 30 days thereafter, the appellant/cross-respondent must serve its reply brief, which will also respond to the cross-appeal. Within 10 days thereafter, the respondent/cross-appellant may file a reply, which is limited to the issues raised on the cross-appeal. *Id.*

XI. Brief Format and Citations

A. Physical Requirements. Briefs must comply with the formats prescribed or the court may reject the inadequate brief and direct a new filing. *R. 2:6-9*. The paper must be 8.5 by 11 inches and contain "no more than 26 double-spaced lines of no more than 65 characters including spaces, each of no less than 10-pitch or 12-point type." *R. 2:6-10*. Courier BT is an acceptable font. Type-size also applies to footnotes but single spacing is permitted for footnotes and indented quotations. *Id.* Margins must be 1 inch. *Id.* The brief must either be stapled in the upper left-hand corner or bound along the left margin, with a cover color that conforms to *Rule 2:6-6*. *Id.* *Rule 2:6-7* dictates the length of the

briefs, which, exclusive of tables of contents and citations, must not exceed 65 pages for the initial briefs of the parties, 20 pages for the reply briefs, 90 pages for a respondent/cross-appellant, and 65 pages for an appellant/cross-respondent.

B. Citation Form Rules and Conventions. The judiciary’s website contains a link to the “New Jersey Manual on Style for Judicial Opinions.” See (<http://www.judiciary.state.nj.us/appdiv/manualonstyle.pdf>). Though the guide is directed toward judges, law clerks, and judiciary support staff, it is a very useful guide to those preparing pleadings to any of the appellate courts, including a list of exceptions from *Bluebook* standards. *Rule 2:6-8* provides abbreviations for citations to briefs, appendices, and transcripts. Citations to the transcript shall be to the pages and lines.

C. Citable Authorities. As a general rule, unpublished opinions are not precedential or binding upon any court. *R. 1:36-3*. *Rule 1:36-3* provides that unpublished opinions may be cited to the court but only if a copy of the opinion is provided to the parties and the court and any contrary unpublished opinions known to counsel are also provided. Unpublished opinions cited in a brief must be included in the party’s appendix. *R. 2:6-1(a)(1)(H)*.

XII. Brief Contents

A. Appellant’s Brief. The contents of an appellant’s brief are governed by *Rule 2:6-2* and must contain the following: (1) a table of contents, which must include point headings to be argued, with an indication in the point heading for those points not presented below; (2) a table of citation of cases arranged alphabetically; statutes, rules and other authorities must also be included; (3) a concise procedural history, which should include the nature of the proceeding with reference to the judgment or order appealed from. Any document referenced should be cited to its appendix page. The procedural history should refer to the parties as “plaintiff” and “defendant,” using “appellant” and “respondent” only when necessary; (4) a concise statement of facts, in chronological narrative form, which should include the facts material to the issues on appeal with references to the appendix and transcript; (5) the legal argument for appellant, which must be divided by point headings. Citations to New Jersey opinions should be to the official New Jersey reports. Citations to other state opinions should be to the National Reporter System or the official report; and (6) the attorney of record, or an associate, must sign and date the pleadings. *R. 1:4-5*. The firm’s signature may be typed, with the signature of the attorney following. All signatures must be followed by either a stamped or typewritten name. *R. 1:4-6*.

Briefs may also include a preliminary statement, not to exceed three pages, providing an overview of the case. It may not include footnotes and should not contain citations, to the extent practicable. *R. 2:6-2(a)(6)*. In lieu of a formal brief, appellants may file a letter brief, which may not exceed 20 pages. *R. 2:6-2(b)*. The letter brief must contain all of the contents of a formal brief, with the exception of a table of citations of cases/authorities. *Id.*

The appellant must serve two copies of the brief and appendices on each party and one copy of the transcript on any one respondent for use by all respondents. *R. 2:6-12(a)*. The appellant must file proof of service with the clerk as detailed in *R. 1:5-3*. *Id.* The Appellate Division clerk must receive five copies of each brief and appendix. *R. 2:6-12(b)*.

B. *Response and Reply Briefs.* Respondent's brief must mirror the requirements of appellant's brief. *R. 2:6-4(a)*. A respondent may include a counterstatement of facts if the party disagrees with the statement of facts included in the appellant's brief. *Id.* Failure to file a brief in conformity with the rules may result in the appeal being deemed unopposed or in the denial of respondent's opportunity to argue the appeal orally. *R. 2:6-4(b)*. Reply briefs must be filed in conformity with *Rule 2:6-5* (referencing the guidelines of *Rule 2:6-2(a)* for formal briefs or (b) for letter briefs). A reply brief may attach an appendix. *R. 2:6-5*.

C. *Cross-Appeals.* An appellant/cross-respondent's brief should respond to the cross-appeal and may include a reply portion, if necessary. *R. 2:6-4(e)*. The cover contents and brief length are contained in *Rule 2:6-6* (covers of briefs and appendices) and *Rule 2:6-7* (length of briefs).

XIII. Appendices and Excerpts of Record

A. *Process for Compiling.* The appellant is required to compile the appendix, but a joint appendix may be filed. *R. 2:6-1*. If a joint appendix has not been filed, the respondent may prepare an appendix, but should not include those documents already included in appellant's appendix. *R. 2:6-3*. Documents included in the appendix may be abridged by omitting irrelevant portions, with asterisks being used to indicate omissions. *R. 2:6-1(b)*.

B. *Filing Procedures.* Five copies of the appendix must be filed with clerk and two copies served on each party. *R. 2:6-12*. Proof of service should be filed simultaneously. *Id.* The appendix must be filed along with the brief, within 45 days after delivery to the appellant of the transcript, or if no verbatim record was made of the proceedings below, within 45 days of the filing of the appeal, or, on appeal from a state administrative agency, within 45 days after the attorney general serves the statement of items comprising the record. *R. 2:6-11*. A respondent must file its appendix, if any, within 30 days after receiving appellant's brief and appendix. *Id.* E-filing of appendices is not available at this time.

C. *Content and Format.* The appendix must include a table of contents identifying the initial page of each document. *R. 2:6-1(c)*. Attachments to a document should be separately identified. Each volume of a separately bound appendix must be prefaced with the full table of contents and specify on its cover the pages included therein. In civil actions, the appendix must include the pretrial order, if any; the pleadings; the judgment, order, or determination appealed from, including the jury verdict sheet; the jury charge, if at issue; the notice of appeal; and such other parts of the record as are essential to the

proper consideration of the issues. *R. 2:6-1(a)(1)*. The filing date of each included paper should be stated at the head of the copy as well as its subject matter (e.g., Pretrial Order). *R. 2:6-1(b)*. Each page must be numbered consecutively followed by the letter “a” to indicate the appendix (e.g., 1a, 2a, etc.). *Id.* If separate from the brief, the color of the cover must be the same as the brief cover. The transcript should not be included in the appendix (*R. 2:6-1(a)(1)*), nor should a brief submitted to the trial court (*R. 2:6-1(a)(2)*), unless it is referred to in the decision of the court or agency, or the question of whether an issue was raised in the trial court is germane to the appeal.

XIV. Amicus Curiae Practice

A. *Participation as of Right or by Motion.* Participation as amicus curiae must be made by way of motion, in general conformance with motion practice set forth in Section IX, herein. *R. 1:13-9*.

B. *Timing.* Although there is no specific timeframe by which the motion must be filed, the sooner it is filed after the filing of the notice of appeal, the more likely the court will determine that participation will not be prejudicial to any party. *R. 1:13-9*.

C. *Content and Format.* An application for leave to appear as amicus curiae is made by motion, 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. *Id.* The court will grant the motion if it determines that 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. An amicus curiae who has been granted leave to appear at a lower court level may, without seeking further leave, file a brief in an appeal taken to the appellate courts. Should amicus desire additional participation—such as leave to orally argue—leave must be sought from the court in which the appeal is pending. There is no requirement that the applicant disclose who is paying for its participation. The brief in support of the motion may be filed as a merits brief. If not, the order granting leave to participate will include a briefing schedule.

D. *Responses to Amicus Briefs.* If the brief submitted by the amicus applicant was limited to its application to participate, response briefs may be limited to that issue. If a merits brief is filed, respondents may include responses to that argument within the same brief in which responses to those of adverse parties are made.

XV. Supplemental Authorities

If a relevant case is decided or relevant legislation is enacted following the filing of a party’s brief, then, without leave of court, the party may serve and file a letter alerting the court of that authority and briefly indicating its significance. *R. 2:6-11(d)*. Any other party to the appeal may, within five days and without leave, file and serve a brief letter in response.

XVI. Oral Argument

A. *Argument as of Right or by Motion; Waiver.* In the New Jersey Appellate Division, any party to an appeal may request oral argument by filing with the clerk's office, no later than 14 days after service of respondent's brief, a separate captioned paper requesting argument. *R. 2:11-1(b)*. Oral argument is generally permitted in nearly all cases in which a party requests it. In the Supreme Court, appeals will be argued unless the court dispenses with argument (a rare occurrence). *R. 2:11-1(b)*.

B. *Procedures for Granting and Calendaring Oral Argument.* Oral argument will be scheduled in accordance with the chronological filing date (*R. 2:11-1(a)*), unless acceleration is granted, or for appeals granted on leave. *R. 2:11-2*. There is also an Appellate Division protocol for expedited disposition of appeals from judgments terminating parental rights. For the 2008–2009 court term, 51 percent of the calendared civil appeals were argued and 15 percent of the calendared criminal appeals were argued.

C. *Identification of Panel Members.* The Appellate Division team case manager assigned to a given appeal may be able to provide information about the panel members likely to participate soon after the notice of appeal is filed. Confirmation of the panel members can be obtained 7 to 10 days prior to the argument from the case manager or clerk's office. The appellate court sits in panels of two or three (although only two judges may hear or decide certain appeals); the Supreme Court sits in panels of seven. Oral argument webcasts of current Supreme Court cases may be viewed at (<http://www.judiciary.state.nj.us/webcast/index.htm>). Older webcasts are available at the Rutgers Law School website.

D. *The Day of Argument.* Counsel will not be permitted to argue for a party who has neither filed a brief nor joined in another party's brief. *R. 2:11-1(b)*. The appellant is entitled to open and conclude argument. *Id.* An appeal and cross-appeal are argued together, the party first appealing generally being entitled to open and conclude. *Id.* Each party is allowed a maximum of 30 minutes unless the court determines more time is necessary, which is rare in the Appellate Division. *Id.* No more than two attorneys will be heard for each party. *Id.* The court does not permit any lengthy reading from briefs, transcripts, or decisions. *Id.* Each case is separately scheduled for argument. Local counsel should introduce out-of-state attorneys who have been admitted *pro hac vice* and have handy the order granting *pro hac vice* admission. However, litigants should use out-of-state counsel to make oral arguments only when absolutely necessary.

XVII. Decisions

A. *Internal Procedures for Disposing of Cases.* For the 2008–2009 Appellate Division court term, the average time from date submitted or argued to issuance of opinion was two months and five days.

B. Draft Decisions. New Jersey's Appellate Division does not issue draft decisions.

C. Published or Unpublished Decisions. Most Appellate Division opinions are not published. *R. 1:36-2(a)*. An opinion will only be published if the panel who issues the opinion so directs. *Rule 1:36-2(d)* sets forth various reasons why an opinion should be published, including, but not limited to, if it involves a significant issue of constitutional law; decides an important new issue; reverses, alters, or questions an established legal principle; or resolves a conflict in the law. A person may request publication of an opinion by writing a letter to the committee on opinions which explains the basis of the request with specificity and reference to the factors set forth in *Rule 1:36-2(d)*. *See R. 1:36-2(c)*. The committee will transmit the request and its opinion to the presiding judge of the panel, but the Appellate Division will make the ultimate publication determination. *Id.*

As a general rule, unpublished opinions are not precedential or binding upon any court. *R. 1:36-3*. If you want to cite to an unpublished opinion, you must serve the court and all other parties with a copy of the opinion, as well as any other contrary unpublished opinions counsel is aware of. *Id.*

XVIII. Motions for Rehearing and Rehearing En Banc

A. Grant Rate. For the 2008–2009 court term, the Appellate Division decided 377 motions for reconsideration, of which 51 were granted.

B. Briefing. A motion for reconsideration from an adverse Appellate Decision must be filed within 10 days after entry of the judgment or order. *R. 2:11-6(a)*. The moving party must serve two copies on the parties and file five with the Appellate Division, with one filed copy signed by counsel. *R. 2:11-6(a)*. The moving brief may not exceed 25 pages, and should contain a brief statement and argument of the grounds relied upon, and a certificate that the motion is filed in good faith and not for the purposes of delay. *R. 2:11-6(a)*. The brief should have attached the challenged opinion or order. The court will direct whether an answering brief is required. Oral argument is not permitted. *Id.* If the motion is granted, the moving party must file a brief, pursuant to *Rule 2:6-2*, within 30 days of the order granting the motion. *R. 2:11-6(b)*. The relevant procedures for original appeals then apply.

XIX. Costs and Attorneys' Fees

A. Taxable Costs. Such costs as are recoverable by law are taxed as ordered by the appellate court or, in the absence of such an order, in favor of the prevailing party. *R. 2:11-5*. Taxable costs include filing fees; costs of transcripts; costs of printing briefs, appendices, motions and petitions; and a fee for attendance at oral argument. *N.J.S.A. 22A:2-2, et seq.* An application for costs should include an affidavit itemizing all amounts paid, with copies

of bills attached. Costs must be taxed within six months of entry of the final judgment, unless good cause for an extension is shown. *N.J.S.A.* 2A:15-65. If an appeal is taken from a jury verdict and the judgment is affirmed, the prevailing party is entitled to double costs on appeal, unless the appellate court expressly states to the contrary. *N.J.S.A.* 2A:15-61. Costs may not be taxed against the state. *N.J.S.A.* 2A:15-60.

B. Other Recoverable Expenses. New Jersey does not provide for the recovery of any specific expenses beyond taxable costs and attorneys' fees, where permitted. However, the courts have broad discretion to award reasonable costs to any party. *N.J.S.A.* 2A:15-59.

C. Attorneys' Fees. An award of attorneys' fees may be allowed, in the appellate court's discretion, as a sanction for violating the appellate rules, in matters where a trial court may award fees, and in workers' compensation proceedings. *R.* 2:11-4; *see also* *R.* 4:42-9 (listing the specific types of matters in which a trial court may award fees).

1. Timing of Request. An application for fees must be served and filed within 10 days after the determination of the appeal. *R.* 2:11-4.

2. Procedure. The application must be made by motion with supporting affidavits. *Id.* Normally, the appellate court will hear the application and decide whether the moving party is entitled to an award. *R.* 2:8-1(c). However, if the case has been remanded to the trial court, the appellate court may refer the fee application to the trial court for disposition. *R.* 2:11-4.

3. Content and Format. The application must be supported by an affidavit of services and a statement of fees received for services both in the trial and appellate courts, including amounts received via *pendent lite* relief, and any arrangements made for the payment of fees in the future. *Id.*

D. Objections and Replies. Objections and replies to fee applications follow the format and schedule for motions. *R.* 2:8-1(c).

XX. Further Appellate Review in Multi-Level Systems

A. Review as of Right or by Grant of Certification. Appeals may be taken as of right to the Supreme Court in civil actions from final judgments in cases (1) determined by the Appellate Division involving a substantial federal or state constitutional question; (2) where there is a dissent in the Appellate Division; and (3) where provided by law. *R.* 2:2-1. Appeals may otherwise be taken to the Supreme Court from final judgments only on certification to the Appellate Division. *Id.* Certification will be granted only if the appeal presents a question of general public importance which has not been settled by the Supreme Court; is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court; or calls for an exercise of the Supreme Court's supervision; or in other matters if

justice requires. *R. 2:12-4*. Where an appeal involves a constitutional question, the court may, but need not, consider it if not raised below. *See The Presbyterian Homes v. Div. of Tax Appeals*, 55 N.J. 275 (1970). Because the Supreme Court also has the constitutional power to regulate the practice of law, review of decisions of the disciplinary review board are directly appealable to the Supreme Court. *R. 1:20-16*. Appeals may be taken to the Supreme Court by leave from interlocutory orders of the Appellate Division in civil actions when necessary to prevent irreparable injury. *R. 2:2-2(b)*. The Supreme Court may, on its own motion, certify any action or class of actions for appeal. *R. 2:12-1*. The Supreme Court may also answer a question of law certified to it by the U.S. Court of Appeals for the Third Circuit. *R. 2:12A-1*.

1. Timing. A motion for certification of an appeal pending unheard in the Appellate Division must be served and filed within 10 days after the filing of all briefs with the Appellate Division. *R. 2:12-2(a)*. Within five days after service of the motion, an opposing party may serve and file a statement in opposition. *Id.* If certification is sought to review a final judgment of the Appellate Division, the petitioner must, within 20 days after its entry, serve the notice of petition for certification upon all parties who may be affected and file the original with the clerk of the Supreme Court, with a copy to the clerk of the Appellate Division. *R. 2:12-3(a)*. A cross-petition for certification may be filed within 10 days after the service of the petition. *R. 2:12-3(b)*. Note that under *Rule 2:12-7(b)*, within 10 days after the filing of the notice of petition for certification or 30 days after the entry of the final judgment, whichever is later, two copies of the petition must be served on the opposing parties and four copies of the petition, together with four copies of the petitioner's Appellate Division brief and appendix, must be filed with the clerk of the Supreme Court. If certification is granted, the petitioner must file five additional copies of the petition and petitioner's Appellate Division brief and appendix within 10 days following receipt of the order granting certification. *R. 2:12-7(b)*. The purpose of the two time periods prescribed by *Rule 2:12-3* and *Rule 2:12-7* is to accord attorneys more flexibility in the use of the aggregate 30-day period. In actual practice, the 10-day period following filing of the notice may exceed the aggregate of 30 days. The rules afford litigants the benefit of whichever period is longer.

2. Content and Format. A petition for certification must be in the form of a brief (conforming to *Rule 2:6*) and must not exceed 20 pages exclusive of table of contents, citations, and appendix. *R. 2:12-7(a)*. It must contain a short statement of the matter involved, the question presented, the errors complained of, the reasons why certification should be allowed, and comments with respect to the Appellate Division decision. It must annex the notice of petition for certification, the written opinions of the courts below and a copy of the transcript of any relevant oral opinions. Petitioner's counsel must certify that it presents a substantial question and is filed in good faith and not for purposes of delay. *Id.*

3. Responses and Replies. The respondent must, within 15 days of service of the petition, serve two copies of the brief in opposition to the petition for certification and file four copies thereof together with four copies of its Appellate Division brief and appendix with the clerk of the Supreme Court. *R. 2:12-8*. The brief must not exceed 20 pages (and

otherwise conform with *Rule 2:6*). Within 10 days of such service, petitioner may serve two copies and file four copies of a reply brief, not exceeding 10 pages. If certification is granted, respondent and petitioner must file an additional five copies of their respective papers. *Id.*

4. Process for Consideration and Disposition. A petition for certification may be granted on the affirmative vote of three or more justices. *R. 2:12-10*. Upon final determination, the clerk will enter an order granting or denying the certification and will mail copies to the Appellate Division clerk and the attorneys of record. Denial of certification will be deemed to be a summary disposition of the appeal unless the Supreme Court otherwise orders. *R. 2:12-9*. The court may remand for additional fact-finding if it concludes that the record is insufficient for resolution of the issue. *See State v. Moore*, 180 N.J. 459 (2004). In the 2008 New Jersey Supreme Court term (9/1/2008–8/31/2009), the court granted 88 petitions for certification of final judgments, of which 74 were granted and 14 were granted and summarily remanded. During that same term, the court granted 24 interlocutory motions, of which 13 were granted and 11 were granted and summarily rejected.

B. Further Briefing on Request or Grant of Review. If certification is granted, the matter will be deemed pending on appeal in the Supreme Court. *R. 2:12-11*. In the interests of justice, the court may consider all claims and issues as to all original parties, even if the petition seeks review of only part of the Appellate Division judgment. *See State Farm v. Zurich Am. Ins. Co.*, 62 N.J. 155 (1973). The respondent may seek affirmative relief only by cross-petition for certification. *R. 2:12-11*. Further proceedings will be had as provided for on appeals as of right, except that, generally, the appeal must be submitted on the briefs, appendices and transcript filed with the Appellate Division. *Id.*

C. Oral Argument. In the Supreme Court, appeals will be argued orally unless the court dispenses with argument. *R. 2:11-1(b)*. Counsel will not be permitted to argue for a party who has neither filed a brief nor joined in another party's brief. The appellant is entitled to open and conclude argument. *Id.* An appeal and cross-appeal are argued together, the party first appealing generally being entitled to open and conclude. Each party is allowed a maximum of 30 minutes unless the court determines more time is necessary. No more than two attorneys will be heard for each party. The court does not permit any lengthy reading from briefs, transcripts, or decisions. *Id.* The court will not interrupt any attorney who has reserved time for an opening statement. (Chief Justice Stuart Rabner has revealed that any justice who does so must pay a fine into a fund for the court's year-end law clerk luncheon).

D. Disposition. The Supreme Court will dispose of the matter by an opinion or order. The court may render a decision without oral argument.

XXI. Mandate

New Jersey courts do not issue mandates; the issuance of the court's written decision, filed by the clerk and served on the parties, is the final judgment of the court.

XXII. Interlocutory and Discretionary Review

A. *Interlocutory Appeals as of Right.* Generally, a party may not appeal as of right from an interlocutory order. *See R. 2:2-3(a); R. 2:2-4.* Rather, an appeal as of right may only be taken to the Appellate Division (1) from final judgments of the trial courts and tax courts; (2) to obtain review of final decisions or actions of a state administrative agency or officer and to review the validity of rules promulgated by the agency or officer; and (3) in such cases as provided by law. *R. 2:2-3(a).*

Civil interlocutory orders for which the law permits an appeal as of right include (1) orders appointing a statutory or liquidating receiver, *R. 4:53-1*; (2) matters where the trial court certifies that there is no just reason for delay of enforcement of a judgment and, therefore, directs entry of final judgment upon fewer than all the claims as to all parties, *R. 4:42-2*; (3) final custody determinations in a bifurcated matrimonial action, *R. 5:8-6*; (4) orders on a preliminary hearing in an adoption action, *R. 5:10-9*; (5) orders granting or denying a motion to extend the time to file a notice of tort claim, *N.J.S.A. 59:8-9*; and (6) an order compelling arbitration. *See R. 2:2-3(a)(3).*

B. *Permissive Appeals.* The Appellate Division may grant a party leave to file an appeal from an interlocutory order of a court or from an interlocutory decision or action of a state administrative agency or officer, if the final judgment, decision, or action thereof is appealable as of right. *See R. 2:2-4; R. 2:5-6.* The Appellate Division may grant leave to appeal "in the interest of justice." *R. 2:2-4.* However, because interlocutory review is counter to the policy favoring an uninterrupted proceeding at the trial level with a single and complete review, the "grant of interlocutory review is 'highly discretionary' and 'customarily exercised only sparingly.'" *Vitanza v. James*, 397 N.J. Super. 516, 517 (App. Div. 2008).

C. *Extraordinary Writs.* In general, to obtain review of a final decision or action of a state administrative agency or officer and to obtain review of any rule promulgated by a state agency or officer, a party may file an appeal as of right to the Appellate Division. *R. 2:2-3(a)(2).* To obtain review of the action or inaction of a municipal agency, a party must file an action in lieu of prerogative writs in the law division. *See R. 4:69-1; 40 N.J. Prac., Appellate Practice, § 25.2 (2d ed. 2005).* Prior to seeking review of a state or municipal agency's actions, a party normally must exhaust all administrative remedies. *See R. 2:2-3(a)(2); R. 4:69-5.* Final judgments of the law division in prerogative writs cases may then be appealed to the Appellate Division. *See 40 N.J. Prac., Appellate Practice, § 25.16.*