

NOTICE TO THE BAR

APPELLATE DIVISION PROCEDURES TO EXPEDITE APPEALS FROM DENIAL OF MEDICAL FURLOUGH APPLICATIONS

On June 5, 2020, the Supreme Court issued its opinion in An Order to Show Cause to Address the Release of Certain Individuals Serving Sentences in State Prisons and Juvenile Facilities (M-1093-19) (084412). The Court addressed the Governor's Executive Order 124, which was designed to mitigate the effects of the COVID-19 coronavirus. The Executive Order created a mechanism to identify inmates in state prison to be considered for parole or a medical furlough. Among other things, the Court held that, because the Executive Order creates a sufficient expectation of eligibility for inmate release through a furlough program, the Order calls for certain due process protections (slip op. at 6); and

Regarding the furlough program, inmates may challenge the Department of Correction's (DOC's) action, a final agency decision, by seeking review before the Appellate Division (slip op. at 7). Individual inmates may also seek relief independently under Rule 3:21-10(b)(2). They do not have to exhaust the remedies available under the Executive Order before they may file a motion in court (slip op. at 7). Exercising the Court's supervisory authority, the opinion requires trial judges to rule on motions, and the Appellate Division to review agency decisions, in a matter of days. The opinion also urges the Commissioner and the Parole Board to act as expeditiously as possible (slip op. at 7-8); and

Regarding the furlough program, the Court specifically directs parties to submit briefs within three days of a notice of appeal, and the Appellate Division to issue its decision within the next three days (slip op. at 38); and

To implement a fair and orderly process with the parameters established by the Court, it is ORDERED that, effective immediately, the following provisions apply to Appellate Division procedures and protocols only:

A. Furlough Program

1. Appeals filed by attorneys from the Final Agency Decision shall be filed through eCourts-Appellate. To protect any confidential information, appellants shall indicate that the appeal is sealed by using the check box within the eCourts-Appellate system.

2. Letter briefs shall be filed simultaneously within three (3) days of the Notice of Appeal and briefs shall not exceed eight (8) pages. There shall be no extensions of time to file letter briefs without leave of court. Reply briefs shall not be permitted without leave of court.

3. To facilitate the expeditious consideration of these appeals as ordered by the Court, the parties are strongly encouraged to share documents as early as possible during the administrative process, and to file a joint appendix consistent with Rule 2:6-1(d) and with the intent of the Court's opinion to expedite these appeals. The appendix shall include all documents and information considered by the agency including, but not limited to, the following:

- a. any statements by the victim(s) or their family, prosecutor statements, and inmate statements;
- b. any criminal, medical, or disciplinary records concerning the inmate;
- c. the Commissioner's initial statement of reasons; and
- d. the Final Agency Decision.

4. The Appellate Division Clerk's Office shall electronically transmit the briefs, appendices, and all other information submitted by the parties to the court immediately upon receipt. There will be no oral argument unless directed by the court.

5. In the event that a self-represented inmate submits a notice of appeal directly to the Clerk's Office, the Clerk shall advise the Office of the Public Defender with a copy to the appropriate respondent and the inmate as soon as practicable. If the inmate continues to proceed without counsel, the appeal shall continue without any filing fee normally required by N.J.S.A. 30:4-16.3(d). If respondent objects to the waiver of the fee, the respondent shall produce the inmate's account statement, along with the basis of the objection, which shall be provided for the court to decide whether the appeal shall continue without the filing fee.

6. The Appellate Division shall issue its decision within three (3) days of receiving the submissions by all parties.

B. COVID-related appeals from the Parole Board, from Rule 3:21-10 (b)(2) decisions, and from Family Part decisions concerning juveniles in custody

These appeals shall be accelerated when filed without the need to file any motion seeking such relief. The Clerk shall issue an expedited scheduling order, and, when perfected, the appeal shall be placed on the first available calendar and decided expeditiously. Additional procedures and protocols for these matters may be developed by the court and communicated in a subsequent order.

/s/ Carmen Messano

Carmen Messano, P.J.A.D.
Presiding Judge for Administration

Dated: June 15, 2020