

Supreme Court of the State of New York

APPELLATE DIVISION

Fourth Judicial Department

Attorneys for Children Program

Presents



**APPELLATE TRAINING FOR
ATTORNEYS FOR CHILDREN**

March 26, 2013

THE APPELLATE DIVISION, FOURTH DEPARTMENT
presents:

APPELLATE TRAINING FOR ATTORNEYS FOR CHILDREN

Tuesday, March 26, 2013

Canandaigua Inn on the Lake
Canandaigua, New York

- 8:45 a.m. Registration
- 9:15 a.m. Welcome
Presiding Justice Henry J. Scudder
Appellate Division, Fourth Department
Tracy M. Hamilton, Esq.
Director, Office of Attorneys for Children
Appellate Division, Fourth Department
- 9:30 a.m. A View From the Bench
Presiding Justice Henry J. Scudder
Appellate Division, Fourth Department
- 10:00 a.m. A View From the Clerk's Office (Including Tips From A-Z)
Frances Cafarell, Esq.
Clerk, Appellate Division, Fourth Department
- 10:45 a.m. Break
- 11:00 a.m. Compiling the Record on Appeal
David Foster, Esq.
Principal Appellate Court Attorney
Appellate Division, Fourth Department
- 11:45 p.m. Lunch (provided)
- 12:45 p.m. Effective Brief Writing
Mary Hope Benedict, Esq.
Principal Law Clerk to Presiding Justice Henry J. Scudder
Appellate Division, Fourth Department
Craig Peterson, Esq.
Chief Appellate Court Attorney
Appellate Division, Fourth Department

PLEASE SEE NEXT PAGE ➡

- 1:45 p.m. Motion Practice
Alan Ross, Esq.
Deputy Clerk, Appellate Division, Fourth Department
- 2:30 p.m. Break
- 2:45 p.m. Role of Child's Attorney on Appeal/Ethics
Tanya Conley, Esq.
Attorney for Children
Legal Aid of Rochester
Andrea Tomaino, Esq.
Principal Attorney
Attorney Grievance Committee, Fourth Department
- 3:45 p.m. Conclusion

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014. This program has been approved for a total of five and one-half (5.5) credit hours, of which two and one-half (2.5) credit hours can be applied toward the skills requirement, two (2.0) credit hours can be applied toward the professional practice (family law) requirement, and one (1) credit hour can be applied toward the ethics and professionalism requirement. This program is suitable for experienced or newly admitted attorneys.

A VIEW FROM THE CLERK'S OFFICE (INCLUDING TIPS FROM A - Z)

Presented by:

Frances Cafarell, Esq.
Clerk
Appellate Division, Fourth Department
Supreme Court of the State of New York

Attorneys for Children Program
The Appellate Division, Fourth Department

Appellate Training for Attorneys for Children
Canandaigua, NY
March 26, 2013

Frances E. Cafarell

Frances E. Cafarell was appointed Clerk of the Appellate Division, Fourth Department in December 2011. Prior to her appointment as Clerk, Ms. Cafarell served as Deputy Clerk of the Court. She also served the Court as acting Consultation Clerk and Supervisor of the Decision Department, Administrator of the Assigned Counsel Program, Family Court Motion Clerk, and Confidential Law Assistant. She was previously engaged in the private practice of law at Harris Beach, in the firm's Rochester office, where her practice was concentrated in the areas of commercial and environmental litigation and appellate practice. Ms. Cafarell is a member of the American Bar Association, New York State Bar Association and Monroe County Bar Association. In 2011, she received Volunteer Legal Services Project's William E. McKnight Award in recognition of her commitment to Pro Bono Service. Ms. Cafarell is an honors graduate of Albany Law School, where she was a member of the Albany Law Review and the National Moot Court Competition team. She also holds a Master's degree in Administration of Justice from American University and a Bachelor's degree in Broadcast Journalism from Syracuse University. Before attending law school, she worked as a television news anchor and legal reporter.

AFC ON APPEAL - TIPS FROM A TO Z

- A. A Poor Person/Assignment of Counsel Motions Not Necessary - Pursuant to Family Ct Act § 1120 (b) appointment of an Attorney for Children (AFC) at the trial level continues on appeal, including, if applicable, motion for leave to appeal to the Court of Appeals, and appeal to the Court of Appeals.

- B. Note that there is no appeal from an order entered upon stipulation or consent.

- C. There is no appeal from a default order - **but** an appeal is **not** precluded where a party failed to appear but was represented by counsel (see, CPLR § 321 [a], § 5511; Family Ct Act § 1118; *Matter of Kwasi S.*, 221 AD2d 1029 [4th Dept 1997] **or** was precluded by the trial court from participating (*Matter of Dominique L. B. [Monique M.]*, 231 AD2d 948. An appeal **is** precluded where counsel does not participate or declines to participate in order to preserve the party's right to move to vacate the default upon a showing of a reasonable excuse for the nonappearance (*Matter of Amy Lee P.*, 245 AD2d 1136 [4th Dept 1997]; *Geraldine Rose W.*, 199 AD2d 313, *lv dismissed* 84 NY2d 967). **Note:** trial counsel **cannot** withdraw and permit entry of a default order without notice to his or her client (*Matter of Tierra C.*, 227 AD2d 994 [4th Dept 1996]).

- D. Remember that intermediate orders **can** be appealed in abuse and neglect cases (but not in *permanent* neglect cases).

- E. Don't let the appeal become moot - stays should be requested and/or objections filed and appeals taken from subsequent orders — such as those that continue a placement.

- F. Because the case may have had multiple docket numbers in Family Court, cross-reference dockets to ensure that you have obtained necessary transcripts and exhibits from all proceedings.

- G. Maintain lower court exhibits - Write letters to Family Court to ensure that exhibits are not destroyed, or returned to the parties.

- H. Timely request extensions of time - if there's a conditional extension order, the appeal will be dismissed if you don't perfect timely and you will have to move to vacate the dismissal — for which you may not get paid and for which you could be disciplined.
- I. Use proper case captions and numbers - all correspondence, records, and briefs should contain the case caption as it appears on the AD assignment order, including the Family Court docket numbers.
- J. If an appeal has an Appellate Division Docket Number, use it!
- K. K-S apply if your client is the appellant: Compile the record on appeal first - don't wait until the last minute; you should compile the "judgment roll" documents (order, notice of appeal, pleadings, exhibits, etc.) even before the transcripts are filed.
- L. Obtain the stipulation to the record early - don't wait until the last minute; give opposing parties a deadline to execute the stipulation and, if you don't have all signatures by the deadline, make a motion in Family Court to settle the record.
- M. The record must be bound on the left-hand side and the cover must include the title of the case clearly identifying the parties to the appeal and the names, addresses and phone numbers of all counsel, including the Attorney for the Child or, when appropriate of the parties - the form of an original record provided by Family Court is **not** in compliance with the Rules of the Fourth Department.
- N. The record must contain a table of contents - if not, it will be rejected.
- O. The record must be consecutively paginated - if not, it will be rejected.
- P. The stipulation to the record must be signed by all counsel - if not, it will be rejected.
- Q. Include the ORIGINAL stipulation in the record - if you include a copy, instead of the original, the record will be rejected.

- R. Make sure that a copy of the notice of appeal, with proof of service and filing, is included in the record - a record without the notice of appeal will be rejected.
- S. Deliver exhibits to the Appellate Division - the exhibits are not automatically sent to the Appellate Division by Family Court; if the exhibits cannot be reproduced in the bound record, arrangements must be made to deliver them under separate cover to the AD.
- T. Be cognizant of the different burdens of proof applicable in different Family Court proceedings.
- U. Review hearsay issues - always a problem in Family Court.
- V. Don't forget the dispositional issues - they might provide fertile grounds for a remand, at least!
- W. Sealed transcript of *in camera* examination of a child - the transcript must be part of the record and should be listed in the table of contents to the record, even though it **cannot** be reproduced in the bound record or reviewed by counsel. Note in the record on the appropriate page that the transcript is being submitted "under separate cover". If Family Court declines a request to release the sealed transcripts to counsel to submit to the Appellate Division, advise the Appellate Division that the transcript exists and must be obtained from Family Court.
- X. Remember to include in your brief a one page statement pursuant to CPLR 5531.
- Y. Serve all opposing parties with copies of **both** your **record** (the stipulated and paginated **final** version) **and brief**.
- Z. File and serve records and briefs **before** the due date - don't wait until the last day; if there's a problem, you won't have time to correct it. If you miss a filing deadline, you run the risk that the appeal will be dismissed and you will have to make a motion to vacate the dismissal of the appeal, which can delay your case (and payment of your voucher) another 6-8 weeks.

TOP 20 APPELLATE TIPS AND POINTERS

1. Read and comply with the Court's rules. Even if you think you know what, when, where and how to file and serve papers, read the relevant sections of the Rules and use them as a checklist before you do so.
2. Be aware of deadlines - If you are unable to meet a filing deadline, request an extension **before** your time to perfect expires, and make the request properly by motion or letter application.
3. If your client is the appellant, make sure that you have obtained transcripts from all proceedings and copies of all exhibits before you start to compile the record or write the brief - Review the Court's file and the Clerk's minutes. Verify that you have a transcript for every day appearances were noted and that you have all the exhibits offered and admitted and all the pleadings or motion papers served and filed.
4. Do **not** attach documents to the brief that are **outside** the record - the Court will **not** consider them.
5. Make specific references to the record in your brief by using page citations.
6. Do not attach confidential documents, such as a PSR in a criminal case or an *in camera Lincoln* hearing transcript in a Family Court appeal, to the brief or appendix. A confidential record must be submitted separately to the Court.
7. Always use the Appellate Division Docket Number ("KA", "KAH", "CAF") on all documents submitted to the Court.
8. Use official case citations - do not cite to New York Supp., etc., if there is an official citation.
9. Use "jump" citations to the specific page of a decision, particularly when citing a lengthy decision.
10. Include a table of contents in the brief and record.
11. Work with opposing counsel on a stipulation to the record - as soon as possible. Set a deadline for execution of a stipulation; move to settle the record if the deadline is not met.

12. Include the **original** stipulation or order settling the record, not a copy, in the filing with the Court.
13. Include proof of service of copies of the brief, appendix or record on all necessary parties, including your client.
14. Do not address multiple issues under one legal point - An exception would be when issues of ineffective assistance of counsel or prosecutorial misconduct are raised; the instances of alleged misconduct will need to be addressed separately.
15. Focus on preserved issues - Remember, however, that the Court has "interest of justice" discretion, and can reach un-preserved issues under the proper circumstances.
16. Know the difference between "that" and "which" (see Strunk and White, *Elements of Style*, 3rd edition, p. 59; C. Edward Good, *Mightier than the Sword*, pp. 93-98). [In other words, pay attention to grammar and syntax. A poorly written brief will not help your client's cause – or your reputation].
17. If after submitting your brief you discover that you missed an issue, make a motion to file an amended brief - In a criminal appeal, you may also have the defendant file a pro se supplemental brief and raise the missed issue in that brief.
18. Request oral argument on the cover of your brief and, if requested, make sure to identify and diary the term of Court during which the appeal will be calendared as soon as you receive a scheduling order, so that you can notify the Clerk's Office within 15 days of any dates during the term on which you will be unavailable to appear for argument, or you may be precluded from arguing the appeal.
19. Do not file a "letter in lieu of brief."
20. **Proofread, proofread, and proofread again.**

(1000.1)

TERMS AND SESSIONS OF 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 A.M. each day during a designated term.

(1000.2)

APPEAL DEFINED; TIME LIMITATIONS; PERFECTION OF APPEALS; RESPONDING AND REPLY BRIEFS.

(a) Appeal defined.

For the purposes of these rules the word "appeal" shall mean appeal or cross appeal, unless otherwise indicated by text or context.

(b) Perfecting appeals generally.

Unless otherwise provided by statute, rule or order of this Court or Justice of this Court, all appeals shall be perfected pursuant to 22 NYCRR 1000.3 within 60 days of service on the opposing party of the notice of appeal. An appeal not perfected within the 60-day period is subject to dismissal on motion pursuant to 22 NYCRR 1000.12 (a). An appeal or cross appeal not perfected within nine months of service of the notice of appeal is subject to dismissal without motion pursuant to 22 NYCRR 1000.12 (b).

(c) Perfecting appeals in which counsel has been assigned.

(1) Appeals taken pursuant to Family Court Act.

An appeal taken pursuant to the Family Court Act in which this Court has assigned counsel shall be perfected within 60 days of receipt of the transcript of the proceedings upon which the order or judgment appealed from is based, as provided in Family Court Act § 1121 (7).

(2) **Appeals taken pursuant to Criminal Procedure Law.**

An appeal taken pursuant to the Criminal Procedure Law in which this Court has assigned counsel shall be perfected within 120 days of receipt of the transcript of the proceedings upon which the judgment appealed from is based, as provided in 22 NYCRR 1021.1 (a) (3).

(d) **Respondent's briefs.**

Unless otherwise provided by order of this Court or Justice of this Court, a respondent or respondent-appellant shall file and serve briefs within 30 days of service of the brief of the appellant or appellant-respondent. If a respondent or respondent-appellant elects not to submit a brief, that party shall notify the Court in writing prior to the expiration of the 30-day period. The failure to timely submit a brief or to timely notify the Court that the party does not intend to file a brief may result in the imposition of sanctions pursuant to 22 NYCRR 1000.16 (a).

(e) **Reply briefs.**

Unless otherwise provided by order of this Court or Justice of this Court, an appellant or appellant-respondent may file and serve reply briefs within 10 days of service of the brief of respondent or respondent-appellant.

(f) **Surreply briefs.**

Unless otherwise provided by order of this Court or Justice of this Court, a respondent-appellant may file and serve surreply briefs within 10 days of service of the reply brief of appellant-respondent. The contents of a surreply brief are to be limited to issues raised by a cross appeal. In the absence of a cross appeal, surreply briefs shall not be permitted.

(g) **Appendices.**

When the filing of an appendix is authorized, it shall be filed and served by a party at the same time that the party files and serves a brief.

(1000.3)

NECESSARY DOCUMENTS; PERFECTION OF APPEALS; BRIEFS.

(a) Complete and timely filing required.

In all appeals, a complete and timely filing is required. **The Clerk shall reject a partial or untimely filing.**

(b) Perfecting appeals generally.

Except in appeals in which permission to proceed as a poor person has been granted, or except as otherwise provided by rule or Court order, an appellant or appellant-respondent shall make a complete filing that shall consist of: a complete record, along with the original stipulation executed by all the parties or their attorneys or the original order settling the record; 10 additional copies of the record; 10 copies of the brief; proof of service of two copies of the record and brief on each opposing party to the appeal; when necessary, a demand for exhibits (see, 22 NYCRR 1000.4 [g] [3]) with proof of service thereof; the filing fee as required by CPLR 8022; and 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; 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 provided for by 22 NYCRR 1000.4 (f) (3).

(c) Appeals in which poor person relief has been granted.

(1) Criminal appeal.

Unless otherwise directed by Court order, in a criminal appeal in which poor person relief has been granted by this Court, the appellant shall file 10 copies of a brief with proof of service of one copy on each opposing party to the appeal; a certified transcript of the trial or hearing, if any; a copy of the Pre-Sentence Investigation Report, if relevant to the appeal; when necessary, a demand for exhibits (see,

22 NYCRR 1000.4 [g] [3]) with proof of service thereof; and one copy of an appendix with proof of service of one copy on each opposing party. The appendix shall contain the description of the action pursuant to CPLR 5531; a copy of the notice of appeal along with proof of service and filing; a copy of the certificate of conviction and the judgment of the court from which the appeal is taken; a copy of the indictment, superior court information or other accusatory instrument; a copy of any motion papers, affidavits and, to the extent practicable, written and photographic exhibits that are relevant and necessary to the determination of the appeal; and the original stipulation to the record executed by all the parties or their attorneys or the original order settling the record. 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; 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 provided for by 22 NYCRR 1000.4 (f) (3).

(2) **Civil appeals.**

In a civil appeal in which poor person relief has been granted by this Court (including appeals taken pursuant to the Family Court Act, appeals in proceedings taken pursuant to article 78 of the CPLR, appeals taken pursuant to the Sex Offender Registration Act and appeals in habeas corpus proceedings) or in which the appellant is the Attorney for the Child and, unless otherwise directed by Court order, the appellant or appellant-respondent shall file 10 copies of a brief with proof of service of one copy on each opposing party to the appeal and one copy of the complete record on appeal along with the original stipulation to the record executed by all parties or their attorneys or the original order of settlement, proof of service of one copy of the record on each other party to the appeal and, when necessary, a demand for exhibits (see, 22 NYCRR 1000.4 [g] [3]), with proof of service thereof. 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; 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 provided for by 22 NYCRR 1000.4 (f) (3).

(d) **Alternate methods of appeal.**

(1) **The appendix method.**

In appeals perfected on the appendix method pursuant to 22 NYCRR 1000.4 (d), the appellant or appellant-respondent shall file one complete record and, in lieu of 10 copies of the record on appeal, 10 copies of the appendix and shall serve one copy of the record on appeal and two copies of the appendix on each party. In all other respects, the appellant or appellant-respondent shall comply with the requirements of 22 NYCRR 1000.3 (b). When a respondent's appendix, reply appendix or joint appendix is submitted, 10 copies shall be filed with proof of service of two copies on each party.

(2) **Statement in lieu of a complete record.**

In appeals perfected pursuant to CPLR 5527 and 22 NYCRR 1000.4 (c), the appellant or appellant-respondent shall file and serve, in lieu of the complete record and copies thereof, the joint appendix and 10 copies thereof. In all other respects, the appellant or appellant-respondent shall comply with the requirements of 22 NYCRR 1000.3 (b).

(e) **Responding and reply briefs.**

A party submitting a respondent's brief, a respondent-appellant's brief, a reply brief or, when permitted, a surreply brief, shall file 10 copies of the brief with proof of service of two copies of the brief on each party. In an appeal in which permission to proceed as a poor person has been granted, only one copy of a brief need be served on each party. When an extension

of time to file and serve a brief has been granted, a copy of the order granting such permission shall be filed with the brief.

(f) **Supplemental briefs in criminal appeals.**

An appellant in a criminal appeal who is represented by assigned counsel may file 10 copies of a pro se supplemental brief, with proof of service of one copy on assigned counsel and the People, no later than 45 days after the date on which assigned counsel mails to the appellant the brief prepared, filed and served by assigned counsel. When a pro se supplemental brief is filed and served, the People may file and serve 10 copies of a responding brief, with proof of service of one copy on the appellant and assigned counsel, no later than 45 days after the appellant has served the pro se supplemental brief.

(g) **Service of papers in criminal appeals by the People.**

In an appeal taken by the People, the People shall serve the defendant in any manner authorized by CPLR 2103.

(h) **Companion filings on interactive compact disk, read-only memory (CD-ROM).**

(1) **Companion filings on CD-ROM.**

(i) The submission of records, appendices and briefs on interactive compact disk, read-only memory (CD-ROM) as companions to the required number of printed records, appendices or briefs in accordance with 22 NYCRR 1000.3 is allowed and encouraged provided that all parties have stipulated to the filing of the companion CD-ROM.

(ii) The Court may, by order on motion by any party or sua sponte, require the filing of a companion CD-ROM.

(2) **[REPEALED]**

(3) **Content.**

The companion CD-ROM record, appendix or brief shall be identical in content and format (including page numbering) to the printed record, appendix or brief, except that each may also provide electronic links (hyperlinks) to the complete text of any authorities cited therein and to any other document or other material constituting a part of the record.

(4) **Number.**

Ten disks or sets of disks shall be filed with proof of service of one disk or set of disks on each party to the appeal, together with a copy of the stipulation of the parties to the filing of the companion CD-ROM or the order of the Court directing the filing of the companion CD-ROM.

(5) **Filing Deadline.**

Unless otherwise directed by order of the Court, a companion CD-ROM shall be filed no later than ten (10) days after the printed record, appendix or brief is filed.

(1000.4)

**CONTENT AND FORM OF RECORDS, APPENDICES AND BRIEFS;
EXHIBITS.**

(a) **The complete record on appeal.**

(1) **Stipulated or settled complete record.**

The complete record on appeal shall be stipulated or settled.

- (i) The parties or their attorneys may stipulate to the correctness of the contents of the complete record (see, CPLR 5532).

- (ii) When the parties or their attorneys are unable to agree and stipulate to the contents of the complete record on appeal, the contents of the record must be settled by the court from which the appeal is taken. It shall be the obligation of the appellant to make the application to settle the record.
- (iii) In a criminal matter, the failure of the parties or their attorneys 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.

(2) **Contents of the complete record on appeal.**

The complete record on appeal shall include, in the following order: the notice of appeal with proof of service and filing; the order or judgment from which the appeal is taken; the decision, if any, of the court granting the order or judgment; the judgment roll, if any; the pleadings of the action or proceeding; the corrected transcript of the action or proceeding or statement in lieu of transcript, if any; all necessary and relevant motion papers; and, to the extent practicable, all necessary and relevant exhibits (*see*, CPLR 5526). When the appeal is from a final judgment, the complete record on appeal shall also include any other reviewable order. The complete record on appeal shall also include the description of the action required by CPLR 5531 and the stipulation to the complete record or the order settling the record.

(3) **Form of the complete record.**

- (i) The complete record on appeal shall be bound on the left side in a manner that properly secures all the pages and keeps them firmly together; however, such binding shall not be done by using metal fastener or similar hard material that protrudes or presents a bulky surface or sharp edge.

- (ii) The complete record on appeal shall be reproduced by standard typographic printing or by any other duplicating process that produces a clear black image on white paper. The record shall be reproduced on opaque, unglazed white paper, measuring 8½ by 11 inches. Printing shall be of no less than 11-point size. Transcript pages in any condensed form shall not be permitted unless such papers were submitted in identical form to the trial court.
- (iii) The cover of the complete record on appeal shall be white and shall contain the title of the matter clearly identifying the parties to the appeal and the action or proceeding; the names, addresses and telephone numbers of counsel for the parties or, when appropriate, of the parties; in a civil matter, the index number or, in a Court of Claims matter, claim number or motion number assigned in the court from which the appeal is taken; in a criminal matter, the indictment or information number; and the Appellate Division docket number if one has been assigned.
- (iv) The complete record on appeal shall be preceded by a table of contents listing and briefly describing the papers included in the record pursuant to 22 NYCRR 1000.4 (a) (2). The table of contents shall list all trial or hearing exhibits, briefly describing the nature of each exhibit, indicating the page of the record where the exhibit is admitted into evidence and indicating where in the record the exhibit is reproduced.
- (v) The pages of the complete record on appeal shall be consecutively paginated. The subject matter of each page of the complete record on appeal shall be stated at the top thereof, except, for papers other than testimony, the subject matter may be stated at the top of the first page of the paper, together with the first and last pages thereof. When testimony is reproduced, the name of the witness, by whom the witness was called and whether the testimony is direct, cross, redirect or recross examination shall be stated at the top of each page (see, CPLR 5526).

(b) **Records in consolidated appeals.**

(1) **Multiple appellants.**

When two or more parties take an appeal from a single order or judgment, the appeals may be consolidated on motion pursuant to 22 NYCRR 1000.13 (n) or on stipulation of the parties or their attorneys. A stipulation consolidating appeals shall be signed by the parties to the appeals or their attorneys, shall designate the party bearing primary responsibility for filing the record and shall be duly filed with this Court.

(2) **Multiple orders or judgments.**

When one party appeals from two or more orders or judgments in the same action, the party may move to consolidate the appeals pursuant to 22 NYCRR 1000.13 (n).

(3) **Form and content of records.**

When appeals have been consolidated and are perfected on the complete record, the record shall comply with 22 NYCRR 1000.4 (a) and the papers related to each appeal shall be clearly identified in the table of contents and shall be physically separated and conspicuously identified within the record (i.e., by insertion of a tab page or colored divider).

(c) **Contents of a statement in lieu of a complete record on appeal - joint appendix.**

(1) Pursuant to CPLR 5527, when the questions raised by an appeal can be determined without an examination of all the pleadings and proceedings, the parties or their attorneys may stipulate to a statement showing how the questions arose and were determined by the court from which the appeal is taken and setting forth only those facts alleged and proved or sought to be proved as are necessary to the determination of the appeal. The statement may also include

portions of the transcript of the proceedings and other relevant material. The statement shall include a copy of the order or judgment appealed from, the notice of appeal and a statement of the issues to be determined. The stipulated statement shall be presented for approval to the court from which the appeal is taken within 20 days after the notice of appeal has been filed and served. The court from which the appeal is taken may make corrections or additions as necessary to present fully the questions raised by the appeal. The approved statement shall constitute the record on appeal and shall be bound, along with the description required by CPLR 5531 and the order approving the statement, as a joint appendix.

- (2) The joint appendix on appeal shall be bound, printed and reproduced as set forth in 22 NYCRR 1000.4 (a) (3).

(d) **Appendices - CPLR article 55.**

(1) **Complete Record on appeal.**

When an appeal is perfected on the appendix method pursuant to CPLR article 55, the complete record on appeal shall comply with CPLR 5525 and 22 NYCRR 1000.4 (a). In the case of consolidated appeals, there shall also be compliance with 22 NYCRR 1000.4 (b).

(2) **Content of appendix.**

- (i) The appellant's appendix shall contain those parts of the record on appeal necessary to consider the questions involved, including those parts of the record that the appellant can reasonably expect to be relied upon by the respondent (see, CPLR 5528 [a] [5]).
- (ii) The respondent's appendix shall contain only such additional parts of the record on appeal necessary to consider the questions involved (see, CPLR 5528 [b]).

- (iii) The appellant's reply appendix shall contain only those parts of the record necessary to consider the questions on appeal that have not been included in either the appellant's appendix or the respondent's appendix.
- (iv) A joint appendix may be submitted when the parties stipulate to the contents of an appendix.

(3) **Form of appendix.**

An appendix shall be bound, printed and reproduced as set forth in 22 NYCRR 1000.4 (a) (3).

(e) **Appendices - criminal appeals.**

(1) **Content of appendix.**

In a criminal appeal, when permission to proceed as a poor person has been granted (see, 22 NYCRR 1000.14), 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 or the order settling the record. 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 provided for by 22 NYCRR 1000.4 (f) (3).

(2) **Form of appendix.**

The appendix shall be bound, printed and reproduced as set forth in 22 NYCRR 1000.4 (a) (3).

(f) **Briefs.**

(1) **Binding.**

A brief on appeal or a proceeding shall be bound on the left side in a manner that properly secures all the pages and keeps them firmly together; however, such binding shall not be done by any metal fastener or similar hard material that protrudes or presents a bulky surface or a sharp edge.

(2) **Paper; printing.**

The brief shall be reproduced by standard typographical printing or other duplicating process that produces a clear black image on white paper, with one inch margins. The brief shall be reproduced on opaque, unglazed white paper, measuring 8½ by 11 inches. Printing shall be of no less than 11-point size, and shall be double-spaced. A brief shall contain no footnotes.

(3) **Page limits.**

The brief of an appellant, petitioner, respondent or respondent-appellant shall not exceed 70 pages. The reply brief of an appellant, petitioner or appellant-respondent or the surreply brief of a respondent-appellant shall not exceed 35 pages. The pages shall be consecutively paginated.

(4) **Cover of brief; information.**

The cover of a brief shall contain the title to the matter; the name, address and telephone number of the person submitting the brief; in a civil matter, the index number or, in a Court of Claims matter, claim number or motion number assigned in the court from which the

appeal is taken; in a criminal matter, the indictment or information number; the Appellate Division docket number if one has been assigned; and, in the upper right-hand corner, the name of the person requesting oral argument and the time requested for argument, or the name of the person submitting.

(5) **Cover of brief; color.**

Except in those appeals in which permission to proceed as a poor person has been granted, the cover of a brief of an appellant or petitioner shall be blue; the cover of a brief of a respondent shall be red; the cover of a reply brief shall be gray; the cover of a surreply brief shall be yellow; and the cover of a brief of an intervenor or an amicus curiae shall be green. The cover of a supplemental brief submitted pro se in a criminal appeal shall be white. The cover of a brief submitted by an Attorney for the Child shall be white.

(6) **Contents of brief.**

A brief shall contain, in the following order: a table of contents; a table of citations; a concise statement, not exceeding two pages, of the questions involved in the matter, with each question numbered and followed immediately by the answer, if any, from the court from which the appeal is taken; a concise statement of the nature of the matter and of the facts necessary and relevant to the determination of the questions involved, with supporting references to pages in the record, transcript or appendix, as appropriate; and the argument of the issues, divided into points by appropriate headings, distinctively printed (see, CPLR 5528). A brief shall contain no footnotes.

(7) **New York decisions shall be cited from the official reports, if any.** All other decisions shall be cited from the official reports, if any, and also from the National Reporter System if they are there reported. Decisions not reported officially or in the National Reporter System shall be cited from the most available source (CPLR 5529 [e]).

- (8) **When an extension of time to file and serve a brief has been granted, a copy of the order granting such permission shall be filed with the brief.**

(g) **Exhibits.**

(1) **In general.**

Absent a court order or stipulation of the parties, all exhibits shall be submitted to the Court. The parties or their attorneys may agree and stipulate that particular exhibits are not relevant or necessary to the determination of an appeal. In such case, the appellant shall file a stipulation of the parties or their attorneys listing the exhibits neither relevant nor necessary to the appeal.

(2) **Printed exhibits.**

To the extent that it is practicable, all relevant and necessary exhibits shall be printed in the record on appeal.

(3) **Original exhibits.**

Absent a stipulation of the parties pursuant to 22 NYCRR 1000.4 (g) (1) or (4), all original exhibits shall be submitted to the Court. Upon perfecting an appeal, an appellant shall file the original exhibits or, when the exhibits are in the control of a respondent or a third party, a five-day written demand for the exhibits or a subpoena duces tecum for the exhibits issued in accordance with CPLR article 23, with proof of service thereof. The failure of a respondent to comply with a five-day demand may result in sanctions pursuant to 22 NYCRR 1000.16 (a).

(4) **Criminal appeals; physical exhibits.**

In a criminal appeal, in lieu of submitting original physical exhibits (weapons, contraband, e.g.) 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.

(h) **Compliance.**

The Clerk shall reject any record, appendix or brief that does not comply with these rules, is not legible or is otherwise unsuitable.

(1000.5)

APPEALS TAKEN PURSUANT TO THE ELECTION LAW.

(a) **Original papers.**

Appeals in proceedings brought pursuant to the Election Law shall be prosecuted upon one original record that has been stipulated to by all counsel or settled by the court from which the appeal is taken, and the original exhibits.

(b) **Briefs and oral argument.**

Appeals taken pursuant to the Election Law shall be accorded a preference pursuant to Election Law § 16-116. Upon notification by the appellant that an appeal pursuant to the Election Law is to be perfected, the Clerk shall expeditiously calendar the appeal and issue a schedule for the filing and service of the record and briefs. Appellant shall file 10 copies of a brief with proof of service of one copy on each opposing party to the appeal. Each respondent shall file and serve a like number of briefs.

(1000.6)

ACTIONS ON SUBMITTED FACTS.

In an action submitted to this Court pursuant to CPLR 3222 and, unless otherwise ordered by this Court, the agreed statement of facts shall be printed or reproduced by any method authorized by Court rule. A copy of the statement required by CPLR 5531 shall be prefixed to the papers constituting the

submission. Appellant shall file the original submission and 10 copies thereof along with 10 briefs and proof of service of two copies of the submission and the brief on each opposing party, and shall otherwise comply with the requirements of 22 NYCRR 1000.3 (b).

(1000.7)

EXPEDITED PEOPLE'S APPEALS PURSUANT TO CPL 450.20

(1-a).

(a) Request to expedite appeal.

When the People appeal pursuant to CPL 450.20 (1-a) from an order reducing a count or counts of an indictment or dismissing an indictment and directing the filing of a prosecutor's information, either party may request that the appeal be conducted on an expedited basis (*see also*, CPL 210.20 [6] [c]; 450.55; 22 NYCRR part 105). The request to expedite the appeal may be made after the People file and serve the notice of appeal.

(b) Order granting expedited appeal.

When a request has been made pursuant to 22 NYCRR 1000.7 (a), an order shall be issued establishing an expedited briefing schedule and designating a term of Court for argument of the appeal, giving a preference to the appeal. The appeal shall be expeditiously determined.

(c) Counsel for defendant.

Absent a contrary order of this Court, if the defendant was represented in the superior court by court-assigned counsel, such counsel shall continue to represent the defendant in an appeal taken pursuant to CPL 450.20 (1-a) and this section (*see*, 22 NYCRR 105.4).

(d) Brief and appendix of the People.

The People shall file nine copies of a brief and appendix. The appendix shall include a copy of the indictment and the order and decision of the court from which the appeal is taken. Briefs may be typewritten or

reproduced. The form of the brief and appendix shall otherwise conform with 22 NYCRR 1000.4. One copy of the brief and appendix shall be served on counsel for respondent.

(e) **Brief and appendix of respondent.**

Respondent shall file nine copies of a brief and shall serve one copy on counsel for the People. The brief may be typewritten or reproduced and shall otherwise conform with 22 NYCRR 1000.4. Respondent may, if necessary, file nine copies of an appendix and serve one copy of the appendix on counsel for the People. The appendix shall conform with 22 NYCRR 1000.4, in the same number as respondent's brief.

(f) **Record on appeal.**

The appeal shall be heard and determined on the original papers, which shall include the notice of appeal with proof of service and filing, the indictment, the motion papers and the order and decision of the court from which the appeal is taken. The People shall file the original papers with their brief and appendix.

(g) **Grand Jury minutes.**

The People shall file, separately from the record, one copy of the Grand Jury minutes with their brief and appendix.

(1000.8)

TRANSFERRED PROCEEDINGS.

(a) **Original papers.**

A proceeding transferred to this Court 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 10 copies 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 10 copies of a brief, with proof of service of one copy on each other party, as set forth in the scheduling order.

(1000.9)

ORIGINAL PROCEEDINGS.

(a) Return date.

Unless otherwise required by statute or by order of this Court or Justice of this Court, original special proceedings commenced in this 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), regardless of whether the Court is in session. The return date shall fall not less than 25 days after service of the notice of petition and petition on each respondent.

(b) **Necessary papers.**

Unless otherwise directed by statute or by order of this Court or Justice of this Court, a petitioner shall file the original notice of petition and petition and 10 copies thereof and the filing fee as required by CPLR 8022. Each respondent shall file and serve a like number of copies of an answer or other lawful response.

- (1) A party commencing an original proceeding by order to show cause (see, 22 NYCRR 1000.13 [b]) shall, in advance, remit the filing fee as required by CPLR 8022.
- (2) Proof of service of two copies of the notice of petition and petition on each respondent shall be filed not later than 15 days after the applicable Statute of Limitations has expired (see, CPLR 306-b).

(c) **Briefs and oral argument.**

Upon the filing of a notice of petition and petition with proof of service, the Clerk shall issue a schedule for the filing and service of briefs, if any, and for the calendaring of the proceeding. A party shall submit 10 copies of a brief.

(1000.10)

CALENDARING OF APPEALS AND PROCEEDINGS.

(a) **Scheduling order.**

After the appellant has perfected the appeal, the Clerk shall issue a scheduling order. The order will specify the term of Court for which the matter has been scheduled and set a deadline for the service and filing of respondent's briefs and reply briefs, if any. A proceeding shall be scheduled pursuant to 22 NYCRR 1000.8 or 22 NYCRR 1000.9, as appropriate.

(b) **Respondent's brief; request for extension of time.**

A respondent on an appeal must serve and file 10 copies of a brief on the deadline set by the Clerk in the scheduling order, which shall be 30 days from service on respondent of appellant's brief. In a proceeding, a party shall file 10 copies of a brief as set forth by the Clerk in the scheduling order. When a respondent to an appeal or a party to a proceeding is unable to comply with a deadline, a motion for an extension of time shall be filed and served prior to the expiration of the deadline (see, 22 NYCRR 1000.13 [h]). When an extension of time to file and serve a brief has been granted, a copy of the order granting such permission shall be filed with the brief.

(c) **Notice of counsel's unavailability for oral argument.**

A party or his or her 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 dates during the term.

(d) **Expedited appeals or proceedings.**

A party or his or her attorney may file and serve a motion to expedite an appeal or proceeding. The motion must be made within 15 days of the date that the scheduling order was mailed. The motion must be supported by an affidavit setting forth with particularity the compelling circumstances requiring that the appeal or proceeding be scheduled at the earliest available date (see, 22 NYCRR 1000.13 [m]).

(e) **Day calendar.**

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 and scheduled. A notice to appear for oral argument will be mailed by the Clerk to all parties or their attorneys not less than 20 days prior to the term. Counsel must appear as directed or submit on the brief.

(1000.11)

ORAL ARGUMENT.

(a) Generally.

A party or his or her 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.

(b) Requests for oral argument.

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. When no time is indicated on the cover of the brief, the appeal or proceeding shall be deemed submitted.

(c) No argument permitted in particular cases.

Unless otherwise provided by order of this Court, oral argument shall not be permitted in the following cases:

- (1) an appeal from a judgment of conviction in a criminal case that challenges only the legality or length of the sentence imposed;
- (2) an appeal from a determination pursuant to the Sex Offender Registration Act;
- (3) 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

(4) any other case in which this Court, in its discretion, determines that oral argument is not warranted.

(d) **Cases deemed submitted.**

An appeal or proceeding in which no argument time has been requested shall be deemed submitted. When oral argument has been requested and counsel fails to appear when the case is called by the Presiding Justice or Justice Presiding, the matter shall be deemed submitted.

(e) **Disqualification or unavailability of Justice.**

When a Justice is absent or unavailable at the time that the appeal or proceeding is argued, the matter will be heard by the four Justices present and deemed submitted to any other qualified Justice unless counsel objects at the time of oral argument.

(f) **No rebuttal permitted.**

Rebuttal argument is not permitted and no time may be reserved by counsel for the purpose of rebuttal.

(g) **Post-argument submissions.**

Except as otherwise ordered by this Court, no post-argument submissions shall be accepted unless 10 copies are filed, with proof of service of one copy on each other party, within five business days of the argument date.

(1000.12)

DISMISSAL OF APPEALS FOR FAILURE TO PERFECT.

(a) **On motion.**

A motion to dismiss for failure to perfect an appeal may be made pursuant to 22 NYCRR 1000.13 (e) when an appellant has failed to perfect an appeal within 60 days of service of the notice of appeal.

(b) **Without motion.**

A civil appeal, except an appeal taken pursuant to the Family Court Act in which this Court has assigned counsel, shall be deemed abandoned and dismissed, without the necessity of an order or motion, when an appellant has failed to perfect an appeal within nine months of service of the notice of appeal. A motion to vacate such an abandonment and dismissal may be made pursuant to 22 NYCRR 1000.13 (g).

(1000.13)

MOTIONS.

(a) **General procedures.**

(1) **Return date.**

Unless otherwise provided by statute or by order of this Court or Justice of this Court, a motion to this Court shall be returnable at 10:00 A.M. on any Monday (or, if Monday is a legal holiday, the first business day of the week), regardless of whether the Court is in session. A motion shall not be adjourned except upon the written consent or stipulation of the moving party or by order of this Court.

(i) A motion for permission to appeal shall be made returnable on a Monday (or, if Monday is a legal holiday, the first business day of the week) at least eight days but not more than 15 days after the notice of motion is served (see, CPLR 5516).

(2) **Notice and service of papers.**

A notice of motion and supporting papers shall be served with sufficient notice to all parties, as set forth in the CPLR. In computing the notice period, the date upon which service is made shall not be included (see, General Construction Law § 20).

- (i) When motion papers are personally served, at least eight-days notice shall be given (CPLR 2214 [b]).
- (ii) When motion papers are served by regular mail, at least 13-days notice shall be given (CPLR 2103 [b] [2]).
- (iii) When motion papers are served by overnight delivery service, at least nine-days notice shall be given (CPLR 2103 [b] [6]).
- (iv) When motion papers are served by electronic means, there shall be compliance with CPLR 2103 (b) (5), and at least eight-days notice shall be given.

(3) **Cross motions.**

Cross motions shall be made returnable on the same date as the original motion. A cross motion shall be served either personally or by overnight delivery service at least four days before the return date.

(4) **Filings of papers.**

- (i) All papers in support of or in opposition to a motion or cross motion shall be filed in the Clerk's Office no later than 5:00 P.M. on the Friday preceding the return date. When Friday is a legal holiday, papers shall be filed no later than 5:00 P.M. on the Thursday preceding the return date.
- (ii) Filing is accomplished by the physical delivery of the necessary papers to the Clerk's Office.
- (iii) A submission to the Clerk's Office by electronic means will be accepted, provided that it otherwise complies with these rules and the original papers and one copy thereof are sent to the Clerk's Office on the date of the electronic transmission.

(5) **Necessary papers.**

- (i) Except as otherwise authorized by statute or rule or by order of this Court or Justice of this Court, the papers on a motion or cross motion shall consist of a notice of motion (CPLR 2214), supporting affidavit(s), proof of service on all parties (CPLR 306), a copy of the notice of appeal or order of transfer with proof or admission of service, a copy of the order or judgment being appealed, along with the court's decision, if any, and a copy of any prior order of this Court.
- (ii) When an appellate docket number has been assigned to a matter by the Clerk's Office, a notice of motion or cross motion and any supporting affidavits shall conspicuously bear that number.
- (iii) An original and one copy of all papers shall be filed.
- (iv) Incomplete filings are not acceptable. A failure to comply with the rules for the submission of a motion shall result in the rejection of the motion papers.
- (v) In accordance with CPLR 8022, a fee of forty-five dollars must be remitted upon the filing of each motion or cross motion with respect to a civil appeal or special proceeding, except that no fee shall be imposed for a motion or cross motion seeking poor person relief pursuant to CPLR 1101(a) and 22 NYCRR 1000.14.

(6) **Oral argument.**

Oral argument of motions is not permitted.

(b) **Orders to show cause and applications pursuant to CPLR 5704.**

(1) **Orders to show cause.**

When a moving party seeks a temporary stay or other emergency interim relief pending the return and determination of a motion, the motion may be brought by an order to show cause. The order to show cause shall be directed to a Justice of this Court with chambers in the Judicial District from which the appeal arises. The party bringing the order to show cause must give reasonable notice to all other parties of the date and time when, and the location where, the order to show cause will be presented to a Justice of this Court, and all counsel may be present upon the presentation of the order to show cause. When the presence of counsel for an adverse party cannot be obtained, the papers in support of the order to show cause shall include an affidavit setting forth the manner in which reasonable notice has been given and an explanation for the failure to obtain the presence of adverse counsel. Unless otherwise ordered by a Justice of this Court, all papers in opposition to a motion brought by an order to show cause shall be served and filed in the Clerk's Office no later than noon of the return date set in the order to show cause.

- (i) A party commencing an original proceeding (see, 22 NYCRR 1000.9) by an order to show cause shall remit the filing fee in advance, as required by CPLR 8022.

(2) **CPLR 5704 (a).**

An application for relief pursuant to CPLR 5704 (a) shall be made using the procedures for an order to show cause set forth in 22 NYCRR 1000.13 (b) (1).

(c) **Stays of judgments in criminal proceedings (CPL 460.50).**

(1) **Initial application.**

Unless otherwise ordered by a Justice of this Court, an application by a defendant or the attorney for a defendant for a stay of judgment

pending appeal may be made by motion on notice, as set forth in 22 NYCRR 1000.13 (a), or by order to show cause, as set forth in 22 NYCRR 1000.13 (b) (1).

(2) **Extensions.**

When a defendant or the attorney for a defendant seeks to extend a stay of judgment pending appeal, the application shall be made by motion on notice, as set forth in 22 NYCRR 1000.13 (a). The papers in support of the motion shall include an affidavit stating either that the transcript of the proceeding to be reviewed has been filed pursuant to CPL 460.70 or that the transcript has been ordered, along with an explanation for the delay in completing and filing the transcript.

(d) **Stays in appeals pursuant to the Family Court Act (Family Ct Act § 1114).**

(1) **Initial application.**

Unless otherwise ordered by a Justice of this Court, an application for a stay pursuant to Family Court Act § 1114 shall be made by order to show cause, as set forth in 22 NYCRR 1000.13 (b) (1) (*see also*, Family Ct Act § 1114 [d]).

(2) **Extensions.**

An application to extend a stay granted pursuant to Family Court Act § 1114 and 22 NYCRR 1000.13 (d) (1) shall be made by motion on notice, as set forth in 22 NYCRR 1000.13 (a). The papers in support of the motion shall include an affidavit demonstrating reasonable efforts to obtain the transcript of the proceeding to be reviewed and otherwise explaining the delay.

(e) **Dismissal for failure to perfect.**

A motion to dismiss for failure to perfect the appeal may be made pursuant to 22 NYCRR 1000.12 (a). An order dismissing the appeal shall be

entered, unless the appellant timely serves and files an affidavit demonstrating a reasonable excuse for the delay and an intent to perfect the appeal within a reasonable time. When an appellant has made the required showing, an order shall be entered dismissing the appeal unless the appellant perfects the appeal by a date certain and further providing that the appeal shall be dismissed without further order if appellant should fail to perfect on or before the date certain.

(f) **Extension of time to perfect.**

In an appeal subject to dismissal pursuant to 22 NYCRR 1000.12 (b) or order of this Court, a motion for an extension of time to perfect the appeal may be made on or before the date by which the appellant must perfect the appeal. In support of the motion, the appellant shall submit an affidavit demonstrating a reasonable excuse for the delay and an intent to perfect the appeal within a reasonable time.

(g) **Vacate dismissal of appeal or proceeding.**

When an appeal or proceeding has been dismissed pursuant to 22 NYCRR 1000.12 (b) or an order of this Court, a motion to vacate the dismissal may be made within one year of the date of the dismissal. In support of the motion, the appellant or petitioner shall submit an affidavit demonstrating a reasonable excuse for the delay and an intent to perfect the appeal or proceeding within a reasonable time and setting forth sufficient facts to demonstrate a meritorious appeal or proceeding.

(h) **Extension of time to file a brief.**

A motion for an extension of time to file and serve a petitioner's brief, a respondent's brief, a reply brief or, when permitted, a surreply brief or a pro se supplemental brief shall be supported by an affidavit demonstrating a reasonable excuse for the delay and an intent to file and serve the brief within a reasonable time. When an extension of time to file and serve a brief has been granted, a copy of the order granting such permission shall be filed with the brief.

(i) **Extension of time to take a criminal appeal.**

A motion pursuant to CPL 460.30 to extend the time to take an appeal shall be made within one year of the date on which the time to take an appeal expired. An affidavit in support of the motion shall set forth facts demonstrating that the appeal was not timely taken because of the improper conduct of a public servant, the improper conduct, death or disability of the defendant's attorney or the inability of the defendant and the defendant's attorney to communicate about whether an appeal should be taken before the time to take the appeal expired.

(1) Filed with the motion papers shall be proof of service of the papers on defendant's trial counsel.

(j) **[REPEALED]**

(k) **Briefs *amicus curiae*.**

A person who is not party to an appeal or proceeding may make a motion to serve and file a brief *amicus curiae*. An affidavit in support of the motion shall briefly set forth the issues to be briefed and the movant's interest in the issues. The proposed brief may not duplicate arguments made by a party to the appeal or proceeding. When permission to submit a brief *amicus curiae* is granted, the person to whom it is granted shall file 10 copies of the brief with proof of service of two copies on each party. A person granted permission to appear *amicus curiae* shall not be entitled to oral argument.

(l) **Admission pro hac vice on a particular matter.**

An attorney and counselor-at-law or the equivalent may move for permission to appear pro hac vice with respect to a particular matter pending before this Court (see, 22 NYCRR 520.11 [a] [1]). An affidavit in support of the motion shall state that the attorney and counselor-at-law is a member in good standing in all the jurisdictions in which the attorney and counselor-at-law is admitted to practice and that the attorney is associated with a member in good standing of the New York Bar, which member shall be the attorney of record in the matter. Attached to the affidavit shall be a

certificate of admission in good standing from each Bar to which the attorney and counselor-at-law is admitted.

(m) **Expedite or adjourn appeal.**

A motion to expedite or adjourn an appeal or proceeding shall be supported by an affidavit setting forth with particularity the compelling circumstances justifying an expedited or adjourned appeal or proceeding.

(n) **Consolidation.**

A motion to consolidate appeals shall be supported by an affidavit setting forth the appeals to be consolidated and the reasons justifying consolidation (see, 22 NYCRR 1000.4 [b] [2]).

(o) **Applications for leave to appeal pursuant to CPL 460.15.**

An application pursuant to CPL 460.15 for a certificate granting leave to appeal to this Court shall be supported by an affidavit setting forth the questions of law or fact for which review is sought and stating that no prior application has been made. The applicant shall attach to the affidavit a copy of the order and decision, if any, sought to be reviewed and a copy of all papers submitted to the court whose order is sought to be reviewed. The motion shall be submitted to the Court for determination by an individual Justice thereof.

(p) **Reargument and leave to appeal to 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 this Court shall be made within 30 days of service of the order of this Court with notice of entry. The time to make the motion shall be extended five days if the order is served by mail and by one day if the order is served by overnight delivery service.

(2) **Necessary papers.**

Papers on a motion for reargument or leave to appeal to the Court of Appeals shall also include a notice of motion (CPLR 2214), supporting affidavit, proof of service on all parties (CPLR 306) and a copy of the order and memorandum or opinion, if any, of this Court.

(3) **Reargument.**

An affidavit in support of a motion for reargument shall briefly set forth the points alleged to have been overlooked or misapprehended by this Court.

(4) **Leave to appeal to Court of Appeals.**

- (i) An affidavit 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 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 and shall be determined by any member of the panel of Justices who determined the appeal. The affidavit in support of the motion shall state that no other application for leave to appeal to the Court of Appeals has been made.
- (iv) A motion for permission to appeal shall be made returnable on a Monday (or, if Monday is a legal holiday, the first business day of the week) at least eight days but not more than 15 days after the notice of motion is served (see, CPLR 5516).

(q) **Withdrawal of counsel; assigned criminal appeals.**

An attorney assigned to perfect a criminal appeal on behalf of an indigent defendant pursuant to 22 NYCRR 1022.11 may move, after conferring with the defendant and trial counsel, to be relieved of the assignment (see *People v Crawford*, 71 AD2d 38). In support of the motion, the attorney shall submit an affidavit accompanied by a brief in which the attorney states all points that may arguably provide a basis for appeal, with references to the record and citation to legal authorities. The brief must be served upon the defendant, together with the motion, at least 30 days before the return date of the motion. Together with the motion papers, the brief, and proof of service of the motion papers and the brief upon defendant, counsel shall submit the papers that would constitute the record on appeal pursuant to 22 NYCRR 1000.3 (c) (1). 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.

(r) **Other motions.**

A motion seeking relief not specifically provided for herein is not precluded. Any such motion shall be submitted to the Clerk's Office in conformity with 22 NYCRR 1000.13 (a).

(1000.14)

POOR PERSONS.

(a) **Motion.**

A motion for permission to proceed on appeal as a poor person and for assignment of counsel may be made by any party pursuant to 22 NYCRR 1000.13 (a).

(1) **Supporting papers; all appeals.**

An affidavit in support of a motion for permission to proceed on appeal as a poor person and 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 to the appeal; and 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 (see, CPLR 1101 [a]; Judiciary Law § 35 [1]; County Law § 722).

(2) Supporting papers; civil appeals.

In a civil appeal, an affidavit in support of a motion for permission to proceed on appeal as a poor person shall also set forth sufficient facts so that the merit of the contentions can be ascertained (CPLR 1101 [a]).

(i) Exceptions.

This subdivision has no application to appeals described in Family Court Act § 1120 (a), SCPA 407 (1) and Judiciary Law § 35 (1).

(3) Service on county attorney.

A motion for permission to proceed on appeal as a poor person and assignment of counsel shall be served with sufficient notice on the county attorney in the county from which the appeal arises (see, CPLR 1101 [c]).

(4) Certification in lieu of motion.

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 or the Law Guardian, as appropriate, by filing with the Clerk a certification of continued indigency and continued eligibility for assignment of counsel pursuant to Family Court Act § 1118. 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.

(b) **Stenographic transcripts.**

Except as provided by order of this Court, the Clerk of the court from which the appeal is taken shall provide a party granted permission to proceed on appeal as a poor person with a stenographic copy of the minutes of the proceeding upon which the appeal is based, along with one copy of any other paper or document on file in the Clerk's Office that is relevant and necessary to the appeal.

(c) **Records and briefs.**

A person granted permission to proceed on appeal as a poor person shall perfect the appeal by filing 10 copies of a brief with proof of service of one copy on each respondent.

(1) In a criminal appeal, a person granted permission to proceed on appeal as a poor person shall file a properly certified transcript of the trial or hearing underlying the appeal, if any, a copy of the Pre-Sentence Investigation Report, if relevant and necessary, one copy of an appendix consisting of the documents described in 22 NYCRR 1000.4 (e) with proof of service of one copy of the appendix on each respondent, and exhibits as required by 22 NYCRR 1000.4 (g).

(2) In a civil appeal, a person granted permission to proceed on appeal as a poor person shall file one copy of the stipulated or settled record with proof of service of one copy on each party to the appeal and shall file exhibits as required by 22 NYCRR 1000.4 (g).

(d) **Filing fee.**

A person granted permission to proceed on appeal as a poor person shall not be required to pay a filing fee (CPLR 1102 [d]).

(e) **Respondent.**

When an appellant has been granted permission to appeal as a poor person, a respondent shall file 10 briefs with proof of service of one copy on appellant.

(1000.15)

LESSER NUMBER OF RECORDS.

(a) **Motion.**

A motion for permission to perfect an appeal on less than the required number of records may be made by any party pursuant to 22 NYCRR 1000.13 (a).

(b) **Supporting papers.**

An affidavit in support of a motion to perfect an appeal on less than the required number of records shall comply with 22 NYCRR 1000.14 (a) (1).

(c) **Relief under motion.**

When a motion to perfect an appeal on less than the required number of records has been granted, an appellant shall perfect the appeal as set forth in 22 NYCRR 1000.14 (c). A respondent shall comply with 22 NYCRR 1000.14 (e).

(1000.16)

SANCTIONS; SIGNING OF PAPERS.

(a) **Sanctions.**

An attorney or party who fails to comply with a rule or order of this Court or who engages in frivolous conduct as defined in 22 NYCRR 130-1.1 (c) shall be subject to such sanction as the Court may, in its discretion, impose. The imposition of sanctions or costs may be made upon motion or upon the Court's own initiative, after a reasonable opportunity to be heard. The Court may award costs or impose sanctions upon a written decision setting forth the conduct on which the award of costs or imposition of sanctions is made and the reasons for the determination that such an award or sanction is appropriate.

(b) **Signing of papers.**

In a civil appeal or proceeding, except in an appeal arising from a proceeding commenced pursuant to Family Court Act article three, seven, eight or 10, the original of every paper submitted for filing with the Clerk of this Court shall be signed in ink by an attorney or, when a party is not represented by an attorney, a party in accordance with 22 NYCRR 130-1.1-a.

(1000.17)

ORDERS AND DECISIONS.

(a) **Entry of orders.**

An order of this Court determining an appeal or motion shall be entered by the Clerk in the Office of the Clerk of this Court (see, CPLR 5524 [a]). Unless otherwise directed by this Court or Justice of this Court, the Clerk shall draft the order.

(b) **Service of order.**

The person prevailing on an appeal or motion shall serve a copy of the order with notice of entry in the Office of the Clerk of this Court on all parties.

(c) **Service of order; criminal appeals.**

Service of a copy of an order on appellant in accordance with CPL 460.10 (5) (a) shall be made pursuant to CPLR 2103.

(d) **Remittitur.**

Unless otherwise ordered by this Court, an order determining an appeal shall be remitted, together with the record on appeal, to the clerk of the court from which the appeal is taken (see, CPLR 5524 [b]).

(e) **Decision-Orders.**

Unless otherwise directed by this Court, the decision-orders of this Court on decided appeals and proceedings shall be published at 3:00 P.M. on the day falling two weeks after the last day of a term of Court. A copy of the decision-order determining the appeal or proceeding shall be mailed by the Clerk's Office to all parties to the appeal or proceeding.

(1000.18)

WITHDRAWAL OF MOTION, APPEAL OR PROCEEDING; SETTLEMENT OF APPEAL OR PROCEEDING OR ISSUE THEREIN.

(a) **Motion.**

A motion may be withdrawn at any time prior to its return date upon the written request of the moving party.

(b) **Appeal or proceeding.**

An appeal or proceeding may be withdrawn and discontinued at any time prior to its determination only upon the filing with this Court of a written stipulation of discontinuance, which must be signed by the parties or their attorneys and, in criminal appeals and appeals in which counsel has been assigned, by the appellant personally. When an appeal or proceeding is withdrawn or discontinued, the Court shall be promptly notified.

(c) **Settlement of appeal or proceeding or issue therein.**

The parties or their attorneys shall immediately notify the Court when there is a settlement of an appeal or proceeding or any issue therein or when an appeal or proceeding or any issue therein has been rendered moot. The parties or their attorneys shall likewise immediately notify the Court if the appeal should not be calendared because of bankruptcy or the death of a party. Any party or attorney who, without good cause shown, fails to comply with the requirements of this subdivision shall be subject to the imposition of such sanction as the Court may, in its discretion, impose pursuant to 22 NYCRR 1000.16 (a).

(1000.19)

ELECTRONIC RECORDING AND AUDIO-VISUAL COVERAGE OF COURT PROCEEDINGS.

(a) Generally.

Except as authorized by the Presiding Justice upon written application, audiotaping, photographing, filming or videotaping the proceedings of this Court is prohibited.

(b) Application for permission to conduct.

Written application for permission to photograph or conduct audio or video coverage of Court proceedings must be submitted to the Presiding Justice at least five days prior to the scheduled proceeding. The application must specify, pursuant to 22 NYCRR 29.2: the type of equipment that will be utilized; the number of personnel that will be employed to conduct the coverage; and the pooling arrangements that have been made with other interested members of the media.

(1000.20)

CONFIDENTIAL AND SEALED RECORDS.

(a) Generally.

Records, briefs and other papers filed in matters deemed confidential by statute are sealed and shall not be available to the public except as provided by statute or rule of this Court.

(b) Confidential matters.

Appeals and proceedings that are confidential by statute include, but are not limited to:

- (1) Matters arising pursuant to the Family Court Act (Family Court Act § 166; 22 NYCRR 205.5).

- (2) Matrimonial actions and proceedings (Domestic Relations Law § 235; CPLR 105 [p]).
- (3) Adoption proceedings (Domestic Relations Law § 114).
- (4) Youthful offender adjudications (CPL 720.35 [2]; 725.15).
- (5) Civil or criminal matters involving sex offenses, as defined by article 130 or §§ 255.25, 255.26 and 255.27 of the Penal Law or an offense involving the alleged transmission of the human immunodeficiency virus (Civil Rights Law § 50-b).
- (6) Proceedings pursuant to article 6 of the Social Services Law (Social Services Law § 422 [4] [a]).
- (7) In criminal matters not otherwise confidential, records of grand jury proceedings (CPL 190.25 [4]), grand jury reports (CPL 190.85) and pre-sentence reports and memoranda (CPL 390.50).

(c) **Papers sealed by trial court.**

Any papers sealed by a trial court shall remain sealed in this Court.

(d) **Application to seal papers.**

Any party to an appeal, proceeding or motion may request, upon good cause shown, that this Court seal papers not sealed at the trial court. Such request shall be made by motion pursuant to 22 NYCRR 1000.13 (a) and (r). In determining whether good cause has been shown, this Court shall consider the interests of the parties and the public.

(e) **Access to papers.**

- (1) With respect to papers sealed pursuant to statute, access to the papers may be requested as authorized by the statute.

- (i) A person authorized by statute to have access to particular papers on file in this Court may request access to such papers, in writing from the Clerk.
 - (ii) When the access authorized by statute lies in the discretion of this Court, the request shall be made by motion pursuant to 22 NYCRR 1000.13 (a) and (r).
- (2) When papers have been sealed in the discretion of a court, requests for access to such papers shall be made by motion, upon good cause shown, pursuant to 22 NYCRR 1000.13 (a) and (r). In determining whether good cause has been shown, this Court shall consider the interests of the parties and the public.

(1022.9)

ADMISSION PRO HAC VICE.

- (a) Applications for admission pro hac vice with respect to a pending appeal or proceeding shall be made pursuant to 22 NYCRR 1000.13 (l).
- (b) Applications for admission pro hac vice pursuant to 22 NYCRR 520.11 (a) (2), (b) and (d) (6) shall be made only to the Appellate Division.

(1022.11)

DUTIES OF CRIMINAL DEFENSE COUNSEL.

- (a) Counsel assigned to or retained for the defendant in a criminal action or proceeding shall represent the defendant until the matter has been terminated in the trial court. Where there has been a conviction or an adverse decision on an application for a writ of habeas corpus, or on a motion under section 440.10 or 440.20 of the Criminal Procedure Law, immediately after the pronouncement of sentence or the service of a copy of the order disposing of such application or motion, counsel shall advise the defendant in writing of his right to appeal or to apply for permission to appeal, the time limitations involved, the manner of instituting an appeal or applying for permission and of obtaining a transcript of the testimony, and

of the right of the person who is unable to pay the cost of an appeal to apply for leave to appeal as a poor person. Such counsel shall also ascertain whether defendant wishes to appeal or to apply for permission to appeal, and, if so, counsel shall serve the necessary notice of appeal or application for permission and shall file the necessary notice of appeal or application for permission with proof of service on or an admission of service by the opposing party.

- (b) Counsel assigned to prosecute an appeal on behalf of an indigent defendant shall prosecute the appeal until entry of the order of the appellate court determining the appeal. Immediately upon entry of an order affirming the judgment of conviction or the order denying an application for a writ of habeas corpus or a motion under section 440.10 or 440.20 of the Criminal Procedure Law, counsel, assigned or retained, shall advise the defendant in writing of his right to apply for permission to appeal and of the right of a person who is unable to pay the cost of a further appeal (in the event that permission is granted) to apply for leave to appeal as a poor person. Counsel shall ascertain whether defendant wishes to apply for permission to appeal, and if so, make timely application therefor. In a habeas corpus proceeding, where the order of the Appellate Division is appealable to the Court of Appeals pursuant to CPLR 5601, counsel shall advise the relator of his absolute right to appeal without permission.
- (c) On or before the date of filing appellant's brief, assigned counsel shall mail a copy of the brief to appellant at his last known address and advise the clerk in writing of the date of mailing.
- (d) 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 section 1000.13 (q) of this Title (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 to legal authorities. A copy of the brief must be served upon the defendant, together with the motion papers, at least 30 days before the return date of the motion. Together with the motion papers, the brief, and proof of service of the motion papers and the brief upon defendant, counsel shall submit the

papers that would constitute the record on appeal pursuant to section 1000.3 (c) (1) of this Title. 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.

(1022.11a)

DUTIES OF COUNSEL IN FAMILY COURT AND SURROGATE'S COURT.

- (a) This rule applies in proceedings commenced pursuant to Family Court Act articles three, seven and 10 and article six, part one, and Social Services Law § 358-a, 384-b and 392 (see, Family Court Act § 1121).
- (b) Counsel assigned to or retained by a party and the law guardian in an applicable proceeding shall represent the client until the matter is terminated by the entry of an order. Upon the entry of an order, it shall be the duty of counsel promptly to advise the parties of the right to appeal to the Appellate Division or to make a motion for permission to appeal. In the written notice, counsel shall set forth: the time limitations applicable to taking an appeal or moving for permission to appeal; the possible reasons upon which an appeal may be based; the nature and possible consequences of the appellate process; the manner of instituting an appeal or moving for permission to appeal; the procedure for obtaining a transcript of testimony, if any; and the right to apply for permission to proceed as a poor person.
- (c) When a party or the law guardian determines to appeal or to move for permission to appeal, counsel or the law guardian shall serve the notice of appeal or motion for permission and shall file the notice of appeal or motion for permission with proof of service on or an admission of service by the opposing parties, including the law guardian when a law guardian has been appointed.
- (d) Except when counsel has been retained to prosecute the appeal, the notice of appeal may include the statement that it is being filed and served on behalf of appellant pursuant to 22 NYCRR 1022.11a (c) and that it shall not be deemed an appearance by counsel as counsel for appellant on the appeal.

- (e) When a party has indicated a desire to appeal, counsel shall, when appropriate, move for permission to proceed as a poor person and assignment of counsel pursuant to 22 NYCRR 1000.14.