NEW JERSEY STANDARDS FOR

APPELLATE REVIEW

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SECTION ONE

INTRODUCTION

Standards for appellate review are the guidelines used by appellate courts to answer this question: was error that occurred in a trial court or administrative agency so serious that it requires reversal or other intervention by the appellate court? It is the legal standard under which the appellate court determines how much deference to give the actions of the court or agency that the appellant is challenging.

Trial judges make many kinds of decisions, for example: whether to admit evidence, grant a motion, dismiss a case, grant a new trial, or enter a final judgment. Agencies make similar decisions and make findings of fact. Trial judges make findings of fact when there is no jury.

When a case is appealed, the appellant will argue that someone (judge, agency, jury, attorney) committed error during a trial, or during an agency hearing or other agency action. The appellate court must look at the record and decide whether the appellant is correct. If there was error, then the court needs to decide whether the error was serious enough to warrant intervention. Often, it was not.

In deciding whether there was error and whether any error warrants appellate intervention, appellate courts sometimes use the same standards that the trial court or agency used, for example, when they interpret a statute or review a grant of summary judgment. But more often appellate courts use different standards and have built-in limits that make it difficult for appellate courts to reverse, even when there has been error.

That is why it is essential to know and understand the standards for appellate review. They show how an appellate court decides whether an error warrants reversal or other intervention.

This outline will help you find and apply those standards.

SECTION TWO

PREREQUISITES TO REVIEW

Be sure your case does not involve a problem in one of the following areas. Remember that (1) there must be an appealable judgment or order, (2) an appellant must designate, in the notice of appeal, the judgment, decision, action or rule appealed from, (3) counsel may not submit to the appellate court any evidence that was not before the trial court or agency, and (4) an appellate court is reluctant to consider issues not raised below. Moreover, in most situations, a trial court no longer has jurisdiction over a case once it is in the appellate court.

I. IS THERE AN APPEALABLE JUDGMENT OR ORDER?

A. Formal Judgment or Order

1. Appeals are taken from formal judgments or orders. There can be no appeal from a written or oral opinion, oral decision, informal written decision, or reasons given for the ultimate conclusion. Hayes v. Delamotte, 231 N.J. 373, 387 (2018); State v. Scott, 229 N.J. 469, 479 (2017); Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001). If there is no final judgment, there is no right to appeal. R. 2:2-3.

2. A final judgment entered after the notice of appeal was filed renders the appeal premature, but the court can overlook the technical defect and address it. See State v. Benjamin, 442 N.J. Super. 258, 262 (App. Div. 2015) (Appellate courts have, at times, opted to overlook technical insufficiencies in order to reach the merits of the appeal), aff'd as modified, 228 N.J. 358 (2017).

B. Appeals as of Right to the Appellate Division

1. N.J. Const., art. VI, § 5, ¶ 2, provides that "[a]ppeals may be taken to the Appellate Division of the Superior Court from the law and chancery divisions of the Superior Court, the County Courts and in such other causes as may be provided by law." See Midler v. Heinowitz, 10 N.J. 123, 129 (1952) (Our judicial system "contemplates one appeal as of right to a court of general appellate

jurisdiction").

2. Rule 2:2-3(a) provides in part that appeals are allowed as of right to the Appellate Division: (1) from final judgments of the Superior Court trial divisions, or the judges thereof sitting as statutory agents; the Tax Court; and in summary contempt proceedings in all trial courts except municipal courts; (2) to review final decisions or actions of any state administrative agency or officer, and to review the validity of any rule promulgated by such agency or officer; and (3) in such cases as are provided by law.

3. Orders of dismissal without prejudice, "which adjudicate[] nothing, . . . invite questions as to their finality under Rule 2:2-3(a)(1), . . . necessitating finality review in the Clerk's Office." Rubin v. Tress, 464 N.J. Super. 49, 56 n.3 (App. Div. 2020) (quoting Cornblatt v. Barow, 153 N.J. 218, 243 (1998) (citations omitted)). See Pressler & Verniero, Current N.J. Court Rules, cmt. 2.2.4 on R. 2:2-3 (2022). "[A] dismissal without prejudice that disposes of all issues as to all parties may, depending on the circumstances, be appealable as of right." Rubin v. Tress, 464 N.J. Super. 49, 56 n.3 (App. Div. 2020). See Devers v. Devers, 471 N.J. Super. 466, 472-74 (App. Div. 2022) (party not barred from appealing a final order out of time in which "without prejudice" language mistakenly suggested it was interlocutory).

4. Rule 2:2-3(b) (effective Sept. 1, 2022), also includes the following non-final appealable as of right orders: (1) orders enrolling a defendant into the pretrial intervention program over the objection of the prosecutor, R. 3:28-6(c); (2) material witness orders, R. 3 :26-3; (3) orders properly certified as final under R. 4:42-2; (4) orders appointing statutory or liquidating receivers, R. 4:53-1; (5) orders determining final custody in bifurcated family actions, R. 5:8-6; (6) orders on preliminary hearings in adoption actions, R. 5: 10-9; (7) orders granting or denying motions to extend the time to file a notice of tort claim pursuant to NJ.S.A. 59:8-9, whether entered in the cause or by a separate action; (8) orders compelling or denying arbitration, whether the action is dismissed or stayed; (9) orders granting or denying as a final matter class certification, R. 4 :32; (10) orders denying motions

for intervention as of right, R. 4:33-1; (11) orders granting pretrial detention, R. 2:9-13 and R. 3 :4A; and (12) any other orders as are provided by case law.

5. Rule 2:2-3(c), provides that appeals may be taken by leave granted, in extraordinary cases and in the interest of justice, from: 1) final judgments of a court of limited jurisdiction; and 2) actions or decisions of an administrative agency or officer if the matter is appealable or reviewable as of right in a trial division of the Superior Court, as where the jurisdiction of the court, agency or officer is questioned on substantial grounds.

6. Note that pursuant to Rule 1:7-4(a), a lower court is required to "find the facts and state its conclusions of law" on all motions decided by written orders appealable as of right.

C. Appeals as of Right to the Supreme Court

1. Rule 2:2-1 follows the constitutional mandate of N.J. Const. art. VI, § 5, ¶ 1, and provides that there is a right to appeal to the Supreme Court from final judgments only: (1) in cases determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or this State; (2) in cases where, and with regard to those issues as to which, there is a dissent in the Appellate Division; and (3) in such cases as are provided by law. All other appeals to the Supreme Court from final judgments must be by petition for certification to the Appellate Division pursuant to Rule 2:12. R. 2:2-1(b).

2. An appeal as of right to the Supreme Court arising from a dissent in the Appellate Division under Rule 2:2-1(a)(2), is limited to the issues in the dissent, and certification must be sought as to other issues. Baskin v. Martinez, 243 N.J. 112, 125 (2020).

D. Motions for Leave to Appeal from Interlocutory Orders

1. A final judgment is one that resolves all issues as to all parties; any other order or decision is interlocutory. Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 136 (2016). For example, in a multi-party case involving several

issues, an order granting summary judgment dismissing the claims against only one of the defendants is not a final order subject to appeal as of right until all claims against the remaining defendants have been resolved by entry of an order on motion or a judgment following a trial. Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 136 (2016). For a good general overview of interlocutory appeals see Mandel, N.J. Appellate Practice § 10:2-3 (2022).

2. If an order is not final, a party must seek and obtain discretionary leave to appeal from the Appellate Division pursuant to Rule 2:5-6(a). Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 550 (App. Div. 2007).

3. Rule 2:2-4 (emphasis added) provides that "the Appellate Division may grant leave to appeal, in the interest of justice, from an interlocutory order of a court or of a judge sitting as a statutory agent, or from an interlocutory decision or action of a state administrative agency or officer, if the final judgment, decision or action thereof is appealable as of right pursuant to R. 2:2-3(a) and R. 2:2-3(b)." Appellate review of a motion for leave to appeal "is expedited to minimize prejudice and delay." Harris v. City of Newark, 250 N.J. 294, 311 (2022). See State v. Mackroy-Davis, 251 N.J. 217, ___ (2022) (slip op. at 32) (Appellate Division should decide a motion for leave to appeal from an order regarding speedy trial calculations within five days).

4. "The Appellate Division enjoys considerable discretion in determining whether the 'interest of justice' standard has been satisfied and, as a result, whether to grant a motion for leave to file an interlocutory appeal." Brundage v. Est. of Carambio, 195 N.J. 575, 599 (2008). The grant of leave to appeal is "highly discretionary," and is "customarily exercised only sparingly." State v. Reldan, 100 N.J. 187, 205 (1985). The rationale that supports this stringent standard may be found in our general policy against piecemeal review of trial-level proceedings." Brundage v. Est. of Carambio, 195 N.J. 575, 599 (2008). See Harris v. City of Newark, 250 N.J. 294, 312 (2022) (general policy in favor of restrained appellate review of issues on matters still before the trial court is to avoid piecemeal litigation); Huny & BH Assocs.

Inc. v. Silberberg, 447 N.J. Super. 606, 609 (App. Div. 2016) ("Rules are intended to limit interlocutory and fragmentary appeals that would delay the disposition of cases and clog our courts"); Grow Co. v. Chokshi, 403 N.J. Super. 443, 461 (App. Div. 2008) ("The discretion to permit an interlocutory appeal must rest solely with the appellate courts, which are in a far better position to gauge whether the case is worthy of such an expenditure of judicial resources."). "[W]hen leave is granted, it is because there is the possibility of 'some grave damage or injustice' resulting from the trial court's order." Brundage v. Est. of Carambio, 195 N.J. 575, 599 (2008) (quoting Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div. 1956)). "Regardless of the specific basis asserted, however, the moving party must establish, at a minimum, that the desired appeal has merit and that 'justice calls for [an appellate court's] interference in the cause.'" Brundage v. Est. of Carambio, 195 N.J. 575, 599 (2008) (quoting Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div. 1956)).

5. In addition to immediacy and urgency, leave to appeal has been granted in the interest of justice for judicial economy concerns, among other areas. Brundage v. Est. of Carambio, 195 N.J. 575, 599 (2008) ("leave to appeal may be appropriate if it will resolve a fundamental procedural issue and thereby prevent the court and the parties from embarking on an improper or unnecessary course of litigation"). Leave to appeal has also been granted in the following cases: State in Interest of A.L., 271 N.J. Super. 192, 196 (App. Div. 1994) (challenge to constitutionality of a statute); Reliance Nat. Ins. Co. In Liquidation v. Dana Transp., Inc., 376 N.J. Super. 537, 541 (App. Div. 2005) (jurisdiction); Gill v. N.J. Dep't of Banking & Ins., 404 N.J. Super. 1, 8 (App. Div. 2008) (significant public issue); Waste Mgmt. of N.J., Inc. v. Morris Cnty. Mun. Utils. Auth., 433 N.J. Super. 445, 448 (App. Div. 2013) (public bidding); S.M. v. K.M., 433 N.J. Super. 552, 554 (App. Div. 2013) (welfare of children); Daniels v. Hollister Co., 440 N.J. Super. 359, 361 (App. Div. 2015) (class certification); Baez v. Paulo, 453 N.J. Super. 422, 435 (App. Div. 2018) (statute of limitations); Brown v. Brown, 470 N.J. Super. 457, 463 (App. Div. 2022) (litigation privilege); Twp. of Montclair Comm. v. Twp. of Montclair, 470 N.J. Super. 1, 5 (App. Div. 2021) (elections); Facebook, Inc. v. State, 471 N.J. Super.

430 (App. Div. 2022) (motion to partially quash Communication Data Warrants). See also State v. Ruffin, 371 N.J. Super. 371, 389 (App. Div. 2004) ("Leave to appeal is ordinarily granted to the State when evidence is suppressed prior to trial").

6. Note that the denial of a motion for leave to appeal does not bar further review of the issue. After a final judgment has been entered, an appellant may appeal as of right from the judgment and raise an issue that an interlocutory decision was erroneous. Sutter v. Horizon Blue Cross Blue Shield of N.J., 406 N.J. Super. 86, 106 (App. Div. 2009). An appeal from a final judgment raises the validity of all interlocutory orders that were previously entered in the trial court. Sutter v. Horizon Blue Cross Blue Shield of N.J., 406 N.J. Super. 86, 106 (App. Div. 2009); Ricci v. Ricci, 448 N.J. Super. 546, 567 (App. Div. 2017).

7. If appellant files a notice of appeal from an interlocutory order without leave granted, the court may dismisses it. Vitanza v. James, 397 N.J. Super. 516, 519 (App. Div. 2008); House of Fire Christian Church v. Zoning Bd. of Adj. of City of Clifton, 426 N.J. Super. 157, 163 (App. Div. 2012). However, in appropriate cases, the Appellate Division can grant leave to appeal nunc pro tunc in its discretion. Crystal Ice-Bridgeton, LLC v. City of Bridgeton, 428 N.J. Super. 576, 579 n.1 (App. Div. 2012); Caggiano v. Fontoura, 354 N.J. Super. 111, 125 (App. Div. 2002); McGowan v. Barry, 210 N.J. Super. 469, 472 n.2 (App. Div. 1986).

8. The final judgment rule also applies to decisions of an administrative agency. Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 136 (2016). Rule 2:2-3(a)(2) sets forth the general rule that so long as there is still a right of review within the administrative agency, an administrative decision is not appealable as of right to the Appellate Division. Exhaustion of administrative remedies is ordinary required before an appeal can be taken. Ortiz v. N.J. Dep't of Corr., 406 N.J. Super. 63, 69 (App. Div. 2009); Triano v. Div. of State Lottery, 306 N.J. Super. 114, 121 (App. Div. 1997). The requirement of exhaustion is not, however, absolute, Griepenburg v. Twp. of Ocean, 220 N.J. 239, 261 (2015), exceptions are made "when irreparable harm would result, when jurisdiction of the agency is doubtful, or when an overriding public interest calls for a prompt judicial decision," and

relaxation is also accorded in cases involving only legal questions. N.J. Civil Serv. Ass'n v. State, 88 N.J. 605, 613 (1982).

9. Examples of interlocutory orders that require leave are:

a. an order granting or denying partial summary judgment, Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 136 (2016), McGlynn v. State, 434 N.J. Super. 23, 29 (App. Div. 2014), Smith v. Jersey Cent. Power & Light Co., 421 N.J. Super. 374, 383 (App. Div. 2011), or an order dismissing some but not all issues or parties in consolidated cases, McGowan v. Barry, 210 N.J. Super. 469, 472 n.2 (App. Div. 1986);

b. an order for divorce where custody, alimony, etc., have not been determined, Kerr v. Kerr, 129 N.J. Super. 291, 293 (App. Div. 1974);

c. an order granting a new trial, D'Oliviera v. Micol, 321 N.J. Super. 637, 640 (App. Div. 1999);

d. evidentiary rulings, Cap. Health Sys. v. Horizon Healthcare Servs., 230 N.J. 73, 76 (2017) (leave to appeal granted from interlocutory discovery orders), State v. J.M., 225 N.J. 146, 150 (2016) (evidence of prior sexual assault);

e. juvenile waiver order, State in Interest of Z.S., 464 N.J. Super. 507, 511 (App. Div. 2020), State in Interest of R.L., 202 N.J. Super. 410, 411-12 (App. Div. 1985);

f. a remand order from an agency to the OAL for further consideration, Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 139 (2016);

g. an order granting or denying a defendants' motion to suppress, State v. Rodriguez, 459 N.J. Super. 13, 19 (App. Div. 2019), State v. Bradley, 291 N.J. Super. 501, 503 (App. Div. 1996);

h. interim reviews of an ongoing permanency plan for

children are interlocutory, Div. of Youth & Fam. Servs. v. D.H., 398 N.J. Super. 333, 335 (App. Div. 2008), but final disposition orders following a permanency hearing are appealable as of right. N.J.S.A. 9:6-8.70;

i. an order denying dismissal of an indictment on double jeopardy grounds, State v. Nemes, 405 N.J. Super. 102, 105 (App. Div. 2008);

j. an order in a New Jersey Civil Rights Act case denying qualified immunity prior to final judgment, Harris v. City of Newark, 250 N.J. 294, 300 (2022).

E. Certification of Interlocutory Orders as Final

1. Rule 4:42-2 allows a trial court to certify as final, orders or decisions that would otherwise be interlocutory, Rule 4:42-2. An order may be certified as final only if the order "would be subject to process to enforce a judgment pursuant to R. 4:59 if it were final," and must fall withing one of the following three subparts: 1) there has been a complete adjudication of a separate claim; 2) upon complete adjudication of all rights and liabilities of a particular party; or 3) upon partial summary judgment or other order for payment of part of a claim. Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 550 (App. Div. 2007). The Rule does not allow trial judges to, in effect, grant a motion for leave to appeal and it is not binding on the Appellate Division. S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 88 (App. Div. 1998); House of Fire Christian Church v. Zoning Bd. of Adj. of City of Clifton, 426 N.J. Super. 157, 159 (App. Div. 2012).

2. It is a misuse of the rule for a judge to certify an order that does not meet the requirements of the rule for the purpose of trying to make the order appealable. It is not meant to be a device to circumvent the Appellate Division's right to decide whether to grant leave. Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 551-52 (App. Div. 2007); Grow Co. v. Chokshi, 403 N.J. Super. 443, 458 (App. Div. 2008); Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:42-2 (2022). Certification of finality

under Rule 4:42-2 "is designed to afford relief where there is no just cause for delay in execution of an interlocutory order--not to reduce delay in appeal from the interlocutory order." D'Oliviera v. Micol, 321 N.J. Super. 637, 641 (App. Div. 1999).

3. If an appellate court concludes that certification was improperly granted, it can, however, grant leave to appeal in its discretion. Brown v. City of Bordentown, 348 N.J. Super. 143, 146 (App. Div. 2002). An appeal from an interlocutory order will be dismissed where the attorney did not seek Rule 4:42-2 certification on finality until after the Appellate Division had denied a motion for leave to appeal. D'Oliviera v. Micol, 321 N.J. Super. 637, 641-43 (App. Div. 1999).

F. Appeals to the Supreme Court from Interlocutory Orders

Rule 2:2-2 provides that appeals may be taken to the Supreme Court, by leave, from interlocutory orders in only two circumstances: 1) when necessary to prevent irreparable injury due to an interlocutory Appellate Division order; and 2) on certification to the Appellate Division under Rule 2:12-1.

G. Consent Orders or Judgments and Stipulations

1. Parties cannot ordinarily appeal as of right from a judgment or order entered with the consent of the parties. Winberry v. Salisbury, 5 N.J. 240, 255 (1950); Jacobs v. Mark Lindsay & Son Plumbing & Heating, Inc., 458 N.J. Super. 194, 205 (App. Div. 2019); N.J. Schs. Constr. Corp. v. Lopez, 412 N.J. Super. 298, 309 (App. Div. 2010). That is so because Rule 2:2-3, which allows an appeal as of right from a final judgment, contemplates a judgment entered involuntarily against a losing party. Jacobs v. Mark Lindsay & Son Plumbing & Heating, Inc., 458 N.J. Super. 194, 205 (App. Div. 2019); N.J. Schs. Constr. Corp. v. Lopez, 412 N.J. Super. 298, 309 (App. Div. 2010).

2. However, where "the parties to the consent judgment reserve the right to appeal an interlocutory order 'by providing that the judgment would be vacated if the interlocutory order were reversed on appeal,'" then they may appeal even though they

consented to the judgment. N.J. Schs. Constr. Corp. v. Lopez, 412 N.J. Super. 298, 309 (App. Div. 2010) (quoting Janicky v. Point Bay Fuel, Inc., 410 N.J. Super. 203, 207 (App. Div. 2009)).

3. "[G]enerally litigants should be held to their stipulations and the consequences thereof." Negrotti v. Negrotti, 98 N.J. 428, 432 (1985). A stipulation of fact may be binding, Kurak v. A.P. Green Refractories Co., 298 N.J. Super. 304, 325 (App. Div. 1997) ("Apart from rare instances, . . . stipulations of fact are binding on the parties"), however, a stipulation of law may not be, State v. Jones, 445 N.J. Super. 555, 565 (App. Div. 2016), State v. Powell, 176 N.J. Super. 190, 195 (App. Div. 1980).

H. Who May Appeal?

1. An appeal may only be taken by a party aggrieved by a judgment, that is, the party had a personal or pecuniary interest or property right that was adversely affected by the judgment. Howard Sav. Inst. v. Peep, 34 N.J. 494, 499 (1961); State v. A.L., 440 N.J. Super. 400, 418 (App. Div. 2015); Borough of Seaside Park v. Comm'r of N.J. Dep't of Educ., 432 N.J. Super. 167, 199 (App. Div. 2013). In a criminal case an accused generally has standing to challenge a search or seizure whenever "he has a proprietary, possessory or participatory interest in either the place searched or the property seized." State v. Randolph, 228 N.J. 566, 571-72 (2017) (quoting State v. Alston, 88 N.J. 211, 228, (1981)).

2. "Parties interested jointly, severally, or otherwise in a judgment, order, decision or action may join in an appeal therefrom or may appeal separately." R. 2:3-3(a). Note that as recently amended, Rule 2:3-3(b) provides that parties are required to notify the clerk "of any other pending appeal or an appeal already decided arising out of the same judgment, order, decision, or action. . . even if the other appeal is filed after the party's appeal." The Appellate Division may permit non-parties to intervene in an appeal from a judgment adverse to their interests. N.J. Dep't of Env't Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 296 (App. Div. 2018).

3. Applications for leave to appear as amicus curiae are

governed by Rule 1:13-9. "[A]s a general rule, the Court 'does not consider arguments that have not been asserted by a party, and are raised for the first time by an amicus curiae.'" State In Interest of A.A., 240 N.J. 341, 359 n.1 (2020) (quoting State v. J.R., 227 N.J. 393, 421 (2017)). "[A]mici 'must accept the case before the court as presented by the parties and cannot raise issues not raised by the parties.'" Pritchett v. State, 248 N.J. 85, 96 (2021) (quoting State v. Lazo, 209 N.J. 9, 25, 34 A.3d 1233 (2012)).

I. Appeal by State in Criminal and Quasi-Criminal Cases

1. "[T]he State's right to appeal in a criminal proceeding is limited." State v. Hyland, 238 N.J. 135, 143 (2019). The right of the State to appeal in a criminal or quasi-criminal case is directly limited by the protections of both the United States and the New Jersey Constitution against double jeopardy. United States v. Scott, 437 U.S. 82 (1978); State v. Widmaier, 157 N.J. 475, 499-501 (1999); State v. Sorensen, 439 N.J. Super. 471, 483 (App. Div. 2015). State v. Barnes, 84 N.J. 362, 369 (1980).

2. Rule 2:3-1(a) provides that the State in a criminal action may appeal to the Supreme Court from a final judgment or from an order of the Appellate Division, pursuant to Rule 2:2-2(a) (appeals to the Supreme Court from interlocutory orders necessary to prevent irreparable harm), or Rule 2:2-3 (appeals to the Appellate Division from final judgments).

3. Rule 2:3-1(b) lists the following six circumstances in which the State can appeal to the Appellate Division from: (1) a judgment of the trial court dismissing an indictment, accusation or complaint, where not precluded by the constitution of the United States or of New Jersey; (2) an order of the trial court entered before trial in accordance with Rule 3:5 (search warrants); (3) a judgment of acquittal entered in accordance with Rule 3:18-2 (JNOV) following a jury verdict of guilty; (4) a judgment in a post-conviction proceeding collaterally attacking a conviction or sentence; (5) an interlocutory order entered before, during or after trial, or, (6) as otherwise provided by law.

4. The State has the authority to appeal a sentence in only two

narrowly defined circumstances: 1) where an appeal is authorized by statute, and 2) if the sentence imposed is illegal. State v. Hyland, 238 N.J. 135, 143 (2019); State v. Ciancaglini, 204 N.J. 597, 605 (2011); State v. Herrera, 469 N.J. Super. 559, 561 n.1 (App. Div. 2022).

5. The double jeopardy prohibition does not attach in civil cases. State v. Widmaier, 157 N.J. 475, 492 (1999). The distinction between civil and quasi-criminal cases can, however, be difficult. "In deciding whether a particular statute is civil or criminal, courts must determine whether the sanctions imposed for a violation are tantamount to a criminal penalty." State v. Widmaier, 157 N.J. 475, 492 (1999). Even if the Legislature has designated a sanction as civil, that "does not foreclose the possibility that it has a punitive character," thus making it a criminal sanction. State v. Widmaier, 157 N.J. 475, 492-94 (1999) (setting forth the factors used to determine which cases are criminal); State v. Solarski, 374 N.J. Super. 176, 180 (App. Div. 2005).

J. Justiciability

1. Ripeness "A case's ripeness depends on two factors: '(1) the fitness of issues for judicial review and (2) the hardship to the parties if judicial review is withheld at this time.'" Comm. to Recall Robert Menendez From the Office of U.S. Senator v. Wells, 204 N.J. 79, 99 (2010) (quoting K. Hovnanian Cos. of N. Cent. Jersey, Inc. v. N.J. Dep't of Envtl. Prot., 379 N.J. Super. 1, 9 (App. Div. 2005).

2. Mootness "Unlike the federal Constitution, the New Jersey Constitution does not confine the exercise of the judicial power to actual cases and controversies," however, New Jersey appellate courts "normally will not entertain cases when a controversy no longer exists and the disputed issues have become moot." De Vesa v. Dorsey, 134 N.J. 420, 428 (1993). "An issue is 'moot when our decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011)). For an

extensive list of examples see Mandel, N.J. Appellate Practice § 3:3-2 (2022). In limited instances, the appellate court will decide moot issues "where the underlying issue is one of substantial importance, likely to reoccur but capable of evading review." Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996). See e.g., State v. Gathers, 234 N.J. 208, 217 (2018) (constitutional question); Int'l Brotherhood of Elec. Workers Local 400 v. Borough of Tinton Falls, 468 N.J. Super. 214, 224 (App. Div. 2021) (jurisdiction); Finkel v. Twp. Comm. of Hopewell, 434 N.J. Super. 303, 316-18 (App. Div. 2013) (moot referendum presented to the voters).

3. Political Questions "The nonjusticiability of a political question is primarily a function of the separation of powers." Gilbert v. Gladden, 87 N.J. 275, 281 (1981) (quoting Baker v. Carr, 369 U.S. 186, 210 (1962)). "Deciding whether a matter presents a nonjusticiable political question is a 'delicate exercise in constitutional interpretation' for which this Court is responsible as the ultimate arbiter of the Constitution of this state." Gilbert v. Gladden, 87 N.J. 275, 282 (1981) (quoting Baker v. Carr, 369 U.S. 186, 211 (1962)). See N.J. Election Law Enf't Comm'n v. DiVincenzo, 451 N.J. Super. 554, 564 (App. Div. 2017).

4. Advisory Opinions Although there is no express language in New Jersey's Constitution that confines the exercise of the Court's judicial power to actual cases and controversies, N.J. Const. art. VI, § 1, our courts generally decline to answer abstract questions or issue advisory opinions. G.H. v. Twp. of Galloway, 199 N.J. 135, 136 (2009); Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971); State v. Ghigliotty, 463 N.J. Super. 355, 386 (App. Div. 2020); In re N.J.A.C. 12:17-2.1, 450 N.J. Super. 152, 170 (App. Div. 2017).

II. REQUIREMENT OF PROPERLY FILED APPEAL

A. Timely Filed and Served

An appeal must be timely served and filed. R. 2:4-1; R. 2:5-1. Lombardi v. Masso, 207 N.J. 517, 540 (2011). A party must file a notice of appeal, transcript request form, and a Case Information

Statement in the form prescribed by the Administrative Director of the Courts and the Rules. R. 2:5-1; R. 2:5-3.

B. Order Designated in Notice of Appeal

1. In civil actions, Rule 2:5-1(f)(2)(ii) requires an appellant to designate, in the notice of appeal, the judgment, decision, action or rule appealed from. See Pressler & Verniero, Current N.J. Court Rules, cmt. 5.1 on R. 2:5-1 (2022). If a matter is not designated in a party's notice of appeal, it is not subject to the appeal process. Kornbleuth v. Westover, 241 N.J. 289, 299 (2020); Petersen v. Meggitt, 407 N.J. Super. 63, 68 n.2 (App. Div. 2009); W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008); 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456, 459 (App. Div. 2004); Sikes v. Twp. of Rockaway, 269 N.J. Super. 463, 465 (App. Div. 1994), aff'd o.b., 138 N.J. 41 (1994). But see Kornbleuth v. Westover, 241 N.J. 289, 299 (2020) (Supreme Court and Appellate Division "generously" addressed and issue not designated in the notice of appeal); N. Jersey Neurosurgical Assocs., P.A. v. Clarendon Nat'l Ins. Co., 401 N.J. Super. 186, 196 (App. Div. 2008)(addressed earlier order); Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 461 (App. Div. 2002) (recognizing that in cases where the basis for the judge's ruling on summary judgment and reconsideration motions are the same, an appeal solely from the grant of summary judgment or from the denial of reconsideration may be sufficient for an appellate review).

2. In criminal, quasi-criminal and juvenile delinquency actions, Rule 2:5-1(f)(2)(iii) provides, in part that the notice of appeal shall include "a concise statement of the offense and of the judgment, giving its date and any sentence or disposition imposed. . . ."

3. Rule 2:5-1(h)(1) provides that an appellant "shall" annex a copy of the judgment, order or agency decision to the Case Information Statement. Failure to file a Case Information Statement or any deficiencies in the completion of the statement "shall be ground for such action as the appellate court deems appropriate, including rejection of the notice of appeal, or on application of any party or on the court's own motion, dismissal of

the appeal." R. 2:5-1(h)(3).

C. Adequately Briefed

A properly presented issue on appeal must also be adequately briefed. See Pressler & Verniero, Current N.J. Court Rules, cmt. 5.1 on R. 2:6-2 (2022). An issue not briefed on appeal is deemed abandoned. State v. Shangzhen Huang, 461 N.J. Super. 119, 125 (App. Div. 2018), aff'd o.b., 240 N.J. 56, 56 (2019); Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011).

III. APPEALS LIMITED TO RECORD

A. Confined to Record

"An appellate court, when reviewing trial errors, generally confines itself to the record." State v. Harvey, 151 N.J. 117, 201-02 (1997).

B. Rule 2:5-4(a) (Defining the Record on Appeal)

1. Rule 2:5-4(a) provides that "[t]he record on appeal shall consist of all papers on file in the court or courts or agencies below, with all entries as to matters made on the records of such courts and agencies, the stenographic transcript or statement of the proceedings therein, and all papers filed with or entries made on the records of the appellate court." "It is, of course, clear that in their review the appellate courts will not ordinarily consider evidentiary material which is not in the record below by way of adduced proof, judicially noticeable facts, stipulation, admission or a recorded proffer of excluded evidence." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:5-4(a) (2022).

2. Note that the evidentiary material may include video or audio recordings presented to the trier of fact. See State v. Singh, 245 N.J. 1, 11 (2021) (surveillance video presented to the jury).

C. Sanctions

Occasionally, without moving for permission to supplement the

record on appeal (R. 2:5-5(b), R. 2:10-5, N.J.R.E. 202(b)), an attorney will annex to his brief material that was not in evidence below. This is in violation of the court rules and is subject to being stricken and may result in sanctions. Townsend v. Pierre, 221 N.J. 36, 45 n.2 (2015); N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 278 (2007). See Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:5-4(a) (2022).

IV. ISSUES NOT RAISED BELOW

Although an appellate court may consider allegations of errors or omissions not brought to the trial judge's attention if it meets the plain error standard under Rule 2:10-2 (discussed below), the court frequently declines to consider issues that were not raised below or not properly presented on appeal when the opportunity for presentation was available. Generally, unless an issue (even a constitutional issue) goes to the jurisdiction of the trial court or concerns matters of substantial public interest, the appellate court will ordinarily not consider it. J.K. v. N.J. State Parole Bd., 247 N.J. 120, 138 n.6 (2021); State v. Jones, 232 N.J. 308, 321 (2018); State v. Lawless, 214 N.J. 594, 605 n.2 (2013); State v. Robinson, 200 N.J. 1, 20-22 (2009); Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973); Pressler & Verniero, Current N.J. Court Rules, cmt. 3 on R. 2:6-2 (2022). See also State v. Cabbell, 207 N.J. 311, 327 n.10 (2011) (Court declined to consider an argument first raised in a supplemental brief to the Court); Hirsch v. State Bd. of Med. Exam'rs, 128 N.J. 160, 161 (1992) (Court declined to address a claim presented after the Court granted a petition for certification).

V. JURISDICTION OF TRIAL COURT AFTER APPEAL

A. Rule 2:9-1(a) provides that "supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification is filed," except as otherwise provided by: (1) Rule 2:9-3 (stay pending review in criminal actions); (2) Rule 2:9-4 (bail); (3) Rule 2:.9-5 (stay pending appeal); (4) Rule 2:9-7 (temporary relief in administrative proceedings); (5) Rule 2:9-13 (pretrial detention appeals); and (6) Rule 3:21-l0(d) (reduction or change in sentence). See Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:9-1(a) (2022) ("Except

to the extent of enforcement or correction and except as otherwise expressly provided for by rule, the ordinary effect of the filing of the notice of appeal is to deprive the court below of jurisdiction to act further in the matter under appeal unless directed to do so by the appellate court").

B. Once a notice of appeal has been filed, a trial court does not have jurisdiction to rule on a motion for a new trial, Dinter v. Sears, Roebuck & Co., 278 N.J. Super. 521, 527 (App. Div. 1995), motion for reconsideration, Kiernan v. Kiernan, 355 N.J. Super. 89, 94 (App. Div. 2002), or dismissal, State v. Kosch, 458 N.J. Super. 344, 349 (App. Div. 2019). The trial court can, however, enforce judgments and orders, Rule 2:9-1(a)(7), and correct clerical errors in the judgment pursuant to Rule 1:13-1, even on its own initiative. Kiernan v. Kiernan, 355 N.J. Super. 89, 94 (App. Div. 2002); McNair v. McNair, 332 N.J. Super. 195, 199, 753 A.2d 147 (App. Div.2000).

SECTION THREE

GENERAL STANDARDS

I. NOTICE OF TRIAL ERRORS

Rule 2:10-2 provides that "[a]ny 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." The Rule applies to criminal, civil (including family), and administrative appeals. See Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 2:10-2 (2022). All error, including both plain error and harmful error, is tested by the standard set forth in Rule 2:10-2, that is, as set forth above, whether the error is "clearly capable of producing an unjust result."

II. PLAIN ERROR RULE

A. If the error was not raised below, the plain error rule, Rule 2:10-2, applies. A statement indicating that the issue was not raised below must be included in the table of contents in the appellate brief. R. 2:6-2(a)(1).

B. When a party does not object to an alleged trial error or otherwise properly preserve the issue for appeal, it may nonetheless be considered by the appellate court if it meets the plain error standard of Rule 2:10-2. State v. Clark, 251 N.J. 266, ___ (2022) (slip op. at 22); State v. Singh, 245 N.J. 1, 13 (2021); State v. Gore, 205 N.J. 363, 383 (2011). "The mere possibility of an unjust result is not enough." State v. Funderburg, 225 N.J. 66, 79 (2016). "In the context of a jury trial, the possibility must be 'sufficient to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached.'" State v. G.E.P., 243 N.J. 362, 389 (2020) (quoting State v. Jordan, 147 N.J. 409, 422 (1997) (quoting State v. Macon, 57 N.J. 325, 336 (1971)). See State v. Clark, 251 N.J. 266, ___ (2022) (slip op. at 22); State v. Alexander, 233 N.J. 132, 142 (2018). Thus, the plain error standard requires a determination of: "(1) whether there was error; and (2) whether that error was 'clearly capable of producing an unjust result,' R. 2:10-2; that is, whether there is 'a reasonable doubt . . . as to whether the error led the jury to a result it otherwise might not have reached.'" State v. Dunbrack, 245 N.J. 531, 544 (2021) (quoting State v. Funderburg, 225 N.J. 66, 79 (2016)). "To determine whether an alleged error rises to the level of plain error, it 'must be evaluated in light of the overall strength of the State's case.'" State v. Clark, 251 N.J. 266, ___ (2022) (slip op. at 23) (quoting State v. Sanchez-Medina, 231 N.J. 452, 468 (2018)).

C. "Relief under the plain error rule, R. 2:10-2, at least in civil cases, is discretionary and 'should be sparingly employed.'" Baker v. Nat'l State Bank, 161 N.J. 220, 226 (1999) (quoting Ford v. Reichert, 23 N.J. 429, 435 (1957). And, even in a criminal case, our Court has noted that plain error review "is a 'high bar,' requiring reversal only where the possibility of an injustice is 'real' and 'sufficient to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached.'" State v. Alessi, 240 N.J. 501, 527 (2020) (first quoting State v. Santamaria, 236 N.J. 390, 404 (2019); and then quoting State v. Macon, 57 N.J. 325, 336 (1971)). "The 'high standard' used in plain error analysis 'provides a strong incentive for counsel to interpose a timely objection, enabling the trial court to forestall or correct a potential error.'" State v. Santamaria, 236 N.J. 390, 404 (2019) (quoting State v. Bueso, 225 N.J. 193, 203 (2016)).

D. "A defendant who does not raise an issue before a trial court bears the burden of establishing that the trial court's actions constituted plain

error because 'to rerun a trial when the error could easily have been cured on request[] would reward the litigant who suffers an error for tactical advantage either in the trial or on appeal.'" State v. Santamaria, 236 N.J. 390, 404-05 (2019) (alteration in original) (quoting State v. Ross, 229 N.J. 389, 407 (2017)).

E. By way of example, plain error was not found in the following cases: State v. Singh, 245 N.J. 1, 17 (2021) (no plain error in the detective's reference to an individual depicted in the surveillance video as "the defendant" in his narration of that video); State v. Santamaria, 236 N.J. 390, 409 (2019) (no plain error in the admission of photographs under N.J.R.E. 403); State v. Ross, 229 N.J. 389, 415 (2017) (no plain error in trial judge's questioning of a number of State's witnesses); T.L. v. Goldberg, 238 N.J. 218, 220 (2019) (no plain error in medical malpractice case where defendant gave trial testimony inconsistent with his discovery responses).

F. As counter examples, plain error was found in the following cases: State v. Clark, 251 N.J. 266, ___ (2022) (slip op. at 32) (plain error to play for the jury the portion of defendant's statement in which he invoked his right to counsel, as emphasized by the prosecutor in summation); State v. Garcia, 245 N.J. 412, 436 (2021) (exclusion of cell phone video, given prosecutor's comments in summation, constituted plain error); State v. Alessi, 240 N.J. 501, 529 (2020) (plain error in admission of defendant's statement); State v. Montalvo, 229 N.J. 300, 323 (2017) (erroneous jury instructions constituted plain error); State v. Simms, 224 N.J. 393, 396 (2016) (admission of the expert testimony constituted plain error); Szczecina v. P.V. Holding Corp., 414 N.J. Super. 173, 185 (App. Div. 2010) (plain error where defense counsel made extensive disparaging remarks about plaintiffs and their attorney in opening and closing statements); Krohn v. N.J. Full Ins. Underwriters Ass'n, 316 N.J. Super. 477, 484 (App. Div. 1998) (attorney's repeated prejudicial comments had the clear capacity to produce an unjust result).

G. Note that Rule 2:10-2 provides that "the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court." This means that even when no party to the appeal raises a particular issue, the appellate court may raise it "where upon the total scene it is manifest that justice requires consideration of an issue central to a correct resolution of the controversy and the

lateness of the hour is not itself a source of countervailing prejudice." Ctr. for Molecular Med. & Immunology v. Twp. of Belleville, 357 N.J. Super. 41, 48 (App. Div. 2003) (quoting In re Appeal of Howard D. Johnson Co., 36 N.J. 443, 446 (1962)). See Fitzgerald v. Stanley Roberts, Inc., 186 N.J. 286, 318 (2006); Morales-Hurtado v. Reinoso, 457 N.J. Super. 170, 191 (App. Div. 2018), aff'd o.b., 241 N.J. 590 (2020).

H. Corollaries to Plain Error Rule

1. Inference from Lack of Objection "[W]hen counsel does not make a timely objection at trial, it is a sign 'that defense counsel did not believe the remarks were prejudicial' when they were made." State v. Pressley, 232 N.J. 587, 594 (2018) (quoting State v. Echols, 199 N.J. 344, 360 (2009)). See Willner v. Vertical Reality, Inc., 235 N.J. 65, 79 (2018); State v. Nelson, 173 N.J. 417, 471 (2002); State v. Macon, 57 N.J. 325, 333 (1971); State v. Cotto, 471 N.J. Super. 489, 537 (App. Div. 2022); State v. Patterson, 435 N.J. Super. 498, 509 (App. Div. 2014); State v. Locascio, 425 N.J. Super. 474, 496 (App. Div. 2012).

2. "Invited-Error" Doctrine Additionally, "[m]istakes at trial are subject to the invited-error doctrine." State v. A.R., 213 N.J. 542, 561 (2013). "Under that settled principle of law, trial errors that 'were induced, encouraged or acquiesced in or consented to by defense counsel ordinarily are not a basis for reversal on appeal. . . .'" State v. A.R., 213 N.J. 542, 561 (2013) (quoting State v. Corsaro, 107 N.J. 339, 345 (1987)). See State v. Santamaria, 236 N.J. 390, 409 (2019) ("a party cannot strategically withhold its objection to risky or unsavory evidence at trial only to raise the issue on appeal when the tactic does not pan out"). "The doctrine prevents litigants from 'playing fast and loose' with, or otherwise manipulating, the judicial process." State v. Bailey, 231 N.J. 474, 490 (2018) (quoting State v. Jenkins, 178 N.J. 347, 359 (2004)). "In other words, if a party has 'invited' the error, he is barred from raising an objection for the first time on appeal." State v. A.R., 213 N.J. 542, 561 (2013). "The doctrine of invited error operates to bar a disappointed litigant from arguing on appeal that an adverse decision below was the product of error, when that party urged the lower court to adopt the proposition now alleged to

be error." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 340 (2010) (quoting Brett v. Great Am. Recreation, Inc., 144 N.J. 479, 503 (1996)).

III. HARMFUL ERROR RULE

A. The harmful error rule is used when a specified error was brought to the trial judge's attention. State v. G.E.P., 243 N.J. 362, 389 (2020); State v. Mohammed, 226 N.J. 71, 86 (2016). The question for the Appellate Division is "whether in all the circumstances there [is] a reasonable doubt as to whether the error denied a fair trial and a fair decision on the merits." State v. G.E.P., 243 N.J. 362, 389 (2020) (alteration in original), (quoting State v. Mohammed, 226 N.J. 71, 86-87, (2016)). "In such cases, the reviewing court asks whether the error is 'clearly capable of producing an unjust result.'" State v. Mohammed, 226 N.J. 71, 87 (2016) (quoting R. 2:10-2). Thus, even though an alleged error was brought to the trial judge's attention, it will not be ground for reversal if it was "harmless error." Willner v. Vertical Reality, Inc., 235 N.J. 65, 79 (2018); State v. J.R., 227 N.J. 393, 417 (2017); State v. Macon, 57 N.J. 325, 338 (1971). That is so because "[t]rials, particularly criminal trials, are not tidy things. The proper and rational standard is not perfection; as devised and administered by imperfect humans, no trial can ever be entirely free of even the smallest defect. Our goal, nonetheless, must always be fairness. 'A defendant is entitled to a fair trial but not a perfect one.'" State v. R.B., 183 N.J. 308, 333-34 (2005) (quoting Lutwak v. United States, 344 U.S. 604, 619 (1953)). State v. Weaver, 219 N.J. 131, 155 (2014).

B. As with "plain error," an error during a jury trial will be found "harmless" unless there is a reasonable doubt that the error contributed to the verdict. That is whether the "error [was] 'sufficient to raise a reasonable doubt as to whether [it] led the jury to a result it otherwise might not have reached.'" State v. Jackson, 243 N.J. 52, 73 (2020) (alteration in original) (quoting State v. Prall, 231 N.J. 567, 581 (2018)). This is true even if the error is of constitutional dimension. State v. Macon, 57 N.J. 325, 338 (1971). "The Supreme Court has emphasized that 'most constitutional errors can be harmless,' and are therefore not subject to automatic reversal." State v. Camacho, 218 N.J. 533, 547 (2014) (quoting Arizona v. Fulminante, 499 U.S. 279, 306 (1991)).

C. However, the standard for determining whether constitutional error warrants reversal differs because errors of constitutional dimension will be remedied unless the respondent (the State in criminal cases) can show that the errors were harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18, 24 (1967) (cited in State v. Camacho, 218 N.J. 533, 548 (2014)); State v. Greene, 242 N.J. 530, 554 (2020); State v. Scherzer, 301 N.J. Super. 363, 441 (App. Div. 1997).

D. Further, there are some errors that are so serious that the harmless error doctrine will not be applied. Certain errors are "structural defects in the constitution of the trial mechanism and thus defy analysis by harmless-error standards." Arizona v. Fulminante, 499 U.S. 279, 282 (1991). For example, the following structural errors cannot be categorized as harmless and require an automatic reversal of a conviction: using a coerced confession against a defendant in a criminal trial; depriving a defendant of counsel; trying a defendant before a biased judge; unlawfully excluding members of the defendant's race from a grand jury; denying a defendant's request to represent himself in a criminal trial; violation of the right to public trial; and denial of the right to trial by jury by giving defective reasonable-doubt instruction. State v. Camacho, 218 N.J. 533, 550 (2014) (citing to United States v. Gonzalez-Lopez, 548 U.S. 140, 148-49 (2006); Arizona v. Fulminante, 499 U.S. 279, 309 (1991); Chapman v. California, 386 U.S. 18, 24 (1967)). State v. Gibson, 219 N.J. 227, 241 (2014).

IV. CONCLUSION

If an appellant claims error, and if the error was properly brought to the trial judge's attention, the appellate court decides first whether it was error by applying the appropriate standards of review (discussed below), and then decides whether the error requires a remedy. An error that is harmless does not require a remedy by the appellate court. If the alleged error was not raised at trial, the court goes through the same process: it first decides if it was error, then decides if it was plain error.

SECTION FOUR

STANDARDS OF REVIEW

I. GENERAL OVERVIEW

In determining whether a ruling, action or inaction by the lower court or agency constituted error, the appellate court applies a standard of review that gives the appropriate deference to the lower court's or agency's decision. That standard may allow for no deference (review of purely legal decisions), some degree of deference, or a substantial degree of deference (review of findings of fact and agency decisions). See Mandel, N.J. Appellate Practice § 34:2-1 (2022).

The issues on appeal, in a typical civil or criminal case, will implicate one or more of four basic standards of review: 1) the de novo, or plenary, standard of review applied to rulings of law; 2) the highly deferential standard applied to findings of facts; 3) the mixed standard applied to mixed questions of law and fact; or 4) the highly deferential standard applied to matters committed to the sound discretion of the lower court. See Mandel, N.J. Appellate Practice § 34:2-3 (2022).

Look to case law to find the applicable standard of review, although in some cases it may be dictated by Court rule or more rarely by statute. Note that a case or an issue may involve more than one standard of review.

SECTION FIVE

STANDARDS ON APPEAL IN CIVIL AND CRIMINAL CASES

I. DE NOVO REVIEW

A. An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is de novo. See In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020) (agency's interpretation of a statute); State v. Courtney, 243 N.J. 77, 85 (2020) (interpretation of sentencing provisions in the Criminal Code); State v. G.E.P., 243 N.J. 362, 382 (2020) (retroactivity of statute); State v. Hemenway, 239 N.J. 111, 125

(2019) (constitutionality of a statute); State v. Hyland, 238 N.J. 135, 143 (2019) (appealability of a sentence); Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019) (statutory interpretation); Green v. Monmouth Univ., 237 N.J. 516, 529 (2019) (applicability of charitable immunity); State v. Fuqua, 234 N.J. 583, 591 (2018) (statutory interpretation); State v. Dickerson, 232 N.J. 2, 17 (2018) (interpretation of court rules).

B. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

C. An interpretation of a contract, Serico v. Rothberg, 234 N.J. 168, 178 (2018), Kieffer v. Best Buy, 205 N.J. 213, 222 (2011), including an arbitration agreement, Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019), and an insurance policy, Est. of Pickett v. Moore's Lounge, 464 N.J. Super. 549, 554-55 (App. Div. 2020), is reviewed de novo.

D. Other examples of de novo review include: 1) summary convictions for contempt, Rule 2:10-4, In re Daniels, 118 N.J. 51, 62 (1990); 2) a determination of whether counsel should be disqualified, City of Atlantic City v. Trupos, 201 N.J. 447, 463 (2010); 3) determining whether a cause of action is barred by a statute of limitations, Save Camden Pub. Schs. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 487 (App. Div. 2018); 4) interpretation of OPRA, Simmons v. Mercado, 247 N.J. 24, 38 (2021), Matter of N.J. Firemen's Ass'n Obligation to Provide Relief Applications Under Open Pub. Records Act, 230 N.J. 258, 274 (2017); N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Office, 447 N.J. Super. 182, 194 (App. Div. 2016); 5) determining whether a court has personal jurisdiction, YA Glob. Invs., LP v. Cliff, 419 N.J. Super. 1, 8 (App. Div. 2011), or subject matter jurisdiction, AmeriCare Emergency Med. Serv., Inc. v. City of Orange Township, 463 N.J. Super. 562, 570 (App. Div. 2020); 6) decision regarding standing, Cherokee LCP Land, LLC v. City of Linden Plan. Bd., 234 N.J. 403, 414-15 (2018); 7) preemption of state law by federal law, Hejda v. Bell Container Corp., 450 N.J. Super. 173, 187 (App. Div. 2017); and 8) choice-of-law, Ginsberg ex rel. Ginsberg v. Quest Diagnostics, Inc., 441 N.J. Super. 198, 223 (App. Div. 2015).

E. Further, if a judge makes a discretionary decision, but acts under a misconception of the applicable law or misapplies it, the exercise of legal discretion lacks a foundation and it becomes an arbitrary act, not subject to the usual deference. Summit Plaza Assocs. v. Kolta, 462 N.J. Super. 401, 409 (App. Div. 2020); Alves v. Rosenberg, 400 N.J. Super. 553, 563 (App. Div. 2008). In such a case, the reviewing court must instead adjudicate the controversy in the light of the applicable law in order that a manifest denial of justice be avoided. State v. Lyons, 417 N.J. Super. 251, 258 (App. Div. 2010); State v. Steele, 92 N.J. Super. 498, 507 (App. Div. 1966); Kavanaugh v. Quigley, 63 N.J. Super. 153, 158 (App. Div. 1960).

II. FINDINGS OF FACT BY JUDGE

A. Appellate courts apply a deferential standard in reviewing factual findings by a judge. Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. McNeil-Thomas, 238 N.J. 256, 271 (2019). In an appeal from a non-jury trial, appellate courts "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). Deference is given to credibility findings. State v. Hubbard, 222 N.J. 249, 264 (2015). "Appellate courts owe deference to the trial court's credibility determinations as well because it has 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" C.R. v. M.T., 248 N.J. 428, 440 (2021) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)).

B. "A reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

C. "The general rule is that findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence." Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). See State v. Camey, 239 N.J. 282, 306 (2019) ("[w]e will not disturb the trial court's findings; in an appeal, we defer to findings that are supported in the record and find roots in credibility assessments by the trial court"); Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 329 (2017) ("[w]e review the trial court's factual findings under a deferential standard: those findings must be upheld if they are based on credible evidence in the record"); Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016) (findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence); State v. K.W., 214 N.J. 499, 507 (2013) ("[w]e defer to the trial court's factual findings 'so long as those findings are supported by sufficient credible evidence in the record").

D. The deferential standard is applied "because an appellate court's review of a cold record is no substitute for the trial court's opportunity to hear and see the witnesses who testified on the stand." Balducci v. Cige, 240 N.J. 574, 595 (2020). And "[l]imiting the role of a reviewing court is necessary because '[p]ermitting appellate courts to substitute their factual findings for equally plausible trial court findings is likely to undermine the legitimacy of the [trial] courts in the eyes of litigants.'" State v. McNeil-Thomas, 238 N.J. 256, 272 (2019) (alterations in original) (quoting State v. S.S., 229 N.J. 360, 380-81 (2017)).

E. Appellate courts also apply that deferential standard of review to a trial court's fact-finding based on video or documentary evidence. State v. McNeil-Thomas, 238 N.J. 256, 271 (2019); State v. S.S., 229 N.J. 360, 379 (2017); State v. Hubbard, 222 N.J. 249, 270 (2015); State v. Carrillo, 469 N.J. Super. 318, 332 (App. Div. 2021).

F. Special Masters are sometimes used by courts as factfinders. See State v. Chun, 194 N.J. 54, 84-89 (2008) (scientific reliability of the Alcotest); State v. Cassidy, 235 N.J. 482, 491-92 (2018) (scientific reliability of Alcotest devices calibrated without use of a proscribed thermometer). An appellate court reviews a Special Master's findings and conclusions under the "ordinary standards of review," and defers to findings supported by substantial credible evidence in the record. Little v. Kia Motors Am., Inc., 242 N.J. 557, 593 (2020).

G. Note that many issues on appeal present mixed questions of law and fact. Under those circumstances the appellate court gives deference to the supported factual findings of the trial court, but reviews de novo the trial court's application of legal rules to the factual findings. State v. Pierre, 223 N.J. 560, 576 (2015); State v. Nantambu, 221 N.J. 390, 404 (2015); State v. Harris, 181 N.J. 391, 416 (2004).

III. DISCRETIONARY RULINGS BY TRIAL JUDGE

Trial judges are afforded wide discretion in deciding many of the issues that arise in civil and criminal cases (see examples below). Appellate courts review those decisions for an abuse of discretion. "A court abuses its discretion when its 'decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)). "[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue." State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 App. Div. 2007)).

A. Adjournment

A motion for an adjournment, in criminal and civil cases, are addressed to the discretion of the trial court and will not lead to reversal unless the defendant suffered manifest wrong or injury. State v. Miller, 216 N.J. 40, 65 (2013); State v. Hayes, 205 N.J. 522, 537 (2011); Escobar-Barrera v. Kissin, 464 N.J. Super. 224, 233 (App. Div. 2020). This applies to a decision on a request for an adjournment to obtain counsel of his choice. State v. Maisonet, 245 N.J. 552, 566 (2021); State v. Kates, 216 N.J. 393, 397 (2014); State v. Hayes, 205 N.J. 522, 537 (2011).

B. Change of Venue

A decision by a trial judge to change venue in a civil case (Rule 4:3-3)

and a criminal case (Rule 3:14-2) are reviewed for an abuse of discretion. See State v. Nelson, 173 N.J. 417, 476-77 (2002); State v. Harris, 156 N.J. 122, 145 (1998).

C. Control of Courtroom

1. A trial judge has broad discretion in controlling the courtroom and court proceedings in both civil and criminal cases. State v. Pinkston, 233 N.J. 495, 511 (2018); State v. Jones, 232 N.J. 308, 311 (2018); Martin v. Newark Pub. Schs., 461 N.J. Super. 330, 340 (App. Div. 2019); State v. Bitzas, 451 N.J. Super. 51, 76 (App. Div. 2017); D.G. ex rel. J.G. v. N. Plainfield Bd. of Educ., 400 N.J. Super. 1, 26 (App. Div. 2008); State v. Cusumano, 369 N.J. Super. 305, 311 (App. Div. 2004). "A trial judge is given wide discretion in determining proper security measures within the courtroom and is obliged to act to protect the jury, [defendants,] counsel, witnesses, and members of the public." State v. Zhu, 165 N.J. 544, 557 (2000) (alteration in original) (quoting State v. Cook, 330 N.J. Super. 395, 415 (App. Div. 2000)).

2. However, "[t]he exercise of this authority is circumscribed by the judge's responsibility to act reasonably and within constitutional bounds." State v. Bitzas, 451 N.J. Super. 51, 76 (App. Div. 2017). See State v. Kuchera, 198 N.J. 482, 500 (2009) (witness dressed in prison garb) (prison garb); State v. Artwell, 177 N.J. 526, 537 (2003) (witness in restraints); State v. Cusumano, 369 N.J. Super. 305, 311 (App. Div. 2004) (limitation on entering or leaving courtroom during witness's testimony); State v. Cook, 330 N.J. Super. 395, 415 (App. Div. 2000) (limitations on pro se defendant's movement); State v. Castoran, 325 N.J. Super. 280, 285 (App. Div. 1999) (restrictions on dress or conduct which is impermissibly testimonial in nature).

3. Additionally, N.J.R.E. 611(a) provides that "[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence to: (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment." See State v. Watson, 472 N.J. Super. 381, ___ (App. Div. 2022) (slip op. at 82).

D. Cross-examination/ Leading Questions

1. Trial courts are afforded broad discretion in controlling cross-examination. State v. Jenewicz, 193 N.J. 440, 467 (2008); State v. Hockett, 443 N.J. Super. 605, 619 (App. Div. 2016).

2. Additionally, N.J.R.E. 611(b) provides that "[c]ross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness' credibility. The court may allow inquiry into additional matters as if on direct examination." And N.J.R.E. 611(c) provides that "[o]rdinarily, leading questions should be permitted on cross-examination. When a party calls an adverse party or a witness identified with an adverse party, or when a witness demonstrates hostility or unresponsiveness, interrogation may be by leading questions, subject to the discretion of the court."

E. Discovery

1. In both civil and criminal cases, the appellate court reviews a trial judge's discovery rulings under the abuse of discretion standard. State v. Brown, 236 N.J. 497, 521 (2019); Brugaletta v. Garcia, 234 N.J. 225, 240 (2018); Cap. Health Sys., Inc. v. Horizon Healthcare Servs., Inc., 230 N.J. 73, 79-80 (2017); State in Interest of A.B., 219 N.J. 542, 554 (2014); Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011); State v. Wyles, 462 N.J. Super. 115, 122 (App. Div. 2020); Salazar v. MKGC Design, 458 N.J. Super. 551, 558 (App. Div. 2019); Quail v. Shop-Rite Supermarkets, Inc., 455 N.J. Super. 118, 133 (App. Div. 2018).

2. "[A]ppellate courts 'generally defer to a trial court's disposition of discovery matters unless the court has abused its discretion or its determination is based on a mistaken understanding of the applicable law.'" State v. Brown, 236 N.J. 497, 521 (2019) (quoting Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011)).

3. "The questions whether to seal or unseal documents are addressed to the trial court's discretion." Hammock by Hammock

v. Hoffmann-Laroche, 142 N.J. 356, 380 (1995). See Matter of T.I.C.-C., 470 N.J. Super. 596, 606 (App. Div. 2022).

F. Evidence (Admission or Exclusion)

1. An appellate court defers to a trial court's evidentiary ruling absent an abuse of discretion. State v. Garcia, 245 N.J. 412, 430 (2021); State v. Jackson, 243 N.J. 52, 64 (2020); Rowe v. Bell & Gossett Co., 239 N.J. 531, 551 (2019); State v. Scott, 229 N.J. 469, 479 (2017); State v. Nantambu, 221 N.J. 390, 402 (2015); State v. Rochat, 470 N.J. Super. 392, 453 (App. Div. 2022). Appellate courts "review the trial court's evidentiary ruling 'under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion.'" State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). Under that deferential standard, appellate courts "review a trial court's evidentiary ruling only for a 'clear error in judgment.'" State v. Medina, 242 N.J. 397, 412 (2020) (quoting State v. Scott, 229 N.J. 469, 479 (2017)).

2. An appellate court "will not substitute [its] judgment unless the evidentiary ruling is 'so wide of the mark' that it constitutes 'a clear error in judgment.'" State v. Garcia, 245 N.J. 412, 430 (2021) (quoting State v. Medina, 242 N.J. 397, 412 (2020)). "A trial court's 'discretion is abused when relevant evidence offered by the defense and necessary for a fair trial is kept from the jury.'" State v. R.Y., 242 N.J. 48, 65 (2020) (quoting State v. Cope, 224 N.J. 530, 554-55 (2016)).

3. See State v. Garcia, 245 N.J. 412, 429 (2021) (video recording); Rowe v. Bell & Gossett Co., 239 N.J. 531, 551 (2019)(interrogatory answers and deposition testimony); State v. Brown, 236 N.J. 497, 526 (2019) (hearsay exceptions); State v. Weaver, 219 N.J. 131, 149 (2014) (other-crimes evidence); State v. Moore, 113 N.J. 239, 295 (1988) (photographs of victims); State v. Brown, 463 N.J. Super. 33, 52 (App. Div. 2020) (cell phone video); State v. Hannah, 448 N.J. Super. 78, 85 (App. Div. 2016) (authentication of social media documents).

4. Note, however, that the evidentiary decision is reviewed de novo if the trial court applies the wrong legal standard in deciding to admit or exclude the evidence. State v. Trinidad, 241 N.J. 425, 448 (2020); State v. Williams, 240 N.J. 225, 234 (2019); Hassan v. Williams, 467 N.J. Super. 190, 214 (App. Div. 2021).

G. Joinder and Severance

1. Rule 4:38-1 governs joinder of claims and defendants in civil trials. "A trial court's decision to grant or deny a party's motion to consolidate actions is discretionary." Moraes v. Wesler, 439 N.J. Super. 375, 378 (App. Div. 2015). Rule 4:38-2 allows a trial judge to order separate trials in civil actions. A determination whether to sever claims under Rule 4:38-2(a) rests in the trial court's sound exercise. Rendine v. Pantzer, 141 N.J. 292, 310 (1995). See Tobia v. Cooper Hosp. Univ. Med. Ctr., 136 N.J. 335, 345 (1994) (decision to sever liability and damages claims rests in the trial court's discretion).

2. Rule 3:15-1 governs the permissible and mandatory joinder of charges and defendants in criminal cases. Rule 3:15-2(b) provides for relief from prejudicial joinder in criminal trials. See State v. Chenique-Puey, 145 N.J. 334, 341 (1996) (decision whether to sever an indictment rests in sound discretion of trial court); State v. Weaver, 219 N.J. 131, 149 (2014) (decision to sever is within the trial court's discretion, and it will be reversed only if it constitutes an abuse of discretion); State v. Sterling, 215 N.J. 65, 72–73 (2013); State v. Krivacska, 341 N.J. Super. 1, 37 (App. Div. 2001) (disposition of a motion for a severance under R. 3:15-2 is addressed to the sound discretion of the trial court).

H. Juries

1. Jury Selection. "The courts, not the parties, oversee jury selection." State v. Andujar, 247 N.J. 275, 304 (2021). See Pellicer v. Saint Barnabas Hosp., 200 N.J. 22, 40 (2009) ("The chief responsibility for conducting jury selection rests with the trial judge." (quoting State v. Wagner, 180 N.J. Super. 564, 567 (App. Div. 1981))).

2. Voir Dire. The Appellate Division reviews a trial court's voir dire in accordance with a deferential standard. State v. Little, 246 N.J. 402, 413 (2021). "Voir dire procedures and standards are traditionally within the broad discretionary powers vested in the trial court . . . ." State v. Little, 246 N.J. 402, 413 (2021) (quoting State v. Papasavvas, 163 N.J. 565, 595 (2000)). "[A] trial court's decisions regarding voir dire are not to be disturbed on appeal, except to correct an error that undermines the selection of an impartial jury." State v. Little, 246 N.J. 402, 413 (2021) (quoting State v. Winder, 200 N.J. 231, 252 (2009)). See Pressler & Verniero, Current N.J. Court Rules, cmt. 1.2 on R. 1:8-3 (2022). "The court's exercise of discretion in dealing with requests for specific inquiries of prospective jurors in the voir dire examination is subject to reversal only on a showing of prejudice in that the voir dire examination failed to afford the parties an opportunity to select an impartial and unbiased jury." Pressler & Verniero, Current N.J. Court Rules, cmt. 1.2 on R. 1:8-3 (2022). Standard Jury Selection Questions can be found at: https://www.njcourts.gov/attorneys/assets/attyresources/jurorselectionquestionscrim.pdf (criminal) and https://www.njcourts.gov/attorneys/assets/attyresources/jurorselectionquestions (civil).

3. Qualifications. "Trial courts possess considerable discretion in determining the qualifications of prospective jurors." State v. DiFrisco, 137 N.J. 434, 459 (1994). "A trial court's removal of a prospective juror for cause will not be reversed unless the court has abused its discretion." State v. DiFrisco, 137 N.J. 434, 459 (1994). "[T]rial courts are 'vested with broad discretionary powers in determining the qualifications of jurors and [a judge's] exercise of discretion will ordinarily not be disturbed on appeal.'" State v. Singletary, 80 N.J. 55, 62 (1979) (second alteration in original) (quoting State v. Jackson, 43 N.J. 148, 160 (1964)). "[T]he trial court's decision to include or exclude a juror from the jury pool will not be reversed absent an abuse of discretion." State v. Simon, 161 N.J. 416, 466 (1999). "No party in a criminal or civil case can use peremptory challenges to remove a juror on the basis of race or gender." State v. Andujar, 247 N.J. 275, 301 (2021).

4. Illness, Inability to Continue. An appellate court's "review of a trial court's decision to remove and substitute a deliberating

juror because of an 'inability to continue,' pursuant to Rule 1:8-2(d)(1), is deferential." State v. Musa, 222 N.J. 554, 564-65 (2015).

5. Influence or Misconduct. Appellate courts review a judge's control of the courtroom and any remedial action taken regarding an inattentive juror under an abuse of discretion standard. State v. Mohammed, 226 N.J. 71, 89 (2016). "The jury verdict must be 'free from the taint of extraneous considerations and influences,' and a new trial will be granted when jury misconduct or the intrusion of irregular influences into jury deliberations 'could have a tendency to influence the jury in arriving at its verdict in a manner inconsistent with the legal proofs and the court's charge.'" State v. Scherzer, 301 N.J. Super. 363, 486 (App. Div. 1997) (quoting Panko v. Flintkote Co., 7 N.J. 55, 61 (1951)). "The test is 'not whether the irregular matter actually influenced the result but whether it had the capacity of doing so.'" State v. Scherzer, 301 N.J. Super. 363, 486 (App. Div. 1997) (quoting Panko v. Flintkote Co., 7 N.J. 55, 61 (1951)). "Jury 'irregularity,' including sleeping, may violate a defendant's federal and state constitutional rights to a fair tribunal if it results in prejudice." State v. Mohammed, 226 N.J. 71, 83 (2016) (quoting State v. Scherzer, 301 N.J. Super. 363, 486 (App. Div. 1997)). "[A]ll doubts about a juror's integrity or ability to be fair should be resolved in favor of removing the juror from the panel." State v. Loftin, 191 N.J. 172, 187 (2007).

6. Read-backs. "Courts have broad discretion as to whether and how to conduct read-backs and playbacks." State v. Miller, 205 N.J. 109, 122 (2011). See State v. Weston, 222 N.J. 277, 294 (2015) (trial courts should make videotaped statements and testimony available to jurors during deliberations only in the event of a jury request, and the replay must be conducted in open court and under the careful supervision of the trial judge); State v. A.R., 213 N.J. 542, 546 (2013) (video-recorded statement must be replayed in open court under direct supervision of the judge). See also State v. Brown, 457 N.J. Super. 345, 347 (App. Div. 2018) (trial courts have discretion in appropriate circumstances to grant jury requests to have the closing arguments of all counsel played back or read back to them, in full or in part).

7. Polling. Rule 1:8-10 provides that "[b]efore the verdict is recorded, the jury shall be polled at the request of any party or upon the court's motion, and it shall be polled in every civil action if the verdict is not unanimous. If the poll discloses that there is not unanimous concurrence in a criminal action or concurrence by the number required by Rule 1:8-2(c) in a civil action, the jury may be directed to retire for further deliberations or discharged." "If a juror expresses disagreement with the verdict as stated by the foreperson, the trial court may direct the juror to continue to deliberate or may discharge the jury." State v. Milton, 178 N.J. 421, 444 (2004).

8. Sequestration. Jury sequestration under Rule 1:8-6 is generally left to the discretion of the trial court. State v. Harvey, 151 N.J. 117, 214 (1997); State v. R.D., 169 N.J. 551, 560 (2001); Barber v. Shop-Rite of Englewood & Assocs., Inc., 393 N.J. Super. 292, 298-99 (App. Div. 2007).

9. Continue Deliberations. A trial judge has the discretion to require further deliberations after a jury has announced its inability to reach a verdict, however, the exercise of that discretion is not appropriate "if the jury has reported a definite deadlock after a reasonable period of deliberations." State v. Czachor, 82 N.J. 392, 407 (1980). See State v. Ross, 218 N.J. 130, 145 (2014); State v. Harris, 457 N.J. Super. 34, 50 (App. Div. 2018); State v. Johnson, 436 N.J. Super. 406, 422 (App. Div. 2014); State v. Adim, 410 N.J. Super. 410, 423-24 (App. Div. 2009).

I. Mistrial

1. A decision to grant or deny a motion for mistrial is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent a clear showing of an abuse of discretion. State v. Smith, 224 N.J. 36, 47 (2016); State v. Jackson, 211 N.J. 394, 407 (2012); McKenney v. Jersey City Med. Ctr., 167 N.J. 359, 376 (2001). "The grant of a mistrial is an extraordinary remedy to be exercised only when necessary 'to prevent an obvious failure of justice.'" State v. Yough, 208 N.J. 385, 397 (2011) (quoting State v. Harvey, 151 N.J. 117, 205 (1997)). "[A]n appellate court will not disturb a trial court's ruling

on a motion for a mistrial, absent an abuse of discretion that results in a manifest injustice." State v. Jackson, 211 N.J. 394, 407 (2012) (quoting State v. Harvey, 151 N.J. 117, 205 (1997)).

2. "Of course, declaring a mistrial is never a preferred course." State v. Smith, 471 N.J. Super. 548, 579 (App. Div. 2022). "If there is 'an appropriate alternative course of action,' a mistrial is not a proper exercise of discretion. State v. Smith, 224 N.J. 36, 47 (2016) (quoting State v. Allah, 170 N.J. 269, 281 (2002)). "For example, a curative instruction, a short adjournment or continuance, or some other remedy, may provide a viable alternative to a mistrial, depending on the facts of the case." State v. Smith, 224 N.J. 36, 47 (2016).

J. Motion in Limine

1. Rule 4:25-8(a)(1) defines a motion in limine "an application returnable at trial for a ruling regarding the conduct of the trial, including admissibility of evidence, which motion, if granted, would not have a dispositive impact on a litigant's case. A dispositive motion falling outside the purview of this rule would include, but not be limited to, an application to bar an expert's testimony in a matter in which such testimony is required as a matter of law to sustain a party's burden of proof."

2. The Appellate Division applies "the same standard of review to in limine motions adjudicating the admissibility of evidence." Primmer v. Harrison, 472 N.J. Super. 173 (App. Div. 2022). Nonetheless, "[o]ur courts generally disfavor in limine rulings on evidence questions." State v. Cordero, 438 N.J. Super. 472, 484 (App. Div. 2014). "[A] trial judge generally should not rule on the admissibility of particular evidence until a party offers it at trial." State v. Cary, 49 N.J. 343, 352, 230 A.2d 384 (1967).

3. "A motion in limine 'is not a summary judgment motion that happens to be filed on the eve of trial. When granting a motion will result in the dismissal of a plaintiff's case. . . , the motion is subject to Rule 4:46, the rule that governs summary judgment motions.'" Jeter v. Sam's Club, 250 N.J. 240, 250 (2022) (quoting Seoung Ouk Cho v. Trinitas Reg'l Med. Ctr., 443 N.J. Super. 461,

471 (App. Div. 2015)).

4. Further, the appellate court analyzes the State's motion to compel a defendant "to turn over evidence using the same standard" used "to review a defendant's motion to suppress evidence," that is the findings must be upheld when supported by substantial credible evidence in the record. State v. C.J.L., 471 N.J. Super. 477, 483 (App. Div. 2022).

K. Opening and Closing Arguments

1. "The trial court has broad discretion in the conduct of the trial, including the scope of counsel's summation." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 392 (2009). "The abuse of discretion standard applies to the trial court's rulings during counsel's summation." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 392-93 (2009). See cases listed under Rule 1:7-1 (Opening and Closing Statement) and Rule 2:10-2. When no objection was made to the comments, the appellate court applies the plain error standard. R. 2:10-2; State v. Santamaria, 236 N.J. 390, 405 (2019); Fertile v. St. Michael's Med. Ctr., 169 N.J. 481, 493 (2001).

2. Note that "a clear and firm jury charge may cure any prejudice created by counsel's improper remarks during opening or closing argument." City of Linden, Cty. of Union v. Benedict Motel Corp., 370 N.J. Super. 372, 398 (App. Div. 2004).

L. Mode and Order of Proof

Under N.J. R. E. 611, the trial court is given broad discretion to "shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence." State v. Pinkston, 233 N.J. 495, 511 (2018) (trial courts retain broad discretion to control proceedings); State v. J.R., 227 N.J. 393, 416 (2017) (timing of expert witness's appearance); Borough of Saddle River v. 66 E. Allendale, LLC, 216 N.J. 115, 154 (2013) ("Judges are given broad discretion to manage the presentation of witnesses to 'avoid needless consumption of time.' N.J.R.E. 611(a)"); State v. Henderson, 208 N.J. 208, 291 (2011) ("trial courts always have

the authority to direct the mode and order of proofs"); See State v. Watson, 472 N.J. Super. 381, ___ (App. Div. 2022) (slip op. at 82) (citing N.J.R.E. 611 regarding police narration testimony).

M. Reconsideration or Rehearing Under Rule 4:49-2

1. The Appellate Division reviews a trial judge's decision on whether to grant or deny a motion for rehearing or reconsideration under Rule 4:49-2 (motion to alter or amend a judgment order) for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Kornbleuth v. Westover, 241 N.J. 289, 301 (2020); Hoover v. Wetzler, 472 N.J. Super. 230, 235 (App. Div. 2022); Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). "The rule applies when the court's decision represents a clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2022).

2. "While the rule does not expressly apply to criminal actions, in view of the absence of a corollary criminal practice rule, the philosophy of the rule was nevertheless applied to a prosecutor's motion for reconsideration of a trial court order admitting a defendant to a pretrial intervention program over prosecutorial objection." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2022). See State v. Puryear, 441 N.J. Super. 280, 294 (App. Div. 2015).

N. Relief to Litigant

Rule 1:10-3 provides in part that "[n]otwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action." The Rule is "a device to enable a litigant to enforce his or her rights." In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 17 (2015). It provides a "means for securing relief and allow[s] for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order." N. Jersey Media Grp., Inc. v. State, Off. of Governor, 451 N.J. Super. 282, 296 (App. Div. 2017) (alteration in original) (quoting In re Adoption of N.J.A.C.

5:96 & 5:97, 221 N.J. 1, 17-18 (2015)). The Appellate Division reviews an order entered under Rule 1:10-3 under an abuse of discretion standard. N. Jersey Media Grp., Inc. v. State, Off. of Governor, 451 N.J. Super. 282, 296 (App. Div. 2017).

O. Recusal/Disqualification

Rule 1:12-2 provides that "[a]ny party, on motion made to the judge before trial or argument and stating the reasons therefor, may seek that judge's disqualification." "Motions for disqualification must be made directly to the judge presiding over the case." State v. McCabe, 201 N.J. 34, 45 (2010). Motions for recusal or disqualification "are entrusted to the sound discretion of the judge and are subject to review for abuse of discretion." State v. McCabe, 201 N.J. 34, 45 (2010). See Goldfarb v. Solimine, 460 N.J. Super. 22, 30 (App. Div. 2019); P.M. v. N.P., 441 N.J. Super. 127, 140 (App. Div. 2015).

P. Sanctions

Decision on sanctions imposed for violating a court order is addressed to the discretion of the trial judge. Kornbleuth v. Westover, 241 N.J. 289, 300 (2020); Williams v. Am. Auto Logistics, 226 N.J. 117, 128 (2016); Gonzalez v. Safe & Sound Sec., 185 N.J. 100, 115 (2005); State v. Wolfe, 431 N.J. Super. 356, 363 (App. Div. 2013). "The decision to dismiss a case or sanction parties for failure to appear for trial falls within the discretion of the trial judge." Kornbleuth v. Westover, 241 N.J. 289, 300 (2020). Moreover, the trial judge's decision on a motion for frivolous lawsuit sanctions is reviewed under an abuse of discretion standard. McDaniel v. Man Wai Lee, 419 N.J. Super. 482, 498 (App. Div. 2011).

Q. Stay Pending Appeal and Injunctive Relief

1. Civil – Rule 2:9-5(a) provides that "neither an appeal, nor motion for leave to appeal, nor a proceeding for certification, nor any other proceeding in the matter shall stay proceedings in any court in a civil action or summary contempt proceeding, but a stay with or without terms may be ordered in any such action or

proceeding in accordance with R. 2:9-5(b)." Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (application for a stay requires consideration of the soundness of the ruling and the effect of a stay on the parties and the public). And Rule 2:9-8 provides for a temporary stay in emergent matters.

Applications for a stay in a civil matter are governed by the standard outlined in Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982), that is "[a] party seeking a stay must demonstrate that (1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were.'" Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (quoting McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting)). "When a case presents an issue of 'significant public importance,'" the appellate court must also "consider the public interest in addition to the traditional Crowe factors." Garden State Equal. v. Dow, 216 N.J. 314, 321 (2013) (quoting McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 484 (2003) (LaVecchia, J., dissenting)). See N.J. Election Law Enf't Comm'n v. DiVincenzo, 445 N.J. Super. 187, 195-96 (App. Div. 2016) (courts should also consider the public interest in cases that present an issue of significant public importance). To evaluate an application for a stay, an appellate court "in essence considers the soundness of the . . . ruling and the effect of a stay on the parties and the public." Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013).

2. Criminal - Rule 2:9-3(a) provides that "[a] sentence of imprisonment shall not be stayed by the taking of an appeal or by the filing of a notice of petition for certification, but the defendant may be admitted to bail as provided in R. 2:9-4." However, Rule 2:9-3(c) provides that "execution of sentence shall be stayed pending appeal by the State pursuant to N.J.S.A. 2C:44-1(f)(2)." See also State v. Robertson, 228 N.J. 138, 149 (2017) (discussing a stay in DWI cases in municipal court).

3. "The authority to issue injunctive relief falls well within the discretion of a court of equity." Horizon Health Ctr. v.

Felicissimo, 135 N.J. 126, 137 (1994). See In re Adoption of Child by M.E.B., 444 N.J. Super. 83, 89 (App. Div. 2016) (quoting Bubis v. Kasin, 353 N.J. Super. 415, 424 (App. Div. 2002) ("court of equity ordinarily has broad discretion in determining whether to grant injunctive relief")). See also R. 4:52-4 (Form and Scope of Injunction or Restraining Order).

R. Witnesses

1. Competency N.J.R.E. 601 states the general rule on the competency of witnesses. "The determination of whether a person is competent to be a witness lies within the sound discretion of the trial judge." State v. G.C., 188 N.J. 118, 133 (2006) (quoting State v. Savage, 120 N.J. 594, 632 (1990)).

2. Lay Witness Testimony The admission of law witness testimony is governed by N.J.R.E. 701. The Appellate Division reviews a decision to exclude a lay witness' testimony for an abuse of discretion. State v. Sanchez, 247 N.J. 450, 465 (2021); State v. Singh, 245 N.J. 1, 12, 243 A.3d 662 (2021).

3. Expert Witness Testimony The admission of expert testimony is generally governed by N.J.R.E. 702, which provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."

a. Civil cases "The admission or exclusion of expert testimony is committed to the sound discretion of the trial court." Townsend v. Pierre, 221 N.J. 36, 52 (2015). An appellate court "must apply an abuse of discretion standard to a trial court's determination, after a full Rule 104 hearing, to exclude expert testimony on unreliability grounds." In re Accutane Litig., 234 N.J. 340, 391 (2018).

b. Criminal cases An appellate court reviews a trial court's evidentiary determination that a witness is qualified to present expert testimony under N.J.R.E. 702, for abuse of

discretion and reverses only "for manifest error and injustice." State v. Rosales, 202 N.J. 549, 562-63 (2010). See State v. Torres, 183 N.J. 554, 572 (2005); State v. Berry, 471 N.J. Super. 76, 121 (App. Div. 2022).

3. Scientific Expert Testimony

a. Civil cases "[T]he abuse of discretion standard applies in the appellate review of a trial court's determination to admit or deny scientific expert testimony on the basis of unreliability in civil matters." In re Accutane Litig., 234 N.J. 340, 392 (2018). The trial court's ruling should be reversed" only if it 'was so wide off the mark that a manifest denial of justice resulted.'" Rodriguez v. Wal-Mart Stores, Inc., 237 N.J. 36, 57 (2019) (quoting Griffin v. City of E. Orange, 225 N.J. 400, 413 (2016)). Note that our Supreme Court in In re Accutane Litig., 234 N.J. 340, 392 (2018), adopted the use of the factors identified in Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 593-95 (1993), and affirmed the methodology-based approach for determining scientific reliability in certain areas of civil law.

b. Criminal cases The Court has not, however, adopted the methodology-based approach in criminal cases, and continues to apply the general acceptance test for reliability in criminal cases (the Frye standard (Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923)). State v. Cassidy, 235 N.J. 482, 492 (2018); State v. Rochat, 470 N.J. Super. 392, 439 (App. Div. 2022). "Scientific test results are admissible in a criminal trial only when the technique is shown to be generally accepted as reliable within the relevant scientific community." State v. Cassidy, 235 N.J. 482, 491-92 (2018). When reviewing a decision on the admission of scientific evidence in a criminal case, "an appellate court should scrutinize the record and independently review the relevant authorities, including judicial opinions and scientific literature." State v. Harvey, 151 N.J. 117, 167 (1997). See State v. Pickett, 466 N.J. Super. 270, 303 (App. Div. 2021) (an appropriate review in a criminal case requires an appellate court to "independently scrutinize the record,

including the comprehensive and amplified declarations of the experts, the scientific validation studies and peer-reviewed publications, and judicial opinions). Whether expert testimony is sufficiently reliable under the Frye test to be admissible under N.J.R.E. 702 is a legal question that appellate courts review de novo. State v. J.L.G., 234 N.J. 265, 301 (2018); State v. Rochat, 470 N.J. Super. 392, 439 (App. Div. 2022); In re Commitment of R.S., 339 N.J. Super. 507, 531 (App. Div. 2001).

IV. JURY INSTRUCTIONS

A. Rule 1:7-2 provides that "[e]xcept as otherwise provided by R. 1:7-5 and R. 2:10-2 (plain error), no party may urge as error any portion of the charge to the jury or omissions therefrom unless objections are made thereto before the jury retires to consider its verdict. . . ." See State v. Montalvo, 229 N.J. 300, 320 (2017); State v. Burns, 192 N.J. 312, 341 (2007); State v. Torres, 183 N.J. 554, 564 (2005); State v. Kille, 471 N.J. Super. 633, 641 (App. Div. 2022). See also R. 1:8-7 (governing requests to charge in civil and criminal cases).

B. In the context of a jury charge, "plain error requires demonstration of 'legal impropriety in the charge prejudicially affecting the substantial rights of the defendant and sufficiently grievous to justify notice by the reviewing court and to convince the court that of itself the error possessed a clear capacity to bring about an unjust result.'" State v. Montalvo, 229 N.J. 300, 321 (2017) (quoting State v. Chapland, 187 N.J. 275, 289 (2006). See State v. Burns, 192 N.J. 312, 341 (2007); State v. Jordan, 147 N.J. 409, 422 (1997). "The error must be evaluated 'in light of the overall strength of the State's case.'" State v. Sanchez-Medina, 231 N.J. 452, 468 (2018) (quoting State v. Galicia, 210 N.J. 364, 388 (2012)).

C. The appellate court reviews a trial court's instruction on the law de novo. Fowler v. Akzo Nobel Chemicals, Inc., 251 N.J. 300, ___ (2022) (slip op. at 28); State ex rel. Comm'r of Transp. v. Marlton Plaza Assocs., L.P., 426 N.J. Super. 337, 347 (App. Div. 2012).

D. Appropriate and proper jury instructions are essential for a fair

trial. State v. Scharf, 225 N.J. 547, 581 (2016); Prioleau v. Ky. Fried Chicken, Inc., 223 N.J. 245, 256 (2015); Velazquez v. Portadin, 163 N.J. 677, 688 (2000); State v. Green, 86 N.J. 281, 287 (1981). "Erroneous instructions are poor candidates for rehabilitation as harmless, and are ordinarily presumed to be reversible error." State v. McKinney, 223 N.J. 475, 495-96 (2015) (quoting State v. Afanador, 151 N.J. 41, 54 (1997)). Certain jury instructions are so crucial to a jury's deliberations that error is presumed to be reversible. State v. McKinney, 223 N.J. 475, 495 (2015); State v. Jordan, 147 N.J. 409, 422 (1997). For example, the failure to charge the jury on an element of an offense is presumed to be prejudicial error, even in the absence of a request by defense counsel. State v. Afanador, 151 N.J. 41, 56 (1997); State v. Hodde, 181 N.J. 375, 384 (2004). "An erroneous jury charge 'when the subject matter is fundamental and essential or is substantially material' is almost always considered prejudicial." State v. Maloney, 216 N.J. 91, 104-05 (2013) (quoting State v. Green, 86 N.J. 281, 288 (1981)).

E. "Nonetheless, not every improper jury charge warrants reversal and a new trial. 'As a general matter, [appellate courts] will not reverse if an erroneous jury instruction was 'incapable of producing an unjust result or prejudicing substantial rights.'" Prioleau v. Ky. Fried Chicken, Inc., 223 N.J. 245, 257 (2015) (alteration in original) (quoting Mandal v. Port Auth. of N.Y. & N.J., 430 N.J. Super. 287, 296 (App. Div. 2013)).

F. The charge must be read as a whole, and not just the challenged portion, to determine its overall effect. State v. Garrison, 228 N.J. 182, 201 (2017); State v. McKinney, 223 N.J. 475, 494 (2015); State v. Wilbely, 63 N.J. 420, 422 (1973). No party is entitled to have the jury charged in his or her own words. State v. LaBrutto, 114 N.J. 187, 204 (1989). "The test to be applied . . . is whether the charge as a whole is misleading, or sets forth accurately and fairly the controlling principles of law." State v. Baum, 224 N.J. 147, 159 (2016) (quoting State v. Jackmon, 305 N.J. Super. 274, 299 (App. Div. 1997). See State v. Walker, 322 N.J. Super. 535, 546-53 (App. Div. 1999) (reviewing the types of general and special instructions that should be given in a criminal case).

G. Instructions given in accordance with the model jury charge, or which closely track the model jury charge, are generally not considered erroneous. Mogull v. CB Com. Real Est. Grp., Inc., 162 N.J. 449, 466

(2000). See State v. Ramirez, 246 N.J. 61, 70 (2021) (Court found no plain error where the judge read the model charge verbatim, and no objection to the endangering instruction was made at trial).

H. "Because a verdict sheet constitutes part of the trial court's direction to the jury, defects in the verdict sheet are reviewed on appeal under the same "unjust result" standard of Rule 2:10-2 that governs errors in the jury charge." State v. Galicia, 210 N.J. 364, 388 (2012). However, [w]hen there is an error in a verdict sheet but the trial court's charge has clarified the legal standard for the jury to follow, the error may be deemed harmless." State v. Galicia, 210 N.J. 364, 387 (2012).

V. NEW TRIAL MOTION

Under Rule 2:10-1 the appellate court will not consider an argument, in both civil and criminal cases, that a jury verdict is against the weight of the evidence unless the appellant moved for a new trial on that ground. Ogborne v. Mercer Cemetery Corp., 197 N.J. 448, 462 (2009); State v. Reininger, 430 N.J. Super. 517, 538 (App. Div. 2013); State v. Diferdinando, 345 N.J. Super. 382, 399 (App. Div. 2001). The trial court's ruling on a motion for a new trial, in criminal and civil cases "shall not be reversed unless it clearly appears that there was a miscarriage of justice under the law." R. 2:10-1. Twp. of Manalapan v. Gentile, 242 N.J. 295, 304 (2020). Where an issue raised on a new trial motion involves a decision that is addressed to the trial court's discretion, the appellate court will not reverse unless there was an abuse of discretion. See Pressler & Verniero, Current N.J. Court Rules, cmt. 4 on R. 2:10-2 (2022). See also Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:10-1 (2022), which explains that these two rules are intertwined.

A. New Trial (Civil)

1. In civil cases, Rule 4:49-1(a) (emphasis added) provides that "[t]he trial judge shall grant the motion if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law."

2. "A jury verdict is entitled to considerable deference and

'should not be overthrown except upon the basis of a carefully reasoned and factually supported (and articulated) determination, after canvassing the record and weighing the evidence, that the continued viability of the judgment would constitute a manifest denial of justice.'" Hayes v. Delamotte, 231 N.J. 373, 385-86 (2018) (quoting Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521 (2011)).

3. "The standard of review on appeal from decisions on motions for a new trial is the same as that governing the trial judge—whether there was a miscarriage of justice under the law." Hayes v. Delamotte, 231 N.J. 373, 386 (2018) (quoting Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 522 (2011)). See Twp. of Manalapan v. Gentile, 242 N.J. 295, 304 (2020). "[A] 'miscarriage of justice' can arise when there is a 'manifest lack of inherently credible evidence to support the finding,' when there has been an 'obvious overlooking or under-valuation of crucial evidence,' or when the case culminates in 'a clearly unjust result.'" Hayes v. Delamotte, 231 N.J. 373, 386 (2018) (quoting Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521-22 (2011)).

4. In evaluating the trial court's decision to grant or deny a new trial, "an appellate court must give 'due deference' to the trial court's 'feel of the case,'" however, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Hayes v. Delamotte, 231 N.J. 373, 386 (2018) (first quoting Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521 (2011) (second quoting Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

B. Motion for a New Trial (Criminal)

1. In criminal cases, Rule 3:20-1 (emphasis added) provides that "[t]he trial judge on defendant's motion may grant the defendant a new trial if required in the interest of justice. If trial was by the judge without a jury, the judge may, on defendant's motion for a new trial, vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. The trial judge shall not, however, set aside the verdict of the jury as

against the weight of the evidence unless, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a manifest denial of justice under the law." See R. 3:20-2 (time for making new trial motion).

2. "The 'semantic' difference between 'miscarriage of justice' [under Rule 4:49-1(a)] and 'manifest denial of justice under the law' [under Rule 3:20-1] is an 'oversight and should not be construed as providing for a different standard in criminal cases at the trial level than that applicable to appellate review and to civil cases at the trial level.'" State v. Armour, 446 N.J. Super. 295, 306 (App. Div. 2016) (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 3:20-1 (2016)).

3. "In reviewing a trial court's decision to grant a new trial following a jury verdict, an appellate court must be 'guided by essentially the same standard as that controlling the trial judge's review of a jury verdict' and must 'weigh heavily' the trial court's views on 'credibility of witnesses, their demeanor, and [the trial court's] general 'feel of the case.'" State v. Brown, 118 N.J. 595, 604 (1990) (quoting State v. Sims, 65 N.J. 359, 373 (1974)). "If the trial court acts under a misconception of the applicable law, however, the appellate court need not give such deference." State v. Brown, 118 N.J. 595, 604 (1990).

VI. EXERCISE OF ORIGINAL JURISDICTION

A. Rule 2:10-5 allows an appellate court to exercise original jurisdiction as "necessary to the complete determination of any matter on review." State v. Shaw, 237 N.J. 588, 607 (2019). It should only be done "sparingly," State v. Jarbath, 114 N.J. 394, 412 (1989), and "with great frugality." State v. Micelli, 215 N.J. 284, 293 (2013) (quoting Tomaino v. Burman, 364 N.J. Super. 224, 234-35 (App. Div. 2003)). Original jurisdiction "is generally used when the record is adequately developed and no further fact finding is needed." Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124, 146 (2022). Exercising original jurisdiction is discouraged if factfinding is necessary. Goldfarb v. Solimine, 245 N.J. 326, 346 (2021); State v. Santos, 210 N.J. 129, 142 (2012). Original jurisdiction can, however, be invoked to "eliminate

unnecessary further litigation," State v. Santos, 210 N.J. 129, 142 (2012), or "when there is 'public interest in an expeditious disposition of the significant issues raised.'" Price v. Himeji, LLC, 214 N.J. 263, 294 (2013) (quoting Karins v. City of Atlantic City, 152 N.J. 532, 540-41 (1998)).

B. Rule 2:10-3 provides that "[i]f 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." State v. Randolph, 210 N.J. 330, 350 n.5 (2012). See also State v. Bell, 250 N.J. 519, 544-45 (2022) (exercise of appellate original jurisdiction over sentencing should not occur regularly or routinely).

SECTION SIX

STANDARDS IN CRIMINAL CASES ONLY

Rule 2:3-2 provides that "[i]n any criminal action, any defendant, the defendant's legal representative, or other person aggrieved by the final judgment of conviction entered by the Superior Court, including a judgment imposing a suspended sentence, or by an adverse judgment in a post-conviction proceeding attacking a conviction or sentence or by an interlocutory order or judgment of the trial court, may appeal or, where appropriate, seek leave to appeal, to the appropriate appellate court."

I. PRETRIAL ISSUES

A. Grand Jury

1. The New Jersey Constitution guarantees the right to indictment by a grand jury. N.J. Const. art. I, § 8. See State v. Vega-Larregui, 246 N.J. 94, 124 (2021); State v. Bell, 241 N.J. 552, 559 (2020). The Assignment Judge of each county orders and organizes grand juries. R. 3:6-1. "Judicial involvement with and review of the grand jury is generally limited." State v. Shaw, 241 N.J. 223, 239 (2020). The Judiciary "exercises supervisory authority over grand juries under the doctrine of fundamental fairness." State v. Shaw, 241 N.J. 223, 242 (2020).

2. "At the grand jury stage, the State is not required to present enough evidence to sustain a conviction." State v. Feliciano, 224 N.J. 351, 380 (2016). "As long as the State presents 'some evidence establishing each element of the crime to make out a prima facie case,' a trial court should not dismiss an indictment. State v. Feliciano, 224 N.J. 351, 380 (2016) (quoting State v. Saavedra, 222 N.J. 39, 57 (2015)).

3. A trial court's denial of a motion to dismiss an indictment is reviewed for an abuse of discretion and should be reversed on appeal only if it clearly appears that the court abused its discretion. State v. Bell, 241 N.J. 552, 561 (2020); State v. Twiggs, 233 N.J. 513, 544 (2018); State v. Feliciano, 224 N.J. 351, 380 (2016); State v. Lyons, 417 N.J. Super. 251, 258 (App. Div. 2010). "An indictment should be disturbed only on the 'clearest and plainest ground[s],' and 'only when the indictment is manifestly deficient or palpably defective.'" State v. Shaw, 241 N.J. 223, 239 (2020) (first quoting State v. Perry, 124 N.J. 128, 168 (1991); then quoting State v. Hogan, 144 N.J. 216, 229 (1996)). See State v. Saavedra, 222 N.J. 39, 55 (2015) (recognizing appellate courts review a trial judge's decision deciding the sufficiency of a grand jury indictment for abuse of discretion). The State has no right of appeal if the grand jury declines to indict. State v. Shaw, 241 N.J. 223, 239 (2020).

4. Moreover, "if grand juries decline to indict on two prior occasions, the State must obtain advance approval from the Assignment Judge before it can submit the same case to a third grand jury. To decide whether to permit a third presentation, Assignment Judges should consider whether the State has new or additional evidence to present; the strength of the State's evidence; and whether there has been any prosecutorial misconduct in the prior presentations." State v. Shaw, 241 N.J. 223, 230 (2020).

B. Motion to Sever an Indictment

A trial court's decision whether to sever an indictment rests in the court's sound discretion. State v. Sterling, 215 N.J. 65, 73 (2013); State v. Weaver, 219 N.J. 131, 149 (2014); State v. Chenique-Puey, 145 N.J. 334, 341 (1996); State v. Krivacska, 341 N.J.

Super. 1, 37 (App. Div. 2001). Rule 3:15-1 governs the permissible and mandatory joinder of charges and defendants in criminal cases, and Rule 3:15-2(b) provides for relief from prejudicial joinder in criminal trials. "Although joinder is favored, economy and efficiency interests do not override a defendant's right to a fair trial." State v. Sterling, 215 N.J. 65, 72 (2013).

C. Pretrial Intervention Program

1. The Pretrial Intervention Program (PTI), which is governed by statute, N.J.S.A. 2C:43-12, and Court Rule, Rule 3:28-1 to -10, "is a 'diversionary program through which certain offenders are able to avoid criminal prosecution by receiving early rehabilitative services expected to deter future criminal behavior.'" State v. Johnson, 238 N.J. 119, 127 (2019) (quoting State v. Roseman, 221 N.J. 611, 621 (2015)). "[T]he prosecutor's decision to accept or reject a defendant's PTI application is entitled to a great deal of deference." State v. Roseman, 221 N.J. 611, 624 (2015). "[T]o overturn a prosecutor's decision to exclude a defendant from the program, the defendant must 'clearly and convincingly' show that the decision was a 'patent and gross abuse of . . . discretion.'" State v. K.S., 220 N.J. 190, 200 (2015) (quoting State v. Wallace, 146 N.J. 576, 582 (1996)). See State v. E.R., 471 N.J. Super. 234, 245 (App. Div. 2022).

2. The scope of the appellate court's review of a PTI rejection "is severely limited," and "serves to check only the 'most egregious examples of injustice and unfairness.'" State v. Negran, 178 N.J. 73, 82 (2003) (quoting State v. Leonardis, 73 N.J. 360, 384 (1977)). See State v. Denman, 449 N.J. Super. 369, 376 (App. Div. 2017). However, "[w]hen a reviewing court determines that the 'prosecutor's decision was arbitrary, irrational, or otherwise an abuse of discretion, but not a patent and gross abuse of discretion,' the reviewing court may remand to the prosecutor for further consideration." State v. K.S., 220 N.J. 190, 200 (2015) (quoting State v. Dalglish, 86 N.J. 503, 509 (1981)). See State v. E.R., 471 N.J. Super. 234, 245 (App. Div. 2022). Moreover, "[i]ssues concerning the propriety of the prosecutor's consideration of a particular [PTI] factor are akin to 'questions of law'" and must be reviewed de novo." State v. Denman, 449 N.J. Super. 369, 376

(App. Div. 2017) (quoting State v. Maddocks, 80 N.J. 98, 104 (1979)). See State v. E.R., 471 N.J. Super. 234, 245 (App. Div. 2022).

D. Pretrial Detention and Speedy Trial

1. The Criminal Justice Reform Act (CJRA), N.J.S.A. 2A:162-15 to -26, allows for pretrial detention of defendants who present such a serious risk of danger, flight, or obstruction that no combination of release conditions would be adequate, N.J.S.A. 2A:162-18(a)(1), and "contains various time limits designed to move cases toward trial." Matter of Request to Release Certain Pretrial Detainees, 245 N.J. 218, 231 (2021). Prosecutors must indict cases within ninety days, N.J.S.A. 2A:162-22(a)(1)(a), and trials must commence within 180 days after indictment. N.J.S.A. 2A:162-22(a)(2)(a). Both of those time periods are subject to "excludable time for reasonable delays," as listed in N.J.S.A. 2A:162-22(b). See also R. 3:25-4(i).

2. The CJRA also "establishes speedy trial deadlines governing how long a defendant can be detained before he or she is indicted and tried." State v. Williams, 464 N.J. Super. 260, 269 (App. Div. 2020). The CJRA "sets an overall limit of two years for pretrial detention, excluding delays attributable to the defendant, if the prosecutor is not ready to proceed to trial." Matter of Request to Release Certain Pretrial Detainees, 245 N.J. 218, 231 (2021) (citing N.J.S.A. 2A:162-22(a)(2)(a)). See R. 3:25-4. The CJRA "establishes statutory speedy trial deadlines for defendants who are detained pending trial." State v. Robinson, 229 N.J. 44, 54 (2017) (citing N.J.S.A. 2A:162-22).

3. A decision on whether a defendant should be held in pretrial detention under the CJRA is reviewed for an abuse of discretion. State v. S.N., 231 N.J. 497, 515 (2018); State v. Williams, 464 N.J. Super. 260, 269 (App. Div. 2020). "The proper standard of review is whether the court abused its discretion by relying on an impermissible basis, by relying on irrelevant or inappropriate factors, by failing to consider all relevant factors, or by making a clear error in judgment," State v. S.N., 231 N.J. 497, 515 (2018), "but de novo review applies with respect to alleged errors or

misapplications of law within that court's analysis." State v. C.W., 449 N.J. Super. 231, 235 (App. Div. 2017). See State v. Molchor, 464 N.J. Super. 274, 285 (App. Div. 2020) (the appellate court reviews de novo questions of the CJRA's meaning). See State v. Mackroy-Davis, 251 N.J. 217, ___ (2022) (slip op. at 32) (Appellate Division should decide a motion for leave to appeal from an order regarding speedy trial calculations within five days).

4. Speedy Trial - Note, however, that the time periods set forth in the CJRA, which focus on pretrial detention, do not establish a bright line for a deciding a speedy trial application. In determining whether a defendant's constitutional right to a speedy trial has been violated, courts consider the four-factor balancing test set forth in Barker v. Wingo, 407 U.S. 514, 530 (1972), which requires consideration of the "[l]ength of delay, the reason for the delay, the defendant's assertion of his [or her] right, and prejudice to the defendant." See State v. Cahill, 213 N.J. 253, 264 (2013). The reviewing court gives deference to the trial court's supported factual findings as to the assessment and balancing of the Barker factors. State v. Fulford, 349 N.J. Super. 183, 195 (App. Div. 2002).

E. Pretrial Rehabilitation Program

N.J.S.A. 2C:35-14 provides for a rehabilitation program for drug and alcohol dependent persons subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility. "[T]he State has the right to appeal a special probation Drug Court sentence only if it is illegal." State v. Hyland, 238 N.J. 135, 145 (2019). Review by the appellate court of "a trial court's application of the Drug Court Statute and Manual to a defendant involves a question of law," and therefore is reviewed de novo. State v. Maurer, 438 N.J. Super. 402, 411 (App. Div. 2014).

F. Motions to Suppress

1. The scope of review of a decision on a motion to suppress is limited. State v. Ahmad, 246 N.J. 592, 609 (2021); State v. Nelson, 237 N.J. 540, 551 (2019); State v. Boone, 232 N.J. 417, 425 (2017); State v. Robinson, 200 N.J. 1, 15 (2009). "Generally,

on appellate review, a trial court's factual findings in support of granting or denying a motion to suppress must be upheld when 'those findings are supported by sufficient credible evidence in the record.'" State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. S.S., 229 N.J. 360, 374 (2017)). The appellate court gives deference to those factual findings in recognition of the trial court's "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Elders, 192 N.J. 224, 243 (2007). The reviewing court "ordinarily will not disturb the trial court's factual findings unless they are 'so clearly mistaken that the interests of justice demand intervention and correction.'" State v. Goldsmith, ___ N.J. ___, ___ (2022) (slip op. at 16) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)). However, legal conclusions to be drawn from those facts are reviewed de novo. State v. Radel, 249 N.J. 469, 493 (2022); State v. Hubbard, 222 N.J. 249, 263 (2015).

2. The scope of review of a search warrant is limited. State v. Chippero, 201 N.J. 14, 32 (2009). "[R]eviewing courts 'should pay substantial deference' to judicial findings of probable cause in search warrant applications." State v. Andrews, 243 N.J. 447, 464 (2020) (quoting State v. Kasabucki, 52 N.J. 110, 117 (1968)). See State v. Marshall, 123 N.J. 1, 72 (1991) ("[w]e accord substantial deference to the discretionary determination resulting in the issuance of the warrant").

3. The reviewing court is not, however, bound by a trial court's determination of the validity of the defendant's waiver of constitutional rights or the voluntariness of a confession, which are legal questions. State v. O.D.A.-C., 250 N.J. 408, 425 (2022).

G. Competence to Stand Trial

The test for competence to stand trial is codified in N.J.S.A. 2C:4-4. An appellate court's review of a trial court's determination that a defendant was competent to stand trial is "highly deferential." State v. Purnell, 394 N.J. Super. 28, 50 (App. Div. 2007); State v. M.J.K., 369 N.J. Super. 532, 548 (App. Div. 2004); State v. Moya, 329 N.J. Super. 499, 506 (App. Div. 2000).

H. Waiver of Juvenile to Adult Court

1. An appellate court reviews a trial court's decision granting the prosecutor's application for waiver of a juvenile under N.J.S.A. 2A:4A-26.1, for an abuse of discretion, which requires "that 'findings of fact be grounded in competent, reasonably credible evidence' and 'correct legal principles be applied.'" In re State ex rel. A.D., 212 N.J. 200, 214-15 (2012) (quoting State v. R.G.D., 108 N.J. 1, 15 (1987)). Appellate review requires an assessment of "whether the correct legal standard has been applied, whether inappropriate factors have been considered, and whether the exercise of discretion constituted a 'clear error of judgment' in all of the circumstances." State v. R.G.D., 108 N.J. 1, 15 (1987). See State ex rel. A.D., 212 N.J. 200, 215 (2012). "[C]onsideration should be given to the experience of the Family Court in adjudicating juvenile waiver cases." State in Interest of J.F., 446 N.J. Super. 39, 52 (App. Div. 2016).

2. Moreover, "the standard of review of the prosecutor's waiver decision is deferential. The trial court should uphold the decision unless it is 'clearly convinced that the prosecutor abused his discretion in considering" the enumerated statutory factors.'" State in Interest of Z.S., 464 N.J. Super. 507, 519 (App. Div. 2020) (quoting N.J.S.A. 2A:4A-26.1(c)(3)).

II. TRIAL ISSUES

A. Motion for Judgment of Acquittal

1. Rule 3:18-1 (after all the evidence) provides in part that "[a]t the close of the State's case or after the evidence of all parties has been closed, the court shall, on defendant's motion or its own initiative, order the entry of a judgment of acquittal of one or more offenses charged in the indictment or accusation if the evidence is insufficient to warrant a conviction."

2. Rule 3:18-2 (after discharge of jury) provides in part that "[i]f the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made. . . . The court on such motion may set aside a verdict of

guilty and order the entry of a judgment of acquittal and may so order if no verdict has been returned."

3. Note that when a motion is made at the close of the State's case, the trial judge must deny the motion if "viewing the State's evidence in its entirety, be that evidence direct or circumstantial," and giving the State the benefit of all reasonable inferences, "a reasonable jury could find guilt beyond a reasonable doubt." State v. Reyes, 50 N.J. 454, 458-59 (1967). See State v. Jones, 242 N.J. 156, 168 (2020). Only the State's proofs are considered.

4. However, "[w]hen a defendant moves for a judgment of acquittal after the verdict, [a reviewing court] consider[s] the evidence in its entirety, including the evidence that defendant presented." State v. Lodzinski, 249 N.J. 116, 141 (2021) (first alteration in original) (quoting State v. Lodzinski, 246 N.J. 331, 340 (2021) (Patterson, J. concurring)). See also State v. Fuqua, 234 N.J. 583, 590-91 (2018) (an appellate court "will deny a motion for a judgment of acquittal if the evidence, viewed in its entirety, be it direct or circumstantial, and giving the State the benefit of all of its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, is sufficient to enable a jury to find that the State's charge has been established beyond a reasonable doubt").

5. In assessing the sufficiency of the evidence on an acquittal motion, the appellate court applies a de novo standard of review. State v. Cruz-Pena, 243 N.J. 342, 348 (2020); State v. Jones, 242 N.J. 156, 168 (2020); State v. Fuqua, 234 N.J. 583, 590 (2018); State v. Williams, 218 N.J. 576, 593-94 (2014). The appellate court "must determine whether, based on the entirety of the evidence and after giving the State the benefit of all its favorable testimony and all the favorable inferences drawn from that testimony, a reasonable jury could find guilt beyond a reasonable doubt." State v. Williams, 218 N.J. 576, 594 (2014) (citing State v. Reyes, 50 N.J. 454, 458-59 (1967)). Reviewing courts "assess the sufficiency in the record anew, and therefore owe no deference to the findings of the trial court." State v. Berry, 471 N.J. Super. 76, 99 (App. Div. 2022).

B. Brady Rule

A trial court's determination as to whether evidence is subject to disclosure under Brady v. Maryland, 373 U.S. 83 (1963), presents a mixed question of law and fact. State v. Marshall, 148 N.J. 89, 185 (1997); State v. Robertson, 438 N.J. Super. 47, 64 (App. Div. 2014). For mixed questions of law and fact, appellate courts give deference to the trial court's supported factual findings, but review de novo the court's application of legal rules to the factual findings. State v. Pierre, 223 N.J. 560, 577 (2015).

C. Pleas

"A defendant who elects to plead guilty to a criminal offense gives up fundamental constitutional rights, including the right to be presumed innocent until determined guilty beyond a reasonable doubt, the guarantee against self-incrimination and the right to confront one's accusers." State v. McDonald, 211 N.J. 4, 15 (2012).

1. Rejection of a Guilty Plea

a. Rule 3:9-2 provides that "[t]he court, in its discretion, may refuse to accept a plea of guilty and shall not accept such plea without first questioning the defendant personally, under oath or by affirmation, and determining by inquiry of the defendant and others, in the court's discretion, that there is a factual basis for the plea and that the plea is made voluntarily, not as a result of any threats or of any promises or inducements not disclosed on the record, and with an understanding of the nature of the charge and the consequences of the plea." See State v. Urbina, 221 N.J. 509, 526 (2015); State v. Tate, 220 N.J. 393, 406 (2015); State v. Slater, 198 N.J. 145, 155 (2009) "[A] trial court must not accept a guilty plea unless it is satisfied that the defendant is in fact guilty." State v. Lipa, 219 N.J. 323, 331 (2014).

b. An appellate court reviews a lower court's refusal to accept a plea under the abuse of discretion standard. State v.

Daniels, 276 N.J. Super. 483, 487 (App. Div. 1994). An abuse of discretion occurs if the court rejects a plea because it believes the agreed upon sentence was too lenient or a jury could convict the defendant of a greater offense. State v. Madan, 366 N.J. Super. 98, 110 (App. Div. 2004).

c. "A trial judge's finding that a plea was voluntarily and knowingly entered is entitled to appellate deference so long as that determination is supported by sufficient credible evidence in the record." State v. Lipa, 219 N.J. 323, 332 (2014). "Once it is established that a guilty plea was made voluntarily, it may only be withdrawn at the discretion of the trial court." State v. Lipa, 219 N.J. 323, 332 (2014).

d. A presumption of reasonableness attaches to the sentence where a defendant receives the exact sentence bargained for. State v. S.C., 289 N.J. Super. 61, 71 (App. Div. 1996).

e. Note that "[i]n the Brimage Guidelines, [Revised Attorney General Guidelines for Negotiating Cases under N.J.S.A. 2C:35-12 (July 15, 2004)], the Attorney General provided detailed instructions to prosecutors regarding the exercise of their discretion in tendering plea offers under N.J.S.A. 2C:35-12 [Controlled Substances] that waive or reduce otherwise mandatory terms of imprisonment and parole ineligibility for certain drug offenses." State v. A.T.C., 239 N.J. 450, 473 (2019). The Brimage guidelines contain a "Table of Authorized Plea Offers," which "sets forth presumptive plea offers based on a defendant's offense, his prior criminal history, and the timing of the plea offer." State v. Fowlkes, 169 N.J. 387, 394 (2001). However, it is important to note that the Attorney General issued a statewide directive to law enforcement providing that "[i]n formulating a plea offer, the prosecuting attorney shall consult the Revised Brimage Guidelines, but shall not be bound by its provisions." Attorney General Law Enforcement Directive No. 2021-4, "Directive Revising Statewide Guidelines Concerning the Waiver of Mandatory Minimum Sentences in Non-Violent Drug Cases Pursuant to

N.J.S.A. 2C:35-12," at 7 (Apr. 19, 2021).

2. Motion to Withdraw a Guilty Plea

a. Our courts apply different standards to a defendant's motion for withdrawal of a guilty plea made before and after sentence. State v. McDonald, 211 N.J. 4, 16 (2012); State v. Munroe, 210 N.J. 429, 441 (2012). Motions filed at or before the time of sentencing are granted in the "interests of justice," Rule 3:9-3(e), while post-sentencing motions must meet a higher standard of "manifest injustice," Rule 3:21-1. State v. Lipa, 219 N.J. 323, 332 (2014). "Understandably, the interest in finality is greater after sentence and entry of a judgment of conviction, and thus the standard for withdrawing a guilty plea is more onerous." State v. Munroe, 210 N.J. 429, 441 (2012)

b. Nonetheless, upon review, "[u]nder either standard, a plea may only be set aside in the exercise of the court's discretion." State v. Slater, 198 N.J. 145, 156 (2009). See State v. Madan, 366 N.J. Super. 98, 108 (App. Div. 2004) ("[i]n determining whether to reject a plea bargain under Rule 3:9-3(e), a trial court has 'wide discretion.'"). This standard of review is different from a trial court's denial of a motion to vacate a plea for lack of an adequate factual basis, which is de novo. State v. Tate, 220 N.J. 393, 404 (2015).

c. The trial judge's decision rejecting a motion to withdraw a plea upon an assertion of innocence is judged under the four-prong test in State v. Slater, 198 N.J. 145, 156 (2009): "(1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal [will] result in unfair prejudice to the State or unfair advantage to the accused." In reviewing a trial court's findings on the Slater factors, an appellate court applies the abuse of discretion standard. State v. Tate, 220 N.J. 393, 404 (2015).

d. Challenges to a plea based on the sufficiency of the

factual basis for a guilty plea are generally brought by way of a motion to withdraw the plea, or on post-conviction relief. State v. Urbina, 221 N.J. 509, 527 (2015). "Although less common, a defendant may also challenge the sufficiency of the factual basis for his guilty plea on direct appeal." State v. Urbina, 221 N.J. 509, 527 (2015). "The standard of review of a trial court's denial of a motion to vacate a plea for lack of an adequate factual basis is de novo." State v. Urbina, 221 N.J. 509, 528 (2015) (quoting State v. Tate, 220 N.J. 393, 404 (2015)). "An appellate court is in the same position as the trial court in assessing whether the factual admissions during a plea colloquy satisfy the essential elements of an offense." State v. Tate, 220 N.J. 393, 404 (2015). Note that "when the issue is solely whether an adequate factual basis supports a guilty plea, a Slater analysis is unnecessary." State v. Tate, 220 N.J. 393, 404 (2015).

e. "If an appellate court determines that 'a plea has been accepted without an adequate factual basis, the plea, the judgment of conviction, and the sentence must be vacated, the dismissed charges reinstated, and defendant allowed to re-plead or to proceed to trial.'" State v. Campfield, 213 N.J. 218, 232 (2013) (quoting State v. Barboza, 115 N.J. 415, 420 (1989)). That remedy also applies when the defendant enters the guilty plea "without a plea offer from the prosecutor, but after the defendant has been advised by the trial court regarding the maximum sentence the judge was 'inclined to impose.'" State v. Ashley, 443 N.J. Super. 10, 13 (App. Div. 2015).

i. Prior to sentencing Before sentencing, under Rule 3:9-3(e), courts exercise their discretion liberally to allow plea withdrawals. State v. Slater, 198 N.J. 145, 156 (2009). In fact, "[i]n a close case, the 'scales should usually tip in favor of defendant.'" State v. Slater, 198 N.J. 145, 156 (2009) (quoting State v. Taylor, 80 N.J. 353, 365 (1979)). However, "defendants have a heavier burden in seeking to withdraw pleas entered as part of a plea bargain."

State v. Slater, 198 N.J. 145, 160 (2009). See State v. Means, 191 N.J. 610, 619 (2007); State v. Smullen, 118 N.J. 408, 416 (1990).

Although no specific corresponding right is found in the Court Rules to allow the State to withdraw its plea agreement, our courts have held that "[i]n proper circumstances the State may withdraw its agreement after the defendant has accepted." State v. Smith, 306 N.J. Super. 370, 383 (App. Div. 1997). See State v. Conway, 416 N.J. Super. 406, 411 (App. Div. 2010).

ii. After sentencing After sentencing, under Rule 3:21-1, the court may in its discretion permit the defendant to withdraw a plea to correct a manifest injustice. State v. Lipa, 219 N.J. 323, 332 (2014). "[A] plea may only be set aside in the exercise of the court's discretion." State v. Slater, 198 N.J. 145, 150 (2009). "That discretionary determination necessitates a weighing of 'the policy considerations which favor the finality of judicial procedures against those which dictate that no man be deprived of his liberty except upon conviction after a fair trial or after the entry of a plea of guilty under circumstances showing that it was made truthfully, voluntarily and understandably.'" State v. Johnson, 182 N.J. 232, 237 (2005) (quoting State v. McQuaid, 147 N.J. 464, 487 (1997) (quoting State v. Herman, 47 N.J. 73, 76-77 (1966))).

"[I]f a defendant wishes to withdraw a guilty plea after sentencing has occurred, 'the court weighs more heavily the State's interest in finality and applies a more stringent standard' than that which is applied to a withdrawal application made before sentencing has occurred." State v. Johnson, 182 N.J. 232, 237 (2005) (quoting State v. McQuaid, 147 N.J. 464, 487 (1997)).

3. Appeal (after plea agreement)

"Generally, a defendant who pleads guilty is prohibited from

raising, on appeal, the contention that the State violated his constitutional rights prior to the plea." State v. Means, 191 N.J. 610, 625 (2007) (quoting State v. Knight, 183 N.J. 449, 470 (2005)). There are, however, three exceptions: (1) Rule 3:5-7(d) (the denial of a motion to suppress may be reviewed on appeal even though the judgment of conviction is entered following a guilty plea); (2) Rule 3:28-6(d) (denial of an application or enrollment for pretrial intervention); and (3) Rule 3:9-3(f) (a defendant may enter a conditional guilty plea (with the consent of the court and the prosecutor) and reserve the right to appeal from the adverse determination of any specified pretrial motion). See State v. K.P.S., 221 N.J. 266, 280 (2015) ("Under Rule 3:5-7(d), defendant had a right to appeal the denial of his suppression motion following the entry of his guilty plea"); State v. Benjamin, 442 N.J. Super. 258, 263 (App. Div. 2015) ("[o]rdinarily, the failure to enter a conditional plea would bar appellate review of other than search and seizure issues"), aff'd as modified, 228 N.J. 358 (2017).

D. Prosecutorial Misconduct

1. The appellate court reverses a conviction for prosecutorial misconduct when it was "clearly and unmistakably improper" and "so egregious" in the context of the trial as a whole that it deprived the defendant of a fair trial. State v. Pressley, 232 N.J. 587, 593 (2018). See State v. Garcia, 245 N.J. 412, 436 (2021); State v. McNeil-Thomas, 238 N.J. 256, 275 (2019); State v. Jackson, 211 N.J. 394, 407 (2012).

2. "In deciding whether prosecutorial conduct deprived a defendant of a fair trial, 'an appellate court must take into account the tenor of the trial and the degree of responsiveness of both counsel and the court to improprieties when they occurred.'" State v. Williams, 244 N.J. 592, 608 (2021) (quoting State v. Frost, 158 N.J. 76, 83 (1999)). "If, after completing such a review, it is apparent to the appellate court that the remarks were sufficiently egregious, a new trial is appropriate, even in the face of overwhelming evidence that a defendant may, in fact, be guilty." State v. Smith, 212 N.J. 365, 404 (2012).

a. Summations

"[P]rosecutors are given wide latitude in making their summations and may sum up 'graphically and forcefully.'" State v. Garcia, 245 N.J. 412, 435 (2021) (quoting State v. Johnson, 31 N.J. 489, 510 (1960)). "'[P]rosecutors in criminal cases are expected to make vigorous and forceful closing arguments to juries' and are therefore 'afforded considerable leeway in closing arguments as long as their comments are reasonably related to the scope of the evidence presented.'" State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (quoting State v. Frost, 158 N.J. 76, 82 (1999)). See State v. Williams, 471 N.J. Super. 34, 43 (App. Div. 2022) ("reiterating seminal principles underscoring the prosecutor's responsibilities and duties").

"Although adversarial, our system of criminal justice does not tolerate convictions achieved by improper methods and, thus, when summing up the State's basis for asking a jury to convict a defendant, a prosecutor is obliged to confine summation remarks to the evidence in the case and only those reasonable inferences that may be drawn from that evidence." State v. McNeil-Thomas, 238 N.J. 256, 283 (2019).

"Although the prosecutor is free to discuss the direct and inferential evidence presented at trial, the prosecutor cannot press an argument that is untrue--that is contradicted by an objective video recording excluded from evidence for reasons unrelated to its authenticity." State v. Garcia, 245 N.J. 412, 435 (2021).

"Visual aids such as PowerPoint presentations must adhere to the same standards as counsels' spoken words." State v. Williams, 244 N.J. 592, 617 (2021).

Nonetheless, "even when a prosecutor's remarks stray over the line of permissible commentary," the appellate court reverses "a conviction on the basis of prosecutorial misconduct only if 'the conduct was so egregious as to

deprive defendant of a fair trial.'" State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (quoting State v. Wakefield, 190 N.J. 397, 437 (2007)). "Only when the prosecutor's conduct in summation so 'substantially prejudice[s] the defendant's fundamental right to have the jury fairly evaluate the merits of his defense' must a court reverse a conviction and grant a new trial." State v. Garcia, 245 N.J. 412, 436 (2021) (quoting State v. Bucanis, 26 N.J. 45, 56 (1958)).

And "[g]enerally, remarks by a prosecutor, made in response to remarks by opposing counsel, are harmless." State v. C.H., 264 N.J. Super. 112, 135 (App. Div. 1993). Moreover, "[i]f defense counsel fails to object contemporaneously to the prosecutor's comments, 'the reviewing court may infer that counsel did not consider the remarks to be inappropriate.'" State v. Clark, ___ N.J. ___, ___ (2022) (quoting State v. Vasquez, 265 N.J. Super. 528, 560 (App. Div. 1993)).

b. Examples of misconduct

See Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:10-2 (2022), for a comprehensive list of examples.

A prosecutor's reference during summation to a still shot from The Shining with the innocuous words, "Here's Johnny!," constituted reversible prosecutorial misconduct. State v. Williams, 244 N.J. 592, 617 (2021).

Error to play for the jury the portion of the defendant's statement in which he invoked his right to counsel and the detective continued questioning him, as further emphasized by the prosecutor's comments in summation that the detective had "practically begged" defendant for information on his alibi. State v. Clark, 251 N.J. 266, ___ (2022) (slip op. at 32).

Prosecutor's repeated statements during summation accusing defendant of lying in his testimony and calling him a liar constituted reversible prosecutorial conduct. State v.

Supreme Life, ___ N.J. Super. ___, ___ (App. Div. 2022) (slip op. at 13).

"[A] prosecutor may not use a defendant's post-arrest silence against him." State v. Taffaro, 195 N.J. 442, 456 (2008).

"Prosecutors must walk a fine line when making comparisons, whether implicit or explicit, between a defendant and an individual whom the jury associates with violence or guilt." State v. Williams, 244 N.J. 592, 617 (2021).

"[I]t is improper for the prosecutor to declare his individual or official opinion or belief of a defendant's guilt in such manner that the jury may understand the opinion or belief to be based upon something which he knows outside the evidence." State v. Wakefield, 190 N.J. 397, 440 (2007) (quoting State v. Thornton, 38 N.J. 380, 398 (1962)).

E. Inconsistent Verdicts

"[A] jury may render inconsistent verdicts so long as there exists a sufficient evidential basis in the record to support the charge on which the defendant is convicted." State v. Banko, 182 N.J. 44, 46 (2004). "We accept inconsistent verdicts in our criminal justice system, understanding that jury verdicts may result from lenity, compromise, or even mistake." State v. Goodwin, 224 N.J. 102, 116 (2016). On review, the appellate court determines only "whether the evidence in the record was sufficient to support a conviction on any count on which the jury found the defendant guilty." State v. Goodwin, 224 N.J. 102, 116 (2016) (quoting State v. Muhammad, 182 N.J. 551, 578 (2005)).

F. Stay/Bail

Rule 2:9-3(a) provides that a prison sentence shall not be stayed by the taking of an appeal; however, the court may admit the defendant to bail pending appeal, in accordance with Rule 2:9-4, which permits bail only when "the case involves a substantial question that should be determined by the appellate court, that the safety of any person or of the community will not be seriously threatened if the defendant remains on bail, and that

there is no significant risk of defendant's flight." See State v. Sanders, 107 N.J. 609, 617 (1987).

G. Compassionate Release

The Compassionate Release Statute, N.J.S.A. 30:4-123.51e, authorizes a court to order the release of an inmate not otherwise eligible for parole based on his medical condition if he satisfies the statute's requirements. The appellate court reviews the trial court's factual findings as to whether the inmate has met his burden of proof by clear and convincing evidence to determine whether they are supported by substantial credible evidence in the record. State v. F.E.D., ___ N.J. ___, ___ (2022) (slip op. at 26).

H. Megan's Law

The Appellate Division reviews "a trial court's conclusions regarding a Megan's Law [N.J.S.A. 2C:7-1 to -23], registrant's tier designation and scope of community notification for an abuse of discretion." In the Matter of the Registration of B.B., ___ N.J. Super. ___, ___ (App. Div. 2022) (slip op. at 8).

III. SENTENCING ISSUES

N.J.S.A. 2C:44-7 provides that "[a]ny action taken by the court in imposing sentence shall be subject to review by an appellate court. The court shall specifically have the authority to review findings of fact by the sentencing court in support of its findings of aggravating and mitigating circumstances and to modify the defendant's sentence upon his application where such findings are not fairly supported on the record before the trial court." For a detailed discussion of sentencing issues please refer to the Manual on New Jersey Sentencing Law, by Heather Young Keagle, Staff Attorney, Central Appellate Research, available at https://www.njcourts.gov/attorneys/assets/attyresources/manualsentencinglaw.pdf.

A. Right of Allocution

1. Rule 3:21-4(b) provides that "[s]entence shall not be imposed unless the defendant is present or has filed a written waiver of the right to be present. Before imposing sentence the

court shall address the defendant personally and ask the defendant if he or she wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment. The defendant may answer personally or by his or her attorney." See State v. Blackmon, 202 N.J. 283, 298 (2010) (the rule limits the right of allocution to defendant only or, at his or her option, to defendant's counsel).

2. "[W]hen a trial court fails to afford a defendant the opportunity to make an allocution, in violation of Rule 3:21-4(b), the error is structural and the matter must be remanded for resentencing without regard to whether there has been a showing of prejudice." State v. Jones, 232 N.J. 308, 319 (2018) (citing State v. Cerce, 46 N.J. 387, 395-97 (1966)).

B. Presentence Report

1. Rule 3:21-2(a) provides that the presentence report "shall be furnished to the defendant and the prosecutor." "The presentence report must be provided to the defendant, and the defendant is entitled to a 'fair opportunity to be heard on any adverse matters relevant to the sentencing.'" State v. Newman, 132 N.J. 159, 170 (1993) (quoting State v. Kunz, 55 N.J. 128, 144 (1969)). See N.J.S.A. 2C:44-6.

2. "In addition to the sentencing statute's general purpose provision, . . . the Legislature requires the sentencing court to give 'due consideration' to a presentence report, prepared after a defendant's conviction, which 'includes individualized information pertaining to a defendant's criminal, psychiatric, employment, personal, and family history.'" State v. Jaffe, 220 N.J. 114, 121 (2014) (quoting State v. Randolph, 210 N.J. 330, 346 (2012)).

C. Reasons for Sentence

1. Rule 3:21-4(h) provides that "[a]t the time sentence is imposed the judge shall state reasons for imposing such sentence including findings pursuant to the criteria for withholding or imposing imprisonment or fines under N.J.S.A. 2C:44-1 to 2C:44-3; the factual basis supporting a finding of particular aggravating

or mitigating factors affecting sentence. . . ." See State v. Comer, 249 N.J. 359, 404 (2022). The statement of reasons must be included in the final judgment. R. 3:21-5.

2. Fifteen aggravating factors are set forth in N.J.S.A. 2C:44-1(a), and fourteen mitigating factors are set forth in N.J.S.A. 2C:44-1(b). See State v. Rivera, 249 N.J. 285, 301 (2021) (the Legislature added a defendant's youth as a statutory mitigating factor, N.J.S.A 2C:44-1(b)(14) effective October 19, 2020). Mitigating factor fourteen, N.J.S.A. 2C:44-1(b)(14), applies prospectively. State v. Lane, 251 N.J. 84 (2022).

3. Trial courts must "explain and make a thorough record of their findings to ensure fairness and facilitate review." State v. Comer, 249 N.J. 359, 404 (2022). See State v. Torres, 246 N.J. 246, 272 (2021) (requiring an "explanation for the overall fairness of a sentence"); State v. Fuentes, 217 N.J. 57, 74 (2014) ("A clear and detailed statement of reasons is thus a crucial component of the process conducted by the sentencing court, and a prerequisite to effective appellate review."). "Proper sentencing thus requires an explicit and full statement of aggravating and mitigating factors and how they are weighed and balanced." State v. McFarlane, 224 N.J. 458, 466 (2016) (quoting State v. Randolph, 210 N.J. 330, 348 (2012)). "[C]ritical to the sentencing process and appellate review is the need for the sentencing court to explain clearly why an aggravating or mitigating factor presented by the parties was found or rejected and how the factors were balanced to arrive at the sentence." State v. Case, 220 N.J. 49, 66 (2014) (citing State v. Fuentes, 217 N.J. 57, 73 (2014)).

4. "[I]f the trial court fails to identify relevant aggravating and mitigating factors, or merely enumerates them, or forgoes a qualitative analysis, or provides little 'insight into the sentencing decision,' then the deferential standard [applied to sentencing decisions] will not apply." State v. Case, 220 N.J. 49, 65 (2014) (quoting State v. Kruse, 105 N.J. 354, 363 (1987)). Failure to give complete, specific reasons can result in remand for amended reasons. State v. Martelli, 201 N.J. Super 378, 385 (App. Div. 1985); State v. Sene, 443 N.J. Super. 134, 145 (App. Div. 2015).

D. Standards of Review

1. An appellate court's review of a sentencing court's imposition of sentence is guided by an abuse of discretion standard. State v. Torres, 246 N.J. 246, 272 (2021); State v. Jones, 232 N.J. 308, 318 (2018). An appellate court reviews a sentence "in accordance with a deferential standard." State v. Trinidad, 241 N.J. 425, 453 (2020) (quoting State v. Fuentes, 217 N.J. 57, 70 (2014)). The appellate court should defer to the sentencing court's factual findings and should not "second-guess" them. State v. Case, 220 N.J. 49, 65 (2014). "Appellate review of a criminal sentence is limited; a reviewing court decides whether there is a 'clear showing of abuse of discretion.'" State v. Bolvito, 217 N.J. 221, 228 (2014) (quoting State v. Whitaker, 79 N.J. 503, 512 (1979)).

2. The deferential standard of review applies, however, "only if the trial judge follows the Code and the basic precepts that channel sentencing discretion.'" State v. Trinidad, 241 N.J. 425, 453 (2020) (quoting State v. Case, 220 N.J. 49, 65 (2014)). If the sentencing court "follow[ed] the Code and the basic precepts that channel sentencing discretion," the reviewing court should affirm the sentence, so long as the sentence does not "shock the judicial conscience." State v. Case, 220 N.J. 49, 65 (2014).

3. "Appellate courts must affirm the sentence of a trial court unless: (1) the sentencing guidelines were violated; (2) the findings of aggravating and mitigating factors were not 'based upon competent credible evidence in the record;' or (3) 'the application of the guidelines to the facts' of the case 'shock[s] the judicial conscience.'" State v. Bolvito, 217 N.J. 221, 228 (2014) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)). The test also applies to "sentences that result from guilty pleas, including those guilty pleas that are entered as part of a plea agreement." State v. Fuentes, 217 N.J. 57, 71 (2014) (quoting State v. Sainz, 107 N.J. 283, 292 (1987)).

4. Trial judges also have discretion to determine if a sentence should be concurrent or consecutive. State v. Cuff, 239 N.J. 321, 350 (2019). A sentencing court should "place on the record its

statement of reasons for the decision to impose consecutive sentences, which . . . should focus 'on the fairness of the overall sentence, and the sentencing court should set forth in detail its reasons for concluding that a particular sentence is warranted.'" State v. Torres, 246 N.J. 246, 267-68 (2021) (quoting State v. Miller, 108 N.J. 112, 122 (1987)).

5. The appellate court's jurisdiction to review sentences includes the power to make new findings of fact, to reach independent determinations of the facts, and to supplement the record on appeal. State v. Jarbath, 114 N.J. 394, 412 (1989); R. 2:10-3. However, "the exercise of appellate original jurisdiction over sentencing should not occur regularly or routinely; . . . a remand to the trial court for resentencing is strongly to be preferred." State v. Bell, 250 N.J. 519, 544-45 (2022) (quoting State v. Jarbath, 114 N.J. 394, 411 (1989)). When "a remand will work an injustice by continuing" the defendant's incarceration, then it is appropriate for an appellate court to exercise original jurisdiction and resentence the defendant. State v. L.V., 410 N.J. Super. 90, 113 (App. Div. 2009).

6. In the appeal of a juvenile delinquency adjudication, the appellate "standard of review is narrow and is limited to evaluation of whether the trial judge's findings are supported by substantial, credible evidence in the record as a whole." State in Interest of D.M., 238 N.J. 2, 15 (2019) (quoting State in Interest of J.P.F., 368 N.J. Super. 24, 31 (App. Div. 2004)).

IV. POST-CONVICTION RELIEF

A. Standard of Review

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)). Post-conviction relief (PCR) provides "a built-in 'safeguard that ensures that a defendant was not unjustly convicted.'" State v. Nash, 212 N.J. 518, 540 (2013) (quoting State v. McQuaid, 147 N.J. 464, 482 (1997)).

The standard of review depends on the errors alleged. Appellate court

"review is necessarily deferential to a PCR court's factual findings based on its review of live witness testimony." State v. Nash, 212 N.J. 518, 540 (2013). However, a PCR court's interpretation of the law is reviewed de novo. State v. Nash, 212 N.J. 518, 540-41 (2013). See State v. Pierre, 223 N.J. 560, 576 (2015).

B. Grounds for Post-Conviction Relief

1. Rule 3:22-2 provides that a petition for post-conviction relief is cognizable if based on the following grounds: (a) substantial denial in the conviction proceedings of defendant's rights under the Federal or State Constitution; (b) lack of jurisdiction to impose the judgment; (c) imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law if raised together with other grounds cognizable under paragraph (a), (b), or (d) of this rule; (d) any ground previously available as a basis for collateral attack upon a conviction by habeas corpus or any other common-law or statutory remedy; and (e) a claim of ineffective assistance of counsel based on trial counsel's failure to file a direct appeal of the judgment of conviction and sentence upon defendant's timely request.

2. "A petitioner is generally barred from presenting a claim on PCR that could have been raised at trial or on direct appeal, R. 3:22-4(a), or that has been previously litigated, R. 3:22-5." State v. Nash, 212 N.J. 518, 546 (2013). See R. 3:22-4 (exceptions). "[P]ost-conviction relief is not a substitute for direct appeal; nor is it an opportunity to relitigate a case on the merits." State v. Szemple, 247 N.J. 82, 97 (2021).

3. A first petition for PCR must be filed within five years of the date of entry of the judgment of conviction, unless, among another things, the petitioner "alleges facts showing that the delay beyond said time was due to defendant's excusable neglect and that there is a reasonable probability that if the defendant's factual assertions were found to be true enforcement of the time bar would result in a fundamental injustice. . . ." R. 3:22-12(a)(1)(A). See State v. Dock, 205 N.J. 237, 245 n.2 (2011).

4. A second or subsequent petition must be filed within one

year after the latest of: "(A) the date on which the constitutional right asserted was initially recognized by the United States Supreme Court or the Supreme Court of New Jersey, if that right has been newly recognized by either of those Courts and made retroactive by either of those Courts to cases on collateral review; or (B) the date on which the factual predicate for the relief sought was discovered, if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence; or (C) the date of the denial of the first or subsequent application for post-conviction relief where ineffective assistance of counsel that represented the defendant on the first or subsequent application for postconviction relief is being alleged." R. 3-22:12(a)(2).

5. The time limitations "shall not be relaxed," except as provided in Rule 3-22:12(b). State v. Marolda, 471 N.J. Super. 49, 62 (App. Div. 2022). However, "petitioners are rarely barred from raising ineffective-assistance-of-counsel claims on post-conviction review. Such claims may fall within Rule 3:22-4(c), which affords post-conviction review for constitutional claims that could have been raised earlier, because those claims are grounded in the Sixth Amendment and the New Jersey Constitution." State v. Preciose, 129 N.J. 451, 459-60 (1992). See State v. Hess, 207 N.J. 123, 145 (2011). The "rules do not "require[ ] this Court to acquiesce to a miscarriage of justice." State v. Hannah, 248 N.J. 148, 178 (2021) (quoting State v. Nash, 212 N.J. 518, 546 (2013)).

6. On appeal, the court applies a deferential standard of review deferring "to the PCR court's factual findings, given its opportunity to hear live witness testimony, and '. . . uphold[s] the PCR court's findings that are supported by sufficient credible evidence in the record.'" State v. Gideon, 244 N.J. 538, 551 (2021) (quoting State v. Nash, 212 N.J. 518, 546 (2013)).

V. INEFFECTIVE ASSISTANCE OF COUNSEL

A. Right to Counsel

"Those accused in criminal proceedings are guaranteed the right to counsel to assist in their defense. U.S. Const. amend. VI; N.J. Const. art. I, ¶ 10." State v. Gideon, 244 N.J. 538, 549 (2021). "To satisfy the

right to counsel guaranteed by our Federal and State Constitutions, it is not enough '[t]hat a person who happens to be a lawyer is present at trial alongside the accused, rather, the right to counsel has been interpreted by the United States Supreme Court and this Court as 'the right to the effective assistance of counsel.'" State v. Gideon, 244 N.J. 538, 550 (2021) (citation omitted) (quoting Strickland v. Washington, 466 U.S. 668, 685-86 (1984)).

B. Ineffective Assistance

"Ineffective-assistance-of-counsel claims are particularly suited for post-conviction review because they often cannot reasonably be raised in a prior proceeding." State v. Hess, 207 N.J. 123, 145 (2011) (quoting State v. Preciose, 129 N.J. 451, 460 (1992)).

C. Appeal

1. In addressing an ineffective assistance claim, whether on direct appeal or post-conviction relief, New Jersey courts follow the standard formulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687 (1984). State v. Konecny, 250 N.J. 321, 342 (2022). "First, the defendant must show that counsel's performance was deficient." State v. Gideon, 244 N.J. 538, 550 (2021) (quoting Strickland v. Washington, 466 U.S. 668, 687 (1984)). "Second, the defendant must have been prejudiced by counsel's deficient performance." State v. Gideon, 244 N.J. 538, 550 (2021) (quoting Strickland v. Washington, 466 U.S. 668, 687 (1984)).

2. "The defendant's conviction must be reversed if both prongs of the Strickland standard have been satisfied because, in such cases, 'the ineffective representation constitutes a breakdown in the adversary process that renders the result unreliable.'" State v. Gideon, 244 N.J. 538, 550 (2021) (quoting State v. Nash, 212 N.J. 518, 542 (2013) (quoting Strickland v. Washington, 466 U.S. 668, 687 (1984))).

VI. MUNICIPAL APPEAL

A. Appeal

1. Generally, a municipal court decision is appealed to the Law Division. See R. 3:23-1; R. 7:13-1. The Law Division reviews municipal court determinations de novo on the record. R. 3:23-8(a)(2). "In the Law Division, the trial judge 'may reverse and remand for a new trial or may conduct a trial de novo on the record below.'" State v. Robertson, 228 N.J. 138, 147-48 (2017) (quoting R. 3:23-8(a)(2)). "At a trial de novo, the court makes its own findings of fact and conclusions of law but defers to the municipal court's credibility findings." State v. Robertson, 228 N.J. 138, 147 (2017) (citing State v. Ross, 189 N.J. Super. 67, 75 (App. Div. 1983). "It is well-settled that the trial judge 'giv[es] due, although not necessarily controlling, regard to the opportunity of the' municipal court judge to assess 'the credibility of the witnesses.'" State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Johnson, 42 N.J. 146, 157 (1964)).

2. On appeal from the Law Division's decision, the appellate court's review "focuses on whether there is 'sufficient credible evidence . . . in the record' to support the trial court's findings." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). "[A]ppellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Locurto, 157 N.J. 463, 474 (1999)). However, the trial court's legal rulings are considered de novo. State v. Robertson, 228 N.J. 138, 148 (2017). See State v. Locurto, 157 N.J. 463, 470 (1999) (appellate review of a de novo conviction in the Law Division following a municipal court appeal is "exceedingly narrow.").

SECTION SEVEN

STANDARDS IN CIVIL CASES ONLY

I. PRETRIAL ISSUES

A. Forum Non Conveniens

The application of the doctrine of forum non conveniens "is left to the sound discretion of the trial court, and therefore considerable deference must be paid to the court's decision." Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 557 (2011). See Kurzke v. Nissan Motor Corp. in U.S.A., 164 N.J. 159, 165 (2000).

B. Failure to State a Claim

1. "Rule 4:6-2(e) motions to dismiss for failure to state a claim upon which relief can be granted are reviewed de novo." Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 108 (2019)). In considering a Rule 4:6-2(e) motion, "[a] reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (quoting Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 108 (2019)). The test for determining the adequacy of a pleading is "whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)).

2. "If the court considers evidence beyond the pleadings in a Rule 4:6-2(e) motion, that motion becomes a motion for summary judgment, and the court applies the standard of Rule 4:46." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 107 (2019).

3. "Dismissals under Rule 4:6-2(e) are ordinarily without prejudice. . . . . [A] dismissal with prejudice is 'mandated where

the factual allegations are palpably insufficient to support a claim upon which relief can be granted,' Rieder v. State, 221 N.J. Super. 547, 552 (App. Div. 1987), or if 'discovery will not give rise to such a claim,' Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C., 237 N.J. 91, 107 (2019)." Mac Prop. Grp. LLC v. Selective Fire & Cas. Ins. Co., ___ N.J. Super. ___, ___ (App. Div. 2022) (slip op. at 16).

C. Involuntary Dismissal

Rule 4:37-2(a) provides that a trial court "in its discretion may on defendant's motion dismiss an action or any claim against the defendant" for failure to issue a timely summons or comply with any rule or order of the court. See Gonzalez v. Safe & Sound Sec. Corp., 185 N.J. 100, 115 (2005). "Such a dismissal shall be without prejudice unless otherwise specified in the order." R. 4:37-2(a).

D. Reinstatement of Complaint

Reinstatement of a civil complaint dismissed under Rule 1:13-7(a) for lack of prosecution is a matter within the judge's discretion. Baskett v. Cheung, 422 N.J. Super. 377, 382-83 (App. Div. 2011). See Est. of Semprevivo v. Lahham, 468 N.J. Super. 1, 5 (App. Div. 2021).

E. Summary Judgment

1. Rule 4:46-1 governs the timing requirement for summary judgment. See Seoung Ouk Cho v. Trinitas Reg'l Med. Ctr., 443 N.J. Super. 461, 474 (App. Div. 2015). See also Jeter v. Sam's Club, 250 N.J. 240, 250 (2022) ("it was improper for the trial judge to convert an untimely motion in limine into a motion for summary judgment").

2. Rule 4:46-2(a) sets forth the requirements for filing a motion. "A motion for summary judgment may be denied without prejudice for failure to file the required statement of material facts." Rule 4:46-2(a). See Seoung Ouk Cho v. Trinitas Reg'l Med. Ctr., 443 N.J. Super. 461, 474 n.6 (App. Div. 2015) .

3. Rule 4:46-2(c) provides that a motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." The court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

2. "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 450, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016). "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.' " Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

3. "Summary judgment should be granted, in particular, 'after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman v. Martinez, 242 N.J. 450, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). Summary judgment is not meant to "shut a deserving litigant from his trial," Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), nor is it appropriate when discovery is incomplete and critical facts are within the moving party's knowledge. Friedman v. Martinez, 242 N.J. 449, 472 (2020).

4. Appellate courts review the trial court's grant or denial of a motion for summary judgment de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73 (2022); Stewart v. N.J. Tpk. Auth./Garden State Parkway, 249 N.J. 642, 655 (2022); Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). The appellate court considers "whether the competent

evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

F. Judicial Estoppel, Res Judicata and Collateral Estoppel

Appellate courts review trial courts' decisions to invoke judicial estoppel for an abuse of discretion, Terranova v. GE Pension Tr., 457 N.J. Super. 404, 410 (App. Div. 2019), In re Declaratory Judgment Actions Filed by Various Muns., 446 N.J. Super. 259, 291 (App. Div. 2016), and reviews de novo a decision on res judicata and collateral estoppel, Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000).

II. TRIAL ISSUES

A. Motions for Judgment

1. The three principal motions for judgment during trial, Rule 4:37-2(b) (motion for judgment at the close of plaintiff's case), Rule 4:40-1 (motion for judgment at the close of all the evidence), and Rule 4:40-2(b) (motion for judgment notwithstanding the verdict), are all governed by the same evidentiary standard at trial and on appellate review. Smith v. Millville Rescue Squad, 225 N.J. 373, 397 (2016); ADS Assocs. Grp., Inc. v. Oritani Sav. Bank, 219 N.J. 496, 511 (2014); Besler v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544, 597 (2010); Verdicchio v. Ricca, 179 N.J. 1, 30 (2004).

2. "[I]f, accepting as true all the evidence which supports the position of the party defending against the motion and according him the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion must be denied." Verdicchio v. Ricca, 179 N.J. 1, 30 (2004) (quoting Est. of Roach v. TRW, Inc., 164 N.J. 598, 612 (2000)). See Smith v. Millville Rescue Squad, 225 N.J. 373, 380 (2016).

B. Equitable Remedies

The Appellate Division reviews the denial of equitable remedies for an abuse of discretion. Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993). See Kaye v. Rosefielde, 223 N.J. 218, 231 (2015) (Chancery judge has broad discretionary power to adapt equitable remedies to the particular circumstances of a case).

C. Reconsideration of Interlocutory Orders

Rule 4:42-2 provides that interlocutory orders "shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice." Reconsideration of, and grant of relief from, an interlocutory order before final judgment is a matter committed to the sound discretion of the trial judge. Lombardi v. Masso, 207 N.J. 517, 536 (2011); Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 263 (App. Div. 1987). "Until entry of final judgment, only 'sound discretion' and the 'interest of justice' guides the trial court. . . ." Lawson v. Dewar, 468 N.J. Super. 128, 134 (App. Div. 2021).

D. Summation

1. "[C]ounsel is allowed broad latitude in summation." Hayes v. Delamotte, 231 N.J. 373, 387 (2018) (quoting Colucci v. Oppenheim, 326 N.J. Super. 166, 177 (App. Div. 1999)). "[C]ounsel may draw conclusions even if the inferences that the jury is asked to make are improbable, perhaps illogical, erroneous or even absurd.'" Bender v. Adelson, 187 N.J. 411, 431 (2006) "That latitude is not without its limits, and 'counsel's comments must be confined to the facts shown or reasonably suggested by the evidence introduced during the course of the trial.'" Hayes v. Delamotte, 231 N.J. 373, 387 (2018) (quoting Colucci v. Oppenheim, 326 N.J. Super. 166, 177 (App. Div. 1999).

2. "When summation commentary transgresses the boundaries of the broad latitude otherwise afforded to counsel, a trial court must grant a party's motion for a new trial if the comments are so prejudicial that "it clearly and convincingly appears that there was a miscarriage of justice under the law." Bender v. Adelson, 187

N.J. 411, 431 (2006) (quoting R. 4:49-1(a). See Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 520 (2011) (new trial on damages was warranted based on cumulative effect of summation notwithstanding final instructions to the jury). The Appellate Division reviews a trial judge's judgment for an abuse of discretion. Bender v. Adelson, 187 N.J. 411, 435 (2006).

3. The failure to make a timely objection indicates that counsel did not believe the remarks were prejudicial when they were made, deprives the court of the opportunity to take curative action, and are reviewed for plain error. Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 523 (2011) (quoting Jackowitz v. Lang, 408 N.J. Super. 495, 505 (App. Div. 2009)).

III. POST-TRIAL ISSUES

A. Prejudgment Interest

1. Tort actions Rule 4:42-11(b) governs an award of prejudgment interest in tort actions. An award of prejudgment is, with a few exceptions, mandatory in tort actions, and is calculated in accord with Rule 4:42-11(a). See Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:42-11(b)(2022).

2. Contract and Equitable Claims In contrast, unlike prejudgment interest in tort actions, which are governed by Rule 4:42-11(b), "the award of prejudgment interest on contract and equitable claims is based on equitable principles." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 390 (2009) (quoting Cnty. of Essex v. First Union Nat'l Bank, 186 N.J. 46, 61 (2006)). In a contract case, the award of prejudgment interest and the rate at which prejudgment interest is calculated is within the sound discretion of the trial court. Cnty. of Essex v. First Union Nat'l Bank, 186 N.J. 46, 61 (2006). See Pressler & Verniero, Current N.J. Court Rules, cmt. 3 on R. 4:42-11(b) (2022).

B. Attorneys' Fees and Costs

1. "In the field of civil litigation, New Jersey courts historically follow the 'American Rule,' which provides that

litigants must bear the cost of their own attorneys' fees." Innes v. Marzano-Lesnevich, 224 N.J. 584, 592 (2016). "However, 'a prevailing party can recover those fees if they are expressly provided for by statute, court rule, or contract.'" Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 385 (2009) (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 440 (2001)).

2. In conformance with the strong public policy against shifting counsel fees, Rule 4:42-9(a) provides that "[n]o fee for legal services shall be allowed in the taxed costs or otherwise, except" in the following eight areas: 1) in a family action; 2) out of a fund in court; 3) in a probate action; 4) in an action for foreclosure of a mortgage; 5) in an action to foreclose a tax certificate; 6) in an action upon liability or indemnity policy of insurance; 7) as expressly provided by rules in any action; and 8) in all cases where attorneys' fees are permitted by statute. See also In re Est. of Folcher, 224 N.J. 496, 516 (2016) (listing statutes "that allow for fee shifting for the public good").

3. "[A] reviewing court will disturb a trial court's award of counsel fees 'only on the rarest of occasions, and then only because of a clear abuse of discretion.'" Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)).

4. For example, an award of counsel fees in matrimonial matters is within the trial court's discretion under Rule 5:3-5(c). See Williams v. Williams, 59 N.J. 229, 233 (1971). An appellate court will not disturb a counsel fee decision in matrimonial matters absent a showing of "an abuse of discretion involving a clear error in judgment." Tannen v. Tannen, 416 N.J. Super. 248, 285 (App. Div. 2010). See also Occhifinto v. Olivo Constr. Co., LLC, 221 N.J. 443, 453 (2015) (an award of counsel fees under Rule 4:42-9(a)(6) involves the exercise of sound discretion by the trial court).

5. Costs are governed under Rule 4:42-8(a) (emphasis added), which provides that "[u]nless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party." See N.J.S.A. 22A:2-8 (setting forth costs

contemplated in Court Rule).

C. Damages

1. General Damages

a. "[T]he trial court may not disturb a damages award entered by a jury unless it is so grossly excessive or so grossly inadequate 'that it shocks the judicial conscience.'" Orientale v. Jennings, 239 N.J. 569, 595 (2019) (quoting Cuevas v. Wentworth Grp., 226 N.J. 480, 485 (2016)). "If a damages award meets that standard, then the court must grant a new trial." Orientale v. Jennings, 239 N.J. 569, 596 (2019).

b. "Judicial review of the correctness of a jury's damages award requires that the trial record be viewed in the light most favorable to plaintiffs." Cuevas v. Wentworth Grp., 226 N.J. 480, 488 (2016). "The standard for reviewing a damages award that is claimed to be excessive is the same for trial and appellate courts, with one exception—an appellate court must pay some deference to a trial judge's 'feel of the case.'" Cuevas v. Wentworth Grp., 226 N.J. 480, 501 (2016) (quoting Johnson v. Scaccetti, 192 N.J. 256, 282 (2007)).

c. However, "when a court concludes that a new trial is warranted 'based solely on the excessiveness of the jury's damages award, it has the power to enter a remittitur reducing the award to the highest amount that could be sustained by the evidence.'" Orientale v. Jennings, 239 N.J. 569, 590 (2019) (quoting Cuevas v. Wentworth Grp., 226 N.J. 480, 499 (2016)).

d. "In setting a remittitur or an additur, the court must determine 'the amount that a reasonable jury, properly instructed, would have awarded.'" Orientale v. Jennings, 239 N.J. 569, 596 (2019) (quoting Tronolone v. Palmer, 224 N.J. Super. 92, 103 (App. Div. 1988)). "The acceptance of a remittitur or an additur requires the mutual consent of the

parties. If either party rejects a remittitur or an additur, the case must proceed to a new trial on damages." Orientale v. Jennings, 239 N.J. 569, 596 (2019). However, trial courts "must exercise the power of remittitur with great restraint" and only "in the unusual case in which the jury's award is so patently excessive, so pervaded by a sense of wrongness, that it shocks the judicial conscience." Cuevas v. Wentworth Grp., 226 N.J. 480, 485 (2016). "[A] judge's personal experiences with seemingly similar cases while in practice and on the bench are not relevant in deciding a remittitur motion." Cuevas v. Wentworth Grp., 226 N.J. 480, 505 (2016)). The "Court reviews a trial court's grant of remittitur de novo, but defers to a trial court's 'feel of the case.'" Graphnet, Inc. v. Retarus, Inc., 250 N.J. 24, 36 (2022) (quoting Cuevas v. Wentworth Grp., 226 N.J. 480, 505 (2016)).

2. Punitive Damages

a. The purpose of punitive damages is "the deterrence of egregious misconduct and the punishment of the offender." Herman v. Sunshine Chem. Specialties, Inc., 133 N.J. 329, 337 (1993) (citing Leimgruber v. Claridge Assocs., Ltd., 73 N.J. 450, 454 (1977)). The New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9 to -5.17, permits recovery of punitive damages "only if the plaintiff proves, by clear and convincing evidence, that the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions." N.J.S.A. 2A:15-5.12(a). Punitive damages may also only be awarded, however, if compensatory damages were awarded in the first stage of the trial. N.J.S.A. 2A:15-5.13(c); Longo v. Pleasure Prods., Inc., 215 N.J. 48, 58 (2013).

b. The decision to award or deny punitive damages rests within the sound discretion of the trier of fact. Leimgruber v. Claridge Assocs., 73 N.J. 450, 456 (1977); Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003). However,

the Punitive Damage Act "envisions an active role for the trial court in reviewing the jury's determinations." Pritchett v. State, 248 N.J. 85, 109 (2021). Thus, N.J.S.A. 2A:15-5.14(a) provides that "[b]efore entering judgment for an award of punitive damages, the trial judge shall ascertain that the award is reasonable in its amount and justified in the circumstances of the case, in light of the purpose to punish the defendant and to deter that defendant from repeating such conduct. If necessary to satisfy the requirements of this section, the judge may reduce the amount of or eliminate the award of punitive damages." The judge's decision under N.J.S.A. 2A:15-5.14(a), is reviewed for an abuse of discretion. Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 390 N.J. Super. 557, 565 (App. Div. 2007), aff'd 194 N.J. 212 (2008).

c. However, appellate review of the amount of the punitive damages award is de novo, applying the three factors identified by the Supreme Court in BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 575 (1996), to determine whether a punitive damages award is grossly excessive and comports with due process considerations. Baker v. Nat'l State Bank, 161 N.J. 220, 230 (1999); Baker v. Nat'l State Bank, 353 N.J. Super. 145, 152 (App. Div. 2002). See Pritchett v. State, 248 N.J. 85, 111 (2021) ("the Due Process Clause of the Fourteenth Amendment imposes outer limits on the allowable size of an award of punitive damages"). The three factors identified by the Court in BMW are: the degree of reprehensibility of the nondisclosure; the disparity between the harm or potential harm and the punitive damages award; and the difference between this remedy and the civil penalties authorized or imposed in comparable cases. BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 575 (1996).

d. The Appellate Division has also held that it reviews de novo a trial court's decision to dismiss a claim for punitive damages without submission to the jury. Rusak v. Ryan Auto., LLC, 418 N.J. Super. 107, 118 (App. Div. 2011) (citing Baker v. Nat'l State Bank, 353 N.J. Super. 145, 152

(App. Div. 2002)).

D. Relief from Judgment or Order

1. Rule 4:50-1 allows a trial court to relieve a party from a final judgment or order for the following specified reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under Rule 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

2. Relief under Rule 4:50-1, except for relief from default judgments, is "granted sparingly," and in exceptional circumstances. F.B. v. A.L.G., 176 N.J. 201, 207 (2003). "The decision whether to vacate a judgment on one of the six specified grounds is a determination left to the sound discretion of the trial court, guided by principles of equity." F.B. v. A.L.G., 176 N.J. 201, 207 (2003). On appeal, "[t]he decision granting or denying an application to open a judgment will be left undisturbed unless it represents a clear abuse of discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). See U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (trial court's determination under Rule 4:50-1 "warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion"). "The Court finds an abuse of discretion when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467-68 (2012) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

3. However, a court should view the setting aside of a default judgment under this rule and Rule 4:43-3, "'with great liberality,'

and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div. 1964)).

IV. SPECIAL MATTERS

A. Arbitration

1. Appellate courts "review de novo the trial court's judgment dismissing the complaint and compelling arbitration." Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 131 (2020). See Skuse v. Pfizer, Inc., 244 N.J. 30, 46 (2020).

2. "Under N.J.S.A. 2A:24-7, either party may move to confirm an award within three months of the date of its delivery. Once confirmed, the award is as conclusive as a court judgment. N.J.S.A. 2A:24-10." Policeman's Benevolent Ass'n, Loc. 292 v. Borough of N. Haledon, 158 N.J. 392, 398 (1999).

3. N.J.S.A. 2A:24-8 provides a court may vacate an arbitration award for: 1) corruption, fraud or undue means; 2) evident partiality or corruption in the arbitrators; 3) misconduct in refusing to postpone the hearing, upon sufficient cause being shown, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party; or 4) the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

4. "Judicial review of an arbitration award is very limited." Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017) (quoting Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko, 202 N.J. 268, 276 (2010)). "To foster finality and 'secure arbitration's speedy and inexpensive nature,' reviewing courts must give arbitration awards 'considerable deference.'" Borough of Carteret v. Firefighters Mut. Benevolent Ass'n, Loc. 67, 247 N.J. 202, 211 (2021) (quoting Borough of E. Rutherford v. E. Rutherford PBA Loc. 275, 213 N.J. 190, 201-02 (2013)). "[A]n arbitrator's award resolving a public sector dispute

will be accepted so long as the award is 'reasonably debatable.'" Borough of Carteret v. Firefighters Mut. Benevolent Ass'n, Loc. 67, 247 N.J. 202, 211 (2021) (quoting Borough of E. Rutherford v. E. Rutherford PBA Loc. 275, 213 N.J. 190, 201 (2013)). "An arbitrator's award is not to be cast aside lightly. It is subject to being vacated only when it has been shown that a statutory basis justifies that action." Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017) (quoting Kearny PBA Loc. # 21 v. Town of Kearny, 81 N.J. 208, 221 (1979)).

5. Certain statutes, including the Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A:23A-1 to -30, set "strict limits on the appeal of an arbitration award." Riverside Chiropractic Grp. v. Mercury Ins. Co., 404 N.J. Super. 228, 235 (App. Div. 2008).

B. Family Part Appeals

1. General Standards

a. Legal decisions of family part judges are reviewed under the same de novo standard applicable to legal decisions in other cases. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019); Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020); Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013).

b. Appellate courts defer to the trial court's findings of fact "when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). See Gnall v. Gnall, 222 N.J. 414, 428 (2015). That review is altered slightly, however, in family part cases "[b]ecause of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare v. Cesare, 154 N.J 394, 413 (1998). Appellate courts "review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413

(1998). "Thus, 'findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998). "We invest the family court with broad discretion because of its specialized knowledge and experience in matters involving parental relationships and the best interests of children." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 427 (2012). The appellate court accords "great deference to discretionary decisions of Family Part judges." Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012).

2. Equitable Distribution

N.J.S.A. 2A:34-23.1 governs equitable distribution of marital assets. The standard of review of issues as to which assets are available for distribution or the valuation of those assets, "is whether the trial judge's findings are supported by adequate credible evidence in the record." Borodinsky v. Borodinsky, 162 N.J. Super. 437, 443-44 (App. Div. 1978) (citing Rothman v. Rothman, 65 N.J. 219, 232 (1974)). Where the issue on appeal concerns the manner in which allocation of the eligible assets is made, "an appellate court may determine whether the amount and manner of the award constituted an abuse of the trial judge's discretion." Borodinsky v. Borodinsky, 162 N.J. Super. 437, 444 (App. Div. 1978). See Slutsky v. Slutsky, 451 N.J. Super. 332, 355 (App. Div. 2017) (a family part judge has broad discretion in allocating assets subject to equitable distribution).

3. Child Support Awards

a. Child Support awards are governed by Rule 5:6A. The child support guidelines set forth in Appendix IX "shall be applied when an application to establish or modify child support is considered by the court." R. 5:6A. "The guidelines may be modified or disregarded by the court only where good cause is shown." R. 5:6A. "Good cause shall consist of a) the considerations set forth in Appendix IX-A, or the presence of other relevant factors which may make

the guidelines inapplicable or subject to modification, and b) the fact that injustice would result from the application of the guidelines. In all cases, the determination of good cause shall be within the sound discretion of the court." R. 5:6A (emphasis added).

b. "When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused his or her discretion." J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)). "The trial court's 'award will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice.'" J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)).

4. Alimony

a. N.J.S.A. 2A:34-23(b) governs awards of alimony. "Whether alimony should be awarded is governed by distinct, objective standards defined by the Legislature in N.J.S.A. 2A:34-23(b)." Gnall v. Gnall, 222 N.J. 414, 429 (2015); Crews v. Crews, 164 N.J. 11, 24 (2000). "[T]he Legislature gave courts substantial discretion in determining whether to grant alimony and in setting the amount and form in which to grant it." Jacobitti v. Jacobitti, 135 N.J. 571, 575 (1994).

b. The standard of review of an alimony award is narrow—a trial court has broad, but not unlimited, discretion, which must take into account the factors set forth in N.J.S.A. 2A:34-23(b) and case law. Steneken v. Steneken, 367 N.J. Super. 427, 434 (App. Div. 2004), aff'd in part, modified in part, 183 N.J. 290 (2005); J.E.V. v. K.V., 426 N.J. Super. 475, 485 (App. Div. 2012). The Appellate Division will not disturb an alimony award if the trial judge's conclusions are consistent with the law and not "manifestly unreasonable, arbitrary, or clearly contrary to

reason or to other evidence, or the result of whim or caprice." Foust v. Glaser, 340 N.J. Super. 312, 316 (App. Div. 2001). "A trial court's findings regarding alimony should not be vacated unless the court clearly abused its discretion, failed to consider all of the controlling legal principles, made mistaken findings, or reached a conclusion that could not reasonably have been reached on sufficient credible evidence present in the record after considering the proofs as a whole." J.E.V. v. K.V., 426 N.J. Super. 475, 485 (App. Div. 2012). See Reese v. Weis, 430 N.J. Super. 552, 567 (App. Div. 2013).

c. The legislature has left applications to modify alimony to the broad discretion of trial judges. Crews v. Crews, 164 N.J. 11, 24 (2000); Storey v. Storey, 373 N.J. Super. 464, 470 (App. Div. 2004). The decision of a family court to modify alimony is reviewed under an abuse of discretion standard. Spangenberg v. Kolakowski, 442 N.J. Super. 529, 536 (App. Div. 2015); Larbig v. Larbig, 384 N.J. Super. 17, 23 (App. Div. 2006).

C. Civil Commitment

1. Civil Commitments of adults is governed by Rule 4:74-7, and of minors by Rule 4:74-7A. "The scope of appellate review of a commitment determination is extremely narrow and should be modified only if the record reveals a clear mistake." In re D.C., 146 N.J. 31, 58 (1996).

2. The scope of appellate review of a commitment under the Sexually Violent Predator Act, N.J.S.A. 30:4-27.24 to -27.38, is also "extremely narrow." In re Civ. Commitment of R.F., 217 N.J. 152, 174 (2014) (quoting In re D.C., 146 N.J. 31, 58 (1996)). See Matter of Commitment of J.S., 467 N.J. Super. 291, 302 (App. Div. 2021).

3. "[A]n appellate court should not modify a trial court's determination either to commit or release an individual unless 'the record reveals a clear mistake.'" In re Civ. Commitment of R.F., 217 N.J. 152, 175 (2014) (quoting In re D.C., 146 N.J. 31, 58

(1996)). Further, the judges who hear, cases "generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" In re Civ. Commitment of R.F., 217 N.J. 152, 174 (2014).

D. Class Certifications

1. Class Actions are governed by Rule 4:32. Rule 4:32-1(a) provides that "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

2. In general, an appellate court reviews a trial court's class action determination for abuse of discretion." Dugan v. TGI Fridays, Inc., 231 N.J. 24, 50 (2017). "When an order granting or denying class certification is reviewed on appeal, the 'appellate court must ascertain whether the trial court has followed' the class action standard set forth in Rule 4:32-1. Dugan v. TGI Fridays, Inc., 231 N.J. 24, 50 (2017) (quoting Lee v. Carter-Reed Co., 203 N.J. 496, 506 (2010)). Note that under the recent amendment to Rule 2:2-3(b) orders granting or denying as a final matter class certification, are reviewable as of right.

E. Foreclosure

"[A]n application to open, vacate or otherwise set aside a foreclosure judgment or proceedings subsequent thereto is subject to an abuse of discretion standard." United States v. Scurry, 193 N.J. 492, 502 (2008).

F. Municipal Matters

1. Rule 4:69 governs challenges to municipal and municipal agency decisions. Rule 4:69-1 provides that such challenges "shall be afforded by an action in the Law Division, Civil Part."

2. "When reviewing a trial court's decision regarding the validity of a local board's determination," appellate courts "are bound by the same standards as was the trial court." Jacoby v. Zoning Bd. of Adj. of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015) (quoting Fallone Props., LLC v. Bethlehem Twp. Plan. Bd., 369 N.J. Super. 552, 562 (App. Div. 2004)). Appellate courts "give deference to the actions and factual findings of local boards and may not disturb such findings unless they were arbitrary, capricious, or unreasonable." Jacoby v. Zoning Bd. of Adj. of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015). See Dunbar Homes, Inc. v. Zoning Bd. of Adj. of Twp. of Franklin, 448 N.J. Super. 583, 594-95 (App. Div. 2017) (zoning board's determination will be set aside only if arbitrary, capricious or unreasonable, and will not be disturbed in the absence of a clear abuse of discretion).

3. "Although a municipality's informal interpretation of an ordinance is entitled to deference . . . the meaning of an ordinance's language is a question of law that we review de novo." Bubis v. Kassin, 184 N.J. 612, 627 (2005). The trial judge's determination as to the meaning of the ordinance is similarly "not entitled to any deference" by the appellate court. Dunbar Homes, Inc. v. Zoning Bd. of Adj. of Twp. of Franklin, 448 N.J. Super. 583, 595 (App. Div. 2017).

4. Municipal Ordinances

a. "[A] municipal ordinance is afforded a presumption of validity, and the action of a board will not be overturned unless it is found to be arbitrary and capricious or unreasonable, with the burden of proof placed on the plaintiff challenging the action." Grabowsky v. Twp. of Montclair, 221 N.J. 536, 551 (2015). See Fraternal Ord. of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 115 (2020). See Price v. Himeji, LLC, 214 N.J. 263, 284 (2013) ("board's decisions enjoy a presumption of validity, and a court may not substitute its judgment for that of the board unless there has been a clear abuse of discretion").

b. "A municipal land-use determination should not be set aside unless the public body has engaged in 'a clear abuse of discretion.'" 388 Route 22 Readington Realty Holdings, LLC v. Twp. of Readington, 221 N.J. 318, 340 (2015) (quoting Kramer v. Bd. of Adj., Sea Girt, 45 N.J. 268, 296 (1965)). See Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 289-90 (2001) (presumption of validity may be overcome by a challenging party only upon a showing that the ordinance is arbitrary, unreasonable or capricious, or plainly contrary to fundamental principles of zoning or the zoning statute). "In evaluating whether a zoning ordinance is arbitrary, capricious, or unreasonable, a court's role is not to pass on the wisdom of the ordinance; that is exclusively a legislative function." Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 293 (2001).

c. "[T]he trial judge's determination as to the meaning of the ordinance is not entitled to any deference" on appeal. Dunbar Homes, Inc. v. Zoning Bd. of Adj. of Twp. of Franklin, 448 N.J. Super. 583, 595 (App. Div. 2017). Further, "[i]n construing the meaning of a statute, an ordinance, or our case law," appellate review is de novo. 388 Route 22 Readington Realty Holdings, LLC v. Twp. of Readington, 221 N.J. 318, 338 (2015).

G. Tax Court Decisions

"Generally, appellate courts apply a highly deferential standard of review when considering the factual findings and decisions of Tax Court judges. Presbyterian Home at Pennington, Inc. v. Borough of Pennington, 409 N.J. Super. 166, 180 (App. Div. 2009) (citing Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 375 (App. Div. 2001). "The findings of the Tax Court will not be disturbed 'unless they are plainly arbitrary or there is a lack of substantial evidence to support them.'" Presbyterian Home at Pennington, Inc. v. Borough of Pennington, 409 N.J. Super. 166, 180 (App. Div. 2009) (quoting G & S Co. v. Borough of Eatontown, 6 N.J. Tax 218, 220 (App. Div. 1982)).

SECTION EIGHT

STANDARDS IN ADMINISTRATIVE APPEALS

I. APPEALS FROM STATE ADMINISTRATIVE AGENCY ACTIONS

A. The New Jersey State Constitution provides for judicial review of actions by administrative agencies. N.J. Const. art. VI, § 5, ¶ 4.

B. Rule 2:2-3(a)(2) vests the Appellate Division with exclusive jurisdiction over all decisions or actions of any state administrative agency or officer. Thus, "[o]rdinarily, review of both the quasi-judicial and regulatory actions of state administrative agencies must be sought in the Appellate Division." Loc. 518, N.J. State Motor Vehicle Emps. Union, S.E.I.U., AFL-CIO v. Div. of Motor Vehicles, 262 N.J. Super. 598, 601-02 (App. Div. 1993). See Matter of Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020) (final agency action is subject to appellate review); Prado v. State, 186 N.J. 413, 422 (2006) (Rule 2:2-3(a)(2) vests the Appellate Division with exclusive jurisdiction over all decisions or actions of any state administrative agency or officer); D.G. ex rel. J.G. v. N. Plainfield Bd. of Educ., 400 N.J. Super. 1, 16 (App. Div. 2008) ("Judicial review of administrative actions is vested in the Appellate Division").

C. Nevertheless, "the Appellate Division retains the discretion, in an appropriate case, to retain jurisdiction in an appeal from the action of a state agency, but to refer the matter to the Law Division or to the agency for such additional fact-finding as it deems necessary to a just outcome." Infinity Broad. Corp. v. N.J. Meadowlands Comm'n, 187 N.J. 212, 227 (2006). Condemnation cases fall into that category. Infinity Broad. Corp. v. N.J. Meadowlands Comm'n, 187 N.J. 212, 225 (2006). See Hosp. Ctr. at Orange v. Guhl, 331 N.J. Super. 322, 330 (App. Div. 2000) (if resolution of an appeal from agency action or inaction "requires development of a factual record," the Appellate Division can remand to the agency for a statement of reasons, for further action by the agency, or permit the Law Division to create a record and make fact-finding).

D. Further, an appeal to review the action or inaction of a local administrative agency by complaint in lieu of prerogative writ is in the Law Division. Infinity Broad. Corp. v. N.J. Meadowlands Comm'n, 187 N.J. 212, 223 (2006).

II. REVIEW OF ADMINISTRATIVE DECISIONS

A. Judicial review of quasi-judicial agency determinations is limited. Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). See Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995) ("In light of the executive function of administrative agencies, judicial capacity to review administrative actions is severely limited").

B. "[A]n appellate court reviews agency decisions under an arbitrary and capricious standard." Zimmerman v. Sussex Cnty. Educ. Servs. Comm'n, 237 N.J. 465, 475 (2019). See Melnyk v. Bd. of Educ. of the Delsea Reg'l High Sch. Dist., 241 N.J. 31, 40 (2020). "An agency's determination on the merits 'will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Herrmann, 192 N.J. 19, 27-28 (2007). The party challenging the administrative action bears the burden of making that showing. Lavezzi v. State, 219 N.J. 163, 171 (2014).

C. On appeal, the judicial role in reviewing all administrative action is generally limited to three inquiries: "(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors." Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting In re Stallworth, 208 N.J. 182, 194 (2011)). See In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 383 (2013); Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995).

D. "When an agency's decision meets those criteria, then a court owes

substantial deference to the agency's expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. 19, 28 (2007). See In re Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020) ("Wide discretion is afforded to administrative decisions because of an agency's specialized knowledge"); Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009) (in assessing the three criteria an appellate court "must be mindful of, and deferential to, the agency's 'expertise and superior knowledge of a particular field'"); City of Newark v. Nat. Res. 30 Council, Dep't of Env't Prot., 82 N.J. 530, 539 (1980) (deferential standard is consistent with "strong presumption of reasonableness that an appellate court must accord an administrative agency's exercise of statutorily delegated responsibility"); In re Musick, 143 N.J. 206, 216 (1996) (deferential standard is consistent with the Judiciary's "limited role . . . in reviewing the actions of other branches of government"). "Deference controls even if the court would have reached a different result in the first instance." In re Herrmann, 192 N.J. 19, 28 (2007). However, "[a]lthough administrative agencies are entitled to discretion in making decisions, that discretion is not unbounded and must be exercised in a manner that will facilitate judicial review." In re Vey, 124 N.J. 534, 543-44 (1991).

E. Decisions "made by an administrative agency entrusted to apply and enforce a statutory scheme" are reviewed "under an enhanced deferential standard." East Bay Drywall, LLC v. Dep't of Labor & Workforce Dev., ___ N.J. ___, ___ (2022) (slip op. at 14). "[G]enerally, when construing language of a statutory scheme, deference is given to the interpretation of statutory language by the agency charged with the expertise and responsibility to administer the scheme." Acoli v. N.J. State Parole Bd., 224 N.J. 213, 229 (2016) See Garden State Check Cashing Serv., Inc. v. Dep't of Banking & Ins., 237 N.J. 482, 489 (2019); State v. Quaker Valley Farms, LLC, 235 N.J. 37, 55 (2018); Hargrove v. Sleepy's, LLC, 220 N.J. 289, 302 (2015); In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010). "This deference comes from the understanding that a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010).

F. A reviewing court is not, however, bound by an agency's

interpretation of a statute or its determination of a strictly legal issue outside its charge. Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 158 (2018); Dep't of Child. & Fam. v. T.B., 207 N.J. 294, 302 (2011). See Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992) (agencies have no superior ability to resolve purely legal questions, and a court is not bound by an agency's determination of a legal issue).

G. Appellate courts also defer to an administrative agency's "technical expertise, its superior knowledge of its subject matter area, and its fact-finding role." Messick v. Bd. of Rev., 420 N.J. Super 321, 325 (App. Div. 2011). However, this deference "is only as compelling as is the expertise of the agency, and this generally only in technical matters which lie within its special competence." Application of Boardwalk Regency Corp. for a Casino License, 180 N.J. Super. 324, 333 (App. Div. 1981).

III. REVIEW OF ADMINISTRATIVE REGULATIONS

A. "Judicial review of agency regulations begins with a presumption that the regulations are both 'valid and reasonable.'" N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 548 (2012) (quoting N.J. Soc'y for Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 385 (2008)). See S.L.W. v. N.J. Div. of Pensions & Benefits, 238 N.J. 385, 394 (2019); In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010); In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 489 (2004).

B. The scope of the appellate court's review of administrative rules, regulations or policy, as with agency decisions, is limited and deferential. In re Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578, 629 (2013); In re N.J. State League of Muns. v. Dep't of Cmty. Affairs, 158 N.J. 211, 222 (1999); In re Petitions for Rulemaking, N.J.A.C. 10:82-1.2 & 10:85-4.1, 117 N.J. 311, 325 (1989). It is "generally limited to a determination whether that rule is arbitrary, capricious, unreasonable, or beyond the agency's delegated powers." In re Amend. of N.J.A.C. 8:31b-3.31 & N.J.A.C. 8:31b-3.51, 119 N.J. 531, 543-44 (1990). And "an administrative agency may not, under the guise of interpretation, extend a statute to give it a greater effect than its language permits." GE Solid State, Inc. v. Dir., Div. of Taxation, 132 N.J. 298, 306 (1993)

(citing Kingsley v. Hawthorne Fabrics, Inc., 41 N.J. 521, 528 (1964)). See Reilly v. AAA Mid-Atl. Ins. Co. of N.J., 194 N.J. 474, 486 (2008).

C. The party challenging their validity bears the burden of proving that the regulations are arbitrary, capricious or unreasonable. N.J. State League of Muns. v. Dep't of Cmty. Affairs, 158 N.J. 211, 222 (1999).

D. The three-part test set forth above in Allstars Automobile Group, Inc. v. N.J. Motor Vehicle Commission, 234 N.J. 150, 157 (2018) and In re Proposed Quest Academy Charter School of Montclair Founders Group, 216 N.J. 370, 383 (2013), is applicable to a review of an agency's rulemaking. "An agency's action must still rest on a reasonable factual basis, but its choice between two supportable, yet distinct, courses of action 'will not be deemed arbitrary or capricious as long as it was reached 'honestly and upon due consideration.'" In re Attorney Gen. Law Enf't Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 491 (2021) (quoting In re Adoption of Amends. & New Regs. at N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 135-36 (App. Div. 2007) (quoting Worthington v. Fauver, 88 N.J. 183, 204-05 (1982))).

E. "Courts afford an agency 'great deference' in reviewing its 'interpretation of statutes within its scope of authority and its adoption of rules implementing' the laws for which it is responsible." N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 549 (2012) (quoting N.J. Soc'y for Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 385 (2008)). "That approach reflects the specialized expertise agencies possess to enact technical regulations and evaluate issues that rulemaking invites." N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 549 (2012).

SECTION NINE

SUMMARY OF AUTHORITY

Standard	Authority
1. Adjournment	State v. Miller, 216 N.J. 40, 47 (2013); State v. Kates, 216 N.J. 393, 397 (2014); State v. Hayes, 205 N.J.

		522, 537 (2011); Escobar-Barrera v. Kissin, 464 N.J. Super. 224, 233 (App. Div. 2020).
2.	Administrative Decisions	In re Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020); Melnyk v. Bd. of Educ. of the Delsea Reg'l High Sch. Dist., 241 N.J. 31, 40 (2020); Zimmerman v. Sussex Cnty. Educ. Servs. Comm'n, 237 N.J. 465, 475 (2019); Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018); In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 383 (2013); Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011); Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995); Messick v. Bd. of Rev., 420 N.J. Super 321, 325 (App. Div. 2011).
3.	Administrative Regulations	In re Attorney Gen. Law Enf't Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 491 (2021); S.L.W. v. N.J. Div. of Pensions & Benefits, 238 N.J. 385, 394 (2019); In re Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578, 629 (2013); N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 548 (2012); In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010); N.J. Soc'y for Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 385 (2008); In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 489 (2004); In re Adoption of Amends. & New Regs. at N.J.A.C.

		7:27-27.1, 392 N.J. Super. 117, 135-36 (App. Div. 2007).
4.	Alimony	N.J.S.A. 2A:34-23(b); Gnall v. Gnall, 222 N.J. 414, 429 (2015); Crews v. Crews, 164 N.J. 11, 24 2000); Reese v. Weis, 430 N.J. Super. 552, 567 (App. Div. 2013); J.E.V. v. K.V., 426 N.J. Super. 475, 485 (App. Div. 2012); Steneken v. Steneken, 367 N.J. Super. 427, 434 (App. Div. 2004), aff'd in part, modified in part, 183 N.J. 290 (2005).
5.	Amicus Curiae	Rule 1:13-9; Pritchett v. State, 248 N.J. 85, 96 (2021); State In Interest of A.A., 240 N.J. 341, 359 n.1 (2020); State v. J.R., 227 N.J. 393, 421 (2017).
6.	Attorney's Fees	Rule 4:42-9(a); Innes v. Marzano-Lesnevich, 224 N.J. 584, 592 (2016); Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009); Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 440 (2001).
7.	Change of Venue	Rule 4:3-3; Rule 3:14-2; State v. Nelson, 173 N.J. 417, 476-77 (2002); State v. Harris, 156 N.J. 122, 145 (1998).
8.	Civil Commitment	Rule 4:74-7 (adults); Rule 4:74-7A (minors); In re D.C., 146 N.J. 31, 58 (1996). N.J.S.A. 30:4-27.24 to -27.38 (Sexually Violent Predator Act), In re Civ. Commitment of R.F., 217 N.J. 152, 174 (2014); In re Commitment of W.Z., 173 N.J. 109, 132 (2002); Matter of Commitment of

		J.S., 467 N.J. Super. 291, 302 (App. Div. 2021).
9.	Consent Judgment	Winberry v. Salisbury, 5 N.J. 240, 255 (1950), cert. denied, 340 U.S. 877 (1950); Jacobs v. Mark Lindsay & Son Plumbing & Heating, Inc., 458 N.J. Super. 194, 205 (App. Div. 2019); N.J. Schs. Constr. Corp. v. Lopez, 412 N.J. Super. 298, 309 (App. Div. 2010); Cooper Med. Ctr. v. Boyd, 179 N.J. Super. 53, 56 (App. Div. 1981); Janicky v. Point Bay Fuel, Inc., 410 N.J. Super. 203, 207 (App. Div. 2009).
10.	Control of Courtroom	State v. Pinkston, 233 N.J. 495, 511 (2018); State v. Jones, 232 N.J. 308, 311 (2018); Martin v. Newark Pub. Schs., 461 N.J. Super. 330, 340 (App. Div. 2019); State v. Bitzas, 451 N.J. Super. 51, 76 (App. Div. 2017); D.G. ex rel. J.G. v. N. Plainfield Bd. of Educ., 400 N.J. Super. 1, 26 (App. Div. 2008); State v. Cusumano, 369 N.J. Super. 305, 311 (App. Div. 2004); N.J.R.E. 611(a).
11.	Contempt	Rule 2:10-4; In re Daniels, 118 N.J. 51, 62 (1990); Ippolito v. Ippolito, 443 N.J. Super. 1, 4 (App. Div. 2015); State v. Quintana, 270 N.J. Super. 676, 678 (App. Div. 1994).
12.	Credibility Findings	C.R. v. M.T., 248 N.J. 428, 440 (2021); State v. Camey, 239 N.J. 282, 306 (2019); State v. J.L.G., 234 N.J. 265, 301 (2018); Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 329 (2017); State v. Hubbard, 222 N.J.

		249, 264 (2015); Gnall v. Gnall, 222 N.J. 414, 428 (2015); Cesare v. Cesare, 154 N.J. 394, 412 (1998).
13.	Cross-Examination	N.J.R.E. 611(b); State v. Jenewicz, 193 N.J. 440, 467 (2008); State v. Hockett, 443 N.J. Super. 605, 619 (App. Div. 2016).
14.	Discovery	State v. Brown, 236 N.J. 497, 521 (2019); Brugaletta v. Garcia, 234 N.J. 225, 240 (2018); Cap. Health Sys., Inc. v. Horizon Healthcare Servs., Inc., 230 N.J. 73, 79-80 (2017); Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011); State v. Wyles, 462 N.J. Super. 115, 122 (App. Div. 2020).
15.	Equitable Distribution	N.J.S.A. 2A:34-23.1; Rothman v. Rothman, 65 N.J. 219, 233 (1974); Slutsky v. Slutsky, 451 N.J. Super. 332, 355 (App. Div. 2017); Borodinsky v. Borodinsky, 162 N.J. Super. 437, 443-44 (App. Div. 1978)
16.	Evidence	State v. Garcia, 245 N.J. 412, 430 (2021); State v. Jackson, 243 N.J. 52, 64 (2020); State v. Medina, 242 N.J. 397, 412 (2020); Rowe v. Bell & Gossett Co., 239 N.J. 531, 551 (2019); State v. Prall, 231 N.J. 567, 580 (2018); State v. Nantambu, 221 N.J. 390, 402 (2015); Townsend v. Pierre, 221 N.J. 36, 52 (2015).
17.	Expert Witness Civil	In re Accutane Litig., 234 N.J. 340, 391 (2018); Townsend v. Pierre, 221 N.J. 36, 53 (2015); Borough of Saddle River v. 66 E. Allendale,

	LLC, 216 N.J. 115, 155 (2013). Scientific: In re Accutane Litig., 234 N.J. 340, 392 (2018) (adopted use of factors identified in Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 593-95 (1993)).
18. Expert Witness Criminal	State v. J.L.G., 234 N.J. 265, 301 (2018); State v. J.R., 227 N.J. 393, 410 (2017); State v. Rosales, 202 N.J. 549, 562-63 (2010); State v. Townsend, 186 N.J. 473, 493 (2006); State v. Harvey, 151 N.J. 117, 167 (1997); State v. Rochat, 470 N.J. Super. 392, 439 (App. Div. 2022). Scientific: State v. Cassidy, 235 N.J. 482, 492 (2018) (continuing to follow Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923)).
19. Fact Findings of Judge	Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. Camey, 239 N.J. 282, 306 (2019); State v. McNeil-Thomas, 238 N.J. 256, 271 (2019); Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 329 (2017); State v. Hubbard, 222 N.J. 249, 264 (2015); Griepenburg v. Township of Ocean, 220 N.J. 239, 254 (2015); Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974); State v. Johnson, 42 N.J. 146, 162 (1964).
20. Fact Findings of Agency	Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997); Messick v. Bd. of Rev., 420 N.J. Super. 321, 325 (App. Div. 2011); S.D. v. Div. of Med. Assistance, 349 N.J. Super. 464, 485 (App. Div. 2002).

21. Fact Findings Family Part	Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016); Gnall v. Gnall, 222 N.J. 414, 428 (2015); Cesare v. Cesare, 154 N.J. 394, 413 (1998); N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 427 (2012); Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012).
22. Forum Non Conveniens	Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 557 (2011); Kurzke v. Nissan Motor Corp., 164 N.J. 159, 165 (2000); Rippon v. Smigel, 449 N.J. Super. 344, 364 (App. Div. 2017).
23. Guilty Plea	Rule 3:9-2; State v. Urbina, 221 N.J. 509, 526 (2015); State v. Tate, 220 N.J. 393, 406 (2015); State v. Lipa, 219 N.J. 323, 331 (2014); State v. Slater, 198 N.J. 145, 155 (2009).
24. Guilty Plea, Motion to Withdraw Before Sentencing	Rule 3:9-3(e); State v. Urbina, 221 N.J. 509, 528 (2015); State v. Tate, 220 N.J. 393, 404 (2015); State v. McDonald, 211 N.J. 4, 16 (2012); State v. Munroe, 210 N.J. 429, 441 (2012); State v. Slater, 198 N.J. 145, 156 (2009).
25. Guilty Plea, Motion to Withdraw After Sentencing	Rule 3:21-1; State v. Lipa, 219 N.J. 323, 332 (2014); State v. Slater, 198 N.J. 145, 156 (2009); State v. Johnson, 182 N.J. 232, 237 (2005); State v. McQuaid, 147 N.J. 464, 487 (1997).
26. Harmless Error	Rule 2:10-2; State v. G.E.P., 243 N.J. 362, 389 (2020); Willner v. Vertical

	Reality, Inc., 235 N.J. 65, 79 (2018); State v. J.R., 227 N.J. 393, 417 (2017); State v. Mohammed, 226 N.J. 71, 86 (2016); State v. Macon, 57 N.J. 325, 338-40 (1971).
27. Ineffective Assistance of Counsel	Strickland v. Washington, 466 U.S. 668 (1984); State v. Konecny, 250 N.J. 321, 342 (2022); State v. Gideon, 244 N.J. 538, 550 (2021); State v. Nash, 212 N.J. 518, 542 (2013); State v. Fritz, 105 N.J. 42, 58 (1987).
28. Indictment, Dismissal	State v. Shaw, 241 N.J. 223, 239 (2020); State v. Bell, 241 N.J. 552, 561 (2020); State v. Twiggs, 233 N.J. 513, 544 (2018); State v. Perry, 124 N.J. 128, 168 (1991); State v. Lyons, 417 N.J. Super. 251, 258 (App. Div. 2010).
29. Joinder and Severance	Rule 4:38-1 (civil); Rule 4:38-2 (civil); Rule 3:15-1 (criminal); Rule 3:15-2 (criminal); State v. Weaver, 219 N.J. 131, 149 (2014); State v. Chenique-Puey, 145 N.J. 334, 341 (1996); Rendine v. Pantzer, 141 N.J. 292, 310 (1995); Tobia v. Cooper Hosp. Univ. Med. Ctr., 136 N.J. 335, 345 (1994); Moraes v. Wesler, 439 N.J. Super. 375, 378 (App. Div. 2015).
30. Jury Charge	Rule 1:7-2; State v. Ramirez, 246 N.J. 61 (2021); State v. Montalvo, 229 N.J. 300, 320 (2017); State v. Garrison, 228 N.J. 182, 201 (2017); Prioleau v. Ky. Fried Chicken, Inc., 223 N.J. 245, 256 (2015); State v. McKinney, 223 N.J. 475, 494 (2015);

	Velazquez v. Portadin, 163 N.J. 677, 688 (2000); State v. Afanador, 151 N.J. 41, 54 (1997); State v. Green, 86 N.J. 281, 287 (1981); State v. Kille, 471 N.J. Super. 633, 641 (App. Div. 2022).
31. Jury, voir dire	State v. Little, 246 N.J. 402, 413 (2021); State v. Thompson, 224 N.J. 324, 344 (2016); State v. Winder, 200 N.J. 231, 252 (2009); State v. Wakefield, 190 N.J. 397, 496 (2007); State v. Papasavvas, 163 N.J. 565, 595 (2000).
32. Jury Influence and Misconduct	State v. Mohammed, 226 N.J. 71, 89 (2016); State v. Loftin, 191 N.J. 172, 187 (2007); State v. Scherzer, 301 N.J. Super. 363, 486 (App. Div. 1997); Panko v. Flintkote Co., 7 N.J. 55, 61 (1951).
33. Jury, Sequestration	Rule 1:8-6; State v. Harvey, 151 N.J. 117, 214 (1997); State v. R.D., 169 N.J. 551, 560 (2001); Barber v. Shop-Rite of Englewood & Assocs., Inc., 393 N.J. Super. 292, 298-99 (App. Div. 2007).
34. Jury, Request to Read Back	State v. Miller, 205 N.J. 109, 122 (2011). See State v. Weston, 222 N.J. 277, 294 (2015) (videotaped statement); State v. Brown, 457 N.J. Super. 345, 347 (App. Div. 2018) .
35. Jury, Further Deliberations	State v. Czachor, 82 N.J. 392, 407 (1980). See State v. Ross, 218 N.J. 130, 145 (2014); State v. Harris, 457 N.J. Super. 34, 50 (App. Div. 2018); State v. Adim, 410 N.J. Super. 410,

	423-24 (App. Div. 2009).
36. Jury, Removal of Juror	For Cause: State v. DiFrisco, 137 N.J. 434, 459 (1994); State v. Singletary, 80 N.J. 55, 62 (1979); State v. Andujar, 247 N.J. 275, 301 (2021). Illness, Inability to Continue: Rule 1:8-2(d)(1); State v. Musa, 222 N.J. 554, 564-65 (2015); State v. Terrell, 452 N.J. Super. 226, 305 (App. Div. 2016).
37. Juvenile, Waiver	N.J.S.A. 2A:4A-26.1; State ex rel. A.D., 212 N.J. 200, 215 (2012); State v. R.G.D., 108 N.J. 1, 15 (1987); State in Interest of Z.S., 464 N.J. Super. 507, 519 (App. Div. 2020); State in Interest of J.F., 446 N.J. Super. 39, 52 (App. Div. 2016).
38. Lay Witnesses	N.J.R.E. 701; State v. Sanchez, 247 N.J. 450, 465 (2021); State v. Singh, 245 N.J. 1, 12, 243 A.3d 662 (2021); State v. G.C., 188 N.J. 118, 133 (2006); State v. Savage, 120 N.J. 594, 632 (1990). See State v. Bueso, 225 N.J. 193, 202-03 (2016) (plain error).
39. Motion to Acquit	Rule 3:18-1 (after all the evidence); Rule 3:18-2 (after the verdict); State v. Lodzinski, 249 N.J. 116, 141 (2021); State v. Cruz-Pena, 243 N.J. 342, 348 (2020); State v. Jones, 242 N.J. 156, 168 (2020); State v. Fuqua, 234 N.J. 583, 590 (2018); State v. Williams, 218 N.J. 576, 593-94 (2014); State v. Reyes, 50 N.J. 454, 458-59 (1967); State v. Berry, 471 N.J. Super. 76, 99 (App. Div. 2022).

40.	Motion to Admit Photos of Victim	State v. McDougald, 120 N.J. 523, 582 (1990); State v. Moore, 113 N.J. 239, 295 (1988).
41.	Motion for Judgment	Rule 4:37-2(b); Rule 4:40-1; Rule 4:40-2(b); Smith v. Millville Rescue Squad, 225 N.J. 373, 397 (2016); ADS Assocs. Grp., Inc. v. Oritani Sav. Bank, 219 N.J. 496, 511 (2014); Besler v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544, 597 (2010); Verdicchio v. Ricca, 179 N.J. 1, 30 (2004); Est. of Roach v. TRW, Inc., 164 N.J. 598, 612 (2000); Dolson v. Anastasia, 55 N.J. 2, 5 (1969).
42.	Motion for Mistrial	State v. Smith, 224 N.J. 36, 47 (2016); State v. Jackson, 211 N.J. 394, 407 (2012); State v. Yough, 208 N.J. 385, 397 (2011); McKenney v. Jersey City Med. Ctr., 167 N.J. 359, 376 (2001); State v. Harvey, 151 N.J. 117, 205 (1997); State v. Smith, 471 N.J. Super. 548, 579 (App. Div. 2022); Escobar-Barrera v. Kissin, 464 N.J. Super. 224, 231 (App. Div. 2020).
43.	Motion for New Trial (Civil)	Rule 4:49-1; Twp. of Manalapan v. Gentile, 242 N.J. 295, 304 (2020); Hayes v. Delamotte, 231 N.J. 373, 386 (2018); Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 522 (2011).
44.	Motion for New Trial (Criminal)	Rule 3:20-1; State v. Brown, 118 N.J. 595, 604 (1990); State v. Sims, 65 N.J. 359, 373 (1974); State v. Armour, 446 N.J. Super. 295, 306

		(App. Div. 2016).
45.	Motion for Reconsideration	Civil - Rule 4:49-2; Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Kornbleuth v. Westover, 241 N.J. 289, 301 (2020); Hoover v. Wetzler, 472 N.J. Super. 230, 235 (App. Div. 2022).
46.	Motion for Recusal	Rule 1:12-2; State v. McCabe, 201 N.J. 34, 45 (2010); Goldfarb v. Solimine, 460 N.J. Super. 22, 30 (App. Div. 2019); P.M. v. N.P., 441 N.J. Super. 127, 140 (App. Div. 2015); Jadlowski v. Owens-Corning, 283 N.J. Super. 199, 221 (App. Div. 1995).
47.	Motions to Suppress	State v. Ahmad, 246 N.J. 592, 609 (2021); State v. Andrews, 243 N.J. 447, 464 (2020); State v. Nelson, 237 N.J. 540, 551 (2019); State v. Boone, 232 N.J. 417, 425 (2017); State v. Smith, 212 N.J. 365, 387 (2012); State v. Handy, 206 N.J. 39, 44 (2011); State v. Robinson, 200 N.J. 1, 15 (2009). State v. Elders, 192 N.J. 224, 243 (2007).
48.	Motion to Vacate Judgment (General Rule)	Rule 4:50-1; U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467-68 (2012); F.B. v. A.L.G., 176 N.J. 201, 207 (2003); Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994).
49.	Motion to Vacate Judgment	Rule 4:43-3 (default); Rule 4:50-1 (relief from judgment); U.S. Bank

		Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012); Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007); F.B. v. A.L.G., 176 N.J. 201, 207 (2003); Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994); Mancini v. Eds ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993).
50.	Municipal Court Decision	State v. Robertson, 228 N.J. 138, 148 (2017); State v. Locurto, 157 N.J. 463, 471-02 (1999); State v. Johnson, 42 N.J. 146, 157 (1964).
51.	Municipal Decisions (Ordinance)	Fraternal Ord. of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 115 (2020); Grabowsky v. Twp. of Montclair, 221 N.J. 536, 551 (2015); Price v. Himeji, LLC, 214 N.J. 263, 284 (2013).
52.	Municipal Decisions (Land Use)	388 Route 22 Readington Realty Holdings, LLC v. Twp. of Readington, 221 N.J. 318, 340 (2015); Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 289-90 (2001); Kramer v. Bd. of Adj., Sea Girt, 45 N.J. 268, 296 (1965).
53.	Order of Proof	N.J.R.E. 611(a); State v. Pinkston, 233 N.J. 495, 511 (2018); State v. Watson, 472 N.J. Super. 381, ___ (App. Div. 2022) (slip op. at 82).
54.	Original Jurisdiction	Rule 2:10-5; Rivera v. Union Cnty Prosecutor's Office, 250 N.J. 124, 146 (2022); Goldfarb v. Solimine, 245 N.J. 326, 346 (2021); State v. Shaw, 237 N.J. 588, 607 (2019); State

	v. Micelli, 215 N.J. 284, 293 (2013); Price v. Himeji, LLC, 214 N.J. 263, 294 (2013); State v. Santos, 210 N.J. 129, 142 (2012).
55. Other Crimes Evidence	N.J.R.E. 404(b); State v. Green, 236 N.J. 71, 81 (2018); State v. Willis, 225 N.J. 85, 96 (2016); State v. Weaver, 219 N.J. 131, 149 (2014); State v. Cofield, 127 N.J. 328, 338 (1992).
56. Plain Error	Rule 2:10-2; State v. Clark, 251 N.J. 266, ___ (2022) (slip op. at 22); State v. Singh, 245 N.J. 1, 13 (2021); State v. Dunbrack, 245 N.J. 531, 544 (2021); State v. G.E.P., 243 N.J. 362, 389 (2020); State v. Alessi, 240 N.J. 501, 527 (2020); State v. Santamaria, 236 N.J. 390, 404 (2019); State v. Funderburg, 225 N.J. 66, 79 (2016); State v. Gore, 205 N.J. 363, 383 (2011); Baker v. Nat'l State Bank, 161 N.J. 220, 226 (1999); State v. Macon, 57 N.J. 325, 336, 273 (1971); Szczecina v. P.V. Holding Corp., 414 N.J. Super. 173, 185 (App. Div. 2010).
57. Plain Error (Corollaries to Rule)	Inference from Lack of Objection: Willner v. Vertical Reality, Inc., 235 N.J. 65, 79 (2018); State v. Pressley, 232 N.J. 587, 594 (2018); State v. Nelson, 173 N.J. 417, 471 (2002); State v. Macon, 57 N.J. 325, 333 (1971); State v. Cotto, 471 N.J. Super. 489, 537 (App. Div. 2022); State v. Patterson, 435 N.J. Super. 498, 509 (App. Div. 2014); State v. Locascio, 425 N.J. Super. 474, 496

	(App. Div. 2012). Invited error: State v. Santamaria, 236 N.J. 390, 409 (2019); State v. A.R., 213 N.J. 542, 561 (2013); N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 340 (2010).
58. Post-Conviction Relief	Rule 3:22-1 to -12; State v. Gideon, 244 N.J. 538, 541 (2021); State v. Szemple, 247 N.J. 82, 97 (2021); State v. Pierre, 223 N.J. 560, 576 (2015); State v. Nash, 212 N.J. 518, 540 (2013); State v. Preciose, 129 N.J. 451, 459-64 (1992).
59. Prejudgment Interest	Torts - Rule 4:42-11(b). Contract - Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 390 (2009); Cnty. of Essex v. First Union Nat'l Bank, 186 N.J. 46, 61 (2006).
60. Pretrial Detention	N.J.S.A. 2A:162-15 to -26 (CJRA); State v. Mackroy-Davis, 251 N.J. 217, ___ (2022) (slip op. at 32); Matter of Request to Release Certain Pretrial Detainees, 245 N.J. 218, 231 (2021); State v. S.N., 231 N.J. 497, 515 (2018); State v. Molchor, 464 N.J. Super. 274, 285 (App. Div. 2020); State v. Williams, 464 N.J. Super. 260, 269 (App. Div. 2020).
61. Pretrial Intervention	Rule 3:28-1 to -10; N.J.S.A. 2C:43-12; State v. Johnson, 238 N.J. 119, 127 (2019); State v. Roseman, 221 N.J. 611, 621 (2015); State v. K.S., 220 N.J. 190, 200 (2015); State v. Negran, 178 N.J. 73, 82 (2003); State v. E.R., 471 N.J. Super. 234, 245 (App. Div. 2022). State v. Denman,

		449 N.J. Super. 369, 376 (App. Div. 2017).
62.	Pretrial Rehabilitation Program	N.J.S.A. 2C:35-14; State v. Hyland, 238 N.J. 135, 145 (2019); State v. Maurer, 438 N.J. Super. 402, 411 (App. Div. 2014).
63.	Prosecutor Misconduct	State v. Garcia, 245 N.J. 412, 436 (2021); State v. Williams, 244 N.J. 592, 608 (2021) State v. McNeil-Thomas, 238 N.J. 256, 275 (2019); State v. Pressley, 232 N.J. 587, 593 (2018); State v. Jackson, 211 N.J. 394, 407 (2012); State v. Frost, 158 N.J. 76, 83 (1999).
64.	Prosecutor's Comments	State v. Garcia, 245 N.J. 412, 436 (2021); State v. Williams, 244 N.J. 592, 617 (2021); State v. McNeil-Thomas, 238 N.J. 256, 275 (2019); State v. Wakefield, 190 N.J. 397, 437 (2007); State v. Williams, 471 N.J. Super. 34, 43 (App. Div. 2022).
65.	Punitive Damages	N.J.S.A. 2A:15-5.9 to -5.17; Pritchett v. State, 248 N.J. 85, 109 (2021); Baker v. Nat'l State Bank, 161 N.J. 220, 230 (1999); Smith v. Whitaker, 160 N.J. 221, 242-43 (1999); Leimgruber v. Claridge Assocs., 73 N.J. 450, 456 (1977); Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 390 N.J. Super. 557, 565 (App. Div. 2007), aff'd 194 N.J. 212 (2008); Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003).
66.	Res Judicata, Collateral Estoppel and Judicial Estoppel	Terranova v. GE Pension Tr., 457

		N.J. Super. 404, 410 (App. Div. 2019); In re Declaratory Judgment Actions Filed by Various Muns., 446 N.J. Super. 259, 291 (App. Div. 2016); Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000).
67.	Sanctions	Kornbleuth v. Westover, 241 N.J. 289, 300 (2020); Williams v. Am. Auto Logistics, 226 N.J. 117, 128 (2016); Gonzalez v. Safe & Sound Sec., 185 N.J. 100, 115 (2005); State v. Wolfe, 431 N.J. Super. 356, 363 (App. Div. 2013).
68.	Stay/Injunction	Rule 2:9-3; Rule 2:9-5; Rule 2:9-7; State v. Robertson, 228 N.J. 138, 149 (2017); Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013); Horizon Health Ctr. v. Felicissimo, 135 N.J. 126, 137 (1994); Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982); N.J. Election Law Enf't Comm'n v. DiVincenzo, 445 N.J. Super. 187, 195-96 (App. Div. 2016); In re Adoption of Child by M.E.B., 444 N.J. Super. 83, 89 (App. Div. 2016).
69.	Sentence, Allocution	Rule 3:21-4(b); State v. Jones, 232 N.J. 308, 319 (2018); State v. Blackmon, 202 N.J. 283, 298 (2010).
70.	Sentence, Excessive	State v. Torres, 246 N.J. 246, 272 (2021); State v. Trinidad, 241 N.J. 425, 453 (2020); State v. Jones, 232 N.J. 308, 318 (2018); State v. Case, 220 N.J. 49, 65 (2014); State v. Fuentes, 217 N.J. 57, 70 (2014); State v. Bolvito, 217 N.J. 221, 228 (2014);

	State v. Sainz, 107 N.J. 283, 292 (1987); State v. Roth, 95 N.J. 334, 363-65 (1984).
71. Sentence, Presentence Report	Rule 3:21-2(a); State v. Jaffe, 220 N.J. 114, 121 (2014); State v. Newman, 132 N.J. 159, 170 (1993); State v. Kunz, 55 N.J. 128.
72. Sentencing Reasons	Rule 3:21-4(h); State v. Comer, 249 N.J. 359, 404 (2022); State v. Torres, 246 N.J. 246, 272 (2021); State v. McFarlane, 224 N.J. 458, 466 (2016); State v. Case, 220 N.J. 49, 65 (2014); State v. Fuentes, 217 N.J. 57, 74 (2014); State v. Randolph, 210 N.J. 330, 348 (2012); State v. Tormasi, 466 N.J. Super. 51, 66 (App. Div. 2021); State v. Sene, 443 N.J. Super. 134, 145 (App. Div. 2015).
73. Sentence, State Appeal	Rule 2:3-1(b); State v. Hyland, 238 N.J. 135, 143 (2019); State v. Ciancaglini, 204 N.J. 597, 605 (2011); State v. Roth, 95 N.J. 334, 344-45 (1984); State v. Herrera, 469 N.J. Super. 559, 561 n.1 (App. Div. 2022).
74. Summary Judgment	Rule 4:46-2; Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). See also Samolyk v. Berthe, 251 N.J. 73 (2022); Stewart v. N.J. Tpk. Auth./Garden State Parkway, 249 N.J. 642, 655 (2022); Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021); Rozenblit v. Lyles, 245 N.J. 105, 121 (2021); Christian Mission John 3:16

	v. Passaic City, 243 N.J. 175, 184 (2020); Friedman v. Martinez, 242 N.J. 450, 472 (2020); Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Shields v. Ramslee Motors, 240 N.J. 479, 487 (2020).
75. Trial Court (de novo review)	Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019); Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). See In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020); State v. Courtney, 243 N.J. 77, 85 (2020); State v. G.E.P., 243 N.J. 362, 382 (2020); State v. Hemenway, 239 N.J. 111, 125 (2019); State v. Hyland, 238 N.J. 135, 143 (2019); State v. Fuqua, 234 N.J. 583, 591 (2018); Green v. Monmouth Univ., 237 N.J. 516, 529 (2019); Meehan v. Antonellis, 226 N.J. 216, 230 (2016); Occhifinto v. Olivo Constr. Co., LLC, 221 N.J. 443, 453 (2015).
76. Videotaped Statement	State v. S.S., 229 N.J. 360, 379 (2017); State v. Hubbard, 222 N.J. 249, 270 (2015).

SECTION TEN

GENERAL PRINCIPLES GOVERNING APPEALS

1. There can be no appeal from a written or oral opinion, oral decision, or informal written decision, only from a formal judgment or order. Hayes v. Delamotte, 231 N.J. 373, 387 (2018); State v. Scott, 229 N.J. 469, 479 (2017); Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001). If there is no final judgment, there is no right to appeal. R. 2:2-3(a)(1).

2. If an order is not final, a party must seek leave to appeal from the Appellate Division. R. 2:5-6(a). Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 550 (App. Div. 2007). Rule 2:2-4 provides that "the Appellate Division may grant leave to appeal, in the interest of justice, from an interlocutory order . . . if the final judgment, decision or action thereof is appealable as of right pursuant to R. 2:2-3(a)." Appellate review of a motion for leave to appeal "is expedited to minimize prejudice and delay." Harris v. City of Newark, 250 N.J. 294, 311 (2022).

3. For an appeal to be heard by the Appellate Division it must be timely served and filed. R. 2:4-1; R. 2:5-1. To appeal a final judgment, a party must file a notice of appeal, transcript request form, and a Case Information Statement in the form prescribed by the Administrative Director of the Courts and the Rules. R. 2:5-1. An appellate court can reject the notice of appeal or dismiss it based on procedural and technical deficiencies. R. 2:2-3(h)(3); R. 2:8-2.

4. Rule 2:5-1(f)(2)(ii) requires an appellant in civil cases to designate, in the notice of appeal, the judgment, decision, action or rule appealed from. If a matter is not designated in a party's notice of appeal, it is not subject to the appeal process. Kornbleuth v. Westover, 241 N.J. 289, 299 (2020); W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008).

5. An order or judgment will be affirmed on appeal if it is correct, even though the judge gave the wrong reasons for it. State v. Scott, 229 N.J. 469, 479 (2017); Isko v. Plan. Bd. of Twp. of Livingston, 51 N.J. 162, 175 (1968).

6. Only a party aggrieved by a judgment may appeal from it. Howard Sav. Inst. v. Peep, 34 N.J. 494, 499 (1961); State v. A.L., 440 N.J. Super. 400, 418 (App. Div. 2015).

7. The appellate court can exercise original jurisdiction under Rule 2:10-5 "as is necessary to the complete determination of any manner on review," with great frugality. State v. Micelli, 215 N.J. 284, 293 (2013). Exercising original jurisdiction is discouraged if factfinding is necessary. Goldfarb v. Solimine, 245 N.J. 326, 346 (2021).

8. "An appellate court, when reviewing trial errors, generally confines itself to the record." State v. Harvey, 151 N.J. 117, 201-02 (1997). If evidence submitted on appeal was not before the trial court, the appellate court will generally not consider it. Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:5-4(a) (2022).

9. "An issue not briefed on appeal is deemed waived." Green Knight Capital, LLC v. Calderon, 469 N.J. Super. 390, 396 (App. Div. 2021) (quoting Woodlands Cmty. Ass'n v. Mitchell, 450 N.J. Super. 310, 319 (App. Div. 2017)).

10. Our judicial system "contemplates one appeal as of right to a court of general appellate jurisdiction." Midler v. Heinowitz, 10 N.J. 123, 129 (1952).

11. On remand, a trial court is required to comply with the Appellate Division's directive "precisely as it is written," Flanigan v. McFeely, 20 N.J. 414, 420 (1956), even if the trial court disagrees with the appellate court's decision. State v. Kosch, 454 N.J. Super. 440, 444 (App. Div. 2018); Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292, 306 (App. Div. 2010); Tomaino v. Burman, 364 N.J. Super. 224, 233 (App. Div. 2003).