

## **RULE 2:10. Scope Of Review**

### **2:10-1. Motion for New Trial as Prerequisite for Jury Verdict Review; Standard of Review**

In both civil and criminal actions, the issue of whether a jury verdict was against the weight of the evidence shall not be cognizable on appeal unless a motion for a new trial on that ground was made in the trial court. The trial court's ruling on such a motion shall not be reversed unless it clearly appears that there was a miscarriage of justice under the law.

**Note:** Source-R.R. 1:5-1(a) (fourth and fifth sentences), 1:5-3(a). Amended July 7, 1971 to be effective September 13, 1971.

### **2:10-2. Notice of Trial Errors**

Any error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result, but the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court.

**Note:** Source-R.R. 1:5-1(a) (first three sentences), (b), 1:5-3(b) (c).

### **2:10-3. Review of Sentence**

If a judgment of conviction is reversed for error in or for excessiveness or leniency of the sentence, the appellate court may impose such sentence as should have been imposed or may remand the matter to the trial court for proper sentence.

**Note:** Source-R.R. 1:5-1(c). Caption amended July 7, 1971 to be effective September 13, 1971; text amended November 2, 1987 to be effective January 1, 1988.

### **2:10-4. Convictions for Contempt**

Every summary conviction by a court for contempt shall be reviewable on the law and the facts. The appellate court shall render such judgment and order for enforcement thereof as it deems just under the circumstances.

**Note:** Source-R.R. 1:5-2.

### **2:10-5. Original Jurisdiction**

The appellate court may exercise such original jurisdiction as is necessary to the complete determination of any matter on review.

**Note:** Source-R.R. 1:5-4(a), N.J. Constitution (1949) Art. VI, § V, para. 3.

### **2:10-6. Allegation of Ineffective Assistance of Counsel in Termination of Parental Rights Cases**

In appeals from judgments terminating parental rights pursuant to N.J.S.A. 30:4C-15 et seq. in which ineffective assistance of counsel has been alleged, the issue shall be raised in the direct appeal of the matter below. The brief submitted by appellate counsel must set forth the factual basis for asserting that trial counsel's performance was deficient and explain why the result would have been different had the lawyer's performance not been deficient. In appropriate cases,

counsel shall proffer certifications or other documentary evidence to support the claim. If the appellate court determines that a genuine issue of material disputed fact on the issue of the representation provided by trial defense counsel has been raised, the matter may be remanded to the trial judge and proceed in accordance with R. 2:9-1(c).

**Note: Adopted July 16, 2009 to be effective September 1, 2009.**