

Practice Rules of the Appellate Division

Approved by Joint Order of the Departments of the New York State
Supreme Court, Appellate Division
December 12, 2017
(Revised June 29, 2018)

Part 1250

1250.1 General Provisions and Definitions

(a) Unless the context requires otherwise, as used in this Part:

(1) The word “cause” or “matter” includes an appeal, a special proceeding transferred to the Appellate Division pursuant to CPLR 7804 (g), a special proceeding initiated in the Appellate Division, and an action submitted to the Appellate Division pursuant to CPLR 3222 on a case containing an agreed statement of facts upon which the controversy depends.

(2) Any reference to the “court” or the “Appellate Division” means the Appellate Division of the Supreme Court of the State of New York for the Judicial Department having jurisdiction over the cause or matter; any reference to a “justice” means a justice of that court; any reference to the “clerk” means the clerk of that court or a designee, unless the context of usage indicates the clerk of another court.

(3) Wherever reference is made to a “judgment,” “order” or “determination,” it shall also be deemed to include a sentence.

(4) The word “consolidation” refers to the combining of two or more causes arising out of the same action or proceeding in one record or appendix and one brief.

(5) The phrase “cross appeal” refers to an appeal taken by a party whose interests are adverse to a party who previously appealed from the same order or judgment as relates to that appeal and cross appeal.

(6) The word “concurrent,” when used to describe appeals, shall refer to those appeals which have been taken separately from the same order or judgment by parties whose interests are not adverse to one another as relates to those appeals.

(7) The word “appellant” shall refer to the party required to file the initial brief to the court in a cause or matter, including an appellant, a petitioner, an appellant-respondent and similar parties.

(8) The term “NYSCEF” shall mean the New York State Courts Electronic Filing System and the “NYSCEF site” shall mean the New York State Courts Electronic Filing System website located at www.nycourts.gov/efile.

(9) The phrase “filed electronically,” when used to describe submissions to a court, shall refer to documents that have been filed by electronic means through the NYSCEF site.

(10) The phrase “electronic means” shall mean any method of transmission of information between computers or other machines, other than facsimile machines.

(11) The phrase “hard copy” shall mean a document in paper format.

(12) The phrase “digital copy” shall mean a document in text-searchable portable document format and otherwise compliant with the technical requirements established by the court.

(b) Number of Justices. When a cause is argued or submitted to the court with four justices present, it shall, whenever necessary, be deemed submitted also to any other duly qualified justice of the court, unless objection is noted at the time of argument or submission.

(c) Filing and Service; Weekends and Holidays.

(1) Filing

(i) Electronic filing. For the purpose of meeting deadlines imposed by court rule, order, or statute, all records on appeal, briefs, appendices, motions, affirmations and other submissions filed electronically will be deemed filed as of the time copies of the submissions are transmitted to the NYSCEF site. The filing of additional hard copies of such electronic filings pursuant to court rules shall not affect the timeliness of the filing.

(ii) Hard copy filing. For the purpose of meeting deadlines imposed by court rule, order or statute, all records on appeal, briefs, appendices, motions, affirmations and other submissions not filed electronically will be deemed filed as of the time hard copies of the submissions are received and stamped by the office of the clerk.

(iii) A document deemed filed for purposes of timeliness under this rule may thereafter be reviewed and rejected by the clerk for failure to comply with any applicable statute, rule or order.

(2) Proof of Service. All hard copy filings shall be accompanied by proof of service upon all necessary parties pursuant to CPLR 2103.

(3) Service by Mail and Overnight Mail. If a period of time prescribed by this Part is measured from the service of a record, brief or other submission and service is by mail, five days shall be added to the prescribed period. If service is by overnight delivery, one day shall be added to the prescribed period.

(4) Service by Electronic Mail Upon Consent. Unless otherwise directed by the court, parties in matters not subject to e-filing may agree, in writing, to service of submissions by

electronic mail. A copy of any such agreement shall be filed with the court with the affidavit of service.

(5) Weekends and Holidays. If a period of time prescribed by this Part for the performance of an act ends on a Saturday, Sunday or court holiday, the act will be deemed timely if performed before the close of business on the next business day.

(d) Signing of documents. The original of every hard copy document submitted for filing in the office of the clerk of the court shall be signed in ink in accordance with the provisions of section 130-1.1-a (a) of this Title. Copies of the signed original shall be served upon all parties to the matter and shall be filed in the office of the clerk whenever multiple copies of a submission are required to be served and filed in accordance with the provisions of this Part. Documents filed electronically shall be signed in accordance with the provisions of the Appellate Division Rules for Electronic Filing.

(e) Confidentiality and Sealing.

(1) Records, briefs and other submissions filed in matters deemed confidential by law shall not be available to the public except as provided by statute or rule.

(2) Appeals and proceedings that are confidential by law include, but are not limited to:

(i) Matters arising pursuant to the Family Court Act (Family Court Act § 166).

(ii) Matrimonial actions and proceedings (Domestic Relations Law § 235; CPLR 105 [p]).

(iii) Adoption proceedings (Domestic Relations Law § 114).

(iv) Youthful offender adjudications (CPL 720.35 [2]; 725.15).

(v) Proceedings pursuant to article 6 of the Social Services Law (Social Services Law § 422 [4] [a]).

(vi) In criminal matters not otherwise confidential, records of grand jury proceedings (CPL 190.25 [4]), grand jury reports (CPL 190.85) and presentence reports and memoranda (CPL 390.50).

(vii) Proceedings pursuant to Civil Rights Law § 50-b.

(viii) Proceedings pursuant to Judiciary Law § 90 (10).

(3) Applications for sealing and unsealing court records shall be made by motion, upon good cause shown.

(4) In a civil cause, documents that are subject to an existing sealing order from another court shall remain subject to such order, except as otherwise ordered by the Appellate Division.

(f) Appellate Division Numbers. All documents filed with the court shall prominently display the name of the court of original instance, the index number or indictment number of the case in such court, if any, and any number assigned by the Appellate Division.

(g) Rejection for Noncompliance. The clerk may reject any submission that does not comply with this Part, is incomplete, is untimely, is not legible, or fails to comply with any applicable statute, rule or order. The court may waive compliance by any party with any provision of this Part.

(h) Sanctions. An attorney or party who fails to comply with a rule or order of the court or who engages in frivolous conduct shall be subject to such sanction as the court may impose. The imposition of sanctions and costs may be made upon motion or upon the court's own initiative, after a reasonable opportunity to be heard. The court may impose sanctions and/or costs upon a written decision setting forth the conduct on which the imposition is made.

(i) Electronic Filing Rules. The rules of this Part shall be read in conjunction with the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245). Where there is a conflict between this Part and Part 1245 in an appellate e-filed matter, Part 1245 shall control.

1250.2 Settlement or Withdrawal of Motion, Appeal or Proceeding; Notice of Change in Circumstances

(a) **Withdrawal of Motion.** A moving party may file a written request to withdraw a motion at any time prior to its determination.

(b) **Withdrawal or Discontinuance of Appeal or Proceeding.**

(1) Unperfected appeals, or proceedings where issue has not been joined, may be withdrawn and discontinued by letter application to the court, with service on all parties.

(2) An appeal that has been perfected or a proceeding where issue has been joined may be withdrawn and discontinued by leave of the court upon the filing with the court of a written stipulation of discontinuance signed by the parties or their attorneys and, in criminal appeals, by the appellant personally. Absent such a stipulation, an appellant may move for permission to withdraw such an appeal or proceeding. An appeal that has been perfected in the Second Judicial Department and in which no respondent's brief has been filed may be withdrawn by letter application to the court, with service on all parties.

(c) **Notice of Change of Circumstances.** The parties or their attorneys shall immediately notify the court when there is a settlement of a matter or any issue therein or when a matter or any issue therein has been rendered moot. The parties or their attorneys shall likewise immediately notify the court if the cause should not be calendared because of the death of a party, bankruptcy or other appropriate event. Any such notification shall be followed by an application for appropriate relief. Any party or attorney who, without good cause shown, fails to comply with the requirements of this subdivision may be subject to the imposition of sanctions.

1250.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program

(a) **Initial Filings.** Unless the court shall direct otherwise, in all civil matters counsel for the appellant or the petitioner shall file with the clerk of the court of original instance and serve on all parties, together with the notice of appeal or transfer order and the order or judgment appealed from, an initial informational statement on a form approved by the court and in such number as the court may direct. The clerk of the court from which the appeal is taken shall promptly transmit to the Appellate Division the informational statement and a copy of the notice of appeal or order granting leave or transferal and the order or judgment appealed from.

(b) **Active Management.** The court may direct that any matter be actively managed and may set forth a scheduling order specifying the time and manner of expedited briefing.

(c) **Settlement or Mediation Program.**

(1) The court may issue a notice in any settlement or mediation program directing the attorneys for the parties, the parties themselves (unless the court excuses a party's personal presence), and such additional parties in interest as the court may direct to attend a conference before such person as it may designate to consider settlement, the limitation of issues and any

other matter that such person determines may aid in the disposition of the appeal or resolution of the action or proceeding. Attorneys and representatives who appear must be fully familiar with the action or proceeding, and must be authorized to make binding stipulations or commitments on behalf of the party represented.

(2) Counsel to any party may apply to the court by letter at any time requesting such a conference. The application shall include a brief statement indicating why a conference would be appropriate.

(3) Upon the failure of any party, representative or counsel to appear for or participate in a settlement or mediation conference, or to comply with the terms of a stipulation or order entered following such a conference, the party or counsel may be subject to sanctions.

1250.4 Motions

(a) General.

(1) Day and time returnable. Unless otherwise required by statute, rule or order of the court or any justice thereof, every motion and every proceeding initiated in the court shall be made returnable at 10:00 a.m. on any Monday (or, if Monday is a legal holiday, the first business day of the week), and on such other days as the court may direct.

(2) Commencement; filing. All motions initiated by notice of motion shall be filed with the clerk at least one week before the return date. The originals of all such submissions shall be filed, together with proof of service upon all parties entitled to notice. Motions by any other method shall be as directed by the court or a justice thereof.

(3) The submissions in support of every motion made before the appeal is determined shall include a copy of the order, judgment or determination sought to be reviewed, the decision, if any, and the notice of appeal or other document which first invoked the jurisdiction of the court, with proof of filing.

(4) Notice and service of documents. Unless otherwise directed by the court, a motion shall be served with sufficient notice to all parties as set forth in CPLR 2103. In computing the notice period, the date upon which service is made shall not be included.

(5) Answering and reply documents, if any, shall be served within the time prescribed by CPLR 2214 (b) or directed by a justice of the court. The originals thereof with proof of service shall be filed by 4:00 p.m. of the business day preceding the day on which the motion is returnable, unless, for good cause shown, they are permitted to be filed at a later time.

(6) Cross motions. Cross motions shall be made returnable on the same date as the original motion. A cross motion shall be served, either personally, by overnight delivery service or by electronic means, and filed at least three business days before the return date.

(7) Motions shall be deemed submitted on the return date, and no further documents shall be accepted for filing without leave of the court upon written application.

(8) Oral argument. Oral argument of motions is not permitted.

(9) One adjournment, for a period of 7 or 14 days, shall be permitted upon written consent of the parties to the appeal, filed no later than 10:00 a.m. on the return date.

(b) Motions or Applications Which Include Requests for Interim Relief.

(1) An application or order to show cause presented for signature that includes a request for a temporary stay or other interim relief pending determination of a motion, or an application pursuant to CPLR 5704, shall be presented in person unless the court excuses such appearance, and shall state, among other things:

(i) the nature of the motion or proceeding;

(ii) the specific relief sought; and

(iii) the names, addresses, telephone numbers and (where known) email addresses of the attorneys and counsel for all parties in support of and in opposition to the motion or proceeding.

(2) Notice. The party seeking relief as provided in this subdivision shall give reasonable notice to his or her adversary of the day and time when, and the location where, the application or order to show cause will be presented and the relief (including interim relief) being requested. The application or order to show cause shall be accompanied by an affidavit or affirmation stating the time, place and manner of such notification; by whom such notification was given; if applicable, reasons for the non-appearance of any party; and, to the extent known, the position taken by the opposing party.

(3) Response. Unless otherwise ordered by the court, all submissions in opposition to any motion or proceeding initiated by an application or order to show cause shall be filed with the clerk at or before 10:00 a.m. on the return date, and shall be served by a method calculated to place the movant and other parties to the motion in receipt thereof on or before that time. The originals of all such submissions shall be filed with the court. On the return date the motion or proceeding will be deemed submitted to the court without oral argument.

(4) Reply. Reply submissions shall be permitted only by leave of the court.

(c) Permission to Appeal to the Appellate Division in a Civil Matter.

(1) When Addressed to a Justice.

(i) An application to a justice of the court for permission to appeal pursuant to CPLR 5701 (c) shall be made within the time prescribed by CPLR 5513.

(ii) The submissions upon which such an application is made shall state whether any previous application has been made and, if so, to whom and the reason given, if any, for any denial of leave or refusal to entertain the application.

(2) When Addressed to the Court.

(i) Where leave of the court is required for an appeal to be taken to it, the application for such leave shall be made in the manner and within the time prescribed by CPLR 5513 and 5516.

(ii) The submissions upon which an application for leave to appeal is made shall include a copy of the order or judgment and decision, if any, of the court below, a concise statement of the grounds of alleged error and a copy of the order of the lower court denying leave to appeal, if any.

(3) Motions for leave to appeal from an order of the Appellate Term.

(i) Where applicable, motions pursuant to CPLR 5703 for leave to appeal from an order of the Appellate Term shall be made only after a denial of a motion for leave to appeal made at the Appellate Term.

(ii) Such motions shall include a copy of the decisions, judgments, and orders of the lower courts, including: a copy of the Appellate Term order denying leave to appeal; a copy of the record in the Appellate Term if such record shall have been printed or otherwise reproduced; and a concise statement of the grounds of alleged error. If the application is to review an Appellate Term order which either granted a new trial or affirmed the trial court's order granting a new trial, the application shall also include the applicant's stipulation consenting to the entry of judgment absolute against him or her in the event that the Appellate Division should affirm the order appealed from.

(d) Poor Person Relief.

(1) All matters. An affidavit in support of a motion for permission to proceed as a poor person, with or without a request for assignment of counsel, shall set forth the amount and sources of the movant's income; that the movant is unable to pay the costs, fees and expenses necessary to prosecute or respond in the matter; whether trial counsel was assigned or retained; whether any other person is beneficially interested in any recovery sought and, if so, whether every such person is unable to pay such costs, fees and expenses; and such other information as the court may require.

(2) Civil Matters.

(i) In a civil appeal or special proceeding, an affidavit in support of a motion for permission to proceed as a poor person shall, in addition to meeting the requirements of section 1250.4(d)(1) of this Part, set forth sufficient facts so that the merit of the contentions can be ascertained (CPLR 1101 [a]). This subdivision has no application to appeals described in Family Court Act §1120(a), SCPA 407(1) and Judiciary Law § 35(1).

(ii) Applicants for poor person relief in civil matters shall comply with the service requirements of CPLR 1101(c).

(3) Family Court Matters

(i) In appeals pursuant to the Family Court Act, in lieu of a motion, an application for either permission to proceed as a poor person or for permission to proceed as a poor person and assignment of counsel may be made by trial counsel assigned pursuant to Family Court Act § 262 by filing with the clerk a certification of continued indigency and continued eligibility for assignment of counsel pursuant to Family Court Act § 1118.

(ii) Counsel shall attach to the certification a copy of the order from which the appeal is taken, together with the decision, if any, and a copy of the notice of appeal with proof of service and filing.

(4) Criminal Matters. In a criminal appeal not otherwise addressed in section 1250.11(a) of this Part, an affidavit in support of a motion for permission to proceed on appeal as a poor person shall, in addition to meeting the requirements of section 1250.4(d)(1), set forth the following: the date and county of conviction; whether the defendant is at liberty or in custody; the name and address of trial counsel; whether trial counsel was appointed or retained and, if retained, the source of the funds for such retention and an explanation as to why similar funds are not available to retain appellate counsel; whether the defendant posted bail during the trial proceedings; and, if bail was posted and the defendant is currently in custody, an explanation as to why the funds used to post such bail are not available to retain appellate counsel.

(e) Admission Pro Hac Vice. An attorney and counselor-at-law or the equivalent may apply for permission to appear pro hac vice with respect to a particular matter pending before the court pursuant to 22 NYCRR 520.11 by providing an affidavit stating that the applicant is a member in good standing in all the jurisdictions in which the applicant is admitted to practice and that the applicant is associated with a member in good standing of the New York bar, which member shall be the attorney of record in the matter. The applicant shall attach to the affidavit an original certificate of good standing from the court or other body responsible for regulating admission to the practice of law in the state in which the applicant maintains his or her principal office for the practice of law. The New York attorney of record in the matter shall provide an affirmation in support of the application.

(f) Leave to File Amicus Curiae Brief. A person or entity who is not a party to an appeal or proceeding may make a motion to serve and file an amicus curiae brief. An affidavit or affirmation in support of the motion shall briefly set forth the issues to be briefed and the movant's interest in the issues, and shall include such number of copies of the proposed brief as the court requires. The proposed brief may not duplicate arguments made by a party to the appeal or proceeding. Unless permitted by the court, a person or entity granted permission to file an amicus curiae brief shall not be entitled to oral argument.

1250.5 Methods of Perfecting Causes

(a) Unless the court directs that a cause be perfected in a particular manner, an appellant may elect to perfect a cause by the reproduced full record method (CPLR 5528 [a] [5]); by the appendix method (CPLR 5528 [a] [5]); by the agreed statement in lieu of record method (CPLR 5527); or, where authorized by statute or this Part or order of the court, on the original record.

(b) Reproduced Full Record Method. If the appellant elects to proceed on a reproduced full record on appeal, the record shall be printed or otherwise reproduced as provided in sections 1250.6 and 1250.7 of this Part.

(c) Appendix Method. If the appellant elects to proceed by the appendix method, the appendix shall be printed or otherwise reproduced as provided in sections 1250.6 and 1250.7 of this Part.

(d) Agreed Statement in Lieu of Record Method. If the appellant elects to proceed by the agreed statement in lieu of record method, the statement shall be reproduced as a joint appendix as provided in sections 1250.6 and 1250.7 of this Part. The statement required by CPLR 5531 shall be appended.

(e) Original Record. In the First, Second and Fourth Judicial Departments, the following causes may be perfected upon the original record, including a properly settled transcript of the trial or hearing, if any:

- (1) appeals from the Family Court;
- (2) appeals under the Election Law;
- (3) appeals under the Human Rights Law (Executive Law § 298);
- (4) proceedings transferred to the court pursuant to CPLR 7804 (g)
- (5) appeals where the sole issue is compensation of a judicial appointee;
- (6) appeals under Correction Law §§ 168-d (3) and 168-n (3);
- (7) appeals of criminal causes;
- (8) appeals from the Appellate Term, where the matter was perfected on an original record at the Appellate Term;
- (9) other causes where an original record is authorized by statute; and
- (10) causes where permission to proceed upon the original record has been authorized by the court.

1250.6 Reproduction of Records, Appendices and Briefs

(a) Compliance with the CPLR. Briefs, appendices and reproduced full records shall comply with the requirements of CPLR 5528 and 5529, and reproduced full records shall, in addition, comply with the requirements of CPLR 5526.

(b) Method of Reproduction. Briefs, records and appendices shall be reproduced by any method that produces a permanent, legible, black image on white paper or its digital equivalent. Use of recycled paper and reproduction on both sides of the paper is encouraged for hard copy filings and submissions.

(c) Paper Quality, Size and Binding. Paper shall be of a quality approved by the chief administrator of the courts and shall be opaque, unglazed, white in color and measure 11 inches along the bound edge by 8½ inches. Records, appendices and briefs shall be bound on the left side in a manner that shall keep all the pages securely together; however, binding by use of any metal fastener or similar hard material that protrudes or presents a bulky surface or sharp edge is prohibited. Records and appendices shall be divided into volumes not to exceed two inches in thickness.

(d) Designation of Parties. The parties to all appeals shall be designated in the record and briefs by adding the word "Appellant," "Respondent," etc., as the case may be, following the party's name, e.g., "Plaintiff-Respondent," "Defendant-Appellant," "Petitioner-Appellant," "Respondent-Respondent," etc. Parties who have not appealed and against whom the appeal has not been taken shall be listed separately and designated as they were in the trial court, e.g., "Plaintiff," "Defendant," "Petitioner," "Respondent." In appeals from the Surrogate's Court or from judgments on trust accountings, the caption shall contain the title used in the trial court including the name of the decedent or grantor, followed by a listing of all parties to the appeal, properly designated. In causes originating in the Appellate Division, the parties shall be designated "Petitioner" and "Respondent" or "Plaintiff" and "Defendant."

(e) Docket Number. The cover of all records, briefs and appendices shall display the appellate division docket number assigned to the cause, or such other identifying number as the court shall direct, in the upper right-hand portion opposite the title.

1250.7 Form and Content of Records and Appendices; Exhibits

(a) Format. Records and appendices shall be consecutively paginated and shall include accurate reproductions of the submissions made to the court of original instance, formatted in accordance with the practice in that court. Reproductions may be slightly reduced in size to fit the page and to accommodate the page headings required by CPLR 5529 (c), provided, however, that such reduction does not significantly impair readability.

(b) Reproduced Full Record. The reproduced full record shall be bound separately from the brief, shall include the items set forth in CPLR 5526, and shall include in the following order so much of the following items as shall be applicable to the particular cause:

(1) A cover which shall contain the title of the cause on the upper portion, and, on the lower portion, the names, addresses, telephone numbers and email addresses of the attorneys, the county clerk's index or file number, the docket or other identifying number or numbers used in the court from which the appeal is taken, and the superior court information or indictment number;

(2) The statement required by CPLR 5531;

(3) A table of contents which shall list and briefly describe each document included in the record. The part of the table relating to the transcript of testimony shall separately list each witness and the page at which direct, cross, redirect and re-cross examinations begin. The part of the table relating to exhibits shall concisely indicate the nature or contents of each exhibit and the page in the record where it is reproduced and where it is admitted into evidence;

(4) The notice of appeal or order of transfer, judgment or order appealed from, judgment roll, corrected transcript or statement in lieu thereof, exhibits, and any opinion or decision in the cause;

(5) An affirmation, certification, stipulation or order, settling the transcript pursuant to CPLR 5525;

(6) A stipulation or order dispensing with reproducing exhibits, as provided in subdivision (c).

(7) The appropriate certification, stipulation, or settlement order pursuant to subdivision (g).

(c) Exhibits. The parties may stipulate to dispense with reproduction of exhibits in the full reproduced record on grounds that (1) the exhibits are not relevant or necessary to the determination of an appeal, and will not be cited in the parties' submissions; or (2) the exhibits, though relevant and necessary, are of a bulky or dangerous nature, and will be kept in readiness and delivered to the court on telephone notice.

(d) Appendix.

(1) The appendix shall include those portions of the record necessary to permit the court to fully consider the issues which will be raised by the appellant and the respondent including, where applicable, at least the following:

- (i) notice of appeal or order of transfer;
- (ii) judgment, decree or order appealed from;
- (iii) decision and opinion of the court or agency, and report of a referee, if any;
- (iv) pleadings, and in a criminal case, the indictment or superior court information;
- (v) material excerpts from transcripts of testimony or from documents in connection with a motion. Such excerpts shall include all the testimony or averments upon which the appellant relies and upon which it may be reasonably assumed the respondent will rely. Such excerpts shall not be misleading or unintelligible by reason of incompleteness or lack of surrounding context;
- (vi) copies of relevant exhibits, including photographs, to the extent practicable;
- (vii) if pertinent, a statement identifying bulky, oversized or dangerous exhibits relevant to the appeal, as well as identifying the party in custody and control of each exhibit; and
- (viii) the appropriate certification, stipulation or settlement order pursuant to subdivision (g).

(2) The appendix shall have a cover complying with subdivision (b)(1) and shall include the statement required by CPLR 5531 and a table of contents.

(3) The court may require such other contents in an appendix in a criminal cause as it deems appropriate.

(4) If a settled transcript of the stenographic minutes, or an approved statement in lieu of such transcript, is not included in the submissions, the appellant shall cause a digital copy of such transcript or statement to be filed together with the brief.

(e) Condensed Format of Transcripts Prohibited. No record or appendix may include a transcript of testimony given at a trial, hearing or deposition that is reproduced in condensed format such that two or more pages of transcript in standard format appear on one page, unless the transcript was submitted in that format to the court from which the appeal is taken.

(f) Settlement of Transcript or Statement. Regardless of the method used to prosecute any civil cause, if the record includes a transcript of the stenographic minutes of the proceedings or a statement in lieu of such transcript, such transcript or statement shall first be either stipulated as correct by the parties or their attorneys or settled pursuant to CPLR 5525.

(g) Certification of Record or Appendix. A reproduced full record or an appendix shall be certified either by: (1) a certificate of the appellant's attorney pursuant to CPLR 2105; (2) a certificate of the proper clerk; or (3) a stipulation in lieu of certification pursuant to CPLR 5532 or, if the parties are unable to stipulate, an order settling the record. The reproduced copy

containing the signed certification or stipulation shall be marked "Original." A party may move to waive certification pursuant to this rule for good cause shown, and shall include with the motion a copy of the proposed record or appendix.

1250.8 Form and Content of Briefs

(a) Cover. The cover shall set forth the title of the action or proceeding. The upper right-hand section shall contain a notation stating: whether the cause is to be argued or submitted; if it is to be argued, the time actually required for the argument; and the name of the attorney who will argue. The lower right-hand section shall contain the name, address, telephone number and email address of the attorney filing the brief and shall indicate whom the attorney represents.

(b) Appellant's Brief. The appellant's brief shall include, in the following order:

(1) a table of contents, which shall include (i) a list of point headings and (ii) the contents of the appendix, if it is not bound separately, with references to the initial page of each document included and of the direct, cross and redirect examination of each witness;

(2) a table of cases (alphabetically arranged), statutes and other authorities, indicating the pages of the brief where they are cited;

(3) a concise statement, not exceeding two pages, of the questions involved, set forth separately and followed immediately by the answer, if any, of the court from which the appeal is taken;

(4) a concise statement of the nature of the case and of the facts which should be known to determine the questions involved, with appropriate citations to the reproduced record, appendix, original record or agreed statement in lieu of record;

(5) the argument for the appellant, which shall be divided into points by appropriate headings distinctively printed;

(6) a statement certifying compliance with printing requirements under this Part, on a form approved by the court, as set forth in subdivision (j);

(7) in the First and Second Judicial Departments, the appellant's brief shall include as an addendum the statement required by CPLR 5531;

(8) in the First and Second Judicial Departments, in any civil cause permitted to be heard on the original record, the appellant's brief shall include:

(i) a copy of the order or judgment appealed from and the decision, if any;

(ii) a copy of the opinion and findings, if any, of a hearing officer and the determination and decision of any administrative department, board or agency; and

(iii) a copy of the notice of appeal or order transferring the proceeding to this court.

(c) Respondent's Brief. The respondent's brief shall conform to the requirements of subdivision (b), except that a counterstatement of the questions involved or a counterstatement of the nature and facts of the case shall be included only if the respondent disagrees with the statement of the appellant.

(d) Reply Brief. Any reply brief of the appellant or cross appellant shall conform to the requirements of subdivision (b), without repetition. An appellant's reply in a cross appeal shall include the points of argument in response to the cross appeal.

(e) Sur-reply Brief. Absent leave of the court, sur-reply briefs shall not be permitted.

(f) Computer-generated briefs.

(1) Briefs prepared on a computer shall be printed in either a serifed, proportionally spaced typeface such as Times Roman, or a serifed, monospaced typeface such as Courier. Narrow or condensed typefaces and/or condensed font spacing may not be used. Except in headings and in quotations of language that appears in such type in the original source, words may not be in bold type or type consisting of all capital letters.

(i) Briefs set in a proportionally spaced typeface. The body of a brief utilizing a proportionally spaced typeface shall be printed in 14-point type, but footnotes may be printed in type of no less than 12 points.

(ii) Briefs set in a monospaced typeface. The body of a brief utilizing a monospaced typeface shall be printed in 12-point type containing no more than 10½ characters per inch, but footnotes may be printed in type of no less than 10 points.

(2) Computer-generated appellants' and respondents' briefs shall not exceed 14,000 words, and reply and amicus curiae briefs shall not exceed 7,000 words, inclusive of point headings and footnotes and exclusive of signature blocks and pages including the table of contents, table of citations, proof of service, certificate of compliance, or any addendum authorized pursuant to subdivision (k).

(g) Typewritten briefs.

(1) Typewritten briefs shall be neatly prepared in clear type of no less than elite in size and in a pitch of no more than 12 characters per inch. The original of the brief shall be signed and filed as one of the number of copies required by section 1250.9 of this Part.

(2) Typewritten appellants' and respondents' briefs shall not exceed 50 pages and reply briefs and amicus curiae briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any addendum authorized pursuant to subdivision (k).

(h) Margins, line spacing and page numbering of computer-generated and typewritten briefs. Computer-generated and typewritten briefs shall have margins of one inch on all sides of the page. Text shall be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Pages shall be numbered consecutively.

(i) Handwritten briefs.

(1) Self-represented litigants and persons filing pro se supplemental briefs may serve and file handwritten briefs. Such briefs shall be neatly prepared in cursive script or hand printing in black or blue ink.

(2) Handwritten appellants' and respondents' briefs shall not exceed 50 pages and reply briefs and amicus curiae briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance or any addendum authorized pursuant to subdivision (k). Pages shall be numbered consecutively. The submission of handwritten briefs is not encouraged. If illegible, handwritten briefs may be rejected for filing by the clerk.

(j) Printing Specifications Statement. Every brief, except those that are handwritten, shall have at the end thereof a printing specifications statement, stating that the brief was prepared either on a typewriter, a computer or by some other specified means. If the brief was typewritten, the statement shall further specify the size and pitch of the type and the line spacing used. If the brief was prepared on a computer, the statement shall further specify the name of the typeface, point size, line spacing and word count. A party preparing the statement may rely on the word count of the processing system used to prepare the brief. The signing of the brief in accordance with section 130-1.1-a (a) of this Title shall also be deemed the signer's representation of the accuracy of the statement.

(k) Briefs may include addenda that are composed exclusively of decisions, statutes, ordinances, rules, regulations, local laws, or other similar matter cited therein that were not published or that are not otherwise readily available.

1250.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

(a) Appellant's Filing. Except where the court has directed that an appeal be perfected by a particular time, an appellant shall file with the clerk within six months of the date of the notice of appeal or order granting leave to appeal:

(1) if employing the reproduced full record method, an original and five hard copies of a reproduced full record, an original and five hard copies of appellant's brief, and one digital copy of the record and brief, with proof of service of one hard copy of the record and brief upon each other party to the appeal; or

(2) if employing the appendix method, an original, five hard copies and one digital copy of appellant's brief and appendix, with proof of service of one hard copy of the brief and appendix upon each other party to the appeal, and either:

(i) in the First and Second Judicial Departments, proof of service of a subpoena upon the clerk of the court of original instance requiring all documents constituting the record on appeal to be filed with the clerk of the Appellate Division, or

(ii) in the Third and Fourth Judicial Departments, a digital copy of the complete record.

(3) if employing the agreed statement in lieu of record method, an original and five hard copies of the agreed statement in lieu of record as provided in CPLR 5527, an original and five hard copies of appellant's brief, and one digital copy of the agreed statement and the brief, with proof of service of one hard copy of the agreed statement and brief upon each other party to the appeal; or

(4) if perfecting on the original record, an original and five hard copies and one digital copy of appellant's brief, with proof of service of one hard copy of the brief upon each other party to the appeal and either:

(i) in the First and Second Judicial Departments, proof of service of a subpoena upon the clerk of the court of original instance requiring all documents constituting the record on appeal to be filed with the clerk of the Appellate Division, or

(ii) in the Fourth Judicial Department, a hard copy of the complete record.

(5) In the First and Second Judicial Departments, where a subpoena is required to be served upon the clerk of the court of original instance pursuant to sections 1250.9(a)(2)(i) and 1250.9(a)(4)(i) of this Part, the clerk from whom the papers are subpoenaed shall compile the original papers constituting the record on appeal and cause them to be transmitted to the clerk of the court, together with a certificate listing the papers constituting the record on appeal and stating whether all such papers are included in the papers transmitted.

(b) Extension of time to perfect appeal. Except where the court has directed that the appeal be perfected by a particular time, the parties may stipulate, or in the alternative an appellant may

apply by letter, on notice to all parties, to extend the time to perfect an appeal up to 60 days. Any such stipulation shall be filed with the court. The appellant may thereafter apply by letter, on notice to all parties, to extend the time to perfect by up to an additional 30 days. Any further application for an extension of time to perfect the appeal shall be made by motion.

(c) Respondent's Filing. The respondent on an appeal shall file with the clerk within 30 days of the date of service of the appellant's submissions or, in the First Judicial Department, in accordance with the court's published terms calendar:

(1) under the full record method, the agreed statement in lieu of record method, or when perfecting on the original record, an original and five hard copies and one digital copy of the respondent's brief, with proof of service of one hard copy of the brief upon each party to the appeal; or

(2) under the appendix method, an original and five hard copies and one digital copy of the respondent's brief and appendix, if any, with proof of service of one hard copy of the brief and appendix, if any, upon each party to the appeal.

(d) Appellant's Reply. The appellant shall file with the clerk an original, five hard copies and one digital copy of the appellant's reply brief, with proof of service of one hard copy of the brief upon each party to the matter, within 10 days of the date of service of the respondent's submissions or, in the First Judicial Department, in accordance with the court's published terms calendar.

(e) Pro se or unrepresented parties shall be exempt from the requirement of the filing of a digital copy of any brief or other document.

(f) Cross Appeals; Concurrent Appeals from Single Order or Judgment; Consolidation of Appeals from Multiple Orders or Judgments.

(1) Cross appeals. In a cross appeal:

(i) The appealing parties shall consult and make best efforts to stipulate to a briefing schedule. In the First Judicial Department, if the parties fail to stipulate to an alternative briefing schedule, the cause shall be perfected in accordance with the court's published terms calendar, and shall not be governed by the time parameters set forth in subsections (iv) through (vi).

(ii) The appealing parties shall file a joint record or joint appendix certified as provided in section 1250.7(g) of this Part and shall share equally the cost of that record or appendix;

(iii) The party that first perfects the appeal shall be denominated the appellant-respondent;

(iv) A respondent-appellant's answering brief shall include the points of argument on the cross appeal and, unless the parties have stipulated otherwise, shall be filed and served within 30 days after service of the first appeal brief;

(v) An appellant-respondent's reply brief shall include the points of argument in response to the cross-appeal and, unless the parties have stipulated otherwise, shall be filed and served within 30 days after service of the answering brief;

(vi) Unless the parties have stipulated otherwise, a respondent-appellant's reply brief, if any, shall be served within 10 days after service of appellant's reply brief.

(2) Concurrent appeals from a single order or judgment. In concurrent appeals, the appellants shall perfect the appeals together, without motion, in the period measured from the date of the latest notice of appeal. The appellants shall file a joint record or joint appendix certified as provided in section 1250.7(g) of this Part and shall share equally the cost of that record or appendix.

(3) Appeals from multiple orders or judgments. When an appellant takes appeals from multiple orders and judgments arising out of the same action or proceeding, the appellant may perfect the appeals together, without motion and upon a single record or appendix, provided that each appeal is perfected in a timely manner pursuant to this Part.

(4) Absent an order of the court, appeals from orders or judgments in separate actions or proceedings cannot be consolidated but may, upon written request of a party, be scheduled by the court to be heard together on the same day.

(g) Extensions of Time to File and Serve Responsive Briefs. Except where the court has directed that answering or reply briefs be served and filed by a particular time, an extension of time to serve and file such briefs may be obtained as follows:

(1) By initial stipulation or application. The parties may stipulate or a party may apply by letter on notice to all parties to extend the time to file and serve an answering brief by up to 30 days, and to file a reply brief by up to 10 days. Not more than two such stipulations or applications shall be permitted. A stipulation shall not be effective unless promptly filed with the court. Any further application shall be made by motion. In the First Judicial Department, extensions by stipulation shall be filed by a date set forth in the court's published terms calendar, and shall put a matter over to any later term other than the June Term.

(2) By motion. A party may move to extend the time to file and serve a brief.

(h) Leave to File Oversized Brief. An application for permission to file an oversized brief shall be made to the clerk by letter stating the number of words or pages by which the brief exceeds the limits set forth in this section and the reasons why submission of an oversized brief is necessary. The letter shall be accompanied by a copy of the proposed brief and printing specifications statement.

(i) Constitutionality of State Statute. Where the constitutionality of a statute of the State is involved in a matter in which the State is not a party, the party raising the issue shall serve a copy of the brief upon the Attorney General of the State of New York, and file proof of service with the court. The Attorney General may thereupon intervene in the appeal.

1250.10 Dismissal of a Matter

(a) Civil Matters. In the event that an appellant fails to perfect a civil matter within six months of the date of the notice of appeal, the order of transfer, or the order granting leave to appeal, as extended pursuant to section 1250.9(b) of this Part, the matter shall be deemed dismissed without further order.

(b) Criminal Matters. The court upon its own motion or the motion of a respondent may dismiss a criminal appeal pursuant to CPL 470.60.

(c) Motion to Vacate Dismissal. When an appeal or proceeding has been deemed dismissed pursuant to subdivision (a) or by order of the court for failure to perfect, a motion to vacate the dismissal may be made within one year of the date of the dismissal. In support of the motion, the movant shall submit an affidavit setting forth good cause for vacatur of the dismissal, an intent to perfect the appeal or proceeding within a reasonable time, and sufficient facts to demonstrate a meritorious appeal or proceeding.

1250.11 Additional Rules Relating to Criminal Appeals

(a) Poor Person Relief and Assigned Counsel.

(1) Continuation of eligibility for assigned counsel on appeal. Where a sentencing court has granted a defendant's application for poor person relief on appeal pursuant to CPL 380.55, the Appellate Division may, upon receipt of a properly filed notice of appeal and a copy of the order, assign appellate counsel or provide other relief without the need for further motion or application.

(2) Continuation of assigned counsel in People's appeal. Unless otherwise ordered by the court, a defendant represented in the superior court by assigned counsel shall continue to be represented by that counsel on an appeal taken by the People.

(b) Application for Certificate Granting Leave to Appeal in a Criminal Matter.

(1) An application for a certificate granting leave to appeal to the Appellate Division shall

(i) be made, in writing, within 30 days after service of the order upon the applicant;

(ii) provide 15 days' notice to the District Attorney;

(iii) be filed with proof of service; and

(iv) be submitted without oral argument.

(2) The moving papers for a certificate granting leave to appeal shall be addressed to the court for assignment to a justice, shall state that no prior application for such certificate has been made, and shall set forth:

(i) the return date;

(ii) the name and address of the party seeking leave to appeal and the name of the District Attorney;

(iii) the indictment number; and

(iv) the questions of law or fact which ought to be reviewed.

(3) The moving papers shall include:

(i) a copy of the order sought to be reviewed;

(ii) a copy of the decision of the court below or a statement that there was none;

and

(iii) a copy of all submissions filed with the trial court.

(4) Answering submissions or a statement that there is no opposition to the application shall be served and filed not later than one business day before the return date stated in the application.

(c) Exhibits. If required by the court in a criminal appeal, in lieu of submitting original physical exhibits (e.g., weapons or contraband) to the court, the appellant may file a stipulation of the parties identifying the particular exhibits, identifying the party in custody and control of each exhibit and providing that each exhibit shall be made available to the court upon the request of the clerk.

(d) Briefs.

(1) There shall be included at the beginning of the main brief submitted by an appellant in any criminal cause a statement setting forth the order or judgment appealed from; the sentence imposed, if any; whether an application for a stay of execution of judgment pending determination of the appeal was made and, if so, the date of such application; whether an order issued pursuant to CPL 460.50 is outstanding, the date of such order, the name of the judge who issued it and whether the defendant is free on bail or on his or her own recognizance; and whether there were codefendants in the trial court, the disposition with respect to such codefendants, and the status of any appeals taken by such codefendants.

(2) Briefs in criminal appeals shall otherwise conform to the requirements of section 1250.8 of this Part.

(3) Assigned counsel shall file proof of mailing of a copy of briefs filed on behalf of a defendant to the defendant at his or her last known address.

(e) Expedited appeal of an order reducing an indictment or dismissing an indictment and directing the filing of a prosecutor's information.

(1) At the request of either party, the court shall give preference to the hearing of an appeal from an order reducing an indictment or dismissing an indictment and directing the filing of a prosecutor's information (CPL 210.20 (6) (c); 450.20 (1-a); 450.55), and shall determine the appeal as expeditiously as possible.

(2) The appellant's brief in such an appeal shall include an appendix containing a copy of the notice of appeal, the indictment, the order appealed from and any underlying decision. The respondent's brief may also include an appendix, if necessary. The appellant shall file, separate from the appendix, one copy of the grand jury minutes under seal.

(f) Application for Withdrawal of Assigned Appellate Counsel Pursuant to *Anders v California* (386 US 738 [1967]). When assigned appellate counsel files a brief pursuant to *Anders v California*, counsel shall additionally either

(1) file proof that the following were mailed to the defendant at his or her last known address: (i) a copy of the brief, and (ii) a copy of a letter to the defendant advising that he or she may file a pro se supplemental brief and, if he or she wishes to file such a brief, that he or she must notify the court no later than 30 days after the date of mailing of counsel's letter of the intention to do so; or

(2) in the Fourth Judicial Department, move to be relieved as counsel pursuant to *People v. Crawford*, 71 A.D.2d 38 (4th Dept. 1979).

(g) Pro Se Supplemental Briefs in Criminal Appeals Involving Assigned Counsel. When assigned appellate counsel does not file a brief pursuant to *Anders v California*, a defendant wishing to file a pro se supplemental brief shall

(1) in the First and Second Judicial Departments, move for permission to do so not later than 45 days after the date of mailing to the defendant of a copy of the brief filed by counsel; the affidavit in support of the motion shall briefly set forth the points that the defendant intends to raise in the supplemental brief; or

(2) in the Third and Fourth Judicial Departments, file the pro se supplemental brief not later than 45 days after the date of mailing to the defendant of a copy of the brief filed by counsel.

(h) Appeal from an Order Concerning a Grand Jury Report.

(1) The mode, time and manner for perfecting an appeal from an order accepting a report of a grand jury pursuant to CPL 190.85 (1) (a), or from an order sealing a report of a grand jury pursuant to CPL 190.85 (5), shall be in accordance with the provisions of this Part governing appeals in criminal cases.

(2) An appeal from such an order shall be a preferred cause.

(3) The record, briefs and other documents on such an appeal shall be sealed and not be available for public inspection except as permitted by CPL 190.85 (3).

1250.12 Transferred Proceedings

(a) Transferred CPLR Article 78 Proceedings. Unless otherwise directed by the court, a proceeding commenced pursuant to CPLR article 78 and transferred to the Appellate Division pursuant to CPLR 7804(g) shall be governed in the same manner as an appeal under this Part, with the time to file the petitioner's brief measured from the date of the order of transfer.

(b) Transferred Human Rights Law Proceedings (Executive Law § 298).

(1) A proceeding under the Human Rights Law which is transferred to the Appellate Division for disposition shall be prosecuted upon the original record, which shall include:

- (i) copies of all submissions filed in the Supreme Court;
- (ii) the decision of the Supreme Court, or a statement that no decision was rendered;
- (iii) the order of transfer; and
- (iv) the original record before the State Division of Human Rights, including a copy of the transcript of the public hearing.

(2) In all other respects every proceeding so transferred shall be governed by this Part in the same manner as an appeal, with the time to perfect measured from the date of the order of transfer.

(3) In the event that the original record that was before the State Division of Human Rights was not previously submitted to the Supreme Court, the Division shall file the original record with the Appellate Division within 45 days after entry of, or service upon it of a copy of the order of transfer.

1250.13 Original Special Proceedings

(a) Return date. Unless otherwise required by statute or court directive, original special proceedings commenced in the Appellate Division, including original proceedings pursuant to CPLR article 78, shall be made returnable at 10:00 a.m. on any Monday or on such other days as the court may direct, with a return date not less than 20 days after service of the notice of verified petition and petition on each respondent.

(b) Necessary documents.

(1) Unless otherwise required by statute, a petitioner shall file the original and a digital copy of the notice of petition or order to show cause, the petition and the filing fee as required by CPLR 8022.

(2) Proof of service of a hard copy of the notice of petition (or order to show cause) and the petition on each respondent shall be filed not later than 15 days after the applicable statute of limitations has expired (see CPLR 306-b).

(3) Each respondent shall serve a hard copy, and shall file a hard copy and a digital copy, of an answer or other lawful response, the record before the respondent, the transcript of the hearing, if any, and the determination and findings of the respondent.

(c) Briefing and Original Record in Original Special Proceedings.

(1) In the following original special proceedings commenced in the First and Second Judicial Departments, the petitioner shall file an original, five copies and a digital copy of a brief, with proof of service of one hard copy of the brief upon each other party to the proceeding, within six months of the date of service of the answer:

- (i) Eminent Domain Procedure Law § 207;
- (ii) Public Service Law §§ 128 or 170;
- (iii) Labor Law §§ 220 or 220-b;
- (iv) Public Officers Law § 36; and
- (v) Real Property Tax Law § 1218.

In all other special proceedings commenced in the First and Second Judicial Departments, further briefing shall not be required, and the court shall determine the matter on the original submissions.

(2) In all original special proceedings filed in the Third and Fourth Judicial Departments, the petitioner shall file an original, five hard copies and one digital copy of the petitioner's brief, with proof of service of one hard copy of the brief upon each other party to the proceeding within six months of the date of service of the answer, or pursuant to such briefing schedule that the court may issue.

(3) In original special proceedings where briefing is required, the respondent to the petition shall file within 30 days of the date of service of the petitioner's brief, or, in the First Judicial Department, in accordance with the court's published terms calendar, an original, five hard copies and one digital copy of the respondent's brief, with proof of service of one hard copy of the brief upon each other party to the proceeding. Not more than ten days after service of the respondent's brief, or, in the First Judicial Department, in accordance with the court's published terms calendar, the petitioner may file an original, five hard copies and one digital copy of the petitioner's reply brief, if any.

(4) In original special proceedings where briefing is required, the period of time within which to file the petitioner's brief or respondent's brief may be extended in the manner provided for the extension of time to perfect and appeal or to file and serve responsive briefs set forth in sections 1250.9(b) and 1250.9(g) of this Part.

(5) All original special proceedings will be heard upon the original record, which shall include: (A) the notice of petition or order to show cause and petition; (B) the original record before the respondent, including a copy of the transcript of the hearing, if any; and (C) the determination and findings of the respondents.

1250.14 Miscellaneous Appeals and Proceedings

(a) Annexation Proceedings. Annexation proceedings shall be prosecuted as set forth in General Municipal Law article 17.

(b) Election Appeals. Appeals in proceedings brought pursuant to any provision of the Election Law shall be prosecuted upon the original record, pursuant to a scheduling directive of the court or clerk, with the filing and service of briefs in such number and manner as the court shall direct.

(c) Appeals from the Workers' Compensation Board and Unemployment Insurance Appeal Board. Appeals from decisions of the Workers' Compensation Board and the Unemployment Insurance Appeal Board shall be prosecuted exclusively before the Appellate Division, Third Judicial Department, in accordance with the rules established by that court.

(d) Original Proceedings under the Education Law, Public Health Law and Tax Law. Proceedings seeking review of determinations pursuant to Education Law § 6510, Public Health Law § 230-c or Tax Law § 2016 shall be prosecuted exclusively before the Appellate Division, Third Judicial Department, in accordance with the rules established by that court.

(e) Appeals of Compensation Awards to Judicial Appointees. If the sole issue sought to be reviewed on appeal is the amount of compensation awarded to a judicial appointee (i.e., referee, arbitrator, guardian, guardian ad litem, conservator, committee of the person or a committee of the property of an incompetent or patient, receiver, person designated to perform services for a receiver, such as but not limited to an agent, accountant, attorney, auctioneer or appraiser, person designated to accept service), the cause may be prosecuted by motion or as an appeal. In such event, the review may be had on the original record, and briefs may be filed at the option of the parties.

(f) Appeals from the Appellate Term. When the court has made an order granting leave to appeal from an order of the Appellate Term, the appellant shall file with the clerk of the Appellate Term a copy of the order. Thereafter the appeal may be brought on for argument by the filing of briefs in the same manner as any other cause.

(g) Submitted facts (CPLR 3222). An original agreed statement of facts in an action submitted to the court pursuant to CPLR 3222 shall be filed in the office of the county clerk, and a copy shall be appended to appellant's brief together with a statement required by CPLR 5531. Briefs shall be served and filed in the manner and in accordance with the time requirements prescribed by section 1250.9 of this Part.

1250.15 Calendar Preference; Calendar Notice; Oral Argument; Post-Argument Submissions

(a) Calendar Preference.

(1) By letter. A party seeking and entitled by law to a preference in the hearing of an appeal shall provide prompt notice by letter to the court setting forth the basis for such preference.

(2) By motion. A party not entitled to a preference by law may move for a calendar preference for good cause shown.

(b) Calendar Notice. Notification that a cause has been placed on the calendar shall be published on the court's website. The court may also arrange for publication of such notice in a daily law journal or other newspaper or periodical regularly published within the Judicial Department.

(c) Oral Argument.

(1) Oral Argument Generally. Oral argument shall be permitted unless proscribed by court rule or, in a particular cause, by the court in its discretion. Parties who do not file a brief on appeal shall not be permitted to argue a cause.

(2) Oral Argument by Permission. Where oral argument is proscribed by rule, a party may seek leave of the court therefor by filing of a letter application, on notice to all parties, or by motion where required by the court, within 7 days of the filing of the respondent's brief. The application or motion shall specify the reasons why oral argument is appropriate and the amount of time requested.

(3) Failure to Request Oral Argument. In the event that any party's main brief shall fail to set forth the appropriate notations indicating that the cause is to be argued and the time required for argument, the cause will be deemed to have been submitted without oral argument by that party.

(4) Failure to Appear for Oral Argument. Where counsel or a self-represented litigant fails to appear timely for oral argument, the matter shall be deemed to have been submitted without oral argument by that party.

(5) Rebuttal. Prior to beginning argument, the appellant may orally request permission to reserve a specific number of minutes for rebuttal in the First and Third Judicial Departments. The time reserved shall be subtracted from the total time assigned to the appellant. The respondent may not request permission to reserve time for sur-rebuttal.

(d) Post-Argument Submissions. Post-argument submissions are discouraged, and may be made only with leave of the court.

1250.16 Decisions, Orders and Judgments; Costs; Remittitur; Motions for Reargument or Leave to Appeal to the Court of Appeals

(a) Decisions, Orders and Judgments. A decision, order or judgment of the court on a cause shall be deemed entered on the date upon which it was issued. Unless otherwise directed by the court, copies of the court's decisions, orders and judgments shall be posted on the court's website.

(b) Costs. Costs upon an appeal under CPLR 8107 shall be allowed only as directed by the court in each case. In the absence of a contrary direction, the award by the court of costs in any matter shall be deemed to include disbursements in accordance with CPLR 8301(a).

(c) Remittitur. Unless otherwise ordered by the court, an order determining an appeal shall be remitted, together with the record on appeal, to the clerk of the court of original instance.

(d) Motion for Reargument or Leave to Appeal to the Court of Appeals.

(1) Time of motion. A motion for reargument of or leave to appeal to the Court of Appeals from an order of the court shall be made within 30 days after service of the order of the court with notice of entry.

(2) Reargument. An affidavit or affirmation in support of a motion for reargument shall briefly set forth the points alleged to have been overlooked or misapprehended by the court.

(3) Leave to appeal to the Court of Appeals.

(i) An affidavit or affirmation in support of a motion for leave to appeal to the Court of Appeals shall briefly set forth the questions of law sought to be reviewed by the Court of Appeals and the reasons that the questions should be reviewed by the Court of Appeals.

(ii) In a civil matter, a motion for leave to appeal to the Court of Appeals shall, to the extent practicable, be determined by the panel of justices that determined the appeal.

(iii) In a criminal matter, a motion for leave to appeal to the Court of Appeals may be submitted to any member of the panel of justices that determined the appeal. The affidavit or affirmation in support of the motion shall state that no other application for leave to appeal to the Court of Appeals has been made. Service of a copy of an order on an appellant as required by CPL 460.10 (5) (a) shall be made pursuant to CPLR 2103.

1250.17 Fees of the Clerk of the Court

(a) Fees. The clerk of the court shall be entitled to the following fees, which shall be payable in advance:

(1) upon the filing of a record on a civil appeal or statement in lieu of record on a civil appeal and upon the filing of a notice of petition or order to show cause commencing a special proceeding, \$315.

(2) upon the filing of each motion or cross motion with respect to a civil appeal or special proceeding, \$45, except that no fee shall be imposed for a motion or cross motion which seeks leave to appeal as a poor person pursuant to CPLR 1101 (a).

(3) such other fees as the court shall direct.

(b) Exemptions. Notwithstanding the foregoing, no party shall be required to pay a filing fee hereunder where such party demonstrates entitlement to an exemption from the payment of such fee under statute or other authority.

Rules of Practice of the Appellate Division, First Judicial Department

Part 600

600.1 General Provisions and Definitions

(a) Practice Rules of the Appellate Division

This Part serves as a supplement to, and should be read in conjunction with, the Practice Rules of the Appellate Division (22 NYCRR) Part 1250 and the Electronic Filing Rules of the Appellate Division (22 NYCRR) Part 1245. Where there is a conflict between this Part and Parts 1250 and 1245, this Part controls when practicing within the First Judicial Department.

(b) Sessions of the Court

The court will convene at 2:00 o'clock in the afternoon during the appointed terms of the court for the hearing of appeals except on Fridays when the court will convene at 10:00 o'clock in the forenoon. Special sessions of the court may be scheduled for such time or such purposes as the court may direct.

600.2 [Reserved]

600.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program

(a) Pre-argument Conference Program

(1) By order of the court, counsel and the parties, and any additional parties in interest, may be directed to attend a pre-argument conference before a special master or such other person as may be designated by the Appellate Division.

(2) Within 10 days after an order directing a pre-argument conference, counsel for respondent shall file a counterstatement, together with proof of service, setting forth:

- (i) the issues proposed to be raised on the appeal, if respondent disagrees with the issues identified by appellant in the informational statement filed pursuant to (22 NYCRR) § 1250.3;
- (ii) the extent to which respondent challenges the assertions made in the informational statement; and
- (iii) an explanation of the grounds for granting the relief sought by respondent.

(3) Upon the conclusion of the conference, if the parties have entered into a stipulation the court shall file an order of approval.

600.4 Motions

(a) Electronically Filed Motions. One hard copy of electronically filed motion papers shall be filed with the clerk in accordance with section 1245.6(a) of the Electronic Filing Rules of the Appellate Division ([22 NYCRR] Part 1245).

(b) Leave to File Amicus Curiae Brief. A motion to serve and file an amicus curiae brief shall include six copies of the proposed brief.

600.5 [Reserved]

600.6 [Reserved]

600.7 [Reserved]

600.8 [Reserved]

600.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

(a) Filing and Service of Digital Copies of Record, Appendices and Briefs

(1) Digital copies of the records, appendices and briefs filed pursuant to (22 NYCRR) § 1250.9(a), (c) and (d) shall comply with the technical specifications for electronically filed documents set forth in Attachment A to Electronic Rules of the Appellate Division ([22 NYCRR] Part 1245) and shall be filed and served by e-mail. Emails to the court shall be directed as follows:

- (i) In civil matters – AD1copy-civil@nycourts.gov
- (ii) In criminal matters – AD1copy-criminal@nycourts.gov
- (iii) In Family Court matters – AD1copy-family@nycourts.gov

(2) Records, appendices and briefs filed electronically through NYCSEF shall satisfy the digital copy requirements of (22 NYCRR) § 1250(a), (c) and (d).

600.10 [Reserved]

600.11 Additional Rules Relating to Criminal Appeals

(a) Transcript of Proceedings. Where an appeal in a criminal matter is prosecuted on the original record or by the appendix method, the appellant shall serve a copy of the transcript of the proceedings upon the respondent together with the brief and appendix, and cause a copy to be filed with the court.

600.12 [Reserved]

600.13 [Reserved]

600.14 [Reserved]

600.15 Calendar Preferences; Calendar Notice; Oral Argument; Post-Argument Submissions

(a) Calendar Notice

All appeals or causes shall be noticed for a term of the court as enumerated or non-enumerated.

The following appeals are to be noticed as enumerated:

- (1) Appeals from final orders and judgments of the Supreme Court, other than those dismissing a cause for failure to prosecute, for failure to serve a complaint or for failure to obey an order of disclosure or to stay or compel arbitration.
- (2) Appeals from decrees or orders of the Surrogate's Court finally determining a special proceeding.
- (3) Appeals from orders granting or denying motions for a new trial.
- (4) Appeals from orders granting or denying motions for summary judgment.
- (5) Appeals from orders granting or denying motions to dismiss a complaint, a cause of action, a counterclaim or an answer in point of law.
- (6) Appeals from orders of the Appellate Term.
- (7) Appeals from judgments or orders in criminal proceedings.
- (8) Special proceedings transferred to this court for disposition.
- (9) Controversies on agreed statement of facts.
- (10) Appeals from orders of the Family Court finally determining a special proceeding.
- (11) Appeals from orders granting or denying custody of minors after a hearing.
- (12) Special proceedings challenging determination of the New York City tax appeals tribunal.
- (13) Such other appeals as the court or a justice thereof may designate as enumerated.

(b) All other types of appeals not set forth in subdivision (a) of this section shall be noticed as non-enumerated.

(c) How Placed on the Calendar; filing time

(1) Appellant's Filing. An appeal or cause shall be placed on the calendar, by the appellant or moving party filing with the clerk, at least 57 days before the first day of the term for which the matter shall have been noticed, the record on appeal or appendix and brief, in the manner and number required by (22 NYCRR) § 1250.9(a), and a note of issue, with proof of service, stating the term for which noticed, the date of the notice of appeal, the date the judgment or order was entered, the name of the justice who made the decision, the nature of the appeal or cause, and the index or indictment number and the Appellate Division number.

(2) Respondent's Filing. At least 27 days before the first day of the term for which the appeal or cause shall have been noticed, the respondent or opposing party shall file the answering brief and appendix, if any, in the manner and number required by (22 NYCRR) § 1250.9(c).

(3) Reply Brief. Within nine days after service of the respondent's brief, the appellant or moving party may file a reply brief, in the manner and number required by (22 NYCRR) § 1250.9(d).

(d) Cross Appeals

(1) If the parties to the appeal do not stipulate to a briefing schedule pursuant to (22 NYCRR) § 1250.9(f)(1)(i), respondent-appellant shall file his or her answering brief pursuant to the schedule for a respondent for that specific term. Appellant shall have nine days thereafter to file its reply brief, and thereafter, respondent-appellant shall have nine days to file his or her reply brief.

(e) Time Permitted for Argument

(1) On the argument of an enumerated appeal, not more than 15 minutes shall be permitted on either side. Any party may for good cause request additional argument time by written application before the day of argument.

(2) Oral argument shall not be allowed in non-enumerated appeals, except by permission of the Court upon application pursuant to (22 NYCRR) § 1250.15(c)(2).

(3) Only one counsel on each side shall be heard except by permission of the Court.

600.16 [Reserved]

600.17 Fees of the Clerk of the Court

(a) In addition to the fees provided for in (22 NYCRR) § 1250.17, pursuant to Judiciary Law § 265, the clerk of the court is entitled to receive in advance the following fees on behalf of the State of New York:

(1) For an embossed and engraved certificate of admission as an attorney and counselor at law, twenty-five dollars;

(2) For a certificate of good standing, ten dollars;

(3) For furnishing a hard or digital copy, certified or uncertified, of an opinion, decision, order, record, or other paper in his or her custody, one dollar for the first page and 50 cents for each additional page; and

(4) No charge shall be made for furnishing a copy of the order, opinion or decision of the court to any party to an appeal or proceeding pending in the court.

Supreme Court of the State of New York

Appellate Division: Second Judicial Department

ADM 2018-0622

The Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, pursuant to the authority vested in it, DOES HEREBY, effective September 17, 2018, rescind Part 670 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York, and adopt a new Part 670 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

Part 670. Rules of Practice

670.1 General Provisions and Definitions

(a) Practice Rules of the Appellate Division

This Part serves as a supplement to, and should be read in conjunction with, the Practice Rules of the Appellate Division (22 NYCRR Part 1250) and the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245). Where there is a conflict between this Part and Parts 1250 and 1245, this Part controls when practicing within the Second Judicial Department.

(b) Sessions of the Court

Unless otherwise ordered, the court will convene at 10 o'clock in the forenoon on Monday, Tuesday, Thursday, and Friday. Special sessions of the court may be held at such times and for such purposes as the court from time to time may direct.

670.2 Settlement or Withdrawal of Motion, Appeal or Proceeding; Notice of Change in Circumstances

(a) Withdrawal of an appeal which has been placed on the court's calendar

A stipulation withdrawing an appeal or proceeding which has been placed on the Court's calendar must be filed with the court prior to the calendar date. Absent such a stipulation, an appellant may, prior to the calendar date, move for permission to withdraw such an appeal or proceeding.

670.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program

(a) Initial Filings

(1) In all civil matters, counsel for the appellant or the petitioner shall file the original plus one copy, and serve one copy, of the papers referred to in section 1250.3(a) of the Practice Rules of the Appellate Division (22 NYCRR §1250.3[a]).

(2) Where an appeal is taken in a criminal matter, the clerk of the court of original instance shall execute an initial information statement on a form approved by the court and shall transmit

it together with a copy of the notice of appeal and the order of sentence and commitment, if any, to the clerk of this court.

(3) An initial informational statement relating to attorney matters shall be filed in connection with attorney disciplinary proceedings instituted in this court and applications made to this court pursuant to sections 690.17 and 690.19 of the rules of this court.

(4) In all other actions or proceedings instituted in this court, and applications pursuant to CPLR 5704, an initial informational statement shall be filed.

(b) Active Management.

(1) All appeals from orders of the Family Court, and any other proceedings in which the welfare, custody or parental access of children is at issue, shall be actively managed.

(2) In all actively managed matters, the clerk shall issue a scheduling order or orders directing the parties to take specified action to expedite the prosecution thereof, including but not limited to the ordering of the transcript of the proceedings and the filing of proof of payment therefor, the making of motions, the perfection of the cause, and the filing of briefs. Notwithstanding any of the time limitations set forth in this part or Part 1250 (22 NYCRR 1250), a scheduling order shall set forth the date or dates on or before which such specified action shall be taken.

(3) If any party shall establish good cause why there cannot be compliance with the provisions of a scheduling order, the clerk may amend the same consistent with the objective of insuring expedited prosecution of the cause. An application to amend a scheduling order shall be made by letter, addressed to the clerk, with a copy to the other parties to the cause. The determination of the clerk in amending or declining to amend a scheduling order shall be reviewable by motion to the court on notice pursuant to section 1250.4 of the Practice Rules of the Appellate Division (22 NYCRR § 1250.4).

(4) Upon the default of any party in complying with the provisions of a scheduling order, the clerk shall issue an order to show cause, on notice, why the cause should not be dismissed or such other sanction be imposed as the court may deem appropriate.

670.4 Motions

(a) Motions Which Include Requests for Interim Relief

(1) Notice. To the extent practicable, the notice required by section 1250.4(b)(2) of the Practice Rules of the Appellate Division (22 NYCRR § 1250.4[b][2]) shall be accompanied by a copy of the papers the party seeking relief intends to present to the court for filing. The affidavit or affirmation of notice required by section 1250.4(b)(2) of the Practice Rules of the Appellate Division (22 NYCRR § 1250.4[b][2]) shall state the manner in which the proposed filing was served. If notice has not been given, and/or a copy of the papers the party seeking relief intends to present to the court for filing has not been served, the affidavit or affirmation shall state whether the applicant has made an attempt to give notice and/or make such service and the reasons for the lack of success. If the applicant is unwilling to give notice and/or to make the required service, the affidavit or affirmation shall state the reasons for such unwillingness.

(2) Oral argument. Where the notice required by subdivision (1) has been given, the party seeking relief and/or the party opposing the relief sought may request the opportunity to present argument to the justice to whom the application will be presented, which request shall be determined in the discretion of that justice.

(b) Permission to Appeal to the Appellate Division in a Civil Matter. A motion for permission to appeal to the Appellate Division pursuant to CPLR 5701(c) and Family Court Act § 1112 shall be addressed to the court.

(c) Leave to File Amicus Curiae Brief. A motion for leave to file an amicus brief shall be made in accordance with section 1250.4(f) of the Practice Rules of the Appellate Division (22 NYCRR §1250.4[f]), and shall include one copy of the proposed brief.

Section 670.5 [Reserved]

Section 670.6 [Reserved]

Section 670.7 [Reserved]

Section 670.8 [Reserved]

670.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

(a) Digital Copies of Records, Appendices and Briefs. The digital copies of the records, appendices and briefs required to be filed with the Court pursuant to §§ 1250.9[a], [c] and [d] of the Rules of Practice of the Appellate Division (22 NYCRR §§ 1250.9[a], [c], [d]) shall comply with the technical requirements for electronically filed documents (22 NYCRR Part 1245, Appendix A), and shall be filed by e-mailing those documents to ad2-digitalfiling@nycourts.gov

(b) Extensions of time to perfect an appeal or to file and serve a brief. Motions to extend the time to perfect an appeal or to file and serve a brief shall be granted only in limited circumstances and upon a showing of good cause.

Section 670.10 [Reserved]

670.11 Additional Rules Relating to Criminal Appeals

(a) Transcript of Proceedings. Where an appeal in a criminal matter is prosecuted on the original record or by the appendix method, the appellant shall serve a copy of the transcript of the proceedings upon the respondent together with the brief and appendix, and cause a copy to be filed with the court.

(b) Appeal from Sentence. Where the only issue to be raised on appeal concerns the legality, propriety, or excessiveness of sentence, the appeal may be prosecuted by submitting a concise statement setting forth the reasons urged in support of the reversal or modification of sentence. Such statement shall contain the information required by CPLR 5531 and by section 1250.8(b)(3) of the Practice Rules of the Appellate Division (22 NYCRR § 1250.8[b][3]) and shall contain a statement by counsel for the appellant that no other issues are asserted.

(1) Such appeals may be brought on as though they were motions made in accordance with the provisions of section 1250.4 of the Practice Rules of the Appellate Division (22 NYCRR §

1250.4) and shall be placed upon a special calendar for appeals submitted in accordance with this subdivision. The respondent shall serve and file papers in opposition within 14 days after service of the motion papers.

(2) The appellant shall submit the transcript of the sentence proceeding and of the underlying plea or trial. The parties shall file an original and one digital copy of their respective papers, including the necessary transcripts.

Section 670.12 [Reserved]

Section 670.13 [Reserved]

Section 670.14 [Reserved]

670.15 Calendar Preference; Calendar Notice; Oral Argument; Post-Argument Submissions

(a) Oral Argument. A maximum of 15 minutes shall be allowed for argument to each attorney who has filed a brief, except as set forth in subdivision (b).

(b) Argument Proscribed. Argument is not permitted on issues involving maintenance; spousal support; child support; counsel fees; the legality, propriety or excessiveness of sentences; determinations made pursuant to the sex offender registration act; grand jury reports; and calendar and practice matters including but not limited to preferences, bills of particulars, correction of pleadings, examinations before trial, physical examinations, discovery of records, interrogatories, change of venue, and transfers of actions to and from the Supreme Court.

(c) Who May Argue. Not more than one attorney shall be heard for each brief filed unless, upon application made in writing at least seven days before the matter appears on the court's calendar, the court shall have granted permission to allow more than one attorney to argue.

(d) Adjournment of Oral Argument. After filing a brief and until a matter has been placed on the court's calendar, counsel shall advise the court, in writing and on a continuing basis, of commitments that will interfere with counsel's ability to appear on a particular date. Requests for leave to adjourn oral argument of an appeal or proceeding which appears on the court's calendar are strongly disfavored. Such requests may be granted only where unusual_circumstances are present, as explained in a writing in which counsel indicates why he or she cannot appear for oral argument, why no other attorney can appear in his or her place, and why oral argument is necessary. Requests for leave to adjourn oral argument of an appeal or proceeding are within the discretion of the court.

(e) Submission. A party who originally elected to argue may notify the clerk of the intention to submit the cause without argument and need not appear at the call of the calendar.

(f) Rebuttal. Rebuttal argument shall not be permitted, except with leave of the court given at the time of argument.

(g) Citations to Recent Authority. After a cause has been placed on the calendar and prior to argument or submission of that cause, any party who previously submitted a brief may inform the court by letter, a copy of which is contemporaneously provided to the other parties to the appeal,

of the citation to any decisions, statutes, ordinances, rules, regulations, or other similar matter not previously cited in that party's brief which arose subsequent to the filing thereof, without additional argument. Except for good cause shown, the court will not accept precedent at the call of the calendar where a copy thereof has not previously been given to the other parties.

Section 670.16 [Reserved]

670.17 Fees of the Clerk of the Court

(a) Fees. In addition to the fees provided for in section 1250.17 of the Practice Rules of the Appellate Division (22 NYCRR § 1250.17), pursuant to Judiciary Law § 265 the clerk of the court is directed to charge and is entitled to receive in advance the following fees on behalf of the State:

(1) For making a photocopy or providing a digital copy of an order, decision, opinion, or other filed paper or record, \$1 for the first page and 50 cents for each additional page.

(2) For comparing the copy of a prepared order, decision, opinion, or other paper or record with the original on file, \$1 for the first page and 50 cents for each additional page, with a minimum fee of \$2.

(3) For certifying the copy of an order, decision, record, or other paper on file or for affixing the seal of the court, \$1; and for authenticating the same, an additional \$5.

(4) For certifying in any form that a search of any records in his custody has been made and giving the result of such search, \$1.

(5) For an engraved parchment diploma attesting to admission as an attorney and counselor at law, \$25.

(6) For a printed certificate attesting to admission or to good standing as an attorney and counselor at law, \$10.

DATED: Brooklyn, New York
June 22, 2018



ALAN D. SCHEINKMAN
Presiding Justice

At a Term of the Appellate Division of the Supreme Court in and for the Third Judicial Department, held in the City of Albany, State of New York, commencing on the 26th day of June 2018.

PRESENT:

HON. ELIZABETH A. GARRY,
Presiding Justice
HON. WILLIAM E. McCARTHY
HON. JOHN C. EGAN JR.
HON. MICHAEL C. LYNCH
HON. EUGENE P. DEVINE
HON. CHRISTINE M. CLARK
HON. ROBERT C. MULVEY
HON. SHARON A.M. AARONS
HON. PHILLIP R. RUMSEY
HON. STAN L. PRITZKER,
Associate Justices

**In the Matter of the Amendment of the Rules of Practice of the
Supreme Court, Appellate Division, Third Judicial Department.**

ORDER

The Appellate Division of the Supreme Court of the State of New York, Third Department, pursuant to the authority vested in it, DOES HEREBY, effective September 17, 2018, rescind Part 800 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York, and adopt a new Part 850 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

Part 850 RULES OF PRACTICE

850.1 General Provisions and Definitions

(a) The Practice Rules of the Appellate Division

The Practice Rules of the Appellate Division are embodied in Part 1250 of the New York Rules of Court (22 NYCRR Part 1250) and the Electronic Filing Rules of the Appellate Division are embodied in Part 1245 (22 NYCRR Part 1245). The Rules of Practice of the Appellate Division, Third Judicial Department are intended to supplement the Practice Rules of the Appellate Division. Where there is a conflict between this Part and Parts 1250 and 1245, this part controls when practicing within the Third Judicial Department.

(b) Definitions

All of the definitions contained in section 1250.1 of the Practice Rules of the Appellate Division are incorporated herein unless otherwise indicated.

(c) Court Sessions

Unless otherwise directed by the court, court sessions shall commence at 1:00 p.m., except on Friday and the last session day of a term, when they shall commence at 9:30 a.m. A term of court shall be deemed to continue until the day on which the next term convenes, and the court may reconvene at any time during recess.

850.2 [Reserved]

850.3 [Reserved]

850.4 Motions

(a) Motions or Applications Which Include Requests for Interim Relief.

(1) Notice. A party seeking relief as provided in section 1250.4 (b) of the Practice Rules of the Appellate Division shall, in addition to the notice required by section 1250.4 (b) (2), provide advance notice to the court of its intention to present the application or order to show cause. To the extent practicable, the notice required by section 1250.4 (b) (2) and by this section shall be accompanied by a copy of the papers the party seeking relief intends to present to the court for filing. The affidavit or affirmation of notice required by section 1250.4 (b) (2) shall state the manner in which the proposed filing was served.

(2) Oral argument. Where the notice required by subdivision (1) has been given, the party seeking relief and/or the party opposing the relief sought may request the opportunity to present argument to the justice to whom the

application or order to show cause will be presented, which request shall be determined in the discretion of that justice.

(b) Admission Pro Hac Vice. An application for admission pro hac vice, pursuant to 1250.4 (e) of the Practice Rules of the Appellate Division, shall be made in the form of a motion.

(c) Leave to File Amicus Curiae Brief. A motion for permission to serve and file an amicus curiae brief, made pursuant to 1250.4 (f) of the Practice Rules of the Appellate Division, shall include one original, five hard copies and one digital copy of the proposed brief with proof of service of one hard copy of the brief upon each other party to the appeal or proceeding.

850.5 Methods of Perfecting Causes

Where perfection of a cause by the original record has been authorized by statute or order of the court, the appellant's brief shall contain an appendix which shall be printed or otherwise reproduced as provided in sections 1250.6 and 1250.7 of the Practice Rules of the Appellate Division.

850.6 [Reserved]

850.7 Form and Content of Records and Appendices; Exhibits

(a) Exhibits. Exhibits under a respondent's control or under the control of a third person shall be filed either pursuant to a five-day written demand served by the appellant upon a respondent or pursuant to a subpoena duces tecum issued in accordance with CPLR article 23. The appellant shall also file with the brief proof of service of such a demand or subpoena together with a list of all relevant exhibits.

(b) Certification of Record or Appendix. The record or appendix shall be certified as provided in section 1250.7 (g) of the Practice Rules of the Appellate Division. Any dispute concerning the certification of the record or appendix or the contents of a record or appendix so certified shall be directed to the court from which the appeal is taken.

850.8 [Reserved]

850.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

(a) Extension of time to perfect appeal. A motion for an extension of time to perfect an appeal or proceeding, made pursuant to section 1250.9 (b) of the

Practice Rules of the Appellate Division, shall be supported by an affidavit setting forth a reasonable excuse for the delay and an intent to perfect the appeal or proceeding within a reasonable time.

(b) Extensions of time to file and serve responsive briefs. A motion for an extension of time to file and serve a responsive brief, made pursuant to section 1250.9 (g) of the Practice Rules of the Appellate Division, shall be supported by an affidavit setting forth a reasonable excuse for the delay and an intent to file and serve the brief within a reasonable time.

850.10 [Reserved]

850.11 Additional Rules Relating to Criminal Appeals

(a) Transcript of Proceedings. Where poor person status has been granted by this court, the clerk of the court from which the appeal is taken, after service upon the clerk of a copy of the decision of this court, shall furnish without charge to a person granted permission to proceed as a poor person one copy of the transcript of all proceedings in the matter and one copy of any other paper or document on file which is material and relevant to the appeal, and shall forward another copy of the transcript to the clerk of this court, who shall attach it to the single copy of the record upon which the appeal shall be prosecuted.

(b) Where a court has directed that the appeal be perfected by a particular date, the appellant may apply by letter, on notice to all parties, to extend the time to perfect the appeal. Where counsel has been assigned, any request for an extension of time to perfect the appeal made more than one year after the assignment date shall be made by motion. Any application or motion shall state the following: the date of the judgment of conviction; whether the conviction was by trial or plea; whether defendant is free on bail; the date the notice of appeal was filed; the date the transcript and other record documents were ordered; whether the transcript and other record documents have been received; the reason for the request; and the anticipated date that the appeal is expected to be perfected. All extension applications and motions must be accompanied by proof of service upon the District Attorney and the defendant.

(c) Notwithstanding the provisions of sections 1250.9 (a) and 1250.10 (b) of the Practice Rules of the Appellate Division, an appeal authorized by the Criminal Procedure Law shall be deemed to have been abandoned where the appellant shall fail to apply for permission to proceed as a poor person and/or for assignment of counsel or shall fail to perfect the appeal within twenty-four months after the date of the notice of appeal; and the clerk of this court shall not accept for filing any record, brief or appendix beyond the twenty-four-month period unless

directed to do so by order of the court. Such an order shall be granted only pursuant to a motion on notice supported by an affidavit setting forth a reasonable excuse for the delay, in addition to any information required by 850.11 (b).

(d) In addition to the items specified in 1250.7 (d), an appendix in a criminal cause shall contain a copy of the indictment and a complete transcript of the sentencing minutes.

850.12 [Reserved]

850.13 [Reserved]

850.14 Miscellaneous Appeals and Proceedings

(a) Unemployment insurance appeals. An appeal from a decision of the Unemployment Insurance Appeal Board may be prosecuted in accordance with written instructions which are available from the clerk of the court or the Department of Law, Employment Security Bureau. There are no filing fees associated with Unemployment Insurance appeals.

(b) Workers' compensation appeals. An appeal from a decision of the Workers' Compensation Board shall be prosecuted in accordance with sections 1250.6 and 1250.7 of the Practice Rules of the Appellate Division. In addition, the record shall contain a record list and a copy of each item identified in the record list, including those items the appellant reasonably assumes will be relied upon by a respondent.

(1) Record list.

(i) The appellant shall prepare a list of the papers relevant to those issues intended to be presented for review by the court.

(ii) Unless, within 45 days after service of a notice of appeal, the Workers' Compensation Board shall vacate, modify or rescind the decision which is the subject of the appeal, within 30 days after expiration of said 45 days or, in the event the board sooner determines that it will not vacate, modify or rescind the decision, within 30 days after the board serves a notice of such determination on the appellant, the appellant shall serve a copy of the proposed record list upon the Attorney General and each party affected by the board decision, together with a written stipulation reciting that the papers, testimony and exhibits listed therein constitute all of the papers necessary and relevant to the issues. The appellant shall also

serve upon the parties affected a written request to stipulate to the contents of the record list within 20 days. Within 20 days after such service, any party so served may make objections or amendments to the record list and serve them upon the appellant.

(iii) Within 20 days after service of a proposed record list, a party respondent shall serve upon the appellant any proposed objections or amendments thereto. The appellant and the objecting party shall have 20 days thereafter in which to agree upon the objections and amendments to the record list and to stipulate in writing thereto. If they are unable to agree, within 10 days after expiration of said 20 days, the appellant shall make application to the board for settlement of the record list. A copy of the board's decision shall be attached to the record list.

(iv) If a party timely served with a proposed record list shall fail to serve objections or amendments within 20 days, the record list shall be deemed correct as to that party, and the appellant shall affix to the record on appeal an affirmation certifying to the timely service of the proposed record list and request to stipulate and to the failure of one or more parties to comply with the request or to make objections or amendments thereto within the time prescribed.

(v) When filing the record on appeal, the appellant shall file the record list, together with the stipulation, board decision or affirmation.

(vi) A decision of the board upon an application to settle a record list shall be reviewable by motion pursuant to section 1250.4 of the Practice Rules of the Appellate Division. The moving papers shall contain a copy of the board decision and the papers submitted to the board upon the application. Where necessary, the court will obtain the board's file for use on the motion.

(2) Form and content of record. A record on an appeal pursuant to section 23 of the Workers' Compensation Law shall comply as to form with sections 1250.6 and 1250.7 of the Practice Rules of the Appellate Division.

(3) Certification of record. The record on appeal shall be certified as true and correct by the secretary or other designee of the Workers' Compensation Board, by a certificate of the appellant's attorney pursuant to CPLR 2105, or by a stipulation in lieu of certification pursuant to CPLR 5532.

(4) Remittitur. Upon entry of an order on the court's decision, the record on appeal shall be remitted to the Attorney General with a copy of the order for filing with the Workers' Compensation Board.

(c) Sex Offender Registration Act (SORA) appeals. An appeal authorized by Correction Law sections 168-d (3) and 168-n (3) shall be prosecuted in accordance with section 1250.11 of the Practice Rules of the Appellate Division and with section 850.11 of this Part.

850.15 Calendar Preference; Calendar Notice; Oral Argument; Post-Argument Submissions

Unless otherwise permitted by the court, oral argument shall not be allowed in the following cases:

- (a) appeals from the Workers' Compensation Board;
- (b) appeals from the Unemployment Insurance Appeal Board;
- (c) appeals from judgments of conviction in criminal cases challenging only the legality, propriety or excessiveness of the sentence imposed;
- (d) appeals in or transfers of CPLR article 78 proceedings in which the sole issue raised is whether there is substantial evidence to support the challenged determination; and
- (e) any other case in which the court, in its discretion, determines that argument is not warranted.

850.16 Decisions, Orders and Judgments; Costs; Remittitur; Motions for Reargument or Leave to Appeal to the Court of Appeals

- (a) The orders, judgments, appointments, assignments and directions of the court shall be signed by the presiding justice, the clerk of the court or a deputy clerk of the court.
- (b) Costs in workers' compensation, unemployment insurance appeals and proceedings commenced in this court shall be taxed by the clerk in accordance with CPLR 8403.

850.17 Fees of the Clerk of the Court

(a) Fees. In addition to the fees provided for in section 1250.17 of the Practice Rules of the Appellate Division, pursuant to Judiciary Law § 265, the clerk of the court is entitled to receive for and on behalf of the state:

(1) For a large, embossed certificate attesting to admission as an attorney and counselor at law, twenty-five dollars (\$25).

(2) For a printed certificate attesting to admission, good standing and registration as an attorney and counselor at law, ten dollars (\$10).

DATED AND ENTERED: June 29, 2018



Hon. Elizabeth A. Garry
Presiding Justice

Appellate Division, Fourth Judicial Department
22 NYCRR Part 1000. Rules of Practice
Effective September 17, 2018

1000.1 General Provisions and Definitions

(a) Practice Rules of the Appellate Division

This Part serves as a supplement to, and should be read in conjunction with, the Practice Rules of the Appellate Division (22 NYCRR Part 1250) and the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245). Where there is a conflict between this Part and those rules, this Part controls when practicing within the Fourth Judicial Department.

(b) Sessions of the Court

The Presiding Justice shall designate by order the terms of Court and the Clerk shall provide notice of designated terms to the Bar. Unless otherwise ordered by the Presiding Justice, the Court shall convene at 10:00 a.m. each day during a designated term.

1000.2 [Reserved]

1000.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program

(a) The Court does not require the filing of an initial informational statement pursuant 22 NYCRR 1250.3 (a).

(b) The Court does not have a settlement or mediation program pursuant to 22 NYCRR 1250.3 (c).

1000.4 Motions

(a) Proof of service required. In addition to proof of filing of the notice of appeal as required pursuant to 22 NYCRR 1250.4 (a) (3), a movant shall submit proof or admission of service of the notice of appeal.

(b) Order to show cause. An application for an order to show cause pursuant to 22 NYCRR 1250.4 (b) shall be directed to a Justice of this Court with chambers in the Judicial District from which the appeal or proceeding arises.

- (c) Family Court Act § 1114 and CPLR 5704 (a). Unless otherwise ordered by a Justice of this Court, an application for a stay pursuant to Family Court Act § 1114 or an application pursuant to CPLR 5704 (a) shall be made by order to show cause pursuant to 22 NYCRR 1250.4 (b).
- (d) Extension of time to file answering or reply documents. Any request for an extension of time to file answering or reply documents pursuant to 22 NYCRR 1250.4 (a) (5) shall be made by motion, and shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file the documents within a reasonable time.
- (e) Leave to File Amicus Curiae Brief. A motion for leave to file an amicus curiae brief shall be made in accordance with 22 NYCRR 1250.4 (f), and only one copy of the proposed brief shall be submitted with the motion. When permission to submit an amicus curiae brief is granted, the person or entity to whom it is granted shall file five hard copies and one digital copy of the brief with proof of service of one hard copy on each party. A person or entity granted permission to appear amicus curiae shall not be entitled to oral argument unless the Court directs otherwise.
- (f) Poor person relief.
 - (1) An affidavit in support of a motion for permission to proceed on appeal as a poor person shall, in addition to the matters listed in 22 NYCRR 1250.4 (d), list
 - (a) the movant's assets with their value; and
 - (b) the number of dependants the movant supports in the movant's present household.
 - (2) A motion for permission to proceed on appeal as a poor person and for assignment of counsel shall be served upon the County Attorney in the county from which the appeal arises.

1000.5 [Reserved]

1000.6 [Reserved]

1000.7 **Form and Content of Records and Appendices; Exhibits**

- (a) Proof of filing and service of notice of appeal. All records and appendices shall contain the notice of appeal with proof of service and filing.
- (b) Certification of Record or Appendix. Any dispute over a certification of the record or appendix pursuant to 22 NYCRR 1250.7 (g) or the contents of a record or appendix so certified shall be directed to the court from which the appeal is taken.
- (c) Failure to list document. In a criminal matter, the failure of the parties to list in the stipulation to the record on appeal any transcript, exhibit or other document that constituted a part of the underlying prosecution shall not preclude the Court from considering such transcript, exhibit, or other document in determining the appeal.
- (d) Appendices - criminal appeals. Pursuant to 22 NYCRR 1250.7 (d) (3), in a criminal matter, when permission to proceed as a poor person has been granted, the appendix to be filed and served by the appellant shall contain, in the following order: the description of the action required by CPLR 5531; a copy of the notice of appeal with proof of service and filing; a copy of the certificate of conviction and the judgment from which the appeal is taken; a copy of the indictment, superior court information or other accusatory instrument; all motion papers, affidavits and, to the extent practicable, written and photographic exhibits relevant and necessary to the determination of the appeal; and the stipulation of the parties or their attorneys to the complete record, the order settling the record, or the certification of the record pursuant to 22 NYCRR 1250.7 (g). The appellant shall also file a copy of any prior order entered by this Court or the trial court affecting the appeal including, but not limited to, an order that: expedites the appeal; grants permission to proceed on appeal as a poor person or on less than the required number of records and briefs; assigns counsel; grants an extension of time to perfect the appeal; grants a stay or injunctive relief; grants relief from dismissal of the appeal; or grants permission to exceed page limitations.

1000.8 Form and Content of Briefs

- (a) Cover color. Except in those appeals in which permission to proceed as a poor person has been granted, the cover of a hard copy brief of an appellant or petitioner shall be blue; the cover of a hard copy brief of a respondent shall be red; the cover of a hard copy reply brief shall be gray; the cover of a hard copy surreply brief shall be yellow; and the cover of a hard copy brief of an intervenor or amicus curiae shall be green. The cover of a hard copy pro se supplemental

brief in a criminal appeal shall be white, as shall the cover of a hard copy brief submitted by an Attorney for the Child. Covers of electronically-filed briefs shall likewise be colored to the extent practicable.

1000.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

- (a) Extension of time to perfect. A motion for an extension of time to perfect an appeal pursuant to 22 NYCRR 1250.9 (b) shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to perfect the appeal within a reasonable time.
- (b) Extension of time to file brief. A stipulation to extend the time to file and serve a responsive brief pursuant to 22 NYCRR 1250.9 (g) (1) shall be filed on or before the date by which the brief was originally required to be filed. In no case shall the parties stipulate to, or apply by letter for, an extension of time to file and serve a responsive brief that would permit the filing and service of the brief within 30 days of the date upon which the matter is scheduled to be heard. A motion for an extension of time to file and serve a responsive brief pursuant to 22 NYCRR 1250.9 (g) (2) shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file and serve the brief within a reasonable time.
- (c) Digital copies. In matters not subject to electronic filing, digital copies of the records, appendices and briefs filed pursuant to 22 NYCRR § 1250.9 (a), (c) and (d) shall comply with the technical specifications for electronically filed documents (Attachment A to 22 NYCRR Part 1245) and shall be filed and served as directed by the Clerk of the court.

1000.10 [Reserved]

1000.11 Additional Rules Relating to Criminal Appeals

- (a) Poor Person Relief and Assigned Counsel; Continuation of eligibility for assigned counsel on appeal. Relief pursuant to 22 NYCRR 1250.11 (a) (1) is contingent upon receipt of a properly filed and served notice of appeal and a copy of the order granting a defendant's application pursuant to CPL 380.55.
- (b) Application for Withdrawal of Assigned Appellate Counsel. When counsel who has been assigned to perfect an appeal on behalf of an indigent defendant

determines, after conferring with the defendant and trial counsel, that the appeal is frivolous, counsel may move to be relieved of the assignment pursuant to 22 NYCRR 1250.11 (f) (2) (*see People v Crawford*, 71 AD2d 38). The motion must be accompanied by a brief in which counsel states all points that may arguably provide a basis for appeal, with references to the record and citation of legal authorities. A copy of the brief, together with the motion, must be served upon the defendant at least 45 days before the return date of the motion. Together with the original motion papers and brief, counsel shall submit the papers that would constitute the record on appeal. Counsel shall also submit a copy of a letter to the defendant advising that he or she may elect to file a pro se response to the motion and/or a pro se supplemental brief.

A defendant wishing to file a pro se response to such a motion and/or a pro se supplemental brief shall file the original response and/or brief, together with proof of service of one copy on assigned counsel and one copy on the People, by 4:00 p.m. on the business day preceding the day on which the motion is returnable, unless, for good cause shown, they are permitted to be filed at a later time. Any request for an extension to file such a response and/or pro se supplemental brief must be made by motion and supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file and serve the response and/or brief within a reasonable time (*see* 22 NYCRR 1250.4 [a] [5]).

- (c) Pro se supplemental briefs where counsel does not seek to withdraw. When assigned counsel does not move to be relieved as counsel and defendant has filed a pro se supplemental brief pursuant to 22 NYCRR 1250.11 (g) (2), the People may file and serve an original and five copies of a responding brief, with proof of service of one copy on the defendant and assigned counsel, no later than 45 days after defendant has served the pro se supplemental brief.

1000.12 Transferred Proceedings.

- (a) Original papers. A proceeding transferred to this Court pursuant to CPLR 7804 (g) shall be prosecuted upon the original papers, which shall include the notice of petition or order to show cause and petition, answer, any other transcript or document submitted to Supreme Court, the transcript of any proceedings at Supreme Court, the order of transfer and any other order of Supreme Court. When the proceeding has been transferred prior to the filing and service of an answer, a respondent shall file and serve an answer within 25 days of filing and service of the order of transfer. When a proceeding has been transferred to this Court pursuant to Executive Law § 298, the State Division of Human Rights shall file

with the Clerk the record of the proceedings within 45 days of the date of entry of the order of transfer.

- (b) Briefs, transcripts and oral argument. Upon receipt of the order of transfer and other documents from the court from which the transfer has been made, the Clerk shall issue a schedule for the filing and service of briefs, if any, the production of necessary transcripts and the calendaring of the proceeding.
 - (1) A petitioner shall file 5 hard copies and one digital copy of a brief, with proof of service of one copy on each respondent, as set forth in the scheduling order. If the brief is not timely filed and served, and no motion to extend the time for filing and service is made, the proceeding shall be deemed dismissed, without the necessity of an order.
 - (2) A respondent shall file 5 hard copies and one digital copy of a brief, with proof of service of one copy on each other party, as set forth in the scheduling order.

1000.13 [Reserved]

1000.14 [Reserved]

1000.15 Calendar Preference or Adjournment; Calendar Notice; Oral Argument; Post-Argument Submissions

- (a) Calendar preference or adjournment. A motion for a calendar preference pursuant to 22 NYCRR 1250.15 (a) (2) shall be supported by an affidavit setting forth with particularity the compelling circumstances justifying the calendar preference. A motion to adjourn the calendaring of an appeal or proceeding shall be supported by an affidavit setting forth with particularity the compelling circumstances justifying an adjournment.
- (b) Scheduling Order. After an appeal is perfected or an original or transferred proceeding is filed or received, the Clerk shall, where appropriate, issue a scheduling order, which will specify the term of Court for which the matter has been scheduled and set a deadline for the service and filing of respondents' briefs and reply briefs, if any. A party or a party's attorney shall notify the Clerk in writing within 15 days of the date that the scheduling order was mailed of unavailability for oral argument on a specific date or on specific dates during the term.

- (c) **Calendar Notice.** The Clerk shall prepare calendars for each day of a Court term by designating for argument or submission appeals or proceedings that have been perfected or scheduled. A notice to appear for oral argument will be sent by the Clerk to all parties or their attorneys not less than 20 days prior to the term. Parties or counsel must appear as directed or submit on the brief.

- (d) **Oral Argument.**
 - (1) A party or a party's attorney who is scheduled to argue before the Court shall sign in with the Clerk's Office prior to 10:00 a.m. on the day of the scheduled argument. When oral argument is scheduled to commence at a time other than 10:00 a.m., a party or counsel shall sign in with the Clerk's Office prior to the time designated for the commencement of argument. Not more than one person shall be heard on behalf of a party. In the event that parties submit a joint brief, not more than one person shall be heard in the matter. When a brief has not been filed on behalf of a party, no oral argument shall be permitted except as otherwise ordered by this Court. Requests for oral argument shall be made by indicating on the cover of the brief the amount of time requested. The amount of time allowed shall be within the discretion of the Court.

 - (2) Unless otherwise provided by order of this Court, oral argument shall not be permitted in the following cases:
 - (A) an appeal from a judgment of conviction in a criminal case that challenges only the legality or length of the sentence imposed;

 - (B) an appeal from a determination pursuant to the Sex Offender Registration Act;

 - (C) a CPLR article 78 proceeding transferred to this Court in which the sole issue is whether there is substantial evidence to support the challenged determination; and

 - (D) any other cause in which this Court, in its discretion, determines that oral argument is not warranted.

 - (3) The Court does not permit rebuttal.

- (e) **Post-argument submissions.** Any request for leave to file a post-argument

submission shall be made in writing within five business days of oral argument, and shall be accompanied by a copy of the proposed submission.

1000.16 Orders

- (a) Service of order. The party prevailing in a cause shall serve a copy of the order with notice of entry on all parties.
- (b) Posting of orders. Pursuant to 22 NYCRR 1250.16 (a), a copy of the order of this Court determining a cause shall be posted on the Court's website. This rule does not apply to motion orders.

1000.17 [Reserved]