

NOTICE TO THE BAR

PROPOSED AMENDMENTS TO THE COURT RULES **FOR BRIEFS IN APPEALS BEFORE THE SUPREME COURT** **-- COMMENTS REQUESTED**

This Notice publishes for public comment proposed amendments to the Rules of Court governing briefing practices for appeals before the Supreme Court. In short, the Court is inclined to adopt the practice of “merits briefing” for Supreme Court appeals. This model is used in federal courts and, in the Court’s preliminary view, would offer numerous benefits for the Court, the parties, and the public. The Court reached this proposal after careful study and discussion with stakeholders, including the Office of the Attorney General, the Office of the Public Defender, members of the private bar, and other frequent amicus participants.

Overview of Current Practice

Currently, the Rules do not provide for merits briefing after the Court takes an appeal. Thus, the parties’ briefs on the petition for certification (together with the Appellate Division briefs) or on the motion for leave to appeal become the parties’ briefs on appeal. In criminal matters, the Court typically orders supplemental briefs, which supplement, rather than supplant, the briefs that preceded them. In other case types (e.g., civil, family, administrative agencies), the Court does not receive briefing on the appeal unless the parties move for supplemental briefing. Because there is no time limit for such motions, motions for supplemental briefing can delay the scheduling of an appeal.

In addition to delay, the reliance on multiple briefs – all filed before the Court’s grant of the appeal – can result in imprecision regarding the issue(s) before the Court and the parties’ arguments on those points. It also results in confusion by the public who must trace the parties’ arguments across multiple briefs, in filings often incorporated by reference.

Finally, the current system renders all amicus motions due on a single date (75 days after the posting on the Court’s website). That results in multiple rounds of briefing and, typically, extension motions, all of which occurs after the parties’ briefs are filed and the appeal is otherwise ready for oral argument.

Overview of “Merits Briefing”

In the proposed “merits briefing” model, the Rules would provide a standard schedule for the parties to file briefs on the merits of the appeal *after* the Court has granted certification or leave to appeal.

In addition, the time for filing amicus motions would be embedded within the parties’ briefing schedule rather than occurring thereafter. For example, in the U.S. Supreme Court, proposed amici file their briefs 7 days after the party that they support. If the proposed amicus party does not support either party, it must file 7 days after the appellant’s brief is filed. Using that approach, the parties respond to the merits of their adversaries’ position(s) in the same brief as the merits of the amici that support their adversaries. Because the amicus motions occur roughly contemporaneously with the filing of the parties’ briefs, proposed amici are not permitted to file motions for extensions of time.

In addition, because amici do not have the burden of including a detailed factual recitation and procedural history, among other details specific to the parties to the litigation, the proposed amendments reduce the page number for amicus briefs from 50 to 30 pages.

Proposed Schedule for “Merits Briefing”

The proposed “merits briefing” schedule under consideration is as follows:

- Appellants file **40 days** from the date of the order
 - (with any amici in support filing 10 days later)
- Respondents file **30 days** from the date of the appellant’s deadline
 - (with any amici in support filing 10 days later)

- Appellants file a reply brief **24 days** from the respondent’s deadline

The proposed schedule aligns closely with the schedules applicable in the Supreme Court and the Court of Appeals for the Third Circuit:

	Proposed	SCOTUS ¹	3d Circ. ²
Appellant’s Br.	40	45	40
<i>Amicus (Supporting App.)</i>	+10	+7	+7
Respondent’s Br.	30	30	30
<i>Amicus (Supporting Resp.)</i>	+10	+7	+7
Appellant’s Reply	24	30	21
Total Briefing Schedule	94	105	91

Summary of Amendments

With merits briefing, two critical shifts would streamline appeals and improve public access to the parties’ arguments:

1. The parties’ merits briefs would include all of the arguments on the issues before the Court in a single brief; the public would no longer have to navigate the petition papers, appellate materials, and other briefs to understand the argument the parties are making before the Supreme Court. This would be of particular value where the parties’ positions have evolved over time, the arguments have been reframed, or the emphasis of the appeal has shifted due to intervening events. In addition, it would help the parties organize their briefs and plan their arguments by knowing that there will be merits briefing at the appeal phase and that they need not shoehorn their substantive arguments into the petition or motion briefs.
2. Importantly, amicus participation would no longer be tethered to a 75-day timeline for proposed participants. Rather, just as in federal court, the proposed amici would file their submissions shortly after the parties they support on appeal. This would allow the parties to address amici’s

¹ Supreme Court [Rule 25](#) (parties’ briefs) and [Rule 37\(3\)\(a\)](#) (amicus briefs).

² The Third Circuit sets forth a briefing schedule in a briefing letter, with the typical schedule as set forth in the chart. [See F.R.A.P. Rule 31](#) and [Rule 29](#).

positions simultaneously with their adversaries' positions. The result should be more concise presentations, with more organized arguments and fewer briefs (since parties will no longer be filing a separate response to every single amicus brief). The process also should yield fewer delays, given the reduction of motion practice attributable to supplemental briefing and extensions related to amicus motions. This will allow for a more expeditious resolution of matters of public importance.

Comments

Please send any comments in writing by Wednesday, December 3, 2025 to:

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

Comments may also be emailed to Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by email should include their name and email address. Comments submitted in response to this notice are subject to public disclosure.

/s/ Michael J. Blee

Hon. Michael J. Blee, J.A.D.
Acting Administrative Director

Date: November 3, 2025

FULL TEXT OF PROPOSED RULE AMENDMENTS

1:13-9. Amicus Curiae; Motion; Grounds for Relief; Briefs

(a) An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall define with specificity the permitted extent of participation by the amicus and shall, where appropriate, fix a briefing schedule.

(b) Briefs filed by an amicus curiae in any court shall comply with all applicable rules.

(c) Except as provided in subsection (f), motions for leave to appear as an amicus curiae in the Appellate Division shall be accompanied by the proposed amicus curiae brief and shall be filed on or before the day when the last brief is due from any party.

(d) An amicus curiae who has been granted leave to appear in a cause may, without seeking further leave:

(1) file a brief in an appeal taken **[to any court] in the Appellate Division** from a final judgment or appealable interlocutory order, provided that the brief is filed on or before the day on which the last brief is due from any party;

(2) file a brief in support of or in opposition to a motion for leave to appeal, provided that the brief is filed on or before the day on which the last brief is due from any party;

(3) file a brief in the Supreme Court in support of or in opposition to a petition for certification, provided that the brief is filed on or before the day on which the last brief is due from any party;

(4) file a brief **of no more than thirty (30) pages** on the merits after the Supreme Court has granted a petition for certification or a motion for leave to appeal, or after a notice of appeal has been filed, provided that the brief is filed in compliance with the time frames fixed in subsection (e) of this Rule.

(e) An amicus curiae who has not been granted leave to appear in a cause may file a motion for leave to appear in the Supreme Court in connection with a petition for certification, a motion for leave to appeal, or an appeal, provided that the motion is accompanied by the proposed amicus curiae brief.

(1) Time for Motions and Briefs. Except as provided in Subsection (f) of this Rule, motions for leave to appear as an amicus curiae in the Supreme Court in connection with a petition for certification or a motion for leave to appeal shall be filed on or before the day on which the last brief is due from any party. Motions for leave to appear as an amicus curiae in connection with an appeal shall be filed within [seventy-five (75) days of the date when the Supreme Court posts on its public website a notice of:

- (1) an order granting certification;
- (2) an order granting leave to appeal; or
- (3) the filing of a notice of appeal.

Untimely motions may be granted by the Supreme Court only on a showing of good cause demonstrated to the satisfaction of the Court.]

ten (10) days after the merits brief for the party supported is filed, or if in support of neither party, within ten (10) days after the time allowed for filing the appellant's merits brief. Motions to extend the time for filing an amicus motion and brief will not be accepted.

(2) Time for Answers to Motions. For motions filed in connection with a petition for certification or a motion for leave to appeal, the parties may file an answer opposing amicus participation within ten (10) days of the filing of an amicus motion. In appeals, an answer opposing amicus participation may be filed together with the response brief addressing the merits of the proposed amicus brief, pursuant to Rule 2:6-11(a)(2).

(f) In the event that the Supreme Court, or the Appellate Division, has directed the parties to submit briefs in accordance with an accelerated schedule, an amicus curiae shall file its motion for leave to appear, accompanied with its brief[,] in compliance with the time frames fixed in the accelerated schedule, or, if the schedule is silent as to the deadline for filing amicus briefs, on or before the date fixed for the last brief due from any party.

Note: Adopted July 16, 1979 to be effective September 10, 1979; caption and text amended July 13, 1994 to be effective September 1, 1994; former text reallocated as paragraphs (a) and (b), paragraph (a) amended, and new paragraphs (c), (d), (e) and (f) adopted July 23, 2010 to be effective September 1, 2010; paragraph (f) amended March 24, 2011 to be effective immediately; paragraph (e) amended July 22, 2014 to be effective September 1, 2014; paragraphs (d), (e), and (f) amended to be effective .

2:6-11. Time for Serving and Filing Briefs; Appendices; Transcript; Notice of Custodial Status

(a) Time Where No Cross Appeal Taken.

(1) In the Appellate Division. Within ten days after the filing of a complete set of transcripts pursuant to R. 2:5-3(e), the appellant shall file three additional copies with the clerk, as provided by R. 2:6-12(d), and shall serve the transcript as provided by R. 2:6-12(a). Except as otherwise provided by R. 2:9-11 (sentencing appeals), the appellant shall serve and file a brief and appendix within 45 days after the delivery to appellant of the transcript, if a verbatim record was made of the proceedings below; or within 45 days after the filing of the settled statement of the proceedings, if no verbatim record was made of the proceedings below; or within 45 days of the filing of the notice of appeal if a transcript or settled statement has been filed prior to a filing of the notice of appeal or if no transcript or settled statement is to be filed; or, on an appeal from a state administrative agency, within the time stated above or within 45 days after the service of the statement of the items comprising the record on appeal required by R. 2:5-4(b), whichever is later. The respondent shall serve and file an answering brief and appendix, if any, within 30 days after the service of the appellant's brief. The appellant may serve and file a reply brief within 14 days after the service of the respondent's brief.

(2) In the Supreme Court. Unless otherwise directed by the Court, the appellant shall file a brief on the merits of an appeal within forty (40) days of the Court's order taking the appeal (except for appeals taken pursuant to Rule 2:12-2), or, where an appeal is taken as of right, within forty (40) days of the Notice of Appeal as of Right. The respondent shall file a brief on the merits of an appeal within thirty (30) days after the brief for the appellant is filed. The response should address the merits of the parties' positions as well as the merits of any proposed amicus submission filed pursuant to Rule 1:13-9. The appellant shall file a reply brief, if any, within twenty-four (24) days after the brief for the respondent is filed. The reply brief should address the points set forth in the respondent's brief as well as the merits of any proposed amicus submissions filed pursuant to Rule 1:13-9.

(b) Time Where Cross Appeal Taken.

(1) In the Appellate Division. Except as otherwise provided by R. 2:9-11 (sentencing appeals), if a cross appeal has been taken, the party first appealing, who shall be designated the appellant/cross respondent, shall serve and file the first brief and appendix within 30 days after the service of the notice of cross appeal or within the time prescribed for appellants by R. 2:6-11(a), whichever is later. Within 30 days after the service of such brief and appendix, the

respondent/cross appellant shall serve and file an answering brief and appendix, if any, which shall also include therein the points and arguments on the cross appeal. Within 30 days thereafter, the appellant/cross respondent shall serve and file a reply brief, which shall also include the points and arguments answering the cross appeal. Within 14 days thereafter, the respondent/cross appellant may serve and file a reply brief, which shall be limited to the issues raised on the cross appeal.

(2) In the Supreme Court. If a timely Notice of Cross-Appeal or Notice of Motion to Cross-Appeal is filed, the time for filing merits briefs on appeal in the Supreme Court shall be tolled pending the issuance of an omnibus briefing schedule addressing the issues on the appeal and cross-appeal, or, if leave to cross-appeal is denied, the briefing schedule shall resume upon the filing of the order denying leave to cross-appeal.

(c) **Scheduling Order.** The time provisions of this rule notwithstanding, the court may enter a separate scheduling order in any case on appeal.

(d) **Permissible Submissions.** No briefs other than those permitted in paragraphs (a) and (b) of this rule shall be filed or served without leave of court, except that:

(1) A party may, without leave, serve and file a letter calling to the court's attention, with a brief indication of their significance, relevant published opinions issued, or legislation enacted, or rules, regulations, and ordinances adopted, subsequent to the filing of the brief. Unpublished opinions shall not be submitted pursuant to this rule, unless they are of a type that the reviewing court is permitted under R. 1:36-3 to cite in its own opinions. Any other party to the appeal may, without leave, file and serve a letter in response thereto within five days after receipt thereof. The initial letter and subsequent responses shall not exceed two pages in length without leave;

(2) In criminal, quasi-criminal, and juvenile matters the appellant shall by letter advise the court of any change in the custodial status of a defendant, juvenile, or other party subject to confinement, during the pendency of the appeal; and

(3) In appeals involving Division of Child Protection and Permanency matters, the appellant or respondent shall by letter advise the court of any change in the placement status of the child during the pendency of the appeal.

(e) **Motions that Toll the Time for Serving and Filing Briefs in the Appellate Division.**

(1) Subject to subparagraph (e)(2) of this rule, in addition to the filing of those motions that toll the time for the filing of briefs and appendices as provided by

R. 2:5- 5(a) and R. 2:8-3(b), the time for the filing of briefs and appendices will be tolled by the filing of a motion:

(A) to correct or supplement the record in trial court, administrative agency or Appellate Division;

(B) for summary disposition pursuant to R. 2:8-3(b);

(C) to strike the entirety or portions of a brief or appendix;

(D) to dismiss the appeal;

(E) for final remand;

(F) to stay appellate proceedings; and

(G) to file an overlength merits brief.

(2) The time for the filing of briefs and appendices will not be tolled if the party filing the motion under subparagraph (e)(1) was previously granted one or more prior extensions of time to file its brief and appendix. In that event, the party seeking the tolling of the time to file a brief and appendix shall be required to file a separate motion seeking an extension.

(3) If the time to file a brief and appendix is tolled by the filing of a motion, the remaining time shall begin again to run from the date of entry of an order disposing of the motion, unless otherwise directed by the court.

Note: Source — R.R. 1:7-12(a)(c), 1:10-14(b), 2:7-3. Paragraph (b) amended by order of September 5, 1969 effective September 8, 1969; paragraph (a) amended July 7, 1971 to be effective September 13, 1971; caption and paragraphs (a) and (b) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended May 8, 1975 to be effective immediately; paragraphs (c), (d) and (e) adopted July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and titles of paragraphs (c)(d) and (e) added November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; paragraph (f) adopted July 16, 2009 to be effective September 1, 2009; paragraph (f) caption and text amended July 9, 2013 to be effective September 1, 2013; new paragraph (g) adopted July 22, 2014 to be effective September 1, 2014; paragraph (d) amended August 1, 2016 to be effective September 1, 2016; caption amended, paragraphs (a) and (b) amended, paragraph (d) caption and text amended, paragraph (e) deleted with text added as subparagraph (d)(2), paragraph (f) deleted with text amended and added as subparagraph (d)(3), paragraph (g) amended and renumbered as paragraph (e) August 5, 2022 to be effective September 1, 2022; paragraphs (a) and (b) amended to be effective.

2:12-11. Proceedings After Certification Granted

If certification is granted, the matter shall be deemed pending on appeal in the Supreme Court and the petitioner's entire case shall be before the Supreme Court for review unless the Supreme Court otherwise orders on its own motion or on the motion of a party which shall be included in the petition or in the respondent's brief in answer thereto. The respondent may seek affirmative relief only by cross petition for certification. [Further proceedings shall be had as provided for on appeals as of right, except that the appeal shall be submitted on the briefs, appendices and transcript filed with the Appellate Division and except that, in appropriate cases, the Supreme Court may render a decision without argument. Further briefs on the appeal may be filed only on order and in accordance with the schedule set forth therein. Application for permission to file further briefs shall be in the form of a motion.] [i]In appropriate cases, the Supreme Court may render a decision without argument.

Note: Source -- R.R. 1:10-14(a) (e). Amended December 21, 1971 to be effective January 31, 1972; amended March 5, 1974 to be effective immediately; amended May 8, 1975 to be effective immediately; amended July 24, 1978 to be effective September 11, 1978; amended _____ to be effective _____ .

2:12A-Certification of Questions of Law by the Supreme Court**2:12A-6-Procedures**

After the Supreme Court has accepted a certified question, the matter shall proceed in the same manner as an appeal as of right. [The Court shall issue a scheduling order and a]All briefs shall comply with the requirements and limitations of Rule 2:6 unless otherwise directed by the Court. Unless the Court dispenses with oral argument, it shall proceed pursuant to Rule 2:11-1(b).

Note: Adopted November 19, 1999, to take effect January 3, 2000.