

APPENDIX D - DIRECTIVES
NEW JERSEY SUPREME COURT
DIRECTIVES AS TO APPELLATE PRACTICE

1. Directive #69-62 (May 29, 1963): Family - Adoption Records and Opinions [rescinded in Notice to the Bar, September 27, 2021]

2. Directive #11-70 (April 16, 1971): Public Interest - Expediting of Appeals in the Public Interest

From time to time appeals are taken to the Appellate Division, the disposition of which ought to be expedited in the public interest. Unfortunately, counsel often fails to call the court's attention to this fact, so that the Appellate Division is not aware of the issues involved until briefs are filed, except as it may have read about the matter in the newspapers.

It would be appreciated if you would advise the clerk of the Appellate Division whenever it comes to your attention that an appeal has been taken in a case where you think the Appellate Division should expedite the appeal in the public interest.

Edward B. McConnell, Administrative Director

3. Directive #7-76 (February 9, 1977): Inmate Legal Associations

Herewith for information and advice to all judges is a letter from Chief Justice Hughes to Appellate Division Presiding Judge Conford which sets forth Supreme Court policy as to the above associations. Please take the necessary implementing action in all vicinages.

Arthur J. Simpson, Jr., J.A.D.

Acting Administrative Director of the Courts

February 2, 1977

Honorable Milton B. Conford

Presiding Judge for Administration

Dear Judge Conford:

I have your letter of January 26 dealing with the question raised by Judge Fritz as to whether the appellate clerks should accept briefs or other papers filed by "Inmate Legal Associations" on behalf of prisoners. I have considered with the Court the pro's and con's of whether an "Inmate Legal Association" should be permitted to file in its name, even if countersigned by the pro se prisoner litigant, briefs or other papers otherwise acceptable on a pro se basis for filing by appellate clerks. The "con" view was expressed by Judge Fritz in his letter to you of November 18, 1976, and by your present letter to me of January 26, 1977. The "pro" view was expressed in the usual careful and knowledgeable opinion of Ed Stern of December 13, 1976.

As Ed Stern rightly says, the reality of inmate legal assistance to the *pro se* prisoner cannot be discouraged, under the *Johnson v. Avery*, 393 U.S. 483, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969) principle, validating that assistance by a "jailhouse lawyer" as providing necessary constitutional access to the courts. On the other hand, those coming before the courts in the habiliments of lawyers should be lawyers subject to discipline, lest the

courts be overwhelmed by false, frivolous and repetitious barrages of legal papers. I would recall here the present relevance of the aphorism of Judge Learned Hand concerning abuse of the courts:

While it is quite true that an order dismissing one writ of habeas corpus does not formally estop the relator from suing out another on the same grounds, that does not mean that he may again and again call upon the court to repeat its rulings. Even this great writ can be abused, and when the question has once been decided upon full consideration, there must be an end, else the court becomes the puppet of any pertinacious convict. [*United States ex rel. McCann v. Thompson*, 144 F. 2d 604, 606 (2d Cir. 1944)].

Apart from his legal arguments, advocating relaxation of the present rule opposing the practice, I recognize Ed Stern's strategic purpose, which I understand and share. It is well-known that when prisoners think "someone is listening -- someone cares," there is a substantial conducement to inmate composure and prison peace. Thus where law library access is provided in prisons, inmates are preoccupied in searching for the needle in the legal haystack of their cases and (at least I have been told) prison unrest markedly diminishes. By analogy it might seem sensible, and costless, to grant inmate legal associations the dignity of co-signing the court papers.

However, I think such would not be costless in final analysis, for it would weaken and distort the legal process. The courts are besieged enough without inviting new assaults on frivolous and repetitious grounds. For that reason you are authorized to direct the Clerk of the Appellate Division that prisoners who submit papers endorsed with the name "Inmate Legal Association" or such, be advised that such papers are not acceptable and that, in the absence of formal counsel, they are to be filed by the prisoner himself, and only by him. At the same time, compatible with *Johnson v. Avery*, and to avoid needless inmate frustration, the prisoner should be advised that the assistance to him of the inmate legal association, in preparation of his papers or otherwise, is not proscribed.

We shall give the same directive to the Clerk of this Court, and the Administrative Director will transmit it to the Assignment Judges for information and compliance of the trial courts.

4. Directive #14-76 (July 12, 1977): Civil - Transcript at Public Expense

On December 16, 1976, the Supreme Court decided *In the Matter of the Guardianship of Felicia Dotson*, 72 N.J. 112 (1976). In the decision, the Court set forth the standard to determine whether an indigent defendant in a civil action (almost quasicriminal in nature, such as one in which the termination of defendant's parental rights is an issue, as in *Dotson*) is entitled to receive a transcript at public expense.

The State should not be obligated to furnish a transcript if the grounds stated for the appeal are frivolous or if the issues to be presented on appeal are such that they can adequately be determined on the basis of a truncated record (pursuant to R. 2:5-3 (c)). However, if the issues are such that only

by a review of a full and complete transcript may a reviewing court properly decide the case, then in such a civil action (almost quasi-criminal in nature), the transcript will have to be provided at public expense to the indigent defendant.

Arthur J. Simpson, Jr., J.A.D.

Acting Administrative Director of the Courts

5. Directive (December 19, 1977): Criminal - Out of Time Appeal for Indigent Defendants, Notice to Appellate Bar, 100 NJLJ 1208 (1977)

The Supreme Court has directed the Appellate Division to relax Rule 2:4-4(a) in favor of allowing an out-of-time appeal nunc pro tunc on behalf of an indigent criminal defendant in any case where it satisfactorily appears that the defendant, personally, within time, requested trial counsel or the Public Defender's Office to file an appeal.

6. Directive #7-80 (December 8, 1980): Special Parts/Panels - Convening Special Parts

The Supreme Court pursuant to its rule-making powers and the Chief Justice pursuant to his assignment and administrative powers, has directed me to advise you that henceforth the Presiding Judge for Administration of the Appellate Division, in addition to his other duties, is authorized to convene special parts of the Appellate Division when, because of illness, disqualification or other good cause, a regularly constituted panel of the Appellate Division is unable to consider an appeal.

Robert D. Lipscher, Administrative Director

7. Directive #8-89 (August 14, 1989): Special Appellate Division Panel for Emergent Environmental Appeals [rescinded in Notice to the Bar, September 27, 2021]

8. Directive #5-92 (October 22, 1992): Appeals from Family Division - Appellate Custody and Terminal System (ACTS)

On September 20, 1989, I issued Directive #9-89 concerning appeals from the Family Division and the implementation of the Appellate Custody and Termination System (ACTS) program. That Directive was intended to eliminate delays in appeals involving termination of parental rights or child abuse. The procedures outlined in Directive #9-89 did not produce the desired results. Hence, Directive #9-89 is hereby rescinded.

As a result of this rescission, the AOC will no longer pay for the production of transcripts upon filing of the notice of appeal. Indigent appellants will be required to move for free transcripts in termination of parental rights or child abuse appeals. Ordinarily, these motions should be made and decided in the trial court under the guidelines set fourth in *In re Guardianship of Dotson*, 72 N.J. 112 (1976).

The goal of this Directive, as was the goal of Directive #9-90, is to expedite the processing and disposition of the categories of Family Division appeals identified above. It is anticipated that this goal can better be achieved with the trial judge addressing the transcript issue at the

inception of the appeal. The Appellate Division Clerk's office will continue to identify these appeals and will accelerate their processing.

Chief Justice Robert N. Wilentz

9. Directive #3-00 (March 21, 2000): Providing Appellate Division With Transcripts on Computer Diskettes (Rule 2:5-3(e))

Rule 2:5-3(e) requires individuals preparing a transcript or appeal to file, along with the transcript, a computer diskette or diskettes containing a copy of that transcript. The diskettes submitted with the transcripts must meet the following requirements:

- * The diskette copy of the transcript must be in WordPerfect, WordPerfect-compatible, ASCII, or ASCII-compatible format.

- * Each diskette must contain as many complete days of a case as possible.

- * Diskettes must be in 8 -1/2 x 11 inch plastic media sheet holders, with a single sheet having a maximum capacity of four diskettes. Sheet holders are available at office supply stores.

- * Each diskette must be labeled with the following information: (1) case name, (2) Appellate Division docket number, and (3) dates of the proceeding.

- * When multiple days of a proceeding are being prepared by more than one court reporter or typist, complete dates should be combined onto a single diskette, to the extent possible.

- * The court reporter or transcriber may charge the party ordering the transcript \$2.50 for each diskette.

- * The court reporter or transcriber may charge the party ordering the transcript the relevant copy rate for each page contained on the computer diskette(s) provided to the Appellate Division. This is in addition to the cost for the paper copy provided to the Appellate Division.

Any questions that you might have regarding the implementation of this requirement should be directed to Reporting and Technical Services at (609) 292-2644.

Richard J. Williams, Administrative Director

10. Directive #07-20 (January 31, 2020): Superior Court Appeal and Non-Appeal Transcript Requests - Distribution to Certified Transcription Agencies and Transcribers

This directive promulgates a new policy regarding distribution of Superior Court transcript requests to certified transcription agencies/transcribers, in order to support appropriate distribution of work to certified transcribers and transcription agencies.

Background

For over a decade, CourtSmart has served as the primary method of recordation of court proceedings throughout New Jersey. At the same time, vicinage transcript offices have maintained relatively small localized pools of transcription agencies to which work assignments are distributed.

In 2017, the Appellate Division Office of Administrative Services centralized the distribution of appeal transcripts. The centralization process presented an opportunity to support greater standardization and equity in the distribution of non-appeal transcript work. To that end, the Judiciary is adopting the following policy:

(1) An attorney ordering a transcript may decide which agency they wish to use on the transcript request form. That request must be honored unless, under review, it is determined that a previous transcriber was used for the same matter.

(2) If a prior order was made for transcription in a certain case, the new request must be sent back to the same transcriber in order to ensure consistency of the record; however, if a transcriptionist or agency is no longer available, contact the Appellate Division transcript office for guidance.

(3) The County transcript office is required to use a minimum of eight transcription agencies for distribution of non-appeal transcript work, while the Appellate Division transcript office will continue to rotate among the entire list of agencies/transcribers for appeal transcripts. This requirement excludes grand jury transcripts, which are subject to the requirements found within R. 3:6-7.

(4) If an agency/transcriber is overdue in completing transcripts for more than a week they should complete their overdue transcripts prior to getting a new assignment.

(5) If a certified agency/transcriber asks to be added to the rotation they should be added unless there is a basis not to do so, for example, lateness, or frequent extension requests; note that the county transcript office is required to check the transcriber's certification by reviewing the online list or by contacting the Appellate Division's Office of Administrative Services.

(6) An official court reporter (OCR) cannot also be given work as a transcriber in the county in which they are assigned as an OCR.

(7) The Appellate Division's Office of Administrative Services will conduct periodic review of the assignments to ensure reasonable distribution.

Conclusion

The official list of approved transcribers and transcription agencies is posted on the Judiciary's website: <https://www.njcourts.gov/appellate.html>. Questions regarding this directive may be directed to Karen M. Carroll, Deputy Clerk for the Appellate Division, at Karen.Carroll@njcourts.gov or at 609-815-2950 ext. 54730.

Glenn A. Grant, J.A.D., Acting Administrative Director