New Jersey Courts
Independence • Integrity • Fairness • Quality Service

Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

www.njcourts.com • Phone: 609-984-0275 • Fax: 609-984-6968

[Questions or comments may be directed to 609-292-4638.]

TO: ASSIGNMENT JUDGES
CRIMINAL DIVISION JUDGES

DIRECTIVE # 05-14

[Supersedes Directive # 03-10]

FROM: GLENN A. GRANT

SUBJ: AMENDED FORM – NOTICE OF APPEAL RIGHTS AND TIME TO FILE A PETITION FOR POST-CONVICTION RELIEF AND COLLOQUY

DATE: AUGUST 25, 2014

Directive #20-06 (November 15, 2006) promulgated the Appeals Rights Form for use in criminal cases and the standard Appeals Rights colloquy to be used by the judge during sentencing to ensure that a "defendant understands his or her appeal rights and has executed the appeal rights form knowingly and intelligently." State v. Molina, 187 N.J. 531, 544 (2006). Directive #03-10 (March 9, 2010) promulgated revisions to the form and colloquy to address notice for the filing of post-conviction relief applications.

In its 2011-2013 report, the Criminal Practice Committee recommended revising the section of the form signed by a private attorney, which describes the procedure to be followed when a defendant decides to appeal and cannot afford to continue to retain private counsel. Those revisions to the form, as approved by the Supreme Court, and revisions to the colloquy, as endorsed by the Conference of Criminal Presiding Judges and the Conference of Criminal Division Managers, follow.

The Appeal Rights Form is being revised to conform with the current practice in R. 2:7-2(a) when a defendant is represented by private counsel at trial, but wishes to seek representation by the Office of the Public Defender for purposes of appeal. The form had required that private counsel refer the matter to the Office of the Public Defender to file the appeal, a practice that caused delays in the receipt and processing of 5A indigency applications, as well as the final indigency determination and referral of the matter to the Office of the Public Defender for representation.

The form as revised now provides that if the defendant no longer wishes to retain private counsel for purposes of appeal, private counsel will direct the defendant to contact the Criminal Division Manager's Office in the county of venue as soon as possible so that the defendant can complete an indigency application to ensure the appointment of the Office of the Public Defender within 45 days of the sentencing date.

Additionally, the form is being revised to include the contact address for the criminal case management office for the county where the conviction occurred. The proposed revisions will help ensure that if the defendant seeks representation by the Office of the Public Defender for the appeal, the indigency determination is made by the criminal case management office before the matter is referred to the Public Defender's Office. In that way, the Public Defender's Office, as opposed to the private attorney, will be able to file the notice of appeal on behalf of indigent individuals who have been deemed eligible for its services.

The colloquy used by judges during sentencing also has been revised to advise defendants that if private counsel does not continue representation on appeal, the defendant should contact the Criminal Division Manager's office to apply for a Public Defender.

Please share this information in your respective vicinages to ensure that members of the bar who practice in this area are informed of this change in procedure.

Attached for use in criminal cases are: (1) Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief, English-language version; (2) Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief, Spanish-language version; (3) Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief Colloquy, English-language version; and (4) Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief Colloquy, Spanish-language version. Any questions or comments regarding the form may be directed to Assistant Director Joseph Barraco at 609-292-4638.

G.A.G.

Attachments: (1) Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief, English-language version
(2) Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief, Spanish-language version
(3) Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief Colloquy, English-language version
(4) Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief Colloquy, Spanish-language version

Cc: Chief Justice Stuart Rabner
Acting Attorney General John J. Hoffman
Public Defender Joseph Krakora
Elie Honig, Director, Division of Criminal Justice
County Prosecutors
Regional Deputy Public Defenders
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Gurpreet Singh, Special Assistant
Susan Callaghan, Chief, Criminal Practice Division
Criminal Division Managers
Melaney Payne, Criminal Practice Division

ATTACHMENT 1

NOTICE OF APPEAL RIGHTS AND TIME TO FILE A PETITION FOR POST-CONVICTION RELIEF

(ENGLISH-LANGUAGE VERSION)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - _____ COUNTY
INDICTMENT NO. _____

STATE OF NEW JERSEY

- v. -

_____
Defendant

NOTICE OF APPEAL RIGHTS AND TIME TO FILE A PETITION FOR POST-CONVICTION RELIEF

I, _____, hereby certify as follows:

1. I am the defendant in the above referenced case.

2. I am being represented in this sentencing by _____ and he/she has reviewed this Form with me.

3. **Appeal Rights.** I understand that:
   (a) An appeal means having my case reviewed by a higher court,
   (b) I have a right to appeal my conviction(s) and sentence(s),
   (c) I have the right to be represented by counsel for that appeal,
   (d) If I am unable to hire private counsel for my appeal, the Office of the Public Defender will represent me or arrange for my representation, and
   (e) If I fail to file a notice of appeal with the Appellate Division within **45 days** of today's date, and unless I obtain a thirty-day extension of time on a showing of good cause and absence of prejudice, I will lose my right to appeal.

4. **Time Limits To File a Petition for Post-Conviction Relief.** I understand that I have **5 years** from today's date to file a petition for post-conviction relief, unless an exception to this general rule applies, as set forth in *R.* 3:22-12.

5. I am appearing before Judge _____, for sentencing today.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: _____ _____
Defendant

I have reviewed this Form with defendant and I am satisfied that he/she has been fully advised of the rights it describes.
DATED: _____ _____
Counsel for Defendant

(To Be Filled Out By Private Counsel Only)
If defendant decides to appeal and cannot afford to retain private counsel, I will direct him/her to contact the Criminal Division Manager's Office in the county of venue and complete an indigency application for appointment of the Office of the Public Defender within 45 days of today's date.

DATED: _____ _____
Counsel for Defendant

For information on appellate representation by the Office of the Public Defender, please write to the Superior Court Criminal Case Management Office in the county where the conviction occurred:

(Complete in duplicate: one fully executed copy to be delivered to the court for the court jacket and one to be given to the defendant.)

ATTACHMENT 2

NOTICE OF APPEAL RIGHTS AND TIME TO FILE A PETITION FOR POST-CONVICTION RELIEF

(SPANISH-LANGUAGE VERSION)

TRIBUNAL SUPERIOR DE NUEVA JERSEY
SUPERIOR COURT OF NEW JERSEY
DIVISIÓN DE DERECHO – CONDADO DE _____
LAW DIVISION - _____ COUNTY

ESTADO DE NUEVA JERSEY
STATE OF NEW JERSEY

NO. DE LA ACUSACIÓN FORMAL _____
INDICTMENT NO.

contra
v.

_____
Acusado
Defendant

NOTIFICACIÓN DE LOS DERECHOS DE APELACIÒN Y DEL PLAZO PARA PRESENTAR UNA SOLICITUD DE ASISTENCIA DESPUÈS DE LA CONDENA

NOTICE OF APPEAL RIGHTS AND TIME TO FILE A PETITION FOR POST-CONVICTION RELIEF

Yo, _____, por la presente certifico lo siguiente:
I, _____, hereby certify as follows:

1. Soy el acusado en la causa citada arriba.
   I am the defendant in the above referenced case.

2. _____ me está representando en este dictado de pena y él/ella ha revisado este Formulario conmigo.
   I am being represented in this sentencing by _____ and he/she has reviewed this Form with me.

3. **Derechos de apelación**: Entiendo que
   Appeal Rights. I understand that:

   (a) una apelación significa hacer que un tribunal superior revise mi causa,
   (a) An appeal means having my case reviewed by a higher court,

   (b) tengo el derecho de apelar mi(s) condena(s) y sentencia(s),
   (b) I have a right to appeal my conviction(s) and sentence(s),

   (c) tengo el derecho de que me represente un abogado en dicha apelación,
   (c) I have the right to be represented by counsel for that appeal,

   (d) si no puedo contratar a un abogado privado para mi apelación, la Oficina del Abogado de Oficio me representará o hará arreglos para mi representación, y
   (d) If I am unable to hire private counsel for my appeal, the Office of the Public Defender will represent me or arrange for my representation, and

   (e) si no presento un aviso de apelación ante la División de Apelaciones dentro de los **45 días** subsiguientes a la fecha de hoy, y a menos que obtenga una prórroga de treinta días al demostrar motivo suficiente y la ausencia de perjuicio, perderé mi derecho a apelar.
   (e) If I fail to file a notice of appeal with the Appellate Division within **45 days** of today's date, and unless I obtain a thirty-day extension of time on a showing of good cause and absence of prejudice, I will lose my right to appeal.

4. **Plazos para presenter una solicitud de asistencia después de la condena**. Entiendo que tengo **5 años** a partir de la fecha de hoy para presentar una solicitud de asistencia después de la condena a menos que corresponda una excepción a esta regla general, según se expone en *R.* 3:22-12,
   Time Limits To File a Petition for Post-Conviction Relief. I understand that I have **5 years** from today's date to file a petition for post-conviction relief, unless an exception to this general rule applies, as set forth in *R.* 3:22-12.

5. Comparezco hoy ante el juez _____ para la imposición de la sentencia.
   I am appearing before Judge _____ for sentencing today.

Certifico que las declaraciones que anteceden hechas por mí son veraces. Sé que si cualquiera de las declaraciones que anteceden hechas por mi es intencionalmente falsa, estaré sujeto a un castigo.
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

FECHADO/ Dated: _____

_____
Acusado/ Defendant

He revisado este Formulario con el acusado y estoy satisfecho de que se le ha informado debidamente de los derechos que describe.

I have reviewed this Form with defendant and I am satisfied that he/she has been fully advised of the rights it describes.

FECHADO/ Dated: _____ _____

Abogado del acusado / Counsel for Defendant

(Para ser llenado solamente por un abogado privado)
(To Be Filled Out By Private Counsel Only)

Si el acusado decide apelar y no puede seguir pagando a un abogado privado, le instruiré que se comunique con la Oficina del Administrador de la División Penal del condado de jurisdicción territorial y llene una solicitud de indigencia para el nombramiento de la Oficina del Abogado de Oficio dentro de los 45 días subsiguientes a la fecha de hoy.

If defendant decides to appeal and cannot afford to continue to retain private counsel, I will direct him/her to contact the Criminal Division Manager's Office in the county of venue and complete an indigence application for appointment of the Office of the Public Defender within 45 days of today's date.

FECHADO/ Dated: _____ _____

Abogado del acusado / Counsel for Defendant

Para información sobre la representación en apelaciones por la Oficina del Abogado de Oficio, escriba a la Oficina de Administración de Causas Penales en el condado donde tuvo lugar la condena:

For information on appellate representation by the Office of the Public Defender, please write to the Superior Court Criminal Case Management Office in the county where the conviction occurred:

(Llénelo por duplicado; una copia debidamente firmada se ha de entregar al tribunal para la cubierta del tribunal y una es para dársela al acusado).

(Complete in duplicate: one fully executed copy to be delivered to the court for the court jacket and one to be given to the defendant.)

ATTACHMENT 3

NOTICE OF APPEAL RIGHTS AND TIME TO FILE A PETITION FOR POST-CONVICTION RELIEF COLLOQUY

(ENGLISH-LANGUAGE VERSION)

NOTICE OF APPEAL RIGHTS AND TIME TO FILE A PETITION FOR POST-CONVICTION RELIEF COLLOQUY

You have 45 days from today to appeal your conviction and sentence.

[If the defendant was represented by private counsel, read the following:

> **If your private attorney does not continue to represent you on appeal, you or your attorney should contact the Criminal Division Manager's office to apply for a Public Defender.]**

If you cannot afford counsel the Public Defender's Office will continue to represent you.

If you miss the 45 day deadline you can ask for a 30 day extension to file your appeal if you can show a good reason for missing the deadline.

If you miss the extended deadline you may lose your right to appeal. Do you have any questions about your right to appeal?

You have 5 years from today's date to file a petition for post-conviction relief, unless an exception to this general rule applies as set forth in *R.* 3:22-12.

Did you discuss the Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief Appeal Rights with your attorney?

Did you sign the Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief?

Based on what you have said, I am satisfied that you have knowingly and intelligently executed the Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief and clearly understand your appeal rights and time to file a post-conviction relief application.

ATTACHMENT 4

NOTICE OF APPEAL RIGHTS AND TIME TO FILE A PETITION FOR POST-CONVICTION RELIEF COLLOQUY

(SPANISH-LANGUAGE VERSION)

NOTIFICACIÓN DE LOS DERECHOS DE APELACIÓN Y DEL PLAZO PARA PRESENTAR UNA PETICIÓN DE COLOQUIO PARA REPARACIÓN DESPUÉS DE LA CONDENA

NOTICE OF APPEAL RIGHTS AND TIME TO FILE A PETITION FOR POST-CONVICTION RELIEF COLLOQUY

Usted tiene 45 días a partir de hoy para apelar su sentencia condenatoria y condena.

You have 45 days from today to appeal your conviction and sentence.

[Si el acusado estuvo representado por un abogado particular, lea lo siguiente:

[If the defendant was represented by private counsel, read the following:

Si su abogado particular no va a continuar representándolo en la apelación, usted (o su abogado) debe comunicarse con la oficina del Administrador de la División Penal para solicitar un Abogado de Oficio].

If your private attorney does not continue to represent you on appeal, you or your attorney should contact the Criminal Division Manager's office to apply for a Public Defender.]

Si usted no puede pagar a un abogado, la Oficina del Abogado de Oficio lo seguirá representando.

If you cannot afford counsel the Public Defender's Office will continue to represent you.

Si usted no cumple con el plazo de 45 días, puede pedir una extensión de 30 días para presentar su apelación si puede indicar una buena razón para no haber cumplido con el plazo.

If you miss the 45 day deadline you can ask for a 30 day extension to file your appeal if you can show a good reason for missing the deadline.

Si usted no cumple con el plazo extendido, puede perder su derecho de apelar. ¿Tiene alguna pregunta sobre su derecho a apelar?

If you miss the extended deadline you may lose your right to appeal. Do you have any questions about your right to appeal?

Usted tiene 5 años a partir de la fecha de hoy para presentar una petición de reparación después de la condena, a menos que corresponda una excepción a esta regla general según se expone en *R.* 3:22-12.

You have 5 years from today's date to file a petition for post-conviction relief, unless an exception to this general rule applies as set forth in *R.* 3:22-12.

¿Habló usted con su abogado sobre la Notificación de los derechos de apelación y el plazo para presentar una solicitud de reparo judicial después de la condena?

Did you discuss the Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief Appeal Rights Form with your attorney?

¿Firmó usted la Notificación de los derechos de apelación y el plazo para presentar una petición de reparación después de la condena?

Did you sign the Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief?

Basado en lo que usted ha dicho, estoy conforme de que usted ha ejecutado a sabiendas e inteligentemente la Notificación de los derechos de apelación y el plazo para presentar una petición de reparación después de la condena y entiende claramente sus derechos de apelación y el plazo para presentar una petición de reparación después de la condena.

Based on what you have said, I am satisfied that you have knowingly and intelligently executed the Notice of Appeal Rights and Time to File a Petition for Post-Conviction Relief and clearly understand your appeal rights and time to file a post conviction relief application.