

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

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Third Department Rules of Practice
Part 850

- 850.1 [General Provisions and Definitions](#)
- 820.2 [Reserved]
- 850.3 Initial Filings; Active Management of Causes; Settlement or Mediation Program
- 850.4 [Motions](#)
- 850.5 [Methods of Perfecting Causes](#)
- 850.6 [Reserved]
- 850.7 [Form and Content of Records and Appendices; Exhibits](#)
- 850.8 [Reserved]
- 850.9 [Time, Number and Manner of Filing of Records, Appendices and Briefs](#)
- 850.10 Dismissal of a Matter
- 850.11 [Additional Rules Relating to Criminal Appeals](#)
- 850.12 [Reserved]
- 850.13 Original Special Proceedings
- 850.14 [Miscellaneous Appeals and Proceedings](#)
- 850.15 [Calendar Preference; Calendar Notice; Oral Argument; Post-Argument Submissions](#)
- 850.16 [Decisions, Orders and Judgments; Costs; Remittitur; Motions for Reargument or Leave to Appeal to the Court of Appeals](#)
- 850.17 [Fees of the Clerk of the Court](#)

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 transferred CPLR article 78 proceedings or 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.**

(1) 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.

(2) Unless otherwise directed by the Court, a motion for permission to serve and file an amicus curiae brief shall be noticed for a return date no later than 45 days prior to the first day of the term of Court on which the argument or submission of the cause is scheduled.

850.5 Methods of Perfecting Causes

(1) 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.

2) All causes in the Third Department are subject to mandatory e-filing in the New York State Courts Electronic Filing System (NYSCEF) and shall be subject to the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245) except for: ~~Original Special Proceedings commenced in the Third Department;~~ a cause in which the appellant or the petitioner perfecting the proceeding is exempt from e-filing pursuant to Rule 1245.4 (a); ~~professional matters~~ and matters concerning the legal profession (22 NYCRR Part 1240 matters).

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

(1) In review proceedings under Education Law § 6510, Labor Law § 220 or § 220-b, Public Health Law § 230-c and Tax Law § 2016, and unless otherwise directed by the Court, the petitioner 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 shall be stipulated to by the parties and shall otherwise comply with section 1250.13 of the Practice Rules of the Appellate Division.

(2) All other special proceedings shall be heard upon the original record before the respondent and shall otherwise comply with section 1250.13 (c) (2) of the Practice Rules of the Appellate Division.

850.14 Miscellaneous Appeals and Proceedings

(a) Unemployment insurance appeals.

(1) 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.

(2) Where an undertaking is required pursuant to Labor Law § 625, said appeal shall not be deemed perfected as set forth in Rule 1250.9 (a) of the Practice Rules of the Appellate Division, without proof that the undertaking has been filed with the Commissioner of Labor.

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