

NOTICE TO THE BAR

SUPREME COURT ADOPTS AMENDMENTS TO THE COURT RULES FOR BRIEFS IN APPEALS BEFORE THE SUPREME COURT – “MERITS BRIEFING”

The Supreme Court has adopted amendments to the Rules governing briefing practices for its appeals. Specifically, the Court adopted the practice of “merits briefing” for Supreme Court appeals, effective with appeals taken on or after February 10, 2026. The Court adopted these amendments after careful study, discussion with stakeholders, and input from frequent amicus participants and other members of the bar, including through public comments.

Merits Briefing for Supreme Court Appeals

Most notably, the new rules provide a standard schedule for parties to file briefs on the merits of an appeal after the Court has granted certification or leave to appeal. Those “merits briefs” will include all of a party’s arguments on the issue(s) before the Court and will supersede the multiple briefs that preceded the Court’s grant of the appeal.

The adoption of merits briefing will help the parties by giving general assurance that they will have the opportunity to brief the merits of the issues at the appeal phase and, therefore, they need not include all of their substantive arguments into the shorter petition or motion briefs. In addition, the public will no longer have to navigate the petition and motion papers, appellate materials, and multiple other briefs to understand the arguments the parties are making before the Supreme Court. This approach will be of particular aid where the parties’ positions have evolved over time, the arguments or issues have been reframed, or the emphasis of the appeal has shifted due to intervening events in the litigation.

The appellant’s merits brief is due 40 days after the Court’s grant of an appeal, with the respondent’s merits brief due 30 days after the appellant files

its merits brief (i.e., roughly 70 days into the appeal). Both briefs are limited to 50 pages.

The appellant has the option of filing a 15-page reply brief 24 days after the filing of respondent's brief (i.e., roughly 94 days after the Court takes the appeal). The appellant's reply brief is limited to addressing points in the respondent's brief and any points raised by proposed amici (discussed further below). The respondent also has an opportunity to respond to the proposed amici (see below), but is not permitted to file a sur-reply brief.

Amicus Filings on Appeals

Under the new model of merits briefing, the time for filing amicus motions is embedded within the parties' briefing schedule rather than occurring thereafter. Specifically, proposed amici must file motions for leave to appear as amicus curiae, with the proposed amicus brief, 10 days after the respondent files its merits brief. Both parties then have 14 days to respond to the amici – appellant by including a response to amici within its reply brief, and respondent by filing a separate response to the merits of the amicus briefs.

In addition to those 15-page briefs that contain arguments responsive to the merits of amici's submissions, the parties have the option – when appropriate – to file separate answers opposing the proposed amici's participation in the appeal. Those separate answers would not address the merits of amici's views but instead would articulate why the parties believe the proposed amici do not satisfy the requirements for amicus participation set forth in Rule 1:13-9. Historically, parties have not often filed answers opposing amicus participation, and instead have limited their submissions to addressing the merits of proposed amici's filings. The Court anticipates that practice will continue but preserves the parties' ability to oppose the grant of amicus status in appropriate circumstances.

Because the amicus motions occur roughly contemporaneously with the filing of the parties' briefs, proposed amici are not permitted to file motions for extensions of time. In addition, because amici do not have the burden of

including a detailed factual recitation and procedural history, among other details specific to the parties to the litigation, the page number for amicus briefs is reduced from 50 to 30 pages. Finally, entities seeking leave to participate as amicus must state on the cover of the proposed amicus brief which party or parties the entity supports or, if the entity's position is not aligned with any party, indicate whether it suggests affirmance or reversal.

Summary of Schedule for “Merits Briefing”

The Court adopted the following schedule to govern merits briefing on appeals:

- Appellant's merits brief is due **40 days** from the date of the order granting the appeal
- Respondent's merits brief is due **30 days** from the date appellant files its merits brief
- Amicus motions and proposed briefs are due **10 days** from the date respondent files its merits brief
- Appellant may file a reply brief **24 days** from the date respondent files its merits brief (or, stated differently, 14 days after the amicus motions and briefs are due), AND, on the same date, respondent may file a response to the merits of the amicus briefs. The parties also may file separate answers opposing amicus participation in appropriate circumstances.

For ease of reference by the parties and the public, the Court anticipates that the applicable due dates typically will be calculated and memorialized in a briefing schedule contained in the order granting the appeal. When the Court issues a briefing schedule, the dates contained in the Court's order control.

Public Accessibility of Materials

Although the posting of a summary to the Court's website will no longer trigger amicus deadlines, [the Court's website](#) will continue to be a resource for members of the public and legal community who wish to follow Supreme Court appeals. Going forward, in addition to posting the decision on appeal and a summary of the issue(s), the Court's website also will include the due

date for amicus motions as well as the Court’s order and publicly filed briefs.¹ Importantly, briefs will be posted when the Court takes the appeal and updated as merits briefs are filed, rather than when oral argument occurs, which was the prior practice. This measure will improve public access to Supreme Court appeals and will facilitate review by those entities that might be considering amicus participation.²

Questions

Questions may also be directed to the Supreme Court Clerk’s Office at 609-815-2955 or via email at SupremeCt.mbx@njcourts.gov.

Heather Joy Baker

Heather Joy Baker
Clerk of Court

Date: February 23, 2026

¹ In confidential matters, the Clerk’s Office will post a summary, the decision on appeal, the Court’s order taking the appeal, and the amicus motion due date; the parties’ briefs in such matters will not be posted, [consistent with existing practice](#) and applicable authority.

² The prior system of optional supplemental briefing was summarized in an earlier [Notice to the Bar](#).

FULL TEXT OF PROPOSED RULE AMENDMENTS:

1:13-9. Amicus Curiae; Motion; Grounds for Relief; Briefs

(a) An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The movant shall identify on the cover of the proposed amicus brief which party or parties to the litigation the amicus supports or, if the movant's position is not aligned with any party, indicate whether it suggests affirmance or reversal. The court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall define with specificity the permitted extent of participation by the amicus and shall, where appropriate, fix a briefing schedule.

(b) Briefs filed by an amicus curiae in any court shall comply with all applicable rules.

(c) Except as provided in subsection (f), motions for leave to appear as an amicus curiae in the Appellate Division shall be accompanied by the proposed amicus curiae brief and shall be filed on or before the day when the last brief is due from any party.

(d) An amicus curiae who has been granted leave to appear in a cause may, without seeking further leave:

(1) file a brief in an appeal taken to any court except the Supreme Court from a final judgment or appealable interlocutory order, provided that the brief is filed on or before the day on which the last brief is due from any party;

(2) file a brief in support of or in opposition to a motion for leave to appeal, provided that the brief is filed on or before the day on which the last brief is due from any party;

(3) file a brief in the Supreme Court in support of or in opposition to a petition for certification, provided that the brief is filed on or before the day on which the last brief is due from any party;

(4) file a brief of no more than thirty (30) pages on the merits after the Supreme Court has granted a petition for certification or a motion for leave to appeal, or after a notice of appeal has been filed, provided that the brief is filed in compliance with the time frames fixed in subsection (e) of this Rule.

(e) An amicus curiae who has not been granted leave to appear in a cause may file a motion for leave to appear in the Supreme Court in connection with a petition for certification, a motion for leave to appeal, or an appeal, provided that the motion is accompanied by the proposed amicus curiae brief.

(1) Time for Motions and Briefs; Supreme Court. Except as provided in Subsection (f) of this Rule, motions for leave to appear as an amicus curiae in the Supreme Court in connection with a petition for certification or a motion for leave to appeal shall be filed on or before the day on which the last brief is due from any party. Motions for leave to appear as an amicus curiae in connection with an appeal shall be filed within [seventy-five (75) days of the date when the Supreme Court posts on its public website a notice of:

- (1) an order granting certification;
- (2) an order granting leave to appeal; or
- (3) the filing of a notice of appeal.

Untimely motions may be granted by the Supreme Court only on a showing of good cause demonstrated to the satisfaction of the Court.]

ten (10) days after the filing of the respondent's merits brief. Motions to extend or relax the time for filing an amicus motion or brief will not be accepted.

(2) Time for Answers to Motions. For motions filed in connection with a petition for certification or a motion for leave to appeal, the parties may file an answer opposing amicus participation within ten (10) days of the filing of an amicus motion. In appeals, a party may forgo an answer opposing amicus participation and instead respond to the merits of the proposed amicus brief in appellant's reply brief or respondent's brief on the merits of the amicus submission, filed pursuant to R. 2:6-11(a)(2). If a party instead seeks to oppose an amicus motion, the party may file an answer in opposition to the motion at the same time that the party files its brief responsive to the merits of the proposed amicus brief, pursuant to Rule 2:6-11(a)(2).

(f) In the event that the Supreme Court, or the Appellate Division, has directed the parties to submit briefs in accordance with an accelerated schedule, an amicus curiae shall file its motion for leave to appear, accompanied with its brief, in compliance with the time frames fixed in the accelerated schedule, or, if the schedule is silent as to the deadline for filling amicus briefs, on or before the date fixed for the last brief due from any party.

Note: Adopted July 16, 1979 to be effective September 10, 1979; caption and text amended July 13, 1994 to be effective September 1, 1994; former text reallocated as paragraphs (a) and (b), paragraph (a) amended, and new paragraphs (c), (d), (e) and (f) adopted July 23, 2010 to be effective September 1, 2010; paragraph (f) amended March 24, 2011 to be effective immediately; paragraph (e) amended July 22, 2014 to be effective September 1, 2014; paragraph (a), (d)(1), (d)(4), and (f) amended, paragraph (e) amended and subpart headings added February 10, 2026 to be effective immediately.

2:6-11. Time for Serving and Filing Briefs; Appendices; Transcript; Other Permissible Submissions

(a) Time Where No Cross Appeal Taken.

(1) In the Appellate Division. Within ten days after the filing of a complete set of transcripts pursuant to R. 2:5-3(e), the appellant shall file three additional copies with the clerk, as provided by R. 2:6-12(d), and shall serve the transcript as provided by R. 2:6-12(a). Except as otherwise provided by R. 2:9-11 (sentencing appeals), the appellant shall serve and file a brief and appendix within 45 days after the delivery to appellant of the transcript, if a verbatim record was made of the proceedings below; or within 45 days after the filing of the settled statement of the proceedings, if no verbatim record was made of the proceedings below; or within 45 days of the filing of the notice of appeal if a transcript or settled statement has been filed prior to a filing of the notice of appeal or if no transcript or settled statement is to be filed; or, on an appeal from a state administrative agency, within the time stated above or within 45 days after the service of the statement of the items comprising the record on appeal required by R. 2:5-4(b), whichever is later. The respondent shall serve and file an answering brief and appendix, if any, within 30 days after the service of the appellant's brief. The appellant may serve and file a reply brief within 14 days after the service of the respondent's brief.

(2) In the Supreme Court; Merits Briefing.

(A) Upon the Court taking an appeal, the parties shall file briefs on the merits of the appeal, which will supersede all briefs previously filed with the Court in the matter. The parties' merits briefs must set forth the parties' arguments on all questions raised in the appeal, and conform to the format, contents, and length set forth in R. 2:6.

(B) Unless otherwise directed by the Court, the appellant shall file a brief on the merits of an appeal within forty (40) days of the Court's order taking the appeal (except for appeals taken pursuant to Rule 2:12-2), or, where an appeal is taken as of right, within forty (40) days of the Notice of Appeal as of Right. The respondent shall file a brief on the merits of an appeal within thirty (30)

days after the brief for the appellant is filed. The appellant may file a reply brief within twenty-four (24) days after the brief for the respondent is filed. The reply brief of no more than fifteen (15) pages should address the points set forth in the respondent's brief as well as the merits of any proposed amicus submissions filed pursuant to Rule 1:13-9. Also within twenty-four (24) days after the brief for the respondent is filed, the respondent may file a brief of no more than fifteen (15) pages on the merits of any proposed amicus submissions filed pursuant to Rule 1:13-9.

(b) Time Where Cross Appeal Taken.

(1) In the Appellate Division. Except as otherwise provided by R. 2:9-11 (sentencing appeals), if a cross appeal has been taken, the party first appealing, who shall be designated the appellant/cross respondent, shall serve and file the first brief and appendix within 30 days after the service of the notice of cross appeal or within the time prescribed for appellants by R. 2:6-11(a), whichever is later. Within 30 days after the service of such brief and appendix, the respondent/cross appellant shall serve and file an answering brief and appendix, if any, which shall also include therein the points and arguments on the cross appeal. Within 30 days thereafter, the appellant/cross respondent shall serve and file a reply brief, which shall also include the points and arguments answering the cross appeal. Within 14 days thereafter, the respondent/cross appellant may serve and file a reply brief, which shall be limited to the issues raised on the cross appeal.

(2) In the Supreme Court. If a timely Notice of Cross-Appeal or Notice of Motion to Cross-Appeal is filed, the time for filing merits briefs on appeal in the Supreme Court shall be tolled pending the issuance of an omnibus briefing schedule addressing the issues on the appeal and cross-appeal, or, if leave to cross-appeal is denied, the briefing schedule shall resume upon the filing of the order denying leave to cross-appeal.

(c) Scheduling Order. The time provisions of this rule notwithstanding, the court may enter a separate scheduling order in any case on appeal.

(d) **Permissible Submissions.** No briefs other than those permitted in paragraphs (a) and (b) of this rule shall be filed or served without leave of court, except that:

(1) A party may, without leave, serve and file a letter calling to the court's attention, with a brief indication of their significance, relevant published opinions issued, or legislation enacted, or rules, regulations, and ordinances adopted, subsequent to the filing of the brief. Unpublished opinions shall not be submitted pursuant to this rule, unless they are of a type that the reviewing court is permitted under R. 1:36-3 to cite in its own opinions. Any other party to the appeal may, without leave, file and serve a letter in response thereto within five days after receipt thereof. The initial letter and subsequent responses shall not exceed two pages in length without leave;

(2) In criminal, quasi-criminal, and juvenile matters the appellant shall by letter advise the court of any change in the custodial status of a defendant, juvenile, or other party subject to confinement, during the pendency of the appeal; and

(3) In appeals involving Division of Child Protection and Permanency matters, the appellant or respondent shall by letter advise the court of any change in the placement status of the child during the pendency of the appeal.

(e) **Motions that Toll the Time for Serving and Filing Briefs in the Appellate Division.**

(1) Subject to subparagraph (e)(2) of this rule, in addition to the filing of those motions that toll the time for the filing of briefs and appendices as provided by R. 2:5- 5(a) and R. 2:8-3(b), the time for the filing of briefs and appendices will be tolled by the filing of a motion:

(A) to correct or supplement the record in trial court, administrative agency or Appellate Division;

(B) for summary disposition pursuant to R. 2:8-3(b);

(C) to strike the entirety or portions of a brief or appendix;

- (D) to dismiss the appeal;
- (E) for final remand;
- (F) to stay appellate proceedings; and
- (G) to file an overlength merits brief.

(2) The time for the filing of briefs and appendices will not be tolled if the party filing the motion under subparagraph (e)(1) was previously granted one or more prior extensions of time to file its brief and appendix. In that event, the party seeking the tolling of the time to file a brief and appendix shall be required to file a separate motion seeking an extension.

(3) If the time to file a brief and appendix is tolled by the filing of a motion, the remaining time shall begin again to run from the date of entry of an order disposing of the motion, unless otherwise directed by the court.

Note: Source — R.R. 1:7-12(a)(c), 1:10-14(b), 2:7-3. Paragraph (b) amended by order of September 5, 1969 effective September 8, 1969; paragraph (a) amended July 7, 1971 to be effective September 13, 1971; caption and paragraphs (a) and (b) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended May 8, 1975 to be effective immediately; paragraphs (c), (d) and (e) adopted July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and titles of paragraphs (c)(d) and (e) added November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; paragraph (f) adopted July 16, 2009 to be effective September 1, 2009; paragraph (f) caption and text amended July 9, 2013 to be effective September 1, 2013; new paragraph (g) adopted July 22, 2014 to be effective September 1, 2014; paragraph (d) amended August 1, 2016 to be effective September 1, 2016; caption amended, paragraphs (a) and (b) amended, paragraph (d) caption and text amended, paragraph (e) deleted with text added as subparagraph (d)(2), paragraph (f) deleted with text amended and added as subparagraph (d)(3), paragraph (g) amended and renumbered as paragraph (e)

August 5, 2022 to be effective September 1, 2022; paragraph (a) text renumbered as subparagraph (a)(1) and caption added, new subparagraph (a)(2) added, paragraph (b) text renumbered as subparagraph (b)(1), and new subparagraph (b)(2) added February 10, 2026 to be effective immediately.

2:12-9. Where Party Appeals and at the Same Time Makes Application for Certification

(a) A party who seeks certification to review a final judgment of the Appellate Division and also appeals therefrom shall state in the petition for certification all questions intended to be raised on appeal. If the parties file a notice of appeal and a notice of petition for certification and petition for certification in a single matter, merits briefing on the notice of appeal under Rule 2:6-11(a)(2)(B), and the associated deadlines for motions for leave to appear as amicus curiae under Rule 1:13-9(e), shall be tolled until the Court files an order granting or denying certification, unless otherwise directed by the Court.

(b) Except in the case of an appeal as of right pursuant to R. 2:2-1(a)(2), a denial of certification shall be deemed to be a summary dismissal of the appeal, and the Clerk of the Supreme Court shall forthwith enter an order dismissing the appeal, unless the Supreme Court otherwise orders.

Note: Amended July 13, 1994 to be effective September 1, 1994; amended August 1, 2016 to be effective September 1, 2016; text divided into paragraphs (a) and (b), and paragraph (a) amended February 10, 2026 to be effective immediately.

2:12-11. Proceedings After Certification Granted

If certification is granted, the matter shall be deemed pending on appeal in the Supreme Court and the petitioner's entire case shall be before the Supreme Court for review unless the Supreme Court otherwise orders on its own motion or on the motion of a party which shall be included in the petition or in the respondent's brief in answer thereto. The respondent may seek affirmative relief only by cross petition for certification. [Further proceedings shall be had as provided for on appeals as of right, except that the appeal shall be submitted on the briefs, appendices and transcript filed with the Appellate Division and except that, in] In appropriate cases, the Supreme Court may render a decision without argument. [Further briefs on the appeal may be filed only on order and in accordance with the schedule set forth therein. Application for permission to file further briefs shall be in the form of a motion.]

Note: Source -- R.R. 1:10-14(a) (e). Amended December 21, 1971 to be effective January 31, 1972; amended March 5, 1974 to be effective immediately; amended May 8, 1975 to be effective immediately; amended July 24, 1978 to be effective September 11, 1978; amended February 10, 2026 to be effective immediately.

2:12A-6. Procedures

After the Supreme Court has accepted a certified question, the matter shall proceed in the same manner as an appeal as of right. [The Court shall issue a scheduling order and a] All briefs shall comply with the requirements and limitations of Rule 2:6 unless otherwise directed by the Court. Unless the Court dispenses with oral argument, it shall proceed pursuant to Rule 2:11-1(b).

Note: Adopted November 19, 1999, to take effect January 3, 2000; amended February 10, 2026 to be effective immediately.