NEW JERSEY STANDARDS FOR

APPELLATE REVIEW

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by

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SECTION ONE

INTRODUCTION

Standards for appellate review are the guidelines used by appellate courts to answer this question: was error that occurred in a trial court or administrative agency so serious that it requires reversal or other intervention by the appellate court? It is the legal standard under which the appellate court determines how much deference to give the actions of the court or agency that the appellant is challenging.

Trial judges make many kinds of decisions, for example: whether to admit evidence, grant a motion, dismiss a case, grant a new trial, or enter a final judgment. Agencies make similar decisions and make findings of fact. Trial judges make findings of fact when there is no jury.

When a case is appealed, the appellant will argue that someone (judge, agency, jury, attorney) committed error during a trial, or during an agency hearing or other agency action. The appellate court must look at the record and decide whether the appellant is correct. If there was error, then the court needs to decide whether the error was serious enough to warrant intervention. Often, it was not.

In deciding whether there was error and whether any error warrants appellate intervention, appellate courts sometimes use the same standards that the trial court or agency used, for example, when they interpret a statute or review a grant of summary judgment. But more often appellate courts use different standards and have built-in limits that make it difficult for appellate courts to reverse, even when there has been error.

That is why it is essential to know and understand the standards for appellate review. They show how an appellate court decides whether an error warrants reversal or other intervention.

This outline will help you find and apply those standards.

SECTION TWO

PREREQUISITES TO REVIEW

Be sure your case does not involve a problem in one of the following areas. Remember that (1) there must be an appealable judgment or order, (2) an appellant must designate, in the notice of appeal, the judgment, decision, action or rule appealed from, (3) counsel may not submit to the appellate court any evidence that was not before the trial court or agency, and (4) an appellate court is reluctant to consider issues not raised below. Moreover, in most situations, a trial court no longer has jurisdiction over a case once it is in the appellate court.

I. IS THERE AN APPEALABLE JUDGMENT OR ORDER?

A. Formal Judgment or Order

1. There can be no appeal from a written or oral opinion, oral decision, or informal written decision, only from a formal judgment or order. Hayes v. Delamotte, 231 N.J. 373, 387 (2018); State v. Scott, 229 N.J. 469, 479 (2017); Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001); Heffner v. Jacobson, 100 N.J. 550, 553 (1985). If there is no final judgment, there is no right to appeal. R. 2:2-3(a)(1).

B. Judgment Filed After Notice of Appeal

Judgment entered after notice of appeal renders the appeal premature, but the court can ignore the defect and address it. See State v. Benjamin, 442 N.J. Super. 258, 262 (App. Div. 2015) (Appellate courts have, at times, opted to overlook technical insufficiencies in order to reach the merits of the appeal), aff'd as modified, 228 N.J. 358 (2017).

C. Appeals as of Right to the Appellate Division

1. N.J. Const., art. VI, § V, ¶ 2, provides that "[a]ppeals may be taken to the Appellate Division of the Superior Court from the law and chancery divisions of the Superior Court, the County Courts and in such other causes as may be provided by law."

2. Rule 2:2-3(a) sets out appeals allowed as of right to the Appellate Division:

a. from final judgments of Superior Court trial divisions and Tax Court; from summary contempt proceedings (except in municipal courts);

b. from final decisions of state administrative agencies (except tax matters (R. 8:2) and Wage Collection Section appeals (R. 4:74-8)), provided administrative remedies have been pursued (this latter requirement can be waived in the interest of justice);

c. from the promulgation of any rule by an agency;

d. whenever otherwise provided by law.

3. Rule 2:2-3(b) sets out cases where appeal to the Appellate Division from final judgments is by leave only:

a. from final judgments of a court of limited jurisdiction (such as a municipal court); or

b. from "actions or decisions" of an administrative agency or officer if the matter is appealable as of right to a trial division of Superior Court.

4. Pursuant to Rule 1:7-4, lower courts are required to "find the facts and state its conclusions of law" on all motions decided by written orders appealable as of right.

D. Appeals as of Right to the Supreme Court

1. Rule 2:2-1 follows the constitutional mandate of N.J. Const. art. VI, § V, ¶ 1, and provides that there is a right to appeal to the Supreme Court from final judgments, only where:

a. the Appellate Division has determined that the case involves a substantial constitutional question;

b. there is a dissent in the Appellate Division; or

c. in such other cases as provided by law.

All other appeals to the Supreme Court from final judgments must be by petition for certification to the Appellate Division pursuant to Rule 2:12. R. 2:2-1(b).

2. Appeal as of right to the Supreme Court arising from a dissent in the Appellate Division under Rule 2:2-1(a)(2), is limited to the issues in the dissent, and certification must be sought as to other issues. Baskin v. Martinez, 243 N.J. 112, 125 (2020); Ferrante v. N.J. Mfrs. Ins. Grp., 232 N.J. 460, 467 (2018); Riley v. N.J. State Parole Bd., 219 N.J. 270, 280 (2014).

E. Appeals from Interlocutory Orders

1. A final judgment is one that resolves all issues as to all parties; any other order or decision is interlocutory. Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 136 (2016). For example, in a multi-party case involving several issues, an order granting summary judgment dismissing the claims against only one of the defendants is not a final order subject to appeal as of right until all claims against the remaining defendants have been resolved by entry of an order on motion or an order following a trial. Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 136 (2016). For a good general overview of interlocutory appeals, see Mandel, N.J. Appellate Practice (2021).

2. If an order is not final, a party must seek and obtain discretionary leave to appeal from the Appellate Division. R. 2:5-6(a). Rule 2:2-4 provides that "the Appellate Division may grant leave to appeal, in the interest of justice, from an interlocutory order of a court or of a judge sitting as a statutory agent, 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 pursuant to R. 2:2-3(a)." "The rationale that supports this stringent standard may be found in our general policy against piecemeal review of trial-level proceedings." Brundage v.

Est. of Carambio, 195 N.J. 575, 599 (2008).

3. The denial of a motion for leave to appeal does not, however, bar further review of the issue on appeal from the final judgment. Once a final judgment has been entered, an appellant may appeal as of right from that judgment and raise as an issue that an interlocutory decision was erroneous. Sutter v. Horizon Blue Cross Blue Shield of N.J., 406 N.J. Super. 86, 106 (App. Div. 2009) (quoting In re Carton, 48 N.J. 9, 15 (1966)) ("[a]n appeal from a final judgment raises the validity of all interlocutory orders" previously entered in the trial court").

4. If appellant files a notice of appeal from an interlocutory order without leave granted, the court generally dismisses the appeal. Vitanza v. James, 397 N.J. Super. 516, 519 (App. Div. 2008). However, in appropriate cases, the Appellate Division can grant leave to appeal nunc pro tunc in its discretion. R. 2:2-4; Caggiano v. Fontoura, 354 N.J. Super. 111, 125 (App. Div. 2002).

5. The final judgment rule also applies to decisions of an administrative agency. Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 136 (2016). Rule 2:2-3(a)(2) sets forth the general rule that so long as there is still a right of review within the administrative agency, a decision of an administrative agency is not appealable as of right to the Appellate Division. The appellant must exhaust all administrative remedies first, although that requirement can be waived in the interest of justice.

6. Examples of interlocutory orders that require leave are:

   a. an order granting or denying partial summary judgment (for example, against only one defendant or on less than all issues), McGlynn v. State, 434 N.J. Super. 23, 29 (App. Div. 2014); Yuhas v. Mudge, 129 N.J. Super. 207, 209 (App. Div. 1974), or an order dismissing some but not all issues or parties in consolidated cases, McGowan v. Barry, 210 N.J. Super. 469, 472 n.2 (App. Div. 1986). The grant of a motion for complete summary judgment is, however, appealable. And because the denial of summary judgment preserves issues, "later reconsideration of matters implicated

in the motion, including the reasons in support of the denial, are not precluded [on appeal from a final judgment]." Blunt v. Klapproth, 309 N.J. Super. 493, 504 (App. Div. 1998);

b. an order for divorce where custody, alimony, etc., have not been determined (Kerr v. Kerr, 129 N.J. Super. 291, 293 (App. Div. 1974));

c. an order granting a new trial (Olah v. Slobodian, 119 N.J. 119, 129 (1990));

d. discovery orders (Cap. Health Sys. v. Horizon Healthcare Servs., 230 N.J. 73, 76 (2017) (appellate court granted leave to appeal from interlocutory discovery orders));

e. an order referring a juvenile for trial as an adult (State in Interest of R.L., 202 N.J. Super. 410, 411-12 (App. Div. 1985));

f. remand for further administrative proceedings (Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 139 (2016));

g. transfers between administrative agencies and trial courts (Fair Share Hous. Ctr., Inc. v. Township of Cherry Hill, 242 N.J. Super. 76, 81 (App. Div. 1990) (transfer from Council on Affordable Housing to trial court));

h. interim reviews of an ongoing permanency plan for children are interlocutory, but final disposition orders following a permanency hearing are appealable as of right. N.J.S.A. 9:6-8.70;

i. an order denying dismissal of an indictment on the ground of double jeopardy (State v. Nemes, 405 N.J. Super. 102, 105 (App. Div. 2008)).

8. There are, however, some orders that are appealable as of right even though they appear interlocutory, some of which are set forth in Rule 2:2-3(a)(3). See Pressler & Verniero, Current N.J.

Court Rules, cmt. 2.3.3 on R. 2:2-3 (2021). Some examples are:

a. a dismissal without prejudice that disposes of all issues as to all parties may be appealable as of right (Rubin v. Tress, 464 N.J. Super. 49, 56 n.3 (App. Div. 2020); Morris County v. 8 Court St. Ltd., 223 N.J. Super. 35, 39 (App. Div. 1988));

b. an order that unconditionally stays execution of a final order (Est. of Carroll v. Samuel Geltman & Co., 2l4 N.J. Super. 306, 308 (App. Div. 1986));

c. a final custody order under Rule 5:8-6 where a matrimonial action has been bifurcated (R. 2:2-3(a)(3));

d. an order entered under Rule 5:10-9 after a preliminary hearing in an adoption case (R. 2:2-3(a)(3));

e. an order appointing condemnation commissioners (N.J.S.A. 20:3-12; see State by Comm'r of Transp. v. Hess Realty Corp., 226 N.J. Super. 256, 261 (App. Div. 1988); Borough of Rockaway v. Donofrio, 186 N.J. Super. 344, 349, 354 (App. Div. 1982)), or dismissing for failure to comply with statutory prerequisites in a condemnation proceeding (Morris County v. 8 Court St. Ltd., 223 N.J. Super. 35, 38-39 (App. Div. 1988));

f. an interlocutory order appropriately certified as final by a trial judge under Rule 4:42-2; (There is a fuller discussion of this rule in subsection F on the next page.) This rule is often misapplied and when it is, the Appellate Division is not bound by the certification and will dismiss the appeal (Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 551-52 (App. Div. 2007); see also House of Fire Christian Church v. Zoning Bd. of Adj. of City of Clifton, 426 N.J. Super. 157, 162 (App. Div. 2012); Grow Co. v. Chokshi, 403 N.J. Super. 443, 456 n.3 (App. Div. 2008));

g. an order under Rule 3:28-6(c) enrolling a defendant into the pretrial intervention program over the prosecutor's

objection (R. 2:2-3(a)(3));

h. an order under Rule 4:53-1 appointing a statutory or liquidating receiver (R. 2:2-3(a)(3));

i. a material witness order under Rule 3:26-3 (R. 2:2-3(a)(3));

j. an order granting or denying a motion to extend time to file notice under the Tort Claims Act (R. 2:2-3(a)(3));

k. an order to either compel or deny arbitration is appealable as of the date the order is entered, regardless of whether all issues have been resolved. R. 2:2-3(a)(3) (Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013); GMAC v. Pittella, 205 N.J. 572, 587 (2011));

l. an order under Rule 2:9-13(a), granting a motion for pretrial detention pursuant to Rule 3:4A is appealable as of right to the Appellate Division, and appeals under the rule are expedited.

F. Certification of Interlocutory Orders as Final

1. Rule 4:42-2 allows a trial court, in some situations, to certify as final, orders or decisions that would otherwise be interlocutory. But it does not allow trial judges, in effect, to grant a motion for leave to appeal and it is not binding on the Appellate Division. S.N. Golden Ests., Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 88 (App. Div. 1998). The rule can be used only 1) where there has been a complete adjudication of a separate claim; 2) upon complete adjudication of all rights and liabilities of a particular party; or 3) upon partial summary judgment or other order for payment of part of a claim. R. 4:42-2.

2. It is a misuse of the rule for a judge to certify an order that does not meet the requirements of the rule for the purpose of trying to make the order appealable. It is not meant to be a device to circumvent the Appellate Division's right to decide whether to grant leave. Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545,

551-52 (App. Div. 2007); Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:42-2 (2021). Certification of finality under Rule 4:42-2 "is designed to afford relief where there is no just cause for delay in execution of an interlocutory order--not to reduce delay in appeal from the interlocutory order." D'Oliviera v. Micol, 321 N.J. Super. 637, 641 (App. Div. 1999).

3. If an appellate court concludes that certification was improperly granted, it can, however, grant leave to appeal in its discretion. Brown v. City of Bordentown, 348 N.J. Super. 143, 146 (App. Div. 2002). An appeal from an interlocutory order will be dismissed where the attorney did not seek Rule 4:42-2 certification on finality until after the Appellate Division had denied a motion for leave to appeal. D'Oliviera v. Micol, 321 N.J. Super. 637, 641-43 (App. Div. 1999).

G. Appeals to the Supreme Court from Interlocutory Orders

Rule 2:2-2 provides that appeals may be taken to the Supreme Court, by leave, from interlocutory orders in only two circumstances: 1) when necessary to prevent irreparable injury due to an interlocutory Appellate Division order; and 2) on certification to the Appellate Division under Rule 2:12-1.

H. Who May Appeal?

An appeal may only be taken by a party aggrieved by a judgment, that is, the party had a personal or pecuniary interest or property right that was adversely affected by the judgment. Howard Sav. Inst. v. Peep, 34 N.J. 494, 499 (1961); State v. A.L., 440 N.J. Super. 400, 418 (App. Div. 2015). However, the Appellate Division may permit non-parties to intervene in an appeal from a judgment adverse to their interests. N.J. Dep't of Env't Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 296 (App. Div. 2018).

I. Mootness

New Jersey appellate courts "normally will not entertain cases when a controversy no longer exists and the disputed issues have become moot." De Vesa v. Dorsey, 134 N.J. 420, 428 (1993). See City of Camden v.

Whitman, 325 N.J. Super. 236, 243 (App. Div. 1999). "An issue is 'moot when our decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011)). For an extensive list of examples see Mandel, N.J. Appellate Practice 3:3-2 (2021). However, on occasion, the appellate court will decide moot issues "where the underlying issue is one of substantial importance, likely to reoccur but capable of evading review." Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996). See e.g., Finkel v. Twp. Comm. of Hopewell, 434 N.J. Super. 303, 316-18 (App. Div. 2013) (reviewing legal issues concerning a moot referendum that had been presented to the voters).

J. Appeal by State in Criminal and Quasi-criminal Cases

1. "[T]he State's right to appeal in a criminal proceeding is limited." State v. Hyland, 238 N.J. 135, 143 (2019). The right of the State to appeal in a criminal or quasi-criminal case is directly limited by the protections of both the United States and the New Jersey Constitution against double jeopardy. United States v. Scott, 437 U.S. 82 (1978); State v. Widmaier, 157 N.J. 475, 499-501 (1999); State v. Barnes, 84 N.J. 362, 369 (1980).

2. Rule 2:3-1(b) lists the following six circumstances in which the State can appeal: "(1) a judgment of the trial court dismissing an indictment, accusation or complaint, where not precluded by the constitution of the United States or of New Jersey; (2) an order of the trial court entered before trial in accordance with Rule 3:5 (search warrants); (3) a judgment of acquittal entered in accordance with Rule 3:18-2 (JNOV) following a jury verdict of guilty; (4) a judgment in a post-conviction proceeding collaterally attacking a conviction or sentence; (5) an interlocutory order entered before, during or after trial, or, (6) as otherwise provided by law."

3. Rule 2:3-1(a) provides that the State may appeal "to the Supreme Court from a final judgment or from an order of the Appellate Division, pursuant to Rule 2:2-2 (a) [appeals the Supreme Court from interlocutory orders] or 2:2-3 [appeals to the Appellate Division from final judgments]."

4. The State has the authority to appeal a sentence in only two circumstances: where an appeal is authorized by statute, and if the sentence imposed is illegal. State v. Hyland, 238 N.J. 135, 143 (2019); State v. Ciancaglini, 204 N.J. 597, 605 (2011); R. 3:21-10(b)(5).

5. The double jeopardy prohibition does not attach in civil cases. The distinction between civil and quasi-criminal cases can, however, be difficult. Even if the Legislature has designated a sanction as civil, that "does not foreclose the possibility that it has a punitive character," thus making it a criminal sanction. State v. Widmaier, 157 N.J. 475, 492-94 (1999) (setting forth the factors used to determine which cases are criminal).

K. No Appeal from Consent Judgments

1. Parties cannot ordinarily appeal for the purposes of challenging its substantive provisions from a judgment or order entered with the consent of the parties. Winberry v. Salisbury, 5 N.J. 240, 255 (1950); Jacobs v. Mark Lindsay & Son Plumbing & Heating, Inc., 458 N.J. Super. 194, 205 (App. Div. 2019); N.J. Schs. Constr. Corp. v. Lopez, 412 N.J. Super. 298, 309 (App. Div. 2010). That is so because Rule 2:2-3, which allows an appeal as of right from a final judgment, contemplates a judgment entered involuntarily against a losing party. N.J. Schs. Constr. Corp. v. Lopez, 412 N.J. Super. 298, 309 (App. Div. 2010); Cooper Med. Ctr. v. Boyd, 179 N.J. Super. 53, 56 (App. Div. 1981).

2. There is, however, an exception to this general rule. Where "the parties to the consent judgment reserve the right to appeal an interlocutory order 'by providing that the judgment would be vacated if the interlocutory order were reversed on appeal,'" then they may appeal even though they consented to the judgment. N.J. Schs. Constr. Corp. v. Lopez, 412 N.J. Super. 298, 309 (App. Div. 2010) (quoting Janicky v. Point Bay Fuel, Inc., 410 N.J. Super. 203, 207 (App. Div. 2009)).

II. REQUIREMENT OF PROPERLY FILED APPEAL

A. Timely Filed and Served

For an appeal to be heard by the Appellate Division it must be timely served and filed. R. 2:5-1. A party filing a notice of appeal must submit a Case Information Statement in the form prescribed by the Administrative Director of the Courts and the Rules. R. 2:5-1.

B. Order Designated in Notice of Appeal

1. Rule 2:5-1(e)(3)(i) requires an appellant to designate, in the notice of appeal, the judgment, decision, action or rule appealed from. If a matter is not designated in a party's notice of appeal, it is not subject to the appeal process. W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008); Sikes v. Township of Rockaway, 269 N.J. Super. 463, 465 (App. Div. 1994); Campagna ex rel. Greco v. Am. Cyanamid Co., 337 N.J. Super. 530, 550 (App. Div. 2001); 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456, 459 (App. Div. 2004). But see Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 461 (App. Div. 2002) (recognizing that in cases where the basis for the motion judge's ruling on the summary judgment and reconsideration motions are the same, an appeal solely from the grant of summary judgment or from the denial of reconsideration may be sufficient for an appellate review).

2. Rule 2:5-1(e)(2) provides that an appellant "shall" annex a copy of the judgment, order or agency decision to the Case Information Statement. Failure to file a Case Information Statement or any deficiencies in the completion of the statement "shall be ground for such action as the appellate court deems appropriate, including rejection of the notice of appeal, or on application of any party or on the court's own motion, dismissal of the appeal." R. 2:5-1(e)(2).

C. Adequately Briefed

An issue properly presented must also be adequately briefed. See Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) ("An

issue not briefed on appeal is deemed waived.").

III. APPEALS LIMITED TO RECORD BEFORE TRIAL COURT OR AGENCY

A. Confined to Record

"An appellate court, when reviewing trial errors, generally confines itself to the record." State v. Harvey, 151 N.J. 117, 201-02 (1997).

B. Rule 2:5-4(a) (Defining the Record on Appeal)

1. Rule 2:5-4(a) provides that "[t]he record on appeal shall consist of all papers on file in the court or courts or agencies below, with all entries as to matters made on the records of such courts and agencies, the stenographic transcript or statement of the proceedings therein, and all papers filed with or entries made on the records of the appellate court." "It is, of course, clear that in their review the appellate courts will not ordinarily consider evidentiary material which is not in the record below by way of adduced proof, judicially noticeable facts, stipulation, admission or a recorded proffer of excluded evidence." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:5-4(a) (2021). Note that the evidentiary material may include video or audio recordings presented to the trier of fact. See State v. Singh, 245 N.J. 1, 11 (2021) (surveillance video presented to the jury).

C. Sanctions

Occasionally, without moving for permission to supplement the record on appeal (R. 2:5-5(b), R. 2:10-5, N.J.R.E. 202(b)), an attorney will annex to his or her brief on appeal material that was not in evidence below. This is in violation of the court rules and is subject to being stricken and may result in sanctions. Townsend v. Pierre, 221 N.J. 36, 45 n.2 (2015); N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 278 (2007); State v. Sidoti, 120 N.J. Super. 208, 211 (App. Div. 1972). See Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:5-4(a) (2021), for a list of cases.

IV. ISSUES NOT RAISED BELOW

Although an appellate court may consider allegations of errors or omissions not brought to the trial judge's attention if it meets the plain error standard under Rule 2:10-2 (discussed below), the court frequently declines to consider issues that were not raised below or not properly presented on appeal. Generally, unless an issue (even a constitutional issue) goes to the jurisdiction of the trial court or concerns matters of substantial public interest, the appellate court will ordinarily not consider it. State v. Jones, 232 N.J. 308, 321 (2018); Zaman v. Felton, 219 N.J. 199, 227 (2014); State v. Robinson, 200 N.J. 1, 20-22 (2009); Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). See Pressler & Verniero, Current N.J. Court Rules, cmt. 3 on R. 2:6-2 (2021).

V. JURISDICTION OF TRIAL COURT AFTER APPEAL

Rule 2:9-1(a) provides that except for very limited exceptions, "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 is filed." Nevertheless, the rule provides that the trial court "shall have continuing jurisdiction to enforce judgments and orders pursuant to R. 1:10 and as otherwise provided." R. 2:9-1(a). And 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." R. 2:9-1(a). This rule means, among other things, that a trial court does not have jurisdiction to rule on a motion for reconsideration once a notice of appeal has been filed, although the trial court can correct clerical errors in the judgment pursuant to Rule 1:13-1, even on its own initiative. Kiernan v. Kiernan, 355 N.J. Super. 89, 94 (App. Div. 2002).

SECTION THREE

GENERAL STANDARDS

I. GENERAL RULE

Rule 2:10-2 provides that "[a]ny error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result, but the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate

court." The Rule applies to criminal, civil (including family), and administrative appeals. See Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 2:10-2 (2021).

II. PLAIN ERROR RULE

A. Always look first to see if the error raised on appeal was raised below. If it was not, counsel must indicate that when he or she states the issue in the point headings of his or her appellate brief. R. 2:6-2(a)(1). If the error was not raised below, the plain error rule, Rule 2:10-2, applies.

B. When a party does not object to an alleged trial error or otherwise properly preserve the issue for appeal, it may nonetheless be considered by the appellate court if it meets the plain error standard of Rule 2:10-2. State v. Singh, 245 N.J. 1, 13 (2021); State v. Gore, 205 N.J. 363, 383 (2011). "The mere possibility of an unjust result is not enough." State v. Funderburg, 225 N.J. 66, 79 (2016). "In the context of a jury trial, the possibility must be 'sufficient to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached.'" State v. G.E.P., 243 N.J. 362, 389 (2020) (quoting State v. Jordan, 147 N.J. 409, 422 (1997) (quoting State v. Macon, 57 N.J. 325, 336 (1971)). See State v. Alexander, 233 N.J. 132, 142 (2018).

The plain error standard requires a determination of: "(1) whether there was error; and (2) whether that error was 'clearly capable of producing an unjust result,' R. 2:10-2; that is, whether there is 'a reasonable doubt . . . as to whether the error led the jury to a result it otherwise might not have reached.'" State v. Dunbrack, 245 N.J. 531, 544 (2021) (quoting State v. Funderburg, 225 N.J. 66, 79 (2016)). See State v. Blanks, 313 N.J. Super. 55, 63-64 (App. Div. 1998) ("Under plain error review, a defendant must establish three things: (1) there was error; (2) the error was clear or obvious; and (3) the error affected substantial rights. In other words, the error must have affected the outcome").

C. "Relief under the plain error rule, R. 2:10-2, at least in civil cases, is discretionary and 'should be sparingly employed.'" Baker v. Nat'l State Bank, 161 N.J. 220, 226 (1999) (quoting Ford v. Reichert, 23 N.J. 429, 435 (1957). And, even in a criminal case, our Court has noted that plain error review "is a 'high bar,' requiring reversal only where the

possibility of an injustice is 'real' and 'sufficient to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached.'" State v. Alessi, 240 N.J. 501, 527 (2020) (first quoting State v. Santamaria, 236 N.J. 390, 404 (2019) (second quoting State v. Macon, 57 N.J. 325, 336 (1971))). "The 'high standard' used in plain error analysis 'provides a strong incentive for counsel to interpose a timely objection, enabling the trial court to forestall or correct a potential error.'" State v. Santamaria, 236 N.J. 390, 404 (2019) (quoting State v. Bueso, 225 N.J. 193, 203 (2016)).

D. "A defendant who does not raise an issue before a trial court bears the burden of establishing that the trial court's actions constituted plain error because 'to rerun a trial when the error could easily have been cured on request[] would reward the litigant who suffers an error for tactical advantage either in the trial or on appeal.'" State v. Santamaria, 236 N.J. 390, 404-05 (2019) (alteration in original) (quoting State v. Ross, 229 N.J. 389, 407 (2017)).

E. By way of example, plain error was not found in the following cases: State v. Singh, 245 N.J. 1, 17 (2021) (no plain error in the detective's reference to an individual depicted in the surveillance video as "the defendant" in his narration of that video); State v. Santamaria, 236 N.J. 390, 409 (2019) (no plain error in the admission of photographs under N.J.R.E. 403); State v. Ross, 229 N.J. 389, 415 (2017) (no plain error in trial judge's questioning of a number of State's witnesses); T.L. v. Goldberg, 238 N.J. 218, 220 (2019) (no plain error in medical malpractice case where defendant gave trial testimony inconsistent with his discovery responses).

F. As counter examples, plain error was found in the following cases: State v. Garcia, 245 N.J. 412, 436 (2021) (exclusion of cell phone video, given prosecutor's comments in summation, constituted plain error); State v. Alessi, 240 N.J. 501, 529 (2020) (plain error in admission of defendant's statement); State v. Montalvo, 229 N.J. 300, 323 (2017) (erroneous jury instructions constituted plain error); State v. Simms, 224 N.J. 393, 396 (2016) (admission of the expert testimony constituted plain error); Szczecina v. P.V. Holding Corp., 414 N.J. Super. 173, 185 (App. Div. 2010) (plain error where defense counsel made extensive disparaging remarks about plaintiffs and their attorney in opening and closing statements); Krohn v. N.J. Full Ins. Underwriters Ass'n, 316 N.J.

Super. 477, 484 (App. Div. 1998) (attorney's repeated prejudicial comments had the clear capacity to produce an unjust result).

G. Note, too, that Rule 2:10-2 provides that "the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court." This means that even when no party to the appeal raises a particular issue, the appellate court may raise it "where upon the total scene it is manifest that justice requires consideration of an issue central to a correct resolution of the controversy and the lateness of the hour is not itself a source of countervailing prejudice." Ctr. for Molecular Med. & Immunology v. Township of Belleville, 357 N.J. Super. 41, 48 (App. Div. 2003) (quoting In re Appeal of Howard D. Johnson Co., 36 N.J. 443, 446 (1962)).

H. Corollaries to Plain Error Rule

1. Summations/Remarks of Counsel "[W]hen counsel does not make a timely objection at trial, it is a sign 'that defense counsel did not believe the remarks were prejudicial' when they were made." State v. Pressley, 232 N.J. 587, 594 (2018). See State v. Echols, 199 N.J. 344, 360 (2009); State v. Nelson, 173 N.J. 417, 471 (2002); State v. Frost, 158 N.J. 76, 83 (1999); State v. Macon, 57 N.J. 325, 333 (1971).

2. "Invited-Error" Doctrine Additionally, "[m]istakes at trial are subject to the invited-error doctrine." State v. A.R., 213 N.J. 542, 561 (2013). "Under that settled principle of law, trial errors that 'were induced, encouraged or acquiesced in or consented to by defense counsel ordinarily are not a basis for reversal on appeal. . . .'" State v. A.R., 213 N.J. 542, 561 (2013) (quoting State v. Corsaro, 107 N.J. 339, 345 (1987)). See State v. Santamaria, 236 N.J. 390, 409 (2019) ("a party cannot strategically withhold its objection to risky or unsavory evidence at trial only to raise the issue on appeal when the tactic does not pan out").

"In other words, if a party has 'invited' the error, he is barred from raising an objection for the first time on appeal." State v. A.R., 213 N.J. 542, 561 (2013). "The doctrine of invited error operates to bar a disappointed litigant from arguing on appeal that an

adverse decision below was the product of error, when that party urged the lower court to adopt the proposition now alleged to be error." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 340 (2010) (quoting Brett v. Great Am. Recreation, Inc., 144 N.J. 479, 503 (1996)).

III. HARMFUL ERROR RULE

A. All error, including both plain error and harmful error, is tested by the standard set forth in Rule 2:10-2, that is, as set forth above, whether the error is "clearly capable of producing an unjust result."

B. The harmful error rule is used when a specified error was brought to the trial judge's attention. State v. G.E.P., 243 N.J. 362, 389 (2020); State v. Mohammed, 226 N.J. 71, 86 (2016). Thus, even though an alleged error was brought to the trial judge's attention, it will not be ground for reversal if it was "harmless error." Willner v. Vertical Reality, Inc., 235 N.J. 65, 79 (2018); State v. J.R., 227 N.J. 393, 417 (2017); State v. Macon, 57 N.J. 325, 338 (1971). That is so because "[t]rials, particularly criminal trials, are not tidy things. The proper and rational standard is not perfection; as devised and administered by imperfect humans, no trial can ever be entirely free of even the smallest defect. Our goal, nonetheless, must always be fairness. 'A defendant is entitled to a fair trial but not a perfect one.'" State v. R.B., 183 N.J. 308, 333-34 (2005) (quoting Lutwak v. United States, 344 U.S. 604, 619 (1953)).

C. As with "plain error," an error during a jury trial will be found "harmless" unless there is a reasonable doubt that the error contributed to the verdict. That is "the error must be 'sufficient to raise a reasonable doubt as to whether [it] led the jury to a result it otherwise might not have reached.'" State v. Daniels, 182 N.J. 80, 95 (2004) (alteration in original) (quoting State v. Macon, 57 N.J. 325, 336 (1971)). This is true even if the error is of constitutional dimension. State v. Macon, 57 N.J. 325, 338 (1971); State v. Slobodian, 57 N.J. 18, 23 (1970). "The Supreme Court has emphasized that 'most constitutional errors can be harmless,' and are therefore not subject to automatic reversal." State v. Camacho, 218 N.J. 533, 547 (2014) (quoting Arizona v. Fulminante, 499 U.S. 279, 306 (1991)).

D. However, the standard for determining whether constitutional error warrants reversal differs because errors of constitutional dimension will be remedied unless the respondent (the State in criminal cases) can show that the errors were harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18, 24 (1967) (cited in State v. Camacho, 218 N.J. 533, 548 (2014)); State v. Greene, 242 N.J. 530, 554 (2020); State v. Scherzer, 301 N.J. Super. 363, 441 (App. Div. 1997).

E. Further, there are some errors that are so serious that the harmless error doctrine will not be applied. Certain errors are "structural defects in the constitution of the trial mechanism, which defy analysis by 'harmless-error' standards." Arizona v. Fulminante, 499 U.S. 279, 309 (1991). For example, the following structural errors cannot be categorized as harmless and require an automatic reversal of a conviction: using a coerced confession against a defendant in a criminal trial; depriving a defendant of counsel; trying a defendant before a biased judge; unlawfully excluding members of the defendant's race from a grand jury; denying a defendant's request to represent himself in a criminal trial, violation of the right to public trial; and denial of the right to trial by jury by giving defective reasonable-doubt instruction. State v. Camacho, 218 N.J. 533, 550 (2014) (citing to United States v. Gonzalez-Lopez, 548 U.S. 140, 148-49 (2006); Arizona v. Fulminante, 499 U.S. 279, 309 (1991); Chapman v. California, 386 U.S. 18, 24 (1967)).

IV. CONCLUSION

If an appellant claims error, and if the error was properly brought to the trial judge's attention, the appellate court decides first whether it was error by applying the appropriate standards of review (discussed below), and then decides whether the error requires a remedy. An error that is harmless does not require a remedy by the appellate court.

If the alleged error was not raised at trial, the court goes through the same process: it first decides if it was error, then decides if it was plain error.

SECTION FOUR

STANDARDS OF REVIEW

I. GENERAL OVERVIEW

In determining whether a ruling, action or inaction by the lower court or agency constituted error, the appellate court applies a standard of review that gives the appropriate deference to the lower court's or agency's decision. That standard may allow for no deference (review of purely legal decisions), some degree of deference, or a substantial degree of deference (review of findings of fact and agency decisions). See Mandel, N.J. Appellate Practice § 34:2-1 (2021).

The issues on appeal, in a typical civil or criminal case, will implicate one or more of four basic standards of review: 1) the de novo, or plenary, standard of review applied to rulings of law; 2) the highly deferential standard applied to findings of facts; 3) the mixed standard applied to mixed questions of law and fact; or 4) the highly deferential standard applied to matters committed to the sound discretion of the lower court. See Mandel, N.J. Appellate Practice § 34:2-3 (2021).

You should look to case law to find the applicable standard of review, although in some cases it may be dictated by Court rule or more rarely by statute. Note that a case or an issue may involve more than one standard of review.

SECTION FIVE

STANDARDS ON APPEAL IN CIVIL AND CRIMINAL CASES

I. DE NOVO REVIEW

A. An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is de novo. See In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020) (agency's interpretation of a statute); State v. Courtney, 243 N.J. 77, 85 (2020) (interpretation of sentencing provisions in the Criminal Code); State v. G.E.P., 243 N.J. 362, 382

(2020) (retroactivity of statute reviewed de novo); State v. Hemenway, 239 N.J. 111, 125 (2019) (standard of review in determining the constitutionality of a statute is de novo); State v. Hyland, 238 N.J. 135, 143 (2019) (appealability of a sentence); State v. Fuqua, 234 N.J. 583, 591 (2018) (statutory interpretation); Green v. Monmouth Univ., 237 N.J. 516, 529 (2019) (trial court's determination of applicability of charitable immunity is reviewed de novo); Meehan v. Antonellis, 226 N.J. 216, 230 (2016) (appellate court interprets statutes and court rules de novo); Occhifinto v. Olivo Constr. Co.. LLC, 221 N.J. 443, 453 (2015) (legal determinations based on an interpretation of court rules).

B. A "trial court's interpretation of the law and the consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

C. An interpretation of a contract, Kieffer v. Best Buy, 205 N.J. 213, 222 (2011), including an arbitration clause, Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019), and an insurance policy, Est. of Pickett v. Moore's Lounge, 464 N.J. Super. 549, 554-55 (App. Div. 2020), is reviewed de novo.

D. Other examples of de novo review include: 1) summary convictions for contempt, Rule 2:10-4; 2) a determination of whether counsel should be disqualified, City of Atl. City v. Trupos, 201 N.J. 447, 463 (2010); 3) determining whether a cause of action is barred by a statute of limitations, Save Camden Pub. Schs. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 487 (App. Div. 2018); determining whether an OPRA request was properly denied and the legal conclusion regarding the appropriate exemption, N. Jersey Media Grp., Inc. v. Township of Lyndhurst, 441 N.J. Super. 70, 89-90 (App. Div. 2015); N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Off., 447 N.J. Super. 182, 194 (App. Div. 2016), whether a court has personal jurisdiction, YA Glob. Invs., LP v. Cliff, 419 N.J. Super. 1, 8 (App. Div. 2011), or subject matter jurisdiction, AmeriCare Emergency Med. Serv., Inc. v. City of Orange Township, 463 N.J. Super. 562, 570 (App. Div. 2020); preemption of state law by federal law, Hejda v. Bell Container Corp., 450 N.J. Super. 173, 187 (App. Div. 2017); and choice-of-law, Ginsberg ex rel. Ginsberg v. Quest Diagnostics, Inc., 441 N.J. Super.

198, 223 (App. Div. 2015).

E. Further, if a judge makes a discretionary decision, but acts under a misconception of the applicable law or misapplies it, the exercise of legal discretion lacks a foundation and it becomes an arbitrary act, not subject to the usual deference. Summit Plaza Assocs. v. Kolta, 462 N.J. Super. 401, 409 (App. Div. 2020); Alves v. Rosenberg, 400 N.J. Super. 553, 563 (App. Div. 2008). In such a case, the reviewing court must instead adjudicate the controversy in the light of the applicable law in order that a manifest denial of justice be avoided. State v. Steele, 92 N.J. Super. 498, 507 (App. Div. 1966); Kavanaugh v. Quigley, 63 N.J. Super. 153, 158 (App. Div. 1960).

II. FINDINGS OF FACT BY JUDGE

A. Appellate courts apply a deferential standard in reviewing factual findings by a judge. Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. McNeil-Thomas, 238 N.J. 256, 271 (2019). In an appeal from a non-jury trial, appellate courts "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Township of Ocean, 220 N.J. 239, 254 (2015). Deference is given to credibility findings. State v. Hubbard, 222 N.J. 249, 264 (2015).

B. "A reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Township of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

C. "The general rule is that findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence." Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). See State v. Camey, 239 N.J. 282, 306 (2019)

("[w]e will not disturb the trial court's findings; in an appeal, we defer to findings that are supported in the record and find roots in credibility assessments by the trial court"); Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 329 (2017) ("[w]e review the trial court's factual findings under a deferential standard: those findings must be upheld if they are based on credible evidence in the record"); Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016) (findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence); State v. K.W., 214 N.J. 499, 507 (2013) ("[w]e defer to the trial court's factual findings 'so long as those findings are supported by sufficient credible evidence in the record").

D. The deferential standard is applied "because an appellate court's review of a cold record is no substitute for the trial court's opportunity to hear and see the witnesses who testified on the stand." Balducci v. Cige, 240 N.J. 574, 595 (2020). And "[l]imiting the role of a reviewing court is necessary because '[p]ermitting appellate courts to substitute their factual findings for equally plausible trial court findings is likely to 'undermine the legitimacy of the [trial] courts in the eyes of litigants.'" State v. McNeil-Thomas, 238 N.J. 256, 272 (2019) (alterations in original) (quoting State v. S.S., 229 N.J. 360, 380-81 (2017)).

E. Appellate courts also apply that deferential standard of review to a trial court's fact-finding based on video or documentary evidence. State v. S.S., 229 N.J. 360, 379 (2017); State v. Hubbard, 222 N.J. 249, 270 (2015).

F. Special Masters are sometimes used by courts as factfinders. See State v. Chun, 194 N.J. 54, 84 (2008) (scientific reliability of the Alcotest); State v. Cassidy, 235 N.J. 482, 491-92 (2018) (scientific reliability of Alcotest devises calibrated without use of a proscribed thermometer). An appellate court reviews a Special Master's findings and conclusions under the "ordinary standards of review," and defers to findings supported by substantial credible evidence in the record. Little v. Kia Motors Am., Inc., 242 N.J. 557, 593 (2020).

G. Note that many issues on appeal present mixed questions of law and fact. Under those circumstances the appellate court gives deference to the supported factual findings of the trial court, but reviews de novo the trial court's application of legal rules to the factual findings. State v.

Harris, 181 N.J. 391, 416 (2004).

III. DISCRETIONARY RULINGS BY TRIAL JUDGE

Trial judges are afforded wide discretion in deciding many of the issues that arise in civil and criminal cases (see examples below). Appellate courts review those decisions for an abuse of discretion. "[A]n abuse of discretion 'arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue." Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002). "When examining a trial court's exercise of discretionary authority," the appellate court "will 'reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 App. Div. 2007)).

A. Adjournment

A motion for an adjournment, in both a criminal and civil case, is addressed to the discretion of the trial court and will not lead to reversal unless the defendant suffered manifest wrong or injury. State v. Hayes, 205 N.J. 522, 537 (2011); Escobar-Barrera v. Kissin, 464 N.J. Super. 224, 233 (App. Div. 2020). This applies to a decision on a request for an adjournment to obtain counsel of his choice. State v. Kates, 216 N.J. 393, 397 (2014); State v. Hayes, 205 N.J. 522, 537 (2011).

B. Change of Venue

A decision by a trial judge to change venue in a civil case (Rule 4:3-3) and a criminal case (Rule 3:14-2) are reviewed for an abuse of discretion. See State v. Harris, 156 N.J. 122, 145 (1998); State v. Wise, 19 N.J. 59, 73 (1955).

C. Control of Courtroom

1. A trial judge has the broad discretion in controlling the

courtroom and court proceedings in both civil and criminal cases. State v. Pinkston, 233 N.J. 495, 511 (2018); Martin v. Newark Pub. Schs., 461 N.J. Super. 330, 340 (App. Div. 2019); State v. Bitzas, 451 N.J. Super. 51, 76 (App. Div. 2017); D.G. ex rel. J.G. v. N. Plainfield Bd. of Educ., 400 N.J. Super. 1, 26 (App. Div. 2008); State v. Cusumano, 369 N.J. Super. 305, 311 (App. Div. 2004). "A trial judge is given wide discretion in determining proper security measures within the courtroom and is obliged to act to protect the jury, [defendants,] counsel, witnesses, and members of the public." State v. Zhu, 165 N.J. 544, 557 (2000) (alteration in original) (quoting State v. Cook, 330 N.J. Super. 395, 415 (App. Div. 2000)).

2. "The exercise of this authority, however, is circumscribed by the judge's responsibility to act reasonably and within constitutional bounds." State v. Cusumano, 369 N.J. Super. 305, 311 (App. Div. 2004). See State v. Kuchera, 198 N.J. 482, 500 (2009) (prison garb); State v. Artwell, 177 N.J. 526, 537 (2003) (restraints); State v. Cook, 330 N.J. Super. 395, 415 (App. Div. 2000) (limitations on movement); State v. Castoran, 325 N.J. Super. 280, 285 (App. Div. 1999) (restrictions on dress or conduct which is impermissibly testimonial in nature).

3. N.J.R.E. 611(a) provides that "[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence to: (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment."

D. Cross-examination/ Leading Questions

1. Trial courts are afforded broad discretion in controlling cross-examination. State v. Jenewicz, 193 N.J. 440, 467 (2008). See State v. Sands, 76 N.J. 127, 140 (1978) ("a trial judge has broad discretion in controlling the scope of cross-examination to test credibility").

2. See N.J.R.E. 611(b) ("Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness' credibility. The court may allow inquiry into

additional matters as if on direct examination"); N.J.R.E. 611(c) ("When a party calls an adverse party or a witness identified with an adverse party, or when a witness demonstrates hostility or unresponsiveness, interrogation may be by leading questions, subject to the discretion of the court").

E. Discovery

In both civil and criminal cases, the appellate court reviews a trial judge's discovery rulings under the abuse of discretion standard. State v. Brown, 236 N.J. 497, 521 (2019); Brugaletta v. Garcia, 234 N.J. 225, 240 (2018); Cap. Health Sys., Inc. v. Horizon Healthcare Servs., Inc., 230 N.J. 73, 79-80 (2017); Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011). An appellate court should "generally defer to a trial court's resolution of a discovery matter, provided its determination is not so wide of the mark or is not 'based on a mistaken understanding of the applicable law.'" State in Interest of A.B., 219 N.J. 542, 554 (2014) (quoting Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 334, 371 (2011)).

F. Evidence (Admission or Exclusion)

1. An appellate court defers to a trial court's evidentiary ruling absent an abuse of discretion. State v. Garcia, 245 N.J. 412, 430 (2021); Rowe v. Bell & Gossett Co., 239 N.J. 531, 551 (2019); State v. Scott, 229 N.J. 469, 479 (2017); State v. Nantambu, 221 N.J. 390, 402 (2015); Townsend v. Pierre, 221 N.J. 36, 52 (2015). Appellate courts "review the trial court's evidentiary ruling 'under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion.'" State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). Under that deferential standard, appellate courts "review a trial court's evidentiary ruling only for a 'clear error in judgment.'" State v. Medina, 242 N.J. 397, 412 (2020) (quoting State v. Scott, 229 N.J. 469, 479 (2017)).

2. An appellate court "will not substitute [its] judgment unless the evidentiary ruling is 'so wide of the mark' that it constitutes 'a clear error in judgment.'" State v. Garcia, 245 N.J. 412, 430

(2021) (quoting State v. Medina, 242 N.J. 397, 412 (2020)). "A trial court's 'discretion is abused when relevant evidence offered by the defense and necessary for a fair trial is kept from the jury.'" State v. R.Y., 242 N.J. 48, 65 (2020) (quoting State v. Cope, 224 N.J. 530, 554-55 (2016)).

3. See generally State v. Brown, 236 N.J. 497, 526 (2019) (hearsay exceptions); State v. Weaver, 219 N.J. 131, 149 (2014) (admissibility of other-crimes evidence is a discretionary matter); State v. Erazo, 126 N.J. 112, 131 (1991) (ruling under N.J.R.E. 404(b) whether to admit other crime evidence is reviewed under the abuse of discretion standard); State v. Schnabel, 196 N.J. 116, 131 (2008) (relevance); State v. Conklin, 54 N.J. 540, 545 (1969) (photos); State v. Brown, 463 N.J. Super. 33, 52 (App. Div. 2020) (cell phone video); State v. Hannah, 448 N.J. Super. 78, 85 (App. Div. 2016) (authentication of social media documents).

4. Note, however, that the evidentiary decision is reviewed de novo if the trial court applies the wrong legal standard in deciding to admit or exclude the evidence. State v. Trinidad, 241 N.J. 425, 448 (2020); State v. Williams, 240 N.J. 225, 234 (2019).

G. Joinder and Severance

Appellate courts review a trial court's decision as to joinder or severance of claims under an abuse of discretion standard. Rule 4:38-1 governs joinder of claims and defendants in civil trials, and Rule 4:38-2 allow a trial judge to order separate trials. In criminal cases, Rule 3:15-1 governs the joinder of charges and defendants, and Rule 3:15-2 provides for relief from prejudicial joinder. See State v. Weaver, 219 N.J. 131, 149 (2014) (decision to sever is within the trial court's discretion, and it will be reversed only if it constitutes an abuse of discretion).

H. Juries

1. "The courts, not the parties, oversee jury selection." State v. Andujar, ___ N.J. ___, ___ (2021) (slip op. at 33). See Pellicer v. Saint Barnabas Hosp., 200 N.J. 22, 40 (2009) ("The chief responsibility for conducting jury selection rests with the trial judge." (quoting State v. Wagner, 180 N.J. Super. 564, 567 (App.

Div. 1981))).

2. Voir Dire. "[A] trial court's decisions regarding voir dire are not to be disturbed on appeal, except to correct an error that undermines the selection of an impartial jury." State v. Winder, 200 N.J. 231, 252 (2009). "Voir dire procedures and standards are traditionally within the broad discretionary powers vested in the trial court [and] its exercise of discretion will ordinarily not be disturbed on appeal." State v. Wakefield, 190 N.J. 397, 496 (2007) (quoting State v. Papasavvas, 163 N.J. 565, 595 (2000)). See Pressler & Verniero, Current N.J. Court Rules, cmt. 1.2 on R. 1:8-3 (2021). "The court's exercise of discretion in dealing with requests for specific inquiries of prospective jurors in the voir dire examination is subject to reversal only on a showing of prejudice in that the voir dire examination failed to afford the parties an opportunity to select an impartial and unbiased jury." Pressler & Verniero, Current N.J. Court Rules, cmt. 1.2 on R. 1:8-3 (2021).

3. Qualifications. "A trial court's removal of a prospective juror for cause will not be reversed unless the court has abused its discretion." State v. DiFrisco, 137 N.J. 434, 459 (1994). "[T]rial courts are 'vested with broad discretionary powers in determining the qualifications of jurors and [a judge's] exercise of discretion will ordinarily not be disturbed on appeal.'" State v. Singletary, 80 N.J. 55, 62 (1979) (alteration in original) (quoting State v. Jackson, 43 N.J. 148, 160 (1964)). "No party in a criminal or civil case can use peremptory challenges to remove a juror on the basis of race or gender." State v. Andujar, ___ N.J. ___, ___ (2021) (slip op. at 29).

4. Illness, Inability to Continue. An appellate court's "review of a trial court's decision to remove and substitute a deliberating juror because of an 'inability to continue,' pursuant to Rule 1:8-2(d)(1), is deferential." State v. Musa, 222 N.J. 554, 564-65 (2015).

5. Influence or Misconduct. Appellate courts also review a judge's control of the courtroom and any remedial action taken regarding an inattentive juror under an abuse of discretion

standard. State v. Mohammed, 226 N.J. 71, 89 (2016). "The jury verdict must be 'free from the taint of extraneous considerations and influences,' and a new trial will be granted when jury misconduct or the intrusion of irregular influences into jury deliberations 'could have a tendency to influence the jury in arriving at its verdict in a manner inconsistent with the legal proofs and the court's charge.'" State v. Scherzer, 301 N.J. Super. 363, 486 (App. Div. 1997) (quoting Panko v. Flintkote Co., 7 N.J. 55, 61 (1951)). "The test is 'not whether the irregular matter actually influenced the result but whether it had the capacity of doing so.'" State v. Scherzer, 301 N.J. Super. 363, 486 (App. Div. 1997) (quoting Panko v. Flintkote Co., 7 N.J. 55, 61 (1951)). "Jury 'irregularity,' including sleeping, may violate a defendant's federal and state constitutional rights to a fair tribunal if it results in prejudice." State v. Mohammed, 226 N.J. 71, 83 (2016) (quoting State v. Scherzer, 301 N.J. Super. 363, 486 (App. Div. 1997)). "[A]ll doubts about a juror's integrity or ability to be fair should be resolved in favor of removing the juror from the panel." State v. Loftin, 191 N.J. 172, 187 (2007).

6. Read-backs. "Courts have broad discretion as to whether and how to conduct read-backs and playbacks." State v. Miller, 205 N.J. 109, 122 (2011). See State v. Weston, 222 N.J. 277, 294 (2015) (trial courts should make videotaped statements and testimony available to jurors during deliberations only in the event of a jury request, and the replay must be conducted in open court and under the careful supervision of the trial judge).

7. Polling. Rule 1:8-10 provides that "[b]efore the verdict is recorded, the jury shall be polled at the request of any party or upon the court's motion, and it shall be polled in every civil action if the verdict is not unanimous. If the poll discloses that there is not unanimous concurrence in a criminal action or concurrence by the number required by Rule 1:8-2(c) in a civil action, the jury may be directed to retire for further deliberations or discharged."

8. Sequestration. Jury sequestration under Rule 1:8-6 is generally left to the discretion of the trial court. State v. Harvey, 151 N.J. 117, 214 (1997); Barber v. Shop-Rite of Englewood & Assocs., Inc., 393 N.J. Super. 292, 298-99 (App. Div. 2007).

9. Continue Deliberations. A trial judge has the discretion to require further deliberations after a jury has announced its inability to reach a verdict, however, the exercise of that discretion is not appropriate "if the jury has reported a definite deadlock after a reasonable period of deliberations." State v. Czachor, 82 N.J. 392, 407 (1980). See State v. Ross, 218 N.J. 130, 145 (2014); State v. Harris, 457 N.J. Super. 34, 50 (App. Div. 2018); State v. Adim, 410 N.J. Super. 410, 423-24 (App. Div. 2009).

I. Mistrial

A decision to grant or deny a motion for mistrial is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent a clear showing of an abuse of discretion. State v. Smith, 224 N.J. 36, 47 (2016); State v. Jackson, 211 N.J. 394, 407 (2012); McKenney v. Jersey City Med. Ctr., 167 N.J. 359, 376 (2001). "The grant of a mistrial is an extraordinary remedy to be exercised only when necessary 'to prevent an obvious failure of justice.'" State v. Yough, 208 N.J. 385, 397 (2011) (quoting State v. Harvey, 151 N.J. 117, 205 (1997)). "[A]n appellate court will not disturb a trial court's ruling on a motion for a mistrial, absent an abuse of discretion that results in a manifest injustice." State v. Jackson, 211 N.J. 394, 407 (2012) (quoting State v. Harvey, 151 N.J. 117, 205 (1997)).

J. Opening and Closing Arguments

"The trial court has broad discretion in the conduct of the trial, including the scope of counsel's summation." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 392 (2009). See cases listed under Rule 1:7-1 (Opening and Closing Statement) and Rule 2:10-2. When no objection was made to the comments, the appellate court applies the plain error standard. R. 2:10-2; State v. Santamaria, 236 N.J. 390, 405 (2019); Fertile v. St. Michael's Med. Ctr., 169 N.J. 481, 493 (2001).

K. Order of Proof

"The order of proof is generally a matter which is left to the discretion of the trial judge." Aiello v. Myzie, 88 N.J. Super. 187, 192 (App. Div. 1965) (citing Handelman v. Handelman, 17 N.J. 1, 9 (1954)). See State

v. McKiver, 199 N.J. Super. 542, 546 (App. Div. 1985) (order of proof). Further, a trial court's decision as to whether to reopen a case for additional evidence is reviewed for an abuse of discretion. N.J. Div. of Child Prot. & Permanency v. K.S., 445 N.J. Super. 384, 390 (App. Div. 2016).

L. Reconsideration

Decision on whether to deny motion for reconsideration under Rule 4:49-2 is addressed to the judge's discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Kornbleuth v. Westover, 241 N.J. 289, 301 (2020); State v. Timmendequas, 161 N.J. 515, 554 (1999); Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996).

M. Relief to Litigant

Rule 1:10-3 provides that "[n]otwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action." The Rule is "a device to enable a litigant to enforce his or her rights." In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 17 (2015). It provides a "means for securing relief and allow[s] for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order." N. Jersey Media Grp., Inc. v. State, Off. of Governor, 451 N.J. Super. 282, 296 (App. Div. 2017) (quoting In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 17-18 (2015)). The appellate court reviews an order entered under Rule 1:10-3 under an abuse of discretion. N. Jersey Media Grp., Inc. v. State, Off. of Governor, 451 N.J. Super. 282, 296 (App. Div. 2017).

N. Recusal

Whether a judge should disqualify himself or herself is a matter within the sound discretion of the judge. State v. McCabe, 201 N.J. 34, 45 (2010); Goldfarb v. Solimine, 460 N.J. Super. 22, 30 (App. Div. 2019). "Motions for recusal ordinarily require a case-by-case analysis of the particular facts presented." State v. McCabe, 201 N.J. 34, 46 (2010). The appellate court reviews de novo whether the judge applied the proper legal standard. State v. McCabe, 201 N.J. 34, 46 (2010).

O. Sanctions

Decision on sanctions imposed for violating a court order is addressed to the discretion of the trial judge. Kornbleuth v. Westover, 241 N.J. 289, 300 (2020); Williams v. Am. Auto Logistics, 226 N.J. 117, 128 (2016); Gonzalez v. Safe & Sound Sec., 185 N.J. 100, 115 (2005).

P. Stay Pending Appeal and Injunctive Relief

"A party seeking a stay must demonstrate that (1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the "relative hardship to the parties reveals that greater harm would occur if a stay is not granted than if it were." State v. Robertson, 228 N.J. 138, 149 (2017) (quoting Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013). See R. 2:9-3 (criminal); R. 2:9-5 (civil); R. 2:9-7 (temporary relief and administrative).

"The authority to issue injunctive relief falls well within the discretion of a court of equity." Horizon Health Ctr. v. Felicissimo, 135 N.J. 126, 137 (1994).

Q. Witnesses

1. Lay Witness Testimony

"The determination of whether a person is competent to be a witness lies within the sound discretion of the trial judge." State v. G.C., 188 N.J. 118, 133 (2006) (quoting State v. Savage, 120 N.J. 594, 632 (1990)). The plain error standard applies when there is no objection. State v. Bueso, 225 N.J. 193, 202-03 (2016) ("[n]othing in Rule 2:10-2 or our case law suggests that a trial court's ruling on the competency of a witness warrants an exception to the plain error standard of review").

2. Expert Witness Testimony

The admission of expert testimony is generally governed by N.J.R.E. 702, which provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to

understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."

a. Civil cases

An appellate court in a civil case, "must apply an abuse of discretion standard to a trial court's determination, after a full Rule 104 hearing, to exclude expert testimony on unreliability grounds." In re Accutane Litig., 234 N.J. 340, 391 (2018). A trial court's decision to admit or exclude expert testimony in a civil case is reviewed under "a pure abuse of discretion standard." In re Accutane Litig., 234 N.J. 340, 391-92 (2018) (citing Townsend v. Pierre, 221 N.J. 36, 52-53 (2015)).

b. Criminal cases

An appellate court reviews a trial court's evidentiary determination that a witness is qualified to present expert testimony under N.J.R.E. 702, for abuse of discretion and reverses only "for manifest error and injustice." State v. Rosales, 202 N.J. 549, 562-63 (2010). See State v. Townsend, 186 N.J. 473, 493 (2006).

3. Scientific Expert Testimony

a. Civil cases

"[T]he abuse of discretion standard applies in the appellate review of a trial court's determination to admit or deny scientific expert testimony on the basis of unreliability in civil matters." In re Accutane Litig., 234 N.J. 340, 392 (2018). The trial court's ruling should be reversed" only if it 'was so wide off the mark that a manifest denial of justice resulted.'" Rodriguez v. Wal-Mart Stores, Inc., 237 N.J. 36, 57 (2019) (quoting Griffin v. City of E. Orange, 225 N.J. 400, 413 (2016)). Note that our Supreme Court in In re Accutane Litig., 234 N.J. 340, 392 (2018), adopted the use

of the factors identified in Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 593-95 (1993), and affirmed the methodology-based approach for determining scientific reliability in certain areas of civil law.

b. Criminal cases

The Court has not, however, adopted the methodology-based approach in criminal cases, and continues to apply the general acceptance test for reliability in criminal cases (the Frye standard (Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923)). State v. Cassidy, 235 N.J. 482, 492 (2018). "Scientific test results are admissible in a criminal trial only when the technique is shown to be generally accepted as reliable within the relevant scientific community." State v. Cassidy, 235 N.J. 482, 491-92 (2018). When reviewing a decision on the admission of scientific evidence in a criminal case, "an appellate court should scrutinize the record and independently review the relevant authorities, including judicial opinions and scientific literature." State v. Harvey, 151 N.J. 117, 167 (1997). See State v. Pickett, 466 N.J. Super. 270, 303 (App. Div. 2021) (an appropriate review in a criminal case requires an appellate court to "independently scrutinize the record, including the comprehensive and amplified declarations of the experts, the scientific validation studies and peer-reviewed publications, and judicial opinions"); In re Commitment of R.S., 339 N.J. Super. 507, 531 (App. Div. 2001). Whether expert testimony is sufficiently reliable under the Frye test to be admissible under N.J.R.E. 702 is a legal question that appellate courts review de novo. State v. J.L.G., 234 N.J. 265, 301 (2018); In re Commitment of R.S., 339 N.J. Super. 507, 531 (App. Div. 2001).

IV. JURY INSTRUCTIONS

A. Rule 1:7-2 provides that "[e]xcept as otherwise provided by R. 1:7-5 and R. 2:10-2 (plain error), no party may urge as error any portion of the charge to the jury or omissions therefrom unless objections are made thereto before the jury retires to consider its verdict. . . ." Thus,

where the appellant failed to object to the charge, Rule 1:7-2 provides that the standard of review is plain error. State v. Torres, 183 N.J. 554, 564 (2005). See also R. 1:8-7 (governing requests to charge in civil and criminal cases).

B. "Plain error, in the context of a jury charge, is '[l]egal impropriety in the charge prejudicially affecting the substantial rights of the defendant sufficiently grievous to justify notice by the reviewing court and to convince the court that of itself the error possessed a clear capacity to bring about an unjust result.'" State v. Afanador, 151 N.J. 41, 54 (1997) (alteration in original) (quoting State v. Jordan, 147 N.J. 409, 422 (1997)).

C. Appropriate and proper jury instructions are essential for a fair trial. Prioleau v. Ky. Fried Chicken, Inc., 223 N.J. 245, 256 (2015); Velazquez v. Portadin, 163 N.J. 677, 688 (2000); State v. Green, 86 N.J. 281, 287 (1981). "Erroneous instructions are poor candidates for rehabilitation as harmless, and are ordinarily presumed to be reversible error." State v. Afanador, 151 N.J. 41, 54 (1997) (quoting State v. Brown, 138 N.J. 481, 522 (1994)). Certain jury instructions are so crucial to a jury's deliberations that error is presumed to be reversible. See State v. Hodde, 181 N.J. 375, 384 (2004) (failure to charge an element of an offense is presumed to be prejudicial error, even in absence of request by defense counsel). "An erroneous jury charge 'when the subject matter is fundamental and essential or is substantially material' is almost always considered prejudicial." State v. Maloney, 216 N.J. 91, 104-05 (2013) (quoting State v. Green, 86 N.J. 281, 288 (1981)).

D. "Nonetheless, not every improper jury charge warrants reversal and a new trial. 'As a general matter, [appellate courts] will not reverse if an erroneous jury instruction was 'incapable of producing an unjust result or prejudicing substantial rights.'" Prioleau v. Ky. Fried Chicken, Inc., 223 N.J. 245, 257 (2015) (alteration in original) (quoting Mandal v. Port Auth. of N.Y. & N.J., 430 N.J. Super. 287, 296 (App. Div. 2013)).

E. The charge must be read as a whole, and not just the challenged portion, to determine its overall effect. State v. Garrison, 228 N.J. 182, 201 (2017); State v. McKinney, 223 N.J. 475, 494 (2015); State v. Wilbely, 63 N.J. 420, 422 (1973). No party is entitled to have the jury

charged in his or her own words. State v. LaBrutto, 114 N.J. 187, 204 (1989). All that is required is that the charge as a whole be accurate. State v. Baum, 224 N.J. 147, 167 (2016); State v. Jordan, 147 N.J. 409, 422 (1997). State v. Walker, 322 N.J. Super. 535, 546-53 (App. Div. 1999), gives an excellent general review of what kinds of general and special instructions should be given in a criminal case.

F. Instructions given in accordance with the model charge, or which closely track the model charge, are generally not considered erroneous. Mogull v. CB Com. Real Est. Grp., Inc., 162 N.J. 449, 466 (2000). See State v. Ramirez, 246 N.J. 61 (2021) (Court found no plain error where the judge read the model charge verbatim, and no objection to the endangering instruction was made at trial).

G. "Because a verdict sheet constitutes part of the trial court's direction to the jury, defects in the verdict sheet are reviewed on appeal under the same "unjust result" standard of Rule 2:10-2 that governs errors in the jury charge." State v. Galicia, 210 N.J. 364, 388 (2012).

V. NEW TRIAL MOTION

Under Rule 2:10-1 the appellate court will not consider an argument, in both civil and criminal cases, that a jury verdict is against the weight of the evidence unless the appellant moved for a new trial on that ground. Ogborne v. Mercer Cemetery Corp., 197 N.J. 448, 462 (2009); State v. Reininger, 430 N.J. Super. 517, 538 (App. Div. 2013); State v. Diferdinando, 345 N.J. Super. 382, 399 (App. Div. 2001). Where an issue raised on a new trial motion involves a decision that is addressed to the trial court's discretion, the appellate court will not reverse unless there was an abuse of discretion. See Pressler & Verniero, Current N.J. Court Rules, cmt. 4 on R. 2:10-2 (2021). See also Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:10-1 (2021), which explains that these two rules are intertwined.

A. New Trial (Civil)

1. In civil cases, Rule 4:49-1(a) provides that "[t]he trial judge shall grant the motion if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law."

2. "A jury verdict is entitled to considerable deference and 'should not be overthrown except upon the basis of a carefully reasoned and factually supported (and articulated) determination, after canvassing the record and weighing the evidence, that the continued viability of the judgment would constitute a manifest denial of justice.'" Hayes v. Delamotte, 231 N.J. 373, 385-86 (2018) (quoting Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521 (2011)).

3. "The standard of review on appeal from decisions on motions for a new trial is the same as that governing the trial judge—whether there was a miscarriage of justice under the law." Hayes v. Delamotte, 231 N.J. 373, 386 (2018) (quoting Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 522 (2011)). See Township of Manalapan v. Gentile, 242 N.J. 295, 304 (2020). "[A] 'miscarriage of justice' can arise when there is a 'manifest lack of inherently credible evidence to support the finding,' when there has been an 'obvious overlooking or under-valuation of crucial evidence,' or when the case culminates in 'a clearly unjust result.'" Hayes v. Delamotte, 231 N.J. 373, 386 (2018) (quoting Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521-22 (2011)).

4. In evaluating the trial court's decision to grant or deny a new trial, "an appellate court must give 'due deference' to the trial court's 'feel of the case,'" however, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Hayes v. Delamotte, 231 N.J. 373, 386 (2018) (first quoting Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521 (2011) (second quoting Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995))).

B. Motion for a New Trial (Criminal)

1. In criminal cases, Rule 3:20-1 provides that "[t]he trial judge on defendant's motion may grant the defendant a new trial if required in the interest of justice. If trial was by the judge without a jury, the judge may, on defendant's motion for a new trial, vacate

the judgment if entered, take additional testimony and direct the entry of a new judgment. The trial judge shall not, however, set aside the verdict of the jury as against the weight of the evidence unless, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a manifest denial of justice under the law." See R. 3:20-2 (time for making new trial motion).

2. "The 'semantic' difference between 'miscarriage of justice' [under Rule 4:49-1(a)] and 'manifest denial of justice under the law' [under Rule 3:20-1] is an 'oversight and should not be construed as providing for a different standard in criminal cases at the trial level than that applicable to appellate review and to civil cases at the trial level.'" State v. Armour, 446 N.J. Super. 295, 306 (App. Div. 2016) (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 3:20-1 (2016)).

3. "In reviewing a trial court's decision to grant a new trial following a jury verdict, an appellate court must be 'guided by essentially the same standard as that controlling the trial judge's review of a jury verdict' and must 'weigh heavily' the trial court's views on 'credibility of witnesses, their demeanor, and [the trial court's] general 'feel of the case.'" State v. Brown, 118 N.J. 595, 604 (1990) (quoting State v. Sims, 65 N.J. 359, 373 (1974)). "If the trial court acts under a misconception of the applicable law, however, the appellate court need not give such deference." State v. Brown, 118 N.J. 595, 604 (1990).

VI. EXERCISE OF ORIGINAL JURISDICTION

Rule 2:10-5 allows an appellate court to exercise original jurisdiction as "necessary to the complete determination of any matter on review." It should only be done "with great frugality." State v. Micelli, 215 N.J. 284, 293 (2013) (quoting Tomaino v. Burman, 364 N.J. Super. 224, 234-35 (App. Div. 2003)). Exercising original jurisdiction is discouraged if factfinding is necessary. State v. Santos, 210 N.J. 129, 142 (2012). However, "the exercise of original jurisdiction is appropriate when there is 'public interest in an expeditious disposition of the significant issues raised.'" Price v. Himeji, LLC, 214 N.J. 263, 294 (2013) (quoting Karins v. City of Atl. City, 152 N.J. 532, 540-41 (1998)).

And Rule 2:10-3 provides that "[i]f a judgment of conviction is reversed for error in or for excessiveness or leniency of the sentence, the appellate court may impose such sentence as should have been imposed or may remand the matter to the trial court for proper sentence."

SECTION SIX

STANDARDS IN CRIMINAL CASES ONLY

Rule 2:3-2 provides that "[i]n any criminal action, any defendant, the defendant's legal representative, or other person aggrieved by the final judgment of conviction entered by the Superior Court, including a judgment imposing a suspended sentence, or by an adverse judgment in a post-conviction proceeding attacking a conviction or sentence or by an interlocutory order or judgment of the trial court, may appeal or, where appropriate, seek leave to appeal, to the appropriate appellate court."

I. PRETRIAL ISSUES

A. Grand Jury

1. The New Jersey Constitution guarantees the right to indictment by a grand jury. N.J. Const. art. I, § 8. The Assignment Judge of each county orders and organizes grand juries. R. 3:6-1. "Judicial involvement with and review of the grand jury is generally limited." State v. Shaw, 241 N.J. 223, 239 (2020). The Judiciary "exercises supervisory authority over grand juries under the doctrine of fundamental fairness." State v. Shaw, 241 N.J. 223, 242 (2020).

2. "At the grand jury stage, the State is not required to present enough evidence to sustain a conviction." State v. Feliciano, 224 N.J. 351, 380 (2016). "As long as the State presents 'some evidence establishing each element of the crime to make out a prima facie case,' a trial court should not dismiss an indictment. State v. Feliciano, 224 N.J. 351, 380 (2016) (quoting State v. Saavedra, 222 N.J. 39, 57 (2015)).

3. A trial court's denial of a motion to dismiss an indictment is reviewed for an abuse of discretion and should be reversed on appeal only if it clearly appears that the court abused its discretion. State v. Bell, 241 N.J. 552, 561 (2020); State v. Twiggs, 233 N.J. 513, 544 (2018); State v. Lyons, 417 N.J. Super. 251, 258 (App. Div. 2010). "An indictment should be disturbed only on the 'clearest and plainest ground[s],' and 'only when the indictment is manifestly deficient or palpably defective.'" State v. Shaw, 241 N.J. 223, 239 (2020) (first quoting State v. Perry, 124 N.J. 128, 168 (1991) (second quoting State v. Hogan, 144 N.J. 216, 229 (1996))).

4. However, "if grand juries decline to indict on two prior occasions, the State must obtain advance approval from the Assignment Judge before it can submit the same case to a third grand jury. To decide whether to permit a third presentation, Assignment Judges should consider whether the State has new or additional evidence to present; the strength of the State's evidence; and whether there has been any prosecutorial misconduct in the prior presentations." State v. Shaw, 241 N.J. 223, 230 (2020).

5. Rule 3:6-9(c) allows a grand jury to make a presentment censuring a public official only if the proof is "conclusive that the existence of the condemned matter is inextricably related to non-criminal failure to discharge that public official's public duty." The Assignment judge must strike the presentment in whole or in part if it "is false, or is based on partisan motives, or indulges in personalities without basis, or if other good cause appears. . . ." R. 3:6-9(c). And Rule 3:6-9(e), which governs appellate review, provides that "[t]he action taken by the Assignment Judge pursuant to this rule is judicial in nature and is subject to review for abuse of discretion . . . . "

B. Motion to Sever an Indictment

A trial court's decision whether to sever an indictment rests in the court's sound discretion. State v. Sterling, 215 N.J. 65, 73 (2013); State v. Chenique-Puey, 145 N.J. 334, 341 (1996). See R. 3:7-6 (joinder of offenses); R. 3:15-1(a),(b) (permissible and mandatory joinder); State v. Sterling, 215 N.J. 65, 73 (2013) ("Rule 3:7-6 expressly provides for

relief from prejudicial joinder, referencing Rule 3:15-2(b), which vests a court with discretion to sever charges '[i]f for any other reason it appears that a defendant or the State is prejudiced by a permissible or mandatory joinder of offenses or of defendants in an indictment or accusation'"). "Although joinder is favored, economy and efficiency interests do not override a defendant's right to a fair trial." State v. Sterling, 215 N.J. 65, 72 (2013).

C. Pretrial Intervention Programs

The Pretrial Intervention Program (PTI), Rule 3:28-1 to -10, "is a 'diversionary program through which certain offenders are able to avoid criminal prosecution by receiving early rehabilitative services expected to deter future criminal behavior.'" State v. Johnson, 238 N.J. 119, 127 (2019) (quoting State v. Roseman, 221 N.J. 611, 621 (2015)). "[T]he prosecutor's decision to accept or reject a defendant's PTI application is entitled to a great deal of deference." State v. Roseman, 221 N.J. 611, 624 (2015).

"[T]o overturn a prosecutor's decision to exclude a defendant from the program, the defendant must 'clearly and convincingly' show that the decision was a 'patent and gross abuse of . . . discretion.'" State v. K.S., 220 N.J. 190, 200 (2015) (quoting State v. Wallace, 146 N.J. 576, 582 (1996)).

The scope of the appellate court's review of a PTI rejection "is severely limited," and "serves to check only the 'most egregious examples of injustice and unfairness.'" State v. Negran, 178 N.J. 73, 82 (2003) (quoting State v. Leonardis, 73 N.J. 360, 384 (1977). See State v. Denman, 449 N.J. Super. 369, 376 (App. Div. 2017). However, "[w]hen a reviewing court determines that the 'prosecutor's decision was arbitrary, irrational, or otherwise an abuse of discretion, but not a patent and gross abuse of discretion,' the reviewing court may remand to the prosecutor for further consideration." State v. K.S., 220 N.J. 190, 200 (2015) (quoting State v. Dalglish, 86 N.J. 503, 509 (1981)).

D. Pretrial Detention

1. A decision on whether a defendant should be held in pretrial detention under the Criminal Justice Reform Act (CJRA), N.J.S.A.

2A:162-15 to -26, is reviewed for an abuse of discretion. State v. S.N., 231 N.J. 497, 515 (2018). "The proper standard of review is whether the court abused its discretion by relying on an impermissible basis, by relying on irrelevant or inappropriate factors, by failing to consider all relevant factors, or by making a clear error in judgment." State v. S.N., 231 N.J. 497, 515 (2018), "but de novo review applies with respect to alleged errors or misapplications of law within that court's analysis." State v. C.W., 449 N.J. Super. 231, 235 (App. Div. 2017). See State v. Molchor, 464 N.J. Super. 274, 285 (App. Div. 2020) (the appellate court reviews de novo questions of the CJRA's meaning). "A reviewing court generally will give no deference to a trial court decision that fails to 'provide factual underpinnings and legal bases supporting [its] exercise of judicial discretion.'" State v. S.N., 231 N.J. 497, 516 (2018) (alteration in original) (quoting State v. C.W., 449 N.J. Super. 231, 255 (App. Div. 2017).

2. "The question of whether a particular period or motion is excludable under N.J.S.A. 2A:162-22(b) [speedy trial deadlines] is a question of law that appellate courts review de novo." State v. Forchion, 451 N.J. Super. 474, 482 (App. Div. 2017). However, appellate courts "apply a deferential standard of review to the fact-finding concerning the amount of excludable time." State v. Brown, 216 N.J. 508, 517 (2014). Thus, we will not disturb the trial court's findings as to the amount of excludable time so long as those findings are supported by "sufficient credible evidence in the record." State v. Brown, 216 N.J. 508, 517 (2014).

E. Pretrial Rehabilitation Program

N.J.S.A. 2C:35-14 provides for a rehabilitation program for drug and alcohol dependent persons subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility. "[T]he State has the right to appeal a special probation Drug Court sentence only if it is illegal." State v. Hyland, 238 N.J. 135, 145 (2019). Review by the appellate court of "a trial court's application of the Drug Court Statute and Manual to a defendant involves a question of law," and therefore is reviewed de novo. State v. Maurer, 438 N.J. Super. 402, 411 (App. Div. 2014).

F. Motions to Suppress

1. The scope of review is limited. State v. Robinson, 200 N.J. 1, 15 (2009). "In reviewing a motion to suppress, an appellate court 'must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record.'" State v. Handy, 206 N.J. 39, 44 (2011) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). The appellate court gives deference to those factual findings in recognition of the trial court's "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Elders, 192 N.J. 224, 243 (2007). However, legal conclusions to be drawn from those facts are reviewed de novo. State v. Smith, 212 N.J. 365, 387 (2012).

2. "[R]eviewing courts 'should pay substantial deference' to judicial findings of probable cause in search warrant applications." State v. Andrews, 243 N.J. 447, 464 (2020) (quoting State v. Kasabucki, 52 N.J. 110, 117 (1968)). See State v. Marshall, 123 N.J. 1, 72 (1991) ("[w]e accord substantial deference to the discretionary determination resulting in the issuance of the warrant").

G. Competence to Stand Trial

The test for competence to stand trial is codified in N.J.S.A. 2C:4-4. An appellate court's review of a trial court's determination that a defendant was competent to stand trial is "highly deferential." State v. Purnell, 394 N.J. Super. 28, 50 (App. Div. 2007); State v. M.J.K., 369 N.J. Super. 532, 548 (App. Div. 2004); State v. Moya, 329 N.J. Super. 499, 506 (App. Div. 2000).

H. Waiver of Juvenile to Adult Court

An appellate court reviews a trial court's decision granting the prosecutor's application for waiver of a juvenile under N.J.S.A. 2A:4A-26.1, for an abuse of discretion, which requires an assessment of "whether the correct legal standard has been applied, whether inappropriate factors have been considered, and whether the exercise of discretion constituted a 'clear error of judgment' in all of the

circumstances." State v. R.G.D., 108 N.J. 1, 15 (1987). See State ex rel. A.D., 212 N.J. 200, 215 (2012); State in Interest of J.F., 446 N.J. Super. 39, 52 (App. Div. 2016).

II. TRIAL ISSUES

A. Motion to Acquit

1. Rule 3:18-1 (after all the evidence) provides in part that "[a]t the close of the State's case or after the evidence of all parties has been closed, the court shall, on defendant's motion or its own initiative, order the entry of a judgment of acquittal of one or more offenses charged in the indictment or accusation if the evidence is insufficient to warrant a conviction."

2. Rule 3:18-2 (after the verdict) provides in part that "[i]f the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made. . . . The court on such motion may set aside a verdict of guilty and order the entry of a judgment of acquittal and may so order if no verdict has been returned."

3. Note that when a motion is made at the close of the State's case, the trial judge must deny the motion if "viewing the State's evidence in its entirety, be that evidence direct or circumstantial," and giving the State the benefit of all reasonable inferences, "a reasonable jury could find guilt beyond a reasonable doubt." State v. Reyes, 50 N.J. 454, 458-59 (1967). See State v. Jones, 242 N.J. 156, 168 (2020). Only the State's proofs are considered.

4. However, when a defendant moves for a judgment of acquittal after all the proofs, "the court considers not only the evidence presented by the State, but 'the entirety of the evidence.'" State v. Lodzinski, ___ N.J. ___, ___ (2021) (slip op. at 30) (citing State v. Williams, 218 N.J. 576, 593 (2014). See also State v. Fuqua, 234 N.J. 583, 590-91 (2018) (appellate court "will deny a motion for a judgment of acquittal if the evidence, viewed in its entirety, be it direct or circumstantial, and giving the State the benefit of all of its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom,

is sufficient to enable a jury to find that the State's charge has been established beyond a reasonable doubt").

5. In assessing the sufficiency of the evidence on an acquittal motion, the appellate court applies a de novo standard of review. State v. Cruz-Pena, 243 N.J. 342, 348 (2020); State v. Jones, 242 N.J. 156, 168 (2020); State v. Fuqua, 234 N.J. 583, 590 (2018); State v. Williams, 218 N.J. 576, 593-94 (2014). The appellate court "must determine whether, based on the entirety of the evidence and after giving the State the benefit of all its favorable testimony and all the favorable inferences drawn from that testimony, a reasonable jury could find guilt beyond a reasonable doubt. State v. Williams, 218 N.J. 576, 594 (2014) (citing State v. Reyes, 50 N.J. 454, 458-59 (1967)).

B. Brady Rule

A trial court's judge's determination as to whether evidence is subject to disclosure under Brady v. Maryland, 373 U.S. 83 (1963), presents a mixed question of law and fact. State v. Marshall, 148 N.J. 89, 185 (1997). For mixed questions of law and fact, appellate courts give deference to the trial court's supported factual findings, but review de novo the court's application of legal rules to the factual findings. State v. Pierre, 223 N.J. 560, 577 (2015).

C. Pleas

"A defendant who elects to plead guilty to a criminal offense gives up fundamental constitutional rights, including the right to be presumed innocent until determined guilty beyond a reasonable doubt, the guarantee against self-incrimination and the right to confront one's accusers." State v. McDonald, 211 N.J. 4, 15 (2012).

1. Rejection of a Guilty Plea

a. Rule 3:9-2 provides that "[t]he court, in its discretion, may refuse to accept a plea of guilty and shall not accept such plea without first questioning the defendant personally, under oath or by affirmation, and determining by inquiry of the defendant and others, in the court's discretion, that there

is a factual basis for the plea and that the plea is made voluntarily, not as a result of any threats or of any promises or inducements not disclosed on the record, and with an understanding of the nature of the charge and the consequences of the plea." See State v. Urbina, 221 N.J. 509, 526 (2015); State v. Tate, 220 N.J. 393, 406 (2015); State v. Slater, 198 N.J. 145, 155 (2009).

b. An appellate court reviews a lower court's refusal to accept a plea under the abuse-of-discretion standard. State v. Daniels, 276 N.J. Super. 483, 487 (App. Div. 1994). An abuse of discretion occurs if the court rejects a plea because it believes the agreed upon sentence was too lenient or a jury could convict the defendant of a greater offense. State v. Madan, 366 N.J. Super. 98, 110 (App. Div. 2004).

c. "Once it is established that a guilty plea was made voluntarily, it may only be withdrawn at the discretion of the trial court." State v. Lipa, 219 N.J. 323, 332 (2014). A presumption of reasonableness attaches to the sentence where a defendant receives the exact sentence bargained for. State v. S.C., 289 N.J. Super. 61, 71 (App. Div. 1996).

d. Note that "[i]n the Brimage Guidelines, [Revised Attorney General Guidelines for Negotiating Cases under N.J.S.A. 2C:35-12 (July 15, 2004)], the Attorney General provided detailed instructions to prosecutors regarding the exercise of their discretion in tendering plea offers under N.J.S.A. 2C:35-12 [Controlled Substances] that waive or reduce otherwise mandatory terms of imprisonment and parole ineligibility for certain drug offenses." State v. A.T.C., 239 N.J. 450, 473 (2019). The Brimage guidelines contain a "Table of Authorized Plea Offers," which "sets forth presumptive plea offers based on a defendant's offense, his prior criminal history, and the timing of the plea offer." State v. Fowlkes, 169 N.J. 387, 394 (2001). However, it is important to note that the Attorney General issued a statewide directive to law enforcement providing that "[i]n formulating a plea offer, the prosecuting attorney shall consult the Revised Brimage Guidelines, but shall not be

bound by its provisions." Attorney General Law Enforcement Directive No. 2021-4, "Directive Revising Statewide Guidelines Concerning the Waiver of Mandatory Minimum Sentences in Non-Violent Drug Cases Pursuant to N.J.S.A. 2C:35-12," at 7 (Apr. 19, 2021).

2. Motion to Withdraw a Guilty Plea

a. Our courts apply different standards to a defendant's motion for withdrawal of a guilty plea made before and after sentence. State v. McDonald, 211 N.J. 4, 16 (2012); State v. Munroe, 210 N.J. 429, 441 (2012). Motions filed at or before the time of sentencing are granted in the "interests of justice," Rule 3:9-3(e), while post-sentencing motions must meet a higher standard of "manifest injustice," Rule 3:21-1. "Under either standard, a plea may only be set aside in the exercise of the court's discretion." State v. Slater, 198 N.J. 145, 156 (2009). See State v. Madan, 366 N.J. Super. 98, 108 (App. Div. 2004) ("[i]n determining whether to reject a plea bargain under Rule 3:9-3(e), a trial court has 'wide discretion.'"). This standard of review is different from a trial court's denial of a motion to vacate a plea for lack of an adequate factual basis, which is de novo. State v. Tate, 220 N.J. 393, 404 (2015).

b. The trial judge's decision rejecting a motion to withdraw a plea upon an assertion of innocence is judged under the four-prong test in State v. Slater, 198 N.J. 145, 156 (2009): "(1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal [will] result in unfair prejudice to the State or unfair advantage to the accused." In reviewing a trial court's findings on the Slater factors, an appellate court applies the abuse of discretion standard. State v. Tate, 220 N.J. 393, 404 (2015).

c. Challenges to a plea based on the sufficiency of the factual basis for a guilty plea are generally brought by way of a motion to withdraw the plea, or on post-conviction

relief. State v. Urbina, 221 N.J. 509, 527 (2015). However, "[a]lthough less common, a defendant may also challenge the sufficiency of the factual basis for his guilty plea on direct appeal." State v. Urbina, 221 N.J. 509, 527 (2015). "The standard of review of a trial court's denial of a motion to vacate a plea for lack of an adequate factual basis is de novo." State v. Urbina, 221 N.J. 509, 528 (2015) (quoting State v. Tate, 220 N.J. 393, 404 (2015)). "An appellate court is in the same position as the trial court in assessing whether the factual admissions during a plea colloquy satisfy the essential elements of an offense." State v. Tate, 220 N.J. 393, 404 (2015). Note that "when the issue is solely whether an adequate factual basis supports a guilty plea, a Slater analysis is unnecessary." State v. Tate, 220 N.J. 393, 404 (2015).

d. If an appellate court finds "that a plea has been accepted without an adequate factual basis, the plea, the judgment of conviction, and the sentence must be vacated, the dismissed charges reinstated, and defendant allowed to re-plead or to proceed to trial." State v. Barboza, 115 N.J. 415, 420 (1989). That remedy also applies when the defendant enters the guilty plea "without a plea offer from the prosecutor, but after the defendant has been advised by the trial court regarding the maximum sentence the judge was 'inclined to impose.'" State v. Ashley, 443 N.J. Super. 10, 13 (App. Div. 2015).

i. Prior to sentencing

Before sentencing, under Rule 3:9-3(e), courts exercise their discretion liberally to allow plea withdrawals. State v. Slater, 198 N.J. 145, 156 (2009). In fact, "In a close case, the 'scales should usually tip in favor of defendant.'" State v. Slater, 198 N.J. 145, 156 (2009) (quoting State v. Taylor, 80 N.J. 353, 365 (1979)). However, "defendants have a heavier burden in seeking to withdraw pleas entered as part of a plea bargain." State v. Slater, 198 N.J. 145, 160 (2009). See State v. Smullen, 118 N.J. 408, 416 (1990); State v. Huntley,

129 N.J. Super. 13, 18 (App. Div. 1974).

Although no specific corresponding right is found in the Court Rules to allow the State to withdraw its plea agreement, our courts have held that "[i]n proper circumstances the State may withdraw its agreement after the defendant has accepted." State v. Smith, 306 N.J. Super. 370, 383 (App. Div. 1997). See State v. Conway, 416 N.J. Super. 406, 411 (App. Div. 2010).

ii. After sentencing

After sentencing, under Rule 3:21-1, the court may in its discretion permit the defendant to withdraw a plea to correct a manifest injustice. "That discretionary determination necessitates a weighing of 'the policy considerations which favor the finality of judicial procedures against those which dictate that no man be deprived of his liberty except upon conviction after a fair trial or after the entry of a plea of guilty under circumstances showing that it was made truthfully, voluntarily and understandably.'" State v. Johnson, 182 N.J. 232, 237 (2005) (quoting State v. McQuaid, 147 N.J. 464, 487 (1997) (quoting State v. Herman, 47 N.J. 73, 76-77 (1966))).

"[I]f a defendant wishes to withdraw a guilty plea after sentencing has occurred, 'the court weighs more heavily the State's interest in finality and applies a more stringent standard' than that which is applied to a withdrawal application made before sentencing has occurred." State v. Johnson, 182 N.J. 232, 237 (2005) (quoting State v. McQuaid, 147 N.J. 464, 487 (1997)).

3. Appeal

"Generally, a defendant who pleads guilty is prohibited from raising, on appeal, the contention that the State violated his constitutional rights prior to the plea." State v. Means, 191 N.J. 610, 625 (2007) (quoting State v. Knight, 183 N.J. 449, 470

(2005)). There are, however, three exceptions: (1) Rule 3:5-7(d) (the denial of a motion to suppress may be reviewed on appeal even though the judgment of conviction is entered following a guilty plea); (2) Rule 3:28-6(d) (denial of an application or enrollment for pretrial intervention); and (3) Rule 3:9-3(f) (a defendant may enter a conditional guilty plea (with the consent of the court and the prosecutor) and reserve the right to appeal from the adverse determination of any specified pretrial motion). See State v. Benjamin, 442 N.J. Super. 258, 263 (App. Div. 2015) ("[o]rdinarily, the failure to enter a conditional plea would bar appellate review of other than search and seizure issues"), aff'd as modified, 228 N.J. 358 (2017).

D. Prosecutorial Misconduct

1. The appellate court reverses a conviction for prosecutorial misconduct when it was "clearly and unmistakably improper" and "so egregious" in the context of the trial as a whole that it deprived the defendant of a fair trial. State v. McNeil-Thomas, 238 N.J. 256, 275 (2019); State v. Pressley, 232 N.J. 587, 593 (2018); State v. Jackson, 211 N.J. 394, 407 (2012).

2. In determining whether a defendant's right to a fair trial has been denied, "an appellate court must consider (1) whether defense counsel made timely and proper objections to the improper remarks; (2) whether the remarks were withdrawn promptly; and (3) whether the court ordered the remarks stricken from the record and instructed the jury to disregard them." State v. Frost, 158 N.J. 76, 83 (1999). "If, after completing such a review, it is apparent to the appellate court that the remarks were sufficiently egregious, a new trial is appropriate, even in the face of overwhelming evidence that a defendant may, in fact, be guilty." State v. Smith, 212 N.J. 365, 404 (2012).

a. Summations

"[P]rosecutors are given wide latitude in making their summations and may sum up 'graphically and forcefully.'" State v. Garcia, 245 N.J. 412, 435 (2021) (quoting State v. Johnson, 31 N.J. 489, 510 (1960)). "'[P]rosecutors in

criminal cases are expected to make vigorous and forceful closing arguments to juries' and are therefore 'afforded considerable leeway in closing arguments as long as their comments are reasonably related to the scope of the evidence presented.'" State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (quoting State v. Frost, 158 N.J. 76, 82 (1999)).

"Although adversarial, our system of criminal justice does not tolerate convictions achieved by improper methods and, thus, when summing up the State's basis for asking a jury to convict a defendant, a prosecutor is obliged to confine summation remarks to the evidence in the case and only those reasonable inferences that may be drawn from that evidence." State v. McNeil-Thomas, 238 N.J. 256, 283 (2019).

"Although the prosecutor is free to discuss the direct and inferential evidence presented at trial, the prosecutor cannot press an argument that is untrue--that is contradicted by an objective video recording excluded from evidence for reasons unrelated to its authenticity." State v. Garcia, 245 N.J. 412, 435 (2021).

"Visual aids such as PowerPoint presentations must adhere to the same standards as counsels' spoken words." State v. Williams, 244 N.J. 592, 617 (2021).

Nonetheless, "even when a prosecutor's remarks stray over the line of permissible commentary," the appellate court reverses "a conviction on the basis of prosecutorial misconduct only if 'the conduct was so egregious as to deprive defendant of a fair trial.'" State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (quoting State v. Wakefield, 190 N.J. 397, 437 (2007)). "Only when the prosecutor's conduct in summation so 'substantially prejudice[s] the defendant's fundamental right to have the jury fairly evaluate the merits of his defense' must a court reverse a conviction and grant a new trial." State v. Garcia, 245 N.J. 412, 436 (2021) (quoting State v. Bucanis, 26 N.J. 45, 56 (1958)).

And "[g]enerally, remarks by a prosecutor, made in response to remarks by opposing counsel, are harmless." State v. C.H., 264 N.J. Super. 112, 135 (App. Div. 1993).

b. Examples of misconduct

See Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:10-2 (2021), for a comprehensive list of examples.

A prosecutor's reference during summation to a still shot from The Shining with the innocuous words, "Here's Johnny!," constituted reversible prosecutorial misconduct. State v. Williams, 244 N.J. 592, 617 (2021).

"[A] prosecutor may not use a defendant's post-arrest silence against him." State v. Taffaro, 195 N.J. 442, 456 (2008).

"Prosecutors must walk a fine line when making comparisons, whether implicit or explicit, between a defendant and an individual whom the jury associates with violence or guilt." State v. Williams, 244 N.J. 592, 617 (2021).

"[I]t is improper for the prosecutor to declare his individual or official opinion or belief of a defendant's guilt in such manner that the jury may understand the opinion or belief to be based upon something which he knows outside the evidence." State v. Wakefield, 190 N.J. 397, 440 (2007) (quoting State v. Thornton, 38 N.J. 380, 398 (1962)).

E. Inconsistent Verdicts

"[A] jury may render inconsistent verdicts so long as there exists a sufficient evidential basis in the record to support the charge on which the defendant is convicted." State v. Banko, 182 N.J. 44, 46 (2004). "We accept inconsistent verdicts in our criminal justice system, understanding that jury verdicts may result from lenity, compromise, or even mistake." State v. Goodwin, 224 N.J. 102, 116 (2016).

F. Stay/Bail

Rule 2:9-3(a) provides that a prison sentence shall not be stayed by the taking of an appeal; however, the court may admit the defendant to bail pending appeal, in accordance with Rule 2:9-4, which permits bail only when "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."

III. SENTENCING ISSUES

N.J.S.A. 2C:44-7 provides that "[a]ny action taken by the court in imposing sentence shall be subject to review by an appellate court. The court shall specifically have the authority to review findings of fact by the sentencing court in support of its findings of aggravating and mitigating circumstances and to modify the defendant's sentence upon his application where such findings are not fairly supported on the record before the trial court." For a detailed discussion of sentencing issues please refer to the Manual on New Jersey Sentencing Law, by Heather Young Keagle, Staff Attorney, Central Appellate Research, available at https://www.njcourts.gov/attorneys/assets/attyresources/manualsentencinglaw.pdf.

A. Right of Allocution

1. Rule 3:21-4(b) provides that "[s]entence shall not be imposed unless the defendant is present or has filed a written waiver of the right to be present. Before imposing sentence the court shall address the defendant personally and ask the defendant if he or she wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment. The defendant may answer personally or by his or her attorney." See State v. Blackmon, 202 N.J. 283, 298 (2010) (the rule limits the right of allocution to defendant only or, at his or her option, to defendant's counsel).

2. "[W]hen a trial court fails to afford a defendant the opportunity to make an allocution, in violation of Rule 3:21-4(b), the error is structural and the matter must be remanded for resentencing without regard to whether there has been a showing

of prejudice." State v. Jones, 232 N.J. 308, 319 (2018) (citing State v. Cerce, 46 N.J. 387, 395-97 (1966)).

B. Presentence Report

Rule 3:21-2(a) provides that the presentence report "shall be furnished to the defendant and the prosecutor." "The presentence report must be provided to the defendant, and the defendant is entitled to a 'fair opportunity to be heard on any adverse matters relevant to the sentencing.'" State v. Newman, 132 N.J. 159, 170 (1993) (quoting State v. Kunz, 55 N.J. 128, 144 (1969)). See N.J.S.A. 2C:44-6.

C. Reasons for Sentence

1. Rule 3:21-4(g) provides that "[a]t the time sentence is imposed the judge shall state reasons for imposing such sentence including findings pursuant to the criteria for withholding or imposing imprisonment or fines under N.J.S.A. 2C:44-1 to 2C:44-3; the factual basis supporting a finding of particular aggravating or mitigating factors affecting sentence; and, if applicable, the reasons for ordering forfeiture of public office, position or employment, pursuant to N.J.S.A. 2C:51-2." The statement of reasons must be included in the final judgment. R. 3:21-5.

2. Fifteen aggravating factors are set forth in N.J.S.A. 2C:44-1(a), and fourteen mitigating factors are set forth in N.J.S.A. 2C:44-1(b). See State v. Tormasi, 466 N.J. Super. 51, 66 (App. Div. 2021) (N.J.S.A. 2C:44-1(b) was amended effective October 19, 2020, to add the defendant's youth (i.e., less than twenty-six years of age) to the statutory mitigating sentencing factors. N.J.S.A. 2C:44-1(b)(14)).

3. "To facilitate meaningful appellate review, trial judges must explain how they arrived at a particular sentence." State v. Case, 220 N.J. 49, 65 (2014). "Proper sentencing thus requires an explicit and full statement of aggravating and mitigating factors and how they are weighed and balanced." State v. McFarlane, 224 N.J. 458, 466 (2016) (quoting State v. Randolph, 210 N.J. 330, 348 (2012)). "[C]ritical to the sentencing process and appellate review is the need for the sentencing court to explain clearly why

an aggravating or mitigating factor presented by the parties was found or rejected and how the factors were balanced to arrive at the sentence." State v. Case, 220 N.J. 49, 66 (2014) (citing State v. Fuentes, 217 N.J. 57, 73 (2014)). "A clear and detailed statement of reasons is thus a crucial component of the process conducted by the sentencing court, and a prerequisite to effective appellate review." State v. Fuentes, 217 N.J. 57, 74 (2014).

4. "[I]f the trial court fails to identify relevant aggravating and mitigating factors, or merely enumerates them, or forgoes a qualitative analysis, or provides little 'insight into the sentencing decision,' then the deferential standard [applied to sentencing decisions] will not apply." State v. Case, 220 N.J. 49, 65 (2014) (quoting State v. Kruse, 105 N.J. 354, 363 (1987)). Failure to give complete, specific reasons can result in remand for amended reasons. State v. Martelli, 201 N.J. Super 378, 385 (App. Div. 1985); State v. Sene, 443 N.J. Super. 134, 145 (App. Div. 2015).

D. Standards of Review

1. An appellate court's review of a sentencing court's imposition of sentence is guided by an abuse of discretion standard. State v. Jones, 232 N.J. 308, 318 (2018). An appellate court reviews a sentence "in accordance with a deferential standard." State v. Trinidad, 241 N.J. 425, 453 (2020) (quoting State v. Fuentes, 217 N.J. 57, 70 (2014)). The appellate court should defer to the sentencing court's factual findings and should not "second-guess" them. State v. Case, 220 N.J. 49, 65 (2014). "Appellate review of a criminal sentence is limited; a reviewing court decides whether there is a "clear showing of abuse of discretion." State v. Bolvito, 217 N.J. 221, 228 (2014) (quoting State v. Whitaker, 79 N.J. 503, 512 (1979)).

2. The deferential standard of review applies, however, "only if the trial judge follows the Code and the basic precepts that channel sentencing discretion.'" State v. Trinidad, 241 N.J. 425, 453 (2020) (quoting State v. Case, 220 N.J. 49, 65 (2014)).

3. If the sentencing court "follow[ed] the Code and the basic precepts that channel sentencing discretion," the reviewing court

should affirm the sentence, so long as the sentence does not "shock the judicial conscience." State v. Case, 220 N.J. 49, 65 (2014). "Appellate courts must affirm the sentence of a trial court unless: (1) the sentencing guidelines were violated; (2) the findings of aggravating and mitigating factors were not 'based upon competent credible evidence in the record;' or (3) 'the application of the guidelines to the facts' of the case 'shock[s] the judicial conscience.'" State v. Bolvito, 217 N.J. 221, 228 (2014) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)). The test also applies to "sentences that result from guilty pleas, including those guilty pleas that are entered as part of a plea agreement." State v. Sainz, 107 N.J. 283, 292 (1987). Trial judges also have discretion to determine if a sentence should be concurrent or consecutive. State v. Cuff, 239 N.J. 321, 350 (2019).

4. "Judges who exercise discretion and comply with the principles of sentencing remain free from the fear of 'second guessing.'" State v. Dalziel, 182 N.J. 494, 501 (2005) (quoting State v. Megargel, 143 N.J. 484, 494 (1996)).

5. The appellate court's jurisdiction to review sentences includes the power to make new findings of fact, to reach independent determinations of the facts, and to supplement the record on appeal. State v. Jarbath, 114 N.J. 394, 412 (1989); R. 2:10-3. However, "the exercise of appellate original jurisdiction over sentencing should not occur regularly or routinely; . . . a remand to the trial court for resentencing is strongly to be preferred." State v. Jarbath, 114 N.J. 394, 411 (1989). When "a remand will work an injustice by continuing" the defendant's incarceration, then it is appropriate for an appellate court to exercise original jurisdiction and resentence the defendant. State v. L.V., 410 N.J. Super. 90, 113 (App. Div. 2009).

6. In the appeal of a juvenile delinquency adjudication, the appellate "standard of review is narrow and is limited to evaluation of whether the trial judge's findings are supported by substantial, credible evidence in the record as a whole." State in Interest of D.M., 238 N.J. 2, 15 (2019) (quoting State in Interest of J.P.F., 368 N.J. Super. 24, 31, 845 (App. Div. 2004)).

IV. POST-CONVICTION RELIEF

A. Standard of Review

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)). Post-conviction relief provides "a built-in 'safeguard that ensures that a defendant was not unjustly convicted.'" State v. Nash, 212 N.J. 518, 540 (2013) (quoting State v. McQuaid, 147 N.J. 464, 482 (1997)).

The standard of review depends on the errors alleged. Appellate court "review is necessarily deferential to a PCR court's factual findings based on its review of live witness testimony." State v. Nash, 212 N.J. 518, 540 (2013). However, review of a PCR court's interpretation of the law is reviewed de novo. State v. Nash, 212 N.J. 518, 540-41 (2013). See State v. Pierre, 223 N.J. 560, 576 (2015).

B. Grounds for Post-Conviction Relief

1. Rule 3:22-2 provides that a petition for post-conviction relief is cognizable if based on the following grounds: (a) substantial denial in the conviction proceedings of defendant's rights under the Federal or State Constitution; (b) lack of jurisdiction to impose the judgment rendered upon defendant's conviction; (c) imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law if raised together with other grounds cognizable under paragraph (a), (b), or (d) of this rule; (d) any ground previously available as a basis for collateral attack upon a conviction by habeas corpus or any other common-law or statutory remedy; and (e) a claim of ineffective assistance of counsel based on trial counsel's failure to file a direct appeal of the judgment of conviction and sentence upon defendant's timely request.

2. "A petitioner is generally barred from presenting a claim on PCR that could have been raised at trial or on direct appeal, R. 3:22-4(a), or that has been previously litigated, R. 3:22-5." State v. Nash, 212 N.J. 518, 546 (2013). See R. 3:22-4 for exceptions. A petition for post-conviction relief is not a substitute for a direct

appeal. State v. Mitchell, 126 N.J. 565, 583 (1992).

3. A first petition for PCR must be filed within five years of the date of entry of the judgment of conviction, unless, among another things, the petitioner "alleges facts showing that the delay beyond said time was due to defendant's excusable neglect and that there is a reasonable probability that if the defendant's factual assertions were found to be true enforcement of the time bar would result in a fundamental injustice." R. 3:22-12(a)(1). See State v. Dock, 205 N.J. 237, 245 n.2 (2011).

4. A second or subsequent petition must be filed within one year after the latest of: "(A) the date on which the constitutional right asserted was initially recognized by the United States Supreme Court or the Supreme Court of New Jersey, if that right has been newly recognized by either of those Courts and made retroactive by either of those Courts to cases on collateral review; or (B) the date on which the factual predicate for the relief sought was discovered, if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence; or (C) the date of the denial of the first or subsequent application for post-conviction relief where ineffective assistance of counsel that represented the defendant on the first or subsequent application for postconviction relief is being alleged." R. 3-22:12(a)(2)(A), (B), (C).

5. The time limitations shall not be relaxed, except as provided in the ule. R. 3-22:12(b). However, "petitioners are rarely barred from raising ineffective-assistance-of-counsel claims on post-conviction review. Such claims may fall within Rule 3:22-4(c), which affords post-conviction review for constitutional claims that could have been raised earlier, because those claims are grounded in the Sixth Amendment and the New Jersey Constitution." State v. Preciose, 129 N.J. 451, 459-60 (1992).

V. INEFFECTIVE ASSISTANCE OF COUNSEL

A. Right to Counsel

"Those accused in criminal proceedings are guaranteed the right to

counsel to assist in their defense. U.S. Const. amend. VI; N.J. Const. art. I, ¶ 10." State v. Gideon, 244 N.J. 538, 549 (2021). "To satisfy the right to counsel guaranteed by our Federal and State Constitutions, it is not enough '[t]hat a person who happens to be a lawyer is present at trial alongside the accused," rather, the right to counsel has been interpreted by the United States Supreme Court and this Court as 'the right to the effective assistance of counsel.'" State v. Gideon, 244 N.J. 538, 550 (2021) (citation omitted) (quoting Strickland v. Washington, 466 U.S. 668, 685-86 (1984)).

B. Ineffective Assistance

"Ineffective-assistance-of-counsel claims are particularly suited for post-conviction review because they often cannot reasonably be raised in a prior proceeding." State v. Hess, 207 N.J. 123, 145 (2011) (quoting State v. Preciose, 129 N.J. 451, 460 (1992)).

C. Appeal

1. In addressing an ineffective assistance claim, whether on direct appeal or post-conviction relief, New Jersey courts follow the standard formulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687 (1984). "First, the defendant must show that counsel's performance was deficient." State v. Gideon, 244 N.J. 538, 550 (2021) (quoting Strickland v. Washington, 466 U.S. 668, 687 (1984)). "Second, the defendant must have been prejudiced by counsel's deficient performance." State v. Gideon, 244 N.J. 538, 550 (2021) (quoting Strickland v. Washington, 466 U.S. 668, 687 (1984)).

2. "The defendant's conviction must be reversed if both prongs of the Strickland standard have been satisfied because, in such cases, 'the ineffective representation constitutes a breakdown in the adversary process that renders the result unreliable.'" State v. Gideon, 244 N.J. 538, 550 (2021) (quoting State v. Nash, 212 N.J. 518, 542 (2013) (quoting Strickland v. Washington, 466 U.S. 668, 687 (1984))).

VI. MUNICIPAL APPEALS

A. Appeal

1. Generally, a municipal court decision is appealed to the Law Division. See R. 3:23-1; R. 7:13-1. "In the Law Division, the trial judge 'may reverse and remand for a new trial or may conduct a trial de novo on the record below.'" State v. Robertson, 228 N.J. 138, 147-48 (2017) (quoting R. 3:23-8(a)(2)). "At a trial de novo, the court makes its own findings of fact and conclusions of law but defers to the municipal court's credibility findings." State v. Robertson, 228 N.J. 138, 147 (2017) (citing State v. Ross, 189 N.J. Super. 67, 75 (App. Div. 1983). "It is well-settled that the trial judge 'giv[es] due, although not necessarily controlling, regard to the opportunity of the' municipal court judge to assess 'the credibility of the witnesses.'" State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Johnson, 42 N.J. 146, 157 (1964)).

2. On appeal from the Law Division's decision, the appellate court's review "focuses on whether there is 'sufficient credible evidence . . . in the record' to support the trial court's findings." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). "[A]ppellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Locurto, 157 N.J. 463, 474 (1999)). However, the trial court's legal rulings are considered de novo. State v. Robertson, 228 N.J. 138, 148 (2017). See State v. Locurto, 157 N.J. 463, 470 (1999) (appellate review of a de novo conviction in the Law Division following a municipal court appeal is "exceedingly narrow.").

SECTION SEVEN

STANDARDS IN CIVIL CASES ONLY

I. PRETRIAL ISSUES

A. Forum Non Conveniens

The application of the doctrine of forum non conveniens "is left to the sound discretion of the trial court, and therefore considerable deference must be paid to the court's decision." Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 557 (2011).

B. Failure to State a Claim

"An appellate court reviews de novo the trial court's determination of the motion to dismiss under Rule 4:6-2(e)," for "failure to state a claim upon which relief can be granted." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 108 (2019); Gonzalez v. State Apportionment Comm'n, 428 N.J. Super. 333, 349 (App. Div. 2012). In considering a Rule 4:6-2(e) motion, the court "examines 'the legal sufficiency of the facts alleged on the face of the complaint," Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989), limiting its review to 'the pleadings themselves,' Roa v. Roa, 200 N.J. 555, 562 (2010)." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 108 (2019). The test for determining the adequacy of a pleading is "whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). "If the court considers evidence beyond the pleadings in a Rule 4:6-2(e) motion, that motion becomes a motion for summary judgment, and the court applies the standard of Rule 4:46." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 107 (2019).

C. Involuntary Dismissal

Rule 4:37-2(a) provides that a trial court "in its discretion may on defendant's motion dismiss an action or any claim against the defendant" for failure to issue a timely summons or comply with any rule or order of

the court. See Gonzalez v. Safe & Sound Sec. Corp., 185 N.J. 100, 115 (2005).

D. Reinstatement of Complaint

Reinstatement of a civil complaint dismissed under Rule 1:13-7(a) for lack of prosecution is a matter within the judge's discretion. Baskett v. Cheung, 422 N.J. Super. 377, 382-83 (App. Div. 2011).

E. Summary Judgment

1. Rule 4:46-2 governs motions for summary judgment. Rule 4:46-2(a) provides that "[t]he motion for summary judgment shall be served with a brief and a separate statement of material facts with or without supporting affidavits."

Rule 4:46-2(c) provides that a motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

2. "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 450, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016). See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). "Summary judgment should be granted, in particular, 'after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman v. Martinez, 242 N.J. 450, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

3. Appellate courts review the trial court's grant or denial of a motion for summary judgment de novo. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Christian Mission John 3:16 v.

Passaic City, 243 N.J. 175, 184 (2020); Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016).

4. When reviewing a grant of summary judgment, the appellate court applies the same standard as the motion judge and considers "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). See Rozenblit v. Lyles, 245 N.J. 105, 121 (2021); Christian Mission John 3:16 v. Passaic City, 243 N.J. 175, 184 (2020); Friedman v. Martinez, 242 N.J. 450, 472 (2020); Shields v. Ramslee Motors, 240 N.J. 479, 487 (2020); Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016).

F. Res Judicata and Judicial Estoppel

An appellate court reviews a trial court's decision to invoke res judicata or judicial estoppel de novo. Terranova v. GE Pension Tr., 457 N.J. Super. 404, 410 (App. Div. 2019); Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000). Note that if an issue raised on appeal was decided on the merits in a prior appeal it may not be relitigated even if of constitutional dimension. State v. Cusick, 116 N.J. Super. 482, 485 (App. Div. 1971).

II. TRIAL ISSUES

A. Motions for Judgment

1. The three principal motions for judgment during trial, Rule 4:37-2(b) (motion for judgment at the close of plaintiff's case), Rule 4:40-1 (motion for judgment at the close of all the evidence), and Rule 4:40-2(b) (motion for judgment notwithstanding the verdict), are all governed by the same evidentiary standard at trial and on appellate review. Smith v. Millville Rescue Squad, 225 N.J. 373, 397 (2016); Besler v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544, 597 (2010); Verdicchio v. Ricca, 179 N.J. 1, 30 (2004).

2. Appellate courts apply the same standard that governs the trial courts in reviewing a motion for involuntary dismissal under Rule 4:37-2(b), judgment at the close of plaintiff's case under Rule 4:37-2(b), and judgment at the close of the evidence under Rule 4:40-1. Smith v. Millville Rescue Squad, 225 N.J. 373, 397 (2016); ADS Assocs. Grp., Inc. v. Oritani Sav. Bank, 219 N.J. 496, 511 (2014); Verdicchio v. Ricca, 179 N.J. 1, 30 (2004); Est. of Roach v. TRW, Inc., 164 N.J. 598, 612 (2000).

3. "[I]f, accepting as true all the evidence which supports the position of the party defending against the motion and according him the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion must be denied." Verdicchio v. Ricca, 179 N.J. 1, 30 (2004) (quoting Est. of Roach v. TRW, Inc., 164 N.J. 598, 612 (2000)).

B. Equitable Remedies

Equitable remedies are reversed only for an abuse of discretion. Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993). See Kaye v. Rosefielde, 223 N.J. 218, 231 (2015) (Chancery judge has broad discretionary power to adapt equitable remedies to the particular circumstances of a case).

C. Reconsideration of Interlocutory Orders

Rule 4:42-2 provides that interlocutory orders "shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice." A trial judge's reconsideration of, and grant of relief from, an interlocutory order before final judgment is a matter committed to the sound discretion of the trial judge. Lombardi v. Masso, 207 N.J. 517, 536 (2011); Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 263 (App. Div. 1987). See Lawson v. Dewar, ___ N.J. Super. ___ (App. Div. 2021) (for an excellent discussion on a motion for reconsideration of an interlocutory order). This remains true even where a party moves for reconsideration of the issue in the trial court after the Appellate Division has already ruled on the issue in an interlocutory appeal. Burt v. W. Jersey Health

Sys., 339 N.J. Super. 296, 310 (App. Div. 2001).

D. Summation

"As a general matter, 'counsel is allowed broad latitude in summation [and] counsel may draw conclusions even if the inferences that the jury is asked to make are improbable, perhaps illogical, erroneous or even absurd.'" Bender v. Adelson, 187 N.J. 411, 431 (2006) (quoting Colucci v. Oppenheim, 326 N.J. Super. 166, 177 (App. Div. 1999)). "Comments during summation, however, should be centered on the truth and counsel should not 'misstate the evidence nor distort the factual picture.'" Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 128 (2008) (quoting Bender v. Adelson, 187 N.J. 411, 431 (2006)).

III. POST-TRIAL ISSUES

A. Prejudgment Interest

1. Tort actions

Rule 4:42-11(b) (emphasis added) governs an award of prejudgment interest in tort actions, and provides in part that, "[e]xcept where provided by statute with respect to a public entity or employee, and except as otherwise provided by law, the court shall, in tort actions, including products liability actions, include in the judgment simple interest, calculated as hereafter provided, from the date of the institution of the action or from a date 6 months after the date the cause of action arises, whichever is later, provided that in exceptional cases the court may suspend the running of such prejudgment interest." Thus, an award of prejudgment is, with a few exceptions, mandatory in tort actions. See Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:42-11(b)(2021).

2. Contract and Equitable Claims

Unlike prejudgment interest in tort actions, which are governed by Rule 4:42-11(b), "the award of prejudgment interest on contract and equitable claims is based on equitable principles." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 390 (2009) (quoting

County of Essex v. First Union Nat'l Bank, 186 N.J. 46, 61 (2006)). In a contract case, the award of prejudgment interest and the rate at which prejudgment interest is calculated is within the sound discretion of the trial court. County of Essex v. First Union Nat'l Bank, 186 N.J. 46, 61 (2006). See Pressler & Verniero, Current N.J. Court Rules, cmt. 3 on R. 4:42-11(b) (2021).

B. Attorneys' Fees and Costs

1. "In the field of civil litigation, New Jersey courts historically follow the 'American Rule,' which provides that litigants must bear the cost of their own attorneys' fees." Innes v. Marzano-Lesnevich, 224 N.J. 584, 592 (2016). "Although New Jersey generally disfavors the shifting of attorneys' fees, . . . a prevailing party can recover those fees if they are expressly provided for by statute, court rule, or contract." Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 440 (2001).

2. In conformance with the strong public policy against shifting counsel fees, Rule 4:42-9(a) provides that "[n]o fee for legal services shall be allowed in the taxed costs or otherwise, except": 1) in a family action; 2) out of a fund in court; 3) in a probate action; 4) in an action for foreclosure of a mortgage; 5) in an action to foreclose a tax certificate; 6) in an action upon liability or indemnity policy of insurance; 7) as expressly provided by rules in any action; and 8) in all cases where attorneys' fees are permitted by statute. See also In re Estate of Folcher, 224 N.J. 496, 516 (2016) (listing statutes "that allow for fee shifting for the public good").

3. "[A] reviewing court will disturb a trial court's award of counsel fees 'only on the rarest of occasions, and then only because of a clear abuse of discretion.'" Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)).

4. For example, an award of counsel fees in matrimonial matters is within the trial court's discretion under Rule 5:3-5(c). See Williams v. Williams, 59 N.J. 229, 233 (1971). An appellate court will not disturb a counsel fee decision in matrimonial

matters absent a showing of "an abuse of discretion involving a clear error in judgment." Tannen v. Tannen, 416 N.J. Super. 248, 285 (App. Div. 2010). See also Occhifinto v. Olivo Constr. Co., LLC, 221 N.J. 443, 453 (2015) (an award of counsel fees under Rule 4:42-9(a)(6) involves the exercise of sound discretion by the trial court).

5. Costs are governed under Rule 4:42-8(a), which provides that "[u]nless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party."

C. Damages

1. General Damages

a. "[T]he trial court may not disturb a damages award entered by a jury unless it is so grossly excessive or so grossly inadequate 'that it shocks the judicial conscience.'" Orientale v. Jennings, 239 N.J. 569, 595 (2019) (quoting Cuevas v. Wentworth Grp., 226 N.J. 480, 485 (2016)). "If a damages award meets that standard, then the court must grant a new trial." Orientale v. Jennings, 239 N.J. 569, 596 (2019).

b. However, "when a court concludes that a new trial is warranted 'based solely on the excessiveness of the jury's damages award, it has the power to enter a remittitur reducing the award to the highest amount that could be sustained by the evidence.'" Orientale v. Jennings, 239 N.J. 569, 590 (2019) (quoting Cuevas v. Wentworth Grp., 226 N.J. 480, 499 (2016)).

c. "In setting a remittitur or an additur, the court must determine 'the amount that a reasonable jury, properly instructed, would have awarded.'" Orientale v. Jennings, 239 N.J. 569, 596 (2019) (quoting Tronolone v. Palmer, 224 N.J. Super. 92, 103 (App. Div. 1988)). "The acceptance of a remittitur or an additur requires the mutual consent of the parties. If either party rejects a remittitur or an additur, the case must proceed to a new trial on damages." Orientale v.

Jennings, 239 N.J. 569, 596 (2019). However, trial courts "must exercise the power of remittitur with great restraint" and only "in the unusual case in which the jury's award is so patently excessive, so pervaded by a sense of wrongness, that it shocks the judicial conscience." Cuevas v. Wentworth Grp., 226 N.J. 480, 485 (2016).

d. "Judicial review of the correctness of a jury's damages award requires that the trial record be viewed in the light most favorable to plaintiffs." Cuevas v. Wentworth Grp., 226 N.J. 480, 488 (2016). "The standard for reviewing a damages award that is claimed to be excessive is the same for trial and appellate courts, with one exception—an appellate court must pay some deference to a trial judge's 'feel of the case.'" Cuevas v. Wentworth Grp., 226 N.J. 480, 501 (2016) (quoting Johnson v. Scaccetti, 192 N.J. 256, 282 (2007)).

2. Punitive Damages

a. The purpose of punitive damages is "the deterrence of egregious misconduct and the punishment of the offender." Herman v. Sunshine Chem. Specialties, Inc., 133 N.J. 329, 337 (1993) (citing Leimgruber v. Claridge Assocs., Ltd., 73 N.J. 450, 454 (1977)). Punitive damages may only be awarded, however, if compensatory damages were awarded in the first stage of the trial. Longo v. Pleasure Prods., Inc., 215 N.J. 48, 58 (2013).

b. The New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9 to -5.17, was enacted in 1995 to "establish more restrictive standards with regard to the awarding of punitive damages." Pavlova v. Mint Mgmt. Corp., 375 N.J. Super. 397, 403 (App. Div. 2005).

c. The decision to award or deny punitive damages rests within the sound discretion of the trial court. Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003). "An otherwise valid award of punitive damages will not be set aside unless 'manifestly outrageous,' or 'clearly excessive.'"

Smith v. Whitaker, 160 N.J. 221, 242-43 (1999) (citations omitted).

D. Relief from Judgment or Order

1. Rule 4:50-1 allows a trial court to relieve a party from a final judgment or order for the following specified reasons: "(a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order."

2. Relief under Rule 4:50-1, except for relief from default judgments, is "granted sparingly," and in exceptional circumstances. F.B. v. A.L.G., 176 N.J. 201, 207 (2003). "The decision whether to vacate a judgment on one of the six specified grounds is a determination left to the sound discretion of the trial court, guided by principles of equity." F.B. v. A.L.G., 176 N.J. 201, 207 (2003). On appeal, "[t]he decision granting or denying an application to open a judgment will be left undisturbed unless it represents a clear abuse of discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). See U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (trial court's determination under Rule 4:50-1 "warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion"). "The Court finds an abuse of discretion when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467-68 (2012) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

3. However, a court should view the setting aside of a default

judgment under this rule and Rule 4:43-3, "'with great liberality,' and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div. 1964)).

IV. SPECIAL MATTERS (CIVIL)

A. Arbitration

1. Appellate courts "review de novo the trial court's judgment dismissing the complaint and compelling arbitration." Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 131 (2020). See Skuse v. Pfizer, Inc., 244 N.J. 30, 46 (2020).

2. "Under N.J.S.A. 2A:24-7, either party may move to confirm an award within three months of the date of its delivery. Once confirmed, the award is as conclusive as a court judgment. N.J.S.A. 2A:24-10." Policeman's Benevolent Ass'n, Loc. 292 v. Borough of N. Haledon, 158 N.J. 392, 398 (1999).

3. N.J.S.A. 2A:24-8 sets forth four bases upon which a court may vacate an arbitration award: 1) corruption, fraud or undue means; 2) evident partiality or corruption in the arbitrators; 3) misconduct of the arbitrators in refusing to postpone the hearing, upon sufficient cause being shown, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party; or 4) the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

4. "Judicial review of an arbitration award is very limited." Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017) (quoting Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko, 202 N.J. 268, 276 (2010)). "To foster finality and 'secure arbitration's speedy and inexpensive nature,' reviewing courts must give arbitration awards 'considerable deference.'" Borough of Carteret v. Firefighters Mut. Benevolent

Ass'n, Loc. 67, ___ N.J. ___ (2021) (slip op. at 11) (quoting Borough of E. Rutherford v. E. Rutherford PBA Loc. 275, 213 N.J. 190, 201-02 (2013)). "[A]n arbitrator's award resolving a public sector dispute will be accepted so long as the award is 'reasonably debatable.'" Borough of Carteret v. Firefighters Mut. Benevolent Ass'n, Loc. 67, ___ N.J. ___ (2021) (slip op. at 11) (quoting Borough of E. Rutherford v. E. Rutherford PBA Loc. 275, 213 N.J. 190, 201 (2013)). An arbitrator's award is not to be cast aside lightly. It is subject to being vacated only when it has been shown that a statutory basis justifies that action." Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017) (quoting Kearny PBA Loc. # 21 v. Town of Kearny, 81 N.J. 208, 221 (1979)).

5. And certain statutes, including the Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A:23A-1 to -30, set "strict limits on the appeal of an arbitration award." Riverside Chiropractic Grp. v. Mercury Ins. Co., 404 N.J. Super. 228, 235 (App. Div. 2008).

B. Family Part Appeals

1. General Standards

Legal decisions of family part judges are reviewed under the same de novo standard applicable to legal decisions in other cases. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019); Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013). Appellate courts also defer to the trial court's findings of fact "when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). That review is altered slightly, however, in family part cases "[b]ecause of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare v. Cesare, 154 N.J 394, 413 (1998). Appellate courts "review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998). "Thus, 'findings by the

trial court are binding on appeal when supported by adequate, substantial, credible evidence.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998). "We invest the family court with broad discretion because of its specialized knowledge and experience in matters involving parental relationships and the best interests of children." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 427 (2012). The appellate court accords "great deference to discretionary decisions of Family Part judges." Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012).

2. Equitable Distribution

N.J.S.A. 2A:34-23.1 governs equitable distribution of marital assets. The standard of review of issues as to which assets are available for distribution or the valuation of those assets, "is whether the trial judge's findings are supported by adequate credible evidence in the record." Borodinsky v. Borodinsky, 162 N.J. Super. 437, 443-44 (App. Div. 1978) (citing Rothman v. Rothman, 65 N.J. 219, 232 (1974)). However, where the issue on appeal concerns the manner in which allocation of the eligible assets is made, "an appellate court may determine whether the amount and manner of the award constituted an abuse of the trial judge's discretion." Borodinsky v. Borodinsky, 162 N.J. Super. 437, 444 (App. Div. 1978). See Slutsky v. Slutsky, 451 N.J. Super. 332, 355 (App. Div. 2017) (a family part judge has broad discretion in allocating assets subject to equitable distribution).

3. Child Support Awards

a. Child Support awards are governed by Rule 5:6A. The child support guidelines "may be modified or disregarded by the court only where good cause is shown." R. 5:6A. "Good cause shall consist of a) the considerations set forth in Appendix IX-A, or the presence of other relevant factors which may make the guidelines inapplicable or subject to modification, and b) the fact that injustice would result from the application of the guidelines. In all cases, the determination of good cause shall be within the sound discretion of the court."

b. "When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused his or her discretion." J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)). "The trial court's 'award will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice.'" J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)).

4. Alimony

a. N.J.S.A. 2A:34-23(b) governs awards of alimony. "[T]he Legislature gave courts substantial discretion in determining whether to grant alimony and in setting the amount and form in which to grant it." Jacobitti v. Jacobitti, 135 N.J. 571, 575 (1994).

b. The standard of review of an alimony award is narrow—a trial court has broad, but not unlimited, discretion, which must take into account the factors set forth in N.J.S.A. 2A:34-23(b) and case law. Steneken v. Steneken, 367 N.J. Super. 427, 434 (App. Div. 2004), aff'd in part, modified in part, 183 N.J. 290 (2005). The Appellate Division will not disturb an alimony award if the trial judge's conclusions are consistent with the law and not "manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice." Foust v. Glaser, 340 N.J. Super. 312, 316 (App. Div. 2001). "A trial court's findings regarding alimony should not be vacated unless the court clearly abused its discretion, failed to consider all of the controlling legal principles, made mistaken findings, or reached a conclusion that could not reasonably have been reached on sufficient credible evidence present in the record after considering the proofs as a whole." J.E.V. v. K.V., 426 N.J. Super. 475, 485 (App. Div. 2012). See Reese v. Weis, 430 N.J. Super. 552, 567 (App. Div. 2013).

C. Civil Commitment

1. Civil Commitments of adults is governed by Rule 4:74-7. "The scope of appellate review of a commitment determination is extremely narrow and should be modified only if the record reveals a clear mistake." In re D.C., 146 N.J. 31, 58 (1996).

2. The scope of appellate review of a commitment under the Sexually Violent Predator Act, N.J.S.A. 30:4-27.24 to -27.38, is also "extremely narrow." In re Civ. Commitment of R.F., 217 N.J. 152, 174 (2014) (quoting In re D.C., 146 N.J. 31, 58 (1996)).

3. "[A]n appellate court should not modify a trial court's determination either to commit or release an individual unless 'the record reveals a clear mistake.'" In re Civ. Commitment of R.F., 217 N.J. 152, 175 (2014) (quoting In re D.C., 146 N.J. 31, 58 (1996)). Further, the judges who hear, cases "generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" In re Civ. Commitment of R.F., 217 N.J. 152, 174 (2014).

D. Class Certifications

1. Class Actions are governed by Rule 4:32. Rule 4:32-1(a) provides that "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

2. In general, an appellate court reviews a trial court's class action determination for abuse of discretion." Dugan v. TGI Fridays, Inc., 231 N.J. 24, 50 (2017). "When an order granting or denying class certification is reviewed on appeal, the 'appellate court must ascertain whether the trial court has followed' the class action standard set forth in Rule 4:32-1. Dugan v. TGI Fridays, Inc., 231 N.J. 24, 50 (2017) (quoting Lee v. Carter-Reed Co., 203

N.J. 496, 506 (2010)).

E. Foreclosure

"[A]n application to open, vacate or otherwise set aside a foreclosure judgment or proceedings subsequent thereto is subject to an abuse of discretion standard." United States v. Scurry, 193 N.J. 492, 502 (2008).

F. Municipal Matters

1. Rule 4:69 governs challenges to municipal and municipal agency decisions. Rule 4:69-1 provides that such challenges "shall be afforded by an action in the Law Division, Civil Part."

2. "When reviewing a trial court's decision regarding the validity of a local board's determination," appellate courts "are bound by the same standards as was the trial court." Jacoby v. Zoning Bd. of Adj. of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015) (quoting Fallone Props., LLC v. Bethlehem Twp. Plan. Bd., 369 N.J. Super. 552, 562 (App. Div. 2004)). Appellate courts "give deference to the actions and factual findings of local boards and may not disturb such findings unless they were arbitrary, capricious, or unreasonable." Jacoby v. Zoning Bd. of Adj. of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015). See Dunbar Homes, Inc. v. Zoning Bd. of Adj. of Twp. of Franklin, 448 N.J. Super. 583, 594-95 (App. Div. 2017) (zoning board's determination will be set aside only if arbitrary, capricious or unreasonable, and will not be disturbed in the absence of a clear abuse of discretion).

3. "Although a municipality's informal interpretation of an ordinance is entitled to deference . . . the meaning of an ordinance's language is a question of law that we review de novo." Bubis v. Kassin, 184 N.J. 612, 627 (2005). The trial judge's determination as to the meaning of the ordinance is similarly "not entitled to any deference" by the appellate court. Dunbar Homes, Inc. v. Zoning Bd. of Adj. of Twp. of Franklin, 448 N.J. Super. 583, 595 (App. Div. 2017).

4. Municipal Ordinances

a. "[A] municipal ordinance is afforded a presumption of validity, and the action of a board will not be overturned unless it is found to be arbitrary and capricious or unreasonable, with the burden of proof placed on the plaintiff challenging the action." Grabowsky v. Township of Montclair, 221 N.J. 536, 551 (2015). See Fraternal Ord. of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 115 (2020). See Price v. Himeji, LLC, 214 N.J. 263, 284 (2013) ("board's decisions enjoy a presumption of validity, and a court may not substitute its judgment for that of the board unless there has been a clear abuse of discretion").

b. "A municipal land-use determination should not be set aside unless the public body has engaged in 'a clear abuse of discretion.'" 388 Route 22 Readington Realty Holdings, LLC v. Township of Readington, 221 N.J. 318, 340 (2015) (quoting Kramer v. Bd. of Adj., Sea Girt, 45 N.J. 268, 296 (1965)). See Pheasant Bridge Corp. v. Township of Warren, 169 N.J. 282, 289-90 (2001) (presumption of validity may be overcome by a challenging party only upon a showing that the ordinance is arbitrary, unreasonable or capricious, or plainly contrary to fundamental principles of zoning or the zoning statute). "In evaluating whether a zoning ordinance is arbitrary, capricious, or unreasonable, a court's role is not to pass on the wisdom of the ordinance; that is exclusively a legislative function." Pheasant Bridge Corp. v. Township of Warren, 169 N.J. 282, 293 (2001).

c. "[T]he trial judge's determination as to the meaning of the ordinance is not entitled to any deference" on appeal. Dunbar Homes, Inc. v. Zoning Bd. of Adj. of Twp. of Franklin, 448 N.J. Super. 583, 595 (App. Div. 2017). Further, "[i]n construing the meaning of a statute, an ordinance, or our case law," appellate review is de novo. 388 Route 22 Readington Realty Holdings, LLC v. Township of Readington, 221 N.J. 318, 338 (2015).

G. Tax Court Decisions

"Generally, appellate courts apply a highly deferential standard of review when considering the factual findings and decisions of Tax Court judges. Presbyterian Home at Pennington, Inc. v. Borough of Pennington, 409 N.J. Super. 166, 180 (App. Div. 2009) (citing Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 375 (App. Div. 2001). "The findings of the Tax Court will not be disturbed 'unless they are plainly arbitrary or there is a lack of substantial evidence to support them.'" Presbyterian Home at Pennington, Inc. v. Borough of Pennington, 409 N.J. Super. 166, 180 (App. Div. 2009) (quoting G & S Co. v. Borough of Eatontown, 6 N.J. Tax 218, 220 (App. Div. 1982)).

SECTION EIGHT

STANDARDS IN ADMINISTRATIVE APPEALS

I. APPEALS FROM STATE ADMINISTRATIVE AGENCY ACTIONS

A. The New Jersey State Constitution provides for judicial review of actions by administrative agencies. N.J. Const. art. VI, § 5, ¶ 4.

B. Rule 2:2-3(a)(2) vests the Appellate Division with exclusive jurisdiction over all decisions or actions of any state administrative agency or officer. Thus, "[o]rdinarily, review of both the quasi-judicial and regulatory actions of state administrative agencies must be sought in the Appellate Division." Loc. 518, N.J. State Motor Vehicle Emps. Union, S.E.I.U., AFL-CIO v. Div. of Motor Vehicles, 262 N.J. Super. 598, 601-02 (App. Div. 1993). See Prado v. State, 186 N.J. 413, 422 (2006) (Rule 2:2-3(a)(2) vests the Appellate Division with exclusive jurisdiction over all decisions or actions of any state administrative agency or officer); D.G. ex rel. J.G. v. N. Plainfield Bd. of Educ., 400 N.J. Super. 1, 16 (App. Div. 2008) ("Judicial review of administrative actions is vested in the Appellate Division").

C. Nevertheless, "the Appellate Division retains the discretion, in an appropriate case, to retain jurisdiction in an appeal from the action of a state agency, but to refer the matter to the Law Division or to the agency for such additional fact-finding as it deems necessary to a just outcome." Infinity Broad. Corp. v. N.J. Meadowlands Comm'n, 187 N.J. 212, 227

(2006). Condemnation cases fall into that category. Infinity Broad. Corp. v. N.J. Meadowlands Comm'n, 187 N.J. 212, 225 (2006). See Hosp. Ctr. at Orange v. Guhl, 331 N.J. Super. 322, 330 (App. Div. 2000) (if resolution of an appeal from agency action or inaction "requires development of a factual record," the Appellate Division can remand to the agency for a statement of reasons, for further action by the agency, or permit the Law Division to create a record and make fact-finding).

D. Further, an appeal to review the action or inaction of a local administrative agency by complaint in lieu of prerogative writ is in the Law Division. Infinity Broad. Corp. v. N.J. Meadowlands Comm'n, 187 N.J. 212, 223 (2006).

II. REVIEW OF ADMINISTRATIVE DECISIONS

A. Judicial review of quasi-judicial agency determinations is limited. Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). See Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995) ("In light of the executive function of administrative agencies, judicial capacity to review administrative actions is severely limited").

B. "[A]n appellate court reviews agency decisions under an arbitrary and capricious standard." Zimmerman v. Sussex Cnty. Educ. Servs. Comm'n, 237 N.J. 465, 475 (2019). "An agency's determination on the merits 'will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Herrmann, 192 N.J. 19, 27-28 (2007). The party challenging the administrative action bears the burden of making that showing. Lavezzi v. State, 219 N.J. 163, 171 (2014).

C. On appeal, the judicial role in reviewing all administrative action is generally limited to three inquiries: "(1) whether the agency's action violates express or implied legislative policies, that is, did the agency

follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors." Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting In re Stallworth, 208 N.J. 182, 194 (2011)). See In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 383 (2013); Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995).

D. "When an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. 19, 28 (2007). See In re Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020) ("Wide discretion is afforded to administrative decisions because of an agency's specialized knowledge"); Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009) (in assessing the three criteria an appellate court "must be mindful of, and deferential to, the agency's 'expertise and superior knowledge of a particular field'"); City of Newark v. Nat. Res. 30 Council, Dep't of Env't Prot., 82 N.J. 530, 539 (1980) (deferential standard is consistent with "strong presumption of reasonableness that an appellate court must accord an administrative agency's exercise of statutorily delegated responsibility"); In re Musick, 143 N.J. 206, 216 (1996) (deferential standard is consistent with the Judiciary's "limited role . . . in reviewing the actions of other branches of government"). "Deference controls even if the court would have reached a different result in the first instance." In re Herrmann, 192 N.J. 19, 28 (2007). However, "[a]lthough administrative agencies are entitled to discretion in making decisions, that discretion is not unbounded and must be exercised in a manner that will facilitate judicial review." In re Vey, 124 N.J. 534, 543-44 (1991).

E. "[G]enerally, when construing language of a statutory scheme, deference is given to the interpretation of statutory language by the agency charged with the expertise and responsibility to administer the scheme." Acoli v. N.J. State Parole Bd., 224 N.J. 213, 229 (2016) See Garden State Check Cashing Serv., Inc. v. Dep't of Banking & Ins., 237 N.J. 482, 489 (2019); State v. Quaker Valley Farms, LLC, 235 N.J. 37, 55 (2018); Hargrove v. Sleepy's, LLC, 220 N.J. 289, 302 (2015); In re

Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010). "This deference comes from the understanding that a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010).

F. A reviewing court is not, however, bound by an agency's interpretation of a statute or its determination of a strictly legal issue outside its charge. Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 158 (2018); Dep't of Child. & Fams. v. T.B., 207 N.J. 294, 302 (2011). See Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992) (agencies have no superior ability to resolve purely legal questions, and a court is not bound by an agency's determination of a legal issue).

G. Appellate courts also defer to an administrative agency's "technical expertise, its superior knowledge of its subject matter area, and its fact-finding role." Messick v. Bd. of Rev., 420 N.J. Super 321, 325 (App. Div. 2011). However, this deference "is only as compelling as is the expertise of the agency, and this generally only in technical matters which lie within its special competence." Application of Boardwalk Regency Corp. for a Casino License, 180 N.J. Super. 324, 333 (App. Div. 1981).

III. REVIEW OF ADMINISTRATIVE REGULATIONS

A. "Judicial review of agency regulations begins with a presumption that the regulations are both 'valid and reasonable.'" N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 548 (2012) (quoting N.J. Soc'y for Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 385 (2008)). See S.L.W. v. N.J. Div. of Pensions & Benefits, 238 N.J. 385, 394 (2019); In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010); In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 489 (2004).

B. The scope of the appellate court's review of administrative rules, regulations or policy, as with agency decisions, is limited and deferential. In re Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578, 629 (2013); In re N.J. State League of Muns. v. Dep't of Cmty. Affairs, 158

N.J. 211, 222 (1999); In re Petitions for Rulemaking, N.J.A.C. 10:82-1.2 & 10:85-4.1, 117 N.J. 311, 325 (1989). It is "generally limited to a determination whether that rule is arbitrary, capricious, unreasonable, or beyond the agency's delegated powers." In re Amend. of N.J.A.C. 8:31b-3.31 & N.J.A.C. 8:31b-3.51, 119 N.J. 531, 543-44 (1990). And "an administrative agency may not, under the guise of interpretation, extend a statute to give it a greater effect than its language permits." GE Solid State, Inc. v. Dir., Div. of Tax'n, 132 N.J. 298, 306 (1993) (citing Kingsley v. Hawthorne Fabrics, Inc., 41 N.J. 521, 528 (1964)). See Reilly v. AAA Mid-Atl. Ins. Co. of N.J., 194 N.J. 474, 486 (2008).

C. The party challenging their validity bears the burden of proving that the regulations are arbitrary, capricious or unreasonable. N.J. State League of Muns. v. Dep't of Cmty. Affairs, 158 N.J. 211, 222 (1999).

D. The three-part test set forth above in Allstars Automobile Group, Inc. v. N.J. Motor Vehicle Commission, 234 N.J. 150, 157 (2018) and In re Proposed Quest Academy Charter School of Montclair Founders Group, 216 N.J. 370, 383 (2013), is applicable to a review of an agency's rulemaking. "An agency's action must still rest on a reasonable factual basis, but its choice between two supportable, yet distinct, courses of action 'will not be deemed arbitrary or capricious as long as it was reached 'honestly and upon due consideration.'" In re AG Law Enf't Directive Nos. 2020-5 & 2020-6, ___ N.J. ___. ___ (2021) (slip op. at 32) (quoting In re Adoption of Amends. & New Regs. at N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 135-36 (App. Div. 2007) (quoting Worthington v. Fauver, 88 N.J. 183, 204-05 (1982))).

E. "Courts afford an agency 'great deference' in reviewing its 'interpretation of statutes within its scope of authority and its adoption of rules implementing' the laws for which it is responsible." N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 549 (2012) (quoting N.J. Soc'y for Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 385 (2008)). "That approach reflects the specialized expertise agencies possess to enact technical regulations and evaluate issues that rulemaking invites." N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 549 (2012).

SECTION NINE

SUMMARY OF AUTHORITY

Standard	Authority
1. Adjournment	State v. Kates, 216 N.J. 393, 397 (2014); State v. Hayes, 205 N.J. 522, 537 (2011); Escobar-Barrera v. Kissin, 464 N.J. Super. 224, 233 (App. Div. 2020).
2. Administrative Decisions	In re Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020); Zimmerman v. Sussex Cnty. Educ. Servs. Comm'n, 237 N.J. 465, 475 (2019); Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018); In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 383 (2013); Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011); In re Herrmann, 192 N.J. 19, 27-28 (2007); Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995); Messick v. Bd. of Rev., 420 N.J. Super 321, 325 (App. Div. 2011).
3. Administrative Regulations	S.L.W. v. N.J. Div. of Pensions & Benefits, 238 N.J. 385, 394 (2019); In re Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578, 629 (2013); N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 548 (2012); In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010); N.J. Soc'y for Prevention of Cruelty to Animals v. N.J. Dep't of Agric.,

		196 N.J. 366, 385 (2008); In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 489 (2004); In re Adoption of Amends. & New Regs. at N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 135-36 (App. Div. 2007).
4.	Alimony	N.J.S.A. 2A:34-23(b); Jacobitti v. Jacobitti, 135 N.J. 571, 575 (1994); Reese v. Weis, 430 N.J. Super. 552, 567 (App. Div. 2013); J.E.V. v. K.V., 426 N.J. Super. 475, 485 (App. Div. 2012); Steneken v. Steneken, 367 N.J. Super. 427, 434 (App. Div. 2004), aff'd in part, modified in part, 183 N.J. 290 (2005); Foust v. Glaser, 340 N.J. Super. 312, 316 (App. Div. 2001).
5.	Attorney's Fees	Rule 4:42-9(a); Innes v. Marzano-Lesnevich, 224 N.J. 584, 592 (2016); Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009); Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 440 (2001).
6.	Change of Venue	Rule 4:3-3; Rule 3:14-2; State v. Harris, 156 N.J. 122, 145 (1998); State v. Wise, 19 N.J. 59, 73 (1955).
7.	Civil Commitment	Rule 4:74-7; In re Civ. Commitment of R.F., 217 N.J. 152, 174 (2014); In re Commitment of W.Z., 173 N.J. 109, 132 (2002); In re D.C., 146 N.J. 31, 58 (1996).
8.	Consent Judgment	Winberry v. Salisbury, 5 N.J. 240, 255 (1950), cert. denied, 340 U.S. 877 (1950); Jacobs v. Mark Lindsay & Son Plumbing & Heating, Inc., 458

		N.J. Super. 194, 205 (App. Div. 2019); N.J. Schs. Constr. Corp. v. Lopez, 412 N.J. Super. 298, 309 (App. Div. 2010); Cooper Med. Ctr. v. Boyd, 179 N.J. Super. 53, 56 (App. Div. 1981); Janicky v. Point Bay Fuel, Inc., 410 N.J. Super. 203, 207 (App. Div. 2009).
9.	Control of Courtroom	State v. Pinkston, 233 N.J. 495, 511 (2018); Martin v. Newark Pub. Schs., 461 N.J. Super. 330, 340 (App. Div. 2019); State v. Bitzas, 451 N.J. Super. 51, 76 (App. Div. 2017); D.G. ex rel. J.G. v. N. Plainfield Bd. of Educ., 400 N.J. Super. 1, 26 (App. Div. 2008); State v. Cusumano, 369 N.J. Super. 305, 311 (App. Div. 2004); N.J.R.E. 611(a).
10.	Contempt	Rule 2:10-4; In re Daniels, 118 N.J. 51, 62 (1990); Ippolito v. Ippolito, 443 N.J. Super. 1, 4 (App. Div. 2015); State v. Quintana, 270 N.J. Super. 676, 678 (App. Div. 1994).
11.	Credibility Findings	State v. Camey, 239 N.J. 282, 306 (2019); State v. J.L.G., 234 N.J. 265, 301 (2018); Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 329 (2017); State v. Hubbard, 222 N.J. 249, 264 (2015); Griepenburg v. Township of Ocean, 220 N.J. 239, 254 (2015).
12.	Cross-Examination	N.J.R.E. 611(b); State v. Jenewicz, 193 N.J. 440, 467 (2008).
13.	Discovery	State v. Brown, 236 N.J. 497, 521 (2019); Brugaletta v. Garcia, 234 N.J.

	225, 240 (2018); Cap. Health Sys., Inc. v. Horizon Healthcare Servs., Inc., 230 N.J. 73, 79-80 (2017); Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011).
14. Equitable Distribution	N.J.S.A. 2A:34-23.1; Rothman v. Rothman, 65 N.J. 219, 233 (1974); Slutsky v. Slutsky, 451 N.J. Super. 332, 355 (App. Div. 2017); Borodinsky v. Borodinsky, 162 N.J. Super. 437, 443-44 (App. Div. 1978)
15. Evidence	State v. Garcia, 245 N.J. 412, 430 (2021); State v. Medina, 242 N.J. 397, 412 (2020); Rowe v. Bell & Gossett Co., 239 N.J. 531, 551 (2019); State v. Prall, 231 N.J. 567, 580 (2018); State v. Nantambu, 221 N.J. 390, 402 (2015); Townsend v. Pierre, 221 N.J. 36, 52 (2015).
16. Expert Witness Civil	In re Accutane Litig., 234 N.J. 340, 391 (2018); Townsend v. Pierre, 221 N.J. 36, 53 (2015); Borough of Saddle River v. 66 E. Allendale, LLC, 216 N.J. 115, 155 (2013). Scientific: In re Accutane Litig., 234 N.J. 340, 392 (2018) (adopted use of factors identified in Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 593-95 (1993).
17. Expert Witness Criminal	State v. J.L.G., 234 N.J. 265, 301 (2018); State v. J.R., 227 N.J. 393, 410 (2017); State v. Rosales, 202 N.J. 549, 562-63 (2010); State v. Townsend, 186 N.J. 473, 493 (2006); State v. Harvey, 151 N.J. 117, 167 (1997).

	Scientific: State v. Cassidy, 235 N.J. 482, 492 (2018) (continuing to follow Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923)).
18. Fact Findings of Judge	Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. Camey, 239 N.J. 282, 306 (2019); State v. McNeil-Thomas, 238 N.J. 256, 271 (2019); Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 329 (2017); State v. Hubbard, 222 N.J. 249, 264 (2015); Griepenburg v. Township of Ocean, 220 N.J. 239, 254 (2015); Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974); State v. Johnson, 42 N.J. 146, 162 (1964).
19. Fact Findings of Agency	Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997); Messick v. Bd. of Rev., 420 N.J. Super. 321, 325 (App. Div. 2011); S.D. v. Div. of Med. Assistance, 349 N.J. Super. 464, 485 (App. Div. 2002).
20. Fact Findings Family Part	Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016); Gnall v. Gnall, 222 N.J. 414, 428 (2015); Cesare v. Cesare, 154 N.J. 394, 413 (1998); N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 427 (2012); Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012).
21. Forum Non Conveniens	Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 557 (2011); Kurzke v. Nissan Motor Corp., 164 N.J. 159, 165 (2000); Rippon v. Smigel, 449 N.J. Super. 344, 364 (App. Div. 2017).

22. Guilty Plea	Rule 3:9-2; State v. Urbina, 221 N.J. 509, 526 (2015); State v. Tate, 220 N.J. 393, 406 (2015); State v. Slater, 198 N.J. 145, 155 (2009); State v. Daniels, 276 N.J. Super. 483, 487 (App. Div. 1994).
23. Guilty Plea, Motion to Withdraw Before Sentencing	Rule 3:9-3(e); State v. Urbina, 221 N.J. 509, 528 (2015); State v. Tate, 220 N.J. 393, 404 (2015); State v. McDonald, 211 N.J. 4, 16 (2012); State v. Munroe, 210 N.J. 429, 441 (2012); State v. Slater, 198 N.J. 145, 156 (2009).
24. Guilty Plea, Motion to Withdraw After Sentencing	Rule 3:21-1; State v. Slater, 198 N.J. 145, 156 (2009); State v. Johnson, 182 N.J. 232, 237 (2005); State v. McQuaid, 147 N.J. 464, 487 (1997); State v. Herman, 47 N.J. 73, 76-77.
25. Harmless Error	Rule 2:10-2; State v. G.E.P., 243 N.J. 362, 389 (2020); Willner v. Vertical Reality, Inc., 235 N.J. 65, 79 (2018); State v. J.R., 227 N.J. 393, 417 (2017); State v. Mohammed, 226 N.J. 71, 86 (2016); State v. Macon, 57 N.J. 325, 338-40 (1971).
26. Ineffective Assistance of Counsel	Strickland v. Washington, 466 U.S. 668 (1984); State v. Gideon, 244 N.J. 538, 550 (2021); State v. Nash, 212 N.J. 518, 542 (2013); State v. Fritz, 105 N.J. 42, 58 (1987).
27. Indictment, Dismissal	Rule 3:6-9(e); State v. Shaw, 241 N.J. 223, 239 (2020); State v. Bell, 241

	N.J. 552, 561 (2020); State v. Twiggs, 233 N.J. 513, 544 (2018); State v. Perry, 124 N.J. 128, 168 (1991); State v. Lyons, 417 N.J. Super. 251, 258 (App. Div. 2010). Cf. State v. Shaw, 241 N.J. 223, 230 (2020) (advance approval two or more indictments).
28. Joinder and Severance	Rule 4:38-1 (civil); Rule 4:38-2 (civil); Rule 3:15-1 (criminal); Rule 3:15-2 (criminal); State v. Weaver, 219 N.J. 131, 149 (2014).
29. Jury Charge	Rule 1:7-2; State v. Ramirez, 246 N.J. 61 (2021); State v. Garrison, 228 N.J. 182, 201 (2017); Prioleau v. Ky. Fried Chicken, Inc., 223 N.J. 245, 256 (2015); State v. McKinney, 223 N.J. 475, 494 (2015); Velazquez v. Portadin, 163 N.J. 677, 688 (2000); State v. Afanador, 151 N.J. 41, 54 (1997); State v. Green, 86 N.J. 281, 287 (1981); State v. Wilbely, 63 N.J. 420 (1973).
30. Jury, voir dire	State v. Thompson, 224 N.J. 324, 344 (2016); State v. Winder, 200 N.J. 231, 252 (2009); State v. Wakefield, 190 N.J. 397, 496 (2007); State v. Papasavvas, 163 N.J. 565, 595 (2000).
31. Jury Influence and Misconduct	State v. Mohammed, 226 N.J. 71, 89 (2016); State v. Loftin, 191 N.J. 172, 187 (2007); State v. Scherzer, 301 N.J. Super. 363, 486 (App. Div. 1997); Panko v. Flintkote Co., 7 N.J. 55, 61 (1951).

32. Jury, Sequestration	Rule 1:8-6; State v. Harvey, 151 N.J. 117, 214 (1997); Barber v. Shop-Rite of Englewood & Assocs., Inc., 393 N.J. Super. 292, 298-99 (App. Div. 2007).
33. Jury, Request to Read Back	State v. Miller, 205 N.J. 109, 122 (2011). See State v. Weston, 222 N.J. 277, 294 (2015) (videotaped statement).
34. Jury, Further Deliberations	State v. Czachor, 82 N.J. 392, 407 (1980). See State v. Ross, 218 N.J. 130, 145 (2014); State v. Harris, 457 N.J. Super. 34, 50 (App. Div. 2018); State v. Adim, 410 N.J. Super. 410, 423-24 (App. Div. 2009).
35. Jury, Removal of Juror	For Cause: State v. DiFrisco, 137 N.J. 434, 459 (1994); State v. Singletary, 80 N.J. 55, 62 (1979). Illness, Inability to Continue: Rule 1:8-2(d)(1); State v. Musa, 222 N.J. 554, 564-65 (2015).
36. Juvenile, Waiver	State ex rel. A.D., 212 N.J. 200, 215 (2012); State v. R.G.D., 108 N.J. 1, 15 (1987); State in Interest of J.F., 446 N.J. Super. 39, 52 (App. Div. 2016).
37. Lay Witnesses	N.J.R.E. 701; State v. G.C., 188 N.J. 118, 133 (2006); State v. Savage, 120 N.J. 594, 632 (1990)). See State v. Bueso, 225 N.J. 193, 202-03 (2016) (plain error).
38. Motion to Acquit	Rule 3:18-1 (after all the evidence); Rule 3:18-2 (after the verdict); State v. Lodzinski, ___ N.J. ___, ___

		(2021); State v. Cruz-Pena, 243 N.J. 342, 348 (2020); State v. Jones, 242 N.J. 156, 168 (2020); State v. Fuqua, 234 N.J. 583, 590 (2018); State v. Williams, 218 N.J. 576, 593-94 (2014); State v. Reyes, 50 N.J. 454, 458-59 (1967).
39.	Motion to Admit Photos	State v. McDougald, 120 N.J. 523, 582 (1990); State v. Moore, 113 N.J. 239, 295 (1988); State v. Conklin, 54 N.J. 540, 545 (1969).
40.	Motion for Judgment	Rule 4:37-2(b); Rule 4:40-1; Rule 4:40-2(b); Smith v. Millville Rescue Squad, 225 N.J. 373, 397 (2016); ADS Assocs. Grp., Inc. v. Oritani Sav. Bank, 219 N.J. 496, 511 (2014); Besler v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544, 597 (2010); Verdicchio v. Ricca, 179 N.J. 1, 30 (2004); Est. of Roach v. TRW, Inc., 164 N.J. 598, 612 (2000); Dolson v. Anastasia, 55 N.J. 2, 5 (1969).
41.	Motion for Mistrial	State v. Smith, 224 N.J. 36, 47 (2016); State v. Jackson, 211 N.J. 394, 407 (2012); State v. Yough, 208 N.J. 385, 397 (2011); McKenney v. Jersey City Med. Ctr., 167 N.J. 359, 376 (2001); State v. Harvey, 151 N.J. 117, 205 (1997).
42.	Motion for New Trial (Civil)	Rule 4:49-1; Township of Manalapan v. Gentile, 242 N.J. 295, 304 (2020); Hayes v. Delamotte, 231 N.J. 373, 386 (2018); Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 522 (2011).

43. Motion for New Trial (Criminal)	Rule 3:20-1; State v. Brown, 118 N.J. 595, 604 (1990); State v. Sims, 65 N.J. 359, 373 (1974); State v. Armour, 446 N.J. Super. 295, 306 (App. Div. 2016).
44. Motion for Reconsideration	Rule 4:49-2; Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Kornbleuth v. Westover, 241 N.J. 289, 301 (2020); State v. Timmendequas, 161 N.J. 515, 554 (1999); Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996).
45. Motion for Recusal	State v. McCabe, 201 N.J. 34, 45 (2010); Goldfarb v. Solimine, 460 N.J. Super. 22, 30 (App. Div. 2019); Jadlowski v. Owens-Corning, 283 N.J. Super. 199, 221 (App. Div. 1995).
46. Motions to Suppress	State v. Andrews, 243 N.J. 447, 464 (2020); State v. Smith, 212 N.J. 365, 387 (2012); State v. Handy, 206 N.J. 39, 44 (2011); State v. Elders, 192 N.J. 224, 243 (2007); State v. Marshall, 123 N.J. 1, 72 (1991).
47. Motion to Vacate Judgment (General Rule)	Rule 4:50-1; U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467-68 (2012); F.B. v. A.L.G., 176 N.J. 201, 207 (2003); Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994).
48. Motion to Vacate Judgment	Rule 4:43-3 (default); Rule 4:50-1 (relief from judgment); U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J.

		449, 467 (2012); Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007); F.B. v. A.L.G., 176 N.J. 201, 207 (2003); Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994); Mancini v. Eds ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993).
49.	Municipal Court Decision	State v. Robertson, 228 N.J. 138, 148 (2017); State v. Locurto, 157 N.J. 463, 471-02 (1999); State v. Johnson, 42 N.J. 146, 157 (1964).
50.	Municipal Decisions (Ordinance)	Fraternal Ord. of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 115 (2020); Grabowsky v. Township of Montclair, 221 N.J. 536, 551 (2015); Price v. Himeji, LLC, 214 N.J. 263, 284 (2013).
51.	Municipal Decisions (Land Use)	388 Route 22 Readington Realty Holdings, LLC v. Township of Readington, 221 N.J. 318, 340 (2015); Pheasant Bridge Corp. v. Township of Warren, 169 N.J. 282, 289-90 (2001); Kramer v. Bd. of Adj., Sea Girt, 45 N.J. 268, 296 (1965).
52.	Order of Proof	N.J.R.E. 611(a); State v. McKiver, 199 N.J. Super. 542, 546 (App. Div. 1985); Aiello v. Myzie, 88 N.J. Super. 187, 192 (App. Div. 1965).
53.	Original Jurisdiction	Rule 2:10-5; State v. Micelli, 215 N.J. 284, 293 (2013); Price v. Himeji, LLC, 214 N.J. 263, 294 (2013); State v. Santos, 210 N.J. 129, 142 (2012).

54. Other Crimes Evidence	State v. Weaver, 219 N.J. 131, 149 (2014); State v. Gillispie, 208 N.J. 59, 84 (2011).
55. Plain Error	Rule 2:10-2; State v. Singh, 245 N.J. 1, 13 (2021); State v. Dunbrack, 245 N.J. 531, 544 (2021); State v. G.E.P., 243 N.J. 362, 389 (2020); State v. Alessi, 240 N.J. 501, 527 (2020); State v. Santamaria, 236 N.J. 390, 404 (2019); State v. Funderburg, 225 N.J. 66, 79 (2016); State v. Gore, 205 N.J. 363, 383 (2011); Baker v. Nat'l State Bank, 161 N.J. 220, 226 (1999); State v. Macon, 57 N.J. 325, 336, 273 (1971); Szczecina v. P.V. Holding Corp., 414 N.J. Super. 173, 185 (App. Div. 2010).
56. Plain Error (Corollaries to Rule)	Summation: State v. Pressley, 232 N.J. 587, 594 (2018); State v. Echols, 199 N.J. 344, 360 (2009); State v. Nelson, 173 N.J. 417, 471 (2002); State v. Frost, 158 N.J. 76, 83 (1999); State v. Macon, 57 N.J. 325, 333 (1971). Invited error: State v. Santamaria, 236 N.J. 390, 409 (2019); State v. A.R., 213 N.J. 542, 561 (2013); N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 340 (2010).
57. Post-Conviction Relief	Rule 3:22-1 to -12; State v. Gideon, 244 N.J. 538, 541 (2021); State v. Pierre, 223 N.J. 560, 576 (2015); State v. Nash, 212 N.J. 518, 540 (2013); State v. Preciose, 129 N.J. 451, 459-64 (1992); State v. Mitchell, 126 N.J. 565, 583 (1992).

58. Prejudgment Interest	Rule 4:42-11(b); Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 390 (2009); County of Essex v. First Union Nat'l Bank, 186 N.J. 46, 61 (2006).
59. Pretrial Detention	N.J.S.A. 2A:162-15 to -26; State v. S.N., 231 N.J. 497, 515 (2018); State v. Molchor, 464 N.J. Super. 274, 285 (App. Div. 2020); State v. Forchion, 451 N.J. Super. 474, 482 (App. Div. 2017); State v. C.W., 449 N.J. Super. 231, 235 (App. Div. 2017).
60. Pretrial Intervention	Rule 3:28-1 to -10; State v. Johnson, 238 N.J. 119, 127 (2019); State v. Roseman, 221 N.J. 611, 621 (2015); State v. K.S., 220 N.J. 190, 200 (2015); State v. Negran, 178 N.J. 73, 82 (2003); State v. Denman, 449 N.J. Super. 369, 376 (App. Div. 2017).
61. Pretrial Rehabilitation Program	N.J.S.A. 2C:35-14; State v. Hyland, 238 N.J. 135, 145 (2019); State v. Maurer, 438 N.J. Super. 402, 411 (App. Div. 2014).
62. Prosecutor Misconduct	State v. McNeil-Thomas, 238 N.J. 256, 275 (2019); State v. Pressley, 232 N.J. 587, 593 (2018); State v. Jackson, 211 N.J. 394, 407 (2012); State v. Frost, 158 N.J. 76, 83 (1999).
63. Prosecutor's Comments	State v. Garcia, 245 N.J. 412, 436 (2021); State v. Williams, 244 N.J. 592, 617 (2021); State v. McNeil-Thomas, 238 N.J. 256, 275 (2019); State v. Wakefield, 190 N.J. 397, 437 (2007).

64. Punitive Damages	N.J.S.A. 2A:15-5.9 to -5.17; Smith v. Whitaker, 160 N.J. 221, 242-43 (1999); Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003).
65. Res Judicata and Collateral Estoppel	Terranova v. GE Pension Tr., 457 N.J. Super. 404, 410 (App. Div. 2019); Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000).
66. Sanctions	Kornbleuth v. Westover, 241 N.J. 289, 300 (2020); Williams v. Am. Auto Logistics, 226 N.J. 117, 128 (2016); Gonzalez v. Safe & Sound Sec., 185 N.J. 100, 115 (2005).
67. Stay/Injunction	Rule 2:9-3; Rule 2:9-5; Rule 2:9-7; State v. Robertson, 228 N.J. 138, 149 (2017); Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013); Horizon Health Ctr. v. Felicissimo, 135 N.J. 126, 137 (1994).
68. Sentence, Allocution	Rule 3:21-4(b); State v. Jones, 232 N.J. 308, 319 (2018); State v. Blackmon, 202 N.J. 283, 298 (2010).
69. Sentence, Excessive	State v. Trinidad, 241 N.J. 425, 453 (2020); State v. Jones, 232 N.J. 308, 318 (2018); State v. Case, 220 N.J. 49, 65 (2014); State v. Fuentes, 217 N.J. 57, 70 (2014); State v. Bolvito, 217 N.J. 221, 228 (2014); State v. Sainz, 107 N.J. 283, 292 (1987); State v. Roth, 95 N.J. 334, 363-65 (1984).

70. Sentence, Presentence Report	Rule 3:21-2(a); State v. Newman, 132 N.J. 159, 170 (1993); State v. Kunz, 55 N.J. 128.
71. Sentencing Reasons	Rule 3:21-4(g); State v. McFarlane, 224 N.J. 458, 466 (2016); State v. Case, 220 N.J. 49, 65 (2014); State v. Fuentes, 217 N.J. 57, 74 (2014); State v. Randolph, 210 N.J. 330, 348 (2012); State v. Tormasi, 466 N.J. Super. 51, 66 (App. Div. 2021); State v. Sene, 443 N.J. Super. 134, 145 (App. Div. 2015).
72. Sentence, State Appeal	State v. Hyland, 238 N.J. 135, 143 (2019); State v. Ciancaglini, 204 N.J. 597, 605 (2011); Rule 3:21-10(b)(5); N.J.S.A. 2C:44-1(f)(2); State v. Roth, 95 N.J. 334, 344-45 (1984).
73. Summary Judgment	Rule 4:46-2; Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). See also Rozenblit v. Lyles, 245 N.J. 105, 121 (2021); Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Christian Mission John 3:16 v. Passaic City, 243 N.J. 175, 184 (2020); Friedman v. Martinez, 242 N.J. 450, 472 (2020); Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Shields v. Ramslee Motors, 240 N.J. 479, 487 (2020).
74. Trial Court (de novo review)	Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019); Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). See In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020); State v. Courtney,

	243 N.J. 77, 85 (2020); State v. G.E.P., 243 N.J. 362, 382 (2020); State v. Hemenway, 239 N.J. 111, 125 (2019); State v. Hyland, 238 N.J. 135, 143 (2019); State v. Fuqua, 234 N.J. 583, 591 (2018); Green v. Monmouth Univ., 237 N.J. 516, 529 (2019); Meehan v. Antonellis, 226 N.J. 216, 230 (2016); Occhifinto v. Olivo Constr. Co., LLC, 221 N.J. 443, 453 (2015).
75. Videotaped Statement	State v. S.S., 229 N.J. 360, 379 (2017); State v. Hubbard, 222 N.J. 249, 270 (2015).

SECTION TEN

GENERAL PRINCIPLES GOVERNING APPEALS

1. There can be no appeal from a written or oral opinion, oral decision, or informal written decision, only from a formal judgment or order. Hayes v. Delamotte, 231 N.J. 373, 387 (2018); State v. Scott, 229 N.J. 469, 479 (2017); Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001); Heffner v. Jacobson, 100 N.J. 550, 553 (1985). If there is no final judgment, there is no right to appeal. R. 2:2-3(a)(1).

2. If an order is not final, a party must seek leave to appeal from the Appellate Division. R. 2:5-6(a). Rule 2:2-4 provides that "the Appellate Division may grant leave to appeal, in the interest of justice, from an interlocutory order . . . if the final judgment, decision or action thereof is appealable as of right pursuant to R. 2:2-3(a)."

3. For an appeal to be heard by the Appellate Division it must be timely served and filed. R. 2:5-1. A party filing a notice of appeal must submit a Case Information Statement in the form prescribed by the Administrative Director of the Courts and the Rules. R. 2:5-1. Rule 2:8-2 permits an appellate court to dismiss the appeal or petition for certification because of procedural and technical difficulties.

4. Rule 2:5-1(e)(3)(i) requires an appellant to designate, in the notice of appeal, the judgment, decision, action or rule appealed from. If a matter is not designated in a party's notice of appeal, it is not subject to the appeal process. W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008).

5. An order or judgment will be affirmed on appeal if it is correct, even though the judge gave the wrong reasons for it. State v. Scott, 229 N.J. 469, 479 (2017); Isko v. Plan. Bd. of Twp. of Livingston, 51 N.J. 162, 175 (1968).

6. Only a party aggrieved by a judgment may appeal from it. Howard Sav. Inst. v. Peep, 34 N.J. 494, 499 (1961); State v. A.L., 440 N.J. Super. 400, 418 (App. Div. 2015).

7. The appellate court can exercise original jurisdiction under Rule 2:10-5 "as is necessary to the complete determination of any manner on review," with great frugality. State v. Micelli, 215 N.J. 284, 293 (2013). The appellate court can remand to the trial court for further findings of fact.

8. "An appellate court, when reviewing trial errors, generally confines itself to the record." State v. Harvey, 151 N.J. 117, 201-02 (1997). If evidence submitted on appeal was not before the trial court, the appellate court will generally not consider it. R. 2:5-4(a).

9. "An issue not briefed on appeal is deemed waived." Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011).

10. If an issue has been determined on the merits in a prior appeal it cannot be relitigated in a later appeal of the same case, even if of constitutional dimension. State v. Cusik, 116 N.J. Super. 482, 485 (App. Div. 1971).

11. Trial courts and state agencies are free to disagree with decisions of appellate courts, but they are not free to disregard them. Reinauer Realty Corp. v. Borough of Paramus, 34 N.J. 406, 415 (1961); Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292, 306 (App. Div. 2010); Tomaino v. Burman, 364 N.J. Super. 224, 233 (App. Div. 2003)).