



NEW YORK STATE  
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS  
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL  
COUNSEL

MEMORANDUM

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Statewide Rules of  
the Appellate Division

Date: May 25, 2017

Public comment is requested on the Unified Court System's proposed statewide Rules of the Appellate Division of the Supreme Court of the State of New York (Exh. A). Drafted by a working group of senior staff of the Appellate Division and the Office of Court Administration at the direction of the Administrative Board of the Courts, the proposed rules harmonize language and principles of practice before the four Judicial Departments of the Appellate Division in a wide range of areas, including numbering; definitions; service and filing rules; general motion practice; specific motions (including requests for interim relief, poor person relief, pro hac vice admission, and amicus filings); methods of perfecting appeals (including reproduction of records and briefs, timing and manner of perfection, oversized briefs, and dismissal of appeals); special rules relating to criminal appeals; transferred proceedings and original special proceedings; decisions (including costs, remittitur, and motions for reargument or leave); fees; and various other subjects. The differences in the practice rules of the Departments of the Appellate Division have been a subject of extensive commentary over the years (*e.g.*, New York State Bar Association Committee on Courts of Appellate Jurisdiction, "Report on Appellate Division Rules," April 4, 2014 [<https://www.nysba.org/appellatedivisionrules/>]). While the draft rules propose unprecedented uniformity in Appellate Division practice, they concurrently preserve the authority of the Departments to shape specified local practices by Departmental rule, as the courts deem appropriate.

The current rules of the Departments of the Appellate Division can be found on each Department's website:

First Department: <http://www.nycourts.gov/courts/AD1/Practice&Procedures/rules.shtml>

Second Department: <http://www.nycourts.gov/courts/ad2/pdf/rulesofprocedure.pdf>

Third Department: <http://www.nycourts.gov/ad3/RULESOFPRACTICEPART800-8-8-2016.pdf>

Fourth Department: <http://www.nycourts.gov/courts/ad4/Clerk/AD4-RuleBook-web.pdf>

Persons wishing to comment on the proposed rules should e-mail their submissions to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov) or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. Comments must be received no later than August 23, 2017.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Appellate Division, the Unified Court System or the Office of Court Administration.

## **EXHIBIT A**

Proposed Statewide Practice Rules of the Appellate Division  
of the Supreme Court of the State of New York

Issued for Public Comment  
May 25, 2017

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**Proposed Statewide Practice Rules of the Appellate Division  
of the Supreme Court of the State of New York**

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1.0 General

A. Definitions.

Unless the context requires otherwise, as used in this part:

1. The word “cause” or “matter” includes an appeal, a special proceeding transferred to this court pursuant to CPLR 7804 (g), a special proceeding initiated in this court, and an action submitted to this court pursuant to CPLR 3222 on a case containing an agreed statement of facts upon which the controversy depends.
2. Any reference to the “court” or the “Appellate Division” means the Appellate Division of the Supreme Court of the State of New York for the Judicial Department having jurisdiction over the cause or matter; any reference to a “justice” means a justice of that court; any reference to the “clerk” means the clerk of that court or a designee, unless the context of usage indicates the clerk of another court.
3. Wherever reference is made to a “judgment,” “order” or “determination,” it shall also be deemed to include a sentence.
4. The phrase “perfecting a cause or matter” means satisfying the requirements for placing a cause on the court's calendar, e.g., the filing of a record and brief.
5. The word “consolidation” refers to the combining of two or more causes arising out of the same action or proceeding in one record or appendix and one brief.
6. The phrase “cross appeal” refers to an appeal taken by a party whose interests are adverse to a party who previously appealed from the same order or judgment as relates to that appeal and cross appeal.
7. The word “concurrent,” when used to describe appeals, shall refer to those appeals which have been taken separately from the same order or judgment by parties whose interests are not adverse to one another as relates to those appeals.
8. The word “appellant” shall refer to the party required to file the initial brief to the court in a cause or matter, including an appellant, a petitioner, an appellant-respondent and similar parties.
9. The phrase “Departmental rule” refers to a rule of a Judicial Department of the Appellate Division that supplements these uniform rules.

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

11. The phrase “filed electronically,” when used to describe papers that have been filed with the court, shall refer to papers that have been filed by electronic means through the NYSCEF site or other court-approved site.

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

13. The phrase “hard copy” shall mean information set forth in paper form.

#### B. Number of Justices.

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

#### C. Filing and Service; Weekends and Holidays.

##### 1. Filing.

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

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

(c) A document deemed filed for purposes of timeliness under this rule may thereafter be reviewed and rejected by the office of the clerk.

2. Proof of Service. Unless otherwise required by section 7.0 (B) of this Part, all filings shall be accompanied by proof of service upon all necessary parties pursuant to CPLR 2103.

3. Service by Mail and Overnight Mail. If a period of time prescribed by this Part is measured from the service of a record, brief or other paper and service is by mail, five

days shall be added to the prescribed period. If service is by overnight delivery, one day shall be added to the prescribed period.

4. Service by Electronic Mail Upon Consent. Unless otherwise directed by the court, parties in matters not subject to e-filing, may agree, in writing, to service of papers by electronic mail. A copy of any such agreement shall be filed with the court with the affidavit of service.

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

D. Electronic Filing – Additional.  
[Insert]

E. Signing of papers.

The original of every paper submitted for filing in the office of the clerk of the court shall be signed in ink in accordance with the provisions of section 130-1.1-a (a) of this Title. Copies of the signed original shall be served upon all parties to the matter and shall be filed in the office of the clerk whenever multiple copies of a paper are required to be served and filed in accordance with the provisions of this Part.

F. Confidentiality.

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

2. Confidential matters. Appeals and proceedings that are confidential by law include, but are not limited to:

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

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

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

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

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

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



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

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

3. Unless otherwise directed by Departmental rule, applications for sealing and unsealing court records shall be made by motion.

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

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

2. Withdrawal or Discontinuance of Appeal or Proceeding.

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

(b) Unless otherwise authorized by Departmental rule, an appeal that has been perfected or a proceeding where issue has been joined may be withdrawn and discontinued by leave of the court upon the filing with the court of a written stipulation of discontinuance signed by the parties or their attorneys and, in criminal appeals and appeals in which counsel has been assigned, by the appellant personally. Absent such a stipulation, an appellant may move for permission to withdraw such an appeal or proceeding.

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

H. Docket or Case Management Numbers.

All documents filed with the court shall prominently display the name of the court of original instance, the index number or indictment number of the case in such court, if any, and an Appellate Division docket or case management number, if assigned.

#### I. Rejection for Noncompliance.

The clerk may reject any submission that does not comply with this Part, is incomplete, is untimely, is not legible, or is otherwise unsuitable. The court may waive compliance by any party with any provision of this Part.

#### J. Sanctions.

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

## 2.0 Initial Filings; Active Management of Causes; Settlement or Mediation Program

### A. Initial Filings.

As may be provided by Departmental rule, in such civil matters as the court shall direct, counsel for the appellant or the petitioner shall file with the clerk of the court of original instance and serve on all parties, together with the notice of appeal or transfer order and the order or judgment appealed from, an initial informational statement (preargument, request for appellate intervention, precalendar, or other statement) on a form approved by the court and in such number as the court may direct. The clerk of the court from which the appeal is taken shall promptly transmit to the Appellate Division the informational statement and a copy of the notice of appeal or order granting leave or transferal and the order or judgment appealed from.

### B. Active Management.

As may be provided by Departmental rule, the court may direct that any matter be actively managed and may set forth a scheduling order specifying the time and manner of expedited briefing.

### C. Settlement or Mediation Program.

1. The court may issue a notice in any settlement or mediation program directing the attorneys for the parties, the parties themselves (unless the court excuses a party's personal presence), and such additional parties in interest as the court may direct to attend a conference before such person as it may designate to consider settlement, the limitation of issues and any other matter which such person determines may aid in the disposition of the appeal or resolution of the action or proceeding. Attorneys and representatives who appear must be fully familiar with the action or proceeding, and must be authorized to make binding stipulations or commitments on behalf of the party represented.
2. Counsel to any party may apply to the court by letter at any time requesting such a conference. The application shall include a brief statement indicating why a conference would be appropriate.
3. Upon the failure of any party, representative or counsel to appear for or participate in a settlement or mediation conference, or to comply with the terms of a stipulation or order entered following such a conference, the party or counsel may be subject to sanctions.

### 3.0 Motions.

#### A. General.

1. Day and time returnable. Unless otherwise required by statute, rule or order of the court or any justice thereof, every motion and every proceeding initiated in the court shall be made returnable at 10:00 a.m. on any Monday (or, if Monday is a legal holiday, the first business day of the week), and on such other days as the court may direct.
2. Commencement; filing. All motions initiated by notice of motion shall be filed with the clerk at least one week before the return date. The originals of all such papers shall be filed, together with proof of service upon all parties entitled to notice. Motions by any other method shall be as directed by the court or a justice thereof.
3. The papers in support of every motion or application made before the appeal is determined must contain a copy of the order, judgment or determination sought to be reviewed, the decision, if any, and the notice of appeal or other paper which first invoked the jurisdiction of the court, with proof of filing.
4. Notice and service of papers. Unless otherwise directed by the court, a motion or application 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.
5. Unless otherwise directed by Departmental rule, answering and reply papers, if any, must be served within the time prescribed by CPLR 2214 (b) or directed by a justice of the court. The originals thereof with proof of service must be filed by 4:00 p.m. of the business day preceding the day on which the motion or application is returnable, unless, for good cause shown, they are permitted to be filed at a later time.
6. Cross motions. Cross motions shall be made returnable on the same date as the original motion. A cross motion shall be served, either personally, by overnight delivery service or by electronic means, and filed at least three business days before the return date.
7. Motions shall be deemed submitted on the return date, and no further papers shall be accepted for filing without leave of the court upon written application.
8. Oral argument. Oral argument of motions is not permitted.

#### B. Motions or Applications Which Include Requests for Interim Relief.

1. Request for Interim Relief. As may be provided by Departmental rule, an application or order to show cause presented for signature that includes a request for a temporary stay or other interim relief pending determination of a motion, or an application pursuant to CPLR 5704, must state, among other things:

- (a) the nature of the motion or proceeding;
- (b) the specific relief sought;
- (c) the names, addresses, telephone numbers and (where known) email addresses of the attorneys and counsel for all parties in support of and in opposition to the motion or proceeding.

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

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

3. Reply. Reply papers shall be permitted only by leave of the court.

#### C. Permission to Appeal to the Appellate Division in a Civil Matter.

1. When Addressed to a Justice. An application to a justice of the court for permission to appeal pursuant to CPLR 5701 (c) shall be made within the time prescribed by CPLR 5513. The papers upon which such an application is made must state whether any previous application has been made and, if so, to whom and the reason given, if any, for the denial of leave or refusal to entertain the application, if that be the case.

2. When Addressed to the Court.

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

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

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

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

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

D. Poor Person Relief.

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

2. Civil Matters.

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

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

3. Family Court Matters - 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 assigned pursuant to 262 of the FCA or the attorney for the child, 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.

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

E. Admission Pro Hac Vice.

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

F. Leave to File Amicus Curiae Brief.

A person who is not a party to an appeal or proceeding may make a motion to serve and file an amicus curiae brief. An affidavit or affirmation in support of the motion shall briefly set forth the issues to be briefed and the movant's interest in the issues, and shall include six copies of the proposed brief unless otherwise directed by the court. The proposed brief may not duplicate arguments made by a party to the appeal or proceeding. Unless otherwise permitted by the court, a person granted permission to file an amicus curiae brief shall not be entitled to oral argument.

## 4.0 Perfecting Appeals.

### A. Methods.

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

1. **Reproduced Full Record.** If the appellant elects to proceed on a reproduced full record on appeal, the record shall be printed or otherwise reproduced as provided in sections 4.0 (B) and (C) of this Part.

2. **Appendix Method.**

(a) Unless otherwise directed by Departmental rule, an appellant who elects to proceed by the appendix method shall provide the court with a single bound copy of the reproduced full record.

(b) The appendix shall be printed or otherwise reproduced as provided in sections 4.0 (B) and (C) of this Part, and shall be bound separately or, if permitted by the court, bound with the brief.

3. **Agreed Statement in Lieu of Record Method.** If the appellant elects to proceed by the agreed statement method in lieu of record method, the statement shall be reproduced as a joint appendix as provided in sections 4.0 (B) and (C) of this Part. The statement required by CPLR 5531 shall be appended.

4. **Original Record.**

(a) The following appeals may be perfected upon the original record, including a properly settled transcript of the trial or hearing, if any:

- (i) appeals from the Family Court;
- (ii) appeals under the Election Law;
- (iii) appeals under the Human Rights Law (Executive Law § 298);
- (iv) appeals where the sole issue is compensation of a judicial appointee;
- (v) appeals under Correction Law §§ 168-d (3) and 168-n (3);
- (vi) appeals from the Appellate Term, where the matter was perfected on an original record at the Appellate Term;
- (vii) other appeals where an original record is authorized by statute; and
- (viii) appeals where permission to proceed upon the original record has been authorized by the court.



(b) Unless otherwise directed by the court, when an appeal is perfected upon the original record, the parties shall proceed by one of the following methods, as provided by court rule:

(i) the appellant shall subpoena from the clerk of the court from which the appeal is taken all the papers constituting the record on appeal, and shall cause them to be filed with the clerk of this court prior to the filing of the briefs; or

(ii) the parties or their attorneys may stipulate to the correctness of the contents of the complete record (CPLR 5532), provided that, if they are unable to so stipulate, the contents of the record shall be settled by the court from which the appeal is taken.

#### B. Reproduction of Records, Appendices and Briefs.

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

2. Method of Reproduction. Briefs, records and appendices shall be reproduced by any method that produces a permanent, legible, black image on white paper. Use of recycled paper and reproduction on both sides of the paper is encouraged.

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

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

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

C. Form and Content of Records and Appendices; Exhibits

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

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

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

(b) The statement required by CPLR 5531;

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

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

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

(f) A stipulation or order dispensing with reproducing exhibits, as provided in subsection 3.

(g) The appropriate certification or stipulation pursuant to section 4.0 (C) (7) of this Part.

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

4. Appendix.

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

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

(b) The appendix shall have a cover complying with section 4.0 (C) (2) (a) of this Part and shall contain the statement required by CPLR 5531 and a table of contents.

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

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

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

7. Certification of Record. Unless otherwise directed by Departmental rule, a reproduced full record shall be certified either by: (a) a certificate of the appellant's attorney pursuant to CPLR 2105; (b) a certificate of the proper clerk; (c) settlement of the record; or (d) a stipulation in lieu of certification pursuant to CPLR 5532. The reproduced copy containing the signed certification or stipulation shall be marked "Original." A party may move to waive certification pursuant to this rule for good cause shown, and shall include with the motion a copy of the proposed record or appendix.

8. Certification of Appendix. The court may direct certification of the appendix by Departmental rule.

#### D. Form and Content of Briefs.

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

2. Appellant's Brief. The appellant's brief shall contain, in the following order:

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

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

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

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

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

(f) a statement certifying compliance with printing requirements under this Part, on a form approved by the court, as set forth in section 4.0 (D) (10).

3. Respondent's Brief. The respondent's brief shall conform to the requirements of section 4.0 (D) (2) of this Part, except that a counterstatement of the questions involved or a counterstatement of the nature and facts of the case shall be included only if the respondent disagrees with the statement of the appellant.

4. Reply Brief. Any reply brief of the appellant or cross appellant shall conform to the requirements of section 4.0 (D) (2) of this Part, without repetition. A reply in a cross appeal shall include the points of argument in response to the cross appeal.

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

6. Computer-generated briefs.

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

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

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

(b) Length. Computer-generated appellants' and respondents' briefs shall not exceed 14,000 words, and reply and amicus curiae briefs shall not exceed 7,000 words, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc.

7. Typewritten briefs. Typewritten briefs shall be neatly prepared in clear type of no less than elite in size and in a pitch of no more than 12 characters per inch. The original of the brief shall be signed and filed as one of the number of copies required by section 5.0 of this Part. Typewritten appellants' and respondents' briefs shall not exceed 50 pages and reply briefs and amicus curiae briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of citations, proof of service, certificate of

compliance, or any authorized addendum containing statutes, rules, regulations and like materials.

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

9. Handwritten briefs. Self-represented litigants and persons filing pro se supplemental briefs may serve and file handwritten briefs. Such briefs shall be neatly prepared in cursive script or hand printing in black or blue ink. Handwritten appellants' and respondents' briefs shall not exceed 50 pages and reply briefs and amicus curiae briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance or any authorized addendum containing statutes, rules, regulations and like materials. Pages shall be numbered consecutively. The submission of handwritten briefs is not encouraged. If illegible, handwritten briefs may be rejected for filing by the clerk.

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

11. The court may authorize addenda to the brief by Departmental rule or order.

## 5.0 Time, Number and Manner of Filing of Records, Appendices and Briefs.

### A. Appellant's Filing.

1. Except where the court has directed that an appeal be perfected by a particular time, an appellant shall file with the clerk within six months of the date of the notice of appeal:

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

(b) if employing the appendix method, an original and five paper copies of a brief and appendix, one electronic copy of the record, brief and appendix, and, unless otherwise directed by the court, one paper copy of the record, with proof of service of one paper copy and one electronic copy of a brief and appendix upon each other party to the appeal; or

(c) if employing the agreed statement method, an original and five paper copies of the agreed statement in lieu of record as provided in CPLR 5527, an original and five paper copies of a brief, and one electronic copy of the agreed statement and the brief, with proof of service of one paper copy and one electronic copy of the agreed statement and brief upon each other party to the appeal.

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

### B. Respondent's Filing.

Unless otherwise directed by Departmental rule or court order, the respondent on an appeal shall file with the clerk within 30 days of the date of service of the appellant's papers:

1. under the full record method, an original and five paper copies and one electronic copy of the respondent's brief, with proof of service of one paper copy and one electronic copy of the brief upon each party to the appeal; or

2. under the appendix method, an original and five paper copies and one electronic copy of respondent's brief and appendix, if any, with proof of service of one paper copy and one electronic copy of the brief and appendix, if any, upon each party to the appeal; or

3. under the agreed statement method, an original and five paper and one electronic copy of respondent's brief, with proof of service of one paper copy and one electronic copy of the brief upon each party to the appeal.

C. Appellant's Reply.

Unless otherwise directed by Departmental rule or court order, the appellant on an appeal shall file with the clerk, within 10 days of the date of service of the respondent's papers, an original and five paper and one electronic copy of the appellant's reply brief, with proof of service of one paper copy and one electronic copy of the brief upon each party to the appeal.

D. Additional Copies of Papers; Electronic Copies in Matters Not Subject to Electronic Filing.

1. Additional Copies of Papers. The court may direct the parties to file additional copies of briefs, records, appendices or other papers in any matter.

2. Electronic Copies. In matters not subject to electronic filing pursuant to this Part, the requirement of filing or service of an electronic copy of a brief, record, appendix, or other paper shall be satisfied through delivery of such documents as directed by Departmental order.

E. Cross Appeals; Concurrent Appeals from Single Order or Judgment; Consolidation of Appeals from Multiple Orders or Judgments.

1. Cross appeals. Unless otherwise directed by Departmental rule, in the case of cross appeals:

(a) the first filer of a notice of appeal shall be denominated as appellant;

(b) the answering brief 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;

(c) an appellant's reply brief shall be filed and served within 10 days after service of the answering brief; and

(d) a reply brief to the cross appeal may be filed and served within 10 days after service of appellant's reply brief.

2. Concurrent appeals from a single order or judgment. Unless otherwise directed by Departmental rule, when two or more parties appeal from a single order or judgment, the appellants shall perfect the appeals together, without motion, in the period measured from the date of the latest notice of appeal. The appellants shall file a joint record or joint appendix certified as provided in section 4.0 (C) (6) of this Part and shall share equally the cost of that record or appendix.



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

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

#### F. Extensions of Time to File and Serve Responsive Briefs.

Except where the court has directed that answering or reply briefs be served and filed by a particular time, an extension of time to serve and file such briefs may be obtained as follows:

1. By initial stipulation or application. Unless otherwise directed by Departmental rule, the parties may stipulate or apply by letter on notice to all parties to extend the time to file and serve an answering brief by up to 30 days, and to file a reply brief by up to 10 days. Not more than one such stipulation or application per perfection or filing shall be permitted. A stipulation shall not be effective unless promptly filed with the court. Any further application must be made by motion.

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

#### G. Leave to File Oversized Brief.

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

#### H. Constitutionality of State Statute.

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

#### I. Dismissal of a Matter.

1. Civil Matters. Unless otherwise directed by Departmental rule or order of the court, in the event that an appellant fails to perfect a civil matter within six months of the date of the notice of appeal, the order of transfer, or the order granting leave to appeal, as extended by stipulation of the parties or order of the court pursuant to section 5.0 (A) (2) of this Part, if any, the matter shall be deemed dismissed without further order.

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

J. Motion to Vacate Dismissal.

When an appeal or proceeding has been deemed dismissed pursuant to section 5.0 (I) (1) or by order of the court for failure to perfect, a motion to vacate the dismissal may be made within one year of the date of the dismissal. In support of the motion, the movant shall submit an affidavit setting forth good cause for vacatur of the dismissal, an intent to perfect the appeal or proceeding within a reasonable time, and sufficient facts to demonstrate a meritorious appeal or proceeding.

## 6.0 Additional Rules Relating to Criminal Appeals.

### A. Poor Person Relief and Assigned Counsel.

1. Continuation of eligibility for assigned counsel on appeal. Where a sentencing court has granted a defendant's application for poor person relief on appeal pursuant to CPL 380.55, the Appellate Division may, upon receipt of a properly filed notice of appeal and a copy of the order, assign appellate counsel or provide other relief without the need for further motion or application.
2. Continuation of assigned counsel in People's appeal. Unless otherwise ordered by the court, a defendant represented in the superior court by assigned counsel shall continue to be represented by that counsel on an appeal taken by the People.

### B. Application for Certificate Granting Leave to Appeal in a Criminal Matter.

1. An application for a certificate granting leave to appeal to the Appellate Division shall
  - (a) be made, in writing, within 30 days after service of the order upon the applicant;
  - (b) provide 15 days' notice to the District Attorney;
  - (c) be filed with proof of service; and
  - (d) be submitted without oral argument.
2. The moving papers for a certificate granting leave to appeal shall be addressed to the court for assignment to a justice, shall state that no prior application for such certificate has been made, and shall set forth:
  - (a) the return date;
  - (b) the name and address of the party seeking leave to appeal and the name of the District Attorney;
  - (c) the indictment number; and
  - (d) the questions of law or fact which ought to be reviewed.
3. The moving papers must include:
  - (a) a copy of the order sought to be reviewed;
  - (b) a copy of the decision of the court below or a statement that there was none; and

(c) a copy of all papers filed with the trial court.

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

#### C. Exhibits.

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

#### D. Briefs.

There shall be included at the beginning of the main brief submitted by an appellant in any criminal cause a statement setting forth the order or judgment appealed from; the sentence imposed, if any; whether an application for a stay of execution of judgment pending determination of the appeal was made and, if so, the date of such application; whether an order issued pursuant to CPL 460.50 is outstanding, the date of such order, the name of the judge who issued it and whether the defendant is free on bail or on his or her own recognizance; and whether there were codefendants in the trial court, the disposition with respect to such codefendants, and the status of any appeals taken by such codefendants. Briefs in criminal appeals shall otherwise conform to the requirements of section 4.0 (D) of this Part. Assigned counsel shall file proof of mailing of a copy of briefs filed on behalf of a defendant to the defendant at his or her last known address.

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

At the request of either party, the court shall give preference to the hearing of an appeal from an order reducing an indictment or dismissing an indictment and directing the filing of a prosecutor's information (CPL 210.20 (6) (c); 450.20 (1-a); 450.55), and shall determine the appeal as expeditiously as possible. The appellant's brief in such an appeal shall include an appendix containing a copy of the notice of appeal, the indictment, the order appealed from and any underlying decision. The respondent's brief may also include an appendix, if necessary. The appellant shall file, separate from the appendix, one copy of the grand jury minutes under seal.

F. Application for Withdrawal of Assigned Appellate Counsel Pursuant to *Anders v California* (386 US 738 [1967]).

Unless otherwise directed by Departmental rule, where assigned appellate counsel files a brief pursuant to *Anders v California*, counsel shall additionally file proof that the following were mailed to the defendant at his or her last known address: (1) a copy of the brief, and (2) a

copy of a letter to the defendant advising that he or she may file a pro se supplemental brief and, if he or she wishes to file such a brief, that he or she must notify the court no later than 30 days after the date of mailing of counsel's letter of the intention to do so.

#### G. Pro Se Supplemental Briefs in Criminal Appeals Involving Assigned Counsel.

Unless otherwise directed by Departmental rule, where assigned appellate counsel does not file a brief pursuant to *Anders v California*, a defendant wishing to file a pro se supplemental brief must move for permission to do so not later than 30 days after the date of mailing to the defendant of a copy of the brief prepared by counsel. The affidavit in support of the motion shall briefly set forth the points that the defendant intends to raise in the supplemental brief.

#### H. Appeal From an Order Concerning a Grand Jury Report.

The mode, time and manner for perfecting an appeal from an order accepting a report of a grand jury pursuant to CPL 190.85 (1) (a), or from an order sealing a report of a grand jury pursuant to CPL 190.85 (5), shall be in accordance with the provisions of this Part governing appeals in criminal cases. An appeal from such an order shall be a preferred cause. The record, briefs and other papers on such an appeal shall be sealed and not be available for public inspection except as permitted by CPL 190.85 (3).

## 7.0 Additional Rules Relating to Appeals and Proceedings.

### A. Transferred Proceedings.

1. Transferred CPLR Article 78 Proceedings. Unless otherwise directed by Departmental rule, a proceeding commenced pursuant to CPLR article 78 and transferred to the court shall be treated in the same manner as an appeal, with the time to perfect measured from the date of the order of transfer, and may be prosecuted upon any method permitted under section 4.0 of this Part.

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

(a) A proceeding under the Human Rights Law which is transferred to the court for disposition shall be prosecuted upon the original record, which shall contain:

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

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

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

### B. Original Special Proceedings.

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

2. Necessary papers.

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

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

(c) Each respondent shall file and serve one paper and one electronic copy of an answer or other lawful response, as well as one paper and one electronic copy of the record before the respondent, the transcript of the hearing, if any, and the determination and findings of the respondent.

3. Briefs and Record on Review in Certain Matters. Following the filing of an answer, the court or the clerk may set a schedule for briefing of an original proceeding by order or Departmental rule, and may direct that the pleadings be bound and filed with the court in the manner of a record on review in the following matters:

- (a) Eminent Domain Procedure Law § 207;
- (b) Public Service Law §§ 128 or 170;
- (c) Labor Law § 220;
- (d) Public Officers Law § 36; and
- (e) Real Property Tax Law § 1218.

#### C. Annexation Proceedings.

Annexation proceedings shall be prosecuted as set forth in General Municipal Law article 17.

#### D. Election Appeals.

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

#### E. Workers' Compensation.

An appeal from a decision of the Workers' Compensation Board shall be prosecuted exclusively before the Appellate Division, Third Judicial Department, in accordance with the rules established by that court.

#### F. Unemployment Insurance

An appeal from a decision of the Unemployment Insurance Appeal Board shall be prosecuted exclusively before the Appellate Division, Third Judicial Department, in accordance with the rules established by that court.

#### G. Appeals of Compensation Awards to Judicial Appointees.

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

#### H. Appeals from the Appellate Term.

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

#### I. Submitted facts (CPLR 3222)

An original agreed statement of facts in an action submitted to the court pursuant to CPLR 3222 shall be filed in the office of the county clerk, and a copy shall be appended to appellant's brief together with a statement required by CPLR 5531. Briefs shall be served and filed in the manner and in accordance with the time requirements prescribed by section 5.0 of this Part.



## 8.0 Calendar Preference; Calendar Notice; Oral Argument; Post-Argument Submissions

### A. Calendar Preference.

1. By letter. A party seeking and entitled by law to a preference in the hearing of an appeal shall provide prompt notice by letter to the court setting forth the basis for such preference.
2. By motion. A party not entitled to a preference by law may move for a calendar preference for good cause shown.

### B. Calendar Notice.

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

### C. Oral Argument.

1. Oral Argument Generally. Oral argument shall be permitted unless proscribed by Departmental rule. Parties who do not file a brief on appeal shall not be permitted to argue a cause.
2. Oral Argument by Permission. Where oral argument is proscribed by rule, a party may seek leave of the court therefor by filing of a letter application, on notice to all parties, or by motion where required by the court, within 7 days of the filing of the respondent's main brief. The application or motion shall specify the reasons why oral argument is appropriate and the amount of time requested.
3. Failure to Request Oral Argument. In the event that any party's main brief shall fail to set forth the appropriate notations indicating that the cause is to be argued and the time required for argument, the cause will be deemed to have been submitted without oral argument by that party.
4. Failure to Appear for Oral Argument. Where counsel or a self-represented litigant fails to appear timely for oral argument, the matter shall be deemed to have been submitted without oral argument by that party.
5. Rebuttal. Unless otherwise provided by Departmental rule, prior to beginning argument, the appellant may orally request permission to reserve a specific number of minutes for rebuttal. The time reserved shall be subtracted from the total time assigned to the appellant. The respondent may not request permission to reserve time for surrebuttal.

D. Post-Argument Submissions.

Unless otherwise provided by Departmental rule, no briefs, letters or other communications in connection with an appeal or a cause will be accepted after the argument or submission of such appeal or cause without leave of the court.

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

### A. Decisions, Orders and Judgments.

A decision, order or judgment of the court on an appeal or cause shall be deemed entered on the date upon which it was issued. The court shall cause to be posted copies of the court's decisions, orders and judgments on the court's website, unless such posting is precluded by statute or court directive.

### B. Costs.

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

### C. Remittitur.

Unless otherwise ordered by the court, an order determining an appeal shall be remitted, together with the record on appeal, to the clerk of the court from which the appeal is taken.

### D. Motion for Reargument or Leave to Appeal to the Court of Appeals.

1. Time of motion. A motion for reargument of or leave to appeal to the Court of Appeals from an order of the court shall be made within 30 days of service of the order of the court with notice of entry.
2. Reargument. An affidavit or affirmation in support of a motion for reargument shall briefly set forth the points alleged to have been overlooked or misapprehended by the court.
3. Leave to appeal to the Court of Appeals.
  - (a) An affidavit or affirmation in support of a motion for leave to appeal to the Court of Appeals shall briefly set forth the questions of law sought to be reviewed by the Court of Appeals and the reasons that the questions should be reviewed by the Court of Appeals.
  - (b) In a civil matter, a motion for leave to appeal to the Court of Appeals shall, to the extent practicable, be determined by the panel of justices that determined the appeal.
  - (c) In a criminal matter, a motion for leave to appeal to the Court of Appeals may be submitted to any member of the panel of justices that determined the appeal. The affidavit or affirmation in support of the motion shall state that no other application for leave to appeal to the Court of Appeals has been made. Service of

a copy of an order on an appellant as required by CPL 460.10 (5) (a) shall be made pursuant to CPLR 2103.

## 10.0 Fees of the Clerk of the Court.

### A. Fees.

The clerk of the court shall be entitled to the following fees, which shall be payable in advance:

1. upon the filing of a record on a civil appeal or statement in lieu of record on a civil appeal and upon the filing of a notice of petition or order to show cause commencing a special proceeding, \$315.
2. upon the filing of each motion or cross motion with respect to a civil appeal or special proceeding, \$45, except that no fee shall be imposed for a motion or cross motion which seeks leave to appeal as a poor person pursuant to CPLR 1101 (a).
3. such other fees as the court shall direct.

### B. Exemptions.

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