

Introduction

This checklist is not intended to be a comprehensive guide to appellate practice. For that, you should consult the *Rules Governing the Courts of the State of New Jersey* (the Court Rules) when pursuing an appeal. This checklist provides some assistance and is intended to serve as a practical guide on rule requirements most frequently questioned by pro se litigants. It also offers suggestions as to some matters not specifically addressed by the Court Rules.

Included in this checklist and elsewhere in the *pro se* kit are instructions and suggestions pertaining to various documents that must be filed with the Appellate Division in the course of pursuing your appeal. You are not required to file these documents all at the start of the process. For example, if you are an appellant and ordered a transcript, you may not receive it for several weeks, following which you have 45 days to file your brief. Indeed, it is likely to be over a year before you receive an Appellate Division decision on your appeal.

Initiating the Appeal

1. Appeals (or motions for leave to appeal, addressed below) are generally taken from judgments or orders signed by the trial judge and filed with the trial court. You cannot take an appeal from an opinion, even if written, or from an oral decision. Before filing an appeal, ensure that the trial judge's determination is reduced to a signed judgment or order and filed with the trial court. You have 45 days from the date of filing to appeal that judgment or order. In the case of a jury verdict or in a Special Civil Part case, the judgment or order may be entered on the docket sheet when the decision is rendered. In those instances, a photocopy of the docket sheet would suffice.
2. You have a right to appeal the **final** judgment or order of a trial court or decision of a State administrative agency. A judgment, order or decision is considered to be final when it disposes of everything before the court or agency. If there are no further issues to be resolved below, you should file a notice of appeal. You have 45 days from the date the judgment or order is filed to appeal. In agency matters, you generally have 45 days from the date of service of the decision. If you are beyond the 45 days, you may file a motion asking the court to permit you to file the appeal out of time.
3. If all issues as to all parties are not closed out at trial, the judgment, order or decision is interlocutory. In such instances, you may not file a notice of appeal. You would need to make a motion for leave to appeal, asking the court to consider the matter before it is final. That motion must be filed within 20 days after the date of service of such order or decision and must be accompanied by a brief outlining the facts and legal arguments for the court and giving reasons why they should be addressed at this time. With motions for leave to appeal, the court may exercise the option of granting leave to appeal and deciding the matter at the same time. For that reason, you should raise any supporting argument on the merits at the same time, while staying within the 25-page limit for the motion brief.
4. Occasionally, it is difficult to determine whether a judgment, order or decision is final or interlocutory. In such an event, you might consider filing both a notice of appeal and motion for leave to appeal. In the motion papers, you can explain the problem and ask the court if it deems the matter to be interlocutory, that you be granted leave to appeal.
5. In a few instances, a trial judge may certify an order as final although there are other issues to be resolved at trial. In that case, you should file a notice of appeal and not a motion for leave to appeal.

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6. As the accompanying notice of appeal indicates, if the proceedings below were transcribed or recorded, you must order a copy of the transcript. If you believe that the entire transcript is not necessary, you can either get your adversary to agree to abbreviate the transcript or move before the trial court or agency to abbreviate. To order a transcript, you should contact the county supervisor of court reporters, the court clerk or agency regarding cost, amount required as a deposit, etc. If the transcript is not ordered, you will be cited for a deficiency, which will result in delays in processing your appeal. If there is a transcript and you already have a copy, you need not order another copy. Simply certify on the notice of appeal that you have a copy in your possession. (See instructions for completing notice of appeal.)
7. Your notice of appeal or motion for leave to appeal must be accompanied by the required filing fee. Without it, your appeal or motion will be rejected. If you cannot afford the fee, you should send a motion to proceed as an indigent. In that motion, you should explain your circumstances to the court, which, at its discretion, may waive the fee. In addition, in civil matters the Court Rules require that within 30 days of filing your appeal, you should make a \$300.00 deposit for costs. These fee requirements do not apply if you are appealing a Board of Review decision or if you were declared indigent by the trial court and you can certify that your circumstances have not changed.
8. The filing of a notice of appeal does not automatically stay the judgment, order or decision that you are appealing. To secure a stay pending appeal, you should move before the trial court or agency for that stay. If it is denied, you may repeat the motion to the Appellate Division.
9. The filing of a motion for leave to appeal does not automatically stay the proceedings in the trial court or agency. A motion for stay must be made to the court or agency and if denied, to the Appellate Division.

Form of Appellate Division Documents

The Court Rules prescribe the form and manner of preparation of documents. Some of the most common deficiencies in this regard are the following:

- (a) Illegibility, particularly of appendices and exhibits.
- (b) Absence of firm covers of the proper color, not glassine, on front and back of briefs and appendices. Frequent handling during the appeal process may cause loss of cover or of pages at front or end of brief if firm covers are not used or if not firmly fastened. For merits briefs, white covers are required for appellant's brief, blue covers for respondent's brief and buff covers for an appellant's reply brief. On a motion, the movant's brief covers should be white and the brief of any responding party should be blue.
- (c) Insecure or improper stapling or fastening of papers. Stapling or fastening should be along the left margin or upper left-hand corner.
- (d) Briefs not typed. The court considers hand written briefs to be unacceptable.
- (e) Failure of pro se litigant to provide name, address and daytime telephone number.

Time for Serving and Filing Transcript, Briefs and Appendices

1. The court reporter or transcribing agency provides the Appellate Division with a copy of the transcript. The appellant must provide the remaining three copies and must provide one copy to any

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one respondent, to be shared by all the respondents. This should be done within 10 days of receipt of the complete transcript, but no later than at the time of filing the appellant's brief.

2. Pursuant to the Court Rules, the appellant shall serve and file a brief and appendix as follows:
 - (a) Within 45 days after the delivery of the transcript, if a verbatim record was made of the proceedings below.
 - (b) If the transcript was delivered prior to the filing of the notice of appeal or if no verbatim record was made of the proceedings below, within 45 days of the filing of the appeal.
 - (c) On an appeal from a State administrative agency, within the time stated above, or within 45 days after the Attorney General serves and files the statement of the items comprising the record on appeal, whichever is later.
3. A respondent shall serve and file a brief and appendix, if any, within 30 days after receiving the appellant's brief and appendix.
4. The appellant may serve and file a reply brief within 10 days after receiving the respondent's brief.
5. If a cross-appeal has been filed, the briefing schedule is similar, except that the appellant has 30 days to file a brief in response to the cross-appeal and the respondent cross-appellant has 10 days to file a reply.
6. In spite of the time provisions stated above, the court may enter a separate scheduling order. If it does, those time limits shall be the ones that must be adhered to.
7. Each party should file five copies of its brief and appendix with the Clerk's office and serve two copies on each of the other parties. A proof of service should be filed with the Clerk's office.

Contents of Brief and Appendix

1. Where the brief and appendix are bound together, there shall be a single table of contents for both. If the appendix is bound separately, the brief and appendix shall have separate tables of contents. The table of contents as to the brief shall include the point headings of the arguments raised in the brief. The table of contents as to the appendix shall indicate the first page of each document in the appendix.
2. You should enter the filing date of each document in the appendix at the head of the page. Filing dates are frequently material to the resolution of issues on appeal. Drafts of documents should not be used for the appendix but only copies of documents or exhibits that were actually provided to the trial court or agency.
3. The appendix should contain all the relevant documents essential for a proper consideration of the issues on appeal. It must contain both the judgment or order appealed from and the opinion or statement of findings and conclusions of the trial judge. If the opinion or findings and conclusions were delivered orally, it may be submitted to the court through the trial transcript. The Appellate Division judges are interested in seeing the trial court opinion or statement of findings and conclusions early in their examination of the record. Its location in the record should be prominently identified both in the appendix table of contents and the procedural history in the brief. If the opinion was published, the citation should be given, by supplemental letter if necessary.

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4. The appendix should also contain any pretrial order, the complaint, answers and a copy of the notice of appeal. If the judgment or order being appealed is the result of a motion, the appendix should contain the motion papers.
5. Where the exhibits are of such size or volume as to prohibit the reproduction in the appendix, a party should submit a letter to the Clerk's office, with a copy to the adversary, itemizing and identifying the exhibits, including the approximate size and bulk of each. At the appropriate time, the court will direct the Clerk's office to advise the party if they desire to see these exhibits and when and where to deliver them.
6. If the appendix is bulky or lengthy, it is preferable for the convenience of the judges that it be bound separately from the brief. No more than 200 sheets may be included in a volume. The pages of the appendix shall be numbered consecutively followed by the letter "a" (*e.g.* 1a, 2a, etc.).
7. The page limits for briefs must be strictly observed. Initial briefs of the parties shall not exceed 65 pages. Reply briefs shall not exceed 20 pages. Respondent/cross-appellant's brief filed pursuant to *R. 2:6-2(d)* shall not exceed 90 pages. Appellant/cross-respondent's brief pursuant to *R. 2:6-4(e)* shall not exceed 65 pages.
8. The procedural history in the brief should be succinct and should cross-reference the pleadings and rulings in the appendix. It should not be a mere recitation of events. For example, it is not sufficient to say:

On January 5, 1995 the plaintiff filed a complaint, on January 20, 1995 the defendant filed an answer and counterclaim, and on March 6, 1995 the court granted summary judgment dismissing the complaint and in favor of the defendant on the counterclaim.

First, provide the court some idea of the nature of the cause of action stated in the complaint, of the defenses raised in the answer, etc. Next to each document referred to, point the court to the page of the appendix where that document is located. Avoid raising your arguments in the procedural history or the statement of facts (discussed below).

9. It is improper to refer in the brief to any fact or evidence that was not part of the record in the trial court or agency or to include any such material in the appendix. If a party deems it essential in the interest of justice to bring to the attention of the Appellate Division any material not part of the record below, the proper course is a motion to supplement the record or to remand to the trial court or agency for taking of additional evidence.
10. The statement of facts in the brief should be in the form of a narrative, chronologically summarizing all pertinent facts of the case. It should not be a summary of all of the evidence given, witness by witness, in the trial. Each significant fact stated should be supported by a cross-reference to the appendix and/or transcript. Remember to avoid raising any arguments in the statement of facts. Do so under the appropriate point heading in the brief.
11. A separate point heading should be developed for each legal argument raised in the brief. Each argument may be supported by citing cases, statutes, Court Rules and other authorities. Each point of argument of a brief should be confined to discussion of that point and not intermingled with argument of other points.

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12. In addition to the aforesaid, the brief may include an optional preliminary statement, not to exceed three pages, providing a concise overview of the case.
13. If you cite cases to support your argument, follow the requirements of specifying the court and year of each case cited.
14. All citations and quotations should be checked for accuracy before filing the brief.
15. The brief must be typed on 8 1/2" x 11" paper and shall contain no more than 26 double spaced lines, of no more than 65 characters, including spaces.

Motions Generally

1. Motions are generally considered on the motion papers, without oral argument. If oral argument is desired, it should be requested in the notice of motion. However, the court very rarely permits oral argument on motions.
2. When filing a motion, you should fulfill the following requirements:
 - (a) A notice of motion setting forth the specific relief that you are seeking from the court.
 - (b) A supporting brief in which you outline the case for the court and present your reasons for seeking the relief contained in the motion. The Court Rules require that each motion be supported by a brief of not more than 25 pages. You may not be able to fully address the merits of your motion if you substitute a certification or affidavit in place of the motion brief.
 - (c) A proof of service indicating that you served two copies of the motion on each adversary.
 - (d) File an original and four copies of the motion with the Clerk's office.
 - (e) The complete caption, as it appears in the action below, should be reflected on each document.
 - (f) Date and sign each document.
3. You must serve your adversary when filing a motion. Generally, the Clerk's office will not submit a motion to the court if there is no affidavit or certification of service accompanying the motion papers, or received shortly thereafter.
4. When a motion is made for an extension of time to file a brief, the motion should state the date by which the brief can be filed. The moving party should begin the preparation of the brief, so that if the motion is denied, the requested date modified, or the motion is granted with little time left, the brief will be available for filing.
5. Generally, you may request one extension of up to 30 days without a motion, provided your adversary does not object. In that case, you need only send a letter stating your reason for the request and representing that your adversary does not object. A copy should be sent to your adversary.
6. If there are no deficiencies, a motion will generally be decided within four weeks. If the relief sought is of an urgent nature, the moving party might consider making an emergent application to the Appellate Division and should contact the Clerk's office to find out the Appellate Division judge

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on emergent duty for the county where the trial court or agency is located. The party seeking relief should be prepared to explain why the matter is considered emergent. If the relief sought is a stay of a judgment, order or decision pending appeal, the moving party should first move for relief from the trial court or agency and if it is denied, renew the application to the Appellate Division.

7. The Court Rules provide for a motion for summary disposition of the appeal. Any party to the appeal may make such a motion at any time after the filing of the notice of appeal, but not later than 25 days after the filing of respondent's brief unless leave is otherwise granted. Such a motion should demonstrate that the issues on appeal do not require further briefs or a full record.

Oral Argument

1. 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.
2. If you or your adversary request oral argument and you will be unavailable for some period of time in the future, you should advise the Clerk's office, as early as possible, of your unavailability in writing so that the matter will not be calendared for argument during your absence.
3. The court permits only a limited period of time for argument. Because the judges have read the briefs and researched the legal issues, the court will not allow incessant repetition of the contents of the briefs. This time should be used to focus the court's attention on specific arguments or issues the litigant deems important and to clarify matters of which the judges make inquiry.

Miscellaneous

1. In the absence of prior leave of court to do so, no supplemental letters or briefs may be sent to the court. The one exception to this rule is that a party may serve and file a letter calling to the court's attention, with a brief indication of their significance, relevant cases decided or legislation enacted after the filing of that party's brief. Any other party to the appeal may serve and file a short letter in response thereto within five days after receipt thereof.
2. The appellant may withdraw/dismiss the appeal, without consent, at any time prior to the first brief being filed. This can be done by a letter signed by the appellant and proof of service thereof on all the parties.
3. To withdraw/dismiss an appeal after the first brief has been filed, a stipulation of dismissal, signed by all the parties to the appeal or their attorneys, must be filed. All stipulations of dismissal are with prejudice and without costs, unless the court, on motion, allows otherwise.