

## NOTICE TO THE BAR

### **CRIMINAL JUSTICE REFORM – APPELLATE DIVISION RULE RECOMMENDATIONS NECESSARY TO IMPLEMENT THE BAIL REFORM AND SPEEDY TRIAL LAW – PUBLICATION FOR COMMENT**

The Supreme Court by this notice is requesting written comments on the amendments to Part II of the Rules of Court proposed by the Appellate Division as necessary to implement the Bail Reform and Speedy Trial Law (also referred to as Criminal Justice Reform). Those proposed amendments, which accompany this notice, consist of a new Rule 2:9-13 (“Appeals of Orders Granting Pretrial Detention”) and a cross-reference revision to Rule 2:9-1(a). Also included here for comment are a proposed “Pretrial Detention Appeal (PDA) Expedited Information Form” and a set of instructions for the completion of that Expedited Information Form.

Please send any comments on the proposed new and amended rules or on the proposed Pretrial Detention Appeal Expedited Information Form and instructions in writing by **Friday, August 26, 2016** to:

Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Rules Comments – Appellate Division CJR Rules  
Hughes Justice Complex; PO Box 037  
Trenton, New Jersey 08625-0037

Comments may also be submitted via Internet e-mail to the following address:  
[Comments.Mailbox@njcourts.gov](mailto:Comments.Mailbox@njcourts.gov).

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). Comments are subject to public disclosure upon receipt.

  
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Glenn A. Grant, J.A. D.  
Acting Administrative Director of the Courts

Dated: July 27, 2016

## 2:9-13 Appeals of Orders Granting Pretrial Detention

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

(b) Time to File Appeal; Order Transcript. An appeal shall be taken by serving and filing a notice of appeal and required Expedited Information Form within seven days of entry of the order granting pretrial detention. If appellant believes that a transcript is necessary to the consideration of the issues on appeal, the transcript shall be ordered at the expedited delivery rate simultaneously with the service and filing of the notice of appeal.

Notwithstanding the above, a transcript shall be ordered in instances including but not limited to the following: when witnesses have testified in the trial court and the basis of the appeal depends on review of that testimony; when there are material differences between the written order and the oral decision or related colloquy by the court; when an oral procedural or evidentiary ruling is being challenged; and when the trial court's factual findings are challenged. The court retains the authority to direct that the transcript be ordered by appellant at any time, if, in its determination, the record presented is insufficient for consideration of the issues on appeal.

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

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

1. Notice of appeal;
2. Expedited Information Form;
3. Detention order with written findings of fact and statement of reasons;

3. Detention order with written findings of fact and statement of reasons;
4. Public Safety Assessment;
5. Briefs;
6. Appendices;
7. Transcript, when required.

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

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

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

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

(i) Self-Represented Appellants Required to File Paper Appeals. Appeals of orders granting pretrial detention filed by defendants representing themselves must be filed in paper.

Note: Adopted \_\_\_\_\_ to be effective January 1, 2017.

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

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

(b) ... no change

(c) ... no change

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

# Proposed Form

## NEW JERSEY SUPERIOR COURT APPELLATE DIVISION

### Pretrial Detention Appeal (PDA) – Expedited Information Form

Defendant's Name: \_\_\_\_\_ CDR #: \_\_\_\_\_

Co-defendant(s) Name(s): \_\_\_\_\_ CDR #: \_\_\_\_\_

- Check only one:
- No other pages are attached to this form (other than the detention order and risk assessment). Respondent's reply is due within 10 days.
  - Continued on attached (not to exceed 2 pages unless compliant with R. 2:9-13). Respondent's reply is due within 10 days.
  - I intend to file a letter brief not to exceed 8 pages and appendix within 10 days as provided by R. 2:9-13. Respondent shall serve and file an answering brief and appendix within 10 days after service of appellant's brief.

**NOTE:** Briefs that exceed 8 pages must be submitted with a motion to file an overlength brief.

#### I. Basis for Appeal

What is the procedural, factual, or legal basis for the PDA? Check all that apply and specify in detail below<sup>1</sup>:

##### A. Procedural or Factual Basis:

1.  The State failed to establish probable cause that defendant committed the offense(s) charged.

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2.  The State failed to meet its burden to prove by clear and convincing evidence that no amount of monetary bail, non-monetary conditions or some combination thereof would reasonably assure defendant's appearance in court, protect the safety of any other person or the community, and prevent the obstruction of the criminal justice process.

<sup>1</sup> These categories apply only to eligible defendants who are appealing an order of pretrial detention. N.J.S.A. 2A:162-18 (c). They are neither binding nor exclusive.

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3.  The findings of fact and statement of reasons for the detention were insufficient or inconsistent with statutory and case law (explain in detail).

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4.  Defendant was denied an opportunity for a fair hearing prior to the entry of the pretrial detention order (describe in detail).

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5.  Defendant's criminal history or other information relied upon by the court is inaccurate or incomplete (state in detail any alleged mistakes or omissions).

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6.  The Public Safety Assessment (PSA) is inaccurate or incomplete (explain why you believe the risk score is not accurate).

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7.  Defendant challenges the court's ruling that he/she failed to rebut by a preponderance of the evidence the presumption of pretrial detention, where the court found probable cause that defendant committed murder or any crime subject to an ordinary or extended term of life imprisonment.

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8.  Other (describe with specificity the grounds for appeal).

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**B. Legal Basis:**

What are the legal citations (specify court rule, statute, regulation, case law, constitutional provision) that are most important in support of this appeal?

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**II. Record on Appeal**

**A. Documents:** A complete record relevant to the issues raised in the PDA is required for the appeal to be considered on an expedited basis.

1. Is the entire **trial court order** attached, including the written findings of fact and statement of reasons?  
 Yes     No (If "No," please explain in space below.)
  
2. Is the **public safety assessment (PSA)** attached?  
 Yes     No (If "No," please explain in space below.)
  
3. If you plan to submit an appendix with a letter brief, as provided by R. 2:9-13, will the appendix include all documents and material<sup>2</sup> considered by the trial court?  
 Yes     No (If "No," please explain in space below.)

If any required item(s) (e.g., trial court order, PSA, digital or video evidence, etc.) are not included with this appeal, please explain below why such items are not included and specify when those items will be provided to the Appellate Division Clerk's Office and to the respondent State.

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<sup>2</sup> Non-documentary material considered by the trial court must be submitted by mail or delivery with 1 additional copy at the time of service and filing of the appendix.

Date expected: \_\_\_\_\_

**B. Transcripts:**

1. You may be required to order a transcript in order for the Appellate Court to consider your appeal.
  - a. Does the basis of your appeal depend on review of the witness testimony?  YES  NO
  - b. Does your appeal assert that there are material differences between the written order and the trial court's oral decision?  YES  NO
  - c. Are you challenging an oral procedural or evidentiary ruling made by the trial court?  YES  NO
  - d. Are you challenging the trial court's written findings of fact?  YES  NO
  - e. Is a transcript necessary for the court to consider your appeal?  YES  NO

*NOTE: If you checked YES to any of the responses (a-e above) you **must** order an expedited transcript.*

2. Have you ordered a transcript for this appeal?  YES  NO
  - a. If YES, when will the transcript be available? Date expected: \_\_\_\_\_
  - b. If NO, and you checked YES to a. – e. above, please explain why no transcript has been ordered:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By signing below, I certify that the factual statements contained in this application are true to the best of my knowledge.

Date: \_\_\_\_\_

\_\_\_\_\_  
Print/Type Name of Attorney or Self-Represented Litigant

\_\_\_\_\_  
Signature of Attorney or Self-Represented Litigant



# Draft Instructions

## **INSTRUCTIONS FOR COMPLETING PRETRIAL DETENTION APPEAL (PDA)- EXPEDITED INFORMATION FORM**

The PDA Expedited Information Form is a document that enables the Appellate Court to determine the legal and factual basis for the expedited appeal in a concise format. This document must be filed along with the Notice of Appeal in place of a Case Information Statement. This form may also be used in lieu of a brief or along with a concise statement. Please refer to the requirements below:

1. The general requirements for filing a Pretrial Detention Appeal (PDA) can be found in Rule 2:9-13. No other material may be submitted without leave of court unless otherwise directed by the Appellate Division.
2. For assistance in completing this PDA form, contact the Appellate Division eTeam at 609-292-4591 in the Appellate Division Clerk's office or go to <http://www.judiciary.state.nj.us/appdiv/index.html> and click on forms.
3. The PDA Expedited Information Form is a required document.
  - a. This form must be filed electronically if the defendant is represented by an attorney.
  - b. This document is uploaded through the eCourts-Appellate website which may be found at the following link. Click <https://njcourts.judiciary.state.nj.us/web14/sso> to login, and then click on the Appellate eDATA tab.
  - c. If you are a defendant who is represented by an attorney, please contact your attorney to discuss your rights and obligations.
  - d. If you are a defendant who is not represented by an attorney, please file a paper appeal and refer to #2 above for assistance.
4. After you successfully eFile this PDA, you will receive notification by email.
5. The appellant bears the burden of specifically demonstrating that there was a lack of sufficient basis for the trial court to enter the pretrial detention order.
6. In addition to the PDA Expedited Information form, the following may apply:
  - a. Appellants may choose to file the form only and any required documents;
  - b. Appellants may file a **concise** position statement not to exceed 2 pages which shall be attached to the form;
  - c. Alternatively, appellants may choose to file a letter brief pursuant to R. 2:9-13 not to exceed 8 pages;
  - d. Appellants shall file an appendix containing all relevant documents, along with any relevant non-documentary material considered by the trial court. (see R. 2:9-13(d));

# Draft Instructions

7. Respondents shall file a response as follows within ten days after the appellant's documentation:
  - a. A concise response or a letter brief not exceeding 8 pages;
  - b. An appendix to the extent that the appellant's appendix omits any relevant material.
8. The Public Safety Assessment (PSA) must be uploaded as a separate exhibit and the document redacted to remove personal identifiers pursuant to R. 1:38-7(b)  
[http://www.judiciary.state.nj.us/rules/Rule\\_01-38-01\\_-13\\_09-01-2015.pdf](http://www.judiciary.state.nj.us/rules/Rule_01-38-01_-13_09-01-2015.pdf).