



Practice Note No 4 of 2012

Appeals from Associate Judges to a Judge of the Trial Division

1. The Chief Justice has authorised the issue of the following Practice Note.

Application

2. The Supreme Court (Associate Judges Appeals Amendment) Rules 2012 will commence on 1 January 2013. Under the amendments appeals from Associate Judges to a Judge of the Trial Division are to be by way of re-hearing rather than by re-hearing *de novo*. The amended rules are largely modelled on Order 64.
3. This Practice Note applies to any appeal from a decision of an Associate Judge to a Judge of the Trial Division under the Rules as amended from 1 January 2013.
4. Appeals from a decision of an Associate Judge to the Court of Appeal continue to be subject to Order 64 and the Practice Statements of the Court of Appeal. This includes the following Corporations matters where an appeal will lie to the Court of Appeal following the amendments
 - (i) in an application under s 459G of the *Corporations Act 2001* (Cth) (applications to set aside a statutory demand); and
 - (ii) in respect of a matter referred to an Associate Judge by a Judge of the Court under r 16.1(3) of Chapter V.

Documents to be filed in addition to the Notice of Appeal

5. Within 7 days of filing the Notice of Appeal the appellant shall file and serve an appeal book containing copies of the following documents in the following order
 - Notice of Appeal
 - The order appealed from
 - The process before the Associate Judge (summons)
 - Any written submissions before the Associate Judge
 - All evidence before the Associate Judge on the initial hearing
 - A transcript of the hearing before the Associate Judge
 - The reasons for decision of the Associate Judge
6. The Appeal Book should be paginated in the bottom right hand corner.
7. If either the transcript or reasons for judgment are not available by the time the appeal book is to be filed, they are to be added to the appeal book as soon as possible after they become available appropriately paginated.

Transcript

8. Digital recordings will be made of hearings before Associate Judges. Parties may order a transcript of the hearing by contacting Victorian Transcript Service Pty Ltd (VTS)

Email: james.creighton@merrillcorp.com or jemma.heywood@merrillcorp.com

Fax: 9642 5185
9. Requests should include the words 'transcript request' in the header and include the following details:
 - Proceeding number
 - Party names and the names of the barristers/solicitors appearing for each side
 - Hearing date and approximate start and finish times

- Court Room (e.g. AsJ Court 2)

Listing of Appeal

10. Appeals in proceedings which are not within a specialist list will be listed for hearing before the Judge in the Practice Court providing they are not likely to exceed 2 hours in duration.
11. Upon filing the Notice of Appeal the appellant should follow the procedure outlined in Practice Note No 1 of 2009, in particular paragraph 4, for obtaining a hearing date. The Practice Court Co-ordinator will notify the parties of the hearing date.
12. Appeals in proceedings which are within a specialist list will normally be heard by the Judge assigned to that list. Upon filing the Notice of Appeal the appellant should contact the Assistant Registrar of the Commercial Court to obtain a hearing date. Where the matter is outside the Commercial Court the Registrar may refer the matter to the Associate to the Judge in charge of the relevant list who will notify parties of the hearing date.
13. In all cases, the appellant must provide an estimate of the time required to hear the appeal and a list of preferred hearing dates.
14. In the event the appellant does not contact the Court to obtain a hearing date, the Court may list the matter of its own accord and notify the parties.
15. Subject to Judge availability appeals will generally be listed two and half to three weeks from the date of filing.
16. In the event a cross-appeal or notice of contention is filed, the party filing them should notify the Practice Court Co-ordinator or Assistant Registrar of the Commercial Court as soon as practicable.
17. In the event a party intends not to pursue an appeal they should contact the Practice Court Co-ordinator or Assistant Registrar of the Commercial Court.

Submissions

18. The appellant's submissions are to be filed and served no later than 5 days before the date listed for hearing. The respondent's submissions are to be filed and served no later than 2 days before the date listed for hearing.

Contact

19. Inquiries in relation to procedural matters may be directed to:

Practice Court Co-ordinator

practicecourt@supremecourt.vic.gov.au

Phone 9603 9288

Fax 9603 9400

Commercial Court Registry

commercialcourt@supremecourt.vic.gov.au

Phone: 9603 6042

Vivienne Macgillivray
Executive Associate to the Chief Justice
December 2012