

# Supreme Court of the State of New York Appellate Division: Second Judicial Department



## **R u l e s o f P r o c e d u r e** **22 NYCRR Part 670**

Effective May 1, 1990

As amended June 18, 1990, effective May 25, 1990;

September 26, 1990, effective immediately;

February 11, 1991, effective immediately;

August 27, 1991, effective immediately;

May 6, 1992, effective immediately;

September 24, 1992, effective immediately;

June 23, 1993, effective September 1, 1993;

October 20, 1994, effective immediately;

December 29, 1994, effective January 1, 1995;

February 27, 1995, effective immediately;

March 13, 1996, effective immediately;

August 16, 1996, effective immediately;

January 14, 1998, effective February 2, 1998;

February 11, 1998, effective March 1, 1998;

November 17, 1999, effective immediately;

December 12, 2001, effective immediately;

December 24, 2002, effective January 1, 2003;

February 27, 2003, effective immediately;

June 20, 2003; effective July 14, 2003;

October 22, 2003, effective January 1, 2004; and,

December 8, 2004, effective immediately.

**22 NYCRR Part 670**  
**Effective May 1, 1990**

**Amendment History:**

§ 670.21(a) amended June 18, 1990, effective May 25, 1990;

§ 670.12(e) enacted September 26, 1990, effective immediately;

§ 670.21(b)(6) amended February 11, 1991, effective immediately;

§§ 670.7(c)(1), 670.9, and 670.10(d)(1)(i) amended August 27, 1991, effective immediately;

§ 670.8(g) amended May 6, 1992, effective immediately;

§ 670.9(d)(vi) amended and (viii) enacted September 24, 1992, effective immediately;

Table of Contents amended; § 670.2(e) and (g) repealed and new § 670.2(a)(5), (e), and (g) enacted; § 670.3 repealed and new § 670.3 enacted; § 670.4 repealed and new § 670.4 enacted; § 670.7(c) repealed and new § 670.7(c) enacted; § 670.8(e) repealed and new § 670.8(e) enacted; § 670.8(g) amended; § 670.10 amended; 670.12 amended; § 670.18 amended; § 670.23 amended; Forms A, B, C, E, and F repealed and revised Forms A, B, C, and E adopted; June 23, 1993, effective September 1, 1993;

§ 670.12(f) enacted October 20, 1994, effective immediately;

§§ 670.1(a), and 670.6(b)(2) amended; § 670.2(g) repealed and new § 670.2(g) enacted; § 670.12(g) and (h) enacted; December 29, 1994, effective January 1, 1995;

§ 670.8(d)(2), and (f) amended; § 670.8(g) renumbered 670.8(h); new § 670.8(g) enacted; February 27, 1995, effective immediately;

§ 670.21(b)(5) amended March 13, 1996, effective immediately;

§ 670.21(a) amended August 16, 1996, effective immediately;

Table of Contents amended; § 670.2(a)(6) enacted; § 670.2(e) and (g) amended; § 670.3(c) amended; § 670.4(b) amended; captions of §§ 670.5, 670.8, and 670.18 amended; §§ 670.19, 670.20, 670.21, 670.22, and 670.23 renumbered to be §§ 670.20, 670.21, 670.22, 670.23 and 670.24, respectively; § 670.5(a) and (b) amended; § 670.6(a) amended; § 670.7(c)(1) amended; § 670.8(c) and (e) repealed and new § 670.8(c) and (e) enacted; § 670.8(d) and § 670.8(d)(1) and (2) amended; § 670.10(a)(5) renumbered § 670.10(a)(6) and new § 670.10(a)(5) enacted; § 670.10(d)(1), (d)(2)(i), (vi), and (viii)(A) amended; § 670.12(h) amended; § 670.14 amended; § 670.18(a) amended; new § 670.19 enacted; renumbered § 670.20(c) and (e) amended; text of renumbered § 670.21 denominated subdivision (b) and new renumbered § 670.21(a) enacted; January 14, 1998, effective February 2, 1998;

§ 670.2(h) and (i) enacted, February 11, 1998, effective March 1, 1998;

Table of Contents amended; captions of §§ 670.6 and 670.18 amended; § 670.2(j) enacted; § 670.6(e) enacted; § 670.8(h) amended; § 670.10(d)(4) and (d)(4)(ii) amended; § 670.18(a) amended; § 670.20(c) amended; November 17, 1999, effective immediately;

§ 670.12(g)(2) and (h) amended, December 12, 2001, effective immediately;

Table of Contents amended; new § 670.4(a) enacted, and former subdivisions (a) and (b) redesignated § 670.4(b)(1) and (2), respectively; § 670.8(d) repealed and new § 670.8(d) enacted; and § 670.9(d)(1)(vii) and (viii) amended and new § 670.9(d)(1)(ix) enacted; December 24, 2002, effective January 1, 2003;

§ 670.8(e), (f), and (g) amended, February 27, 2003, effective immediately;

§ 670.18(a) and § 670.22(a) amended, and § 670.22(b)(7) repealed, June 20, 2003, effective July 14, 2003;

Table of Contents amended; § 670.9(a), (b)(4), and (c) amended; § 670.10 repealed and new §§ 670.10.1, 670.10.2, and 670.10.3 enacted; § 670.11(b), § 670.12(c), § 670.19(a)(1) and (b), and § 670.20(f) amended, October 22, 2003, effective January 1, 2004; and,

§ 670.22(b)(2) and (3) amended, December 8, 2004, effective immediately.

**22 NYCRR PART 670**  
**PROCEDURE IN THE APPELLATE DIVISION**

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### **§ 670.1 Court Sessions.**

- (a) Unless otherwise ordered, the court will convene at 10 o'clock in the forenoon on Monday, Tuesday, Thursday, and Friday.
- (b) 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) When a cause is argued or submitted with four Justices present, it shall, whenever necessary, be deemed submitted also to any other duly qualified Justice unless objection is noted at the time of argument or submission.

### **§ 670.2 General Provisions and Definitions.**

- (a) Unless the context requires otherwise, as used in this part:
  - (1) The word cause includes an appeal, a special proceeding transferred to this court pursuant to CPLR 7804(g), a special proceeding initiated in this court, and an action submitted to this court pursuant to CPLR 3222 on a case containing the agreed statement of facts upon which the controversy depends.
  - (2) Any reference to the court means this court; any reference to a Justice means a Justice of this court; any reference to the clerk means the clerk of this court.
  - (3) Wherever reference is made to a judgment, order, or determination it shall also be deemed to include a sentence.
  - (4) The word perfection refers to the requirements for placing a cause on the court's calendar, e.g. the filing of a record and brief.
  - (5) The word consolidation refers to combining two or more causes arising out of the same action or proceeding in one record and one brief.
  - (6) The word concurrent, when used to describe appeals, is intended to 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. The term 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.
- (b) Unless the context requires otherwise, if a period of time prescribed by this Part for the performance of an act ends on a Saturday, Sunday, or holiday, the act will be deemed timely if performed before 5:00 P.M. on the next business day.
- (c) If a period of time prescribed by this Part is measured from the service of a record, brief, or other paper and service is by mail, five days shall be added to the prescribed period. If service is by overnight delivery, one day shall be added to the prescribed period.
- (d) All records on appeal, briefs, appendices, motions, affirmations, and other papers will be deemed filed in this court only as of the time they are actually received by the clerk and they shall be accompanied by proof of service upon all necessary parties pursuant to CPLR 2103.
- (e) An appellate division docket number will be assigned to every cause. All papers and correspondence thereafter filed shall prominently display the docket number or numbers in the

upper right hand corner of the first page opposite the title of the action or proceeding. In the event of concurrent and/or cross appeals from a judgment or order, all parties shall use the docket number first assigned to the appeal from that judgment or order.

(f) In any civil cause, and in any criminal cause where the defendant appears by retained counsel, the clerk will send to the party a copy of the decision on an appeal or a motion, if the party provides the clerk with a self-addressed, stamped envelope.

(g) If a cause or the underlying action or proceeding is wholly or partially settled or if any issues are wholly or partially rendered moot, or if any cause should not be calendared because of bankruptcy or death of a party, inability of counsel to appear, an order of rehabilitation, or for some other reason, the parties or their counsel shall immediately notify the court. Any attorney or party who, without good cause shown, fails to comply with the requirements of this subdivision shall be subject to the imposition of such costs and/or sanctions as the court may direct.

(h) Any attorney or party to a civil cause who, in the prosecution or defense thereof, engages in frivolous conduct as that term is defined in section 130-1.1(c) of this Title, shall be subject to the imposition of such costs and/or sanctions authorized by subpart 130-1 of this Title as the court may direct.

(i) The original of every paper submitted for filing in the office of the clerk of this 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 opposing parties and shall be filed in the office of the clerk whenever multiple copies of a paper are required to be served and filed by this Part.

(j) Pursuant to CPLR 5525(a), in all causes the petitioner or appellant may request that the court reporter or stenographer prepare only one copy of the transcript of the stenographic record of the proceedings. When the appendix method or original record method of prosecuting an appeal is being used, the copy prepared by the court reporter, or one of equal quality, shall be filed in the office of the clerk of the court in which the action or proceeding was commenced, prior to the issuance of a subpoena for the original papers as required by section 670.9(b)(1) or (d)(2) of this Part.

### **§ 670.3 Filing of Notice of Appeal, Request for Appellate Division Intervention, Order of Transfer.**

(a) Where an appeal is taken in a civil action or proceeding, the notice of appeal, or the order of the court of original instance granting permission to appeal, shall be filed by the appellant in the office in which the judgment or order of the court of original instance is filed. Two additional copies of the notice of appeal or order granting permission to appeal shall be filed by the appellant, to each of which shall be affixed a completed Request for Appellate Division Intervention - Civil (Form A), a copy of the order or judgment appealed from, and a copy of the opinion or decision, if any. In the event that the notice of appeal covers two or more judgments or orders, the appellant shall also complete and affix to each Form A an Additional Appeal Information form (Form B) describing the additional judgments or orders appealed from, and affix copies of the judgments or orders and the opinions or decisions upon which they were based, if any. Thereupon, the clerk of the court of original instance shall endorse the filing date upon such instruments and transmit the two additional copies to the clerk of this court.

- (b) Where an appeal is taken in a criminal action, the notice of appeal shall be filed by the appellant in duplicate in the office in which the judgment or order of the court of original instance is filed. Thereupon the clerk of the court of original instance shall endorse the filing date upon such instruments, shall execute a Request for Appellate Division Intervention - Criminal (Form D) and shall transmit it together with the duplicate notice of appeal to the clerk of this court.
- (c) In any case in which an order is made transferring a proceeding to this court, the petitioner shall file forthwith in the office of the clerk of this court two copies of such order, to each of which shall be affixed a copy of a Request for Appellate Division Intervention - Civil (Form A) and a copy of any opinion or decision by the transferring court.
- (d) A Request for Appellate Division Intervention - Attorney Matters (Form E) 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.
- (e) In all other actions or proceedings instituted in this court, and applications pursuant to CPLR 5704, a Request for Appellate Division Intervention - Civil (Form A) shall be filed.

#### **§ 670.4 Management of Causes.**

(a) *Active Management.*

- (1) The court may, in the exercise of discretion, direct that the prosecution of any cause or class of causes be actively managed.
- (2) The clerk shall issue a scheduling order or orders directing the parties to a cause assigned to the active management program 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, 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 670.5 of this Part.
- (4) No filing directed by a scheduling order shall be permitted after the time to do so has expired unless the order is amended in accordance with paragraph (3) of subdivision (a) of this section.
- (5) 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 seven days notice, why the cause should not be dismissed or such other sanction be imposed as the court may deem appropriate.

(b) *Civil Appeals Management Program.*

(1) The court, in those cases in which it deems it appropriate, will issue a notice directing the attorneys for the parties and/or the parties themselves to attend a pre-argument conference before a designated 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) Any attorney or party who, without good cause shown, fails to appear for a regularly scheduled pre-argument 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.

**§ 670.5 Motions and Proceedings Initiated in this Court – Generally.**

(a) Unless otherwise required by statute, rule, or order of the court or any Justice, every motion and every proceeding initiated in this court shall be made returnable at 9:30 A.M. on any Friday. Cross motions shall be made returnable on the same day as the original motion and shall be served and filed at least three days before the return date. Motions shall be on notice prescribed by CPLR 2214 and CPLR article 78 proceedings shall be on notice prescribed by CPLR 7804(c).

(b) All motions and proceedings initiated by notice of motion or notice of petition, shall be filed with the clerk at least one week before the return date. All papers in opposition shall be filed with the clerk before 4 P.M. of the business day preceding the return date. All papers in opposition to any motion or proceeding initiated in this court by an order to show cause shall be filed with the clerk on or before 9:30 A.M. of the return date, and shall be served by a method calculated to place the movant and other parties to the motion in receipt thereof on or before that time. The originals of all such papers shall be filed. On the return date the motion or proceeding will be deemed submitted to the court without oral argument. Counsel will not be required to attend and a note of issue need not be filed.

(c) Every notice, petition, or order to show cause instituting a motion or proceeding must state, *inter alia*:

(1) the nature of the motion or proceeding;

(2) the specific relief sought;

(3) the return date; and

(4) the names, addresses, and telephone numbers of the attorneys and counsel for all parties in support of and in opposition to the motion or proceeding.

(d) The papers in support of every motion or proceeding must contain a copy of:

(1) the order, judgment, or determination sought to be reviewed and the decision, if any; and

(2) the notice of appeal or other paper which first invoked the jurisdiction of this court.

(e) Except as hereinafter provided, when an order to show cause presented for signature makes provision for a temporary stay or other interim relief pending determination of the motion, or when an application is presented pursuant to CPLR 5704, the party seeking such relief must give reasonable notice to his or her adversary of the day and time when, and the location where, the order to show cause or CPLR 5704 application will be presented and the relief being requested. If notice has been given, the order to show cause or the application pursuant to CPLR 5704 must be accompanied by an affidavit or affirmation stating the time, place, by whom given, the manner of such notification, and to the extent known, the position taken by the opposing party. If notice has not been given, the affidavit or affirmation shall state whether the applicant has made an attempt to give notice and the reasons for the lack of success. If the applicant is unwilling to give notice, the affidavit or affirmation shall state the reasons for such unwillingness. An order to show cause providing for a temporary stay or other interim relief or an application pursuant to CPLR 5704 must be personally presented for signature by the party's attorney or by the party if such party is proceeding *pro se*.

(f) The clerk may reject papers or deem a motion or proceeding to be withdrawn or abandoned for the failure to comply with any of these rules.

#### **§ 670.6 Motions - Reargue; Resettle; Amend; Leave to Appeal; Admission Pro Hac Vice.**

(a) Motions to Reargue, Resettle, or Amend. Motions to reargue a cause or motion, or to resettle or amend a decision and order shall be made within 30 days after service of a copy of the decision and order determining the cause or motion, with notice of its entry, except that for good cause shown, the court may consider any such motion when made at a later date. The papers in support of every such motion shall concisely state the points claimed to have been overlooked or misapprehended by the court, with appropriate references to the particular portions of the record or briefs and with citation of the authorities relied upon. A copy of the order shall be attached.

(b) Motions for Leave to Appeal to Appellate Division

(1) Motions for leave to appeal to the Appellate Division pursuant to CPLR 5701 (c) and Family Court Act §1112 shall be addressed to the court and shall contain a copy of the order or judgment and the decision of the lower court.

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

(c) Motions for leave to appeal to the Court of Appeals shall set forth the questions of law to be reviewed by the Court of Appeals and, where appropriate, the proposed questions of law decisive of the correctness of this court's determination or of any separable portion within it. A copy of this court's order shall be attached.



(d) Motions for leave to appeal to the Court of Appeals pursuant to CPL 460.20 shall be made to any Justice who was a member of the panel which decided the matter. A copy of this court's order shall be attached.

(e) Motions for Admission Pro Hac Vice. An attorney and counselor-at-law or the equivalent may move for permission to appear pro hac vice with respect to a cause pending before this court pursuant to section 520.11(a)(1) of this Title. An affidavit in support of the motion shall state that the attorney and counselor-at-law is a member in good standing in all the jurisdictions in which he or she is admitted to practice and is associated with a member in good standing of the New York Bar, which member shall appear with him or her on the appeal or proceeding and shall be the person upon whom all papers in connection with the cause shall be served. Attached to the affidavit shall be a certificate of good standing from the bar of the state in which the attorney and counselor-at-law maintains his or her principal office for the practice of law.

#### **§ 670.7 Calendar; Preferences; Consolidation.**

(a) There shall be a general calendar for appeals. Appeals will be placed on the general calendar in the order perfected and, subject to the discretion of the court, will be heard in order.

(b) Preferences

(1) Any party to an appeal entitled by law to a preference in the hearing of the appeal may serve and file a demand for a preference which shall set forth the provision of law relied upon for such preference and good cause for such preference. If the demand is sustained by the court, the appeal shall be preferred.

(2) A preference under CPLR 5521 may be obtained upon good cause shown by a motion directed to the court on notice to the other parties to the appeal.

(c) Consolidation

(1) A party may consolidate appeals from civil orders and/or judgments arising out of the same action or proceeding provided that each appeal is perfected timely pursuant to section 670.8(e)(1) of this Part; and

(2) 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.

#### **§ 670.8 Placing Civil or Criminal Causes on Calendar; Time Limits for Filing.**

(a) Placing Cause on General Calendar. An appeal may be placed on the general calendar by filing with the clerk the record on appeal pursuant to one of the methods set forth in section 670.9 of this Part and by filing nine copies of a brief, with proof of service of two copies upon each of the other parties. Unless the court shall otherwise direct, when an appeal is prosecuted upon the original record, only one copy of the brief need be served. An extra copy of the statement required by CPLR 5531 shall be filed together with the record or appendix. If an appeal is taken on the original record, the extra copy of the statement shall be filed with the appellant's brief.

(b) **Answering and Reply Briefs.** Not more than 30 days after service of the appellant's brief, each respondent or opposing party shall file nine copies of the answering brief with proof of service of two copies upon each of the other parties. Not more than 10 days after service of respondent's brief, the appellant may file nine copies of a reply brief with proof of service of two copies upon each of the other parties. If one copy of the appellant's brief was served, only one copy of answering and reply briefs need be served.

(c) **Concurrent and Cross Appeals**

(1) Unless otherwise ordered by the court, all parties appealing from the same order or judgment shall consult and thereafter file a joint record or joint appendix which shall include copies of all notices of appeal. The cost of the joint record or the joint appendix, and the transcript, if any, shall be borne equally by the appealing parties.

(2) The joint record or joint appendix and the briefs of concurrent appellants shall be served and filed together. The time to do so in accordance with subdivision (e) of this rule shall be measured from the latest date on the several concurrent notices of appeal.

(3) The answering brief on a cross appeal shall be served and filed not more than 30 days after service of the appellant's brief or briefs and the joint record or joint appendix, and it shall include the points of argument on the cross appeal. An appellant's reply brief may be served and filed not more than 30 days after service of the answering brief. A cross appellant's reply brief may be served and filed not more than 10 days after service of the appellant's reply brief.

(d) **Enlargements of Time.** Except where a scheduling order has been issued pursuant to section 670.4(a)(2) of this Part or where the court has directed that a cause be perfected or that a brief be served and filed by a date certain, an enlargement of time to perfect or to serve and file a brief may be obtained as follows:

(1) **By Stipulation.** The parties may stipulate to enlarge the time to perfect a cause by up to 60 days, to file an answering brief by up to 30 days, and to file a reply brief by up to 10 days. Not more than one such stipulation per perfection or filing shall be permitted. Such a stipulation shall not be effective unless so ordered by the clerk.

(2) **For Cause.** Where a party shall establish a reasonable ground why there cannot or could not be compliance with the time limits prescribed by this section, or such time limits as extended by stipulation pursuant to paragraph (1) of this subdivision, the clerk or a Justice may grant reasonable enlargements of time to comply. An application pursuant to this paragraph shall be made by letter, addressed to the clerk, with a copy to the other parties to the cause. Orders made pursuant to this paragraph shall be reviewable by motion to the court on notice pursuant to section 670.5 of this Part.

(e) Notwithstanding any of the provisions of this Part, a civil appeal, action, or proceeding shall be deemed abandoned unless perfected

(1) within six months after the date of the notice of appeal, order granting leave to appeal, or order transferring the proceeding to this court, or,

(2) within six months of the filing of the submission with the county clerk in an action on submitted facts pursuant to CPLR 3222,

unless the time to perfect shall have been extended pursuant to subdivision (d) of this section. The clerk shall not accept any record or brief for filing after the expiration of such six-month period or such period as extended.

(f) Notwithstanding any of the provisions of this Part, an unperfected criminal appeal by a defendant shall be deemed abandoned in all cases where no application has been made by the defendant for the assignment of counsel to prosecute the appeal within nine months of the date of the notice of appeal unless the time to perfect shall have been extended pursuant to subdivision (d) of this section.

(g) Notwithstanding any of the provisions of this Part, an appeal by the People pursuant to CPL 450.20(1), (1-a) or (8) shall be deemed abandoned unless perfected within three months after the date of the notice of appeal unless the time to perfect shall have been extended pursuant to subdivision (d) of this section. All other appeals by the People shall be deemed abandoned unless perfected within six months after the date of the notice of appeal unless the time to perfect shall have been extended pursuant to subdivision (d) of this section.

(h) The clerk shall periodically prepare a calendar of all civil causes which have been ordered to be perfected by a date certain and which have not been perfected and a calendar of all civil causes which have been assigned an appellate division docket number and have not been perfected within the time limitations set forth in subdivision (e) of this section. Such calendars shall be published in the New York Law Journal for five consecutive days. Upon the failure of the appellant to make an application to enlarge time to perfect within 10 days following the last day of publication, an order shall be entered dismissing the cause.

#### **§ 670.9 Alternate Methods of Prosecuting Appeals.**

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

(a) **Reproduced Full Record.** If the appellant elects to proceed on a reproduced full record on appeal as authorized by CPLR 5528(a)(5), the record shall be printed or otherwise reproduced as provided in sections 670.10.1 and 670.10.2 of this Part. Nine copies of the record, one of which shall be marked "original", duly certified as provided in section 670.10.2(f), shall be filed with proof of service of two copies upon each of the other parties.

(b) **Appendix Method.**

(1) If the appellant elects to proceed by the appendix method, the appellant shall subpoena from the clerk of the court from which the appeal is taken all the papers constituting the record on appeal and cause them to be filed with the clerk of this court prior to the filing of the appendix.

(2) The clerk from whom the papers are subpoenaed shall compile the original papers constituting the record on appeal and transmit them to the clerk of this 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.

(3) If a settled transcript of the stenographic minutes, or an approved statement in lieu of such transcript, or any relevant exhibit is not included in the papers so filed with the clerk of this court, the appellant shall cause such transcript, statement, or exhibit to be filed together with the brief.

(4) The appendix shall be printed or otherwise reproduced as provided in sections 670.10.1 and 670.10.2 and may be bound with the brief or separately. Nine copies of the appendix, one of which shall be marked "original", duly certified as provided in section 670.10.2(f) shall be filed with proof of service of two copies upon each of the other parties.

(c) **Agreed Statement in Lieu of Record Method.** If the appellant elects to proceed by the agreed statement method in lieu of record (CPLR 5527), the statement shall be reproduced as provided in sections 670.10.1 and 670.10.2 as a joint appendix. The statement required by CPLR 5531 shall be appended. Nine copies of the statement shall be filed with proof of service of two copies upon each of the other parties.

(d) **Original Record**

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

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

(2) When an appeal is prosecuted upon the original record the appellant shall subpoena from the clerk of the court from which the appeal is taken all the papers constituting the record on appeal and cause them to be filed with the clerk of this court prior to the filing of the briefs.

### **§ 670.10.1 Form and Content of Records, Appendices, and Briefs—Generally.**

(a) *Compliance with Civil Practice Law and Rules.* Briefs, appendices and to the extent practicable, 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. To the extent practicable, reproduction on both sides of the paper is encouraged.

(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 proceedings and actions originating in this court, 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 in the upper right-hand portion opposite the title.

(f) *Rejection of Papers.* The clerk may refuse to accept for filing any paper that does not comply with these rules, is not legible, or is otherwise unsuitable.

#### **§ 670.10.2 Form and Content of Records and Appendices.**

(a) *Format.* Records and appendices shall contain accurate reproductions of the papers submitted to the court of original instance, formatted in accordance with the practice in that court, except as otherwise provided in subdivision (d) of this section. 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 contain the items set forth in CPLR 5526, and shall contain in the following order so much of the following items as shall be applicable to the particular cause:

(1) A cover which shall contain the title of the action or proceeding on the upper portion and, on the lower portion, the names, addresses, and telephone numbers of the attorneys, the county clerk's index or file number, and the indictment number;

(2) The statement required by CPLR 5531;

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

the complaint or to direct or set aside a verdict or where an oral decision of the court appears;

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

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

(6) A stipulation or order dispensing with reproducing exhibits.

(i) Exhibits which are relevant to a cause may be omitted upon a stipulation of the parties which shall contain a list of the exhibits omitted and a brief description of each exhibit or, if a party unreasonably refuses to so stipulate, upon motion directed to the court. Exhibits thus omitted, unless of a bulky or dangerous nature, shall be filed with the clerk at the same time that the appellant's brief is filed. Exhibits of a bulky or dangerous nature (cartons, file drawers, ledgers, machinery, narcotics, weapons, etc.) thus omitted need not be filed but shall be kept in readiness and delivered to the court on telephone notice. A letter, indicating that a copy has been sent to the adversary, listing such exhibits and stating that they will be available on telephone notice, shall be filed with the clerk at the same time that the appellant's brief is filed.

(ii) Exhibits which are not relevant to a cause may be omitted upon stipulation of the parties which shall contain a list of the exhibits omitted, a brief description of each exhibit, and a statement that the exhibits will not be relied upon or cited in the briefs of the parties. If a party unreasonably refuses to so stipulate, a motion to omit the exhibits may be directed to the court. Such exhibits need not be filed; and

(7) The appropriate certification or stipulation pursuant to subdivision (f) of this section.

(c) *Appendix.*

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

- (i) notice of appeal or order of transfer;
- (ii) judgment, decree, or order appealed from;
- (iii) decision and opinion of the court or agency, and report of a referee, if any;
- (iv) pleadings, if their sufficiency, content or form is in issue or material; in a criminal case, the indictment, or superior court information;
- (v) material excerpts from transcripts of testimony or from papers in connection with a motion. Such excerpts must contain all the testimony or averments upon which the appellant relies and upon which it may be

reasonably assumed the respondent will rely. Such excerpts must not be misleading or unintelligible by reason of incompleteness or lack of surrounding context;

- (vi) copies of critical exhibits, including photographs, to the extent practicable; and
- (vii) The appropriate certification or stipulation pursuant to subdivision (f) of this section.

(2) If bound separately from the brief, the appendix shall have a cover complying with subdivision (b)(1) of this section and shall contain the statement required by CPLR 5531 and a table of contents.

(d) *Condensed Format of Transcripts Prohibited.* No record or appendix may contain a transcript of testimony given at a trial, hearing, or deposition that is reproduced in condensed format such that two or more pages of transcript in standard format appear on one page.

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

(f) *Certification of Record.* A reproduced full record or 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. The reproduced copy containing the signed certification or stipulation shall be marked "Original."

### **§ 670.10.3 Form and Content of Briefs.**

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

(1) *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.

(2) *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.

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

(b) *Typewritten briefs.* Typewritten briefs shall be neatly prepared in clear type of no less than elite in size and in a pitch of no more than 12 characters per inch. The ribbon typescript of the brief shall be signed and filed as one of the number of copies required by section 670.8 of

this Part. Typewritten appellants' and respondents' briefs shall not exceed 70 pages and reply briefs and amicus curiae briefs shall not exceed 35 pages, exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc.

(c) *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 in the center of the bottom margin of each page.

(d) *Handwritten briefs.* Pro se litigants may serve and file handwritten briefs. Such briefs shall be neatly prepared in cursive script or hand printing in black ink. Pages shall be numbered consecutively in the center of the bottom margin of each page. The submission of handwritten briefs is not encouraged. If illegible or unreasonably long, handwritten briefs may be rejected for filing by the clerk.

(e) *Application for permission 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, including a certificate if required by subdivision (f) hereof to the effect that the brief is in all other respects compliant with this section. The determination of the clerk may be reviewed by motion to the court on notice in accordance with section 670.5 of this Part.

(f) *Certification of compliance.* Every brief, except those that are handwritten, shall have at the end thereof a certificate of compliance with this rule, stating that the brief was prepared either on a typewriter, a computer, or by some other specified means. If the brief was typewritten, the certificate shall further specify the size and pitch of the type and the line spacing used. If the brief was prepared on a computer, the certificate shall further specify the name of the typeface, point size, line spacing, and word count. A party preparing the certificate 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 certificate of compliance.

(g) *Content of Briefs.*

(1) *Cover.* The cover shall set forth the title of the action or proceeding. The upper right hand section shall contain a notation stating: whether the cause is to be argued or submitted; if it is to be argued, the time actually required for the argument; and the name of the attorney who will argue (see § 670.20). The lower right hand section shall contain the name, address, and telephone number of the attorney filing the brief and shall indicate whom the attorney represents.

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

- (i) the statement required by CPLR 553l;
- (ii) a table of contents including the titles of the points urged in the brief;
- (iii) a concise statement of the questions involved without names, dates, amounts, or particulars. Each question shall be numbered, set forth



separately, and followed immediately by the answer, if any, of the court from which the appeal is taken;

- (iv) a concise statement of the nature of the action or proceeding and of the facts which should be known to determine the questions involved, with supporting references to pages in the record or the appendix, including, if such be the case, a statement that proceedings on the judgment or order appealed from have been stayed pending a determination of the appeal;
  - (v) the appellant's argument, which shall be divided into points by appropriate headings distinctively printed;
  - (vi) if a civil cause is perfected on the original papers, the brief shall include either a copy of the order or judgment appealed from, the decision, if any, and the notice of appeal, or a copy of any order transferring the proceeding to this court;
  - (vii) if the appeal is from an order involving pendente lite relief in a matrimonial action, the brief shall state whether issue has been joined and, if so, the date of joinder of issue, and whether the case has been noticed for trial;
  - (viii) in criminal causes, the appellant's brief at the beginning shall also set forth
    - (A) 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
    - (B) whether there were co-defendants in the trial court, the disposition with respect to such co-defendants, and the status of any appeals by such co-defendants; and
  - (ix) a certificate of compliance, if required by subdivision (f) of this section.
- (3) *Respondent's Brief.* The respondent's brief shall contain, in the following order:
- (i) a table of contents including the titles of points urged in the brief;
  - (ii) a counterstatement of the questions involved or of the nature and facts of the action or proceeding, if the respondent disagrees with the statement of the appellant;
  - (iii) the argument for the respondent, which shall be divided into points by appropriate headings distinctively printed; and
  - (iv) a certificate of compliance, if required by subdivision (f) of this section.
- (4) *Appellant's Reply Brief.* The appellant's reply brief, unless otherwise ordered by the court, shall not contain an appendix, but shall contain, in the following order:
- (i) a table of contents;
  - (ii) the reply for the appellant to the points raised by the respondent, without repetition of the arguments contained in the main brief, which shall be divided into points by appropriate headings distinctively printed; and

- (iii) a certificate of compliance, if required by subdivision (f) of this section.
- (h) *Addenda to Briefs.*
  - (1) Briefs may contain an addendum composed 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.
  - (2) Unless otherwise authorized by order of the court, briefs may not contain maps, photographs, or other addenda.
- (i) *Constitutionality of State Statute.* Where the constitutionality of a statute of the State is involved in an appeal in which the State is not a party, the party raising the issue shall serve a copy of the brief upon the Attorney General of the State of New York who will be permitted to intervene in the appeal.

#### **§ 670.11 *Amicus Curiae* Briefs.**

- (a) Permission to file an *amicus curiae* brief shall be obtained by persons who are not parties to the action or proceeding by motion on notice to each of the parties.
- (b) Unless otherwise ordered by the court, oral argument is not permitted.

#### **§ 670.12 Appeals in Criminal Actions**

- (a) Except as otherwise provided herein, an appeal in a criminal action shall be prosecuted in the same manner as a civil appeal.
- (b) Application for Certificate Granting Leave to Appeal
  - (1) An application pursuant to CPL 450.15 and CPL 460.15 for leave to appeal to this court from an order shall be made in writing within 30 days after service of the order upon the applicant, on 15 days notice to the district attorney, or other prosecutor, as the case may be.
  - (2) The application shall be addressed to the court for assignment to a Justice and shall include:
    - (i) the name and address of the applicant and the name and address of the district attorney or other prosecutor, as the case may be;
    - (ii) the indictment, or superior court information number;
    - (iii) the questions of law or fact which it is claimed ought to be reviewed;
    - (iv) any other information, data, or matter which the applicant may deem pertinent in support of the application;
    - (v) a statement that no prior application for such certificate has been made; and
    - (vi) a copy of the order sought to be reviewed and a copy of the decision of the court of original instance or a statement that there was no decision.

- (3) Within 15 days after service of a copy of the application the district attorney or other prosecutor shall file answering papers or a statement that there is no opposition to the application. Such answering papers shall include a discussion of the merits of the application or shall state, if such be the case, that the application does not contain any allegations other than those alleged in the papers submitted by the applicant in the trial court and that the prosecutor relies on the record; the answering papers in the trial court; and the decision of such court, if any.
  - (4) Unless the Justice designated to determine the application shall otherwise direct, the matter shall be submitted and determined upon the foregoing papers and without oral argument.
- (c) 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 670.10.3(g)(2)(viii) of this Part 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 670.5 of this Part 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 transcripts of sentence and the transcripts of the underlying plea or trial. The parties shall file an original and four copies of their respective papers, including the necessary transcripts.
- (d) When an appeal in a criminal action 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.
- (e) Appeals by the People pursuant to CPL 450.20 (1-a) shall be granted a preference upon the request of either the appellant or the respondent. The appellant's brief shall include an appendix containing a copy of the indictment, the order appealed from and the decision. The respondent's brief may also include an appendix, if necessary. The appellant shall file, separate from the record, one copy of the grand jury minutes (see Rules of the Chief Administrator of the Courts, Part 105).
- (f) Appeals to the Court of Appeals. 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.
- (g) In the event the defendant is represented by counsel the following shall be filed together with the brief filed on behalf of the defendant:
- (1) Proof of mailing of a copy of the brief to the defendant at his or her last known address; and
  - (2) Where a brief pursuant to *Anders v California* (386 US 738) has been filed, 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 this court no later than 30 days after the date of mailing of counsel's letter of the intention to do so.

(h) A defendant represented by counsel who has not submitted a brief pursuant to *Anders v California* (386 US 738) who wishes to file a *pro se* supplemental brief, must make an application for permission to do so not later than 30 days after the date of mailing to the defendant of a copy of the brief prepared by counsel. The affidavit in support of the motion shall briefly set forth the points that the appellant intends to raise in the supplemental brief.

#### **§ 670.13 Appeals from the Appellate Term.**

(a) Appeals from the Appellate Term of the Supreme Court to this court may be prosecuted upon the record as presented to the Appellate Term; its order; its opinion or decision; and the order granting leave to appeal.

(b) When this court has made an order granting leave to appeal, the appellant shall file with the clerk of the Appellate Term a copy of the order. Within 20 days after an order granting leave to appeal shall have been filed with the clerk of the Appellate Term, such clerk or the appellant shall cause the record to be filed with the clerk of this court. Thereafter the appeal may be brought on for argument by the filing of briefs in the same manner as any other cause.

#### **§ 670.14 Appeals from Orders Concerning Grand Jury Reports.**

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. Appeals from such orders shall be preferred causes and may be added to the calendar by stipulation approved by the court or upon motion directed to the court. The record, briefs, and other papers on such an appeal shall be sealed and not available for public inspection except as permitted by CPL 190.85(3).

#### **§ 670.15 Appeals where the Sole Issue is Compensation of a Judicial Appointee.**

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, appraiser, or person designated to accept service), the appeal may be prosecuted in accordance with any of the methods specified in section 670.9 of this Part; or the appeal may be prosecuted by motion in accordance with the procedure applicable to special proceedings as set forth in section 670.5 of this Part. In such event, the review may be had on the original record and briefs may be filed at the option of any party.

#### **§ 670.16 Transferred CPLR Article 78 Proceedings.**

CPLR article 78 proceedings transferred to this court pursuant to CPLR 7804(g) may be prosecuted in accordance with any of the methods specified in section 670.9 of this Part. Where applicable, every such proceeding shall be governed by this Part as if it were an appeal.

**§ 670.17 Transferred Proceedings under the Human Rights Law (Executive Law § 298).**

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

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

(b) In all other respects every proceeding so transferred shall be governed by this Part as if it were an appeal.

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

**§ 670.18 Special Proceedings pursuant to Eminent Domain Procedure Law § 207; Public Service Law §§ 128, 170; Labor Law § 220; Public Officers Law § 36; or Real Property Tax Law § 1218.**

(a) Special proceedings initiated in this court pursuant to Eminent Domain Procedure Law § 207, Public Service Law §§ 128, or 170, Labor Law § 220, Public Officers Law § 36, or Real Property Tax Law § 1218 shall be commenced by the filing of a petition in the office of the clerk of this court pursuant to CPLR 304. Service of the petition with a notice of petition or order to show cause shall be made in accordance with CPLR 306-b on at least 20 days notice to the respondent. In proceedings pursuant to sections 207, 128, or 170 such notice shall be accompanied by a demand upon the respondent to file a copy of the transcript of the hearing before it and a copy of its determinations and findings.

(b) The respondent shall file an answer to the petition and, in proceedings pursuant to sections 207, 128, or 170, the transcript of the hearing and the determination and findings.

(c) Within three months after service of the answer, the petitioner shall file nine copies of a brief, with proof of service of one copy upon the respondent. Not more than 30 days after service of petitioner's brief, the respondent shall file nine copies of an answering brief, with proof of service of one copy upon the petitioner. Not more than 10 days after service of the respondent's brief the petitioner may file a reply brief.

(d) The proceeding will be heard upon the original record which shall contain:

- (1) the notice of petition and petition;
- (2) if applicable, the demand for the transcript, determination, and findings;
- (3) the original record before the respondent including a copy of the transcript of the hearing, if any; and
- (4) the determination and findings of the respondent.

(e) In all other respects such a proceeding shall be governed by this Part as if it were an appeal.

### **§ 670.19 Action on Submitted Facts.**

(a) An action submitted to this court pursuant to CPLR 3222 shall be prosecuted on a printed submission which shall be bound separately from the brief and shall contain in the following order:

- (1) a cover complying with subdivision (b)(1) of section 670.10.2 of this Part;
- (2) the statement required by CPLR 5531;
- (3) the case required by CPLR 3222(a), duly executed and acknowledged by all the parties in the form required to entitle a deed to be recorded, containing:
  - (i) the agreed statement of facts upon which the controversy depends;
  - (ii) a statement that the controversy is real and is made in good faith for the purpose of determining the rights of the parties;
  - (iii) a provision designating the particular county clerk of one of the counties within the Second Judicial Department with whom the papers are to be filed; and,
  - (iv) a provision in conformity with CPLR 3222(b)(3) stipulating that the action be heard and determined by this court; and,
- (4) proof of filing of the papers comprising the submission with the designated county clerk.

(b) Where applicable, every such action shall be governed by this Part as if it were an appeal. The submission and the briefs of the respective parties shall be served and filed in accordance with section 670.8 of this Part and the form of the briefs shall be governed by section 670.10.3 of this Part.

### **§ 670.20 Oral Argument.**

(a) Not more than 30 minutes shall be allowed for argument to each attorney who has filed a brief on:

- (1) appeals from judgments, orders, or decrees made after a trial or hearing;
- (2) appeals from orders of the Appellate Term; and
- (3) special proceedings transferred to or instituted in this court to review administrative determinations made after a hearing.

(b) Not more than 15 minutes shall be allowed for argument to each attorney who has filed a brief on all other causes except as set forth in subdivision (c).

(c) 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. Applications for permission to argue such issues shall be made at the call of the calendar on the day the cause appears on the calendar. Notice of intention to make such an application shall be given to the court and the other parties at least seven days before the cause appears on the calendar.

(d) The court, in its discretion, may deny oral argument of any cause.

(e) Where the total time requested for argument by the attorneys on each side exceeds 30 minutes on appeals under subdivision (a) of this section or 15 minutes on appeals under subdivision (b) of this section, the court may, in its discretion, reduce the argument time requested. Not more than one attorney will be heard for each brief unless, upon application made before the beginning of the argument, the court shall have granted permission to allow more than one attorney to argue. A party who has not filed a brief may not argue.

(f) 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 (see 670.10.3[g][1]) the cause will be deemed to have been submitted without oral argument by that party.

(g) If any party shall have filed the main brief late and such late brief be accepted, the court or any Justice may deem that the party has waived oral argument and has submitted the cause without argument.

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

(i) No briefs, letters, or other communications in connection with a cause will be accepted after the argument or submission of a cause unless permission is granted by the court.

#### **§ 670.21 Decisions and Orders; Costs.**

(a) An order or judgment of this court determining a cause or an order of this court determining a motion shall be drafted by the court and shall be entered in the office of the clerk of this court. Such an order or judgment shall be deemed entered on the date upon which it was issued.

(b) Costs and disbursements upon any cause or motion shall be allowed only as directed by the court. In the absence of a contrary direction, the award by this court of costs upon any cause shall be deemed to include disbursements.

#### **§ 670.22 Fees of the Clerk of the Court.**

(a) Pursuant to CPLR 8022, the clerk is directed to charge and is entitled to receive on behalf of the State:

(1) A fee of \$315, payable 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.

- (2) A fee of \$45, payable upon the filing of each motion or cross motion with respect to a civil appeal or special proceeding, except that no fee shall be imposed for a motion or cross motion which seeks leave to appeal as a poor person pursuant to CPLR 1101(a).
- (b) Pursuant to Judiciary Law § 265, the clerk is directed to charge and is entitled to receive in advance the following fees on behalf of the State:
- (1) For making a photocopy 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, \$5.
- (c) The clerk shall not, however, charge or receive any fees set forth in subdivision (b) of this section from the following parties who shall be exempt from the payment of such fees in this court.
- (1) The United States or any state, city or county, or any political subdivision or agency or department of any of them;
  - (2) any judge, court, official character committee or board of examiners, or any recognized agency serving the court or such committee or board;
  - (3) any duly recognized bar association;
  - (4) any party specifically exempt by law from the payment of fees; and
  - (5) any party to the cause for furnishing a copy of an opinion or order.

### **§ 670.23 Court's Waiver of Compliance.**

In any civil or criminal cause, the court, either upon its own or upon any party's motion and either with or without notice to the adverse parties, may waive compliance by any party with any provision of this Part or may vary the application of any such provision.

### **§ 670.24 Forms.**

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