

Supreme Court of New Jersey

A Guide to Filing for Litigants without Lawyers



**Office of the Clerk
November 2014**

Introduction

This Guide gives you basic information on how to file papers in the *Supreme Court*. The Rules of Court, which can be found on the internet at njcourts.com or at any public law library, set forth the official requirements. In using the Guide, you will find that words in *italics* are defined on page 7.

The Guide is organized by sections. Read the entire Guide and then follow the procedures that apply to your type of case. Please note that the filing deadlines in the Supreme Court are very short. If you fail to file your papers on time, your case can be dismissed. If you are a respondent, your brief can be suppressed, which means the Court will not read your brief.

The mailing address of the Supreme Court is: Clerk of the Supreme Court, P.O. Box 970, Trenton, NJ 08625-0970. The Clerk's Office is located in the Hughes Justice Complex, 25 Market Street, Trenton. The telephone number is (609) 292-4837.

A. General Requirements

In New Jersey, the Supreme Court is the highest state court. Cases come to the Supreme Court after a decision by the *Appellate Division* of Superior Court. If the decision of that court is a *final judgment*, in most cases the proper procedure is to *petition for certification* (See p.2). If the decision is not a final judgment, it is *interlocutory* and you must seek review by filing a *motion* (See p.3).

1. Format. Although the Court prefers formal briefs that include a Table of Contents and a Table of Case Citations, you may submit a brief in the form of a letter. If you use a letter format, you do not have to include a formal Table of Citations or have a stiff paper cover.

Your papers should be typed. If you do not have a computer or a typewriter, you may submit hand-written papers. You must print all of the papers clearly. All pages must be double-spaced and must have one-inch margins on both sides, the top, and the bottom.

If you use a typewriter or a computer, the type (or "font") size must produce no more than 65 characters per line, including spaces between words.

You must number all pages. The maximum number of pages you may have for different kinds of briefs is discussed in later sections of the Guide.

2. Brief covers. If you are a *petitioner, movant, or appellant*, the cover of the brief in support of your application must be white. If you are a respondent, your brief cover must be blue. A reply brief cover

must be buff or cream. The covers should be made of paper that is stiffer than the paper that makes up the brief.

3. Copies. Except for a *notice of petition for certification* or a *notice of appeal*, you must submit an original plus four copies of all required Supreme Court papers. In addition, if you are filing a petition for certification or an appeal, you must include four copies of the briefs and appendices you filed in the Appellate Division, exactly as they were filed in that court.

Original notices of petition for certification and notices of appeal are filed with the Clerk of the Supreme Court. A copy of the notice is sent to the Clerk.

4. Filing Fees. Unless you have a court order allowing you to proceed as an *indigent*, Supreme Court filing fees are as follows:

- a. Notice of petition for certification \$250
- b. Notice of appeal \$250
- c. Respondent's brief (no fee)
- d. A motion that opens a case \$50
- e. Respondent's first motion, if filed \$50
- f. A motion for reconsideration \$50

5. Deposit for costs. If you are a petitioner or an appellant in a civil case, you must submit a \$300 deposit for costs within thirty days of opening your Supreme Court case. If you have been granted leave to proceed as an indigent, you do not have to file the deposit.

6. Due Dates. Each of the sections below lists specific deadlines for the filing of papers in the Supreme Court. As a general rule, if the deadline falls on a weekend or a holiday, the due date is automatically extended to the next business day. Also, if you file your papers by mail, an extra three days are added to the due date – if your papers are postmarked no later than the due date, they will be accepted for filing. (There is an exception to the three-day rule. If the Court has entered a *peremptory order* giving you until a specific date to file papers, you must have them at the Clerk's Office and served on your *adversary* by that date.)

7. Proof of Service (By Mail or in Person).

Every time you serve copies of your papers on your adversaries, you must submit proof of your service to the Clerk's Office. You can do this in the form of an *affidavit of service* or a certification. (See page 6 for a sample form.)

B. Petitions for Certification

If you or your adversary appealed to the Appellate Division from a final judgment, the decision of the Appellate Division is, in almost all cases, a final one for purposes of Supreme Court review. Although you can file an *appeal as of right* to the Supreme Court in very limited situations (See page 3), normally the proper procedure to use is to petition for certification. In addition to following the General Requirements in Section A, above, you must submit:

1. Notice of Petition for Certification. The notice of petition for certification is usually one or two pages. It includes the caption of the case, the Appellate Division docket number, and the filing date of the decision you are seeking to have reviewed. (See page 6 for a sample form.)

Under Rule 2:12-3(a), you have twenty days from the date of the Appellate Division decision within which to file a notice of petition for certification. A copy must be served on your adversary.

Please note that the time to file a notice of petition for certification is deferred if you have filed a timely motion for reconsideration with the Appellate Division; that is, within ten days of that court's decision. The twenty-day period to file a notice of petition for certification stops on the day you file a timely motion for reconsideration.

The time to file a notice of petition for certification does not run while the motion for reconsideration is pending. As soon as the Appellate Division files its decision on that motion, however, the time begins to run again. For example, if the Appellate Division opinion were filed on January 1st, the twenty days would begin to run from that date. If you filed a motion for reconsideration on January 8th, the running of the twenty days would stop with seven days having been used up. If the motion for reconsideration were denied on January 31st, you would have thirteen days left to file your notice of petition for certification. It would, therefore, be due by February 13th.

2. Petition for Certification. The petition for certification is a formal brief -- or a letter brief -- four copies of which must be filed with the Clerk's Office within thirty days of the filing date of the decision of the Appellate Division. Two copies must be served on your adversary. There are special requirements for a petition for certification that make it different from the brief you filed in the Appellate Division.

a. Format. In addition to the general format requirements of Section A (See page 1), a petition for certification may not be longer than twenty pages. It must include:

1. a short statement of the matter involved;
2. the question presented;
3. the errors complained of;
4. the reasons why certification should be allowed; and
5. comments on the Appellate Division's opinion.

You must also certify that the petition presents a substantial question and is filed in good faith and not for purposes of delay.

b. Appendix. The appendix to the petition for certification must include:

1. the opinion or *summary order* disposition of the Appellate Division; and
2. a transcript of any oral opinion by the trial judge.

In sentencing cases heard by the Appellate Division without briefs, the petition for certification appendix must also include a transcript of the oral arguments before the Appellate Division. (Defendants who were represented by the Public Defender in the Appellate Division should ask that office to forward four copies of the Appellate Division materials and transcript to the Supreme Court Clerk's Office.)

2. Respondent's Brief. If you are responding to someone else's petition for certification, you have fifteen days from the filing of the petition for certification to file an original plus four copies of your respondent's brief and four copies of your Appellate Division briefs and appendices.

The general format requirements of Section A (See page 1) apply to respondents' briefs, too. The Court does, however, allow a respondent to file an original and three copies of a letter relying on his or her Appellate Division briefs in place of a new Supreme Court brief.

A respondent's brief may not exceed twenty pages.

4. Reply Brief. The petitioner has ten days from the filing of a respondent's brief to file an original and three copies of a reply brief. The maximum length for a reply brief is ten pages. You do not have to file a reply brief.

5. Transcripts. Except for transcribed oral opinions, you do not have to forward trial transcripts with your petition for certification. If certification is granted, the Appellate Division Clerk's Office will forward copies of the transcript to the Supreme Court.

6. Grounds for Granting Certification. The Supreme Court does not grant certification routinely. In fact, certification is denied in approximately ninety percent of the cases filed.

Grounds for granting certification include the following:

- a. the matter must present a question of general public importance that has not been, but should be, settled by the Court;
- b. the matter is similar to another case already on appeal before the Court;
- c. the Appellate Division's decision is in conflict with a prior Supreme Court or Appellate Division decision or otherwise calls for an exercise of the Supreme Court's supervision; or
- d. if the interest of justice requires a grant.

Please note that certification will not be allowed on final judgments of the Appellate Division except for special reasons. (See R. 2:12-4)

7. Court Action. The Court's grant or denial of certification will be by Order without oral argument. If certification is denied, the case is concluded. If certification is granted, the Court may either dispose of the matter summarily or may set the appeal down for oral argument. If the Court does not decide the case summarily, you must send the Clerk's Office three more copies of all of your Appellate Division and Supreme Court briefs and appendices.

If your case is to be argued, you will receive approximately four weeks' advance notice of the argument dates.

C. Appeals as of Right

1. When to file. Appeals as of right to the Supreme Court are proper in very limited circumstances. Grounds for an appeal as of right include:

- a. A sentence of death in a criminal case;
- b. A dissent in the Appellate Division (but the appeal is limited to the issues discussed in the dissent); or
- c. When the case presents a substantial constitutional question that has not been the subject of a prior appellate decision. Please note that allegations of constitutional violations are not automatically "substantial questions." If the Court decides they are **not** substantial questions within the meaning of

the Rules and case law, the appeal will be dismissed. Rather than have an appeal dismissed on procedural grounds, you should petition for certification. If the Court finds your issues to be substantial, it will grant certification.

2. Time to File and Format. You have forty-five days from the final judgment of the Appellate Division decision within which to file a notice of appeal. The same Rules that apply to appeals as of right in the Appellate Division apply to the Supreme Court. Please remember that nine copies of all briefs and appendices are required -- including your Appellate Division briefs and appendices. Transcripts will be forwarded to the Supreme Court by the Appellate Division Clerk's Office.

D. Motions

Motions are *interlocutory* applications. If you are seeking Supreme Court review of an interlocutory decision by the Appellate Division, you would normally file a "motion for leave to appeal." In certain circumstances, you might also be filing a "motion for a *stay* pending appeal" or a "motion for bail pending appeal." You have twenty days from the filing date of the Appellate Division order to file your papers with the Supreme Court and your adversary. (R. 2:5-6) If you are responding to an adversary's motion, you have ten days to do so. (R. 2:8-1) The Court normally decides motions without oral arguments.

In addition to motions that seek review of interlocutory decisions of the Appellate Division, you may also need to file motions in cases that are already pending in the Supreme Court. Examples would be a "motion for an extension of time to file a petition for certification" or a "motion to supplement the record." If your brief will be late, you must file an extension motion to keep your case from being dismissed for lack of prosecution. Motions must follow these requirements:

1. A Notice of Motion This is usually one or two pages. In it, you state the nature of your request, such as "NOTICE OF MOTION FOR LEAVE TO APPEAL" or "NOTICE OF MOTION FOR A STAY PENDING APPEAL." (See p. 6 for a sample form.)

2. A Proof of Service must also accompany your motion papers. (See p. 6 for a sample form.)

3. An Affidavit in Support of the Motion. This can be your own affidavit. In it, you state, under oath, a short history of the case, the actions taken by the courts below, and why you should be getting the relief you want. An affidavit starts with the case caption and is written in numbered paragraph form. (See p. 6 for a sample form.)

A notary public or an attorney can take your oath on the affidavit. Please note that the Rules permit you to file a "certification" in place of an affidavit. If you decide to use that, your document must have the following words appear just before your signature: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment." (R. 1:4-4(b))

Please be careful to make your statements truthful and accurate. Also, be careful not to add new factual material to the case without making a motion to "supplement the record." Other than considering new procedural events in the case, the Court's review is limited to the record that was before the lower courts.

4. A Brief in Support of the Motion. Your brief contains a statement of the facts, procedural history, issues, and your legal arguments. As noted in the General Format section at page 1, briefs must be double-spaced, have one-inch margins, and be typed in a size that produces not more than 65 characters per line, including spaces between words. Your brief on a motion cannot be longer than 25 pages. If you prefer, you may rely on the brief you submitted to the Appellate Division. If you do, you must submit nine copies of that brief to the Supreme Court. You must also submit nine copies of your appendix to the motion brief.

The Court permits the use of letter briefs, but they still must be double-spaced. Although handwritten papers are accepted, typed papers are preferred. If the Court cannot read your handwriting, you cannot get the relief you want.

5. Copies. You must file an original plus eight copies of your papers with the Supreme Court Clerk's Office. You also must serve two copies of the motion papers on your adversaries. If you are seeking Supreme Court review of an Appellate Division order, you must send a copy of your motion to the Clerk of the Appellate Division.

6. Filing Fees. If the motion starts a case in the Supreme Court -- such as a motion for leave to appeal --there is a filing fee of \$50. If you have already filed papers in the Supreme Court and paid a fee, there is no filing fee. For example, if you had filed a timely notice of petition for certification and then had to make a motion for an extension of time to file your brief, the motion for an extension of time would not need a filing fee.

7. Indigency. If the courts below have found you to be indigent, you will be allowed to proceed without filing a fee if you send the Clerk's Office a copy of the order finding you to be indigent and an affidavit from you stating, under oath, that there have been no substantial changes in your financial situation since the date of the order. (See R. 2:7-4)

If you are asking the Court to declare you indigent, you must make a motion seeking "leave to proceed as an indigent." Your affidavit in support of the motion must set out your income and monthly expenses in detail.

You do not have to pay a filing fee on a motion to proceed as an indigent.

8. Emergent Motions. Sometimes emergencies arise that require accelerated consideration of a matter. The Supreme Court calls such matters "Emergent Motions." Typical examples include motions for a stay (of an eviction or the suspension of a driver's license, etc.) or for bail pending appeal.

Before you can make an emergent motion to the Supreme Court, you must have a decision from the Part Judges of the Appellate Division. Once you have that, you should either call or visit the Clerk's Office for instructions. If it is necessary and appropriate, you may have to deliver motion papers to a single Justice for him or her to consider immediately. The Justice may or may not hear oral arguments before deciding the motion.

A single Justice cannot grant final relief. If he or she grants any relief, it is only until the full Court can consider the matter. Under such circumstances, a very short briefing schedule may be set. Usually, the Clerk's Office will tell you what the schedule is.

If the single Justice denies the motion, you may still ask for review by the full Court, but the matter will no longer be treated as an Emergent Motion.

Please note that the format and service requirements for Emergent Motions are the same as those for regular motions.

8. Court Action. As with petitions for certification, motions are decided by the Supreme Court on the papers submitted. When the Court has decided the motion, the Clerk will enter an appropriate Order and distribute it to the parties.

9. Motions for Reconsideration. If you have a petition for certification or motion denied, or an appeal dismissed or otherwise decided against you, you have ten days from the filing date of the Court's decision within which to file a motion for reconsideration. The format is the same as for other motions. You must submit an original and eight copies to the Clerk's Office and serve two copies on your adversaries. The filing fee is \$50. Reconsideration motions are rarely granted, so you should not file one except in extraordinary circumstances.

E. Conclusion

Neither the Justices nor the employees of the Clerk's Office may give you legal advice. If you have procedural questions about your case, however, you may telephone or write the Clerk's Office.

Try to write your briefs clearly. Make them as short as you can. Be sure that the information in your briefs is accurate. Concentrate on the legal and factual issues before the Court -- do not spend time and effort attacking your adversaries or their attorneys.

If you follow the Rules of Court and the information contained in these Guidelines, the Court can give your application the attention it deserves. You may not win, but a proper presentation will help your chances for success.

[Sample Notice of Petition for Certification]

[Your Name]
[Your Address]
[Your Telephone Number]

Supreme Court of New Jersey
App. Div. Number: _____

John Doe, ;

Plaintiff-Respondent;

v. : **Civil Action**

[Your Name] ; **Notice of Petition for Certification**

Defendant-Petitioner.;

To: Clerk of the Supreme Court
Hughes Justice Complex
P.O. Box 970
Trenton, NJ 08625-0970

Clerk of the Appellate Division
Hughes Justice Complex
P.O. Box 006
Trenton, NJ 08625-0006

[Also list the attorneys for your adversaries or, if they are not represented by counsel, list your adversaries by their names and addresses]

TAKE NOTICE that [Your Name] shall petition the Supreme Court for an Order certifying the entire judgment entered by the Appellate Division in the above matter on [the date of the opinion of the Appellate Division]. The filing fee of \$250 is enclosed herewith.

Dated: _____
[Your Signature]

[If the Court has decided you are Indigent, the filing fee will be waived. See page 4.]

[Sample Notice of Motion]

[Your Name]
[Your Address]
[Your Telephone Number]

Supreme Court of New Jersey
Docket Number: (if known) _____
App. Div. Number: _____

John Doe, ;

Plaintiff-Respondent;

v. : **Notice of Motion**

[Your Name] ; **[For Leave to Appeal]**

Defendant-Movant.;

To: [List the attorneys for your adversaries, or if there are no attorneys, the adversaries themselves. Include addresses.]

PLEASE TAKE NOTICE that the undersigned hereby moves before the Supreme Court of New Jersey for leave to appeal the _____, 20__, order of the Superior Court, Appellate Division [use the date the order was FILED], which denied leave to appeal from the _____, 20__, order of the Superior Court, Law Division, that granted plaintiff's motion for a partial summary judgment. In support of this motion, I shall rely on the attached affidavit and brief.

Dated: _____
[Your Signature]

[The language of the NOTICE provision will depend on the actual nature and history of the motion you are filing. The important information is the Appellate Division Docket Number and the specific relief you are seeking. You have to be clear for the Court and your adversaries.]

[Sample Form of Affidavit]

[Whenever you have to file an affidavit, you should follow this format. You can, however, use the "certification" language found in the Proof of Mailing form instead of having your oath taken before a Notary Public or an Attorney at Law.]

Supreme Court of New Jersey
Docket Number: (if known) _____

John Doe, ;

Plaintiff-Respondent;

v. : **Affidavit**

[Your Name] ;

Defendant-Movant.;

[Your Name] , being of full age, on [his or her] oath, deposes and says:

- 1. I am the [movant, petitioner, appellant, etc.] in the above matter.
- 2. [You then set forth your sworn statements in numbered paragraph form. Remember you are swearing under oath that the information is true.]
- 3. ...

Sworn to and subscribed
Before me this _____ [Your Signature]
day of _____
20____.

[Sample Service by Mail]

[This form can be used as evidence of your service of any papers filed in the Supreme Court.]

PROOF OF MAILING: On _____, 20__, I, the undersigned, mailed my [notice of petition for certification, motion for leave to appeal, reply brief, etc.] to [list the people identified on your notice of petition for certification] by [regular mail, certified mail, express mail, or hand delivery - state whichever method you used].

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____
[Your Signature]

Glossary

ADVERSARY Opponent, the other party to the litigation.

AFFIDAVIT OF SERVICE A sworn statement that you have delivered copies of your materials on your adversaries; you may also make a certification in place of an affidavit.

APPEAL AS OF RIGHT An application to the Supreme Court that is based on a dissent in the Appellate Division or a substantial constitutional question. Also occurs in capital murder cases. Applies only when the decision is a final judgment.

APPELLANT The party who is appealing the judgment of the Appellate Division.

APPELLATE DIVISION The intermediate appellate court in the New Jersey state court system.

DEPOSIT FOR TAXED COSTS Should you petition, appeal, or move before the Supreme Court for relief and lose, the court may impose taxed costs against you. Your adversaries will be entitled to receive certain monies to defer the expense of defending against your application. Costs are taxed by the Clerk's Office on the request of a prevailing party. Any monies not used out of your deposit are returned to you, minus a small commission that is turned over to the State Treasurer.

EMERGENT MATTER If circumstances require emergency handling of a motion or other matter, arrangements can be made through the Clerk's Office to have the question presented to a single Justice. If the single Justice grants relief, that relief remains in effect pending the full Court's consideration of the application.

FINAL JUDGMENT A decision of a court that resolves all issues for all parties; for example, in a criminal case, a final judgment is entered after a conviction and sentence have been imposed on the defendant. In a civil case, a final judgment is entered after a jury verdict or the disposition of the case by the trial court.

INDIGENT One who is unable to afford court filing fees and related costs. In criminal matters, an indigent is entitled to receive transcripts at public expense. Except in rare cases, free transcripts are not provided in civil cases. A party making a motion to be declared an indigent must submit a detailed financial statement to the courts on an appropriate form.

INTERLOCUTORY A decision by a court or an application by a party that does not decide the entire case. For example, if a trial court denies a defendant's motion to suppress evidence in a criminal matter, the defendant may seek leave to appeal that decision before going to trial. Such an application would be interlocutory.

MOTION An interlocutory application made to a court.

MOVANT The name given to a party who has filed a motion.

NOTICE OF APPEAL If you are claiming an appeal as of right, the notice of appeal begins Supreme Court proceedings by placing the other parties and the court below on notice of your intention.

NOTICE OF PETITION FOR CERTIFICATION The document that begins a Supreme Court case after a final judgment in the Appellate Division. It puts the Appellate Division and all of the parties on notice that you are seeking Supreme Court review of the Appellate Division's decision.

PEREMPTORY ORDER An Order that gives you a specific date within which to file particular papers. No extensions of time will be granted. If you were to miss the deadline, your case could be dismissed or, if you were a respondent, your brief suppressed without further notice.

PETITION FOR CERTIFICATION The name given a brief filed in the Supreme Court when a party is seeking Supreme Court review of a final decision of the Appellate Division. A petition for certification involves "discretionary review," which means that the Supreme Court does not have to hear the case or issue a full opinion.

PETITIONER The name given to a party who files a petition for certification.

RESPONDENT The name given to a party who opposes a petitioner, an appellant, or a movant.

STAY An order of a court preventing an act from occurring. For example, a party may make a motion to the Appellate Division for a stay of its judgment pending a petition for certification to the Supreme Court.

SUMMARY ORDER The Supreme Court may dispose of matters before it by the entry of an order without hearing oral argument of the parties. Such summary decisions are normally entered at the time the petition for certification or motion is considered, but summary dispositions can be entered in appeals as of right as well.

SUPREME COURT The court of last resort in the New Jersey state court system.