

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

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ACTING ADMINISTRATIVE DIRECTOR
OF THE COURTS



RICHARD J. HUGHES
JUSTICE COMPLEX
P.O. Box 037
TRENTON, NEW JERSEY 08625-0037

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

Directive # 20-06

[Supersedes Directive #10-06]

**To: Assignment Judges
Criminal Division Judges**

From: Philip S. Carchman

Subj: Criminal -- Appeal Rights Form and Appeal Rights Colloquy

Date: November 15, 2006

Directive #10-06 (July 13, 2006) promulgated on an interim basis an Appeal Rights Form for use in Criminal cases as directed by the Supreme Court in State v. Molina, 187 N.J. 531, 536 (2006). The Spanish-language version of that interim form was promulgated by a July 17, 2006 supplement to Directive #10-06. As required by Molina, those interim versions of the form were to be used pending development of a permanent Appeal Rights Form and an accompanying standard Appeal Rights Colloquy. The Criminal Practice Committee recently submitted to the Court the proposed Appeal Rights Form and Appeal Rights Colloquy. The Court at its November 13, 2006 Administrative Conference approved the Criminal form and colloquy.

This Directive thus promulgates the permanent version of the Appeal Rights Form for use in Criminal cases (English-language and Spanish-language) and the standard Appeal Rights Colloquy to be used by the judge during sentencing to ensure that "defendant understands his or her appeal rights and has executed the appeal rights and has executed the appeal rights form knowingly and intelligently." 187 N.J. at 544. As such, this supersedes Directive #10-06 and the supplement thereto.

In State v. Molina, 187 N.J. 531, 541 (2006), the Supreme Court addressed "when, and under what circumstances, leave to appeal as within time should be granted in criminal cases." As part of its decision, the Court held that a defendant's right to appeal must be communicated to defendant in writing and in a manner that ensures a meaningful discussion with counsel. 187 N.J. at 543.

To implement that aspect of its ruling, the Court stated that “[i]n the future, before imposing sentence, trial courts are to provide defendants with a form, to be generated and executed in duplicate,” with a sample form attached as an appendix to the opinion. 187 N.J. at 543.

The Court also set out in detail the procedure for defense counsel to follow to explain the appeals process to defendant at the time of sentencing. “Much as with guilty plea forms, defense counsel is required to review the appeal rights form with the defendant, and to explain the nature of an appeal, that the defendant has a right to appeal both [the] conviction and/or sentence, and that counsel will be appointed to prosecute the appeal if the defendant is unable to afford counsel.” 187 N.J. at 544. Defense counsel is to ensure that defendant understands his or her appeal rights, with both defendant and counsel required to sign the form as evidence thereof. A fully executed copy of the appeal rights form then is to be delivered to the trial court for retention in the court file, and another fully executed copy retained by the defendant. Further, as noted above, “[t]he trial court, as part of the sentencing colloquy, is to review the appeal rights form with the defendant, satisfy itself that the defendant understands his or her appeal rights and has executed the appeal rights form knowingly and intelligently, and place that conclusion on the record.” 187 N.J. at 544.

Accordingly, attached for use in Criminal cases are (1) the Appeal Rights Form, English-language version, (2) the Appeal Rights Form, Spanish-language version, and (3) the Appeal Rights Colloquy. Any questions or comments regarding the form and colloquy may be directed to Assistant Director Joseph Barraco at 609-292-4658.

P.S.C.

Attachments: (1) “Appeal Rights Form” – English-language version
(2) “Appeal Rights Form” – Spanish-language version
(3) “Appeal Rights Colloquy”

cc: Chief Justice James R. Zazzali
Attorney General Stuart J. Rabner
Public Defender Yvonne Smith Segars
Hon. Edwin H. Stern, Chair, Criminal Practice Committee
Gregory Paw, Director, Division of Criminal Justice
County Prosecutors
Regional Deputy Public Defenders
AOC Directors and Assistant Directors
Trial Court Administrators
John Wieck, Chief, Criminal Practice Division
Criminal Division Managers
Vance D. Hagins, Criminal Practice Division
Melaney S. Payne, Criminal Practice Division
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

DIRECTIVE #20-06

ATTACHMENT 1

APPEAL RIGHTS FORM
(ENGLISH-LANGUAGE VERSION)

STATE OF NEW JERSEY

- v. -

APPEAL RIGHTS FORM

Defendant.

I, _____, hereby certify as follows:

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

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

DATED: _____

Defendant

I have reviewed this Appeal Rights Form with defendant and I am satisfied that he/she clearly and fully understands the rights it describes. I certify that defendant has signed this form knowingly and voluntarily.

DATED: _____

Counsel for Defendant

(To Be Filled Out By Private Counsel Only)

If defendant decides to appeal and cannot afford to continue to retain private counsel, I will notify the Office of the Public Defender within 45 days of today's date.

DATED: _____

Counsel for Defendant

(Complete in duplicate: one fully executed copy to be delivered to the trial judge and one to be given to the defendant.)

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ATTACHMENT 2

APPEAL RIGHTS FORM
(SPANISH-LANGUAGE VERSION)

TRIBUNAL SUPERIOR DE NUEVA JERSEY

SUPERIOR COURT OF NEW JERSEY

DIVISIÓN DE DERECHO – CONDADO DE _____

LAW DIVISION -

COUNTY _____

NO. DE LA ACUSACIÓN FORMAL _____

INDICTMENT NO.

ESTADO DE NUEVA JERSEY

STATE OF NEW JERSEY

contra

v.

**FORMULARIO SOBRE
LOS DERECHOS DE APELACIÓN
APPEAL RIGHTS FORM**

_____,
Acusado

Defendant

El suscrito, _____, por la presente certifica lo siguiente:

I, _____, hereby certify as follows:

1. Es el acusado en la causa citada arriba.

I am the defendant in the above referenced case.

2. _____ lo está representando en esta imposición de sentencia, y
él/ella ha revisado con el acusado este Formulario sobre los Derechos de Apelación.

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

3. Entiende que:

I understand that:

(a) una apelación significa hacer que un tribunal más alto revise su causa,

(a) An appeal means having my case reviewed by a higher court,

(b) tiene el derecho de apelar su(s) condena(s) y sentencia(s),

(b) I have a right to appeal my conviction(s) and sentence(s),

(c) tiene el derecho de que lo represente un abogado en dicha apelación,

(c) I have the right to be represented by counsel for that appeal,

(d) si no puede contratar a un abogado privado para su apelación, la Oficina del Abogado de Oficio lo representará o hará arreglos para la representación, y

(d) If I am unable to hire private counsel for my appeal, the Office of the Public Defender will represent me or arrange for my representation, and

(e) si no presenta un aviso de apelación ante la División de Apelaciones dentro de los **45 días** subsiguientes a la fecha de hoy, y a menos que obtenga una prórroga de treinta días al demostrar motivo suficiente y la ausencia de perjuicio, perderá su derecho de apelar.

(e) If I fail to file a notice of appeal with the Appellate Division within **45 days** of today's date, and unless I obtain a thirty-day extension of time on a showing of good cause and absence of prejudice, I will lose my right to appeal.

4. Comparece hoy ante el juez _____ para la imposición de la
sentencia.

I am appearing before Judge _____ for sentencing today.

FECHADO/ Dated:

He revisado este Formulario sobre los Derechos de Apelación con el acusado, y estoy satisfecho de que entiende los derechos que se describen. Certifico que el acusado ha firmado este formulario a sabiendas y voluntariamente.

FECHADO/ Dated:

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

Si el acusado decide apelar y no puede seguir pagando a un abogado privado, notificaré a la Oficina del Abogado de Oficio dentro de los 45 días subsiguientes a la fecha de hoy.

FECHADO/ Dated:

(Llénelo por duplicado; una copia debidamente firmada se ha de entregar al juez del juicio, y el acusado ha de quedarse con la otra copia).

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ATTACHMENT 3

APPEAL RIGHTS COLLOQUY

APPEAL RIGHTS COLLOQUY

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

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

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

If you miss the extended deadline you may lose your right to appeal.

Do you have any questions about your right to appeal?

Did you discuss the Appeal Rights Form with your attorney?

Did you sign the Appeal Rights Form?

Based on what you have said, I am satisfied that you have knowingly and intelligently executed the Appeal Rights Form and clearly understand your appeal rights.