

## **RULE 2:8. Motions; Dismissals; Summary Dispositions**

### **2:8-1. Motions**

- **(a) Contents; Form of Brief and Appendix.** Every motion shall be accompanied by a brief, conforming either to the requirements of R. 2:6-2(a) (formal brief) or (b) (letter brief), and by an appendix and shall be in the form and reproduced as provided by R. 2:6-10. The brief shall explain clearly the nature of the action, the relief the moving party seeks and why the moving party is entitled thereto. It may, for purposes of clarity, summarize pleadings and other undisputed papers or records which do not accompany the brief. The appendix shall include the judgment or order and the opinion or statement of findings and conclusions below and, where essential, the transcript of the testimony, depositions or other discovery, pleadings or other portions of the record, including the portions thereof upon which the movant should reasonably assume the opposing party will rely. If the transcript cannot be obtained in time for the motion, an affidavit may be filed in lieu thereof giving the substance of such testimony. If the motion is opposed, the opposing party shall file an answering brief setting forth with equal explicitness the grounds of opposition, annexing an appendix containing copies of any papers relied on which are not in the moving party's appendix. On motion for leave to appeal the brief shall include argument on the merits of the issues sought to be appealed. If no opposing brief is filed the court may consider the motion unopposed. Without leave of the court, which may be applied for ex parte, supporting and answering briefs shall not exceed 25 pages, exclusive of tables of contents, table of citations and appendix.
- **(b) Time for Filing and Service; Copies; Argument.** The moving party shall serve 2 copies of the moving papers on all other parties. In the Appellate Division, the original and 4 copies of the papers shall be filed with the Clerk of that court. In the Supreme Court, the original and 8 copies of the papers shall be filed with the Clerk of that court. Within 10 days after the service of the movant's papers, the opposing party shall serve and file the same number of papers in opposition. No other papers shall be filed by either party without leave of court. Motions shall not be argued unless the court directs oral argument.
- **(c) Disposition.** Unless the court otherwise directs, all motions in the Appellate Division shall be decided by a single judge except that motions for bail, stay of any order or judgment, summary disposition, and leave to appeal shall be decided by a panel of at least two judges. Insofar as practicable, motions for reconsideration and motions for counsel fees for work performed in the Appellate Division shall be decided by the judges who decided the original matter.
- **(d) Order and Notice.** Unless the court otherwise directs, upon determination of the motion the court or the clerk acting under its direction shall forthwith enter an order granting or denying the motion in accordance with the determination of the court and shall mail true copies thereof to counsel.
- **(e) Fees.** If the motion is the first paper filed in the appellate court by the moving party it shall be accompanied by the fee required by N.J.S.A. 22A:2.

Note: Source-R.R. 1:7-10(b), 1:11-1, 1:11-2(a) (b), 1:11-3, 2:11-1, 2:11-2, 2:11-3,4:61-1(c). Paragraph (a) amended, paragraph (c) adopted and former paragraph (c) redesignated (d) July 24, 1978 to be effective September 11, 1978; paragraph (b) amended and paragraph (e) adopted July 16, 1981 to be effective September 14, 1981; paragraph (c) and (d) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended July 12, 2002 to be effective September 3, 2002.

### **2:8-2. Dismissal of Appeals: Order; Stipulation**

The appellate court may at any time on its own motion or that of a party dismiss the appeal or petition for certification. Appeals and petitions for certification in class actions and in actions involving the status of minors shall not be dismissed without an order of the appellate court; all other appeals and petitions may be dismissed upon the filing of a stipulation by the parties

agreeing thereto. An appellant may dismiss the appeal without consent at any time before the first brief on appeal is filed. Such dismissal shall be accompanied by a proof of service thereof on all respondents.

Note: Source-R.R. 1:4-1 (third sentence), 1:8-6, 1:10-6(a) (third sentence). Amended July 24, 1978 to be effective September 11, 1978; amended November 1, 1985 to be effective January 2, 1986.

### **2:8-3. Motion for Summary Disposition**

- **(a) Supreme Court.** On an appeal taken to the Supreme Court as of right from a judgment of the Appellate Division, any party may move at any time following the service of the notice of appeal for a summary disposition of the appeal. Such motion shall be determined on the motion papers and on the briefs and record filed with the Appellate Division and may result in an affirmance, reversal or modification. The pendency of such motion shall toll the time for the filing of briefs and appendices on the appeal. The Supreme Court may summarily dispose of any appeal on its own motion at any time, and on such prior notice, if any, to the parties as the court directs.
- **(b) Appellate Division.** Any party to an appeal may move the Appellate Division for summary disposition in accordance with R. 2:8-1(a). Such motion shall demonstrate that the issues on appeal do not require further briefs or full record. The motion may be filed at any time after filing of the notice of appeal but unless leave is otherwise granted not later than 25 days after the filing of respondents' briefs. The court may deny the motion; may grant it by affirming, reversing or modifying the judgment or order appealed from on the record before it or on such further record as it may direct; or may take such other action in respect of limitation of the issues or otherwise as it deems appropriate. The court may summarily dispose of any appeal on its own motion at any time, and on such notice, if any, to the parties as the court directs, provided that the merits have been briefed. A motion for summary disposition shall toll the time prescribed by these rules for further perfection of the appeal.

Note: Source-Adopted December 21, 1971 to be effective January 31, 1972. Paragraph (a) designation added and paragraph (b) adopted July 24, 1978 to be effective September 11, 1978; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 13, 1994 to be effective September 1, 1994.