RULE 2:11. ARGUMENT; DETERMINATION; COSTS; REHEARING

2:11-1. Appellate Calendar; Oral Argument

(a) Calendar. The clerk of the appellate court shall enter all appeals upon a docket in chronological order and, except for appeals on leave granted or from orders compelling or denying arbitration which shall be entitled to a preference, cases shall be argued or submitted for consideration without argument in the order of perfection, insofar as practicable, unless the court otherwise directs with respect to a category of cases or unless the court enters an order of acceleration as to a particular appeal on its own or a party's motion.

(b) Oral Argument.

(1) n the Supreme Court, appeals shall be argued orally unless the court dispenses with argument.

(2) In the Appellate Division, appeals shall be submitted for consideration without argument, unless argument is requested by one of the parties within 14 days after service of the respondent's brief or is ordered by the court. Such request shall be made by a separate captioned paper filed with the Clerk in duplicate. The clerk shall notify counsel of the assigned argument date. If one of the parties has filed a timely request for oral argument, the other parties may rely upon that request and need not file their own separate requests for argument. A party may withdraw its request for oral argument only if it has the consent to do so from all other parties participating in the appeal.

(3) Counsel shall not be permitted to argue for a party who has neither filed a brief nor joined in another party's brief. The appellant shall be entitled to open and conclude argument. An appeal and cross appeal shall be argued together, the party first appealing being entitled to open and conclude, unless the court otherwise orders. Unless the court determines more time is necessary, each party will be allowed 30 minutes for argument in the Supreme Court and 15 minutes in the Appellate Division, but the court may terminate the argument at any time it deems the issues adequately argued. No more than two attorneys will be heard for each party in the Appellate Division, and one attorney will be heard for each party in the Supreme Court, unless the Court otherwise orders. An attorney will not be permitted to read at length from the briefs, appendices, transcripts or decision.

Note: Source — R.R. 1:8-1(a) (b), 1:8-2(a), 1:8-3, 1:8-4, 2:8-3. Amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended June 29, 1973 to be effective September 10, 1973; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended November 2, 1987 to be effective January 1, 1988; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 19, 2012 to be effective September 4, 2012; paragraph (b) amended July 22, 2014 to be effective September 1, 2014; paragraph (b)(3) amended July 27, 2018 to be effective September 1, 2018.

2:11-2. Determination of Appeal on Motion for Leave to Appeal

Where summary disposition is appropriate, the court may elect to consider the merits of the appeal simultaneously with the motion for leave to appeal on the motion papers alone. Otherwise t may grant leave to appeal and determine the appeal on the papers submitted on the motion and any additional papers it may require. Appeals on leave granted shall be expedited.

Note: Amended July 16, 1981 to be effective September 14, 1981; amended July 31, 1981 to be effective September 14, 1981.

2:11-3. Opinion, Judgment; Stay After Judgment

(a) Dissenting or Concurring Opinion. The court shall file a written opinion upon the final determination of every appeal. A judge of the Appellate Division dissenting or concurring as to result only shall file a separate opinion stating the reasons for his action.

(b) Judgment; Order for Bail. The opinion of the appellate court shall include its judgment, and no other form of judgment shall be required. It shall state whether the judgment, order or determination below is affirmed, reversed or modified, or it may provide for final judgment dispositive of the action. The date of the filing of the opinion shall be deemed to be the date of the entry of the judgment. If the appellate court reverses a judgment of conviction of a defendant in custody, it may direct the trial court to admit him to bail.

(c) Notice. Forthwith upon the filing of the opinion, the clerk of the appellate court shall mail true copies thereof to the clerk of the court or agency below and to the parties.

(d) Stay of Judgment. A motion for a stay of an appellate court judgment shall be served ad filed within 20 days of its entry unless the time is enlarged by court order.

(e) Affirmance Without Opinion.

(1) Civil Appeals. When in a civil appeal the Appellate Division determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision:

(A) that a judgment of a trial court is based on findings of fact which are adequately supported by evidence;

(B) that the evidence in support of a jury verdict is not insufficient;

(C) that the determination of a trial court on a motion for a new trial does not constitute a manifest denial of justice;

(D) that the decision of an administrative agency is supported by sufficient credible evidence on the record as a whole;

(E) that some or all of the arguments made are without sufficient merit to warrant discussion in a written opinion;

then and in any such case the judgment or order under appeal may be affirmed without opinion and by an order quoting the applicable paragraph of this rule.

(2) Criminal, Quasi-Criminal and Juvenile Appeals. When in an appeal in a criminal, quasi-criminal or juvenile matter, the Appellate Division determines that some or all of the arguments made are without sufficient merit to warrant discussion in a written opinion, the court may affirm by specifying such arguments and quoting this rule and paragraph.

Note: Source-R.R. 1:9-1(a) (second sentence) (b), 2:4-2, 2:9-1(a); paragraph (e) adopted May 2, 1975, to be effective May 19, 1975; paragraph (e)(2) amended July 21, 1980 to be effective September 8, 1980; paragraph (d) amended November 1, 1985 to be effective January 2, 1986; paragraph (e)(2) amended July 13, 1994 to be effective September 1, 1994; paragraphs (e)(1) and (e)(2) amended July 5, 2000 to be effective September 5, 2000.

2:11-4. Attorney's Fees on Appeal

An application for a fee for legal services rendered on appeal shall be made by motion supported by affidavits as prescribed by *R*. 4:42-9(b) and (c), which shall be served and filed within 10 days after the determination of the appeal. The application shall state how much has been previously paid to or received by the attorney for legal services both in the trial and appellate courts or otherwise, including any amount received by way of pendente lite allowances, and what arrangements, if any, have been made for the payment of a fee in the future. Fees may be allowed by the appellate court in its discretion:

(a) In all actions in which an award of counsel fee is permitted by R. 4:42-9(a), except appeals arising out of mortgage or tax certificate foreclosures.

(b) In a worker's compensation proceeding. Where the determination of the Supreme Court reverses a denial of compensation in the Appellate Division, the Supreme Court shall determine the fees for services rendered in both appellate courts.

(c) As a sanction for violation by the opposing party of the rules for prosecution of appeals. In its disposition of a motion or on an order of remand for further trial or administrative agency proceedings, where the award of counsel fees abides the event, the appellate court may refer the issue of attorney's fees for appellate services for disposition by the trial court or, if applicable, by the agency that is serving solely as the forum and that has the authority to award counsel fees against litigants appearing in that forum.

Note: Source — *R.R*. 1:9-3, 2:9-3, 1:12-9(f), 4:55-7(a)(b)(e), 5:2-5(f). Paragraph (d) amended July 14, 1972 to be effective September 5, 1972; text amended and paragraph (g) and (h) adopted July 29, 1977 to be effective September 6, 1977; paragraphs (a) (b) (c) (e) (g) and (h) deleted, new paragraph (a) adopted, former paragraph (d) redesignated (b) and former paragraph (f) redesignated paragraph (c) November 1, 1985 to be effective January 2, 1986; introductory paragraph amended July 13, 1994 to be effective September 1, 1994; final paragraph added June 28, 1996 to be effective September 1, 1996; final paragraph amended July 27, 2918 to be effective September 1, 2018.

2:11-5. Costs on Appeal

Such costs as are recoverable by law, including the cost of the transcript and the reasonable expense of printing or reproducing briefs, appendices, motions and petitions, shall be taxed by the clerk of the appellate court in the manner ordered by the appellate court or in the absence of such order, in favor of the prevailing party except that where a new trial is ordered taxation of costs on the appeal shall abide the event of the new trial unless the court otherwise orders.

Note: Source-R.R. 1:9-2. Amended July 7, 1971 to be effective September 13, 1971.

2:11-6. Motion for Reconsideration

(a) Service; Filing; Contents; Argument. Within ten days after entry of judgment or order, unless such time is enlarged by court order, a party may apply for reconsideration by serving two copies of a motion on counsel for each of the opposing parties and filing nine copies thereof with the Supreme Court, or five copies thereof with the Appellate Division, as appropriate. One filed copy shall be signed by counsel. The motion shall not exceed 25 pages and shall contain a brief statement and argument of the ground relied upon and a certificate of counsel that it is submitted in good faith and not for purposes of delay. The motion shall have annexed thereto a copy of the opinion or order that is the subject thereof. An answer shall be filed only if requested by the court, and within ten days after such request or within such other time as the court fixes therein. The motion will not be argued orally.

(b) Grant of Motion. A motion for reconsideration will be granted only if it is moved by a justice or judge who concurred in the judgment or decision, and a majority of the court so determines. It may be granted in whole or in part, and on terms. Unless otherwise ordered by the court, the motioning party shall be regarded as the appellant on reconsideration of a judgment or order that disposes of the appeal and shall file a brief within 30 days of the entry of the order granting the reconsideration. Thereafter the same procedures shall be followed as are provided for an original appeal.

(c) Determination of Appeal. The court may, where appropriate, summarily redetermine the appeal or amend its opinion.

Note: Source-CR.R. 1:9-4(a)(b)(c). Caption, paragraph (a) and paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000.