

# Part 800

## Rules of Practice

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### **Section 800.1 Court sessions; four justices present.**

Unless otherwise ordered, 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. 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.

## **Section 800.2 Motions; special proceedings; stays**

**(a) Motions.** Unless otherwise directed by order to show cause, motions shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not court is actually in session, upon notice prescribed by CPLR 2214. Motions may not be argued except by permission of the court or a justice thereof. Counsel shall promptly notify the court clerk when such permission is granted. A notice of motion shall give notice to adverse parties that the motion will be submitted on the papers and that their personal appearance in opposition to the motion is neither required nor permitted. An order to show cause shall also give notice to adverse parties (1) whether the motion will be argued or submitted and (2) whether their personal appearance in opposition to the motion is permitted. Papers and memoranda shall be typewritten. The original moving papers shall be filed with proof of service as soon as possible. Papers in opposition to a motion made pursuant to notice of motion shall be filed at or before 11 a.m. on the Friday before the return day. Papers in opposition to an order to show cause shall be filed at or before 9 a.m. of the return date of the order. The moving papers on motions for permission to appeal to the Court of Appeals on certified questions shall state the questions proposed. A motion for permission to appeal to the Court of Appeals pursuant to CPLR 5602(a) shall be granted upon the approval of a majority of the justices comprising the panel assigned to consider the motion. On motions for reargument, a copy of the decision and any opinion of the court shall be attached to the moving papers.

**(b) Special proceedings.** Unless otherwise directed by order to show cause, original special proceedings instituted in this court (e.g., removal proceedings, mandamus and prohibition) shall be made returnable on a motion day, at 1:30 p.m., upon notice prescribed by CPLR 403 or CPLR 7804(c), unless a different time is otherwise fixed by applicable statute. The moving and opposing parties shall submit the original and six copies of their papers with proof of service of a copy on each adversary. Moving papers shall be filed within 24 hours after service upon respondent, and opposing papers shall be filed as prescribed by applicable CPLR section, unless otherwise directed by the court.

**(c) Review Proceedings Under Education Law, Labor Law, Public Health Law, and Tax Law.** Unless otherwise provided by order to show cause, review proceedings commenced in this court pursuant to section 6510 of the Education Law, sections 220 or 220-b of the Labor Law, section 230-c of the Public Health Law or section 2016 of the Tax Law shall be made returnable on a motion day, on not less than 20 days' notice, as provided in CPLR 7804(c). Within 60 days from service of respondent's answer, petitioner shall file an original and nine copies of a reproduced full record on review and 10 copies of petitioner's brief, or a single copy of the record and 10 copies of petitioner's brief and appendix, with proof of service of one copy

of the record and two copies of the brief, or two copies of the brief and appendix, upon respondent. Within 45 days from service of petitioner's brief, respondent shall file 10 copies of a brief or brief and appendix, with proof of service of two copies on petitioner. Petitioner may file a reply brief within 10 days of service of respondent's brief. The record to be filed by petitioner shall be stipulated to by the parties and shall include the petition, answer, reply and affidavits, if any, the administrative determination sought to be reviewed, and the hearing transcript and exhibits. In proceedings pursuant to section 2016 of the Tax Law, the stipulated record shall also include the determination of the administrative law judge, the decision of the tax appeals tribunal, the stenographic transcript of the hearing before the administrative law judge, the transcript of any oral proceedings before the tax appeals tribunal and any exhibit or document submitted into evidence at any proceeding in the division of tax appeals upon which such decision is based.

**(d) Stays.** When an order to show cause presented for signature makes provision for a temporary stay or other interim relief, except as to the time and manner of service, the party seeking such relief must inform the justice or the clerk at the time of submission of the order that the opposing party has been notified of the application and whether such party opposes or consents to the granting of the interim relief sought.

### **Section 800.3 Applications to a justice for leave to appeal to Appellate Division or Court of Appeals.**

An application to a justice of the Appellate Division for leave to appeal in a civil case (CPLR 5701[c]), or in a criminal action or proceeding (CPL 460.15; CPL 460.20), may, but need not be, addressed to a named justice, and, unless otherwise directed by order to show cause, shall be made returnable at the court's address in Albany, in the manner provided in section 800.2(a) of this Part. Such an application may not be argued unless the justice to whom it is made or referred otherwise directs.

### **Section 800.4 Alternative methods of prosecuting appeals and review proceedings.**

An appeal or transferred review proceeding may be prosecuted upon a full record reproduced by any method approved for briefs and appendixes by CPLR 5529, by the appendix method, or upon an agreed statement in lieu of record.

**(a) Reproduced full record.** When the full record is reproduced, appellant shall file with the clerk the original and nine copies prepared in accordance with section 800.5 of this Part, with proof of service of one copy upon each adverse party.

**(b) Appendix method.** When the appendix method is used, appellant shall file with the clerk a single copy of the papers constituting the record on appeal or record on review prepared in accordance with section 800.5 of this Part, with proof of service of a copy upon each adverse

party or, in lieu thereof, appellant may file with the clerk proof of service of a notice upon each adverse party that the single copy of the record has been filed in the office of the clerk of this court. In the alternative, when serving appellant's brief, appellant may serve the single copy of the record upon respondent and shall so state in an affidavit of service. A respondent upon whom the single copy of the record has been served shall file the record with the clerk of this court within 30 days from the date of its service upon him. When there are two or more adverse parties, appellant shall obtain instructions from the clerk for use of a single record by respondents and its filing with the clerk. Appellant's or petitioner's brief shall contain an appendix in compliance with section 800.8(b) of this Part.

**(c) Appeals by indigent parties.** An appeal in a criminal case, or in a civil case by a person who has been granted permission by this court to proceed as a poor person, may be prosecuted by the appendix method authorized by subdivision (b) of this section. Appellant shall file seven copies of a typewritten brief and appendix with proof of service of one copy upon each adversary. Respondent may likewise file seven copies of a brief with proof of service of one copy upon each adversary. The clerk of the court from which the appeal is taken, after service upon him 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 stenographic transcript of trial or hearing minutes and one copy of any other paper or document on file in his office which is material and relevant to the appeal. In criminal and family court cases the court may, where such is necessary for perfection of the appeal, direct the clerk of the court to send a copy of the stenographic transcript of trial or hearing minutes on file in his office to the clerk of this court, who shall attach it to the single copy record upon which the appeal shall be prosecuted.

**(d) Agreed statement in lieu of record.** If an appeal is prosecuted pursuant to CPLR 5527, appellant shall reproduce the agreed statement as a joint appendix in a manner authorized by CPLR 5529; shall prefix thereto a statement pursuant to CPLR 5531; and shall, within 30 days after approval of the statement by the court from which the appeal is taken, file the required number of copies, with proof of service of one copy upon each adverse party.

## **Section 800.5 Record on appeal or review.**

**(a) Form and content.** A record on appeal or record on review shall be on good quality, white, unglazed paper and shall comply with CPLR 5526 as to size and form. Carbon copies will not be accepted. Bulky records shall be divided into volumes not to exceed one and one-half inches in thickness and shall be bound on the left margin with a flat clasp or similar type of fastener. The record shall contain, in the following order, so much of the following items as shall be applicable to the particular appeal or proceeding:

- (1) a soft cover containing the title and the names, addresses and telephone numbers of attorneys;

(2) a table of contents which shall list and briefly describe each paper included in the record, each witness' testimony and each exhibit. The part relating to a transcript of testimony shall separately state as to each witness the page at which direct, cross, redirect and recross examination begins. The part relating to exhibits shall briefly describe each exhibit and shall indicate the page where offered or admitted in evidence and whether the exhibit has been omitted from the record;

(3) a statement pursuant to CPLR 5531;

(4) the notice of appeal or order of transfer, judgment or order appealed from, judgment roll, corrected transcript or statement in lieu thereof, any affidavits and relevant exhibits or copies of them, and any opinion or decision in the case;

(5) a stipulation or order settling the transcript pursuant to CPLR 5525(c);

(6) a stipulation dispensing with reproducing any exhibits. Exhibits may be omitted from the record pursuant to stipulation of counsel or by permission of the presiding justice. Omitted exhibits which are material to the issues raised on appeal shall be filed when briefs are filed. All exhibits, whether omitted from the record or not, shall be listed and briefly described in the table of contents;

(7) the appropriate certification or stipulation as required by section 800.7 of this Part.

**(b) Exhibits.** Exhibits which are material to the issues raised by any party shall be made available to the court. Exhibits not relevant, as well as bulky, dangerous or irreplaceable exhibits, need not, however, be filed unless the clerk otherwise directs. Except in appropriation cases, appellant when filing his brief shall also file the original or a certified copy of each exhibit upon which he relies or has reason to believe a respondent will rely. 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 appellant upon a respondent or pursuant to a subpoena duces tecum issued in accordance with CPLR, article 23. Appellant shall also file with his brief proof of service of such a demand or subpoena, together with a list of all relevant exhibits. In appropriation cases, each party shall file with his brief two copies of each appraisal report upon which he relies.

## **800.6 Transcript.**

**(a) Number required.** In civil cases, the court reporter or stenographer shall furnish petitioner or appellant with the ribbon copy of the typewritten transcript and, when the appendix method of appeal is used, the ribbon copy, or a copy of equal quality, shall be included in the single-copy record on appeal for use by the parties and the court.

**(b) Form.** Court reporters and stenographers who report administrative agency hearings shall furnish transcripts on 11 by 8-1/2-inch white, opaque paper of good quality. Pages shall contain page headings as required for appendixes by CPLR 5529(c). The transcript shall be prefaced with a table of contents showing the location of direct, cross and redirect examination of witnesses; motions for dismissal; the jury charge; the verdict and motions addressed to it; and the admission of exhibits in evidence, with a brief description of each. (c) Settlement of transcript. A transcript shall be stipulated to by the parties or settled in the manner provided by CPLR 5525(c).

### **Section 800.7 Certification of record.**

**(a) Reproduced full record.** A reproduced full record shall be certified either by (1) a certificate of appellant's or petitioner'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. The reproduced copy containing the signed certification or stipulation shall be marked "Original Record". When a record contains a transcript, it shall be settled in the manner provided in section 800.6(c) of this Part.

**(b) Single copy of record.** When the appendix method is used, the single copy of the record must be stipulated to by the parties or, if the parties are unable to stipulate, settled by the judge before whom the proceedings were held. The procedure for settlement of a single copy record shall be in the manner provided by CPLR 5525(c), except that, if respondent shall fail to make any proposed amendments or objections to the record within twenty days after service of it upon respondent, the record, certified as correct by appellant's or petitioner's attorney, shall be deemed correct and may be filed with an affirmation by counsel certifying to compliance with the requirements of this section and the lack of proposed amendments or objections by respondent.

**(c) Attorney for the Child.** Upon any appeal in which an attorney for the child appears for a non-appellant child, the provisions of this section permitting or requiring respondent to stipulate to the record on appeal shall also apply to and include the attorney for the child.

### **Section 800.8 Form and content of brief and appendix.**

**(a) Briefs.** Briefs shall comply with CPLR 5528 and 5529, shall contain on the cover the name and address of counsel who will argue the appeal and the estimated time of argument, and shall be on good quality, white, unglazed paper. Carbon copies will not be accepted. Except with permission of the court, briefs shall not exceed the following limitations: petitioner's or appellant's brief, 50 printed or 70 typewritten pages; respondent's brief, 25 printed or 35

typewritten pages; reply brief, 10 printed or 15 typewritten pages; amicus curiae brief, 25 printed or 35 typewritten pages.

**(b) Appendixes.** An appendix shall comply with CPLR 5529 and may be bound in the brief or separately. Appellant's appendix shall contain such parts of the record on appeal as are necessary to consider the questions involved, including at least the following:

- (1) notice of appeal;
- (2) judgment, decree or order appealed from;
- (3) decision and opinion of the court or agency, and report of a referee, if any;
- (4) pleadings, if their sufficiency, content or form is in issue or material; in a criminal case, the indictment;
- (5) relevant excerpts from transcripts of testimony or of averments in motion papers upon which appellant relies or has reason to believe respondent will rely; in addition, in a criminal case, the sentencing minutes;
- (6) charge to the jury; and
- (7) copies of critical exhibits, including photographs, to the extent practicable.

**(c) Inadequate appendix.** If an appendix fails to comply with this section, the adverse party, within 10 days from its receipt, may move to compel a party to file a further appendix. A respondent may also file an appendix to respondent's brief containing relevant portions of the record omitted from appellant's brief.

## **Section 800.9 Filing and service of papers.**

**(a) Record and appellant's brief.** Except where a different time limit or a different number of copies of papers is otherwise permitted herein, appellant shall cause to be filed with the clerk of this court, within 60 days after service of the notice of appeal, either (1) the original and nine copies of a reproduced full record and 10 copies of appellant's brief; (2) the single copy of the record, together with 10 copies of a brief and appendix, or (3) 10 copies of the agreed statement in lieu of record and 10 copies of a brief; with proof of service of one copy of the record and two copies of the brief, or two copies of a brief and appendix, upon each respondent.

**(b) Respondent's brief.** After the record on appeal and appellant's brief, or brief and appendix, have been accepted for filing, the clerk shall mail to each respondent a scheduling

memorandum which shall require respondent to serve and file respondent's brief within 45 days from the date of the memorandum or within such shorter time as the memorandum may direct. Each respondent shall file the same number of copies of respondent's brief as appellant shall have filed, with proof of service of two copies upon each appellant. Upon any appeal in which an attorney for the child appears for a non-appellant child, the provisions of this subdivision regarding mailing of the scheduling memorandum and filing of respondent's brief shall also apply to and include the attorney for the child.

**(c) Reply brief.** Appellant may file a corresponding number of copies of a reply brief within 10 days after service of respondent's brief, with proof of service of two copies upon each respondent.

**(d) Effect of failure to comply.** Upon appellant's or petitioner's failure to comply with any provision of this Part, or for any other unreasonable delay in prosecuting an appeal or proceeding, respondent may move to dismiss for lack of prosecution. Upon respondent's failure to comply with any provision of this Part, in the discretion of the court, costs and disbursements of the appeal may be imposed against respondent or respondent's attorney, irrespective of the outcome of the appeal.

**(e) Cross-appeals.** In the case of cross-appeals, unless otherwise directed by order of the court made pursuant to a motion on notice, the plaintiff shall be appellant and shall file and serve the record and brief, or brief and appendix, first. The answering brief and appendix shall be filed and served within 30 days after service of the first brief and shall include the points of argument on the cross-appeal. A reply brief shall be filed and served within 10 days after service of the answering brief. A reply brief to the cross-appeal may be served within 10 days after service of appellant's reply brief.

### **Section 800.10 Oral argument.**

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

- (1) appeals from the Workers' Compensation Board;
- (2) appeals from the Unemployment Insurance Appeal Board;
- (3) appeals from judgments of conviction in criminal cases challenging only the legality, propriety or excessiveness of the sentence imposed;
- (4) 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

(5) any other case in which the court, in its discretion, determines that argument is not warranted.

**(b)** Any party seeking permission for oral argument in any of the cases specified in subdivision (a) (1) through (4) of this section shall submit a letter application therefor, on notice to all parties, within 10 days after the filing of appellant's or petitioner's brief together with proof of service upon respondent. Any party seeking permission for oral argument in a case specified in subdivision (a) (5) of this section shall submit a letter application therefor, on notice to all parties, within 10 days after being advised by the clerk that there will be no oral argument. The application shall specify the reasons why oral argument is appropriate and the amount of time requested.

**(c)** In cases not specified in subdivision (a) of this section, each counsel shall notify the clerk whether argument is desired and, if so, shall indicate on the cover of the brief the amount of time requested. Unless otherwise ordered, each side shall be allowed not more than 30 minutes for argument on appeals from judgments, in actions on submitted facts, and in special proceedings transferred to or instituted in this court and 15 minutes on appeals from nonfinal orders.

#### **Section 800.11 Day calendar assignments; adjournments; additions.**

The clerk shall prepare day calendars for each court term by scheduling for argument or submission cases in which the record and appellant's brief have been filed and in which the respondent's brief has been filed or the date for filing and serving respondent's brief has been fixed pursuant to section 800.9(b) of this Part. The clerk shall give counsel notice of the date on which a case will be argued. After notice of day calendar assignment has been given, a case may not be moved to a different day unless request is made at least 14 days prior to commencement of the term for which it has been scheduled. The granting of a request to reschedule a case shall not serve to extend the time to file respondent's brief. A case not argued by a party when reached shall be submitted without oral argument on the papers filed. A case may be added to a term upon written stipulation signed by counsel and approved by the court.

#### **Section 800.12 Appeals and proceedings deemed abandoned.**

A civil appeal or proceeding shall be deemed to have been abandoned where appellant or petitioner shall fail to serve and file a record and brief within nine months after the date of the notice of appeal or order of transfer, or, in the case of a proceeding instituted in this court, within nine months after the date of the order to show cause or notice of petition commencing the proceeding; and the clerk of this court shall not accept or file any record or brief attempted to be filed beyond the nine-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 and facts showing merit to the appeal or proceeding.

### **Section 800.13 Appeals from Family Court.**

An appeal from Family Court shall be prosecuted by the appendix method authorized by section 800.4(b) of this Part upon a single copy of the record prepared in accordance with section 800.5 of this Part and upon seven copies of a brief and appendix in compliance with section 800.8(b) of this Part. Application for assignment of counsel and for permission to proceed as a poor person shall be made to this court pursuant to section 1120 of the Family Court Act.

### **Section 800.14 Appeals in criminal cases.**

An appeal authorized by the Criminal Procedure Law shall be prosecuted by the appendix method authorized by section 800.4(b) of this Part. The single copy record in a criminal case shall comply with section 800.5 of this Part, except that, in addition to the relevant items listed in section 800.5(a) of this Part, it shall also contain the indictment, hearing and trial transcripts, motion papers, if any, and sentencing minutes. When the clerk of the trial court has been directed, pursuant to section 800.4(c) of this Part, to furnish a copy of a transcript to this court, the transcript may be omitted from the single copy record.

**(a) Briefs and appendixes.** Briefs and appendixes shall comply with CPLR 5528 and section 800.8 of this Part.

**(b) When to be heard; service of briefs.** Unless appellant's time is enlarged by order, appellant's counsel shall file the single copy record and seven copies of a brief and appendix within 60 days after the last day for filing a notice of appeal, with proof of service of one copy upon the appellant and one copy upon respondent. Respondent, within 30 days after service of appellant's brief and appendix, shall file seven copies of a brief and appendix, with proof of service of two copies upon appellant's counsel, who shall forthwith furnish a copy of respondent's brief to appellant. The clerk shall schedule the appeal for argument or submission at the next term of court commencing more than 30 days after the service and filing of the record on appeal and appellant's brief and appendix, unless an extension to file respondent's brief shall have been granted pursuant to section 800.9(b) of this Part.

**(c) Enlargement of time.** Application by appellant for an enlargement of time in a criminal case shall be by motion on notice and shall be accompanied by an affidavit satisfactorily explaining the delay. The affidavit shall state (1) the date of conviction; (2) whether by trial or plea; (3) whether appellant is free on bail; (4) the date the notice of appeal

was filed; (5) the date the trial transcript was ordered; (6) whether the transcript has been filed; (7) if the complete transcript has not been filed, the date it is expected to be filed; and (8) the date appellant's brief and appendix will be filed.

**(d) Oral argument.** Unless otherwise ordered by the court, appeals may be submitted without oral argument. The time allowed for oral argument shall be as provided in section 800.10 of this Part.

**(e) Remittitur.** Upon entry of the order on this court's decision, the original record on appeal shall be remitted to the clerk of the criminal court with a copy of the order.

**(f) Reargument of appeal.** Motions for reargument must be made within 60 days after service upon the moving party of a copy of the court's order, with written notice of its entry, except that when a party has entered the order, the time shall be computed from the date of entry.

**(g) Where only sentence in issue.** When the sole question raised on appeal concerns the legality, propriety or excessiveness of the sentence imposed, the appeal may be heard upon a shortened record on appeal consisting of the notice of appeal, sentencing minutes, and minutes of the plea, if appellant pleaded guilty. The record, which shall be clearly labeled "Record on Appeal from Sentence", shall contain a statement pursuant to CPLR 5531 and shall be stipulated to or settled in the manner provided in section 800.7(b) of this Part. The appeal shall be prosecuted, and may be scheduled for oral argument or submission, in the manner provided in subdivision (b) of this section. A copy of the presentence investigation report shall be filed with the clerk.

**(h) Expedited criminal appeal of order reducing indictment or dismissing indictment and directing filing of prosecutor's information.**

(1) This subdivision shall govern the procedure for an expedited appeal, pursuant to CPL 210.20(6)(c), 450.20 (1-a) and 450.55, of an order by a superior court reducing a count or counts of an indictment or dismissing an indictment and directing the filing of a prosecutor's information.

(2) After the people file and serve a notice of appeal pursuant to CPL 460.10(1), either party may request that the court expedite the appeal. If a request is made, the court shall hear the appeal on an expedited basis as set forth in this subdivision.

(3) (i) The court shall establish an expedited briefing schedule for the appeal. Briefs may be typewritten or reproduced. The people shall file nine copies of a brief and an appendix, which shall include a copy of the indictment and the trial court's decision and order. The respondent shall file nine copies of a

brief and, if necessary, an appendix. One copy of the brief and appendix shall be served on opposing counsel.

(ii) The appeal may be taken on one original record, which shall include copies of the indictment, the motion papers, the trial court's decision and order, and the notice of appeal.

(iii) The People shall file with the Appellate Division, separately from the record, one copy of the grand jury minutes.

(iv) The court shall give preference to the hearing of an appeal perfected pursuant to this subdivision and shall determine the appeal as expeditiously as possible.

(4) Unless otherwise ordered by the Appellate Division, if the defendant is represented in the superior court by court-assigned counsel, such counsel shall continue to represent the defendant in any appeal by the People of an order reducing an indictment or dismissing an indictment and directing the filing of a prosecutor's information. (amended effective 4/29/91).

(i) Service of Order. Service of a copy of the order upon appellant in accordance with CPL 460.10 (5) (a) shall be made pursuant to CPLR 2103.

### **Section 800.15 Appeals from orders concerning grand jury reports.**

The mode, time and manner for perfecting an appeal from an order accepting a report of a grand jury pursuant to paragraph (a) of subdivision 1 of section 190.85 of the Criminal Procedure Law, or from an order sealing a report of a grand jury pursuant to subdivision 5 of section 190.85 of the Criminal Procedure Law, shall be in accordance with section 800.14 of this Part governing appeals in criminal cases. Appeals from such orders shall be preferred causes and may be added to a term calendar either by stipulation or upon motion. The record, briefs and other papers on such an appeal shall be sealed and not be available for public inspection. Unless otherwise directed by the court, oral argument will not be allowed.

### **Section 800.16 Appeals in election cases.**

Appeals in proceedings brought pursuant to any provision of the Election Law shall be prosecuted upon a single-copy record and seven copies of a brief and appendix pursuant to the method specified in section 800.4 (b) of this Part. Such appeal shall be given preference and

shall be brought on for argument on such terms and conditions as the presiding justice may direct upon application of any party to the proceeding.

### **Section 800.17 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, 120 Broadway, 26th Floor, New York, New York 10271.

### **Section 800.18 Workers' compensation appeals.**

**(a) Papers on appeal.** An appeal from a decision of the Workers' Compensation Board shall be heard upon one copy of the papers constituting the record list as herein prescribed, together with an appendix to appellant's brief, which shall comply with section 800.8 of this Part and contain a copy of each item of the record necessary to consider the questions raised, including those items appellant reasonably assumes will be relied upon by a respondent. Respondent's brief may contain an appendix which, however, shall contain only such additional parts of the record as are necessary to consider the questions involved, or the parties may agree upon a joint appendix. Where all papers in the record on appeal are deemed relevant to the issues, appellant may proceed upon the required number of copies of the record on appeal, and in the event of such an election an appendix shall not be required.

#### **(b) Record list.**

(1) Appellant shall prepare a statement of the issues he intends to present for review by the Appellate Division, together with a list of the papers relevant to those issues. Transcripts of testimony shall be listed according to date, and each paper and exhibit listed shall, where possible, be designated by date and brief description.

(2) 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 appellant, 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. 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 appellant.

(3) If a party timely served with a proposed record list shall fail to serve objections or amendments within said 20 days, the record list shall be deemed correct as to that party, and 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.

(4) Within 20 days after service of a proposed record list, a party respondent shall serve upon appellant any proposed objections or amendments thereto. 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, 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.

(5) When filing the original record on appeal, appellant shall file the record list, together with the stipulation, board decision or affirmation. Hearing transcripts, certified as correct by the hearing reporter, shall, in the absence of objection, also be deemed correct.

(6) A decision of the board upon an application to settle a record list shall be reviewable by motion pursuant to section 800.2(a) of this Part. 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.

**(c) 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 section 800.5(a) of this Part and shall contain:

(1) a soft cover containing the title and names, addresses and telephone numbers of the attorneys;

(2) a table of contents which shall list and briefly describe each paper, including the date thereof, included in the record and each exhibit. The part relating to a transcript of testimony shall separately state as to each witness the page at which direct, cross, redirect and recross examination begins. The part relating to exhibits

shall briefly describe each exhibit and shall indicate the page where admitted in evidence and whether the exhibit has been omitted from the record;

(3) a statement pursuant to CPLR 5531;

(4) the notice of appeal and, in chronological order, the papers set forth in the record list;

(5) a stipulation dispensing with reproducing any exhibits in the record. Omitted exhibits which are material to the issues raised shall be filed when briefs are filed; and

(6) a certification or stipulation in lieu thereof.

**(d) 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 appellant's attorney pursuant to CPLR 2105, or by a stipulation in lieu of certification pursuant to CPLR 5532.

**(e) Filing and service of papers.** Within 60 days after the last day to agree upon objections or amendments to the record list, or, when the parties are unable to agree, within 60 days from settlement of the record list by the board, or, if no objections or amendments to the record list have been served, within 60 days from the last day to serve them, appellant shall file with the clerk the record on appeal together with 10 copies of appellant's brief and appendix, with proof of service of one copy of the record and two copies of appellant's brief and appendix upon the Attorney General and each respondent affected by the board's decision. Respondent's brief shall be served and filed in accordance with the provisions of section 800.9(b) of this Part, except that a respondent shall file proof of service of two copies of a respondent's brief upon every other interested party to the appeal.

**(f) When to be heard; application of rules.** Appeals shall be scheduled at terms designated for workers' compensation appeals in accordance with the provisions of section 800.11 of this Part. The Attorney General may continue an appeal to a subsequent term by filing, within 14 days from service of appellant's brief, proof of service of a notice of adjournment. Except as otherwise provided in this section, the provisions of this Part governing appeals generally shall apply to workers' compensation appeals.

**(g) 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.

## **Section 800.19 Transferred proceedings.**

An article 78 proceeding transferred to this court pursuant to CPLR 7804(g), and an appeal transferred from another department pursuant to CPLR 5711, may be prosecuted in any manner authorized by section 800.4 of this Part. Unless otherwise ordered by the court, the rules governing the content, number and form of records, briefs and appendixes shall apply, except that petitioner or appellant shall serve and file the required papers within 60 days after the entry of the order of transfer.

### **Section 800.20 State human rights matters.**

**(a) Appeals.** An appeal from an order or judgment of the Supreme Court determining a proceeding pursuant to section 298 of the Executive Law shall be prosecuted upon a record consisting of the original papers and the record before the State Division of Human Rights together with seven copies of appellant's brief and appendix, with proof of service of one copy upon each respondent. Appellant's appendix shall contain at least the notice of appeal, the order or judgment appealed from, the decision of the court below and the determination and order of the State Division of Human Rights. Each respondent shall file seven copies of a brief with proof of service of one copy upon appellant. Briefs and appendixes shall comply with and be filed within the time specified by sections 800.8 and 800.9 of this Part.

**(b) Transferred proceedings.** A proceeding transferred to this court for disposition pursuant to section 298 of the Executive Law may be prosecuted upon a single copy of the record on review which shall consist of the notice of petition and petition, answer, reply, if any, the original record and transcript of the public hearing held before the State Division of Human Rights and the division's determination and order. Petitioner shall file seven copies of a brief and appendix, with proof of service of one copy upon each named respondent. Each respondent shall file seven copies of a brief or brief and appendix with proof of service of one copy upon petitioner. Briefs and appendixes shall comply with and be filed within the time specified by sections 800.8 and 800.19 of this Part. Unless the court directs otherwise, the division shall file the original record and transcript of public hearing within 45 days of entry of the order of transfer.

### **Section 800.21 Action on submitted facts.**

An original agreed statement of facts in an action submitted to this 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 as a joint appendix. A statement required by CPLR 5531 shall be prefixed thereto. Briefs shall be served and filed in the manner and in accordance with the time requirements prescribed by sections 800.9 and 800.11 of this Part for appeals.

### **Section 800.22 Orders; costs.**

The orders, appointments, assignments and directions of the court shall be signed by the presiding justice or the clerk of the court. Costs in workers' compensation and unemployment insurance appeals shall be taxed by the clerk in accordance with CPLR 8403.

### **Section 800.23 Fees of the Clerk of the Court**

**(a) Fee on civil appeals and proceedings.** In accordance with CPLR 8022, the clerk of the court is directed to charge and is entitled to receive a fee of three hundred fifteen dollars, payable in advance, upon the filing of a record on a civil appeal or statement in lieu of record on a civil appeal, or upon the filing of a notice of petition or order to show cause commencing a special proceeding. The fee shall be paid by check or money order and payment in full shall accompany the record on appeal, statement in lieu of record, notice of petition or order to show cause. A civil appeal or special proceeding shall not be scheduled for argument or submission until the fee is received and the clerk may return a document not accompanied by the fee. The clerk shall not charge or receive a fee from: (1) the State, or any agency or officer thereof, or any party or governmental entity specifically exempted by law from the payment of such fee; (2) any party who by statute, rule or order of the court has been authorized to proceed as a poor person; or (3) a claimant upon an appeal from a decision of the Unemployment Insurance Appeal Board.

**(b) Fee on Motions and Cross Motions.** In accordance with CPLR 8022, the clerk of the court is also entitled, upon the filing of each motion or cross motion with respect to a civil appeal or special proceeding, to a fee of forty-five dollars, payable in advance. 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).

**(c) Other fees.** In accordance with 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 a large, embossed certificate attesting to admission as an attorney and counselor at law, twenty dollars.
- (2) For a printed certificate attesting to admission, good standing and registration as an attorney and counselor at law, five dollars.

### **Section 800.24-a Pre-calendar Statement for Civil Appeals**

**(a)** In every civil case in which a notice of appeal is filed or an order granting leave to appeal is entered, except in appeals in proceedings pursuant to the Election Law and CPLR articles 70 and 78, appeals in family court proceedings involving child abuse or neglect, juvenile

delinquency or persons in need of supervision, appeals from decisions of the Unemployment Insurance Appeal Board and Workers' Compensation Board, and appeals pursuant to section 168-n (subd. 3) of the Correction Law, appellant shall also file, together with the notice of appeal or order granting leave to appeal, a pre-calendar statement.

**(b)** The pre-calendar statement, entitled as same, must set forth:

- (1) The title of the underlying action or proceeding and the date of commencement;
- (2) The full names of the original parties and any change in the parties;
- (3) The name, address, telephone number and facsimile telephone number of counsel for appellant;
- (4) The name, address, telephone number and facsimile telephone number of counsel for each respondent and counsel for each other party;
- (5) The court, judge or justice, and county from which the appeal is taken, together with the index number and the request for judicial intervention (RJI) number;
- (6) The specific nature and object of the underlying action or proceeding (e.g., automobile negligence personal injury action seeking money damages; breach of contract action seeking specific performance; family court proceeding seeking modification of child custody and visitation order; divorce action involving equitable distribution; real property action involving a boundary-line dispute and adverse possession);
- (7) A clear and concise statement of the issues to be raised on the appeal and the grounds for reversal or modification to be advanced;
- (8) Whether there is another pending appeal or pending related action or proceeding, briefly describing same.

**(c)** Appellant shall attach to the pre-calendar statement a copy of the order or judgment appealed from, the opinion or decision, if any, and a copy of the notice of appeal or order granting leave to appeal.

**(d)** The clerk of the court from which the appeal is taken shall promptly transmit the pre-calendar statement and its attachments to the Appellate Division, Third Department.

**(e) Forms.** The pre-calendar statement shall read substantially as follows:

PRE-CALENDAR STATEMENT  
State of New York  
Supreme Court - Appellate Division  
Third Judicial Department

Case Title: Set forth the full case title.

County Index No. \_\_\_\_\_  
RJI No. \_\_\_\_\_  
Date of Commencement \_\_\_\_\_

Parties Involved: Set forth the full names of the original parties and any change in parties.

Party Name (eg. John Doe)	Original Status (eg. Defendant)	Appellate Status (eg. Appellant)
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Counsel for Appellant(s): Set forth the name, address, telephone number and facsimile telephone number of counsel for appellant(s).

Counsel for Respondent(s) and Counsel for Other Parties: Set forth the name, address, telephone number and facsimile telephone number of counsel for respondent(s) and for each other party.

Court, Judge and County: Identify the court, judge or justice, and the county from which the appeal is taken.

Nature and Object of Action or Proceeding: Concisely set forth the nature and object of the underlying action or proceeding.

Appellate Issue(s): Set forth a clear and concise statement of the issue(s) to be raised on the appeal, the grounds for reversal or modification to be advanced and the specific relief sought on the appeal.

Other Related Matters: Indicate if there is another related action or proceeding, identifying and briefly describing same.

Submitted by: \_\_\_\_\_  
Signature

Print Name:  
Attorney for:  
Date:

Attachments:	Check
1. Copy of order or judgment appealed from.	_____ attached
2. Copy of opinion or decision.	_____ attached _____ does not exist
3. Copy of notice of appeal or order granting leave to appeal.	_____ attached

Attach copies, not originals. File this original form with attachments when original notice of appeal is filed in the office where the judgment or order of court of original instance is entered. A copy of this document must be served upon all counsel and pro se parties.

### **Section 800.24-b Civil Appeals Settlement Program**

**(a)** The court, in those cases in which it deems it appropriate, will issue a notice directing the attorneys for the parties and the parties themselves (unless the court excuses a party's personal presence) to attend a pre-calendar conference before such person as it may designate to consider settlement, the limitation of issues and any other matter which such person determines may aid in the disposition of the appeal or resolution of the action or proceeding. Where parties are represented by counsel, only attorneys fully familiar with the action or proceeding, and authorized to make binding stipulations or commitments, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.

**(b)** Any attorney or party who, without good cause shown, fails to appear for or participate, with the familiarity and authorization described in subdivision (a) of this section, in a regularly scheduled pre-calendar conference, or who fails to comply with the terms of a stipulation or order entered following a pre-calendar conference, may be subject to such sanctions and/or to such costs in the form of reimbursement for actual expenses incurred and reasonable attorneys' fees as the court may direct.

**(c)** Should a pre-calendar conference not be scheduled within 30 days after the filing of a pre-calendar statement, any party may, upon notice, apply to the court by letter requesting such conference. The application shall include a brief statement indicating why a conference would be appropriate.