

**Rules of the Supreme Court,
Appellate Division,
Third Judicial Department,
(22 NYCRR) Part 821**

Amendments Effective January 1, 2023

Section 821.1. Duties of assigned or retained counsel

a) It shall be the duty of counsel assigned to or retained for the defense of a defendant in a criminal action or proceeding to represent defendant until the action or proceeding has been terminated in the trial court, and to comply with the provisions of subdivision (a) of section 821.2 of this Part, after which the duties of assigned counsel shall be ended.

(b) It shall be the duty of counsel assigned to prosecute an appeal on behalf of an indigent defendant to accept said assignment and to prosecute the appeal until entry of the order of the appellate court terminating the appeal, and to comply with the provisions of subdivision (b) of section 821.2 of this Part, after which his or her duties as assigned counsel shall be ended.

Section 821.2. Notification of right to appeal or to apply for a certificate granting leave to appeal

(a) After conviction or denial of post-conviction or habeas corpus relief.

Where there has been a conviction after trial or otherwise, or where there has been an adverse decision upon an application for a writ of habeas corpus or upon a motion made pursuant to CPL

~~section 440.10 or section 440.20, Criminal Procedure Law,~~ it shall be the duty of counsel, retained or assigned, and of the public defender, immediately after the pronouncement of sentence or the service of a copy of a judgment or order disposing of an application for a writ of habeas corpus or a motion made pursuant to CPL section 440.10 or section 440.20,~~Criminal Procedure Law,~~ to advise the defendant in writing of his or her right to appeal or to apply for a certificate granting leave to appeal pursuant to CPL subdivision 4, section 460.10 (4),~~Criminal Procedure Law,~~ the time limitations involved, the manner of instituting an appeal and of obtaining a transcript of the testimony, and of the right of a person who has an absolute right to appeal or has received a certificate granting leave to appeal and is unable to pay the cost of an appeal to apply for leave to appeal as a poor person. It shall also be the duty of such counsel to ascertain whether defendant wishes to appeal or to apply for a certificate granting leave to appeal and, if so, to serve and file the necessary notice of appeal from a judgment of conviction or to apply for a certificate granting leave to appeal from the denial of a motion made pursuant to CPL,~~section 440.10 or section 440.20, Criminal Procedure Law,~~ and, if granted, to file the necessary certificate and notice of appeal within the time limitations provided for in ~~subdivision 4, section~~ CPL 460.10 (4),~~Criminal Procedure Law.~~

(b) After affirmance of conviction or of order or judgment denying post-conviction or habeas corpus relief.

Immediately after entry of an order affirming a judgment of conviction, a judgment denying an application for a writ of habeas corpus, or an order denying a motion made pursuant to CPL~~section 440.10 or section 440.20 Criminal Procedure Law,~~ it shall be the duty of counsel retained or assigned, and of the public defender, to advise the defendant of his or her right to apply for

permission to appeal and of the additional right of a person who is unable to pay the cost of a further appeal (in the event permission shall have been granted) to apply for leave to prosecute such appeal as a poor person. It shall also be the duty of such counsel to ascertain whether the defendant wishes to apply for permission to appeal and, if so, to make a timely application therefor. In the case of an ~~nonunanimous~~ affirmance of a judgment dismissing a writ of habeas corpus with a two-justice dissent, such counsel shall also advise the relator of his or her absolute right to appeal without permission if the dissent is on a stated question of law in his or her favor.

Section 821.3. Notification to defendants who appear without counsel

(a) After conviction or denial of post-conviction relief.

If a defendant has appeared pro se, the trial court shall advise a defendant of his or her right to appeal from a judgment of conviction, or of his or her right to apply for a certificate granting leave to appeal from an order denying a motion made pursuant to CPL section 440.10 or section 440.20, Criminal Procedure Law. It shall also advise a ~~defendant~~ of the right of a person unable to pay the cost of an appeal to apply for leave to appeal as a poor person. If the defendant so requests, the clerk of the court shall prepare and file and serve forthwith a notice of appeal on behalf of the defendant from a judgment of conviction. If the defendant so requests in writing, within 30 days after service upon him or her of a copy of an order denying a motion made pursuant to ~~section~~ CPL 440.10 or section 440.20 and no previous application for a certificate granting leave to appeal has been made, the clerk of the court shall serve a copy of such request upon the district attorney and shall transmit the request and the original record of the proceedings sought to be reviewed to the appellate court. Upon determination of the application the original record of proceedings shall be returned to the trial court together with a certified copy of the

order entered upon the application; a certified copy of the order shall also be sent to the defendant at his or her address shown in the application.

(b) After affirmance or modification on appeal.

(1) If on an appeal from a judgment of conviction after trial or otherwise, or from an order denying a motion made pursuant to ~~section~~ CPL 440.10 or ~~section~~ 440.20, ~~Criminal Procedure Law~~; a defendant has appeared pro se and the judgment or order ~~is~~ be affirmed or modified, it shall be the obligation of the People to serve on the defendant a the copy of the order of affirmance or modification with notice of entry, which is served on the defendant with the following notice ~~shall have~~ annexed or appended thereto ~~the following notice~~:

NOTICE AS TO FURTHER APPEAL

Pursuant to ~~section 460.20 of the Criminal Procedure Law~~ CPL 460.20, defendant has the right to apply for leave to appeal to the Court of Appeals by making application to the chief judge of that court by submitting such application to the clerk of that court, as prescribed in CPL 460.20 (3) (b) and (4), or to a justice of the Appellate Division of the Supreme Court of this department, as prescribed in CPL 460.20 (3) (a) and (4), ~~as provided in section 800.26, Rules of Practice, Appellate Division Third Department~~ within 30 days after service of a copy of the order of affirmance with notice of entry.

Denial of the application for permission to appeal by the judge or justice first applied to is final and no new application may thereafter be made to any other judge or justice.

(2) If on an appeal from a judgment dismissing a writ of habeas corpus or from a judgment dismissing a petition in an CPLR article 78 proceeding affecting a criminal case, the relator or petitioner has appeared pro se, the copy of the order of affirmance, with notice of entry, which is

served on the relator or petitioner shall, by counsel for the prevailing party, have annexed or appended thereto the following notice:

NOTICE AS TO FURTHER APPEAL

If the affirmance by the Appellate Division is by a unanimous court, an appeal may be taken to the Court of Appeals only pursuant to CPLR section 5602 of the Civil Practice Law and Rules by permission of the Appellate Division or by permission of the Court of Appeals upon refusal of the Appellate Division to grant permission, or by direct application to the Court of Appeals; an appeal may be taken to the Court of Appeals as of right from an order which finally determines an action where there is directly involved the construction of the NY or US Constitutions pursuant to CPLR 5601 (b) (1).

An application for permission to appeal must be made within 30 days after service of a copy of the order of affirmance with notice of entry.

If there is a two-judge dissent in the Appellate Division on a question of law in an order that finally determines the matter; or there is a modification of the judgment appealed from, relator or petitioner may take an appeal to the Court of Appeals as a matter of right pursuant to CPLR section 5601(a) of the Civil Practice Law and Rules by serving on the adverse party a notice of appeal within 30 days after service of a copy of the order appealed from, with notice of entry, and filing the notice of appeal in the office where the judgment or order of the original instance is entered.