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APPELLATE DIVISION

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SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION

Statewide Practice Rules with Local Rules

SEPTEMBER 2022 EDITION

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- NY Appellate Term First Judicial Department
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- US Court of Appeals for the Second Circuit

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Bio

Rob Brucato opened Counsel Press’s Buffalo Office in 1992 and has managed it continuously since then. During his more-than-30-year career, he has been personally involved with several thousand appeals, primarily to the N.Y.S. Appellate Courts and the U.S.C.A. for the Second Circuit. Prior to joining Counsel Press, Mr. Brucato worked for a short time with the U.S. Small Business Administration and was also in private practice. Mr. Brucato serves as a Vice President on the University at Buffalo Law Alumni Board. He also serves as co-chair of the Bar Association of Erie County’s Appellate Practice Committee and is a former director on that organization’s board. Mr. Brucato is actively involved with multiple legal organizations and associations in the upstate NY region. He has presented CLEs on appellate topics to the Bar Association of Erie County, the Monroe County Bar Association, the Western New York Chapter of the Women’s Bar Association of the State of New York (WBASNY), the Greater Rochester Association for Women Attorneys (GRAWA), the University at Buffalo Law School Law Alumni GOLD Group, the Western New York Paralegal Association and the Paralegal Association of Rochester. Mr. Brucato is a member of the Bar Association of Erie County, the Monroe County Bar Association, the WNY Chapter of WBASNY and GRAWA.

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APPELLATE PRACTICE IN NEW YORK

Appeals Requiring Electronic Filing, the Implementation of Statewide Practice Rules of the Appellate Division, Individual Department Rules and Practice in the New York Court of Appeals

In September 2018, the four departments of the Appellate Division adopted statewide practice rules in an effort to streamline appellate practices. *See* 22 NYCRR Part 1250, *Attachment 1*. The Appellate Division also implemented rules mandating electronic filing in certain matters, requiring the use of the New York State Court Electronic Filing (“**NYSCEF**”) system for those electronically filed appeals. *See* 22 NYCRR Part 1245, *Attachment 2*. While many of the requirements are the same across the board, each Department maintains its own “local rules” supplementing the statewide practice rules and e-Filing requirements. The First Department’s Rules of Practice are found in 22 NYCRR Part 600. *See Attachment 3*. The Second Department’s Rules of Practice are found in 22 NYCRR Part 670. *See Attachment 4*. The Third Department’s Rules of Practice are found in 22 NYCRR Part 850. *See Attachment 5*. The Fourth Department’s Rules of Practice are found in 22 NYCRR Part 1000. *See Attachment 6*.

Now, when perfecting an appeal, a practitioner must consider the Civil Practice Laws and Rules (“**CPLR**”) appellate filing requirements, the Statewide Practice Rules (“**SPR**”), the individual court’s rules and the e-Filing requirements specific to their type of case.

The SPR and the local rules for each of the four appellate departments went into effect on September 17, 2018. These materials provide an overview of the e-Filing rules, the SPR and the individual practice rules of the four departments.

In addition, these materials provide an outline for going beyond the Appellate Division and taking an appeal to the highest court in the state – the New York Court of Appeals.

Any citation to a statute or rule, and any form provided, should be reviewed for available updates before specifically relying upon it.

I. ELECTRONIC FILING REQUIREMENTS

Electronic filing is accomplished through the NYSCEF system. All four Appellate Division departments now require mandatory electronic filing for certain types of appeals. *See* 22 NYCRR Part 1245, *Attachment 2*. This section will cover: (a) case types; (b) formatting requirements; (c) failure to file for technical reasons; (d) confidential information; (e) hard copies; and (f) additional resources.

A. CASE TYPES

The cases subject to electronic filing, as of the date of this publication, in each of the four departments are as follows:

1. Appellate Division, First Department

As of July 27, 2020, e-Filing is mandatory on appeals from all matters except Original Special Proceedings and Attorney matters.

2. Appellate Division, Second Department

All appeals originating in Supreme or Surrogate's Court which were e-filed in the court of original instance.

3. Appellate Division, Third Department

As of January 1, 2022, all appeals except original proceedings commenced in the Third Department and attorney matters. All appeals filed in Workers' Compensation matters and Unemployment Insurance matters where the notice of appeal is filed **on or after January 1, 2022** are subject to mandatory e-filing in NYSCEF. Additionally, as of January 1, 2022, parties may elect to opt into e-filing for any Workers' Compensation matter or Unemployment matter that is not perfected, regardless of when the notice of appeal was filed, by executing and filing the statement of e-filing form.

4. Appellate Division, Fourth Department

Mandatory for all appeals, orders of transfer, and original proceedings as of April 1, 2021.

B. FORMATTING REQUIREMENTS

In addition to the general rules for formatting, e-Filed documents shall:

- 1) be identical in content to the hard copy;
- 2) comply with text-searchable PDF archival format (PDF/A);
- 3) contain bookmarks linking the table of contents of briefs and records to the corresponding pages of the document;
- 4) be paginated to correspond to the hard copy; and

- 5) be scanned at a resolution sufficient to ensure legibility. *See* 22 NYCRR 1245, Attachment A(1).

Multiple-volume records and appendices will be uploaded as separate e-Filed documents. *See* 22 NYCRR 1245, Attachment A(2). Any corrections required by the court must be made to both the e-Filed documents and the hard copy. *See* 22 NYCRR 1245, Attachment A(3).

The clerk can refuse to accept any document that does not comply with these rules. *See* 22 NYCRR 1245.10.

For purposes of timeliness, the e-Filed document is deemed filed when it is electronically transmitted to the NYSCEF site and the filing fee is paid. *See* 22 NYCRR 1245.7(a)(1) and (2).

C. FAILURE TO FILE FOR TECHNICAL REASONS

If there are technical problems with any filing, due to technical failure of the NYSCEF site or technical problems with an attorney's computer equipment or Internet connection, hard copies must be served and filed on the due date and documents e-Filed within three business days from that date (if attorney's equipment or Internet connection was the problem) or three business days from the restoration of the NYSCEF site (if the site was the problem). *See* 22 NYCRR 1245.6(d).

D. CONFIDENTIAL INFORMATION

E-filed documents that contain confidential information in non-sealed documents should be redacted before the document is e-Filed. *See* 22 NYCRR 1245.8.

E-filed documents that are confidential pursuant to a sealing/confidentiality order or statute will be filed and maintained on the NYSCEF site in a manner that precludes viewing by the general public. *See* 22 NYCRR 1245.8.

In all cases with redacted and/or confidential or sealed documents, the e-Filer shall attest to compliance with statutory redaction and sealing requirements. *See* 22 NYCRR 1245.8.

A partial list of appeals and proceedings deemed confidential by law can be found in 22 NYCRR 1250.1(e)(2). *See Attachment 1.*

E. HARD COPIES

Currently and as of January 2022, the Second Department has suspended the requirement for hard copies. It may be reinstated at any time. The First Department requires an original plus one copy of records, appendices, and briefs filed in civil appeals only. The Third Department requires an original plus five copies of records, appendices, and briefs, and originals of motion papers to be filed. The Fourth Department requires an original plus five copies of briefs and an original plus two copies of records or appendices.

The hard copies are due within two business days of the E-mail notification from the court that the e-Filed documents have been reviewed and accepted. *See* 22 NYCRR 1245.6(a)(2).

The original of every hard copy document must contain an original ink signature. *See* 22 NYCRR 1250.1(d).

Hard copy service of an appeal must be made on parties exempt from e-Filing, such as a *pro se* party or attorneys without the necessary equipment or knowledge to e-File, etc. *See* 22 NYCRR 1245.4(a)(1) and (2) and 22 NYCRR 1245.5(d). Proof of service upon all necessary parties must accompany the hard copy filing. *See* 22 NYCRR 1250.1(c)(2).

Hard copy service must also be made if an appeal is perfected before the expiration of the 20-day period for respondents to register for the appeal. *See* 22 NYCRR 1245.5(b).

Parties not subject to e-Filing requirements can consent (in writing) to service by electronic mail. *See* 22 NYCRR 1250.1(c)(4). A copy of the written agreement must be filed with the court with proof of service. *See* 22 NYCRR 1250.1(c)(4).

F. ADDITIONAL RESOURCES

Additional information about e-Filing in each department may be found at the following web locations:

First Department: <http://www.courts.state.ny.us/courts/ad1/efiling.html>

Second Department: <http://www.nycourts.gov/courts/AD2/efiling>

Third Department: <http://www.nycourts.gov/ad3/e-file/Index.html>

Fourth Department: <http://ad4.nycourts.gov/efile>

II. STATEWIDE PRACTICE RULES OF THE APPELLATE DIVISION (“SPR”)

On September 17, 2018, the SPR went into effect. The experienced appellate practitioner will notice that many long-standing appellate practice rules have changed. The following is not just a summary of those changes, but an explanation of the hows and wherefores of maintaining an appeal in this “new age” for both seasoned and novice appellate attorneys.

A. NOTICING AN APPEAL

The required initial step of taking an appeal is timely serving and filing a notice of appeal with other requisite documents. Where, when and how you file the notice is of critical importance.

1. WHERE do you take the appeal?

There are 62 counties in New York State. These counties are divided into four departments of the Appellate Division of the Supreme Court. *See Attachment 7.*

Appellate Division, First Department
27 Madison Avenue
New York, NY 10010
(212) 340-0400

Appellate Division, Second Department
45 Monroe Place
Brooklyn, NY 11201
(718) 722-6324

Appellate Division, Third Department
Empire State Plaza
Justice Building, Room 529
Albany, NY 12223
(518) 471-4777

Appellate Division, Fourth Department
50 East Avenue
Rochester, NY 14604
(585) 530-3100

2. WHEN do you have to notice the appeal?

A party has 30 days from when an order or judgment is served, with notice of its entry, to file and serve a notice of appeal. A cross-appellant has 10 days from the filing of the lead appellant's filing of their notice of appeal or 30 days from when the order or judgment is served with notice of its entry, whichever is longer. If the order or judgment that will be the subject of the appeal is served with notice of its entry, by overnight delivery or regular mail, then an extra one or five days, respectively, are added to the deadline for filing the notice of appeal. The time to take an appeal is governed by CPLR § 5513.

3. HOW do you file a notice of appeal?

The appeal must be noticed in the court of original instance. Parties must file a notice of appeal, an initial informational statement (“IIS”), the order or judgment being appealed from and a \$65.00 filing fee. In e-Filed cases, these documents are uploaded to the Supreme Court through the NYSCEF. In non-e-Filed cases, these documents are filed in hard copy and must also include proof of service of these documents upon all potential opposing parties to the appeal. When filing a notice of appeal in hard copy, you should always keep a “filed” stamped copy of it from the court for your files. A sample notice of appeal is attached as *Attachment 8*. A sample IIS is attached as *Attachment 9*.

Notable Departmental Exceptions

- *The Fourth Department does not require the filing of an IIS. See 22 NYCRR 1000.3(a).*

4. Effect of the electronic filing rules

In cases where the appeal will also be electronically filed, as detailed above, the procedure for noticing an appeal and registering a notice of appeal is as follows:

- 1) The notice of appeal, order or judgment appealed from and IIS are filed through the NYSCEF in the court of original instance with a \$65 filing fee;
- 2) Within 14 days of filing the notice of appeal with the lower court, you must upload those forms to the Appellate Division NYSCEF site (an additional filing fee is *not* required);
- 3) The Appellate Division will issue a calendar or docket number soon thereafter. Within seven days of receiving that number, you must serve a *hard copy* of the notification on your adversaries and upload the affidavit of service to the Appellate Division NYSCEF site. Notification of case number is attached as *Attachment 10*; and
- 4) Within 20 days of receiving the notification, all parties must register on the Appellate Division NYSCEF site.

B. PERFECTING AN APPEAL

1. Time to Perfect

An appeal is considered perfected when the record or appendix (unless the case is proceeding on its original record) and opening brief are filed with the appellate court and served on the responding parties. Unless there is an order directing that an appeal be perfected by a particular date, all appeals must be perfected within *six months* of the date on the notice of appeal or order granting

leave to appeal. *See* Section 1250.9(a). This rule is in effect even for notices of appeal filed prior to September 17, 2018.

Appeals in civil matters not perfected within six months after the date on the notice of appeal will be deemed dismissed *automatically*, without further order of the court, unless an enlargement of time has been granted. *See* Section 1250.10(a). Once it is deemed dismissed, a motion to vacate the dismissal will be necessary to pursue the appeal. *See* Section 1250.10(b).

That motion must be made within *one year* of the date of the automatic dismissal and must include 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.” *See* Section 1250.10(c).

An appellant can get an extension of time to perfect an appeal before the six-month deadline lapses. Unless the court has directed that an appeal be perfected by a certain date, parties can stipulate, or the appellant can file a letter application, with a copy sent to all parties to the appeal for an additional 60 days to perfect the appeal. *See* Section 1250.9(b). A second letter application, on notice to all parties, can be made for an additional 30-day extension. *See* Section 1250.9(b).

Any additional extension requests, or a request for more than a total of 90 days, require a motion on notice to all parties. *See* Section 1250.9(b).

Notable Departmental Exceptions

- *First Department – in interlocutory discovery disputes arising from the Commercial Division must be perfected within 4 months from the date on the notice of appeal where the notice of appeal is dated on or after 1/1/2022. See Attachment 20.*
- *Second Department – in non-e-filed cases letter applications and stipulations for an extension of time can be e-mailed to the Appellate Division, Second Department. The email address for these requests is AD2-extensionsoftime@nycourts.gov. Motions to extend beyond the initial 60- and 30-day enlargements will only granted under limited circumstances and for good cause shown. See 22 NYCRR 670.9(b).*
- *Third and Fourth Departments – a motion for an extension of time to perfect an appeal shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to perfect the appeal within a reasonable time. See 22 NYCRR 850.9(c) and 22 NYCRR 1000.9(a).*

2. [Methods of Perfecting an Appeal](#)

An appellant may perfect an appeal using the full record method, appendix method or an agreed statement in lieu of a record or on the original record, where permitted. *See* 22 NYCRR 1250.5(a).

(i) Full Record Method

The record on appeal is a compilation of those documents considered by the lower court in rendering its decision. It must include the items set forth in CPLR 5526. *See* 22 NYCRR 1250.6(a) and 1250.7(b). When perfecting on the full record method, the requisite hard copies, along with one digital copy of the record and brief, with proof of service of one hard copy of the record and brief upon each other party to the appeal, must be filed. *See* 22 NYCRR 1250.9(a)(1).

The record for an appeal from an order deciding a motion will generally include:

- 1) A CPLR 5531 statement; *see Attachment 11*;
- 2) The notice of appeal or order of transfer;
- 3) The order appealed from;
- 4) The notice of motion; and
- 5) All affidavits and affirmations in support, opposition and reply with all exhibits attached.

The record on appeal from a judgment after trial will generally include:

- 1) A CPLR 5531 statement;
- 2) The notice of appeal;
- 3) The judgment appealed from;
- 4) The pleadings;
- 5) The trial transcript;
- 6) An affirmation, certification, stipulation or order settling the transcript. *See* 22 NYCRR 1250.7(b)(5); and
- 7) Trial exhibits or a stipulation or order excluding certain exhibits.

Memoranda of law are typically not included in the record except in limited circumstances, such as when there is independent relevance for referring to them, if one is attached as an exhibit to moving or opposing affidavits or affirmations, or when it is the only document submitted in support of, or in opposition to, a motion. It is permissible to include, or exclude, memos of law.

Pursuant to Appellate Division, Fourth Department Local Rule, 22 NYCRR Part 1000.7(a), records and appendices shall contain the notice of appeal with proof of service thereof.

(ii) Appendix Method

It may be desirable in certain instances to appeal on the appendix method – essentially an excerpt of the record – where documents that would be a proper and necessary part of the record are not provided to the Appellate Division. *See* CPLR 5528 and 22 NYCRR 1250.7(d). The SPR provides guidance as to what documents should be included when using an appendix to perfect an appeal. 22 NYCRR 1250.7(d) states that an “appendix shall include those portions of the record necessary to permit the court to fully consider the issues that will be raised by the appellant and the respondent, including, where applicable, at least the following:

- 1) notice of appeal or order of transfer;
- 2) judgment, decree or order appealed from;
- 3) decision and opinion of the court or agency, and report of a referee, if any;
- 4) pleadings, and, in a criminal case, the indictment or Superior Court information;
- 5) material excerpts from transcripts of testimony or from documents in connection with a motion. Such excerpts shall include all the testimony or averments upon which the appellant relies and it may be reasonably assumed the respondent will rely. Such excerpts shall not be misleading or unintelligible by reason of incompleteness or lack of surrounding context;
- 6) copies of relevant exhibits, including photographs, to the extent practicable;
- 7) 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
- 8) the appropriate certification, stipulation or settlement order pursuant to subdivision (g).

When perfecting on the appendix method, the requisite hard copies, along with one digital copy of the appendix and brief, with proof of service of one hard copy of the appendix and brief upon each party to the appeal, must be filed. *See* 22 NYCRR 1250.9(a)(2).

While the appendix method allows for only limited parts of the record to be reproduced for the appeal, the full record of the proceedings in the court below must be before the Appellate Division to “perfect” the appeal.

In addition, when appealing on the appendix method, if a settled transcript is not included, the appellant must file a digital copy of the transcript with the brief. *See* Section 1250.7(d)(4).

Records and appendices must be certified. They must contain either a certification pursuant to CPLR § 2105, *see Attachment 12*, a certificate from a clerk, a stipulation pursuant to CPLR 5532, *see Attachment 13*, or an order settling the record. *See* 22 NYCRR 1250.7(g). A party may also make a motion to waive certification by showing good cause and including a copy of the proposed record or appendix. *See* 22 NYCRR 1250.7(g).

Notable Departmental Exceptions

- *In the First and Second Departments, the appellant must subpoena the lower court and file proof of service of the subpoena with the Appellate Division. See 22 NYCRR 1250.9(a)(2)(i).*
- *In the Third and Fourth Departments, a digital copy of the complete record must be filed. See 22 NYCRR 1250.9(a)(2)(ii). In addition, a hard copy of the full record must be filed in the Third Department. See 22 NYCRR 850.9(a).*
- *In the Third and Fourth Departments, pursuant to Local Rule 1000.7(b), while it will be permissible for a record on appeal or appendix to be certified pursuant to CPLR § 2105, any dispute over a certification of the record or appendix pursuant to 22 NYCRR 1250.7(g) or the contents of a record or appendix so certified shall be directed to the court from which the appeal is taken. See 22 NYCRR 850.7(b) and 22 NYCRR 1000.7(b).*

(iii) Agreed Statement in Lieu of Record

The appellant may elect to proceed by the agreed statement in lieu of record method, pursuant to CPLR 5527. The parties need to determine and agree on the issues to be presented to the Appellate Division and prepare a statement that is presented to the court from which the appeal is coming for the judge's approval. The statement shall be reproduced as a joint appendix as provided in 22 NYCRR 1250.6 and 1250.7 and must include a statement required by CPLR 5531. *See* 22 NYCRR 1250.5(d). When perfecting using the agreed statement in lieu of record, the requisite hard copies of the agreed statement in lieu of record and appellant's brief with one digital copy of the agreed statement and the brief, with proof of service of one hard copy of the agreed statement and brief upon each party to the appeal, must be filed. *See* 22 NYCRR 1250.9(a)(3). This method for perfecting an appeal is virtually never used.

(iv) Original Record

The following appeals can be perfected on the original record in the First, Second and Fourth Departments:

- 1) appeals from Family Court;
- 2) appeals under the Election Law;
- 3) appeals under the Human Rights Law (Executive Law § 298);
- 4) proceedings transferred to the court pursuant to CPLR § 7804(g);
- 5) appeals where the sole issue is compensation of a judicial appointee;
- 6) appeals under the Correction Law §§ 168-d(3) and 168-n(3);
- 7) appeals of criminal causes;
- 8) appeals from the Appellate Term, where the matter was perfected on an original record at the Appellate Term;
- 9) other causes where an original record is authorized by statute; and
- 10) causes where permission to proceed upon the original record has been authorized by the court. *See* 22 NYCRR 1250.5(e).

Any transcripts with sworn witness testimony must be properly settled, as well. *See* 22 NYCRR 1250.5(e).

When perfecting using the original record, the appellant must file the requisite hard copies, along with one digital copy of the appellant's brief, with proof of service of one hard copy of the brief upon each party to the appeal and either:

- 1) in the First and Second Departments, proof of service of a subpoena upon the clerk of the Court of original instance requiring all documents constituting the record on appeal to be filed with the clerk of the Appellate Division; or
- 2) in the Fourth Department, a hard copy of the complete record needs to be filed. *See* 22 NYCRR 1250.9(a)(4).

In the Third Department, where perfection of a cause by the original record method has been authorized by statute or order of the Court, the appellant's brief shall contain an appendix, which shall be printed or otherwise reproduced, as provided in 22 NYCRR 1250.6 and 1250.7. *See* 22 NYCRR 850.5.

3. [Additional Information](#)

In addition to the general practice rules stated above, there are situations that do not occur with every appeal but are governed by the SPR and local rules.

(i) Exclusion of Trial Exhibits from the Record or Appendix

Pursuant to 22 NYCRR 1250.7(c), parties to an appeal can exclude trial exhibits from the record or appendix if:

- 1) The exhibits are not relevant or necessary to the determination of an appeal and will not be cited in the parties' submissions; or
- 2) 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.

In the Third and Fourth Departments, exhibits under a respondent's control or under the control of a third person shall be filed either pursuant to a five-day written demand served by the appellant upon a respondent or pursuant to a subpoena *duces tecum* issued in accordance with CPLR Article 23. The appellant shall file with the brief proof of service of such a demand or subpoena, together with a list of all relevant exhibits. *See* 22 NYCRR 850.7(a) and 22 NYCRR 1000.7(e).

(ii) Supplemental Record and Respondent's Appendix

If an appellant has proceeded on the appendix method, a respondent also has the option and right to file a respondent's appendix. *See* CPLR 5528. A respondent's appendix should contain only those additional portions of the record necessary to consider the issues involved. If the appellant has perfected on the record method, however, the respondent may not file additional documents unless the parties stipulate to file a supplemental record. If the parties do not agree, the respondent must make a motion for permission to file a supplemental record.

Notable Departmental Exceptions

- *In the Second Department, a supplemental record will only be accepted if it was directed by the Court or if it is accompanied by a stipulation among all of the parties to the appeal stating that the additional documents are properly part of the record on appeal but were inadvertently omitted from the record on appeal previously filed with the Court. See 22 NYCRR 670.7.*

(iii) Cross-Appeals and Concurrent Appeals

(a) Cross-Appeals

Parties that are adverse and have both filed notices of appeal are considered cross-appellants. When perfecting an appeal where there is a cross-appeal, the parties shall consult and stipulate to a briefing schedule. *See* 22 NYCRR 1250.9(f)(1)(i). Parties shall

file a joint record or joint appendix and share equally in the cost. *See* 22 NYCRR 1250.9(f)(1)(ii). The first party to perfect the appeal will be deemed the appellant-respondent. *See* 22 NYCRR 1250.9(f)(1)(iii). The last day to perfect the appeal is measured from the earliest notice of appeal.

(b) Concurrent Appeals

Multiple parties, who have filed notices of appeal but are not adverse to each other and are seeking the same or similar relief against a respondent, are considered concurrent appellants. They shall perfect concurrent appeals together in the same joint record or joint appendix and share equally in the cost. *See* 22 NYCRR 1250.9(f)(2). The last day to perfect the appeal can be measured from the latest notice of appeal. *See* 22 NYCRR 1250.9(f)(2).

(iv) Appeals from Multiple Orders

Appeals from multiple orders arising from the same index number/proceeding may be perfected in one record or appendix. A motion is not necessary to consolidate these appeals. *See* 22 NYCRR 1250(9)(f)(3).

Appeals from orders arising out of different index numbers/proceedings cannot be consolidated without an order of the court after a motion. *See* 22 NYCRR 1250.9(f)(4). If consolidation is not sought or granted, a party can request by a letter to the appellate court that appeals arising from different index numbers be heard together on the same day. *See* 22 NYCRR 1250.9(f)(4).

(v) Settlement of Transcripts

Regardless of the method used to perfect a civil appeal, in cases where there is a transcript containing sworn witness testimony, the entire transcript of the proceedings must be “settled” pursuant to CPLR 5525. *See* 22 NYCRR 1250.7(f). While CPLR 5525 requires that the appellant serve the transcript on the respondent within 15 days after receiving the transcript from the court stenographer, this obligation is not strictly enforced. Provided that the transcript of the proceedings is served on the respondent at least 15 days prior to perfecting the appeal, the transcript will be accepted by the court.

Unless the parties stipulate to the correctness of the transcript, the procedure to settle the transcript is as follows:

- 1) Within 15 days of receipt of the transcript from the court stenographer, the appellant must serve upon the respondent the following:
 - a) Copy of the transcript with the appellant's proposed changes, if any; and
 - b) Notice of Settlement. *See Attachment 14.*
- 2) If the respondent fails to propose changes within 15 days of being served, the transcript with the appellant's proposed changes (if any) is deemed correct. Appellant will include an affirmation of compliance with the transcript. *See Attachment 15.*
- 3) If the respondent proposes changes or objects to the appellant's proposed changes within 15 days and appellant and respondent can agree to the changes, they will execute a stipulation settling the transcript.
- 4) If the appellant and respondent cannot agree, then the transcript, with the proposed changes of the parties, shall be submitted for settlement to the judge or referee before whom the proceedings were held, upon at least four days' notice. This may only be done after the 15-day period has elapsed.

While an appellant can settle the transcript 15 days prior to perfecting an appeal, in practice they should do so long before they want to perfect to leave ample time for the respondent to make changes, or, if necessary, to appear before the lower court to resolve any disputes.

If the parties agree to changes, the conformed transcript is contained within the record or appendix filed with the court.

An appeal perfected on the appendix method that does not include the transcript in the submission must have a digital copy of the transcript filed with it. *See 22 NYCRR 1250.7(d)(4).*

(vi) [Brief Requirements](#)

In addition to the record or appendix on appeal, a brief setting forth the arguments on appeal must be filed. Briefs prepared on a computer must be in a serified, proportionally-spaced font (*e.g.*, Times New Roman) in no less than 14-point type, or a serified mono-spaced font (*e.g.*, Courier) in no less than 12-point type. *See 22 NYCRR 1250.8(f)(1).* If using Times New Roman 14-point type, footnotes can be no smaller than 12-point, and, if using Courier, footnotes can be no smaller than 10-point. *See 22 NYCRR 1250.8(f)(1).*

Words may not be in bold or all capital letters except in argument headings or subheadings. *See* 22 NYCRR 1250.8(f)(1).

Main briefs (for the appellant and the respondent) may not exceed 14,000 words. *See* 22 NYCRR 1250.8(f)(2). Reply briefs and *amicus* briefs may not exceed 7,000 words. *See* 22 NYCRR 1250.8(f)(2).

All briefs must contain a table of contents and table of authorities. *See* 22 NYCRR 1250.8(b)(1) and (2). *See* subsections (3) through (7) for other required elements of the brief.

All briefs must be accompanied by a printing specifications statement stating that the brief complies with the court's rules. *See* 22 NYCRR 1250.8(j). *See Attachment 16*.

A brief may contain an addendum including decisions, statutes, ordinances, rules, regulations, etc. that are not readily available or unpublished. *See* 22 NYCRR 1250.8(k). If they are available through a source, like Lexis or Westlaw, they should not be attached to the brief. In the Fourth Department, except in those appeals in which permission to proceed as a poor person has been granted, the cover of a hard copy brief of an appellant or petitioner shall be blue; the cover of a hard copy brief of a respondent shall be red; the cover of a hard copy reply brief shall be gray; the cover of a hard copy sur-reply brief shall be yellow; and the cover of a hard copy brief of an intervenor or *amicus curiae* shall be green. Covers of electronically-filed briefs shall likewise be colored to the extent practicable. *See* 22 NYCRR 1000.8(a).

(vii) Extensions of Time to File Respondent's Briefs and Reply Briefs

The time to file a respondent's brief or a reply brief can be extended by stipulation or letter application for up to 30 days and 10 days, respectively. *See* 22 NYCRR 1250.9(g)(1). Only two extensions are permitted by stipulation or letter application. *See* 22 NYCRR 1250.9(g)(1). Additional requests require a motion. *See* 22 NYCRR 1250.9(g)(2).

Notable Departmental Exceptions

- *In the First Department, after an appeal is perfected, extensions are only permitted by stipulation or expedited motion to adjourn. Parties may not stipulate to adjourn to the June term. See 22 NYCRR 1250.9(g)(1).*
- *In the Second Department, motions to extend beyond those enlargements allowable by stipulation and/or letter application will only be granted under limited circumstances and for good cause. See 22 NYCRR 670.9(b).*
- *In the Third Department, a motion for an extension of time to file and serve a responsive brief shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file and serve the brief within a reasonable time. See 22 NYCRR 850.9(d).*
- *In the Fourth Department, a stipulation to extend the time to file and serve a responsive brief shall be filed on or before the date by which the brief was originally required to be filed. In no case shall the parties stipulate to an extension of time to file and serve a responsive brief that would permit the filing and service of the brief within 30 days of the date upon which the matter is scheduled to be heard. A motion for an extension of time to file and serve a responsive brief shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file and serve the brief within a reasonable time. See 22 NYCRR 1000.9(b).*

4. Oral Argument

Oral argument is permitted in all cases unless precluded by court rule. *See* 22 NYCRR 1250.15(c)(1). Oral argument requests, stating the arguing attorney and the number of minutes requested for argument, must be noted on the cover of the main brief filed by a party. Failure to do so will result in the case being submitted without argument. *See* 22 NYCRR 1250.15(c)(3). Only a party who submits a brief is permitted to argue. *See* 22 NYCRR 1250.15(c)(1). If argument is not permitted by court rule, a party may seek leave to argue the appeal by letter application or motion. The application or motion must be made within seven days of the filing of the respondent's main brief and must state why oral argument is necessary and how much time is requested. *See* 22 NYCRR 1250.15(c)(2).

Appellants in the First and Third Departments may reserve rebuttal time from their total argument time, but sur-rebuttals are not allowed by respondents. *See* 22 NYCRR 1250.15(c)(5).

As of January 2022, all Departments have returned to virtual oral arguments.

5. Motion Practice

All motions will be made returnable at 10:00 AM on any Monday. *See* 22 NYCRR 1250.4(a)(1). If Monday is a court holiday, then the motion can be made returnable on the next business day. All motions made prior to the appeal being decided must include a copy of the notice of appeal, the order/judgment appealed from and any other document which first invoked the jurisdiction of the court. *See* 22 NYCRR 1250.4(a)(3). Motions are submitted on the return date without argument. *See* 22 NYCRR 1250.4(a)(7) and (8).

Motions must be *filed* with the court at least one week before the return date. *See* 22 NYCRR 1250.4(a)(2). Opposition papers and any reply to the opposition must be served in accordance with CPLR 2214(b) and originals filed with the clerk by 4:00 PM the business day before the return date. *See* 22 NYCRR 1250.4(a)(5). One adjournment will be permitted by stipulation for a period of either seven or 14 days. *See* 22 NYCRR 1250(a)(9). The stipulation must be filed no later than 10:00 AM on the return date. *See* 22 NYCRR 1250(a)(9).

Requests to appear before the Appellate Division *pro hac vice* are made by affidavit and must include a certificate of good standing from the jurisdiction in which the applicant attorney maintains his, or her, principal office. The application must be supported by an affirmation of the New York attorney of record. It is important to note that *pro hac vice* status in the lower court does not carry over to the Appellate Division. A new application is required. *See* 22 NYCRR 1250.4(e).

Permission to file an *amicus* brief must be sought by motion supported by an affirmation or affidavit and include the requisite copies of the proposed *amicus* brief as is required by the particular court.

(i) Expedited Relief

Interim applications in the First Department or an order to show cause (“OSC”) in the Second Department requesting a temporary stay or other interim relief shall be presented in person. *See* 22 NYCRR 1250.4(b)(1). The party seeking the relief must give reasonable notice to the other parties of the day, time and location of the appearance and relief sought. *See* 22 NYCRR 1250.4(b)(2). Due to COVID, all personal appearances required by this rule are conducted remotely by telephone or video conference. In the First Department, some interim applications are being handled on submission only without personal or remote appearance.

In addition to the notice required by 22 NYCRR 1250.4(b)(1), parties making a motion or application for interim relief in the Third Department must provide advance notice to the court of their intention to present the application or OSC. To the extent practicable, the notice shall be accompanied by a copy of the papers the party intends to present to the court for filing. *See* 22 NYCRR 850.4(a)(1). The party seeking relief and/or the party opposing the relief may request argument. This request will be determined by the justice to whom the application is to be presented. *See* 22 NYCRR 850.4(a)(2).

An OSC in the Fourth Department should be directed to a justice of the Court with chambers in the judicial district from which the appeal or proceeding arises. *See* 22 NYCRR 1000.4(b).

The interim application/OSC must:

- 1) be accompanied by an affidavit or affirmation stating the time, place or manner of such notification;
- 2) state by whom such notification was given;
- 3) state, if applicable, reasons for the non-appearance of any party; and
- 4) state, to the extent known, the position taken by the opposing party. *See* 22 NYCRR 1250(b)(2).

The interim application/OSC must also clearly state:

- 1) the nature of the motion or proceeding;
- 2) the specific relief sought; and
- 3) the names, addresses, telephone numbers and (where known) E-mail addresses of the attorneys and counsel for all parties in support of, and in opposition to, the motion or proceeding. *See* 22 NYCRR 1250(b)(1).

Oppositions to interim applications/OSCs must be filed on the return date at or before 10:00 AM. *See* 22 NYCRR 1250.4(b)(3). Reply submissions are not permitted without leave of the court. *See* 22 NYCRR 1250(b)(4).

(ii) Motions to Reargue and/or for Leave to Appeal to the New York State Court of Appeals

Motions must be made within 30 days of service of the Appellate Division order with notice of its entry. *See* 22 NYCRR 1250.16(d)(1). The reargument motion must contain an affidavit or affirmation setting forth the points misapprehended or overlooked by the Appellate Division. *See* 22 NYCRR 1250.16(d)(2). The motion for leave to appeal must state the questions to be reviewed by the Court of Appeals and the reasons those questions need to be reviewed. *See* 22 NYCRR 1250.16(d)(3)(i).

6. Settlement or Withdrawal of Motion or Appeal

Unperfected appeals can be withdrawn by letter to the court with a copy to the other parties. *See* 22 NYCRR 1250.2(b)(1). Perfected appeals can be withdrawn by stipulation of the parties. *See* 22 NYCRR 1250(b)(2). If the parties can't stipulate, the appellant can move for permission to withdraw the appeal. *See* 22 NYCRR 1250.2(b)(2).

If there is a change of circumstance (*i.e.*, settlement of a case or the matter should not be calendared due to the death of a party, bankruptcy, *etc.*), the parties must immediately notify the court. Failure to do so may result in sanctions. *See* 22 NYCRR 1250.2(c).

III. “LOCAL RULES” FOR THE FOUR APPELLATE DIVISION DEPARTMENTS

Some of the more relevant individual practices, not previously mentioned, are summarized below.

A. FIRST DEPARTMENT RULES OF PRACTICE

Appeals are heard starting at 2:00 PM on dates designated by the Court, pursuant to their term calendar, except on Fridays, when the Court's session commences at 10:00 AM. *See* 22 NYCRR 600.1(b). Cases shall be noticed for a specific term of Court as either enumerated (those where oral argument is allowed) or non-enumerated (where oral argument is not permitted). *See* 22 NYCRR 600.15(a) for a list of enumerated appeals.

In addition to a record or appendix and brief, the appellant must file a note of issue, *see Attachment 17*, stating:

- 1) the term for which the appeal is noticed;
- 2) the date of the notice of appeal;
- 3) the date the judgment or order being appealed from was entered;
- 4) the name of the justice issuing the judgment or order;

- 5) the nature of the appeal; and
- 6) the index or indictment number, along with the Appellate Division case number. *See* 22 NYCRR 600.15(c)(1).

Each side in an appeal is limited to a total of 15 minutes argument time, unless additional time is sought, for good cause, and granted by the Court prior to the argument. *See* 22 NYCRR 600.15(e)(1). Only one counsel per side is permitted to argue, except where permission is granted by the Court. *See* 22 NYCRR 600.15(e)(3).

If there are dates that you are unavailable to argue, the Court requires that the parties file a joint letter of unavailable dates no later than the deadline set forth in the term calendar. Generally, the Court will allow six days of unavailability per case per term.

B. SECOND DEPARTMENT RULES OF PRACTICE

In non-e-Filed cases, the appellant must file the original plus one copy and serve one copy of the documents initiating an appeal under 22 NYCRR 1250.3(a). *See* 22 NYCRR 670.3(a). Appeals are heard starting at 10:00 AM on Mondays, Tuesdays, Thursdays and Fridays, except for other sessions the Court directs. *See* 22 NYCRR 670.1(b). In actively-managed cases, such as appeals from orders of the Family Court, the clerk will issue a scheduling order to expedite the appeal. *See* 22 NYCRR 670.3(b).

Oral argument is limited to 15 minutes per attorney who has filed a brief for all matters that are not proscribed by the Court. *See* 22 NYCRR 670.15(a), (b). Only one attorney per brief may argue unless the Court grants permission after application is made at least seven days prior to the case appearing on the Court's calendar. *See* 22 NYCRR 670.15(c). Rebuttal is not permitted unless permission is received from the Court at the time of argument. *See* 22 NYCRR 670.15(f).

The Court's e-Filing technical guidelines require that all briefs must now be prepared in a digital format and e-filed. This change applies to all appeals, even those not on the NYSCEF. The digital version must contain bookmarks that link each entry in the table of authorities (cases, statutes and other authorities), both with the page or pages where the authority appears and the authority itself. The authorities cited in the brief must either be appended to the back of the brief or hyperlinked to Lexis or Westlaw each time that authority is cited. Only *pro se* parties are excluded from this requirement.

C. THIRD DEPARTMENT RULES OF PRACTICE

Court sessions, unless otherwise directed by the Court, shall commence at 1:00 PM except on Friday and the last session day of a term, when they shall commence at 9:30 AM. A term of Court shall be deemed to continue until the day on which the next term convenes, and the Court may reconvene at any time during recess. *See* 22 NYCRR 850.1(c).

An application for admission *pro hac vice*, pursuant to 1250.4(e) of the SPR, shall be made by a motion. *See* 22 NYCRR 850.4(b).

Unless otherwise permitted by the Court, oral argument shall not be allowed in the following cases:

- 1) appeals from the workers' compensation board;
- 2) appeals from the unemployment insurance appeal board;
- 3) appeals from judgments of conviction in criminal cases challenging only the legality, propriety or excessiveness of the sentence imposed;
- 4) appeals in, or transfers of, CPLR Article 78 proceedings in which the sole issue raised is whether there is substantial evidence to support the challenged determination; and
- 5) any other case in which the Court, in its discretion, determines that argument is not warranted. *See* 22 NYCRR 850.15.

A motion for leave to file an *amicus curiae* brief must also include one digital copy of the proposed brief with proof of service of one hard copy of the brief upon each party to the appeal or proceeding. *See* 22 NYCRR 850.4(c).

D. FOURTH DEPARTMENT RULES OF PRACTICE

Pursuant to NYCRR 1245.2, to the extent not previously designated by the Court for mandatory electronic filing, all appeals filed with the Court in which a notice of appeal is filed on or after April 1, 2021, all matters transferred to the court by order dated on or after April 1, 2021 and all special proceedings commenced in the Court on or after April 1, 2021, shall be designated for mandatory electronic filing. *See* 22 NYCRR 1000.2.

The Court does not require the filing of an initial informational statement. *See* 22 NYCRR 1250.3(a). The Court does not have a settlement or mediation program pursuant to 22NYCRR 1250.3(c). *See* 22 NYCRR 1250.3(b).

In matters not subject to electronic filing, except as otherwise provided, all motion and application papers shall be submitted in digital format through the Court's digital copy portal and shall be served electronically to the extent practicable in accordance with 22 NYCRR 1250.1(c)(4). Digital copies of motions and applications shall comply with the technical specifications for electronically filed documents. Where such papers are submitted in digital format, no hard copy submission is required. *See* 22 NYCRR 1000.4(a).

Proof of service and filing of the notice of appeal is required with any motion. *See* 22 NYCRR 1000.4(e). If more time is needed to file answering or reply documents to a motion, a motion shall be made and shall be supported by an affidavit demonstrating a reasonable excuse for the delay and an intent to file the documents within a reasonable time. *See* 22 NYCRR 1000.4(d).

An original record shall be certified either by a certificate of the appellants attorney pursuant to CPLR 2105, a certificate of the proper clerk or a stipulation in lieu of certification pursuant to CPLR 5532 or an order settling the record. Any dispute over a certification of the record or appendix, or the contents of a record or appendix so certified, shall be directed to the court from which the appeal is taken. *See* 22 NYCRR 1000.7(b).

Except where a party is exempt from filing a digital copy of a document pursuant to 22 NYCRR 1245.4 or 1250.9 (a)(1) and (a)(2), the hard copy filing requirement with respect to records and appendices in matters perfected using the reproduced full record method or appendix method shall be satisfied by the filing of an original and two hard copies of the record or appendix. *See* 22 NYCRR 1000.9(c)(1).

After an appeal is perfected or an original or transferred proceeding is filed or received, the clerk will then issue a scheduling order, which 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. The Court must be notified within 15 days of the date that the scheduling order was mailed of unavailability for oral argument for a specific date or dates. *See* 22 NYCRR 1000.15(b).

The Court will send a notice to appear for oral argument not less than 20 days prior to the term. Parties or counsel must appear as directed or submit on the brief. *See* 22 NYCRR 1000.15(c).

All parties or parties' attorneys, who are scheduled to argue before the Court, shall sign in with the clerk's office prior to 10:00 AM on the day of the scheduled argument. When oral argument is scheduled to commence at a time other than 10:00 AM, a party or counsel shall sign in with the clerk's office prior to the time designated for the commencement of argument. Only one person shall be heard on behalf of a party. If parties submit a joint brief, not more than one person shall be heard in the matter. Oral argument shall be permitted except as otherwise ordered by the Fourth Department. 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. *See* 22 NYCRR 1000.15(d)(1).

There are a few appeals where oral argument will not be permitted in the Fourth Department unless otherwise provided by order of the Court:

- 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 the Court in which the sole issue is whether there is substantial evidence to support the challenged determination; and

- 4) Any other cause in which the Court, at its discretion, determines that oral argument is not warranted. *See* 22 NYCRR 1000.15(d)(2).

While rebuttal is not permitted at the Fourth Department, the Court does look favorably on post-argument submissions. Requests for leave to file a post-argument submission shall be made in writing within five business days of oral argument and accompanied by a copy of the proposed submission. *See* 22 NYCRR 1000.15(d)(3) and 22 NYCRR 1000.15(e).

IV. THE NEW YORK STATE COURT OF APPEALS

The New York State Court of Appeals is the highest court in the State of New York. There are two mechanisms by which to proceed to this Court:

A. APPEALS AS OF RIGHT – CPLR § 5601, § 5611

Appeals as of right are permitted when there exists:

- (a) From a final determination wherein two Appellate Division justices dissent on a question of law;
- (b) From a final determination presenting a “substantial” constitutional question;
- (c) An order granting or affirming the granting of a new trial or hearing, upon stipulation for judgment absolute; or
- (d) Any matter satisfying (a) and (b) except for that of finality, where the Appellate Division has made an order on prior appeal which necessarily affects the final determination.

B. APPEALS BY PERMISSION – CPLR § 5602

If you do not have an appeal as of right, you may move for permission to appeal pursuant to § 500.22. A motion addressed to the Court may be made on eight days’ notice (personal service), nine days’ notice (overnight service) or 13 days’ notice (service by mail) and is returnable on a Monday unless the Monday is a holiday in which case the motion is returnable on the next business day.

Annexed to the motion for leave to appeal there must be a copy of the original order or judgment appealed from with notice of entry, as well as a copy of the Appellate Division order with notice of entry. No later than the Friday before the return date, the movant must provide the New York State Court of Appeals with one digital copy of the motion for leave to appeal, as well as the record or appendix and each of the briefs filed in the Appellate Division.

The filing fee for a motion for leave to appeal is \$45.

Opposition to a motion for leave to appeal is due in the Court on or before the return date. One digital copy of the opposition is also required to be filed on the court's digital portal.

V. TABLE OF ATTACHMENTS

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Attachment 1

Statewide Practice Rules, 22 NYCRR Part 1250

Practice Rules of the Appellate Division

Approved by Joint Order of the Departments of the New York State
Supreme Court, Appellate Division
December 12, 2017
(Revised June 29, 2018)

Part 1250

1250.1 General Provisions and Definitions

(a) Unless the context requires otherwise, as used in this Part:

(1) The word “cause” or “matter” includes an appeal, a special proceeding transferred to the Appellate Division pursuant to CPLR 7804 (g), a special proceeding initiated in the Appellate Division, and an action submitted to the Appellate Division 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 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) The phrase “filed electronically,” when used to describe submissions to a court, shall refer to documents that have been filed by electronic means through the NYSCEF site.

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

(11) The phrase “hard copy” shall mean a document in paper format.

(12) The phrase “digital copy” shall mean a document in text-searchable portable document format and otherwise compliant with the technical requirements established by the court.

(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

(i) 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 submissions filed electronically will be deemed filed as of the time copies of the submissions are transmitted to the NYSCEF site. The filing of additional hard copies of such electronic filings pursuant to court rules shall not affect the timeliness of the filing.

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

(iii) A document deemed filed for purposes of timeliness under this rule may thereafter be reviewed and rejected by the clerk for failure to comply with any applicable statute, rule or order.

(2) Proof of Service. All hard copy 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 submission 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 submissions 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) Signing of documents. The original of every hard copy document 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 submission are required to be served and filed in accordance with the provisions of this Part. Documents filed electronically shall be signed in accordance with the provisions of the Appellate Division Rules for Electronic Filing.

(e) Confidentiality and Sealing.

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

(2) Appeals and proceedings that are confidential by law include, but are not limited to:

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

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

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

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

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

(vi) 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).

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

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

(3) Applications for sealing and unsealing court records shall be made by motion, upon good cause shown.

(4) In a civil cause, documents that are subject to an existing sealing order from another court shall remain subject to such order, except as otherwise ordered by the Appellate Division.

(f) Appellate Division 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 any number assigned by the Appellate Division.

(g) Rejection for Noncompliance. The clerk may reject any submission that does not comply with this Part, is incomplete, is untimely, is not legible, or fails to comply with any applicable statute, rule or order. The court may waive compliance by any party with any provision of this Part.

(h) 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.

(i) Electronic Filing Rules. The rules of this Part shall be read in conjunction with the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245). Where there is a conflict between this Part and Part 1245 in an appellate e-filed matter, Part 1245 shall control.

1250.2 Settlement or Withdrawal of Motion, Appeal or Proceeding; Notice of Change in Circumstances

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

(b) **Withdrawal or Discontinuance of Appeal or Proceeding.**

(1) 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.

(2) 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, by the appellant personally. Absent such a stipulation, an appellant may move for permission to withdraw such an appeal or proceeding. An appeal that has been perfected in the Second Judicial Department and in which no respondent's brief has been filed may be withdrawn by letter application to the court, with service on all parties.

(c) **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 cause 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.

1250.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program

(a) **Initial Filings.** Unless the court shall direct otherwise, in all civil matters 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 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.** 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 that 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.

1250.4 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 submissions 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 submissions in support of every motion made before the appeal is determined shall include a copy of the order, judgment or determination sought to be reviewed, the decision, if any, and the notice of appeal or other document which first invoked the jurisdiction of the court, with proof of filing.

(4) Notice and service of documents. Unless otherwise directed by the court, a motion shall be served with sufficient notice to all parties as set forth in CPLR 2103. In computing the notice period, the date upon which service is made shall not be included.

(5) Answering and reply documents, if any, shall 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 shall be filed by 4:00 p.m. of the business day preceding the day on which the motion 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 documents shall be accepted for filing without leave of the court upon written application.

(8) Oral argument. Oral argument of motions is not permitted.

(9) One adjournment, for a period of 7 or 14 days, shall be permitted upon written consent of the parties to the appeal, filed no later than 10:00 a.m. on the return date.

(b) Motions or Applications Which Include Requests for Interim Relief.

(1) 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, shall be presented in person unless the court excuses such appearance, and shall state, among other things:

(i) the nature of the motion or proceeding;

(ii) the specific relief sought; and

(iii) 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.

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

(3) Response. Unless otherwise ordered by the court, all submissions in opposition to any motion or proceeding initiated by an application or order to show cause 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 submissions shall be filed with the court. On the return date the motion or proceeding will be deemed submitted to the court without oral argument.

(4) Reply. Reply submissions 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.

(i) 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.

(ii) The submissions upon which such an application is made shall state whether any previous application has been made and, if so, to whom and the reason given, if any, for any denial of leave or refusal to entertain the application.

(2) When Addressed to the Court.

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

(ii) The submissions upon which an application for leave to appeal is made shall include 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.

(i) 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.

(ii) Such motions shall include 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 application shall also include the applicant's stipulation consenting to the entry of judgment absolute against him or her in the event that the Appellate Division 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.

(i) 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 1250.4(d)(1) of this Part, 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).

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

(3) Family Court Matters

(i) 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 Family Court Act § 262 by filing with the clerk a certification of continued indigency and continued eligibility for assignment of counsel pursuant to Family Court Act § 1118.

(ii) 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 not otherwise addressed in section 1250.11(a) of this Part, 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 1250.4(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 or entity 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 such number of copies of the proposed brief as the court requires. The proposed brief may not duplicate arguments made by a party to the appeal or proceeding. Unless permitted by the court, a person or entity granted permission to file an amicus curiae brief shall not be entitled to oral argument.

1250.5 Methods of Perfecting Causes

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

(b) Reproduced Full Record Method. 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 1250.6 and 1250.7 of this Part.

(c) Appendix Method. If the appellant elects to proceed by the appendix method, the appendix shall be printed or otherwise reproduced as provided in sections 1250.6 and 1250.7 of this Part.

(d) Agreed Statement in Lieu of Record Method. If the appellant elects to proceed by the agreed statement in lieu of record method, the statement shall be reproduced as a joint appendix as provided in sections 1250.6 and 1250.7 of this Part. The statement required by CPLR 5531 shall be appended.

(e) Original Record. In the First, Second and Fourth Judicial Departments, the following causes may be perfected upon the original record, including a properly settled transcript of the trial or hearing, if any:

- (1) appeals from the Family Court;
- (2) appeals under the Election Law;
- (3) appeals under the Human Rights Law (Executive Law § 298);
- (4) proceedings transferred to the court pursuant to CPLR 7804 (g)
- (5) appeals where the sole issue is compensation of a judicial appointee;
- (6) appeals under Correction Law §§ 168-d (3) and 168-n (3);
- (7) appeals of criminal causes;
- (8) appeals from the Appellate Term, where the matter was perfected on an original record at the Appellate Term;
- (9) other causes where an original record is authorized by statute; and
- (10) causes where permission to proceed upon the original record has been authorized by the court.

1250.6 Reproduction of Records, Appendices and Briefs

(a) 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.

(b) Method of Reproduction. Briefs, records and appendices shall be reproduced by any method that produces a permanent, legible, black image on white paper or its digital equivalent. Use of recycled paper and reproduction on both sides of the paper is encouraged for hard copy filings and submissions.

(c) 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.

(d) 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 causes originating in the Appellate Division, the parties shall be designated "Petitioner" and "Respondent" or "Plaintiff" and "Defendant."

(e) 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.

1250.7 Form and Content of Records and Appendices; Exhibits

(a) Format. Records and appendices shall be consecutively paginated and shall include accurate reproductions of the submissions made 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.

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

(1) A cover which shall contain the title of the cause 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;

(2) The statement required by CPLR 5531;

(3) A table of contents which shall list and briefly describe each document 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 re-cross 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;

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

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

(6) A stipulation or order dispensing with reproducing exhibits, as provided in subdivision (c).

(7) The appropriate certification, stipulation, or settlement order pursuant to subdivision (g).

(c) Exhibits. The parties may stipulate to dispense with reproduction of exhibits in the full reproduced record on grounds that (1) the exhibits are not relevant or necessary to the determination of an appeal, and will not be cited in the parties' submissions; or (2) 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.

(d) Appendix.

(1) The appendix shall include 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 documents in connection with a motion. Such excerpts shall include all the testimony or averments upon which the appellant relies and upon which it may be reasonably assumed the respondent will rely. Such excerpts shall 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, stipulation or settlement order pursuant to subdivision (g).

(2) The appendix shall have a cover complying with subdivision (b)(1) and shall include the statement required by CPLR 5531 and a table of contents.

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

(4) If a settled transcript of the stenographic minutes, or an approved statement in lieu of such transcript, is not included in the submissions, the appellant shall cause a digital copy of such transcript or statement to be filed together with the brief.

(e) Condensed Format of Transcripts Prohibited. No record or appendix may include 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.

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

(g) Certification of Record or Appendix. A reproduced full record or an appendix shall be certified either by: (1) a certificate of the appellant's attorney pursuant to CPLR 2105; (2) a certificate of the proper clerk; or (3) a stipulation in lieu of certification pursuant to CPLR 5532 or, if the parties are unable to stipulate, an order settling the record. 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.

1250.8 Form and Content of Briefs

(a) 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.

(b) Appellant's Brief. The appellant's brief shall include, in the following order:

(1) 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 document included and of the direct, cross and redirect examination of each witness;

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

(3) 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;

(4) 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, original record or agreed statement in lieu of record;

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

(6) a statement certifying compliance with printing requirements under this Part, on a form approved by the court, as set forth in subdivision (j);

(7) in the First and Second Judicial Departments, the appellant's brief shall include as an addendum the statement required by CPLR 5531;

(8) in the First and Second Judicial Departments, in any civil cause permitted to be heard on the original record, the appellant's brief shall include:

(i) a copy of the order or judgment appealed from and the decision, if any;

(ii) a copy of the opinion and findings, if any, of a hearing officer and the determination and decision of any administrative department, board or agency; and

(iii) a copy of the notice of appeal or order transferring the proceeding to this court.

(c) Respondent's Brief. The respondent's brief shall conform to the requirements of subdivision (b), 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.

(d) Reply Brief. Any reply brief of the appellant or cross appellant shall conform to the requirements of subdivision (b), without repetition. An appellant's reply in a cross appeal shall include the points of argument in response to the cross appeal.

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

(f) Computer-generated briefs.

(1) Briefs prepared on a computer shall be printed in either a serifed, proportionally spaced typeface such as Times Roman, or a serifed, monospaced typeface such as Courier. Narrow or condensed typefaces and/or condensed font spacing may not be used. Except in headings and in quotations of language that appears in such type in the original source, 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.

(2) 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 signature blocks and pages including the table of contents, table of citations, proof of service, certificate of compliance, or any addendum authorized pursuant to subdivision (k).

(g) Typewritten briefs.

(1) 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 1250.9 of this Part.

(2) 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 addendum authorized pursuant to subdivision (k).

(h) 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.

(i) Handwritten briefs.

(1) 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.

(2) 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 addendum authorized pursuant to subdivision (k). 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.

(j) 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.

(k) Briefs may include addenda that are composed exclusively of decisions, statutes, ordinances, rules, regulations, local laws, or other similar matter cited therein that were not published or that are not otherwise readily available.

1250.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

(a) Appellant's Filing. 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 or order granting leave to appeal:

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

(2) if employing the appendix method, an original, five hard copies and one digital copy of appellant's brief and appendix, with proof of service of one hard copy of the brief and appendix upon each other party to the appeal, and either:

(i) in the First and Second Judicial Departments, proof of service of a subpoena upon the clerk of the court of original instance requiring all documents constituting the record on appeal to be filed with the clerk of the Appellate Division, or

(ii) in the Third and Fourth Judicial Departments, a digital copy of the complete record.

(3) if employing the agreed statement in lieu of record method, an original and five hard copies of the agreed statement in lieu of record as provided in CPLR 5527, an original and five hard copies of appellant's brief, and one digital copy of the agreed statement and the brief, with proof of service of one hard copy of the agreed statement and brief upon each other party to the appeal; or

(4) if perfecting on the original record, an original and five hard copies and one digital copy of appellant's brief, with proof of service of one hard copy of the brief upon each other party to the appeal and either:

(i) in the First and Second Judicial Departments, proof of service of a subpoena upon the clerk of the court of original instance requiring all documents constituting the record on appeal to be filed with the clerk of the Appellate Division, or

(ii) in the Fourth Judicial Department, a hard copy of the complete record.

(5) In the First and Second Judicial Departments, where a subpoena is required to be served upon the clerk of the court of original instance pursuant to sections 1250.9(a)(2)(i) and 1250.9(a)(4)(i) of this Part, the clerk from whom the papers are subpoenaed shall compile the original papers constituting the record on appeal and cause them to be transmitted to the clerk of the court, together with a certificate listing the papers constituting the record on appeal and stating whether all such papers are included in the papers transmitted.

(b) Extension of time to perfect appeal. Except where the court has directed that the appeal be perfected by a particular time, 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 shall 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 shall be made by motion.

(c) Respondent's Filing. The respondent on an appeal shall file with the clerk within 30 days of the date of service of the appellant's submissions or, in the First Judicial Department, in accordance with the court's published terms calendar:

(1) under the full record method, the agreed statement in lieu of record method, or when perfecting on the original record, an original and five hard copies and one digital copy of the respondent's brief, with proof of service of one hard copy of the brief upon each party to the appeal; or

(2) under the appendix method, an original and five hard copies and one digital copy of the respondent's brief and appendix, if any, with proof of service of one hard copy of the brief and appendix, if any, upon each party to the appeal.

(d) Appellant's Reply. The appellant shall file with the clerk an original, five hard copies and one digital copy of the appellant's reply brief, with proof of service of one hard copy of the brief upon each party to the matter, within 10 days of the date of service of the respondent's submissions or, in the First Judicial Department, in accordance with the court's published terms calendar.

(e) Pro se or unrepresented parties shall be exempt from the requirement of the filing of a digital copy of any brief or other document.

(f) Cross Appeals; Concurrent Appeals from Single Order or Judgment; Consolidation of Appeals from Multiple Orders or Judgments.

(1) Cross appeals. In a cross appeal:

(i) The appealing parties shall consult and make best efforts to stipulate to a briefing schedule. In the First Judicial Department, if the parties fail to stipulate to an alternative briefing schedule, the cause shall be perfected in accordance with the court's published terms calendar, and shall not be governed by the time parameters set forth in subsections (iv) through (vi).

(ii) The appealing parties shall file a joint record or joint appendix certified as provided in section 1250.7(g) of this Part and shall share equally the cost of that record or appendix;

(iii) The party that first perfects the appeal shall be denominated the appellant-respondent;

(iv) A respondent-appellant's answering brief shall include the points of argument on the cross appeal and, unless the parties have stipulated otherwise, shall be filed and served within 30 days after service of the first appeal brief;

(v) An appellant-respondent's reply brief shall include the points of argument in response to the cross-appeal and, unless the parties have stipulated otherwise, shall be filed and served within 30 days after service of the answering brief;

(vi) Unless the parties have stipulated otherwise, a respondent-appellant's reply brief, if any, shall be served within 10 days after service of appellant's reply brief.

(2) Concurrent appeals from a single order or judgment. In concurrent appeals, 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 1250.7(g) of this Part and shall share equally the cost of that record or appendix.

(3) Appeals from multiple orders or judgments. 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.

(g) 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. The parties may stipulate or a party may 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 two such stipulations or applications shall be permitted. A stipulation shall not be effective unless promptly filed with the court. Any further application shall be made by motion. In the First Judicial Department, extensions by stipulation shall be filed by a date set forth in the court's published terms calendar, and shall put a matter over to any later term other than the June Term.

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

(h) 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.

(i) **Constitutionality of State Statute.** Where the constitutionality of a statute of the State is involved in a matter 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.

1250.10 Dismissal of a Matter

(a) **Civil Matters.** 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 pursuant to section 1250.9(b) of this Part, the matter shall be deemed dismissed without further order.

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

(c) **Motion to Vacate Dismissal.** When an appeal or proceeding has been deemed dismissed pursuant to subdivision (a) 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.

1250.11 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

(i) be made, in writing, within 30 days after service of the order upon the applicant;

(ii) provide 15 days' notice to the District Attorney;

(iii) be filed with proof of service; and

(iv) 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:

(i) the return date;

(ii) the name and address of the party seeking leave to appeal and the name of the District Attorney;

(iii) the indictment number; and

(iv) the questions of law or fact which ought to be reviewed.

(3) The moving papers shall include:

(i) a copy of the order sought to be reviewed;

(ii) a copy of the decision of the court below or a statement that there was none;

and

(iii) a copy of all submissions filed with the trial court.

(4) Answering submissions 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.

(1) 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.

(2) Briefs in criminal appeals shall otherwise conform to the requirements of section 1250.8 of this Part.

(3) 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.

(1) 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.

(2) 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]). When assigned appellate counsel files a brief pursuant to *Anders v California*, counsel shall additionally either

(1) file proof that the following were mailed to the defendant at his or her last known address: (i) a copy of the brief, and (ii) 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; or

(2) in the Fourth Judicial Department, move to be relieved as counsel pursuant to *People v. Crawford*, 71 A.D.2d 38 (4th Dept. 1979).

(g) Pro Se Supplemental Briefs in Criminal Appeals Involving Assigned Counsel. When assigned appellate counsel does not file a brief pursuant to *Anders v California*, a defendant wishing to file a pro se supplemental brief shall

(1) in the First and Second Judicial Departments, move for permission to do so not later than 45 days after the date of mailing to the defendant of a copy of the brief filed 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; or

(2) in the Third and Fourth Judicial Departments, file the pro se supplemental brief not later than 45 days after the date of mailing to the defendant of a copy of the brief filed by counsel.

(h) Appeal from an Order Concerning a Grand Jury Report.

(1) 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.

(2) An appeal from such an order shall be a preferred cause.

(3) The record, briefs and other documents on such an appeal shall be sealed and not be available for public inspection except as permitted by CPL 190.85 (3).

1250.12 Transferred Proceedings

(a) Transferred CPLR Article 78 Proceedings. Unless otherwise directed by the court, a proceeding commenced pursuant to CPLR article 78 and transferred to the Appellate Division pursuant to CPLR 7804(g) shall be governed in the same manner as an appeal under this Part, with the time to file the petitioner's brief measured from the date of the order of transfer.

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

(1) A proceeding under the Human Rights Law which is transferred to the Appellate Division for disposition shall be prosecuted upon the original record, which shall include:

- (i) copies of all submissions 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.

(2) 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.

(3) 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.

1250.13 Original Special Proceedings

(a) 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.

(b) Necessary documents.

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

(2) Proof of service of a hard 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).

(3) Each respondent shall serve a hard copy, and shall file a hard copy and a digital copy, of an answer or other lawful response, the record before the respondent, the transcript of the hearing, if any, and the determination and findings of the respondent.

(c) Briefing and Original Record in Original Special Proceedings.

(1) In the following original special proceedings commenced in the First and Second Judicial Departments, the petitioner shall file an original, five copies and a digital copy of a brief, with proof of service of one hard copy of the brief upon each other party to the proceeding, within six months of the date of service of the answer:

- (i) Eminent Domain Procedure Law § 207;
- (ii) Public Service Law §§ 128 or 170;
- (iii) Labor Law §§ 220 or 220-b;
- (iv) Public Officers Law § 36; and
- (v) Real Property Tax Law § 1218.

In all other special proceedings commenced in the First and Second Judicial Departments, further briefing shall not be required, and the court shall determine the matter on the original submissions.

(2) In all original special proceedings filed in the Third and Fourth Judicial Departments, the petitioner shall file an original, five hard copies and one digital copy of the petitioner's brief, with proof of service of one hard copy of the brief upon each other party to the proceeding within six months of the date of service of the answer, or pursuant to such briefing schedule that the court may issue.

(3) In original special proceedings where briefing is required, the respondent to the petition shall file within 30 days of the date of service of the petitioner's brief, or, in the First Judicial Department, in accordance with the court's published terms calendar, an original, five hard copies and one digital copy of the respondent's brief, with proof of service of one hard copy of the brief upon each other party to the proceeding. Not more than ten days after service of the respondent's brief, or, in the First Judicial Department, in accordance with the court's published terms calendar, the petitioner may file an original, five hard copies and one digital copy of the petitioner's reply brief, if any.

(4) In original special proceedings where briefing is required, the period of time within which to file the petitioner's brief or respondent's brief may be extended in the manner provided for the extension of time to perfect and appeal or to file and serve responsive briefs set forth in sections 1250.9(b) and 1250.9(g) of this Part.

(5) All original special proceedings will be heard upon the original record, which shall include: (A) the notice of petition or order to show cause and petition; (B) the original record before the respondent, including a copy of the transcript of the hearing, if any; and (C) the determination and findings of the respondents.

1250.14 Miscellaneous Appeals and Proceedings

(a) Annexation Proceedings. Annexation proceedings shall be prosecuted as set forth in General Municipal Law article 17.

(b) 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.

(c) Appeals from the Workers' Compensation Board and Unemployment Insurance Appeal Board. Appeals from decisions of the Workers' Compensation Board and 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.

(d) Original Proceedings under the Education Law, Public Health Law and Tax Law. Proceedings seeking review of determinations pursuant to Education Law § 6510, Public Health Law § 230-c or Tax Law § 2016 shall be prosecuted exclusively before the Appellate Division, Third Judicial Department, in accordance with the rules established by that court.

(e) 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 by motion or as an appeal. In such event, the review may be had on the original record, and briefs may be filed at the option of the parties.

(f) Appeals from the Appellate Term. When the court has made an order granting leave to appeal from an order of the Appellate Term, 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.

(g) 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 1250.9 of this Part.

1250.15 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 court rule or, in a particular cause, by the court in its discretion. 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 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. Prior to beginning argument, the appellant may orally request permission to reserve a specific number of minutes for rebuttal in the First and Third Judicial Departments. The time reserved shall be subtracted from the total time assigned to the appellant. The respondent may not request permission to reserve time for sur-rebuttal.

(d) Post-Argument Submissions. Post-argument submissions are discouraged, and may be made only with leave of the court.

1250.16 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 a cause shall be deemed entered on the date upon which it was issued. Unless otherwise directed by the court, copies of the court's decisions, orders and judgments shall be posted on the court's website.

(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 in accordance with CPLR 8301(a).

(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 of original instance.

(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 after 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.

(i) 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.

(ii) 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.

(iii) 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.

1250.17 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.

Attachment 2

Electronic Filing Rules, 22 NYCRR Part 1245

Electronic Filing Rules of the Appellate Division

Approved by Joint Order of the Departments of the New York State
Supreme Court, Appellate Division
December 12, 2017

1245.1. Definitions.

For purposes of this section:

- (a) 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.
- (b) The phrase “authorized e-filer” shall mean a person who has registered as an authorized e-filing user with the NYSCEF system pursuant to 22 NYCRR 202.5-b (c).
- (c) 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 the “clerk” means the clerk of that court or a designee, unless the context of usage indicates the clerk of another court.
- (d) The word “cause” or “matter” includes an appeal, a special proceeding transferred to the Appellate Division pursuant to CPLR 7804 (g), a special proceeding initiated in the Appellate Division, and an action submitted to the Appellate Division pursuant to CPLR 3222 on a case containing an agreed statement of facts upon which the controversy depends.
- (e) The word “document” shall mean a brief, motion, application, record, appendix, or any other paper relating to a cause or matter. “Document” shall not include correspondence, other than letter applications.
- (f) The phrase “electronically file” or “e-file” shall mean the filing and service of a document in a cause or matter by electronic means through the NYSCEF site.
- (g) The phrase “hard copy” shall mean a document in paper format.
- (h) The phrase “exempt litigant” or “exempt attorney” shall mean, respectively, an individual or attorney who is exempt from e-filing pursuant to section 1245.4 of this Part.

1245.2. Designation of Case Types Subject to E-filing.

The court may designate e-filing in such cases and case types as it deems appropriate.

1245.3. Entry of Initial Information for Electronic Filing.

(a) Appeals or Transferred Matters – Entry of Contact Information. In any appeal or transferred proceeding of a type designated by the Appellate Division for e-filing, counsel for the appellant or the petitioner, unless an exempt attorney, shall within 14 days of filing of a notice of appeal, or entry of an order granting leave to appeal, or entry of an order transferring a matter to the Appellate Division:

(1) register or confirm registration as an authorized e-filer with NYSCEF; and

(2) enter electronically in NYSCEF such information about the cause and parties, and e-file such documents, as the court shall require.

(b) Appeals or Transferred Matters – Service of Notice of Appellate Case or Docket Number. In any matter described in subdivision (a), counsel for the appellant or the petitioner, unless an exempt attorney, shall within seven days of receipt from the court of an appellate case or docket number for the matter:

(1) serve upon all parties in hard copy as provided by CPLR 2103 notification of that case or docket number, together with other pertinent information about the case and such documents as the court shall require, on a form approved by the Appellate Division; and

(2) e-file proof of service of this notification.

(c) Original Proceedings – Commencement by Electronic Filing. Unless an exempt attorney, counsel for a petitioner commencing an original proceeding of a type designated by the Appellate Division for e-filing shall:

(1) register or confirm registration as an authorized e-filer with NYSCEF;

(2) e-file the notice of petition (or order to show cause), petition and supporting documents;

(3) obtain from the court a case or docket number for the matter; and

(4) serve upon all parties in hard copy as provided in CPLR 2103 and court rule

(i) the notice of petition (or order to show cause), petition and supporting documents; and

(ii) on a form approved by the Appellate Division, notification of the case or docket number; and

(5) e-file proof of service of the submissions specified in subsection (4).

(d) Entry of Information by Respondents and Other Parties. Within 20 days of service of the notification of the case or docket number as required in subdivision (b) or (c), counsel of record to each other party to the matter, unless an exempt attorney, shall:

- (1) register or confirm registration as an authorized e-filer with NYSCEF; and
- (2) enter electronically in NYSCEF such contact information and additional information as the court may require.

(e) Designation of Other Persons and Electronic Filing Agents.

(1) An authorized e-filer may designate another person to e-file a document on his or her behalf using the authorized e-filer's user identification and password, but shall retain full responsibility for any such e-filed document.

(2) Designation of an electronic filing agent. An authorized e-filer may designate another person or entity, including an appellate printer, to e-file documents on his or her behalf as a filing agent if that agent is also an authorized e-filer. Such filing agent shall e-file a statement of authorization, in a form approved by the Appellate Division, prior to or together with the first e-filing in that action by the agent. The principal authorized e-filer shall retain full responsibility for any document e-filed by such filing agent.

1245.4. Exemptions of Certain Persons from Electronic Filing.

(a) Personal Exemptions. The following persons are exempt from e-filing, and shall file, serve and be served in hard copy:

(1) "exempt litigants," who shall be unrepresented litigants other than litigants who voluntarily participate in e-filing as set forth in subdivision (d); and

(2) "exempt attorneys," who shall be attorneys who certify in good faith, on a form provided by the Appellate Division, that they lack either (i) the computer hardware and/or connection to the internet and/or scanner or other device by which documents may be converted to an electronic format; or (ii) the requisite knowledge in the operation of such computers and/or scanners necessary to participate, pursuant to CPLR 2111 (b) (3) (A) or (B). Such certification shall be served on all parties and filed with the court in hard copy.

(b) Notice of Hard Copy Filing. An exempt attorney shall include with each document filed in hard copy in an e-filed matter a notice of hard copy filing on a form provided by the court.

(c) Entry of Information the Other Parties. The court may direct another party to scan and upload documents filed in hard copy by an exempt attorney or exempt litigant, and to enter additional case information in NYSCEF.

(d) Voluntary Participation. A pro se or unrepresented litigant may voluntarily participate in e-filing in a cause or matter by:

(1) recording his or her consent electronically in the manner provided at the NYSCEF site;

(2) registering as an authorized e-filer with the NYSCEF site, and entering case and contact information about the particular cause; and

(3) e-filing documents as provided under this Part.

(e) Withdrawal of Consent. An unrepresented litigant who has consented to participate voluntarily in e-filing in a matter may withdraw such consent at any time by filing and serving on all parties a notice of intent to cease e-filing, on a form provided by the Appellate Division.

1245.5. Electronic Filing and Service.

(a) All authorized e-filers who have entered information for a particular cause as set forth in sections 1245.3 (a), (c) or (d) or 1245.4 (d) of this Part shall thereafter e-file and be served electronically in that matter.

(b) Prior to the expiration of the 20-day period for entry of information described in section 1245.3 (d) of this Part, filing and service of documents by, and service upon, parties who have not entered such information shall be in hard copy.

(c) Upon expiration of the 20-day period for entry of information described in section 1245.3 (d) of this Part, service and filing by and upon all parties other than exempt attorneys and exempt litigants shall be by e-filing. Thereafter, an attorney who has neither entered information nor given notice as an exempt attorney pursuant to section 1245.4 (a) (2) of this Part shall be deemed served with any e-filed document.

(d) At all times, service by and upon, and filing by, exempt attorneys and exempt litigants shall be in hard copy. E-filers shall e-file proof of any service made in hard copy.

(e) Site Instructions. Technical instructions for e-filing documents shall be set forth on the NYSCEF site (www.nycourts.gov/efile).

(f) Formatting. In addition to compliance with the court's general rules for document formatting, e-filed documents filed pursuant to this Part shall comply with the formatting requirements set forth in attachment A.

1245.6. Hard Copy Filing and Service.

(a) Filing of Additional Hard Copies.

(1) Unless otherwise directed by the court, authorized e-filers shall, in addition to submitting electronic filings, file hard copies of documents as follows:

(i) appellate briefs, records, appendices, agreed statements in lieu of record: one original and five copies.

(ii) papers in original proceedings, transferred proceedings, motions, applications: such number as required by court rule in matters not subject to e-filing.

(2) Authorized e-filers shall delay the filing of such additional hard copies of documents until receipt of email notification that the clerk has reviewed and approved the electronic version of the document, and shall file the hard copies within two business days of such notification. A failure to file such additional hard copies of documents shall cause the filing to be deemed incomplete.

(b) Filing of Unbound Copy of Documents by Exempt Attorneys and Exempt Litigants. Exempt attorneys and exempt litigants filing and serving documents in hard copy shall additionally file, together with the bound copy or copies of the document in such number as required by court rule, a single unbound copy of the filing, containing no staples or binding other than easily removable clips or rubber bands.

(c) Motions and Applications Seeking Emergency Relief. Where a motion or application seeks interim or emergency relief, the court may permit the initial submissions of a party or parties to be filed and served in hard copy, and e-filed thereafter. All such filings, other than filings by an exempt litigant, shall be accompanied by a notice of hard copy submission on a form approved by the Appellate Division.

(d) Technical Failure.

(1) If the NYSCEF site is subject to technical failure pursuant to 22 NYCRR 202.5-b (i), authorized e-filers shall file and serve documents in hard copy and e-file those documents within three business days after restoration of normal operations at that site.

(2) If an authorized e-filer is unable to e-file a document because of technical problems with his or her computer equipment or internet connection, the e-filer shall file and serve the document in hard copy, together with a notice of hard copy

submission in a form approved by the Appellate Division, and shall e-file those documents within three business days thereafter.

1245.7. Timeliness of Filing and Service; Rejection by Clerk.

(a) Filing of E-filed documents. For purposes of timeliness under a statute or court rule or directive, an e-filed document is deemed filed when:

(1) the document has been electronically transmitted to the NYSCEF site; and

(2) the appropriate fee, if any, has been paid to the court either through the NYSCEF site or, where permitted, by delivery to the office of the Clerk.

(b) Service of E-filed Documents. Upon receipt of an e-filed document and appropriate fee, if any, NYSCEF shall immediately notify all e-filers in the matter of the receipt and location of the document. For purposes of timeliness of service under a statute or court rule, at the issuance of such notification the document shall be deemed served upon all parties other than exempt attorneys and exempt litigants.

(c) Rejection by the Clerk. An e-filed document deemed filed for purposes of timeliness under this Part may thereafter be reviewed and rejected by the Clerk for any reason provided by this Part or any applicable statute, rule or order, or as otherwise unsuitable for filing.

(d) Hard Copy Filing or Service. The timeliness of service or filing in hard copy pursuant to these rules shall be as provided by statute or court directive.

1245.8. Confidentiality; Sealed Documents; Redaction.

E-filed matters deemed confidential by statute or court directive, as well as sealed documents or documents that are the subject of an application to seal in an e-filed matter, shall be filed and maintained on the NYSCEF site in a manner that precludes viewing by the public and such other persons as the case may require. In all matters, authorized e-filers shall attest to compliance with statutory redaction requirements (e.g., General Business Law § 399-ddd) and relevant sealing requirements in filings.

1245.9. Authorized Record; Scanning of Documents by Clerk.

(a) The court may deem documents e-filed or uploaded by the parties to be the official record of a cause or matter.

(b) The clerk may scan and upload hard copy filings in a cause, and may deem such uploaded documents to be the official record copy of the filing.

1245.10. Rejection of Non-Compliant Documents; Modification of Electronic Filing Procedures.

(a) Rejection of Documents. The clerk may refuse to accept for filing or e-filing any document that does not comply with this Part or any applicable statute, rule or order, or is otherwise unsuitable for filing, and may direct that the document be refiled.

(b) Modification of Procedures. The court or its designee may at any time modify or discontinue e-filing in a matter for good cause shown.

Attachment 3

Rules of Practice, First Department, 22 NYCRR Part 600

Rules of Practice of the Appellate Division, First Judicial Department

Part 600

600.1 General Provisions and Definitions

(a) Practice Rules of the Appellate Division

This Part serves as a supplement to, and should be read in conjunction with, the Practice Rules of the Appellate Division (22 NYCRR) Part 1250 and the Electronic Filing Rules of the Appellate Division (22 NYCRR) Part 1245. Where there is a conflict between this Part and Parts 1250 and 1245, this Part controls when practicing within the First Judicial Department.

(b) Sessions of the Court

The court will convene at 2:00 o'clock in the afternoon during the appointed terms of the court for the hearing of appeals except on Fridays when the court will convene at 10:00 o'clock in the forenoon. Special sessions of the court may be scheduled for such time or such purposes as the court may direct.

600.2 [Reserved]

600.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program

(a) Pre-argument Conference Program

(1) By order of the court, counsel and the parties, and any additional parties in interest, may be directed to attend a pre-argument conference before a special master or such other person as may be designated by the Appellate Division.

(2) Within 10 days after an order directing a pre-argument conference, counsel for respondent shall file a counterstatement, together with proof of service, setting forth:

- (i) the issues proposed to be raised on the appeal, if respondent disagrees with the issues identified by appellant in the informational statement filed pursuant to (22 NYCRR) § 1250.3;
- (ii) the extent to which respondent challenges the assertions made in the informational statement; and
- (iii) an explanation of the grounds for granting the relief sought by respondent.

(3) Upon the conclusion of the conference, if the parties have entered into a stipulation the court shall file an order of approval.

600.4 Motions

(a) Electronically Filed Motions. One hard copy of electronically filed motion papers shall be filed with the clerk in accordance with section 1245.6(a) of the Electronic Filing Rules of the Appellate Division ([22 NYCRR] Part 1245).

(b) Leave to File Amicus Curiae Brief. A motion to serve and file an amicus curiae brief shall include six copies of the proposed brief.

600.5 [Reserved]

600.6 [Reserved]

600.7 [Reserved]

600.8 [Reserved]

600.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

(a) Filing and Service of Digital Copies of Record, Appendices and Briefs

(1) Digital copies of the records, appendices and briefs filed pursuant to (22 NYCRR) § 1250.9(a), (c) and (d) shall comply with the technical specifications for electronically filed documents set forth in Attachment A to Electronic Rules of the Appellate Division ([22 NYCRR] Part 1245) and shall be filed and served by e-mail. Emails to the court shall be directed as follows:

- (i) In civil matters – AD1copy-civil@nycourts.gov
- (ii) In criminal matters – AD1copy-criminal@nycourts.gov
- (iii) In Family Court matters – AD1copy-family@nycourts.gov

(2) Records, appendices and briefs filed electronically through NYCSEF shall satisfy the digital copy requirements of (22 NYCRR) § 1250(a), (c) and (d).

600.10 [Reserved]

600.11 Additional Rules Relating to Criminal Appeals

(a) Transcript of Proceedings. Where an appeal in a criminal matter is prosecuted on the original record or by the appendix method, the appellant shall serve a copy of the transcript of the proceedings upon the respondent together with the brief and appendix, and cause a copy to be filed with the court.

600.12 [Reserved]

600.13 [Reserved]

600.14 [Reserved]

600.15 Calendar Preferences; Calendar Notice; Oral Argument; Post-Argument Submissions

(a) Calendar Notice

All appeals or causes shall be noticed for a term of the court as enumerated or non-enumerated.

The following appeals are to be noticed as enumerated:

- (1) Appeals from final orders and judgments of the Supreme Court, other than those dismissing a cause for failure to prosecute, for failure to serve a complaint or for failure to obey an order of disclosure or to stay or compel arbitration.
- (2) Appeals from decrees or orders of the Surrogate's Court finally determining a special proceeding.
- (3) Appeals from orders granting or denying motions for a new trial.
- (4) Appeals from orders granting or denying motions for summary judgment.
- (5) Appeals from orders granting or denying motions to dismiss a complaint, a cause of action, a counterclaim or an answer in point of law.
- (6) Appeals from orders of the Appellate Term.
- (7) Appeals from judgments or orders in criminal proceedings.
- (8) Special proceedings transferred to this court for disposition.
- (9) Controversies on agreed statement of facts.
- (10) Appeals from orders of the Family Court finally determining a special proceeding.
- (11) Appeals from orders granting or denying custody of minors after a hearing.
- (12) Special proceedings challenging determination of the New York City tax appeals tribunal.
- (13) Such other appeals as the court or a justice thereof may designate as enumerated.

(b) All other types of appeals not set forth in subdivision (a) of this section shall be noticed as non-enumerated.

(c) How Placed on the Calendar; filing time

(1) Appellant's Filing. An appeal or cause shall be placed on the calendar, by the appellant or moving party filing with the clerk, at least 57 days before the first day of the term for which the matter shall have been noticed, the record on appeal or appendix and brief, in the manner and number required by (22 NYCRR) § 1250.9(a), and a note of issue, with proof of service, stating the term for which noticed, the date of the notice of appeal, the date the judgment or order was entered, the name of the justice who made the decision, the nature of the appeal or cause, and the index or indictment number and the Appellate Division number.

(2) Respondent's Filing. At least 27 days before the first day of the term for which the appeal or cause shall have been noticed, the respondent or opposing party shall file the answering brief and appendix, if any, in the manner and number required by (22 NYCRR) § 1250.9(c).

(3) Reply Brief. Within nine days after service of the respondent's brief, the appellant or moving party may file a reply brief, in the manner and number required by (22 NYCRR) § 1250.9(d).

(d) Cross Appeals

(1) If the parties to the appeal do not stipulate to a briefing schedule pursuant to (22 NYCRR) § 1250.9(f)(1)(i), respondent-appellant shall file his or her answering brief pursuant to the schedule for a respondent for that specific term. Appellant shall have nine days thereafter to file its reply brief, and thereafter, respondent-appellant shall have nine days to file his or her reply brief.

(e) Time Permitted for Argument

(1) On the argument of an enumerated appeal, not more than 15 minutes shall be permitted on either side. Any party may for good cause request additional argument time by written application before the day of argument.

(2) Oral argument shall not be allowed in non-enumerated appeals, except by permission of the Court upon application pursuant to (22 NYCRR) § 1250.15(c)(2).

(3) Only one counsel on each side shall be heard except by permission of the Court.

600.16 [Reserved]

600.17 Fees of the Clerk of the Court

(a) In addition to the fees provided for in (22 NYCRR) § 1250.17, pursuant to Judiciary Law § 265, the clerk of the court is entitled to receive in advance the following fees on behalf of the State of New York:

(1) For an embossed and engraved certificate of admission as an attorney and counselor at law, twenty-five dollars;

(2) For a certificate of good standing, ten dollars;

(3) For furnishing a hard or digital copy, certified or uncertified, of an opinion, decision, order, record, or other paper in his or her custody, one dollar for the first page and 50 cents for each additional page; and

(4) No charge shall be made for furnishing a copy of the order, opinion or decision of the court to any party to an appeal or proceeding pending in the court.

Attachment 4

Rules of Practice, Second Department, 22 NYCRR Part 670

670.1 General Provisions and Definitions

(a) Practice Rules of the Appellate Division

This Part serves as a supplement to, and should be read in conjunction with, the Practice Rules of the Appellate Division (22 NYCRR Part 1250) and the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245). Where there is a conflict between this Part and Parts 1250 and 1245, this Part controls when practicing within the Second Judicial Department.

(b) Sessions of the Court

Unless otherwise ordered, the court will convene at 10 o'clock in the forenoon on Monday, Tuesday, Thursday, and Friday. Special sessions of the court may be held at such times and for such purposes as the court from time to time may direct.

(c) Appearance of Counsel

(1) Counsel who has filed a notice of appeal on behalf of a party shall be regarded as counsel of record for that party in this court, except where

(A) the notice of appeal contains a statement indicating that counsel has not been retained for purposes of appeal, or

(B) counsel who filed the notice of appeal was assigned in the court of original instance, and that assignment has not been extended to the appeal by statute, order or rule.

(2) In any cause or matter in which counsel files a document in this court on behalf of a party who is not otherwise represented by counsel of record in this court, filing counsel shall be regarded as counsel of record for that party in this court.

(3) Unless the Court directs otherwise, there shall be only one counsel of record for a party in connection with any cause or matter pending in this Court.

(4) Counsel of record may be changed by:

(A) The filing of a consent to change attorney or substitution of counsel in this Court which is on notice to all parties, executed by both counsel of record and incoming counsel, if there is one, and signed and acknowledged by the affected party; or

(B) By successfully moving this Court for permission to withdraw as counsel.

(5) Upon the filing of a notice of appearance on notice to all parties in a cause or matter, counsel shall be regarded as counsel of record for a party who is not otherwise represented in this court in connection with the cause or matter.

(6) Counsel who is retained by counsel of record to serve as appellate counsel may inform the court as to that status by filing a writing indicating same on notice to all parties. All records, appendices and briefs filed by appellate counsel must bear the name, address, telephone number

and e-mail address of counsel of record, along with that of appellate counsel, and must indicate appellate counsel's status as such.

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

(a) Withdrawal of an appeal which has been placed on the court's calendar

(1) A stipulation withdrawing an appeal or proceeding which has been placed on the Court's calendar must be filed with the court prior to the calendar date. Absent such a stipulation, an appellant may, prior to the calendar date, move for permission to withdraw such an appeal or proceeding.

(2) An appeal which has been placed on the court's calendar cannot subsequently be withdrawn based upon a settlement which occurred prior to the calendar date, except upon a showing of good cause.

(3) An application for permission to withdraw an appeal subsequent to the calendar date must be supported by (i) a stipulation withdrawing the appeal, (ii) documentation which establishes when the event upon which the withdrawal is based occurred, and (iii) where appropriate, an explanation regarding why there was a delay in notifying the court of that event. Such applications shall be granted only in limited circumstances and upon a showing of good cause.

(b) Notice of Change of Circumstances. For the purposes of section 1250.2(c) of the Practice Rules of the Appellate Division (22 NYCRR § 1250.2[c]), settlement includes, but is not limited to, any oral or written agreement or understanding which may, once memorialized, render a determination of the cause unnecessary.

670.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program

(a) Initial Filings

(1) In all civil matters, counsel for the appellant or the petitioner shall file the original plus one copy, and serve one copy, of the papers referred to in section 1250.3(a) of the Practice Rules of the Appellate Division (22 NYCRR §1250.3[a]).

(2) Where an appeal is taken in a criminal matter, the clerk of the court of original instance shall execute an initial information statement on a form approved by the court and shall transmit it together with a copy of the notice of appeal and the order of sentence and commitment, if any, to the clerk of this court.

(3) An initial informational statement relating to attorney matters shall be filed in connection with attorney disciplinary proceedings instituted in this court and applications made to this court pursuant to sections 690.17 and 690.19 of the rules of this court.

(4) In all other actions or proceedings instituted in this court, and applications pursuant to CPLR 5704, an initial informational statement shall be filed.

(5) Where the appeal is taken from an order or judgment issued in an action commenced under the provisions of CPLR 214-g, counsel for the appellant shall so indicate in the “Case Type” section of the informational statement. The clerk of the court from which the appeal is taken shall notify this Court when transmitting such an informational statement to this Court pursuant to section 1250.3(a) of the Practice Rules of the Appellate Division (22 NYCRR 1250.3[a]).

(b) Active Management.

(1) The following appeals shall be actively managed:

(a) All appeals from orders of the Family Court, and any other proceedings in which the welfare, custody or parental access of children is at issue; and

(b) All appeals from orders and judgments issued in actions commenced under CPLR 214-g.

(2) In all actively managed matters, the clerk shall issue a scheduling order or orders directing the parties to take specified action to expedite the prosecution thereof, including but not limited to the ordering of the transcript of the proceedings and the filing of proof of payment therefor, the making of motions, the perfection of the cause, and the filing of briefs. Notwithstanding any of the time limitations set forth in this part or Part 1250 (22 NYCRR 1250), a scheduling order shall set forth the date or dates on or before which such specified action shall be taken.

(3) If any party shall establish good cause why there cannot be compliance with the provisions of a scheduling order, the clerk may amend the same consistent with the objective of insuring expedited prosecution of the cause. An application to amend a scheduling order shall be made by letter, addressed to the clerk, with a copy to the other parties to the cause. The determination of the clerk in amending or declining to amend a scheduling order shall be reviewable by motion to the court on notice pursuant to section 1250.4 of the Practice Rules of the Appellate Division (22 NYCRR § 1250.4).

(4) Upon the default of any party in complying with the provisions of a scheduling order, the clerk shall issue an order to show cause, on notice, why the cause should not be dismissed or such other sanction be imposed as the court may deem appropriate.

(c) Pre-Perfection Civil Appeals Management Program

(1) The court, in those cases in which it deems it appropriate, shall issue a notice directing the attorneys for the parties and/or the parties themselves, as well as any other individual whose attendance the court may require, to attend a pre-perfection conference before a Justice of this court or such other person as it may designate, to consider the possibility of settlement, the limitation of the issues, and any other matters which the designated Justice or other person determines may aid in the disposition of the appeal or proceeding.

(2) Requests for adjournments shall be addressed to the Pre-Perfection Civil Appeals Management Program Administrator. Such requests shall be determined by the Administrator or Special Referee designated to conduct the conference, whose determination shall be final. Absent unusual circumstances, no adjournment shall be granted unless requested at least three business days prior to the scheduled date.

(3) Pre-perfection conferences shall be deemed appearances before this court. Any attorney or party who, without good cause shown, fails to appear for a regularly scheduled pre-perfection conference, or who fails to comply with the terms of a stipulation or order entered following a pre-argument conference, shall be subject to the imposition of such costs and/or sanctions as the court may direct. Pre-perfection conferences shall constitute actual engagements before this court for the purposes of Part 125 of the Rules of the Chief Administrator of the Courts (22 NYCRR Part 125).

(d) Mandatory Civil Appeals Mediation Program

(1) Establishment, Purpose and Scope of Program

The Appellate Division, Second Department hereby establishes a Mandatory Civil Appeal Mediation Program (the Program). Appeals from orders of the Family Court are excluded from this requirement, provided, however, that counsel and the parties to perfected Family Court appeals involving the custody of, or access to, children may jointly request, by letter application to the Clerk of the Court, that the particular appeal be designated for mediation.

(2) Mandatory Mediation; Notice of Reference

(i) The Clerk of the Court shall cause civil appeals which have been perfected to be designated for mandatory mediation.

(ii) Upon such designation, the Clerk of the Court, shall cause to be issued a Notice of Reference, which shall direct the parties to the appeal and their counsel, as well as any other individual whose attendance the court may require, to attend an initial, ninety-minute session, without charge, before a designated Special Master identified in that Notice. The Notice of Reference shall set forth the date, time, and place of the initial mediation session. Counsel with knowledge of the matter on appeal and who is prepared to engage in meaningful settlement discussions and parties who are natural persons are required to attend the mediation in person. In the event that a party is not a natural person but a legal entity, such as a corporation or limited liability company, such entity is required to have present at the mediation a representative of the entity who has the authority to make binding decisions on behalf of the entity.

(iii) Parties and counsel who wish to continue mediation beyond the initial ninety-minute session may continue that session or schedule additional sessions as agreed upon with the Special Master. Special Masters shall be entitled to receive such compensation from the parties for such continued or additional sessions as may be agreed upon in writing, provided that the initial session shall remain free-of-charge. At the conclusion of the mediation the Special Master shall not serve in any other capacity relative to the litigation that was the subject of the mediation without the consent of the parties.

(iv) Requests for adjournments shall be addressed by e-mail to the Special Master, with copies sent simultaneously to all counsel or unrepresented parties. Such requests shall be determined by the Special Master, whose determination shall be final. Absent unusual circumstances, no adjournment shall be granted unless requested at least three business days prior to the scheduled date. In no event may the initial mediation be adjourned more than three (3) times or for a total of more than 30 days.

(v) Mediation sessions shall be deemed appearances before this court. Failure of the parties to the appeal and/or their counsel with knowledge of the matter on appeal who

is prepared to engage in meaningful settlement discussions to appear or to appear on time may result in the imposition of sanctions pursuant to Part 130 of the Rules of the Chief Administrator of the Courts (22 NYCRR Part 130). The initial mediation session shall constitute an actual engagement before this court for the purposes of Part 125 of the Rules of the Chief Administrator of the Courts (22 NYCRR Part 125).

(vi) At least five (5) business days prior to the initial session, counsel to the parties, or a self-represented party, shall provide the Special Master with copies of the order or judgment appealed from, the decision of the trial court, the briefs or memoranda submitted by the parties to the trial court, the briefs, if any, filed with this court, and any other information necessary for the effective negotiation and resolution of the issues involved. The Special Master may request a conference call with both counsel regarding any preliminary matters.

(vii) Within five (5) business days after the conclusion of the mediation sessions, the Special Master shall send a Report (“Report of the Special Master”) to the Clerk of the Court and to counsel for the parties stating the date of the initial session and whether each party and counsel appeared at the initial session, the dates of any subsequent scheduled sessions, whether the parties reached partial, complete, or no agreement on the issues, and whether a stipulation of withdrawal of the appeal has been executed. The Special Master shall not disclose any other information discussed during the Mediation to the court, and the use of any such information is subject to CPLR § 4547

(3) The Role of the Court

The Program is conducted under court auspices and pursuant to these rules. The pendency of mediation will not affect, or delay, the progress of the appeal on the court’s calendar. Unless an agreement is reached in mediation and the appeal is wholly or partially withdrawn, the appeal will proceed in accordance with the regular processes of the Court and will be heard and determined.

(4) The Roster of Special Masters

The Clerk of the Court shall maintain a list of approved Special Masters. It shall consist of individuals who the Presiding Justice of this court has concluded possess the requisite training and experience as well as the appropriate temperament, character, and discretion. Approved Special Masters may be add to and removed from the Roster of Special Masters at the discretion of the Presiding Justice.

(5) Immunity

Special Masters serving in this Program shall be immune from suit as a result of any conduct or omission during the performance of duties in that capacity to the extent permissible by law.

670.4 Motions

(a) Motions Which Include Requests for Interim Relief

(1) Notice. To the extent practicable, the notice required by section 1250.4(b)(2) of the Practice Rules of the Appellate Division (22 NYCRR § 1250.4[b][2]) shall be accompanied by a

copy of the papers the party seeking relief intends to present to the court for filing. The affidavit or affirmation of notice required by section 1250.4(b)(2) of the Practice Rules of the Appellate Division (22 NYCRR § 1250.4[b][2]) shall state the manner in which the proposed filing was served. If notice has not been given, and/or a copy of the papers the party seeking relief intends to present to the court for filing has not been served, the affidavit or affirmation shall state whether the applicant has made an attempt to give notice and/or make such service and the reasons for the lack of success. If the applicant is unwilling to give notice and/or to make the required service, the affidavit or affirmation shall state the reasons for such unwillingness.

(2) Oral argument. Where the notice required by subdivision (1) has been given, the party seeking relief and/or the party opposing the relief sought may request the opportunity to present argument to the justice to whom the application will be presented, which request shall be determined in the discretion of that justice.

(b) Permission to Appeal to the Appellate Division in a Civil Matter. A motion for permission to appeal to the Appellate Division pursuant to CPLR 5701(c) and Family Court Act § 1112 shall be addressed to the court.

(c) Leave to File Amicus Curiae Brief. A motion for leave to file an amicus brief shall be made in accordance with section 1250.4(f) of the Practice Rules of the Appellate Division (22 NYCRR §1250.4[f]), and shall include one copy of the proposed brief.

(d) Digital Copies of Motion Papers. Except as otherwise provided, the papers filed in relation to every motion and every proceeding initiated in the Court shall be submitted in digital format, shall comply with the technical requirements for electronically filed documents (22 NYCRR Part 1245, Appendix A), shall be served on all parties in digital format, and shall be filed by uploading through the digital portal located on the home page of the Court's website with proof of service. In such circumstances, as well as in matters in which electronic filing is mandated and that filing is effectuated pursuant to the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245), no hard copy submission shall be made unless requested by the Court. Exempt attorneys and exempt litigants, as defined in 22 NYCRR 1245.4, are exempt from the digital filing requirement and must file original papers in hard copy in accordance with 22 NYCRR 1250.4(a) and be served in hard copy.

Section 670.5 [Reserved]

Section 670.6 [Reserved]

670.7 Form and Content of Records and Appendices; Exhibits

(a) Supplemental Record. A supplemental record shall only be accepted for filing in the following circumstances:

(i) where directed or permitted by order of the court; or

(ii) where accompanied by a stipulation in which it is agreed that the contents of the supplemental record are properly part of the Record on Appeal as that term is defined in CPLR

5526 and section 1250.7(b) of the Practice Rules of the Appellate Division (22 NYCRR § 1250.7[b]) but were inadvertently omitted from the Record on Appeal previously filed with the court.

Section 670.8 [Reserved]

670.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

(a) Digital Copies of Records, Appendices and Briefs. The digital copies of the records, appendices and briefs required to be filed with the Court pursuant to §§ 1250.9[a], [c] and [d] of the Rules of Practice of the Appellate Division (22 NYCRR §§ 1250.9[a], [c], [d]) shall comply with the technical requirements and guideline for electronically filed documents (22 NYCRR Part 1245, Appendix A), and shall be filed by uploading through a digital portal. Please consult the court's website for details.

(b) Extensions of time to perfect an appeal or to file and serve a brief. Motions to extend the time to perfect an appeal or to file and serve a brief shall be granted only in limited circumstances and upon a showing of good cause.

Section 670.10 [Reserved]

670.11 Additional Rules Relating to Criminal Appeals

(a) Transcript of Proceedings. Where an appeal in a criminal matter is prosecuted on the original record or by the appendix method, the appellant shall serve a copy of the transcript of the proceedings upon the respondent together with the brief and appendix, and cause a copy to be filed with the court.

(b) Appeal from Sentence. Where the only issue to be raised on appeal concerns the legality, propriety, or excessiveness of sentence, the appeal may be prosecuted by submitting a concise statement setting forth the reasons urged in support of the reversal or modification of sentence. Such statement shall contain the information required by CPLR 5531 and by section 1250.8(b)(3) of the Practice Rules of the Appellate Division (22 NYCRR § 1250.8[b][3]) and shall contain a statement by counsel for the appellant that no other issues are asserted.

(1) Such appeals may be brought on as though they were motions made in accordance with the provisions of section 1250.4 of the Practice Rules of the Appellate Division (22 NYCRR § 1250.4) and shall be placed upon a special calendar for appeals submitted in accordance with this subdivision. The respondent shall serve and file papers in opposition within 14 days after service of the motion papers.

(2) The appellant shall submit the transcript of the sentence proceeding and of the underlying plea or trial. The parties shall file an original and one digital copy of their respective papers, including the necessary transcripts.

Section 670.12 [Reserved]**Section 670.13 [Reserved]****Section 670.14 [Reserved]****670.15 Calendar Preference; Calendar Notice; Oral Argument; Post-Argument Submissions**

(a) Oral Argument. A maximum of 15 minutes shall be allowed for argument to each attorney who has filed a brief, except as set forth in subdivision (b).

(b) Argument Proscribed. Argument is not permitted on issues involving maintenance; spousal support; child support; counsel fees; the legality, propriety or excessiveness of sentences; determinations made pursuant to the sex offender registration act; grand jury reports; and calendar and practice matters including but not limited to preferences, bills of particulars, correction of pleadings, examinations before trial, physical examinations, discovery of records, interrogatories, change of venue, and transfers of actions to and from the Supreme Court.

(c) Who May Argue. Not more than one attorney shall be heard for each brief filed unless, upon application made in writing at least seven days before the matter appears on the court's calendar, the court shall have granted permission to allow more than one attorney to argue.

(d) Adjournment of Oral Argument. After filing a brief and until a matter has been placed on the court's calendar, counsel shall advise the court, in writing and on a continuing basis, of commitments that will interfere with counsel's ability to appear on a particular date. Requests for leave to adjourn oral argument of an appeal or proceeding which appears on the court's calendar are strongly disfavored. Such requests may be granted only where unusual circumstances are present, as explained in a writing in which counsel indicates why he or she cannot appear for oral argument, why no other attorney can appear in his or her place, and why oral argument is necessary. Requests for leave to adjourn oral argument of an appeal or proceeding are within the discretion of the court.

(e) Submission. A party who originally elected to argue may notify the clerk of the intention to submit the cause without argument and need not appear at the call of the calendar.

(f) Rebuttal. Rebuttal argument shall not be permitted, except with leave of the court given at the time of argument.

(g) Citations to Recent Authority. After a cause has been placed on the calendar and prior to argument or submission of that cause, any party who previously submitted a brief may inform the court by letter, a copy of which is contemporaneously provided to the other parties to the appeal, of the citation to any decisions, statutes, ordinances, rules, regulations, or other similar matter not previously cited in that party's brief which arose subsequent to the filing thereof, without additional argument. Except for good cause shown, the court will not accept precedent at the call of the calendar where a copy thereof has not previously been given to the other parties.

Section 670.16 [Reserved]**670.17 Fees of the Clerk of the Court**

(a) Fees. In addition to the fees provided for in section 1250.17 of the Practice Rules of the Appellate Division (22 NYCRR § 1250.17), pursuant to Judiciary Law § 265 the clerk of the court is directed to charge and is entitled to receive in advance the following fees on behalf of the State:

(1) For making a photocopy or providing a digital copy of an order, decision, opinion, or other filed paper or record, \$1 for the first page and 50 cents for each additional page.

(2) For comparing the copy of a prepared order, decision, opinion, or other paper or record with the original on file, \$1 for the first page and 50 cents for each additional page, with a minimum fee of \$2.

(3) For certifying the copy of an order, decision, record, or other paper on file or for affixing the seal of the court, \$1; and for authenticating the same, an additional \$5.

(4) For certifying in any form that a search of any records in his custody has been made and giving the result of such search, \$1.

(5) For an engraved parchment diploma attesting to admission as an attorney and counselor at law, \$25.

(6) For a printed certificate attesting to admission or to good standing as an attorney and counselor at law, \$10.

Attachment 5

Rules of Practice, Third Department, 22 NYCRR Part 850

**Appellate Division, Third Judicial Department
Rules of Practice**

Effective September 17, 2018

As Amended Effective June 11, 2021

**Third Department Rules of Practice
Part 850**

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Part 850 RULES OF PRACTICE

850.1 General Provisions and Definitions

(a) The Practice Rules of the Appellate Division

The Practice Rules of the Appellate Division are embodied in Part 1250 of the New York Rules of Court (22 NYCRR Part 1250) and the Electronic Filing Rules of the Appellate Division are embodied in Part 1245 (22 NYCRR Part 1245). The Rules of Practice of the Appellate Division, Third Judicial Department are intended to supplement the Practice Rules of the Appellate Division. Where there is a conflict between this Part and Parts 1250 and 1245, this part controls when practicing within the Third Judicial Department.

(b) Definitions

All of the definitions contained in section 1250.1 of the Practice Rules of the Appellate Division are incorporated herein unless otherwise indicated.

(c) Court Sessions

Unless otherwise directed by the court, court sessions shall commence at 1:00 p.m., except on Friday and the last session day of a term, when they shall commence at 9:30 a.m. A term of court shall be deemed to continue until the day on which the next term convenes, and the court may reconvene at any time during recess.

850.2 [Reserved]

850.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program

Initial Filings. The initial filings required in civil appeals pursuant to section 1250.3 (a) of the Practice Rules of the Appellate Division shall not apply to appeals from the Unemployment Insurance Appeal Board or the Workers' Compensation Board.

850.4 Motions

(a) Hard Copies and Digital Submissions Required. Except as otherwise provided, all papers filed in relation to a motion or application shall be submitted both in hard copy and in digital format. In all matters not subject to mandatory e-filing, the digital copy of such papers shall be uploaded through the Court's digital portal (<http://www.nycourts.gov/ad3/Clerk/Index.html>). The digital copy of such papers must comply with the technical requirements for electronically filed documents (22 NYCRR Part 1245, Appendix A.). Exempt attorneys and exempt litigants, as defined in section 1245.4 of the Rules of the Appellate Division on Electronic Filing, are exempt from the digital filing requirements.

(b) Motions or Applications Which Include Requests for Interim Relief.

(1) Notice. A party seeking relief as provided in section 1250.4 (b) (1) of the Practice Rules of the Appellate Division shall, in addition to the notice required by section 1250.4 (b) (2), provide advance notice to the court of its intention to present the application or order to show cause. To the extent practicable, the notice required by section 1250.4 (b) (2) and by this section shall be accompanied by a copy of the papers the party seeking relief intends to present to the court for filing. The affidavit or affirmation of notice required by section 1250.4 (b) (2) shall state the manner in which the proposed filing was served.

(2) Oral argument. Where the notice required by subdivision (1) has been given, the party seeking relief and/or the party opposing the relief sought may request the opportunity to present argument to the justice to whom the application or order to show cause will be presented, which request shall be determined in the discretion of that justice.

(c) Admission Pro Hac Vice. An application for admission pro hac vice, pursuant to 1250.4 (e) of the Practice Rules of the Appellate Division, shall be made in the form of a motion.

(d) Leave to File Amicus Curiae Brief. A motion for permission to serve and file an amicus curiae brief, made pursuant to 1250.4 (f) of the Practice Rules of the Appellate Division, shall include one original, five hard copies and one digital copy of the proposed brief with proof of service of one hard copy of the brief upon each other party to the appeal or proceeding.

850.5 Methods of Perfecting Causes

Where perfection of a cause by the original record method has been authorized by statute or order of the court, the appellant's brief shall contain an appendix which shall be printed or otherwise reproduced as provided in sections 1250.6 and 1250.7 of the Practice Rules of the Appellate Division.

850.6 [Reserved]

850.7 Form and Content of Records and Appendices; Exhibits

(a) Exhibits. Exhibits under a respondent's control or under the control of a third person shall be filed either pursuant to a five-day written demand served by the appellant upon a respondent or pursuant to a subpoena duces tecum issued in accordance with CPLR article 23. The appellant shall also file with the brief proof of service of such a demand or subpoena together with a list of all relevant exhibits.

(b) Certification of Record

(1) Reproduced Full Record. A reproduced full record shall be certified as provided in section 1250.7 (g) of the Practice Rules of the Appellate Division. Any dispute concerning the certification of the record or the contents of a record so certified shall be directed to the court from which the appeal is taken.

(2) Single Copy of the Record. When the appendix method is used, in addition to the requirements of section 1250.9 (a) (2) of the Practice Rules of

the Appellate Division, the appellant is directed to file with the clerk of this court, with proof of service of a copy upon each party to the appeal, one hard copy of the complete record, accompanied by: (1) a stipulation in lieu of certification pursuant to CPLR 5532; (2) a certificate of the appellant's or petitioner's attorney, pursuant to CPLR 2105, after giving each other party 20 days' notice and not having received any objections or proposed amendments to the record, together with an attorney affirmation certifying compliance with the requirements of this section; or (3) if the record is incapable of being certified by either of those methods, an order settling the record by the court from which the appeal is taken.

850.8 [Reserved]

850.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

(a) Appellant's Filing. An appellant employing the appendix method pursuant to section 1250.9 (a) (2) of the Practice Rules of the Appellate Division shall, in addition to the digital copy required by section 1250.9 (a) (2) (ii), file with the Court a hard copy of the complete record.

(b) Digital Submissions.

(1) Any document required to be digitally filed pursuant to section 1250.9 of the Practice Rules of the Appellate Division shall comply with the technical specifications for electronically filed documents set forth in Attachment A to the Electronic Filing Rules of the Appellate Division (22 NYCRR 1245) and shall be uploaded in a manner provided on this Court's website located at www.nycourts.gov/ad3.

(2) Documents filed electronically through NYSCEF shall satisfy the digital filing requirements of section 1250.9 of the Practice Rules of the Appellate Division.

(3) Where a litigant or an attorney is exempt from the digital filing requirement pursuant to section 1250.9 (e) of the Practice Rules of the Appellate Division, such litigant or attorney shall be required to file an additional unbound hard copy of any document filed pursuant to sections 1250.9 (a), (c) or (d).

(c) Extension of time to perfect appeal. Where a motion for an extension of time to perfect an appeal or proceeding is required by section 1250.9 (b) of the Practice Rules of the Appellate Division, such motion shall be supported by an affidavit setting forth a reasonable excuse for the delay and an intent to perfect the appeal or proceeding within a reasonable time.

(d) Extensions of time to file and serve responsive briefs. Where a motion for an extension of time to file and serve a responsive brief is required by section 1250.9 (g) (1) of the Practice Rules of the Appellate Division, or is permitted by 1250.9 (g) (2) of the Practice Rules of the Appellate Division, such motion shall be supported by an affidavit setting forth a reasonable excuse for the delay and an intent to file and serve the brief within a reasonable time.

850.10 Dismissal of a Matter

Civil Matters. In addition to those circumstances set forth in section 1250.10 (a) of the Practice Rules of the Appellate Division, in the event that a petitioner fails to perfect an original special proceeding within six months of the date of the service of the answer by complying with the requirements of section 1250.13 (c) (2) of the Practice Rules of the Appellate Division, the matter shall be deemed dismissed without further order.

850.11 Additional Rules Relating to Criminal Appeals

(a) Transcript of Proceedings. Where poor person status has been granted by this court, the clerk of the court from which the appeal is taken, after service upon the clerk of a copy of the decision of this court, shall furnish without charge to a person granted permission to proceed as a poor person one copy of the transcript of all proceedings in the matter and one copy of any other paper or document on file which is material and relevant to the appeal, and shall forward another copy of the transcript to the clerk of this court, who shall attach it to the single copy of the record upon which the appeal shall be prosecuted.

(b) Where a court has directed that the appeal be perfected by a particular date, the appellant may apply by letter, on notice to all parties, to extend the time to perfect the appeal. Where counsel has been assigned, any request for an extension of time to perfect the appeal made more than one year after the assignment date shall be made by motion. Any application or motion shall state the following: the date of the judgment of conviction; whether the conviction was by trial or plea; whether

defendant is free on bail; the date the notice of appeal was filed; the date the transcript and other record documents were ordered; whether the transcript and other record documents have been received; the reason for the request; and the anticipated date that the appeal is expected to be perfected. All extension applications and motions must be accompanied by proof of service upon the District Attorney and the defendant.

(c) Respondent's Filing. Absent court order directing otherwise, the respondent on a criminal appeal shall file a respondent's brief and appendix with the clerk within 30 days of the date of the acceptance of the appellant's submissions.

(d) Notwithstanding the provisions of sections 1250.9 (a) and 1250.10 (a) and (b) of the Practice Rules of the Appellate Division, an appeal authorized by the Criminal Procedure Law shall be deemed to have been abandoned where the appellant shall fail to apply for permission to proceed as a poor person and/or for assignment of counsel or shall fail to perfect the appeal within twenty-four months after the date of the notice of appeal; and the clerk of this court shall not accept for filing any record, brief or appendix beyond the twenty-four-month period unless directed to do so by order of the court. Such an order shall be granted only pursuant to a motion on notice supported by an affidavit setting forth a reasonable excuse for the delay, in addition to any information required by 850.11 (b).

(e) In addition to the items specified in 1250.7 (d), an appendix in a criminal cause shall contain a copy of the indictment and a complete transcript of the sentencing minutes.

(f) Where only sentence in issue. When the sole question raised on appeal concerns the legality, propriety or excessiveness of the sentence imposed, the appeal may be heard upon a shortened record on appeal consisting of the notice of appeal, sentencing minutes and minutes of the plea, if appellant pleaded guilty. The record, which shall be clearly labeled "Record on Appeal from Sentence," shall contain a statement pursuant to CPLR 5531 and shall be stipulated to or settled in the manner provided in section 850.7 (b) of these rules. A copy of the presentence report shall be filed with the clerk.

850.12 [Reserved]

850.13 Original Special Proceedings

All original special proceedings will be heard either upon the reproduced full record method or appendix method. In all original special proceedings, the appellant shall file (1) an original, five copies and a digital copy of a reproduced full record on review, or (2) one single copy of the record, and an original, five copies and a digital copy of an appendix. The record on review shall be stipulated to by the parties or, where there are no respondents to the proceeding, certified pursuant to CPLR 2105, and shall otherwise comply with section 1250.13 of the Practice Rules of the Appellate Division.

850.14 Miscellaneous Appeals and Proceedings

(a) Unemployment insurance appeals. An appeal from a decision of the Unemployment Insurance Appeal Board may be prosecuted in accordance with written instructions which are available from the clerk of the court or the Department of Law, Employment Security Bureau. There are no filing fees associated with Unemployment Insurance appeals.

(b) Workers' compensation appeals. An appeal from a decision of the Workers' Compensation Board shall be prosecuted in accordance with sections 1250.6 and 1250.7 of the Practice Rules of the Appellate Division. In addition, the record shall contain a record list and a copy of each item identified in the record list, including those items the appellant reasonably assumes will be relied upon by a respondent.

(1) Record list.

(i) The appellant shall prepare a list of the papers relevant to those issues intended to be presented for review by the court.

(ii) Unless, within 45 days after service of a notice of appeal, the Workers' Compensation Board shall vacate, modify or rescind the decision which is the subject of the appeal, within 30 days after expiration of said 45 days or, in the event the board sooner determines that it will not vacate, modify or rescind the decision, within 30 days after the board serves a notice of such determination on the appellant, the appellant shall serve a copy of the proposed record list upon the Attorney General and each party affected by the board decision, together with a written stipulation reciting that the papers, testimony and exhibits listed therein constitute all of the papers necessary and

relevant to the issues. The appellant shall also serve upon the parties affected a written request to stipulate to the contents of the record list within 20 days. Within 20 days after such service, any party so served may make objections or amendments to the record list and serve them upon the appellant.

(iii) Within 20 days after service of a proposed record list, a party respondent shall serve upon the appellant any proposed objections or amendments thereto. The appellant and the objecting party shall have 20 days thereafter in which to agree upon the objections and amendments to the record list and to stipulate in writing thereto. If they are unable to agree, within 10 days after expiration of said 20 days, the appellant shall make application to the board for settlement of the record list. A copy of the board's decision shall be attached to the record list.

(iv) If a party timely served with a proposed record list shall fail to serve objections or amendments within 20 days, the record list shall be deemed correct as to that party, and the appellant shall affix to the record on appeal an affirmation certifying to the timely service of the proposed record list and request to stipulate and to the failure of one or more parties to comply with the request or to make objections or amendments thereto within the time prescribed.

(v) When filing the record on appeal, the appellant shall file the record list, together with the stipulation, board decision or affirmation.

(vi) A decision of the board upon an application to settle a record list shall be reviewable by motion pursuant to section 1250.4 of the Practice Rules of the Appellate Division. The moving papers shall contain a copy of the board decision and the papers submitted to the board upon the application. Where necessary, the court will obtain the board's file for use on the motion.

(2) Form and content of record. A record on an appeal pursuant to section 23 of Workers' Compensation Law shall comply as to form with sections 1250.6 and 1250.7 of the Practice Rules of the Appellate Division.

(3) Certification of record. The record on appeal shall be certified as true and correct by the secretary or other designee of the Workers' Compensation

Board, by a certificate of the appellant's attorney pursuant to CPLR 2105, or by a stipulation in lieu of certification pursuant to CPLR 5532.

(4) Remittitur. Upon entry of an order on the court's decision, the record on appeal shall be remitted to the Attorney General with a copy of the order for filing with the Workers' Compensation Board.

(c) Sex Offender Registration Act (SORA) appeals. An appeal authorized by Correction Law sections 168-d (3) and 168-n (3) shall be prosecuted in accordance with section 1250.11 of the Practice Rules of the Appellate Division and with section 850.11 of this Part.

(d) Original Proceedings under the Education Law and Public Health Law. The Record on Review and briefs filed in proceedings seeking review of determinations pursuant to Education Law § 6510 or Public Health Law § 230-c shall comply with sections 1250.6 and 1250.7 and shall otherwise be prosecuted in accordance with section 1250.13 of the Practice Rules of the Appellate Division and section 850.13 of these rules.

(e) Original proceedings under the Tax Law. The Record on Review and briefs filed in proceedings seeking review of determinations pursuant to Tax Law 2016 shall comply with sections 1250.6 and 1250.7 and shall otherwise be prosecuted in accordance with 1250.13 of the Practice Rules of the Appellate Division and 850.13 of these rules. The stipulated record shall also include the determination of the administrative law judge, the decision of the tax appeals tribunal, the stenographic transcript of the hearing before the administrative law judge, the transcript of any oral proceedings before the tax appeals tribunal and any exhibit or document submitted into evidence at any proceeding in the division of tax appeals upon which such decision is based.

850.15 Calendar Preference; Calendar Notice; Oral Argument; Post-Argument Submissions

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

(a) appeals from the Workers' Compensation Board;

- (b) appeals from the Unemployment Insurance Appeal Board;
- (c) appeals from judgments of conviction in criminal cases challenging only the legality, propriety or excessiveness of the sentence imposed;
- (d) appeals in or transfers of CPLR article 78 proceedings in which the sole issue raised is whether there is substantial evidence to support the challenged determination; and
- (e) any other case in which the court, in its discretion, determines that argument is not warranted.

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

- (a) The orders, judgments, appointments, assignments and directions of the court shall be signed by a justice of the court, the clerk of the court or a deputy clerk of the court.
- (b) Costs in workers' compensation, unemployment insurance appeals and proceedings commenced in this court shall be taxed by the clerk in accordance with CPLR 8403.

850.17 Fees of the Clerk of the Court

In addition to the fees provided for in section 1250.17 of the Practice Rules of the Appellate Division, pursuant to Judiciary Law § 265, the clerk of the court is entitled to receive for and on behalf of the state:

(1) For a large, embossed certificate attesting to admission as an attorney and counselor at law, twenty-five dollars (\$25).

~~(2) For a printed certificate attesting to admission, good standing and registration as an attorney and counselor at law, ten dollars (\$10).~~

Attachment 6

Rules of Practice, Fourth Department, 22 NYCRR Part 1000

Appellate Division, Fourth Judicial Department
22 NYCRR Part 1000. Rules of Practice
As Amended December 9, 2020
Effective April 1, 2021

[Additions underlined; deletions struck through]

1000.1 General Provisions and Definitions

- (a) Practice Rules of the Appellate Division. This Part serves as a supplement to, and should be read in conjunction with, the Practice Rules of the Appellate Division (22 NYCRR Part 1250) and the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245). Where there is a conflict between this Part and those rules, this Part controls when practicing within the Fourth Judicial Department.
- (b) Sessions of the 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 10:00 a.m. each day during a designated term.

1000.2 ~~[Reserved]~~ Designation of Case Types Subject to Electronic Filing

Pursuant to 22 NYCRR 1245.2, to the extent not previously designated by the Court for mandatory electronic filing, all appeals filed with the Court in which a notice of appeal is filed on or after April 1, 2021, all matters transferred to the Court by order dated on or after April 1, 2021, and all special proceedings commenced in the Court on or after April 1, 2021 shall be designated for mandatory electronic filing and subject to 22 NYCRR Part 1245 and the Rules of Practice of this Court governing electronic filing.

1000.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program

- (a) The Court does not require the filing of an initial informational statement pursuant 22 NYCRR 1250.3 (a).
- (b) The Court does not have a settlement or mediation program pursuant to 22 NYCRR 1250.3 (c).

1000.4 Motions

- (a) Digital submissions required. In matters not subject to electronic filing, except as

otherwise provided, all motion and application papers shall be submitted in digital format through ~~an email address designated by the Court for that purpose~~ the Court's digital copy portal, and shall be served on all parties electronically to the extent practicable in accordance with 22 NYCRR 1250.1 (c) (4). Digital copies of motions and applications shall comply with the technical specifications for electronically filed documents (Attachment A to 22 NYCRR Part 1245). Where such papers are submitted in digital format, no hard copy submission is required. Exempt attorneys and exempt litigants, as defined in 22 NYCRR 1245.4, are exempt from the digital filing requirement and must file original papers in hard copy in accordance with 22 NYCRR 1250.4 (a).

- (b) Proof of service required. In addition to proof of filing of the notice of appeal as required pursuant to 22 NYCRR 1250.4 (a) (3), a movant shall submit proof or admission of service of the notice of appeal.
- (c) Order to show cause. An application for an order to show cause pursuant to 22 NYCRR 1250.4 (b) shall be directed to a Justice of this Court with chambers in the Judicial District from which the appeal or proceeding arises.
- (d) Family Court Act § 1114 and CPLR 5704 (a). Unless otherwise ordered by a Justice of this Court, an application for a stay pursuant to Family Court Act § 1114 or an application pursuant to CPLR 5704 (a) shall be made by order to show cause pursuant to 22 NYCRR 1250.4 (b). An application to extend a stay granted pursuant to Family Court Act § 1114 shall be made by motion on notice pursuant to 22 NYCRR 1250.4 (a).
- (e) Extension of time to file answering or reply documents. Any request for an extension of time to file answering or reply documents pursuant to 22 NYCRR 1250.4 (a) (5) shall be made by motion, and shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file the documents within a reasonable time.
- (f) Leave to file amicus curiae brief. A motion for leave to file an amicus curiae brief shall be made in accordance with 22 NYCRR 1250.4 (f), and only one copy of the proposed brief shall be submitted with the motion. When permission to submit an amicus curiae brief is granted, the person or entity to whom it is granted shall file five hard copies and one digital copy of the brief with proof of service of one hard copy on each party. A person or entity granted permission to appear amicus curiae shall not be entitled to oral argument unless the Court directs otherwise.

(g) Poor person relief.

- (1) An affidavit in support of a motion for permission to proceed on appeal as a poor person shall, in addition to the matters listed in 22 NYCRR 1250.4 (d), list
 - (a) the movant's assets with their value; and
 - (b) the number of dependants the movant supports in the movant's present household.
- (2) A motion for permission to proceed on appeal as a poor person and for assignment of counsel shall be served upon the County Attorney in the county from which the appeal arises.

1000.5 [Reserved]

1000.6 [Reserved]

1000.7 Form and Content of Records and Appendices; Exhibits

- (a) Proof of filing and service of notice of appeal. All records and appendices shall contain the notice of appeal with proof of service and filing.
- (b) Certification of record or appendix. An original record shall be certified either by: (1) a certificate of the appellant's attorney pursuant to CPLR 2105; (2) a certificate of the proper clerk; or (3) a stipulation in lieu of certification pursuant to CPLR 5532 or, if the parties are unable to stipulate, an order settling the record. Any dispute over a certification of the record or appendix pursuant to 22 NYCRR 1250.7 (g) or this subdivision, or the contents of a record or appendix so certified, shall be directed to the court from which the appeal is taken.
- (c) Failure to list document. In a criminal matter, the failure of the parties 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.
- (d) Appendices - criminal appeals. Pursuant to 22 NYCRR 1250.7 (d) (3), in a criminal matter, when permission to proceed as a poor person has been granted, 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; a copy of any prior order entered by the trial court affecting the appeal, including but not limited to an order that grants a stay; and, pursuant to 22 NYCRR 1250.7 (g), the stipulation of the parties or their attorneys to the correctness of the record, the order settling the record, the certificate of the appellant's attorney pursuant to CPLR 2105, or the certificate of the proper clerk. ~~and the stipulation of the parties or their attorneys to the complete record, the order settling the record, or the certification of the record pursuant to 22 NYCRR 1250.7 (g). 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.~~

- (e) Demand for exhibits. Absent a stipulation of the parties pursuant to 22 NYCRR 1250.7 (c) or 1250.11 (c), 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 1250.1 (h).

1000.8 Form and Content of Briefs

- (a) Cover color. Except in those appeals in which permission to proceed as a poor person has been granted, the cover of a hard copy brief of an appellant or petitioner shall be blue; the cover of a hard copy brief of a respondent shall be red; the cover of a hard copy reply brief shall be gray; the cover of a hard copy surreply brief shall be yellow; and the cover of a hard copy brief of an intervenor or amicus curiae shall be green. The cover of a hard copy pro se supplemental brief in a criminal appeal shall be white, as shall the cover of a hard copy brief submitted by an Attorney for the Child. Covers of electronically-filed briefs shall likewise be colored to the extent practicable.

1000.9 Time, Number and Manner of Filing of Records, Appendices and Briefs

- (a) Extension of time to perfect. An extension of time to perfect an appeal may be obtained, pursuant to 22 NYCRR 1250.9 (b), by a letter application, stipulation or motion. A stipulation to extend the time to perfect an appeal pursuant to 22 NYCRR 1250.9 (b) shall be filed on or before the date by which the appeal is required to be perfected. A motion for an extension of time to perfect an appeal pursuant to 22 NYCRR 1250.9 (b) shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to perfect the appeal within a reasonable time.

- (b) Extension of time to file brief. An extension of time to file and serve a responsive brief may be obtained, pursuant to 22 NYCRR 1250.9 (g), by a letter application, stipulation or motion. A stipulation to extend the time to file and serve a responsive brief pursuant to 22 NYCRR 1250.9 (g) (1) shall be filed on or before the date by which the brief was originally required to be filed. In no case shall the parties stipulate to, or apply by letter for, an extension of time to file and serve a responsive brief that would permit the filing and service of the brief within 30 days of the date upon which the matter is scheduled to be heard. A motion for an extension of time to file and serve a responsive brief pursuant to 22 NYCRR 1250.9 (g) (2) shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file and serve the brief within a reasonable time.

- (c) Hard copies of records and appendices
 - (1) Hard copies of records and appendices in matters perfected upon the reproduced full record method or appendix method. Except where a party is exempt from filing a digital copy of a document pursuant to 22 NYCRR 1245.4 or 1250.9 (e), the hard copy filing requirement in 22 NYCRR 1245.6 (a) and 1250.9 (a) (1) and (a) (2) with respect to records and appendices in matters perfected using the reproduced full record method or appendix method shall be satisfied by the filing of an original and two hard copies of the record or appendix. Parties exempt from filing a digital copy of a document shall file the number of hard copies of records and appendices otherwise provided by the rules.

 - (2) Hard copies of records and appendices in matters perfected upon the original record. The hard copy filing requirement in 22 NYCRR 1245.6 (a)

with respect to records and appendices in matters perfected upon the original record shall be satisfied by the filing of a hard copy of the complete record, consistent with 22 NYCRR 1250.9 (a) (4) (ii).

- (d) Digital copies. In matters not subject to electronic filing, digital copies of the records, appendices and briefs filed pursuant to 22 NYCRR § 1250.9 (a), (c) and (d) shall comply with the technical specifications for electronically filed documents (Attachment A to 22 NYCRR Part 1245) and shall be filed and served as directed by the Clerk of the Court.
- (e) Service of original record in matters not subject to e-filing. When perfecting on the original record pursuant to 22 NYCRR 1250.9 (a) (4), an appellant shall file a hard copy of the complete record, together with proof of service of one hard copy of the record upon each other party to the appeal.

1000.10 [Reserved]

1000.11 Additional Rules Relating to Criminal Appeals

- (a) Poor person relief and assigned counsel; continuation of eligibility for assigned counsel on appeal. Relief pursuant to 22 NYCRR 1250.11 (a) (1) is contingent upon receipt of a properly filed and served notice of appeal and a copy of the order granting a defendant's application pursuant to CPL 380.55.
- (b) Application for withdrawal of assigned appellate counsel. 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 22 NYCRR 1250.11 (f) (2) (*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 of legal authorities. A copy of the brief, together with the motion, must be served upon the defendant at least 45 days before the return date of the motion. Together with the original motion papers and brief, counsel shall submit the papers that would constitute the record on appeal. 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.

A defendant wishing to file a pro se response to such a motion and/or a pro se supplemental brief shall file the original response and/or brief, together with proof

of service of one copy on assigned counsel and one copy on the People, by 4:00 p.m. on the business day preceding the day on which the motion is returnable, unless, for good cause shown, they are permitted to be filed at a later time. Any request for an extension to file such a response and/or pro se supplemental brief must be made by motion and supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file and serve the response and/or brief within a reasonable time (*see* 22 NYCRR 1250.4 [a] [5]).

- (c) Pro se supplemental briefs where counsel does not seek to withdraw. When assigned counsel does not move to be relieved as counsel ~~and defendant has filed a pro se supplemental brief pursuant to 22 NYCRR 1250.11 (g) (2), a defendant wishing to file a pro se supplemental brief pursuant to 22 NYCRR 1250.11 (g) (2) shall file an original and five copies of such brief, with proof of service of one copy on assigned counsel and one copy on the People.~~ The People may file and serve an original and five hard copies and a digital copy of a responding brief, with proof of service of one copy on assigned counsel and one copy on the defendant the defendant and assigned counsel, no later than 45 days after defendant has served the pro se supplemental brief. A request for an extension of time to file and serve a pro se supplemental brief or a responding brief shall be made by motion and supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file and serve the brief within a reasonable time.

1000.12 Transferred Proceedings.

- (a) Original papers. A proceeding transferred to this Court pursuant to CPLR 7804 (g) 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. Pursuant to Rule 1000.2, matters transferred to the Court by order dated on or after April 1, 2021 must be electronically filed pursuant to 22 NYCRR Part 1245.
- (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 5 hard copies and one digital copy 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 5 hard copies and one digital copy of a brief, with proof of service of one copy on each other party, as set forth in the scheduling order.

1000.13 [Reserved]

1000.14 [Reserved]

1000.15 Calendar Preference or Adjournment; Calendar Notice; Oral Argument; Post-Argument Submissions

- (a) Calendar preference or adjournment. A motion for a calendar preference pursuant to 22 NYCRR 1250.15 (a) (2) shall be supported by an affidavit setting forth with particularity the compelling circumstances justifying the calendar preference. A motion to adjourn the calendaring of an appeal or proceeding shall be supported by an affidavit setting forth with particularity the compelling circumstances justifying an adjournment.
- (b) Scheduling order. After an appeal is perfected or an original or transferred proceeding is filed or received, the Clerk shall, where appropriate, issue a scheduling order, which will specify the term of Court for which the matter has been scheduled and set a deadline for the service and filing of respondents' briefs and reply briefs, if any. A party or a party's 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 on specific dates during the term.
- (c) Calendar notice. 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 or scheduled. A notice to appear for oral argument will be sent by the Clerk to all parties or their attorneys not less than 20 days prior to the term.

Parties or counsel must appear as directed or submit on the brief.

(d) Oral Argument.

(1) A party or a party's 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. 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.

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

- (A) an appeal from a judgment of conviction in a criminal case that challenges only the legality or length of the sentence imposed;
- (B) an appeal from a determination pursuant to the Sex Offender Registration Act;
- (C) 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
- (D) any other cause in which this Court, in its discretion, determines that oral argument is not warranted.

(3) The Court does not permit rebuttal.

(e) Post-argument submissions. Any request for leave to file a post-argument submission shall be made in writing filed, with proof of service, within five business days of oral argument, and shall be accompanied by an original, five hard copies, and a digital copy of the proposed submission.

1000.16 Orders

- (a) Service of order. The party prevailing in a cause shall serve a copy of the order with notice of entry on all parties.
- (b) Posting of orders. Pursuant to 22 NYCRR 1250.16 (a), a copy of the order of this Court determining a cause shall be posted on the Court's website. This rule does not apply to motion orders.

1000.17 Electronic Filing

- (a) Entry of initial information for electronic filing
 - (1) Application for assigned counsel. When the appellant seeks the assignment of counsel to prosecute an appeal, the entry of initial information for electronic filing pursuant to 22 NYCRR 1245.3 (a) shall not be required until the Court issues an order with respect to an application for the assignment of counsel. Where the Court issues an order assigning counsel, the entry of initial information, to the extent not previously accomplished, shall be completed within 14 days of the date of the order. Where an application for the assignment of counsel is denied, the appellant shall be deemed exempt from e-filing and the matter shall be perfected in hard copy, unless the appellant chooses to voluntarily participate in e-filing pursuant to 22 NYCRR 1245.4 (d) or engages counsel to prosecute the appeal who is not an exempt attorney.
 - (2) Engagement of counsel. Where the appellant engages counsel to prosecute an appeal who is not an exempt attorney, the entry of initial information for electronic filing pursuant to 22 NYCRR 1245.3 (a), to the extent not previously accomplished, shall be completed within 14 days of the date upon which appellate counsel was engaged.
 - (3) Effect of failure to enter initial information. Except as otherwise provided, no submission will be accepted in a case subject to mandatory e-filing prior to the entry of initial information and service of notification of the docket number pursuant to 22 NYCRR 1245.3.
- (b) Perfecting a criminal appeal.
 - (1) Appendix. The record on an e-filed criminal appeal shall include an appendix as described in 22 NYCRR 1000.7 (d).

- (2) Perfection upon electronic filing. Unless the filing is deemed incomplete pursuant to subdivision (4) of this section or for other reason, a criminal appeal shall be deemed perfected at the time the appendix and appellant's brief are electronically filed.
 - (3) Voluntary filing of digital transcript. When a digital copy of the transcripts upon which the appeal is based is available, the appellant is encouraged to e-file that digital transcript.
 - (4) Hard copy filing; transcripts. Hard copies of the appendix, appellant's brief, and the transcripts upon which the appeal is based must be filed with the clerk within two business days of receipt by the appellant of email notification that the clerk has reviewed and approved the electronic filing required in subdivision (2) of this section. ~~With respect to criminal appeals in which permission to proceed as a poor person has been granted, t~~The appellant shall submit one hard copy each of the appendix and transcripts, and an original and five hard copies of appellant's brief. ~~The filing of hard copies shall otherwise be as set forth in 22 NYCRR 1245.6 (a).~~ A failure to file such additional hard copies of documents shall cause the filing to be deemed incomplete.
- (c) Perfecting a Family Court appeal.
- (1) Service of notice of appellate docket number. With respect to a Family Court appeal, service of notification of the appellate docket number, as required in 22 NYCRR 1245.3 (b), must be made upon both respondent's counsel and respondent individually. ~~Where the Court has issued an order assigning counsel to prosecute an appeal, such that an appellate docket number has previously been received by counsel for the appellant, service of notification of the appellate docket number shall be made within seven days of the date upon which counsel completes the entry of initial information for electronic filing pursuant to 22 NYCRR 1245.3 (a).~~
 - (2) Appendix. The record on an e-filed Family Court appeal shall include an appendix that contains, 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 order or judgment appealed from and any relevant intermediate orders; all motion papers, affidavits and, to the extent practicable, written and photographic exhibits relevant and necessary to the determination of the appeal; a copy of any prior order entered by the trial court affecting the appeal, including but not limited to an order that grants

a stay; and, pursuant to 22 NYCRR 1250.7 (g), the stipulation of the parties or their attorneys to the correctness of the record, the order settling the record, the certificate of the appellant's attorney pursuant to CPLR 2105, or the certificate of the proper clerk.

- (3) Perfection upon electronic filing. Unless the filing is deemed incomplete pursuant to subdivision (4) of this section or for other reason, a Family Court appeal shall be deemed perfected at the time the appendix and appellant's brief are electronically filed.
- (4) Voluntary filing of digital transcript. When a digital copy of the transcripts upon which the appeal is based is available, the appellant is encouraged to e-file that digital transcript.
- (5) Hard copy filing; transcripts. Hard copies of the appendix, appellant's brief, and the transcripts upon which the appeal is based must be filed with the clerk within two business days of receipt by the appellant of email notification that the clerk has reviewed and approved the electronic filing required in subdivision (3) of this section. ~~With respect to Family Court appeals in which permission to proceed as a poor person has been granted, t~~
The appellant shall submit one hard copy each of the appendix and transcripts, and an original and five hard copies of appellant's brief. ~~The filing of hard copies shall otherwise be as set forth in 22 NYCRR 1245.6 (a).~~ A failure to file such additional hard copies of documents shall cause the filing to be deemed incomplete.
- (6) Respondent on Appeal.
 - (A) Respondent's e-filing status. A respondent shall be deemed exempt from e-filing unless the Ccourt issues an order assigning counsel to represent the respondent on appeal, the respondent engages appellate counsel who is not an exempt attorney, or the respondent chooses to voluntarily participate in e-filing pursuant to 22 NYCRR 1245.4 (d).
 - (B) Entry of information by respondent's counsel. When the Ccourt issues an order assigning counsel to represent a respondent on appeal or a respondent engages counsel who is not an exempt attorney, counsel for the respondent must record that representation in accordance with 22 NYCRR 1245.3 (d) within 20 days of the date of the order of assignment or the date upon which appellate counsel was engaged, as appropriate; provided that, if the assignment or

engagement of appellate counsel for a respondent occurs prior to the entry, by appellant's counsel, of initial information for e-filing pursuant to 22 NYCRR 1245.3 (a), counsel for the respondent must record that representation within 20 days of service upon respondent's counsel of notification of the appellate docket number as required in 22 NYCRR 1245.3 (b).

(d) Motions and Applications.

- (1) In all matters subject to mandatory e-filing or e-filed voluntarily via NYSCEF, all motions and applications must be filed electronically in compliance with the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245).
- (2) When a motion or application is e-filed via NYSCEF, no hard copy submission is required.

Attachment 7

Judicial Departments, Appellate Divisions, Districts and Counties

**JUDICIAL DEPARTMENTS, THEIR APPELLATE DIVISIONS,
DISTRICTS AND COUNTIES WITHIN THE DISTRICTS**

Appellate Department	Judicial District	New York State Counties
Appellate Division — First Department (212) 340-0400 Appellate Term † First Department (646) 386-3040	1st District 12th District	New York County Bronx County
Appellate Division — Second Department (718) 722-6324 Appellate Term † Second Department (347) 401-9580	2nd District 9th District	Kings County Dutchess County Orange County Putnam County Rockland County Westchester County
	10th District	Nassau County Suffolk County
	11th District	Queens County
	13th District	Richmond County
Appellate Division — Third Department (518) 474-3609	3rd District	Albany County Columbia County Greene County Rensselaer County Schoharie County Sullivan County Ulster County
	4th District	Clinton County Essex County Franklin County Fulton County Hamilton County Montgomery County St. Lawrence County Saratoga County Schenectady County Warren County Washington County
	6th District	Broome County Chemung County Chenango County Cortland County Delaware County Madison County Otsego County Schuyler County Tioga County Tompkins County
Appellate Division — Fourth Department (585) 530-3100	5th District	Herkimer County Jefferson County Lewis County Oneida County Onondaga County Oswego County
	7th District	Cayuga County Livingston County Monroe County Ontario County Seneca County Steuben County Wayne County Yates County
	8th District	Allegany County Cattaraugus County Chautauqua County Erie County Genesee County Niagara County Orleans County Wyoming County

Attachment 8

Notice of Appeal

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Plaintiff(s)

-v-

NOTICE OF APPEAL

Defendant(s)

Index No. _____

-----X

PLEASE TAKE NOTICE that the above named Defendant(s)/Plaintiff(s) hereby appeal to the Appellate Division of the Supreme Court of the State of New York, for the _____ Judicial Department, from an Order/Judgment rendered against Defendant(s)/Plaintiffs which (*describe Order/Judgment – if money judgment include dollar amount*) dated _____ and entered in the office of the County Clerk on the ____ day of _____, 20__ and from each and every part thereof (*or describe the portion of the order/judgment appealed if not the whole thereof*).

Dated: _____, New York
_____, 20__

Yours, etc.

(Signature)
(Print Name)
(Address)
(Telephone Number)
Attorney for the

To: (*Insert below the name and address of the clerk of the trial court and the names and addresses of all opponents*)

Attachment 9

Initial Informational Statement

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment <input type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment <input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court:	County:
Dated:	Entered:
Judge (name in full):	Index No.:
Stage: <input type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury

Prior Unperfected Appeal and Related Action or Proceeding Information

Are any appeals arising in the same action or proceeding currently pending in the court? Yes No
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court:	County:
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court:	County:
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Issues: Specify the issue(s) proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal or modification to be advanced and the specific relief sought on appeal.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court. Examples of party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defendant third-party plaintiff, third-party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

No.	Party Name	Original Status	Appellate Division Status
1			
2			
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4			
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20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above:

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above:

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above:

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above:

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above:

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above:

Attachment 10

Electronic Filing Forms

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : DEPARTMENT**

-----X

- against -

**Appellate Division
Case/Docket No.**

**Originating Court
No.**

-----X

**NOTIFICATION OF CASE NUMBER AND OTHER INFORMATION
IN E-FILED APPEAL OR TRANSFERRED PROCEEDING
(22 NYCRR 1245.3[b])**

PLEASE TAKE NOTICE that a petitioner or appellant in this matter has notified the Court that this case is designated for electronic filing pursuant to the rules of the Appellate Division.

The case/docket number for this

- appeal
- transferred proceeding

is .

Parties represented by an attorney. Within twenty (20) days of service of this notification, counsel to all other parties in this matter shall, as required by 22 NYCRR 1245.3(d):

(a) (i) register or confirm registration as authorized e-filing users with the New York State Court Electronic Filing system (NYSCEF); and

(ii) enter electronically in NYSCEF such contact information and additional information as the court may require;

or

(b) if an attorney exempt from e-filing, serve upon all parties and file with the court by hard copy service method, an attorney exemption certification.

Parties not represented by an attorney. Unrepresented litigants are exempt from e-filing, but may voluntarily participate in e-filing in this matter by:

(a) registering as an authorized e-filing user in this matter with the NYSCEF site and entering case and contact information about the particular cause; and

(b) recording his or her consent electronically in the manner provided at the NYSCEF

site; and

(c) serving and filing documents by electronic means as provided under these rules.

Note: An unrepresented litigant who has consented to participate voluntarily in e-filing in this matter may withdraw such consent at any time by filing and serving on all parties a notice of intent to cease e-filing (AD-EF-06).

Important: Under 22 NYCRR 1245.5(c), upon the expiration of the 20-day registration and notice period, any party (other than persons exempt from e-filing) who fails to meet his or her obligation to register and enter information will be deemed served with any document electronically filed in this matter.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the matter was filed or visit www.nycourts.gov/efile-unrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: _____

Name

Firm Name

Address

Phone

E-Mail

To: _____

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : DEPARTMENT

-----X

- against -

Appellate Division
Case/Docket No.

Originating Court
No.

-----X

**NOTIFICATION OF CASE NUMBER AND OTHER INFORMATION
IN E-FILED ORIGINAL PROCEEDING
(22 NYCRR 1245.3[c])**

PLEASE TAKE NOTICE that counsel for the petitioner, or a self-represented petitioner, in the matter captioned above:

- a special proceeding initiated in this court
- an action submitted to the court pursuant to CPLR 3222

has filed a notice of petition or other initiating documents by electronic filing method through the New York State Courts Electronic Filing System (“NYSCEF”). This notification is being served as required by 22 NYCRR 1245.3(c)

The case number for this matter is

Parties represented by an attorney. Within twenty (20) days of service of this notification, counsel to all other parties in this matter shall, as required by 22 NYCRR 1245.3(d):

- (a) (i) register or confirm registration as authorized e-filing users with NYSCEF; and
- (ii) enter electronically in NYSCEF such contact information and additional information as the court may require;

or

- (b) if an attorney exempt from e-filing, serve upon all parties and file with the court by hard copy service method, an attorney exemption certification.

Parties not represented by an attorney. Unrepresented litigants are exempt from e-filing, but may voluntarily participate in e-filing in this matter by:

- (a) registering as an authorized e-filing user in this matter with the NYSCEF site and entering case and contact information about the particular cause; and
- (b) recording his or her consent electronically in the manner provided at the NYSCEF

site; and

(c) serving and filing documents by electronic means as provided under these rules.

Note: An unrepresented litigant who has consented to participate voluntarily in e-filing in this matter may withdraw such consent at any time by filing and serving on all parties a notice of intent to cease e-filing (AD-EF-06).

Important: Under 22 NYCRR 1245.5(c), upon the expiration of the 20 day registration and notice period, any party, other than persons exempt from e-filing, who fails to meet his or her obligation to register and enter information will be deemed served with any document electronically filed in this matter.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the matter was filed or visit www.nycourts.gov/efile-unrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: _____

Name

Firm Name

Address

Phone

E-Mail

To: _____

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : DEPARTMENT**

STATEMENT OF AUTHORIZATION FOR ELECTRONIC FILING

(Individual Attorney Authorizing Filing Agent)

I, _____, Esq. (Attorney Registration No. _____),
am an authorized user of the New York State Courts Electronic Filing System (“NYSCEF”) (User
ID _____). I hereby authorize _____ or any employee
of _____ who possesses a NYSCEF filing agent ID (“the filing agent”) to
utilize his/her NYSCEF filing agent ID to file documents on my behalf and at my direction in
any e-filed appellate cause or matter in which I am counsel of record through the NYSCEF
system, as provided in Appellate Division E-Filing Rule 1245.3(e).

This authorization extends to any appeal or transferred matter in which I have entered
electronically my initializing information, any original proceeding I have commenced by e-filing,
or any cause or matter in which I have entered electronically information as a respondent or
other party, as well as to any cause or matter in which I may authorize the filing agent to take
such action, as provided in the Appellate Division E-Filing Rules.

This authorization extends to any and all documents I generate and submit to the filing
agent for filing in any such cause or matter. This authorization shall be e-filed prior to or
together with the first e-filing by the filing agent. As the principal authorized e-filer, I
understand that I retain full responsibility for any document e-filed by the filing agent.

This authorization also extends to matters of payment, which the filing agent may make
in the manner provided by the Appellate Division.

This authorization regarding this filing agent shall continue until I revoke it in writing
on a prescribed form delivered to the E-Filing Resource Center.

Dated:

Signature

City, State and Zip Code

Print Name

Phone

Firm/Department

E-Mail Address

Street Address

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : DEPARTMENT**

**STATEMENT OF AUTHORIZATION FOR
ELECTRONIC FILING
(Managing Attorney Authorizing Filing Agent)**

I, _____, Esq. (Attorney Registration No. _____),
am the managing attorney of/attorney in charge of e-filing for
(the “Firm”). I hereby acknowledge and represent that the attorneys in the Firm who are
authorized users of the NYSCEF system hereby authorize _____ or any
employee of _____ who possesses a filing agent ID (“the filing agent”) to
utilize his/her NYSCEF filing agent ID to file documents on their behalf and at their direction in
any e-filed appellate cause or matter in which they are counsel of record through NYSCEF, as
provided in Appellate Division E-Filing Rule 1245.3(e).

This authorization extends to any appeal or transferred matter in which these attorneys
have entered electronically their initializing information, any original proceeding they have
commenced by e-filing, or any cause or matter in which they have entered electronically
information as a respondent or other party, as well as to any cause or matter in which they may
authorize the filing agent to take such action, as provided in the Appellate Division E-Filing
Rules.

This authorization extends to any and all documents these attorneys generate and
submit to the filing agent for filing in any such cause or matter. This authorization shall be e-
filed prior to or together with the first e-filing by the filing agent. As the principal authorized e-
filers, each attorney understands that he or she retains full responsibility for any document e-
filed by the filing agent.

This authorization also extends to matters of payment, which the filing agent may make
in the manner provided by the Appellate Division.

This authorization regarding this filing agent shall continue until the Firm revokes the
authorization in writing on a prescribed form delivered to the E-Filing Resource Center.

Dated:

Signature

City, State and Zip Code

Print Name

Phone

Firm/Department

E-Mail Address

Street Address

**REVOCATION OF AUTHORIZATION FOR
ELECTRONIC FILING - INDIVIDUAL ATTORNEY**

I, _____, Esq., am an authorized user of the NYSCEF
system (User ID _____). I hereby revoke the authorization, dated
_____, that authorized _____ to e-file
documents on my behalf in Appellate Division Case No. _____.

Dated:

Signature

Print Name

Firm

Street Address

City, State and Zip Code

Phone

E-Mail Address

This form must be e-mailed to the Resource Center Efile@nycourts.gov for processing.

**REVOCATION OF AUTHORIZATION FOR
ELECTRONIC FILING - MANAGING ATTORNEY**

I, _____, Esq., am the managing attorney
of/attorney in charge of e-filing for _____. I hereby
revoke the authorization, dated _____, that authorized
_____ to e-file documents on behalf of authorized
users in my firm in Appellate Division Case No. _____.

Dated: _____

Signature

Print Name

Firm

Street Address

City, State and Zip Code

Phone

E-Mail Address

This form must be e-mailed to the Resource Center Efile@nycourts.gov for processing.

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : DEPARTMENT**

-----x

- against -

**Appellate Division
Case/Docket No.**

**Originating Court
No.**

-----x

ATTORNEY EXEMPTION CERTIFICATION

Pursuant to CPLR 2111(b)(3) and 2112 and 22 NYCRR 1245.4(a)(2), I hereby certify in good faith that I am unable to participate in the electronic filing of documents in this matter on behalf of my client, _____, because:

[Place your initials in the space(s) provided and check all boxes that apply]

_____ I lack:

- the necessary computer hardware and/or
- a connection to the internet and/or
- a scanner or other device by which documents may be converted to an electronic format

OR

I lack the requisite knowledge in the operation of such computers and/or scanners necessary to participate in electronic filing of documents in this matter, pursuant to CPLR 2111(b)(3)(A) or (B).

I understand that this exemption from participation in electronic filing requires that I file and serve all court documents in hard copy and that other parties to this matter are required to serve me with documents in hard copy.

I further understand that I am required submit to the court an additional unbound copy of each document that I file in hard copy with the court.

Dated:

(Signature)

(Name)

(Firm Name)

(Address)

(Phone)

This form must be signed. All contact information must be provided, including the address at which hard-copy documents in this matter should be served.

This form must be filed with the clerk of the court in which the matter is pending and served on all parties.

NOTICE OF HARD COPY SUBMISSION - - E-FILED MATTER

(This Form Must be Annexed to All Hard Copy Submissions in E-Filed Matters)

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION : DEPARTMENT

-----X

against -

Appellate Division
Case/Docket No.

Originating Court
No.

-----X

When permitted to submit original hard copy documents in e-filed matters, indicate the reason for hard copy submission by checking the relevant box and signing below.

Additional Hard Copies Required by Court Rule

I am a registered e-filer in this matter, and am submitting additional hard copies of e-filed documents as required by 22 NYCRR 1245.6(a).

Exempt Counsel

I am exempt from the requirement to e-file because I have filed the Attorney Exemption Certification with the clerk of the court where this matter is pending.

Participating Counsel and Participating Unrepresented Litigants

As allowed by court rule, I am making an initial submission of a motion or application seeking interim or emergency relief.

I am authorized to file this document in hard copy pursuant to an emergency exception and am submitting the explanatory affirmation/affidavit required by the E-Filing Rules. I shall, as required by the Rules, e-file these documents within 3 business days thereafter.

I am authorized to file this document in hard copy because of a technical failure on the e-filing site as defined in the E-Filing Rules. I shall, as required by the Rules, e-file these documents within 3 business days after restoration of normal operations at the site.

Other:

I am applying for an order sealing / limiting access to document(s) and I am submitting the application in hard copy form, as permitted by court protocol/procedure.

I am submitting documents for in camera review.

I am filing an exhibit that cannot be e-filed.

Dated: _____

(Address)

(Signature)

(Name)

(Phone)

(Firm Name)

(E-Mail)

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : DEPARTMENT**

-----X

- against -

**Appellate Division
Case/Docket No.**

**Originating Court
No.**

-----X

**NOTICE OF INTENT TO CEASE E-FILING
BY UNREPRESENTED PARTY**

To the Parties in this matter and the Court:

1. I do not have an attorney. I am unrepresented.
2. I want to stop e-filing my court documents in this matter.
3. I will serve and file all future court documents in paper form on all other parties in this matter.
4. I understand that, when filing court documents in paper form, I must also provide an unbound copy of those court documents.
5. I understand that the other parties may continue to e-file their court documents in this matter, except that such parties **MUST** serve me with those documents in paper form at the following address:

Name:

Street address:

City:

State:

Zip code:

Phone number:

Dated:

Signed:

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT**

-----X

STATEMENT OF E-FILING

**Appellate Division
Case/Docket No.:** _____

-against-

Originating Court No.:

Date Notice of Appeal Filed:
_____/_____/_____

-----X

PLEASE TAKE NOTICE:

Statement of prior E-Filing (appellant):

- [] I, _____, am [] an attorney in good standing representing a party in the above-captioned action, [] an attorney admitted pro hac vice representing a party in this matter, or [] a self-represented party in this matter, and **hereby certify** under penalty of perjury that the above matter was electronically filed through the New York State Courts Electronic Filing System (“NYSCEF”) in the court of original instance. I understand that this matter must be perfected through the NYSCEF system, and am aware of the rights and responsibilities of parties (including unrepresented parties) under the Appellate Divisions e-filing rules (22 NYCRR Part 1245). Additionally, I understand that once an appellate number is assigned, I must serve this **Statement of E-Filing** together with Notification of Case Number (AD-EF-01) in accordance with Appellate Division e-filing rules, as supplemented by local rules.

OR

Stipulation and consent of parties:

- [] We the undersigned, counsel in good standing representing parties, counsel admitted pro hac vice, and/or an unrepresented party in this matter, hereby **stipulate and consent** to the use of the New York State Courts Electronic Filing System (“NYSCEF”) in this matter. We agree to be bound by Appellate Division e-filing rules (22 NYCRR Part 1245), as supplemented by local court rules.

The undersigned confirm that they are registered as authorized e-filers with NYSCEF and understand that the primary e-mail addresses, listed below, will be used for service of documents.

Dated:

Attorney [] Pro Hac [] Unrep []

Attorney [] Pro Hac [] Unrep []

Signature

Signature

Print Name

Print Name

Attorney for (Identity of Parties)

Attorney for (Identity of Parties)

UCS Attorney Registration #
Firm Name

UCS Attorney Registration #
Firm Name

Address

Address

Phone #

Phone #

E-Mail
(Primary Service E-Mail Address)

E-Mail
(Primary Service E-Mail Address)

Attorney [] Pro Hac [] Unrep []

Attorney [] Pro Hac [] Unrep []

Signature

Signature

Print Name

Print Name

Attorney for (Identity of Parties)

Attorney for (Identity of Parties)

UCS Attorney Registration #
Firm Name

UCS Attorney Registration #
Firm Name

Address

Address

Phone #

Phone #

E-Mail
(Primary Service E-Mail Address)

E-Mail
(Primary Service E-Mail Address)

Attachment 11

Statement Pursuant to CPLR § 5531

STATEMENT PURSUANT TO CPLR § 5531

New York Supreme Court
Appellate Division—Second Department

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— against —
’
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1. The index number of the case in the court below is .
 2. The full names of the original parties are as set forth above. There have been no changes.
 3. The action was commenced in Supreme Court, County.
 4. The action was commenced on or about .
 5. The nature and object of the action is .
 6. This appeal is from the Decision and Order of the Hon. .
 7. This appeal is on the full reproduced record.

Attachment 12

Certification Pursuant to CPLR § 2105

CERTIFICATION PURSUANT TO CPLR § 2105

I, , a member of the firm of , attorneys for the , hereby certify pursuant to Section 2105 of the CPLR that the foregoing papers constituting the Record on Appeal have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file in the office of the Clerk of the County of .

Dated:

Attorney for

Attachment 13

Stipulation Pursuant to CPLR § 5532

STIPULATION PURSUANT TO CPLR § 5532

New York Supreme Court
Appellate Division—First Department

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– against –
,
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IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the respective parties hereto that the foregoing Record on Appeal is hereby deemed correct and complete.

Dated:

Attachment 14

Notice of Settlement of Transcript

NOTICE OF SETTLEMENT

New York Supreme Court

Appellate Division— Department

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— against —
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PLEASE TAKE NOTICE that within 15 days of receipt from the Court Reporter there is transmitted herewith a copy of the transcript in the above entitled matter certified as correct by the Court Reporter, together with Appellant's proposed amendments, if any.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR §5525(c), you are required to make and serve proposed amendments or objections within 15 days of the date of this service, as provided in such Rule, or the transcript, as certified by the Court Reporter, together with Appellant's proposed amendments, shall be deemed correct without necessity for stipulation by you or settlement by Judge or Referee. If agreement cannot be reached, the matter shall be submitted for settlement on four days' notice pursuant to CPLR §5525(c).

Dated:

TO:

Attachment 15

Affirmation of Compliance

AFFIRMATION OF COMPLIANCE

New York Supreme Court
Appellate Division—First Department

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– against –
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I, _____, attorney of record herein for the Appellant in the above matter, do hereby affirm pursuant to CPLR 2106 that the transcript of the within proceeding was served upon Respondent without any proposed amendments together with the 15-day notice required by 22 NYCRR § 600.5(e) and CPLR 5525(c) and that the amendments thereafter proposed by Respondent have been made to said transcript; and therefore, the transcript, as amended, is now settled in accordance with the applicable rules.

Dated:

Attachment 16

Printing Specifications Statement

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface:

Point size:

Line spacing:

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this Statement is _____.

Dated:

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface:

Point size:

Line spacing:

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this Statement is _____.

Dated:

Attachment 17

AD1 Note of Issue

NOTE OF ISSUE
Appellate Case No.

New York Supreme Court
Appellate Division—First Department

’
’
— against —
’
’

1. Term noticed for: .
2. The date of the Notice of Appeal is .
3. The Judgment/Order was entered on .
4. The Judgment/Order was rendered by the Honorable .
5. The nature of the appeal or cause .
6. The index (or indictment) number is . The Appellate Division case number is .

Attachment 18

Updated First and Second Department Guidance

Appellate Division of the Supreme Court First Judicial Department

AD1 2.0 – First Department Operations During the 2022 Winter Terms

Updated December 22, 2021

Appeals

Commencing on January 4, 2022, and until further notice, the Appellate Division, First Department will hold oral arguments remotely via Microsoft Teams. Oral arguments will be held on Tuesdays, Wednesdays, and Thursdays at 2:00 p.m., and if necessary, on Fridays at 10:00 a.m.

Oral Arguments. Attorneys and self-represented litigants who made oral argument requests pursuant to court rules will receive a Teams invitation no less than three (3) days before the scheduled oral argument. The Teams invitation will include an attachment with the argument time allocated for each matter.

Please note that once a matter has been calendared, there will be no adjournments. If a party cannot appear for remote oral argument as scheduled on the calendar, the matter will be taken on submission as far as that party is concerned.

As is customary, oral arguments will be livestreamed on the Court's website.

Aside from returning to virtual oral arguments due to the rapidly increasing COVID-19 infection rate, the courthouse remains open for business. Any person entering the courthouse must follow the screening protocols outlined below.

Screening Before Entering Courthouse

Prior to entering the courthouse, all persons will be subject to COVID-19 screening and temperature checks.

Persons:

(a) experiencing symptoms associated with COVID-19, including a temperature of 100.0° or higher, a cough, difficulty breathing, sore throat, muscle or body aches, vomiting and diarrhea, or a new loss of taste or smell; or

(b) who have been diagnosed with COVID-19 and have not obtained medical clearance to appear in public; or

(c) who have been directed to quarantine, isolate and/or self-monitor due to COVID-19 by any doctor, hospital or public health official/agency and have not obtained medical clearance to appear in public; or

(d) who have had close contact with anyone diagnosed with COVID-19 within

the last 14 days unless fully vaccinated or have recovered from COVID-19 in the last three months (proof of vaccination or recent recovery from COVID must be provided); or

(d) who have returned from international travel within the last 10 days unless the person returned 8-10 days ago and took a viral COVID test 3-5 days after the return (proof of test results required)
will not be allowed to enter the courthouse.

Facial Covering: All persons who enter the courthouse are required to (a) wear a mask or facial covering at all times and (b) comply with social distancing guidelines and directives of the court officers.

Hard Copy Filing

Briefs, Records and Appendices. In addition to electronic filing, in all civil appeals, the Court requires the original and one copy (for a total of two hard copies) of records, appendices and briefs to be filed with the clerk.

In all e-filed matters, the filing of such hard copies shall be delayed until receipt of email notification that the clerk has reviewed and approved the electronic version of the document. Once approved, the hard copies shall be filed within two business days of the notification (see Rule 1245.6[2]).

Motions and Original Proceedings. Motions and applications, and original proceedings shall be filed in digital form only (via NYSCEF or Digital Submission Portal). No hard copy submission is required.

Attorney Matters. In addition to the digital copy, the original document (i.e., one hard copy) shall be filed with the Court.

Hyperlinks

The Court accepts, on a voluntary basis, briefs with hyperlinks to cited primary authorities (constitutions, case law, statutes, rules and regulations) available on Westlaw, Lexis, or state or federal government websites. Citations to secondary and other sources should not be hyperlinked. All citations (with or without hyperlinks) shall appear in standard citation form.

Electronic Filing

Matters Subject to Mandatory E-filing

All matters before the First Department, except original proceedings and attorney matters, are subject to mandatory e-filing via NYSCEF in accordance with the procedural and electronic filing rules of the Court. For additional information on the e-filing requirements, please [click here](#).

Original Proceedings and Attorney Matters

All filings, including petitions, motions, and applications, made in connection with original proceedings and attorney matters shall be submitted electronically via the Digital Submission portal in NYSCEF. For additional information on the Digital Submission portal, please [click here](#).

Admission of Attorneys to the Bar

Applications and other documents for admission to the bar shall be transmitted electronically to the Court's Committee on Character and Fitness via the online portal set up by the Court. Admission ceremonies will be held remotely via Microsoft Teams until further notice.

Requests for Certificates of Good Standing are processed electronically via the statewide Appellate Division online portal. Paper certificates are no longer issued in-person. Instructions for obtaining a Certificate of Good Standing and the link to the portal are posted on the webpage of the [Committee on Character and Fitness](#).

Attorney Grievance Matters

The Attorney Grievance Committee is fully operational. Complaints, pleadings and all other submissions shall be transmitted electronically to the Committee. Additional information is posted on the [Attorney Grievance Committee webpage](#).

Pre-argument Conference Program

Until further notice, the Pre-argument Conference Program will continue to hold conferences remotely via Microsoft Teams and other virtual platforms.

Notice to Counsel

Appellate Division, Second Judicial Department Sitings

In response to the recent increase in the number of persons experiencing COVID-19 in the New York Metropolitan Area, beginning January 03, 2022, and until further notice, counsel and self-represented litigants who have submitted briefs on matters in which argument is permitted under the Second Department Rules of Practice (see, [22 NYCRR 670.15\[b\]](#)), and who have properly requested argument time on their briefs, will be presumed to be either presenting oral argument via Microsoft Teams or submitting. If such counsel or self-represented litigants wish to pursue their request to orally argue, they must notify the Court as to the name and e-mail address of the individual who will be presenting remote argument by e-mail to AD2-Calendars@nycourts.gov, on which all counsel and self-represented litigants are copied, **no later than five business days prior to the date on which the matter is calendared**. Failure to timely and properly notify the Court will result in the matter being marked submitted on behalf of that counsel or self-represented litigant. [Link to New York Law Journal press release](#).

At this time, while the Courthouse will otherwise remain open to the public, the Unified Court System's green attorney/agency pass and visitor pass program remains suspended. Therefore, while members of the public can enter the courthouse at this time, in order to ensure the health and safety of all court users, effective immediately, and until further notice, all court users, regardless of vaccination status, are required to wear a face mask or face covering while present in our courthouse. In addition, all court users, including those holding green card passes that are now temporarily suspended, must have their temperature taken and undergo COVID screening before entry. Thank you for your cooperation. Stay safe.

Attachment 19

AD1 Term Calendar 2022

**New York Supreme Court
Appellate Division — First Department**

27 Madison Avenue, New York, NY 10010
(212) 340-0400

2022 CALENDAR

The Calendar will be called at 2:00 P.M. except on Fridays at 10:00 A.M.

Term	Argument Noticed for	Last Day to File Record Appellants' Points, and Notes of Issue	Last Day to File Respondents' Points	Last Day to File Appellants' Reply Points	Last Day to File Stipulations Of Adjournment and Unavailability Dates
January	January 4	November 8	December 8	December 17	December 9
February	February 1	December 6	January 5	January 14	January 6
March	March 1	January 3	February 2	February 10	February 3
April	March 29	January 31	March 2	March 11	March 3
May	April 19	February 22	March 23	April 1	March 24
June	May 17	March 21	April 20	April 29	April 21
September	September 6	July 11	August 10	August 19	August 11
October	October 4	August 8	September 7	September 16	September 8
November	November 1	September 6	October 5	October 14	October 6
December	November 29	October 3	November 2	November 10	November 3

The Statewide Practice Rules have been in effect since September 17, 2018.

Appellate Division, First Department appeals are now governed by 22 NYCRR Parts 1250 and 600.
Electronic Filing Requirements for the Appellate Division are set forth in 22 NYCRR Part 1245.



COUNSEL PRESS
The Appellate Experts
(800) 4 APPEAL
10 East 40th Street, 5th Floor
New York, NY 10016
212-685-9800
www.counselpress.com

Attachment 20

AD1 Pilot Program for Interlocutory Discovery Appeals

Pilot Program

Interlocutory Appeals from the Commercial Division of the Supreme Court Relating to Discovery Matters

Commencing on January 1, 2022, the Appellate Division, First Department will institute a Pilot Program to reduce the time within which to perfect interlocutory appeals from the Commercial Division of the Supreme Court where the issues on appeal relate exclusively to discovery disputes.

The goal of the Court in shortening the perfection period is to promptly resolve issues involving discovery disputes that should be addressed before a litigation can proceed. The perfection period for interlocutory appeals involving discovery disputes will be reduced from six (6) months to (4) months.

Inasmuch as this is a pilot program in the First Department, there will be no rule change to the statewide Practice Rules of the Appellate Division ([22] NYCRR Part 1250) or the Rules of Practice of the Appellate Division, First Department ([22] NYCRR Part 600).

The Pilot Program:

1. The program will apply **ONLY** to interlocutory appeals from the Commercial Division of the Supreme Court – both New York and Bronx Counties - where an order on appeal involves exclusively discovery issues.
2. The program will commence on January 1, 2022 and apply to discovery dispute appeals in which a notice of appeal is dated January 1, 2022 or thereafter.
3. Except where the court has directed that an interlocutory appeal involving discovery disputes be perfected by a particular time, an appellant shall perfect the appeal within **four** months of the date of the notice of appeal.
4. Extensions of time may be sought pursuant to the provisions of 22 NYCRR 1250.9(b).