



JOHN J. GIBBONS FELLOWSHIP IN
PUBLIC INTEREST & CONSTITUTIONAL LAW

MICHAEL R. NOVECK
DIRECTOR

LAWRENCE S. LUSTBERG
DIRECTOR EMERITUS

RUTH O'HERRON
MADHULIKA MURALI*

**Admitted in NY only*

Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310

December 3, 2025

VIA EMAIL TO Comments.Mailbox@njcourts.gov

Heather Joy Baker, Clerk of the Supreme Court
Comments on Proposed Rule Amendments re: Merits Briefing
Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625-0970

Dear Ms. Baker:

I am the Executive Director of the John J. Gibbons Fellowship in Public Interest & Constitutional Law. Please accept this comment letter on behalf of the Gibbons Fellowship in response to the November 5, 2025 Notice to the Bar proposing amendments to the Court Rules governing briefing before the New Jersey Supreme Court.

Briefly stated, the Gibbons Fellowship supports the proposed amendments, particularly insofar as they serve to bring transparency and predictability to the schedule for briefing matters before the Court. The Fellowship also suggests that the Court further strengthen the impact of these rules by permitting attorneys, and the public, to access electronic Supreme Court dockets so that they can remain up-to-date about case developments and changes to filing deadlines, particularly insofar as they affect amicus practice.

As background, the Gibbons Fellowship regularly appears before the New Jersey Supreme Court representing parties or amici curiae. The Fellowship also frequently practices in federal appellate courts (including the Court of Appeals for the Third Circuit) and the United States Supreme Court, whose procedures are referenced in the Notice to the Bar. This comment draws on our experiences, with the hope that our perspective can assist the Court in its careful consideration of the proposed amendments.

In general, the Gibbons Fellowship supports the Court’s proposal of ordering merits briefing in every case. When representing a party before the Supreme Court, the Gibbons Fellowship almost always requests permission to file a supplemental merits brief. Unlike briefs at the petition for certification (or motion for leave to appeal) stage—which must primarily focus on persuading the Court why the matter is a suitable vehicle to address an issue of public importance—merits briefs allow lawyers to focus on their substantive legal arguments. Filing a comprehensive supplemental merits brief is thus an invaluable opportunity for a party to present a single, comprehensive statement of its strongest arguments in support of its legal position to the Court. Previously, parties (especially in civil cases) usually had to request permission to file such briefs, without certainty as to whether those requests would be granted or what the deadline would be for filing. The Court’s new rules properly remove that uncertainty and provide a predictable schedule for merits briefing.

The Gibbons Fellowship also supports the Court’s proposed amendments regarding the timing of amici briefs, for several reasons. First, under current practice, the deadline to file amici briefs is not tethered to the deadline for a party’s supplemental brief. In some circumstances, we have found that amici briefs must be filed before a party’s supplemental brief is due. An amicus therefore does not know what the party will argue when filing its brief. The Court’s proposed rule change ensures that amici can see the brief of the party they are supporting before filing, so that they can ensure that they are providing the Court with a unique and meaningful perspective on the issue. *See Whelan v. N.J. Power & Light Co.*, 45 N.J. 237, 244 (1965) (explaining that amici can help “assure [the Court] that all recesses of the problem will be earnestly explored”). Indeed, an amicus brief is most helpful to the Court when it supplements a party’s position rather than simply repeating it. *Cf., e.g., Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers) (“The vast majority of amicus curiae briefs are filed by allies of the litigants and duplicate the arguments made in the litigants’ briefs, in effect merely extending the length of the litigants’ brief. Such amicus briefs should not be allowed.”). Reviewing the party’s brief prior to filing an amicus brief allows potential amici to ensure that they are fulfilling this valuable role as friends of the Court.

Moreover, the proposed new rules—unlike the existing rules—ensure that a party will have an fair and adequate opportunity to respond to briefs for amici opposing the party’s position in the normal course of the litigation. Under current practice, a party might file a supplemental brief—without any schedule to file a reply

brief—before amici briefs are due. If the party wished to address arguments made in an amicus brief, it would have to wait until the Court entered an order permitting responses to amici briefs; otherwise, the party would need to request permission to file a brief responding to amici. The proposed revisions to the rules instead provide that briefs from amici supporting an appellant will be filed before the respondent’s brief is due, and any amici briefs supporting a respondent will be filed before the appellant’s reply brief is due. The party can therefore respond to amici’s arguments in the ordinary course of briefing. As the Notice to the Bar explains, the Court’s proposal helpfully serves to streamline and consolidate briefing of appeals on a predictable schedule. The Gibbons Fellowship agrees that these revisions are valuable to the Court, the bar, and the public.

All that said, the Gibbons Fellowship has some concerns about how the new rules will work in practice, particularly for amici whose filing deadlines will now depend on the date that they a party’s brief is due. In the United States Supreme Court and the Third Circuit Court of Appeals, any order establishing a briefing schedule—or any event that might affect the deadline for filing of a brief, such as a party’s request for an extension of time—is publicly available through the court’s electronic filing system.¹ But New Jersey eCourts Supreme (and Appellate) dockets are not similarly available, either to the public or a member of the bar. Instead, attorneys are only able to view electronic dockets when they have entered an appearance for a party. (Even attorneys representing proposed amici are not granted electronic docket access until a motion for amicus status has been granted by the Court.)

Under the Court’s current rules, the deadline for an amicus filing on the merits of an appeal does not depend on any filings entered on the Court’s docket. Instead, *Rule 1:13-9(e)* requires an amicus brief to “be filed within seventy-five (75) days of the date when the Supreme Court posts on its public website a notice” that it has accepted the appeal. An amicus therefore always knew when its brief was due to the Court. But under the proposed new rules, that certainty is lost, particularly if a party

¹ United States Supreme Court dockets are available through that court’s website, available at <https://www.supremecourt.gov/docket/docket.aspx/>, and Third Circuit dockets are available through the federal PACER system.

requests an extension on its time to file a brief or otherwise engages in motion practice that tolls the filing deadline.²

To ameliorate this problem, while maintaining the benefits described above that result from the Court's proposed rules, the Gibbons Fellowship respectfully urges the Court to expand electronic access to eCourts Supreme dockets. Such access will allow potential amici and their counsel to remain up-to-date on filings, including extension motions, revised briefing schedules, and filing of briefs. Expanded electronic access to dockets also furthers principles, grounded in history and the First Amendment, of access to courts for attorneys, amici, and the public. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980) (holding that the First Amendment protects the public's right to attend criminal trials); *Publiker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984) (“[T]he public and the press possess a First Amendment and a common law right of access to civil proceedings; indeed, there is a presumption that these proceedings will be open.”); *Div. of Youth & Family Servs. v. J.B.*, 120 N.J. 112, 127 (1990) (“There is an expectation based in history and the first amendment, and embodied in our Court Rules, *see R. 1:2-1*, that civil trials and proceedings will be open to the public.”).

To the extent the Court is understandably concerned about the risks of breaching the confidentiality that applies to certain types of proceedings, *see R. 1:38-3* (“Court Records Excluded from Public Access”), there are less restrictive means, such as sealing or redacting particular documents, that can achieve confidentiality while also preserving open access to court records. *See Hammock ex rel. Hammock v. Hoffman-Laroche*, 142 N.J. 356, 382 (1995) (explaining that when a trial court is assessing a motion to seal, “[d]ocuments should be redacted when possible, editing out any privileged or confidential subject matter, so that the protective order will have the least intrusive effect on the public’s right-of-access” (citation omitted)).

² The proposed amendments to *Rule 2:6-11(a)(2)* state that “the appellant shall file a brief on the merits of an appeal within forty (40) days of the Court’s order taking the appeal.” The date of “the Court’s order taking the appeal” could mean: (1) the date that is on the Court’s order accepting the appeal; (2) the date that document is uploaded to the eCourts Supreme docket portal (usually a few days after the date on the order); or (3) the date that the appeal is posted to the Court’s public website (which sometimes is not the same as the date when the order is uploaded to eCourts Supreme). The Court should consider clarifying which of these dates its proposed rule is referencing.

The United States Supreme Court and Third Circuit, which generally permit public access to electronic dockets, require parties to submit redacted copies of filings that can be accessed on those public dockets. *See* Sup. Ct. R. 34.7(d) (“Where possible, the movant should provide a redacted copy of the material for the public record.”); Third Cir. Local R. 113.12(a) (instructing Third Circuit filers to redact certain identifiers in filings). This Court has also ordered attorneys to file redacted documents in appeals. *See* Notice to the Bar, *Public Access in the Supreme Court and Appellate Division*, Oct. 15, 2024, <https://www.njcourts.gov/sites/default/files/notices/2024/10/n241017b.pdf>. Sealing and redaction therefore can serve as appropriate and feasible tools to facilitate open access to New Jersey Supreme Court electronic dockets, just as they are used in United States Supreme Court and Third Circuit matters.

In sum, the Gibbons Fellowship welcomes the Supreme Court’s proposed changes to the procedure for briefing in appeals before it. We respectfully ask the Court to further expand electronic docket access to matters on appeal, which will further facilitate the values of predictability and transparency that undergird the Court’s proposal.

On behalf of the Gibbons Fellowship, I thank the Court for the opportunity to comment on this proposal. We welcome the opportunity for additional dialogue regarding our comments. Please do not hesitate to contact me directly if the Gibbons Fellowship can further assist the Court in its consideration of the proposed amendments to the Court Rules.

Respectfully submitted,



Michael R. Noveck, Esq.
GIBBONS P.C.
Gibbons Fellowship in Public Interest and
Constitutional Law
Tel: (973) 596-4500
mnoveck@gibbonslaw.com