

NOTICE TO THE BAR

AMENDMENTS TO RULES 2:6-2 AND 2:6-11 – REVISIONS TO CERTAIN REQUIREMENTS RELATING TO APPELLANT’S BRIEF AND TO LETTERS TO COURT AFTER BRIEF FILED

This notice highlights certain amendments to the Rules Governing the Courts of the State of New Jersey that become effective September 1, 2016. Specifically, the notice explains new requirements and amendments pertaining to Part II, Rules Governing Appellate Practice in the Supreme Court and the Appellate Division of the Superior Court, in particular, R. 2:6-2, Contents of Appellant's Brief, and R. 2:11-6(d), Letter to Court After Brief Filed.

1. REQUIREMENT OF A TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED IN APPELLANT’S BRIEF

Rule 2:6-2(a)(2) has been amended to require that a table of judgments, orders and rulings being appealed must be in appellant's brief, following the table of contents. The table must list the location in the record of (a) the trial court's judgment(s), order(s), and ruling(s) being appealed, or the administrative agency's final decision(s); (b) the trial judge's written or oral opinion; and (c) intermediate decisions, if any, pertinent to the appeal.

The inclusion of a table of judgments, orders and rulings in a brief is intended to improve efficiency for the brief reader by making these critical items easier to locate in the record. As the first item the brief reader may wish to examine is the judgment, order or ruling in question, a table providing the location of these items in the record will save the brief reader time. It will also serve as a check to appellant to ensure that required items are included in the record, such as intermediate decisions, which may be necessary or relevant to appellate review but are sometimes omitted from the record provided to the court.

2. STATEMENT OF LOCATION OF OPINION OR RULING IN POINT HEADINGS

Rule 2:6-2 has been amended to require that the location in the record of the opinion or ruling in question, or the fact that the issue was not raised below, must be included in a statement in parentheses next to the point heading. This information must be included in the table of contents where point headings are listed, R. 2:6-2(a)(1), and in the legal argument portion of the brief, R. 2:6-2(a)(6).

This amendment requires that the statement of location (or notice that the issue was not raised below) appear in both the table of contents to the brief and to the point headings

as listed in the legal argument section of the brief. This information is critical for the brief reader and also can affect the applicable standard of review.

3. LETTERS TO COURT AFTER BRIEF FILED

Rule 2:6-11(d), Letter to Court After Brief Filed, has been amended in a number of ways:

A. To add the category of rules, regulations and ordinances adopted to the list of new materials that may be brought to the court's attention subsequent to the filing of the brief.

B. To change the category of "cases decided" to "published opinions." The purpose of this amendment is to limit the number of unpublished opinions that are brought to the court's attention by the mechanism of letters to court after the merits briefs have been filed. Unless an exception to R. 1:36-3 applies, unpublished opinions may not be cited by any court.

C. To limit the length of the initial letter and subsequent responses to two pages. The purpose of the rule is to bring to the court's attention published opinions issued, legislation enacted, or rules, regulations and ordinances adopted subsequent to the filing of the brief. A letter bringing the matter to the court's attention and describing its significance, or a response thereto, should not need to exceed two pages. Submissions that exceed that length tend to be advocacy documents that resemble supplemental briefs, for which a motion for leave to file is required.

Samples of the table of judgments, orders and rulings and point headings that conform to these new provisions may be found on the appellate section of the Judiciary's website at: www.judiciary.state.nj.us/appdiv/index.html.

Failure to include the table or the statement next to the point heading shall be considered a brief deficiency. Failure to correct shall make the appeal subject to dismissal.

/s/ Joseph H. Orlando

Joseph H. Orlando
Clerk of the Appellate Division

Dated: August 26, 2016