

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 1:5. SERVICE AND FILING OF PAPERS

1:5-1. Service: When Required

(a) Civil Actions. In all civil actions, unless otherwise provided by rule or court order, orders, judgments, pleadings subsequent to the original complaint, written motions (not made *ex parte*), briefs, appendices, petitions and other papers except a judgment signed by the clerk shall be served upon all attorneys of record in the action and upon parties appearing *pro se*; but no service need be made on parties who have failed to appear except that pleadings asserting new or additional claims for relief against such parties in default shall be served upon them in the manner provided for service of original process. The party obtaining an order or judgment shall serve it as herein prescribed within 7 days after the date it was signed unless the court otherwise orders therein.

(b) Criminal and Municipal Actions. In criminal and municipal actions, unless otherwise provided by rule or court order, written motions (not made *ex parte*), briefs, appendices, petitions, memoranda and other papers shall be served upon all attorneys of record in the action, upon parties appearing *pro se* and upon such other agencies of government as may be affected by the relief sought.

Note: Source — R.R. 3:11-4(a), 4:5-1. Paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended August 1, 2016 to be effective September 1, 2016.

1:5-2. Manner of Service

Service upon an attorney of papers referred to in R. 1:5-1 shall be made by mailing a copy to the attorney at his or her office by ordinary mail, by handing it to the attorney, or by leaving it at the office with a person in the attorney's employ, or, if the office is closed or the attorney has no office, in the same manner as service is made upon a party. Service upon a party of such papers shall be made as provided in R. 4:4-4 or by registered or certified mail, return receipt requested, and simultaneously by ordinary mail to the party's last known address. If no address is known, despite diligent effort, the filing of papers with the clerk shall be deemed to satisfy that service requirement and there need be no separate service upon the clerk. Mail may be addressed to a post office box in lieu of a street address only if the sender cannot by diligent effort determine the addressee's street address or if the post office does not make street-address delivery to the addressee. The specific facts underlying the diligent effort required by this rule shall be recited in the proof of service required by R. 1:5-3. If, however, proof of diligent inquiry as to a party's whereabouts has already been filed within six months prior to service under this rule, a new diligent inquiry need not be made provided the proof of service required by R. 1:5-3 asserts that the party making service has no knowledge of any facts different from those recited in the prior proof of diligent inquiry.

Note: Source - R.R. 1:7-12(d), 1:10-10(b), 1:11-2(c), 2:11-2(c), 3:11-1(b), 4:5-2(a) (first four sentences); amended July 16, 1981 to be effective September 14, 1981; amended July 13, 1994 to be effective September 1, 1994; amended July 28, 2004 to be effective September 1, 2004; amended July 23, 2010 to be effective September 1, 2010.

1:5-3. Proof of Service

Proof of service of every paper referred to in R. 1:5-1 may be made (1) by an acknowledgment of service, signed by the attorney for a party or signed and acknowledged by the party, or (2) by an affidavit of the person making service, or (3) by a certification of service appended to the paper to be filed and signed by the attorney for the party making service. If service has been made by mail the affidavit or certification shall state that the mailing was to the last known address of the person served. A proof of service made by affidavit or certification shall state the name and address of each attorney served, identifying the party that attorney represents, and the name and address of any pro se party. The proof shall be filed with the court promptly and in any event before action is to be taken on the matter by the court. Where service has been made by registered or certified mail, filing of the return receipt card with the court shall not be required. Failure to make proof of service does not affect the validity of the service, and the court at any time may allow the proof to be amended or supplied unless an injustice would result.

Note: Source-R.R. 4:5-2(b), 4:88-10 (fifth sentence); amended July 17, 1975 to be effective September 8, 1975; amended July 29, 1977 to be effective September 6, 1977; amended June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002.

1:5-4. Service by Mail or Courier: When Complete

(a) Service by Ordinary Mail if Registered or Certified Mail Is Required and Is Refused. Where under any rule, provision is made for service by certified or registered mail, service may also be made by ordinary mail simultaneously or thereafter, unless simultaneous service is required under these rules.

(b) Service Complete on Mailing. Except for motions that are governed by R. 1:6-3(c), service by mail of any paper referred to in R. 1:5-1, when authorized by rule or court order, shall be complete upon mailing of the ordinary mail. If no ordinary mailing is made, service shall be deemed complete upon the date of acceptance of the certified or registered mail. If service is simultaneously made by ordinary mail and certified or registered mail, service shall be deemed complete on mailing of the ordinary mail. If service is not made simultaneously and the addressee accepts the certified or registered mail, service shall be deemed complete on the date of the acceptance. If the addressee fails to claim or refuses to accept delivery of certified or registered mail, service shall be deemed complete on mailing of the ordinary mail.

(c) Service by Commercial Courier. Service by a commercial courier of a paper referred to in R. 1:5-1, except for motions, which are governed by R. 1:6-3, shall be complete upon the courier's receipt of the paper from the sender, provided the courier's regular business is delivery service, and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender.

Note: Source - R.R. 4:5-2(a) (fifth sentence). Paragraph (a) adopted and former rule designated (b) June 29, 1973 to be effective September 10, 1973; amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended and paragraph (c) added July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a) and (b) amended July 27, 2006 to be effective September 1, 2006.

1:5-5. Service; Numerous Defendants

In any civil action in which there are unusually large numbers of defendants, the court, upon motion or on its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleadings and service thereof upon the plaintiff, or an adverse party in a cross-claim, constitutes due notice of it to the parties. In any such action the court may designate certain parties as representatives for receipt of service for all defendants similarly situated and may order that service of pleadings, motions and other papers filed in the action may be served upon such representatives with the same effect as if all such defendants had been served. A copy of every such order shall be served upon the parties in interest in such manner and form as the court directs.

Note: Source-R.R. 4:5-3.

1:5-6. Filing

(a) Time for Filing. In any trial court, unless otherwise stated, all papers required to be served by R. 1:5-1 shall be filed with the court either before service or promptly thereafter, unless the rule requiring service or filing provides otherwise. Whenever in these rules provision is made for the publication, mailing or posting of notice, proof thereof shall be filed with the court within 20 days after the publication or mailing, or posting.

(b) What Constitutes Filing with the Court. Except as otherwise provided by R. 1:6-4 (motion papers), R. 1:6-5 (briefs), R. 4:42-1(e) (orders and judgments), and R. 5:5-4 (motions in Family actions), a paper is filed with the trial court if the original is filed as follows:

(1) In civil actions in the Superior Court, Law Division, and in actions in the Superior Court, Chancery Division, General Equity, except mortgage and tax foreclosure actions, with the deputy clerk of the Superior Court in the county of venue;

(2) In criminal actions in the Superior Court, Law Division, with the Criminal Division Manager in the county of venue, as designee of the deputy clerk of the Superior Court;

(3) In mortgage and tax foreclosure actions, with the Clerk of the Superior Court, unless and until the action is deemed contested and the papers have been sent by the Clerk to the county of venue, in which event subsequent papers shall be filed with the deputy clerk of the Superior Court in the county of venue;

(4) In actions in the Chancery Division, Family Part, with the deputy clerk of the Superior Court in the county of venue if the action is a dissolution action, with the Surrogate of the county of venue if the action is for adoption, and in all other actions, with the Family Division Manager in the county of venue, as designee of the deputy clerk of the Superior Court;

(5) In probate matters in the Surrogate's Court, with the Surrogate, and in actions in the Chancery Division, Probate Part, with the Surrogate of the county of venue as deputy clerk of the Superior Court;

(6) In actions of the Special Civil Part, as provided by Part VI of these rules;

(7) In actions in the Tax Court, as provided by Part VIII of these rules;

(8) In actions in the Municipal Courts, as provided by Part VII of these rules.

The foregoing notwithstanding, in any case the judge or, at the judge's chambers, a member of the staff may accept papers for filing if they show the filing date and the judge's name and office. The filed papers shall be forwarded forthwith to the appropriate office.

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped "Received but not Filed (date)" if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement as required by R. 4:5-1 in the form set forth in Appendices XII-B1 or XII-B2 to these rules; or

(C) in Family Part actions, the affidavit of insurance coverage required by R. 5:4-2(f), the Parents Education Program registration fee required by N.J.S.A. 2A:34-12.2, the Affidavit of Verification and Non-Collusion as required by R. 5:4-2(c), the Confidential Litigant Information Sheet as required by R. 5:4-2(g) in the form prescribed by the Administrative Director of the Courts, the Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives as required by R. 5:4-2(h) in the form prescribed in Appendix XXVII-A or XXVII-B of these rules, or the kinship caregiver assessment required in the kinship legal guardianship petition pursuant to N.J.S.A. 3B:12A-5(b); the kinship caregiver assessment required in the kinship legal guardianship petition pursuant to N.J.S.A. 3B:12A-5(b); or

(D) the signature of an attorney permitted to practice law in this State pursuant to R. 1:21-1 or the signature of a party appearing pro se, provided, however, that a pro se appearance is provided for by these rules; or

(E) a certification of title search as required by R. 4:64-1(a) and the certifications of diligent inquiry and of accuracy as required by R. 4:64-1(a)(2) and (3).

If a paper is returned under this rule, it shall be accompanied by a notice advising that if the paper is retransmitted together with the required signature, document or fee, as appropriate, within ten days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(2) if an answer is presented by a defendant against whom default has been entered, the clerk shall return the same stamped "Received but not Filed (date)" with notice that the defendant may move to vacate the default.

(3) a demand for trial de novo may be rejected and returned if not filed within the time prescribed in R. 4:21A-6 or if it is submitted for filing by a party in default or whose answer has been suppressed.

(4) a paper shall be returned stamped "Received but not Filed (date)" if it does not conform to the requirements of R. 1:4-9 with notice that if the document is retransmitted on conforming paper within 10 days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(d) Misfiled Papers. If papers are sent to the wrong filing office, they shall be stamped "Received but not Filed (date)" and transmitted by that office to the proper filing office and a notice shall be sent by the transmitting office to the filer of the paper advising of the transmittal. The stamped received date shall be deemed to be the date of filing.

(e) Attorneys Answerable for Clerk's Fees. The attorney of record in every action shall be answerable for the clerk's lawful fees and charges.

Note: Source — *R.R.* 1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a) (first and second sentence), 4:5-7 (first sentence), 5:5-1(a). Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph

(b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d) redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2) adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1), (3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (c)(1) and (c)(3) amended July 28, 2004 to be effective September 1, 2004; subparagraph (c)(1)(E) adopted, paragraphs (c)(2) and (c)(3) amended, and paragraph (c)(4) adopted July 27, 2006 to be effective September 1, 2006; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; subparagraph (c)(1)(C) amended July 16, 2009 to be effective September 1, 2009; subparagraph (c)(1)(E) amended December 20, 2010 to be effective immediately; subparagraphs (b)(4) and (c)(1)(C) amended July 21, 2011 to be effective September 1, 2011; subparagraph (c)(1)(C) amended July 9, 2013 to be effective September 1, 2013; new subparagraph (b)(8) added August 1, 2016 to be effective September 1, 2016.

1:5-7. Non-Military Affidavit

Before entry of judgment by default, an affidavit, which may be filed as part of the affidavit of proof, shall be filed as required by law setting forth facts showing that the defendant is not in military service. Unless based on facts admissible in evidence, the affidavit shall have attached to it a statement from the Department of Defense or from each branch of the armed forces that the defendant is not in the military service. If the plaintiff is unable to determine whether the defendant is in military service, the affidavit shall so state, and the court, before entering judgment, may require the plaintiff to post a bond in an amount approved by the court to indemnify the defendant, if later found to have been in military service, against any loss or damage resulting from the judgment should it be set aside. The bond shall remain in effect until expiration of the time for appeal and setting aside of the judgment.

Note: Source - R.R. 7:9-3; amended July 28, 2004 to be effective September 1, 2004; amended July 27, 2006 to be effective September 1, 2006.