

**NEW YORK STATE
BAR ASSOCIATION**

**ADDENDUM TO THE
RECOMMENDATIONS OF THE**

**COMMITTEE ON COURTS OF
APPELLATE JURISDICTION**

**REGARDING
APPLICATIONS FOR LEAVE
TO APPEAL TO THE
NEW YORK COURT OF APPEALS
IN CRIMINAL CASES**

OCTOBER 2009

The Committee on Courts of Appellate Jurisdiction (“Committee”) submits this Addendum to its June 10, 2009 Recommendations on Criminal vs. Civil Leave Applications to the Court of Appeals to the Executive Committee of the NYSBA.

The Committee realized at its September 23, 2009 meeting that it had not expressly addressed the issue of the number of Court of Appeals’ Judges whose consent would be required to grant an application for leave to appeal in a criminal case under the proposed application change where the full Court would consider the application. In accordance with the Committee’s recommendation that New York conform its criminal leave application procedures in the Court of Appeals to the current civil application procedures in that Court, we expressly recommend that the criminal leave applications also be granted upon the approval of two Judges of the Court of Appeals, consistent with CPLR 5602(a) governing motions for leave to appeal in civil cases.

The sole recommendation in this Addendum is to incorporate within the proposed amendment to CPL 460.20 language providing that a criminal leave application made to the Court of Appeals shall be granted upon the approval of two Judges of the Court of Appeals. We propose adding a new subdivision (2)(c) to CPL 460.20 to include the exact same language contained in CPLR 5602(a).¹

1 CPLR 5602(a) provides, in relevant part, as follows:

{H1178337} (a) Permission of appellate division or court of appeals. An appeal may be taken to the

Therefore, the Committee proposes that CPL 460.20 now be amended to read as follows (the additional language not included in our original June 10, 2009 Recommendations is underlined below):

460.20 Certificate granting leave to appeal to court of appeals

1. A certificate granting leave to appeal to the court of appeals from an order of an intermediate appellate court is an order granting such permission and certifying that the case involves a question of law which ought to be reviewed by the court of appeals.

2. Such certificate may be issued by the court of the appeals or by a justice of the appellate division in the indicated situations:

(a) Where the appeal sought is from an order of the appellate division, the certificate may be issued by (i) the court of appeals or (ii) a justice of the appellate division of the department which entered the order sought to be appealed.

(b) Where the appeal sought is from an order of an intermediate appellate court other than the appellate division, the certificate may be issued only by the court of appeals.

(c) Permission by the court of appeals for leave to appeal shall be pursuant to rules authorized by the court which shall provide that leave to appeal be granted upon the approval of two judges of the court of appeals.

3. An application for such a certificate must be made in the following manner:

(a) An application to a justice of the appellate division must be made

court of appeals by permission of the appellate division granted before application to the court of appeals, or by permission of the court of appeals upon refusal by the appellate division or upon direct application. Permission by an appellate division for leave to appeal shall be pursuant to rules authorized by that appellate division. Permission by the court of appeals for leave to appeal shall be pursuant to rules authorized by the court which shall provide that leave to appeal be granted upon the approval of two judges of the court of appeals.

upon reasonable notice to the respondent;

(b) An application seeking such a certificate from the court of appeals must be made in writing to the clerk of the court of appeals. The clerk of the court must then notify the respondent of the application.

4. A justice of the appellate division to whom such an application has been made may in his discretion determine it upon such papers as he may request the parties to submit, or upon oral argument, or upon both.

5. Every justice acting pursuant to this section shall file with the clerk of the court of appeals, immediately upon issuance, a copy of every certificate granting or denying leave to appeal.