

[Questions or comments may
be directed to 609-292-4638.]

Directive #10-06

**TO: ASSIGNMENT JUDGES
 CRIMINAL DIVISION JUDGES**

FROM: PHILIP S. CARCHMAN

SUBJ: NEW FORM – “APPEAL RIGHTS FORM” AS REQUIRED BY *STATE V. MOLINA*

DATE: JULY 13, 2006

This Directive promulgates on an interim basis a new form -- entitled *Appeal Rights Form* -- to be used in criminal cases as set forth below effective immediately. The English-language version of the form is attached. The Spanish-language version will be separately distributed as a supplement to this Directive by the beginning of next week.

In *State v. Molina*, ___ N.J. ___ (A-25/26/27/28-05, decided July 12, 2006), the Supreme Court addressed “when, and under what circumstances, leave to appeal as within time should be granted in criminal cases.” Slip opinion at 3. As part of its decision, the Court held that a defendant’s right to appeal must be communicated to defendant in writing and in a manner that ensures a meaningful discussion with counsel. Slip opinion at 15. To implement that aspect of its ruling, the Court stated that “[i]n the future, before imposing sentence, trial courts are to provide defendants with a form, to be generated and executed in duplicate,” with a sample form attached as an appendix to the opinion. Slip opinion at 15.

The Court also set out in detail the procedure for defense counsel to follow to explain the appeals process to defendant at the time of sentencing. “Much as with guilty plea forms, defense counsel is required to review the appeal rights form with the defendant, and to explain the nature of an appeal, that the defendant has a right to appeal both [the] conviction and/or sentence, and that counsel will be appointed to prosecute the appeal if the defendant is unable to afford counsel.” Slip opinion at 15. Defense counsel is to ensure that defendant understands his or her appeal rights, with both defendant and counsel required to sign the form as evidence thereof. A fully executed copy of the appeal rights form then is to be delivered to the trial court for retention in the court file, and another fully executed copy retained by the defendant.

Furthermore, “[t]he trial court, as part of the sentencing colloquy, is to review the appeal rights form with the defendant, satisfy itself that the defendant understands his or her appeal rights and has executed the appeal rights form knowingly and intelligently, and place that conclusion on the record.” Slip opinion at 16.

The Court stated that the above-described procedures and the form as appended to the opinion were “intended solely as interim measures.” Slip opinion at 16. The Court then referred the development of a permanent appeal rights form and a suggested colloquy to accompany it to the Criminal Practice Committee. Until that form and procedures are developed by the Criminal Practice Committee and approved by the Court, judges should use the attached *Appeal Rights Form* to ensure that criminal defendants have been advised of their right to appeal.

Any questions or comments regarding this Directive or the appended form may be directed to Assistant Director Joseph J. Barraco by e-mail or by phone (609-292-4638).

P.S.C.

Attachment (“Appeal Rights Form” – English-language version)

cc: Chief Justice Deborah T. Poritz
Attorney General Zulima Farber
Public Defender Yvonne Smith Segars
County Prosecutors
Gregory Paw, DCJ Director
AOC Directors and Assistant Directors
Regional Deputy Public Defenders

Trial Court Administrators
Criminal Division Managers
Francis W. Hoeber, Special Assistant
Steven D. Bonville, Special Assistant
Vance D. Hagins, Esq.
John Wieck
Melaney S. Payne, Esq.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - _____ COUNTY
INDICTMENT NO. _____

STATE OF NEW JERSEY

- v. -

_____,
Defendant.

APPEAL RIGHTS FORM

(Complete in duplicate; one fully executed copy to be delivered to the trial judge and defendant to retain the remaining copy.)

I, _____, hereby certify as follows:

1. I am the defendant in the above referenced case.
2. I am being represented in this sentencing by _____
and he/she has reviewed this appeal rights form with me.
3. I understand that (a) an appeal means having my case reviewed by a higher court, (b) I have a right to appeal my conviction and sentence, (c) I have the right to be represented by counsel for that appeal, (d) if I am unable to secure counsel for my appeal, the Office of the Public Defender will represent me or arrange for my representation, and (e) if I fail to file a notice of appeal with the Appellate Division within 45 days of today's date, and unless I obtain a thirty-day extension of time on a showing of good cause and absence of prejudice, I will lose my right to appeal.
4. 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: _____, ____
Defendant

I have reviewed this Appeal Rights Form with defendant and I am satisfied that he understands the rights it describes.

DATED: _____, ____
Counsel for Defendant

Interim Form Promulgated by Directive #10-06, July 13, 2006 (English-language version) CN 10778
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