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Supplement to Directive #27-17

TO: **Assignment Judges**
 Civil Presiding Judges

FROM: **Glenn A. Grant, J.A.D.** 

SUBJ: **Election-Related Applications – Supplemental Provisions Related to**
 Statewide Applications – Notification Requirements, Filing Fees, Docket
 Numbers, Processing Records

DATE: **October 16, 2020**

Directive #27-17 addresses standardized procedures for handling election-related applications among the counties as to whether a fee is charged (and, if so, what that fee is), whether a docket number is assigned, and whether a court file is opened. The Directive covers both applications that implicate an individual's right or ability to vote as well as applications that do not.

This Supplement to Directive #27-17 clarifies the procedures related to election contests and recount actions in statewide elections, including the statutory requirements (a) to notify the Clerk of the Superior Court and (b) for the assignment of one Superior Court judge to address all related filed contests as a single action docketed in the county of that assigned judge. This Supplement also clarifies the filing procedure related to those actions that challenge a statute, executive order, or other governmental action related to an election. This Supplement makes no changes to Directive #27-17 as to matters that affect an individual's right or ability to vote or as to other election-related matters that are not statewide contests or recount applications.

Petitions Seeking a Recount

Pursuant to N.J.S.A. 19:28-1, a petitioner "may, within a period of 17 days following [an] election, apply to a judge of the Superior Court assigned to the county

wherein such district or districts are located, for a recount of the votes cast at the election in any district or districts.” Where such recount application seeks to require a recount in a single county, the application must be filed in that county. The filing should be done electronically in eCourts or JEDS, with the matter being assigned a Law Division docket number and then managed in the civil case management system. The filing fee for that application is to be waived in accordance with *Reinhart v. Miller*, 208 N.J. Super. 314 (App. Div. 1985).

Where a petitioner seeks to require a recount in two or more counties, the Chief Justice has determined that those matters should be consolidated, using the same approach as set forth in N.J.S.A. 19:29-2 for contesting election results. Under that approach the consolidated recount matters would be heard by a Superior Court judge “assigned for that purpose by the Chief Justice of the Supreme Court.” The petitioner is required to contact the Clerk of the Superior Court in advance of filing documents with the court for specific instructions on how to file the matter. The Clerk of the Superior Court will provide the petitioner with the information as to the Superior Court judge assigned and the county of venue. The matter shall be electronically filed in eCourts or JEDS in the Law Division, Civil Part. The filing fee for this consolidated recount application is to be waived in accordance with *Reinhart*.

Petitions Contesting an Election

Where a petition contests an election voted on by voters in just one county, N.J.S.A. 19:29-2 provides that the matter will be venued in that county and will be heard by a Superior Court judge assigned to that county. Where the petition contests an election voted on by voters in the entire state, N.J.S.A. 29-2 requires that the election contest “be heard by any judge of the Superior Court assigned for that purpose by the Chief Justice of the Supreme Court.”

In both situations, the petitioner seeking to contest an election is required to contact the Clerk of the Superior Court in advance of filing documents with the court for specific instruction on how to file the matter. The Clerk of the Superior Court will provide the petitioner with information as to the Superior Court judge assigned and the county of venue. The matter is to be electronically filed in eCourts or JEDS, with a Law Division docket number assigned and the matter managed in the civil case management system. The filing fee for the application is \$250 for the complaint. Additional court fees may be required in accordance with Rule 1:43 (e.g., an Order to Show Cause would require a \$50 motion fee in addition to the \$250 complaint fee).

Appeals

Where the sole basis for a petition contesting an election is an executive order, that matter must be filed in the Appellate Division rather than in Superior Court. Pursuant to Rule 2:2-3(a)(2) and *Vas v. Roberts*, 418 N.J. Super. 509 (App. Div. 2011), the Appellate Division has the authority to review final administrative decisions or actions of any state administrative agency or officer. Thus, the Appellate Division has exclusive jurisdiction over challenges related to state administrative action and inaction, including executive orders. The trial court lacks subject matter jurisdiction in such instances. The fee to file a notice of appeal for such matters in the Appellate Division is \$250.

In order to file an Application for Permission to File an Emergent Motion with the Appellate Division relating to either petitions seeking a recount or petitions contesting an election, the action must first commence in the trial court. Any such application seeking to file a motion for a stay in the Appellate Division must first be denied a stay in the trial court. Rule 2:9-5. A party that wants to file an emergent application must call 609-815-2950 x52614 for filing instructions.

For questions or information related to this notice, please contact Michelle M. Smith, Clerk of the Superior Court at michelle.smith@njcourts.gov or 609-815-2900 ext. 54200.

cc: Chief Justice Stuart Rabner
Hon. Carmen Messano, Presiding Judge for Administration
Hon. Jack M. Sabatino, Deputy Presiding Judge for Administration
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