

NOTICE TO THE BAR

APPELLATE DIVISION GUIDELINES FOR ENTERTAINING EMERGENT APPLICATIONS

The Appellate Division is reissuing guidelines to clarify the circumstances and procedures pursuant to which emergent applications will be entertained. These guidelines distinguish between applications made during the pendency of trial and all other applications.

1. Initiation. The Clerk publishes quarterly in the *New Jersey Law Journal* and on the Judiciary's website (njcourtsonline.com) a list of judges on emergent duty for each group of vicinages. A litigant making an emergent application must determine from those sources or a call to the Clerk's office the judge who is covering the vicinage in which the action to which the application relates is pending. Upon such determination, the litigant should call the chambers of that judge. The judge's chambers shall arrange for the completion by the applicant of an application for permission to file an emergent motion in the form annexed hereto.

2. Emergent Applications Made During Trial. The court shall entertain an emergent application made during trial only upon a preliminary showing of likelihood of success of the application and that immediate and irreparable harm will result if the application is not entertained. If the application is not entertained, a denial shall be endorsed on the application form by the emergent judge so that the litigant has a record for further review by the Supreme Court should the litigant decide to pursue the matter on an emergent basis. If the application is entertained, the judge's chambers will advise the litigant with respect to the filing fee, notice to adversaries, motion and any other papers required and to whom they must be submitted, scheduling, and whether oral argument on the motion will be heard.

3. Emergent Applications Not Made During Trial. Applications not made during trial shall be entertained by the court on a showing that a definitive event will occur or specific action is required on a date prior to the date on which a motion made in the ordinary course can be considered by the court, usually three to four weeks after the filing of the motion. If the application is not entertained, the reason for the denial of consideration on an emergent basis shall be endorsed on the application form. If the application is entertained, the emergent judge's chambers will advise the litigant as provided in paragraph 2.

**Edwin H. Stern
Presiding Judge for Administration
Appellate Division**

Dated: February 19, 2009

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION**

TO: _____

DATE: _____

FROM: _____

TELEPHONE: _____

The following questions are to be answered by the attorney or pro se litigant requesting permission to file an emergent motion. This questionnaire is designed to assist the court's determination respecting its further instructions. **COMPLETION OF THIS APPLICATION DOES NOT IN ANY SENSE CONSTITUTE THE FILING OF AN APPEAL OR MOTION.** There is no right to be heard orally on an emergency application. Further instructions will come from the court.

Except by permission of the court, the only documents you may submit with this application are: a copy of the decision being appealed, any opinion or statement of reasons given by the trial judge or agency, and any order or decision denying or granting a stay. A copy of this application must be served simultaneously on both your adversary and the trial judge or agency. No answer shall be filed without permission of the court.

If the court grants you permission to file an emergent motion and you have not previously filed a motion for leave to appeal or notice of appeal (whichever is applicable), you must simultaneously file one. You must also pay the applicable filing fee (\$30 for a motion for leave to appeal; \$200 for a notice of appeal), direct the charging of an account with the Superior Court, or file a motion to proceed as an indigent and supporting certification.

CASE NAME: _____

1. What is the vicinage of the matter? (i.e., what judge, in what county or what agency entered the decision?)

2. a) What is your name, address, including any e-mail address, phone number and fax number?

 b) Whom do you represent?

3. List the names of all other parties and name, address, including any known e-mail address, phone number and fax number of attorney for each.

4. Do you have a written order or judgment entered by the judge or a written agency decision? **You must attach a copy of the order, judgment or decision.**

5. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? **If so, the decision is not final, but rather interlocutory, and leave to appeal must be sought.**

6. Have you filed for a stay before the trial court or agency?

If so, do you have a court order or agency decision denying or granting same? **Attach a copy of any such order or decision. Before you seek a stay from the Appellate Division, you must first apply to the trial court or agency for a stay and obtain a signed order or decision ruling on your stay application. (Court Rules 2:9-5 and 2:9-7)**

7. If the order or agency decision is interlocutory, are you filing a motion for leave to appeal?

8. If interlocutory, are you filing a motion to stay the trial court or agency proceeding?

9. If the order, judgment or agency decision is final, have you filed a notice of appeal?

10. What is the essence of the order, judgment or agency decision?

11. a) Has any aspect of this matter been presented to or considered by another judge or part of the Appellate Division by emergent application or prior appeal proceedings? If so, which judge or part?

b) Have the merits briefs been filed in this matter? If so, has the matter been calendared to a part?

12. What is the nature of the emergency?
13. What is the irreparable harm, and when do you expect this harm to occur?
14. What relief do you seek?
15. What citation is most important for the proposition that you are likely to prevail on appeal?
16. Have you served simultaneously a copy of this application on both your adversary and the trial judge or agency?
17. Have any transcripts been ordered (particularly of the trial judge's challenged ruling)?

If so, when will the transcript be available?

18. Please give a brief summary of the facts of your case.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DISPOSITION ON APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION

Case Name: _____

DO NOT FILL IN THIS SECTION - FOR COURT USE ONLY

I. The application for leave to file an emergent motion on short notice is **Denied** for the following reasons:

_____ The application does not concern a genuine emergency or otherwise does not warrant adjudication on short notice. Counsel may file a motion with the Clerk's Office in the ordinary course.

_____ The applicant did not apply to the trial court or agency for a stay, and obtain a signed order, before seeking a stay from the Appellate Division.

_____ The application concerns an order entered during trial as to which there is no prima facie showing that immediate interlocutory intervention is warranted.

_____.

II. The application for leave to file an emergent motion on short notice is **Granted** on the following terms:

A. The applicant must file an original and two copies of the motion for emergent relief and a notice of appeal or motion for leave to appeal (plus all required fees or an indigency motion) with Judge _____ by no later than _____. On that same date, copies must be delivered to all counsel/pro se parties and to Judge _____. A copy must also be sent to the trial judge or agency whose decision is being appealed.

B. Opposition must be served and filed by no later than _____.

J.A.D.

Date