

## **RULE 2:9. MISCELLANEOUS PROCEEDINGS PENDING APPEAL**

### **2:9-1. Control by Appellate Court of Proceedings Pending Appeal or Certification**

(a) **Control Prior to Appellate Disposition.** Except as otherwise provided by R. 2:9- 3, 2:9-4 (bail), 2:9-5 (stay pending appeal), 2:9-7, 2:9-13(f), and 3:21-10(d), the supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed. The trial court, however, shall have continuing jurisdiction to enforce judgments and orders pursuant to R. 1:10 and as otherwise provided. In addition, when an appeal is taken from an order compelling or denying arbitration, the trial court shall retain jurisdiction to address issues relating to claims and parties that remain in that court. When an appeal is taken from an order involving a child who has been placed in care by the Division of Child Protection and Permanency, the trial court shall retain jurisdiction to conduct summary hearings in due course to address issues not the subject of the appeal relating to the child or the child's family. Unless the appeal concerns the permanency plan of the child, the trial court also shall retain jurisdiction to conduct hearings to address the permanency plan of the child. The appellate court may at any time entertain a motion for directions to the court or courts or agencies below or to modify or vacate any order made by such courts or agencies or by any judge below.

(b) **Proceedings on Remand to Tribunal of First Instance.** When the judgment or decision of the court, agency or officer of first instance has been reviewed by a court whose judgment is reviewable by the Appellate Division, the appellate court may, if it retains jurisdiction and remands to the tribunal of first instance for any appropriate action therein, direct that after execution of the remand the proceedings be returned to itself without preliminary review by the court to which appeal was first taken.

(c) **Ineffective Assistance of Counsel Claim in Appeals from Judgment Terminating Parental Rights.** In appeals from judgments terminating parental rights pursuant to N.J.S.A. 30:4C-15 et seq. in which ineffective assistance of counsel has been alleged, the appellate court, if it determines there to be a genuine issue of material fact on the issue of the representation provided by trial defense counsel that requires resolution, may retain jurisdiction and remand the case to the trial judge for an accelerated hearing to be completed within 30 days to be followed promptly by an oral opinion by the trial judge. The parties shall then be permitted simultaneously to exchange supplemental appellate briefs on the limited issue of the remand no later than seven days after the filing of the transcript of the remand proceedings.

**Note:** Source – R.R. 1:4-1 (first sentence), 1:10-6(a) (first and third sentences). Paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; new paragraph (c) adopted July 16, 2009 to be effective September 1, 2009; paragraph (a) amended July 19, 2012 to be effective September 4, 2012; paragraph (a) amended July 27, 2015 to be effective September 1, 2015; paragraph (a) amended October 19, 2016 to be effective January 1, 2017.

## **2:9-2. Extension and Acceleration of Time; Adjournments**

The time fixed by these Rules for the taking of any proceeding on appeal or certification may not be extended by consent of the parties. Such extension may, however, be granted by order for good cause shown unless otherwise provided by Rule. The time schedule may be accelerated on the court's own motion or on the motion of a party. Adjournments, extensions with consent, and accelerations of time may be granted by the Chief Justice, or the Clerk of the Supreme Court acting under the direction of the Chief Justice, or by the presiding judge of a part of the Appellate Division or the Clerk of the Appellate Division acting under the direction of the presiding judge.

**Note:** Source – R.R. 1:7-13, 1:8-2(b); amended November 1, 1985 to be effective January 2, 1986.

## **2:9-3. Stay Pending Review in Criminal Actions**

(a) Imprisonment. A sentence of imprisonment shall not be stayed by the taking of an appeal or by the filing of a notice of petition for certification, but the defendant may be admitted to bail as provided in R. 2:9-4.

(b) Fine; Probation. A sentence to pay a fine and an order placing the defendant on probation may be stayed by the trial court on appropriate terms if an appeal is taken or a notice of petition for certification is filed. If the court denies a stay, it shall state its reasons briefly, and the application may be renewed before the appellate court. Pending the appellate proceedings, the court may require the defendant to deposit, in whole or part, the fine and costs with the official authorized by law to receive the same in the county in which the conviction was had, or may require a bond for the payment thereof, or may require the defendant to submit to an examination of assets, and may make an appropriate order restraining the defendant from dissipating any assets.

(c) Stay Following Appeal by the State. Notwithstanding paragraphs (a) and (b) of this rule, execution of sentence shall be stayed pending appeal by the State pursuant to N.J.S.A. 2C:44-1(f)(2). Whether the sentence is custodial or noncustodial, bail pursuant to R. 2:9-4 shall be established as appropriate under the circumstances. A defendant may elect to execute a sentence stayed by the State's appeal but such election shall constitute a waiver of the right to challenge any sentence on the ground that execution has commenced.

(d) Stay of Order of Enrollment in a Pretrial Intervention Program. An order of the trial court enrolling a defendant into a pretrial intervention program over the objection of the prosecutor shall be automatically stayed for fifteen days following the date of its entry, and if the prosecutor files a notice of appeal within said fifteen-day period, during the pendency of the appeal.

(e) Court to Which Motion Is Made. Pending appeal or certification to the Supreme Court respecting a judgment of the Appellate Division, application for a stay pending review shall be first made to the Appellate Division.

**Note:** Source — R.R. 1:2-8(a) (sixth sentence), 1:4-3(a) (first sentence) (b)(c)(d); paragraph (c) amended and paragraph (d) deleted July 29, 1977 to be effective September 6, 1977; paragraph (c) caption amended July 24, 1978 to be effective September 11, 1978; paragraph (d) adopted September 10, 1979 to be effective immediately; paragraph (d) amended July 16, 1981 to be effective September 14, 1981; paragraph (e) adopted November 1, 1985 to be effective January 2, 1986; paragraphs (c) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (e) redesignated as paragraph (f) and new paragraph (e) adopted June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) deleted, former paragraphs (b) and (c) redesignated as paragraphs (a) and (b), former paragraph (d) amended and redesignated as paragraph (c), and former paragraphs (e) and (f) redesignated as paragraphs (d) and (e) July 27, 2018 to be effective September 1, 2018; paragraph (c) amended July 31, 2020 to be effective September 1, 2020.

#### **2:9-4. Bail after Conviction**

Except as otherwise provided by R. 2:9-5(a), the defendant in criminal actions shall be admitted to bail on motion and notice to the county prosecutor pending the prosecution of an appeal or proceedings for certification only if it appears that the case involves a substantial question that should be determined by the appellate court, that the safety of any person or of the community will not be seriously threatened if the defendant remains on bail and that there is no significant risk of defendant's flight. Pending appeal to the Appellate Division, bail may be allowed by the trial court; or if denied by the trial court, by the Appellate Division; or if denied by the Appellate Division, by the Supreme Court. Following disposition in the Appellate Division and pending proceedings in the Supreme Court, bail may be allowed by the Appellate Division or if denied by the Appellate Division, by the Supreme Court. A copy of an order entered by an appellate court granting bail shall be forwarded by the clerk of the appellate court to the sentencing court and clerk of the trial court. A trial court denying bail shall state briefly its reasons therefor. A judge or court allowing bail may at any time revoke the order admitting defendant to bail.

**Note:** Source — R.R. 1:4-3(e), 1:4-4. Amended June 29, 1973 to be effective September 10, 1973. Amended July 17, 1975 to be effective September 8, 1975; amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; amended July 27, 2018 to be effective September 1, 2018.

#### **2:9-5. Stay of Proceedings in Civil Actions, Contempts, and Arbitrations**

(a) Stay on Order; Bond, Other Security or Cash Deposit. Except as otherwise provided by R. 1:10 (Contempt), neither an appeal, nor motion for leave to appeal, nor a proceeding for certification, nor any other proceeding in the matter shall stay proceedings in any court in a civil action or summary contempt proceeding, but a stay with or without

terms may be ordered in any such action or proceeding in accordance with R. 2:9-5(b). If a stay is denied after conviction in a summary contempt proceeding, bail shall be allowed as provided by R. 2:9-4. A judgment or order in a civil action adjudicating liability for a sum of money or the rights or liabilities of parties in respect of property which is the subject of an appeal or certification proceedings shall be stayed only upon the posting of a supersedeas bond or other form of security pursuant to R. 2:9-6 or a cash deposit pursuant to R. 1:13-3(c), unless the court otherwise orders after notice and on good cause shown. Such posting or deposit may be ordered by the court as a condition for the stay of any other judgment or order in a civil action.

(b) **Court to Which Motion Made.** A motion for a stay in a civil action or contempt proceeding prior to the date of the oral argument in the appellate court or of submission to the appellate court for consideration without argument shall be made first to the court which entered the judgment or order. Thereafter the motion shall be made to the appellate court. If the motion is denied below, it may be made again to the appellate court; if granted below, the appellate court may entertain a motion to dissolve the stay. The grant or denial of a stay by the Appellate Division may be reviewed on motion to the Supreme Court on notice to the Appellate Division without taking an appeal to the Supreme Court. Following disposition in the Appellate Division and pending proceedings in the Supreme Court, a stay shall be sought in the first instance from the Appellate Division. Further relief from its order may be sought in the Supreme Court.

(c) **Stay of Arbitration Pending Appeal.** If an order compelling arbitration is appealed as of right pursuant to R. 2:2-3(a), then any party subject to the order may move in the trial court for a stay of the arbitration pending appeal. If so requested, the stay of the arbitration shall be granted unless the court finds that exceptional circumstances warrant the arbitration to proceed while the appeal is pending. If an order compelling or denying arbitration is appealed as of right pursuant to R. 2:2-3(a) in circumstances where the trial court retains jurisdiction over remaining claims or parties pursuant to the exception set forth in R. 2:9-1(a), any party may move in that court for a stay of proceedings pertaining to such remaining claims or parties pending appeal. The trial court shall exercise its sound discretion in the interests of justice in deciding whether to grant or deny the stay and whether any conditions shall apply. Any party may apply to the appellate court, by way of a timely motion filed in accordance with R. 2:8-1, to obtain review of the trial court's disposition of the application for a stay pending appeal.

**Note:** Source – R.R. 1:4-5, 1:4-6, 1:4-7, 1:10-6(b), 2:4-3 (first three sentences). Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; caption amended, paragraph (a) caption and text amended, and new paragraph (c) adopted July 19, 2012 to be effective September 4, 2012.

## **2:9-6. Supersedeas Bond; Exceptions**

### **(a) Supersedeas Bond; Other Form of Security.**

(1) Except as otherwise provided in paragraph (c), the supersedeas bond or the form of security other than a supersedeas bond shall be presented for approval to the court or agency from which the appeal is taken, or to the court to which certification is sought, and shall have such surety or sureties as the court requires. Unless the court otherwise orders after notice on good cause shown, the bond or other form of security shall be conditioned for the satisfaction of the judgment in full, together with interest and trial costs, and to satisfy fully such modification of judgment, additional interest and costs and damages as the appellate court may adjudge.

(2) In determining whether good cause exists to approve a supersedeas bond in an amount less than the full judgment together with interest and trial costs or to approve a form of security other than a supersedeas bond either in the amount of the full judgment or an amount less than the full judgment together with interest and trial costs, the court shall consider all relevant factors, including, but not limited to, the amount and nature of the judgment, anticipated interest and costs, the availability and cost of a supersedeas bond or other form of security, the assets of the judgment debtor and of the judgment debtor's insurers, sureties and indemnitors, if any, the judgment debtor's ability to dissipate assets, and the risk of harm to the parties on the appeal. The burden shall be on the party seeking approval of a supersedeas bond in an amount less than the full judgment together with interest and trial costs or a form of security other than a supersedeas bond either in the full judgment amount or an amount less than the full judgment together with interest and trial costs to show that the posting of a supersedeas bond in the full judgment amount would cause undue economic hardship and that in the circumstances such lesser amount or other form of security is adequate and just. In the event the court approves a form of security other than a supersedeas bond or a supersedeas bond in an amount less than the amount of the judgment plus anticipated interest and costs, the court shall impose additional conditions on the judgment debtor to prevent the dissipation, the diminution in the aggregate value, or the diversion of the judgment debtor's assets during the appeal.

(3) When the judgment determines the disposition of the property in controversy or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court below, the amount of the supersedeas bond shall be fixed at such sum only as will secure the damages recovered for the use and detention of the property, trial and appellate costs, and interest.

(4) In all other cases not specifically provided for herein the amount of the supersedeas bond shall be fixed by the court.

(b) Appellants Excepted. When an appeal is taken or certification sought by the State or any political subdivision thereof or any of their respective officers or agencies

or by direction of any of the principal departments of the State and the operation or enforcement of a judgment or order is stayed, no bond, obligation or other security shall be required from the appellant.

(c) **Bail Forfeiture Appeals.** Simultaneous with the filing of notice of appeal in respect of a bail forfeiture judgment by or on behalf of an insurer, the appellant shall deposit the full amount of the judgment with the Clerk of the Superior Court in cash or by certified, cashiers or bank check. The court for good cause shown may allow the posting of a supersedeas bond or other form of security in lieu of the cash deposit. Good cause, however, shall not be satisfied by an application to extend the time to locate the defendant or to stay payment of a forfeited bond, entry of a judgment, or preclusion from the bail registry maintained by the Superior Court. The notice of appeal in a bail forfeiture appeal shall be accompanied by proof of compliance with this rule. Such proof shall be provided by affidavit, unless the court otherwise orders.

**Note:** Source – R.R. 1:4-8(a) (c); paragraph (a) amended and paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 21, 2011 to be effective September 1, 2011; paragraph (a) caption amended, text of paragraph (a) redesignated as subparagraphs (a)(1), (a)(3) and (a)(4), new subparagraph (a)(2) adopted, and paragraph (c) amended July 19, 2012 to be effective September 4, 2012.

## **2:9-7. Temporary Relief in Administrative Proceedings**

On or after the filing with the Appellate Division of a notice of appeal or of a notice of motion for leave to appeal from a state administrative agency or officer, a motion for ad interim relief or for a stay of the decision, action or rule under review shall be made in the first instance to the agency whose order is appealed from and, if denied, to the Appellate Division.

**Note:** Source – R.R. 4:88-12(a) (first sentence); amended July 24, 1978 to be effective September 11, 1978; amended November 1, 1985 to be effective January 2, 1986.

## **2:9-8. Temporary Relief in Emergent Matters**

When necessary, temporary relief, stays, and emergency orders may be granted, with or without notice, by a single Justice of the Supreme Court or, if the matter is pending in the Appellate Division, by a single judge thereof, to remain in effect until the court acts upon the application. A request to the Supreme Court for emergent relief from an order or emergent application disposition of the Appellate Division may be made by contacting the Supreme Court Clerk's office, which will handle intake and referral of the matter to a single Justice on a rotating basis or to the full Court, as appropriate.

**Note:** Source – R.R. 1:1-5A, 2:4-3 (fourth sentence), 4:88-12(a) (second sentence), 4:88-12(b); amended January 22, 1974, effective immediately; amended July 29, 1977 to be effective September 6, 1977; amended July 19, 2012 to be effective September 4, 2012.

## **2:9-9. Sanctions for Non-Compliance with Rules**

Failure properly to prosecute or defend an appeal or proceedings for certification shall be ground for such action as the appellate court deems appropriate, including, but not limited to, dismissal of the appeal or petition, imposition of costs or attorney's fees or such other penalty as may be assessed personally against the attorney.

**Note:** Source – R.R. 1:4-1 (second sentence), 1:4-2(a) (b), 1:7-2 (seventh sentence), 1:19-6(a) (second sentence). Amended July 24, 1978 to be effective September 11, 1978.

## **2:9-10. Effect of Appeal by the State**

An appeal by the State pursuant to N.J.S.A. 2C:44-1(f)(2) shall not stay the entry of final judgment for purposes of an appeal or cross-appeal by the defendant.

**Note:** Adopted September 10, 1979 to be effective immediately; amended July 28, 2004 to be effective September 1, 2004; amended July 31, 2020 to be effective September 1, 2020.

## **2:9-11. Sentencing Appeals**

In a criminal, quasi-criminal or juvenile action in the Appellate Division in which the only issue on appeal is whether the court imposed a proper sentence, briefs shall not be filed without leave of court and the matter shall be placed on a sentencing calendar for consideration by the court following oral argument, which shall be recorded verbatim. The appellate court at its discretion may direct the removal of any case from the sentencing calendar.

**Note:** Adopted November 2, 1987 to be effective January 1, 1988; amended January 19, 1989 to be effective February 1, 1989.

## **2:9-12. [Deleted]**

**Note:** Rule 2:9-12 (“Proportionality Review in Capital Cases”) adopted July 5, 2000 to be effective September 5, 2000; rule deleted July 27, 2018 to be effective September 1, 2018.

## **2:9-13. Appeals from Orders Granting Pretrial Detention**

(a) **Appealable Order; Expedition.** An order granting a motion for pretrial detention pursuant to R. 3:4A shall be appealable as of right to the Appellate Division. Appeals filed pursuant to this rule shall be expedited.

(b) **Time to File Appeal; Order Transcript.** An appeal shall be taken by serving and filing a notice of appeal and required Expedited Information Form within seven days of entry of the order granting pretrial detention. If appellant believes that a transcript is necessary to the consideration of the issues on appeal, the transcript shall be ordered at the expedited delivery rate simultaneously with the service and filing of the notice of appeal. A transcript shall be presumed to be required in at least the following instances, unless appellant believes that a transcript is not necessary to decide the issues on appeal: when witnesses have testified in the trial court and the basis of the appeal depends on review of that testimony; when there are material differences between the written order and the oral decision or related colloquy by the court; when an oral procedural or evidentiary ruling is being challenged; and when the trial court's factual findings are challenged. Notwithstanding the above, the court retains the authority to direct that the transcript be ordered by appellant at any time, if, in its determination, the record presented is insufficient for consideration of the issues on appeal.

(c) **Time for Serving and Filing Letter Briefs; Length of Letter Briefs; Reply Letter Briefs.** In those appeals in which a transcript has been ordered, the appellant shall serve and file a letter brief and appendix within ten days after the delivery to appellant of the transcript. In those appeals in which no transcript has been ordered, and appellant has opted to file a letter brief, the letter brief and appendix shall be served and filed within ten days after the filing of the notice of appeal. Appellant's letter brief shall not exceed eight pages. The respondent shall serve and file an answering letter brief and appendix within ten days after the service of appellant's letter brief. In those appeals in which no transcript is required and the appellant has opted to rely on the Expedited Information Form and attachment, if any, in lieu of a letter brief, the respondent's brief and appendix shall be served and filed within ten days of the filing of the appellant's Expedited Information Form. Respondent's letter brief shall not exceed eight pages. No reply letter briefs or supplemental letter briefs shall be permitted without leave of court. There shall be no extensions of time to file letter briefs without leave of court.

(d) **Consideration on the Record.** Pretrial detention appeals shall be submitted for consideration on the record without argument, unless requested by the court. The following shall constitute the record on appeal:

1. Notice of appeal;
2. Expedited Information Form;



3. Detention order with written findings of fact and statement of reasons;

4. Public Safety Assessment;

5. Briefs;

6. Appendices;

7. Transcript, when required.

(e) Disposition of Appeals. Appeals of orders granting pretrial detention pursuant to this rule may be disposed of by opinion or order.

(f) Trial Court Retention of Jurisdiction. The filing and pendency of an appeal taken pursuant to this rule shall not divest the trial court of jurisdiction, unless otherwise ordered by the court.

(g) Continuing Obligation to Inform Court of Change in Detention Status. Appellant's counsel shall have a continuing obligation to inform the court immediately if there is any change to the appellant's pretrial detention status.

(h) Electronic Filing Required by Attorneys. Appeals of orders granting pretrial detention filed by attorneys must be filed through the Appellate Division's electronic filing application.

(i) Paper Filing by Self-Represented Defendants. Appeals of orders granting pretrial detention filed by defendants representing themselves must be filed in paper.

**Note:** Adopted October 19, 2016 to be effective January 1, 2017.

## **2:9-14. Motion for Leave to Appeal from Disposition of R. 2:9-13 Appeal**

Following the disposition of an appeal as of right filed in the Appellate Division pursuant to R. 2:9-13 (Appeals of Orders Granting Pretrial Detention), requests for relief from the Supreme Court shall be by motion for leave to appeal. Such motions shall conform to the Rules of Court governing motions for leave to appeal, including but not limited to R. 2:5-6 (Appeals from Interlocutory Orders, Decisions and Actions) and R. 2:8-1 (Motions), with the following exceptions:

(a) Supporting and answering briefs shall not exceed five (5) pages, exclusive of tables of contents and tables of citations;

(b) The record before the Supreme Court shall be limited to the parties' briefs on the motion for leave to appeal, the Appellate Division's disposition of the pretrial

detention appeal in the form provided by R. 2:9-13(e), and the documents that comprised the record on the appeal to the Appellate Division, as provided in R. 2:9-13(d). No further submissions shall be filed on the motion for leave to appeal without leave of Court;

(c) The filing of a motion for leave to appeal pursuant to this rule shall not divest the trial court of jurisdiction, unless otherwise ordered by the Court;

(d) Movant shall have a continuing obligation to notify the Court immediately if there is a change to the defendant's pretrial detention status.

**Note:** Adopted December 6, 2016 to be effective January 1, 2017.