



*State of New York  
Court of Appeals*

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Albany, New York 12207-1095*

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### **Notice to the Bar**

Following review of the public comments submitted upon its proposed new Rules of Practice, the Court of Appeals has rescinded in its entirety 22 NYCRR part 500 and approved a new Part 500, entitled The Rules of Practice of the Court of Appeals. The new 22 NYCRR part 500 will be effective September 1, 2005.

The Rules of Practice of the Court of Appeals apply to civil and noncapital criminal appeals, motions, criminal leave applications and certified questions from the Supreme Court of the United States, United States Courts of Appeal and state courts of last resort. In addition to substantive changes and additions, the new Rules are organized into broad categories to eliminate duplication and provide a more logical sequence. Rules 500.1 through 500.8 set out requirements applicable to all filings under these Rules. Rules 500.9 through 500.19 relate to civil and noncapital criminal appeals. Rule 500.20 contains procedures concerning criminal leave applications. Motions are addressed in Rules 500.21 through 500.24. Orders to show cause, the Primary Election Session and certified questions are addressed in Rules 500.25, 500.26 and 500.27, respectively.

Changes of note include: substitution of a Court-promulgated preliminary appeal statement for the jurisdictional statement previously required for appeals (see Rule 500.9); use of scheduling letters to set due dates for appeal papers (see Rule 500.12[a]) and elimination of the automatic 20-day extension for filing dates for appeals; reduction of the time period from 80 days to 60 days for perfecting appeals, unless an extension is granted (see Rule 500.16[a]); and set filing dates for all applications for amicus curiae relief (see Rule 500.23). The number of copies to be filed on appeals and motions for leave to appeal in civil cases also has been changed.

Questions about the new Rules of Practice of the Court of Appeals and the Preliminary Appeal Statement, which are attached, may be directed to the Clerk's Office at 518-455-7700.

Stuart M. Cohen  
Clerk

**Commentary on The Rules of Practice  
of the Court of Appeals  
22 NYCRR part 500, Effective September 1, 2005**

**A. Structure**

The Rules of Practice of the Court of Appeals apply to civil and noncapital criminal appeals, motions, criminal leave applications and certified questions from the Supreme Court of the United States, United States courts of appeal and state courts of last resort.

The Court of Appeals recently rescinded in its entirety 22 NYCRR part 500 and approved a new part 500 which will be effective September 1, 2005. In addition to reflecting substantive changes and additions to the old Rules of Practice, the new Rules are organized into broad categories to eliminate duplication and provide a more logical sequence. New Rules 500.1 through 500.8 set out requirements applicable to all filings under these Rules. New Rules 500.9 through 500.19 relate to civil and noncapital criminal appeals. New Rule 500.20 contains procedures concerning criminal leave applications. Motions are addressed in new Rules 500.21 through 500.24. Orders to show cause, the Primary Election Session and certified questions are addressed in new Rules 500.25, 500.26 and 500.27, respectively. Finally, old Rule 500.13, relating to real property actions, was deleted as unnecessary.

## **B. General Requirements**

### **500.1 General Requirements [Old Rule 500.1]**

New Rule 500.1 states the general requirements for papers submitted to the Court of Appeals. The Rule generally applies to “papers filed,” which is defined in section 500.1(b) as all briefs, papers filed pursuant to sections 500.10 (Examination of Subject Matter Jurisdiction) and 500.11 (Alternative Procedure for Selected Appeals), motion papers and appendices. The typeface and font requirements match those recently adopted by the Appellate Division Departments following repeal of the portion of CPLR 5529 that set out specifications for such matters.

New Rule 500.1(h) informs self-represented litigants that illegible papers will not be accepted.

New Rule 500.1(i) discourages litigants, especially those self-represented, from sending ex parte communications relating to an appeal or motion directly to a Judge or Judges and clarifies that any submission filed with the Court must be served on all parties.

New Rule 500.1(j) states the procedure to be followed by all, including self-represented, litigants for requesting an acknowledgment of receipt of filings.

New Rule 500.1(k) restates old section 500.11(h).

### **500.2 Companion Filings on Compact Disk, Read Only Memory (CD-ROM) [Old Rule 500.1(b)]**

This section basically tracks the procedure contained in old Rule 500.1(b), but

clarifies that the CD-ROM filing shall be identical to the printed version, in content and format, shall be word-searchable and shall contain hyperlinks to the text of cited authorities and all record materials. To accommodate litigants desiring to jointly file their briefs, records and appendices on one CD-ROM, new Rule 500.2(e) designates "10 days after the final due date for filing appellant's reply brief" as the latest date for such filing.

#### **500.3 Fees [Old Rule 500.14]**

By order dated June 25, 2003, the Court promulgated old Rule 500.14 to reflect amendments to CPLR 8022, which increased the filing fee on civil appeals to \$315 and instituted a filing fee of \$45 for civil motions. New Rule 500.3 is essentially a restatement of the old Rule.

#### **500.4 Pro Hac Vice Admission [New Rule]**

The old Rules did not contain any information about admission of out-of-state attorneys seeking to appear on particular matters pending in this Court. This Rule tracks current practice.

#### **500.5 Sealed Documents [New Rule]**

The old Rules did not address the procedure for sealing documents in the Court of Appeals. This Rule sets out current practice and requires that sealed documents be reproduced in separate volumes of the record on appeal.

**500.6 Developments Affecting Appeals, Certified Questions, Motions and Criminal Leave Applications [New Rule]**

This new Rule identifies those post-submission written communications that may be submitted to the Court without prior permission, and is a companion to new Rule 500.7.

**500.7 Post-Briefing, Post-Submission and Post-Argument Communications [Old Rule 500.12]**

The new Rule restates old Rule 500.12, and is expanded to include reference to new Rule 500.6.

**500.8 Withdrawal of Appeal, Motion or Criminal Leave Application [Old Rule 500.16]**

This new Rule generally restates old Rule 500.16, treating procedures for withdrawal of appeals and motions, now separated into subsections (a) and (b) for clarity. The current procedure for withdrawing a criminal leave application is stated for the first time in subsection (c).

**C. Appeals**

The new Rules governing appeals differ from the old Rules in several major respects. First, new Rule 500.9 requires appellant to file a preliminary appeal statement form, instead of the 500.2 jurisdictional statement previously required. In addition, new Rule 500.12 increases from 20 to 25 the number of copies of briefs and record material

filed on normal course appeals.

Given the currency of the Court’s calendar, the Clerk’s office now sets filing dates in most cases for briefs and record material, superceding the automatic filing dates the old Rules prescribed. New Rule 500.12(a) describes that, generally, the Clerk’s office will issue a scheduling letter setting filing dates for record material and briefs. When the Clerk’s office does not issue a scheduling letter, new Rule 500.12 provides that appellant’s papers shall be served and filed within 60 days after the appeal is taken, respondent’s papers shall be served and filed within 45 days after service of appellant’s papers, and reply briefs shall be served and filed within 15 days after service of respondent’s brief. This schedule closely follows the filing dates in the old Rules (see old Rules 500.5[a], 500.7[a][1], 500.9[b], 500.9[c]).

The new Rules also eliminate the automatic 20-day extension for filing all but reply briefs (see old Rule 500.9). In recent years, the automatic extension provision had not applied to most appeals. With the elimination of the automatic extension, an extension request will be determined with regard to the particular circumstances of the case. New Rule 500.15 permits the Clerk’s office to grant reasonable extensions of time for “good cause shown.”

The Clerk’s office previously entertained extension requests only within 20 days before the final due date, to ensure that parties did not request extensions not actually needed. Similarly, new Rule 500.15 specifies that a “request for an initial extension shall be made no earlier than 20 days before the filing deadline set by the Clerk’s office or otherwise prescribed by these Rules” (see new Rule 500.15).

The new Rules also change the time period applicable to the dismissal of certain

appeals. The old Rules required that all normal course appeals be perfected within 80 days from the date the appeal was taken, unless an extension was granted. Thus, under the old Rules, where the Court had “no notice from any source of a pending appeal and 80 days pass from the date it was taken,” and the appellant failed to comply with the Rules governing appeals, the appeal was dismissed by operation of old Rule 500.9(a) after the Court learned that an appeal was filed. Under new Rule 500.16(a) an appeal will be dismissed if unperfected by the date set forth in a scheduling letter or, if no scheduling letter is issued, within 60 days from the date the appeal was taken, unless an extension was granted (see new Rule 500.12[a], [b]).

New Rules 500.10 and 500.11 change certain aspects, including the titles, of two types of review previously conducted pursuant to Rules 500.3 and 500.4.

New Rule 500.23 sets filing dates for all applications for amicus relief, and subsection (a)(2) clarifies the way amicus curiae relief can be sought on appeals reviewed under the new Rule 500.11 alternative procedure.

New Rule 500.18(a) states that the Court may assign a party any time it deems appropriate for oral argument, or may direct that any party or all parties submit the appeal without oral argument.

### **500.9 Appellant’s Preliminary Appeal Statement [Old Rule 500.2]**

This Rule replaces old Rule 500.2, which required the filing of a jurisdictional statement within 10 days after “taking” the appeal and set out in detail the contents of the document. The new Rule changes “jurisdictional statement” to “preliminary appeal statement,” states more clearly the time period for filing, and refers appellant to a Court

form promulgated for this purpose. The associated form prompts appellant to provide specific information the Clerk's office requires for initial management of the appeal. Timeliness of the appeal is one matter of specific inquiry on the form.

#### **500.10 Examination of Subject Matter Jurisdiction [Old Rule 500.3]**

This new Rule tracks old Rule 500.3, but explains the actual procedure in more detail, specifying that the Clerk's office will notify the parties of its jurisdictional inquiry and will identify, without preclusive effect, the jurisdictional issues the parties should address. The new Rule also adopts a new name for the Court's jurisdictional review, dropping use of the term "sua sponte."

#### **500.11 Alternative Procedure for Selected Appeals [Old Rule 500.4]**

This new Rule tracks old Rule 500.4, with a few changes. The new Rule provides respondent on an appeal an early opportunity to request review via the alternative procedure. The new Rule also extends the initial filing dates by five days to offset partially the elimination of the automatic 20-day extension. The new Rule adopts a new name for this review procedure, dropping use of the terms "sua sponte" and "expedited."

#### **500.12 Filing of Record Material and Briefs in Normal Course Appeals [Old Rules 500.5 and 500.7]**

Subsection (a) of this new Rule changes the Court's previous practice by establishing a procedure whereby the Clerk's office will set all initial filing dates by

scheduling letter. The new subsection specifies default filing dates when scheduling letters are not issued, and omits the issuance of 20-day notices. Unlike the old Rules, the new Rule specifies in one place the required papers and filing dates applicable to both appellants and respondents. The new Rule also states for the first time the Court's practice of permitting briefs in response to amicus curiae briefs. To meet the Court's needs and archival responsibilities, the new Rule increases from 20 to 25 the number of copies of party briefs and record material to be filed.

**500.13 Content and Form of Briefs in Normal Course Appeals  
[Old Rules 500.5(d)(3), 500.7(a) and 500.8(a)]**

This new Rule collects in one place requirements from several old Rules. The new Rule addresses the content of briefs and brief covers, adding requirements that briefs contain a table of contents, original briefs be signed on both civil and criminal appeals, and original briefs be so designated on their front covers. The new Rule also requires that brief covers be white and that requested argument times be listed on the upper right corner of the brief. As with the old Rules, the new Rule does not impose page or word limitations for briefs.

**500.14 Records, Appendices and Exhibits in Normal Course Appeals  
[Old Rules 500.5(a)-(c), 500.6, 500.7(b)-(c)]**

This new Rule basically tracks requirements now found in several of the old Rules, setting out in one place the Rules applicable to the filing of record material. The new Rule clarifies the Court's power to direct the parties to supplement an appendix with additional parts of the record.

### **500.15 Extensions of Time - Appeals [Old Rule 500.9(d)]**

This new Rule states the Clerk's authority to grant reasonable extensions of time for good cause shown. The new Rule follows the longstanding practice of the Clerk's office not to entertain initial extension requests earlier than 20 days before the party's filing due date.

### **500.16 Failure to Proceed or to File Appeal Papers [Old Rule 500.9]**

As with old Rule 500.9, the new Rule states that the Clerk will issue dismissal or preclusion orders where a party fails to file its papers on time, and that the Court may review such orders by motion on notice.

### **500.17 Calendar [Old Rule 500.8]**

This new Rule treats the calendaring of cases for argument, and specifies for the first time counsel's obligation to notify the Clerk's office of days of known or possible unavailability for oral argument (see subsection [c]). Subsection (d) states the information counsel must provide in requesting an adjournment of a calendared appeal, and informs counsel that adjournments of calendared appeals are not favored.

### **500.18 Oral Argument [Old Rule 500.8(a)]**

This new Rule updates information that was in old Rule 500.8(a) and explains the procedures governing oral argument. Among other things, the Rule reminds counsel that requests for argument time must take into account that the Court is a "hot bench."

### **500.19 Remittitur [Old Rule 500.15]**

New Rule 500.19 essentially restates information contained in old Rule 500.15.

#### **D. Criminal Leave Applications**

##### **500.20 Criminal Leave Applications (CPL 460.20) [Old Rule 500.10]**

New Rule 500.20 represents a significant reorganization and supplementation of old Rule 500.10 governing criminal leave applications addressed to the Court of Appeals. Unlike the old Rule, the new Rule separately addresses stay requests and, by reference to the Rule governing motions (see new Rule 500.21), applications for extensions of time to seek leave to appeal.

Subsection (a) specifies, and expands, the information that must be provided in the letter application, including to whom it should be addressed, and states that additional submissions will be allowed after the application has been assigned to a Judge of the Court.

Subsection (b) lists specific materials that must be provided with the application. The old Rule, which was promulgated before orders determining applications for writs of error *coram nobis* became appealable, did not treat applications for leave to appeal from those orders. The new Rule addresses such applications separately from applications for leave to appeal from orders of intermediate appellate courts determining appeals taken to those courts.

Subsection (c) advises that the Chief Judge directs assignment of applications through the Clerk, and that counsel may not apply to a Judge or request assignment of the application to a specific Judge. This information was in old Rule 500.10(a). In addition, subsection (c) states that the assigned Judge will advise the parties if oral

argument of the application will be entertained. The old Rule treated requests for oral argument, but did not explicitly state that an applicant has no right to oral argument.

Subsection (d) of the new Rule, concerning reargument or reconsideration, is similar to subsection (b) of the old Rule.

Subsection (e) of the new Rule sets forth provisions regarding counsel previously found in subsection (a) of the old Rule.

Subsection (f) is a new provision regarding stay requests, which were not addressed in the old Rule. The subsection lists the required information and refers the reader to the applicable statutes for further information.

Subsection (g) is a new provision regarding applications for extensions of time to seek leave to appeal. The subsection was added for the convenience of litigants who might expect information on such applications to be in the Rule regarding criminal leave applications, rather than in the Rule regarding motions.

The new Rules also contain a new provision (see new Rule 500.8[c]) pertaining to withdrawal of criminal leave applications.

## **E. Motions**

New Rules 500.21 through 500.24 address all aspects of motion practice included in old Rule 500.11, and contain certain additions. New Rule 500.21 sets out general provisions applicable to all motions. Specific requirements for motions for permission to appeal are covered in new Rule 500.22. Motions for amicus curiae relief are addressed in new Rule 500.23, and motions for reargument are covered in new Rule 500.24.

Each new Rule includes procedures and information not contained in its respective old Rule, including a detailed explanation of the setting of return dates and the procedures for requesting amicus relief on calendared certified questions, appeals selected for alternative review and motions for permission to appeal. New Rule 500.23(a)(1) sets due dates for motions for amicus relief on normal course appeals. New Rule 500.12(e) sets due dates for briefs in response to such amicus briefs.

New Rule 500.22 reduces from ten to seven the number of copies required to be filed on a motion for permission to appeal. Except where poor person relief has been granted, the new Rules increase to two the number of copies for all motions now made on a single copy.

#### **500.21 Motions - General Procedures [Old Rule 500.11(a)-(d); (f);(g)]**

New Rule 500.21(b) assists movants in computing the return date for a motion to the Court of Appeals. New Rule 500.21(e) refers to the fee requirement for motions.

#### **500.22 Motions for Permission to Appeal in Civil Cases [Old Rule 500.11(a)-(b); (d)(1, 2)]**

The new Rule generally tracks the old Rule, but reduces from ten to seven the number of copies of motion papers filed with the Court.

#### **500.23 Motions for Amicus Curiae Relief [Old Rules 500.4(h); 500.11(e)]**

The new Rule tracks old Rule 500.11(e), adding instructions for filing amicus curiae motions on appeals selected for review pursuant to the alternative procedure,

outlined in new Rule 500.11, and motions for permission to appeal. The new Rule will require in all cases inclusion of the proposed submission with the amicus motion, which the old Rule did not. If the amicus motion is granted, the new Rule specifies the number of copies of the amicus brief to be filed.

The new Rule adds a provision allowing the Attorney General to file, without first obtaining leave of the Court, amicus curiae briefs and memoranda on normal course appeals, normal course certified questions, appeals selected for review by the alternative procedure, and motions for leave to appeal. Due dates for filing are set. Any other non-party must obtain permission by motion.

**500.24 Motions for Reargument of Appeals, Motions and Decisions on Certified Questions [Old Rule 500.11(g)]**

The new Rule generally tracks old Rule 500.11(g), but reduces from ten to seven the number of copies required to be filed, states that only one such motion is available, and includes in its scope reargument of decisions on new Rule 500.27 certified questions.

**F. Other Matters**

**500.25 Emergency Matters; Orders to Show Cause [New Rule]**

The new Rule was added to inform counsel of the steps necessary to seek emergency relief pending determination of a civil appeal or motion for leave to appeal. (Stay requests regarding criminal leave applications are covered in new Rule 500.20[f].) The Rule specifies the required content of papers and accompanying documents to be

filed in the Clerk's office and the Clerk's office procedures after an order to show cause is filed, and states that no fee is required for the filing of an order to show cause. The new Rule sets out current procedure when counsel or self-represented litigants seek emergency relief pending determination of a civil appeal or motion for leave to appeal. The new Rule requires the applicant to notify the Clerk's office prior to submitting an application. Papers are filed with the Clerk's office, and are assigned at random to an individual Judge. Additional papers, if any, are filed in the Clerk's office and notification of the Judge's disposition is given by the Clerk of the Court unless a Judge directs otherwise. An oral hearing may be held, at the discretion of the assigned Judge.

#### **500.26 Primary Election Session Procedures [New Rule]**

New Rule 500.26 outlines, for the first time, procedures for taking an appeal or moving for permission to appeal during the Primary Election Session. In the past, instructions have been given only when counsel contacted the Clerk's office after receiving an order from the Appellate Division, and a Notice to the Bar served as the only alert to counsel to contact the Clerk's office upon receipt of such an order. Specifications regarding notice, form, content and filing of the required number of documents are included in the new Rule.

#### **500.27 Discretionary Proceedings to Review Certified Questions from Federal Courts and Other Courts of Last Resort [Old Rule 500.17]**

New Rule 500.27 tracks procedures, set out in old Rule 500.17, applicable to the certifying court, the Court of Appeals and the parties. Procedures for obtaining amicus curiae relief concerning certified questions are stated in new Rule 500.23. Reargument

of a decision on a certified question is addressed in new Rule 500.24.

**COURT OF APPEALS STATE OF NEW YORK**  
**RULES OF PRACTICE**  
**(22 NYCRR Part 500)**  
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## **GENERAL MATTERS**

### **500.1 General Requirements.**

- (a) All papers shall comply with applicable statutes and rules, particularly the signing requirement of 22 NYCRR 130-1.1-a.
- (b) Method of reproduction. All briefs, papers submitted pursuant to sections 500.10 and 500.11 of this Part, motion papers and appendices (hereinafter “papers filed”) may be reproduced by any method that produces a permanent, legible, black image on white paper. Reproduction on both sides of the paper is encouraged.
- (c) Necessary information. Where this Part requires the filing of multiple copies of papers, the parties shall identify on its cover the original document filed. All papers filed by or on behalf of a corporation or other business entity shall list all its parents, subsidiaries and affiliates, or state that no such parents, subsidiaries and affiliates exist (hereinafter “disclosure statement”). Where New York authorities are cited in any submissions, New York Official Law Report citations shall be included, if available. Copies of decisions that are not officially published, or are not otherwise readily available, shall be included in the submission in which such decisions are cited.
- (d) Paper quality, size and binding. Paper shall be opaque, unglazed, white and eleven by eight and one-half inches. Briefs, appendices, records and motion papers shall be bound on the left side in a manner that keeps all pages securely together, without plastic covers or any metal fasteners or similar hard material that protrudes or presents a bulky surface or sharp edge.
- (e) Computer-generated papers filed. Papers filed 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 condensed font spacing shall not be used. Except in headings, words shall not be in bold type or type consisting of all capital letters.
  - (1) Papers filed using a proportionally-spaced typeface. The body of any papers filed using a proportionally-spaced typeface shall be printed in 14-point type. Footnotes shall be printed in type of no less than 12 points.
  - (2) Papers filed using a monospaced typeface. The body of any papers filed using a monospaced typeface shall be printed in 12-point type containing no more than 10 and one-half characters per inch. Footnotes shall be printed in type of no less than 10 points.

- (f) Typewritten papers filed. Typewritten papers filed shall be neatly prepared in clear type no smaller than elite and in a pitch of no more than twelve characters per inch. The original, ribbon typescript of any papers filed shall be signed and filed as the original required by this Part. Carbon copies will not be accepted.
- (g) Margins, line spacing and page numbering of computer-generated and typewritten papers filed. Computer-generated and typewritten papers filed 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 consecutively numbered in the center of the bottom margin of each page.
- (h) Handwritten papers. Self-represented litigants may serve and file handwritten papers. Such papers shall be neatly prepared in cursive script or hand printing in black ink. Pages shall be consecutively numbered in the center of the bottom margin of each page. The filing of handwritten papers is not encouraged. The clerk of the Court may reject illegible papers.
- (i) Filing of Papers. All papers filed shall be addressed to the clerk of the Court at 20 Eagle Street, Albany, New York 12207-1095, not to a Judge or Judges of the Court, and shall be served on each other party in accordance with the requirements of this Part. Submissions shall not be filed by facsimile transmission or electronic mail, except when requested by the clerk of the Court.
- (j) Acknowledgment of receipt of papers. A request for an acknowledgment of receipt of papers shall be accompanied by the papers filed and a self-addressed, postage pre-paid postcard or envelope. Parties proceeding as poor persons or requesting poor person relief shall comply with this requirement if acknowledgment of receipt of papers is desired.
- (k) Nonconforming Papers. The clerk of the Court may reject papers that do not conform to the requirements of this Part.

## **500.2 Companion Filings on Compact Disk, Read-Only Memory (CD-ROM).**

- (a) The Court allows the submission of briefs, records or appendices on compact disk, read-only memory (CD-ROM) as companions to the requisite number of printed briefs, records and appendices filed and served in accordance with this Part if all parties have consented to the filing of the companion CD-ROM brief and record or appendix. The Court, by order on motion of any party or on its own motion, may require such filing by a party or amicus.
- (b) The companion CD-ROM brief, record or appendix shall comply with the current technical specifications available from the clerk's office.
- (c) The companion CD-ROM brief, record or appendix shall be identical in content and

format (including page numbering) to the printed version, except that each also shall be word-searchable and shall provide electronic links (hyperlinks) to the complete text of any authorities cited therein, and to all documents or other material constituting the record on appeal. The disk and container shall be labeled to indicate the title of the case and the documents reproduced on the disk.

- (d) Unless the Court requires a greater number, 10 disks or sets of disks shall be filed, with (i) proof of service of at least one disk or set on each other party and (ii) a copy of the parties' stipulation permitting, or the Court's order directing, such filing.
- (e) Unless the Court requires otherwise, appellant's filing and respondent's filing, or a joint filing by appellant and respondent, are due 10 days after the final due date for filing appellant's reply brief (see section 500.12[d] of this Part).

### **500.3 Fees.**

- (a) Upon the filing of record material in a civil appeal pursuant to section 500.11, 500.12 or 500.26(a) of this Part, appellant shall provide the clerk of the Court the fee in the amount specified in CPLR 8022 in the form of an attorney's check, certified check, cashier's check or money order payable to "State of New York, Court of Appeals" unless:
  - (1) appellant demonstrates exemption from the fee requirements by statute or other authority;
  - (2) other payment arrangements have been made with the clerk of the Court;
  - (3) the appeal is accompanied by a motion requesting poor person relief or a motion requesting relief from payment of the filing fee; or
  - (4) appellant in the Court of Appeals provides a copy of an order issued by any court in the action or proceeding to which the appeal relates granting that party poor person relief, together with a sworn affidavit that the same financial circumstances exist at the time of filing in the Court of Appeals as when the order granting poor person relief was issued.
- (b) Upon the filing of each motion or cross motion in a civil case pursuant to section 500.21 through 500.24 or 500.26(b) of this Part, movant shall provide the clerk of the Court with the fee in the amount specified in CPLR 8022 in the form of an attorney's check, certified check, cashier's check or money order payable to "State of New York, Court of Appeals" unless:
  - (1) movant demonstrates exemption from the fee requirements by statute or other authority;

- (2) other payment arrangements have been made with the clerk of the Court;
  - (3) the motion or cross motion is accompanied by a motion requesting poor person relief or a motion requesting relief from payment of the filing fee; or
  - (4) movant in the Court of Appeals provides a copy of an order issued by any court in the action or proceeding to which the motion relates granting that party poor person relief, together with a sworn affidavit that the same financial circumstances exist at the time of filing in the Court of Appeals as when the order granting poor person relief was issued.
- (c) Except as provided in subsections (a) or (b) above or where otherwise specifically required by law or by the Court, no fees shall be charged by the clerk of the Court.

#### **500.4 Pro Hac Vice Admission.**

An attorney or the equivalent who is a member of the bar of another state, territory, district or foreign country may apply to appear pro hac vice with respect to a particular matter pending in this Court (see 22 NYCRR 520.11[a] [Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law--Admission Pro Hac Vice]). The application shall consist of a letter request to the clerk of the Court, with proof of service on each other party, and shall include current certificates of good standing from each jurisdiction in which the applicant is admitted and any orders of the courts below granting such relief in the matter for which pro hac vice status is sought.

#### **500.5 Sealed Documents.**

- (a) Documents under seal are not available for public viewing.
- (b) Any papers sealed by a court below or otherwise required by statute to be sealed shall be sealed in the Court of Appeals.
- (c) Any party to an appeal or motion may request that papers not sealed below be sealed in this Court. Such requests shall be by an original and one copy of a motion pursuant to section 500.21 of this Part, with proof of service of one copy on each other party.
- (d) Documents and transcripts ordered sealed by the Court of Appeals or a court below shall be reproduced in separate volumes of the record on appeal. Each such volume shall be clearly identified on the cover as containing sealed material.

#### **500.6 Developments Affecting Appeals, Certified Questions, Motions and Criminal Leave Applications.**

Counsel shall timely inform the clerk's office and each other party by letter of all developments affecting appeals, section 500.27 certified questions, motions and criminal leave applications pending in this Court, including contemplated and actual settlements, circumstances or facts that could render the matter moot and pertinent developments in applicable case law, statutes and regulations. The writing shall contain proof of service on each other party.

### **500.7 Post-Briefing, Post-Submission and Post-Argument Communications.**

Except for communications providing the information required by section 500.6 of this Part or those specifically requested by the Court, post-briefing, post-submission and post-argument written communications to the Court are not favored, and shall be returned to the sender unless accepted by the clerk of the Court following a written request with a copy of the proposed submission and proof of timely service of one copy on each other party.

### **500.8 Withdrawal of Appeal, Motion or Criminal Leave Application.**

(a) Appeals.

- (1) Before argument or submission, an appeal shall be marked withdrawn upon receipt by the clerk of the Court of a stipulation of withdrawal signed by counsel for all parties and by all self-represented litigants and, in criminal appeals, additionally by defendant.
- (2) After argument or submission, a request to withdraw an appeal shall be supported by a stipulation of withdrawal signed by counsel for all parties and by all self-represented litigants and, in criminal appeals, additionally by defendant. The request shall be submitted to the Court for determination.

(b) Motions.

- (1) Before its return date, a motion shall be marked withdrawn upon receipt by the clerk of the Court of a written notice of withdrawal signed by counsel for the moving party, with proof of service of one copy on each other party.
- (2) After the return date, a request to withdraw a motion shall be supported by a stipulation of withdrawal signed by counsel for all parties and by all self-represented litigants. The request shall be submitted to the Court for determination.

(c) Criminal Leave Applications. A request to withdraw an application shall be in writing and, if made on behalf of a defendant, shall be signed by defendant. The request shall contain an indication of service of one copy upon all parties and, if the request is made by defendant personally, proof of service upon defense counsel, if defendant is represented. The request shall be submitted to the assigned Judge for determination.

## **APPEALS**

### **500.9 Preliminary Appeal Statement.**

- (a) Within 10 days after an appeal is taken by (1) filing a notice of appeal in the place and manner required by CPLR 5515, (2) entry of an order granting a motion for leave to appeal in a civil case, or (3) issuance of a certificate granting leave to appeal in a non-capital criminal case, appellant shall file with the clerk of the Court an original and one copy of a preliminary appeal statement on the form prescribed by the Court, with the required attachments and proof of service of one copy on each other party. No fee is required at the time of filing the preliminary appeal statement.
- (b) Where a party asserts that a statute is unconstitutional, appellant shall give written notice to the Attorney General before filing the preliminary appeal statement, and a copy of the notification shall be attached to the preliminary appeal statement. The notification and a copy of the preliminary appeal statement shall be sent to the Solicitor General, Department of Law, The Capitol, Albany, New York 12224.
- (c) After review of the Preliminary Appeal Statement, the clerk will notify the parties either that review pursuant to section 500.10 or section 500.11 of this Part shall commence or that the appeal shall proceed in the normal course.

### **500.10 Examination of Subject Matter Jurisdiction.**

On its own motion, the Court may examine its subject matter jurisdiction over an appeal based on the papers submitted in accordance with section 500.9 of this Part. The clerk of the Court shall notify all parties by letter when an appeal has been selected for examination pursuant to this section, stating the jurisdictional concerns identified in reviewing the preliminary appeal statement and setting a due date for filing and service of comments in letter form from all parties. Such examination shall result in dismissal of the appeal by the Court or in notification to the parties that the appeal shall proceed either under the review process described in section 500.11 of this Part or in the normal course, with or without oral argument. This examination of jurisdiction shall not preclude the Court from addressing any jurisdictional concerns at any time.

### **500.11 Alternative Procedure for Selected Appeals.**

- (a) On its own motion, the Court may review selected appeals by an alternative procedure. Such appeals shall be determined on the intermediate appellate court record or appendix and briefs, the writings in the courts below and additional letter submissions on the merits. The clerk of the Court shall notify all parties by letter when an appeal has been

selected for review pursuant to this section. Appellant may request such review in its preliminary appeal statement. Respondent may request such review by letter to the clerk of the Court, with proof of service of one copy on each other party within five days after the appeal is taken.

- (b) Appeals may be selected for alternative review on the basis of:
  - (1) questions of discretion, mixed questions of law and fact or affirmed findings of fact, which are subject to a limited scope of review;
  - (2) recent, controlling precedent;
  - (3) narrow issues of law not of statewide importance;
  - (4) nonpreserved issues of law;
  - (5) a party's request for such review; or
  - (6) other appropriate factors.
- (c) Appellant's filing. Within 25 days after the date of the clerk of the Court's letter initiating the alternative review procedure, appellant shall:
  - (1) file three copies of the intermediate appellate court record or appendix and three copies of each brief filed by each party in the intermediate appellate court. Original exhibits to be relied upon which are not in the record or appendix at the intermediate appellate court shall be filed or, if they are on file with the clerk of the trial court, subpoenaed to this Court and the Court so advised by letter. Such exhibits shall be clearly identified and, where appropriate, their authenticity shall be certified or stipulated to;
  - (2) file an original and two copies of a letter stating its arguments in support of appellant's position on the merits. If appellant objects to review pursuant to this section, the letter shall also explain that position;
  - (3) file a disclosure statement pursuant to section 500.1(c) of this Part, if necessary;
  - (4) file proof of service of one copy of its arguments on each other party; and
  - (5) remit the fee, if any, required by section 500.3(a) of this Part.
- (d) Respondent's filing. Within 20 days after service of appellant's submission, respondent shall file an original and two copies of a letter stating its arguments in support of its position on the merits. If respondent objects to review pursuant to this section, the letter

shall also explain that position. Respondent shall file a disclosure statement pursuant to section 500.1(c) of this Part, if necessary, and proof of service of one copy of its arguments on each other party.

- (e) **Abandonment of arguments.** A party shall be deemed to have abandoned any argument made in the intermediate appellate court briefs not addressed or reserved in the written submission to this Court.
- (f) **Review of subject matter jurisdiction.** An appeal selected for review pursuant to this section is subject to dismissal on the Court's own motion, should it be determined that the Court is without subject matter jurisdiction.
- (g) **Termination of alternative procedure.** If the Court terminates its review of the appeal pursuant to this section before disposition, the clerk of the Court will notify counsel by letter and set a schedule for full briefing of the appeal.
- (h) **Amicus curiae relief.** The Attorney General of the State of New York may file, no later than the filing date set for respondent's submission, an original and two copies of an amicus curiae submission without leave of the Court, with proof of service of one copy on each party. Any other proposed amicus curiae shall request amicus curiae relief pursuant to section 500.23(a)(2) of this Part.

## **500.12 Filing of Record Material and Briefs in Normal Course Appeals.**

- (a) **Scheduling letter.** Generally, in an appeal tracked for normal course treatment, the clerk of the Court issues a scheduling letter after the filing of the preliminary appeal statement. A scheduling letter also issues upon the termination of an inquiry pursuant to section 500.10 or 500.11 of this Part. The scheduling letter sets the filing dates for record material and briefs.
- (b) **Appellant's initial filing.** On or before the date specified in the scheduling letter, appellant shall serve and file record material in compliance with section 500.14 of this Part, and shall remit the fee, if any, required by section 500.3(a) of this Part. Appellant also shall file an original and 24 copies of a brief, with proof of service of three copies on each other party. If no scheduling letter is issued, appellant's papers shall be served and filed within 60 days after appellant took the appeal by (1) filing a notice of appeal in the place and manner required by CPLR 5515, (2) entry of an order granting a motion for leave to appeal in a civil case, or (3) issuance of a certificate granting leave to appeal in a non-capital criminal case.
- (c) **Respondent's filing.** On or before the date specified in the scheduling letter, respondent shall serve and file an original and 24 copies of a brief and a supplementary appendix, if any, with proof of service of three copies on each other party. If no scheduling letter is

issued, respondent's papers shall be filed within 45 days after service of appellant's brief.

- (d) **Reply briefs.** A reply brief is not required but may be served and filed by appellant on or before the date specified in the scheduling letter. If no scheduling letter is issued, a reply brief may be served and filed within 15 days after service of respondent's brief. Where cross appeals are filed, the cross appellant may serve and file a reply brief to the main appellant's responsive brief. An original and 24 copies of a reply brief shall be served and filed, with proof of service of three copies on each other party.
- (e) **Amicus curiae briefs.** The Attorney General of the State of New York may file, no later than the filing date set for respondent's brief, an original and 24 copies of an amicus curiae brief without leave of the Court, with proof of service of three copies on each party. Any other proposed amicus curiae shall request amicus curiae relief pursuant to section 500.23(a)(1) of this Part.
- (f) **Briefs in response to amicus curiae briefs.** Briefs in response to an amicus curiae brief are not required but may be served and filed by a party whose position is adverse to that of the amicus curiae. The brief shall be served and filed within 15 days after the date of this Court's order granting a motion for amicus curiae relief or within 15 days after the service of an amicus curiae brief by the Attorney General of the State of New York. An original and 24 copies shall be filed, with proof of service of three copies on each other party and one copy on each amicus curiae.
- (g) **Sur reply briefs.** Sur reply briefs are not permitted.

### **500.13 Content and Form of Briefs in Normal Course Appeals.**

- (a) **Content.** All briefs shall conform to the requirements of section 500.1 of this Part and contain a table of contents, a table of cases and authorities and a disclosure statement pursuant to section 500.1(c) of this Part, if necessary. Respondent's brief may have a supplementary appendix attached to it. The original of each brief shall be signed and dated, shall have the affidavit of service affixed to the inside of the back cover and shall be identified on the front cover as the original.
- (b) **Brief covers.** Brief covers shall be white and shall contain the caption of the case and name, address, telephone number, and facsimile number of counsel or self-represented litigant and the party on whose behalf the brief is submitted, and the date on which the brief was completed. In the upper right corner, the brief cover shall indicate whether the party proposes to submit the brief without oral argument or, if argument time is requested, the amount of time requested and the name of the person who will present oral argument (see section 500.18 of this Part). If a time request does not appear on the brief, generally no more than 10 minutes will be assigned. The Court will determine the argument time, if any, to be assigned to each party.

## **500.14 Records, Appendices and Exhibits in Normal Course Appeals.**

- (a) Record material. Appellant shall supply the Court with record material in one of the following ways:
- (1) Appellant may subpoena the original file to this Court from the clerk of the court of original instance or other custodian, and submit original exhibits to be relied upon, and supplement these with an original and 24 copies of an appendix conforming to subdivision (b) below, with proof of service of three copies of the appendix on each other party. If appellant is represented by assigned counsel, or has established indigency, an oral or written request may be made of the clerk of this Court to obtain the original file.
  - (2) Appellant may file with the clerk of the Court one copy of the reproduced record used at the court below. This record shall be supplemented by an original and 24 copies of an appendix conforming to subdivision (b) below, with proof of service of three copies of the appendix on each other party.
  - (3) Appellant may file with the clerk of the Court an original and 24 copies of a new and full record which shall include the record used at the court below, the notice of appeal or order granting leave to appeal to this Court, the decision and order appealed from to this Court, and any other decision and order brought up for review, with proof of service of three copies of the new record on each other party.
- (b) Appendix. An appendix shall conform to the requirements of CPLR 5528 and 5529, and shall be sufficient by itself to permit the Court to review the issues raised on appeal without resort to the original file (see subsection [a][1] of this section) or reproduced record used at the court below (see subsection [a][2] of this section). The appendix shall include, as relevant to the appeal, the following:
- (1) the notice of appeal or order or certificate granting leave to appeal;
  - (2) the order, judgment or determination appealed from to this Court;
  - (3) any order, judgment or determination which is the subject of the order appealed from, or which is otherwise brought up for review;
  - (4) any decision or opinion relating to the orders set forth in subsections (b)(2) and (3) above; and
  - (5) the testimony, affidavits, and written or photographic exhibits useful to the determination of the questions raised on appeal.

- (c) Respondent's appendix. A respondent's brief may include a supplementary appendix.
- (d) Inadequate appendix. When appellant has filed an inadequate appendix, respondent may move to strike the appendix (see section 500.21 of this Part) or may submit an original and 24 copies of an appendix containing such additional parts of the record as respondent deems necessary to consider the questions involved, with proof of service of three copies of the appendix on each other party. The Court may direct appellant to supplement the appendix with additional parts of the record it deems necessary to consider the questions involved.
- (e) Correctness of the record. The correctness of the reproduced record or the appendix and additional papers shall be authenticated pursuant to CPLR 2105 or stipulated to pursuant to CPLR 5532.

#### **500.15 Extensions of Time.**

The clerk of the Court is authorized to grant, for good cause shown, a reasonable extension of time for filing papers on an appeal. A request for an extension may be by telephone call to the clerk's office, and shall be made no earlier than 20 days before the filing due date set by the clerk's office or otherwise prescribed by this Part. The party requesting an extension shall advise the clerk of the Court of the position of each other party with regard to the request. A party granted an extension shall file a confirmation letter, with proof of service of one copy on each other party, unless the clerk's office has notified all parties in writing of the determination of the request.

#### **500.16 Failure to Proceed or File Papers.**

- (a) Dismissal of appeal. If appellant has not filed and served the papers required by section 500.11, 500.12 or 500.26(a) of this Part within the time set by the clerk's office or otherwise prescribed by this Part, the clerk of the Court shall enter an order dismissing the appeal.
- (b) Preclusion. If respondent has not filed and served the papers required by section 500.11, 500.12 or 500.26(a) of this Part within the time set by the clerk's office or otherwise prescribed by this Part, the clerk of the Court shall enter an order precluding respondent's filing.
- (c) Judicial review. The Court may review dismissal and preclusion orders entered pursuant to subsections (a) and (b) above by motion on notice in accordance with section 500.21 of this Part.

#### **500.17 Calendar.**

- (a) Notification of argument time and date. When the calendar has been prepared, the clerk

of the Court shall advise counsel by letter of the date and time assigned for oral argument.

- (b) Calendar preferences. A party seeking a preference shall address a letter to the clerk of the Court, with proof of service of one copy on each other party. The letter shall state why a preference is needed, why alternative remedies, such as review pursuant to section 500.11 of this Part or submission without argument, are not appropriate, and opposing counsel's position on the request.
- (c) Notification of unavailability. Counsel have a continuing obligation to notify the clerk's office of days of known or possible unavailability for oral argument during the Court's scheduled Albany sessions.
- (d) Adjournments. Requests for adjournment of a calendared appeal are not favored. A party seeking an adjournment shall address a letter to the clerk of the Court, with proof of service of one copy on each other party. The letter shall state why the adjournment is necessary, why submission on the brief filed and having substitute counsel argue are not viable alternatives, and opposing counsel's position on the request.

#### **500.18 Oral Argument.**

- (a) Argument time. Maximum argument time is 30 minutes per party, unless otherwise directed or permitted by the Court upon advance request by letter addressed to the clerk of the Court with proof of service of one copy on each other party. In requesting argument time, counsel shall presume the Court's familiarity with the facts, procedural history and legal issues the appeal presents. The Court may assign time for argument that varies from a party's request and may determine that the appeal be submitted by any party or all parties without oral argument (see section 500.13[b] of this Part).
- (b) Arguing counsel. Only one counsel is permitted to argue for a party, unless otherwise directed or permitted by the Court upon advance request by letter addressed to the clerk of the Court with proof of service of one copy on each other party.
- (c) Rebuttal. Prior to beginning argument, appellant may orally request permission from the Chief Judge to reserve a specific number of minutes for rebuttal. The time reserved shall be subtracted from the total time assigned to appellant. Respondent may not request permission to reserve time for sur-rebuttal.

#### **500.19 Remittitur.**

- (a) The remittitur of the Court, containing the Court's adjudication, together with the return papers filed with the Court, shall be sent to the clerk of the court of original instance or to the clerk of the court to which the case is remitted, there to be proceeded upon according to law.

- (b) The court of original instance or the court to which the case is remitted issues any order to effect the adjudication in this Court's remittitur, including an award of costs.

## **CRIMINAL LEAVE APPLICATIONS**

### **500.20 Criminal Leave Applications.**

- (a) Letter application. Applications to the Chief Judge for leave to appeal in a criminal case (CPL 460.20) shall be by letter addressed to 20 Eagle Street, Albany, New York 12207-1095, and shall be sent to the clerk of the Court, with proof of service of one copy on the adverse party. The letter shall indicate:
- (1) the names of all codefendants in the trial court, if any, and the status of their appeals, if known;
  - (2) whether an application has been addressed to a justice of the Appellate Division;
  - (3) whether oral argument in person or by telephone conference call is requested; and
  - (4) the grounds upon which leave to appeal is sought. Particular written attention shall be given to reviewability and preservation of error, identifying and reproducing the particular portions of the record where the questions sought to be reviewed are raised and preserved.

After the application is assigned to a Judge for review, counsel will be given an opportunity to serve and file additional submissions, if any, and opposing counsel will be given an opportunity to respond.

- (b) Material to be provided with application.
- (1) Orders of intermediate appellate courts determining appeals to those courts. An application for leave to appeal from an intermediate appellate court order determining an appeal taken to that court shall include:
    - (i) one copy of each brief submitted by defendant to the intermediate appellate court;
    - (ii) one copy of each brief submitted by the People to the intermediate appellate court;
    - (iii) the order and decision of the intermediate appellate court sought to be appealed from; and

- (iv) all relevant opinions or memoranda of the courts below, along with any other papers to be relied on in furtherance of the application.
- (2) Orders of intermediate appellate courts determining applications for writs of error coram nobis. An application for leave to appeal from an intermediate appellate court order determining an application for coram nobis relief shall include:
  - (i) the order and decision sought to be appealed from;
  - (ii) the papers in support of and opposing the application filed in the intermediate appellate court; and
  - (iii) the intermediate appellate court decision and order sought to be vacated, as well as the briefs filed on the underlying appeal, if available.
- (c) Assignment. The Chief Judge directs the assignment of each application to a Judge of the Court through the clerk of the Court; counsel shall not apply directly to a Judge or request that an application be assigned to a particular Judge. The assigned Judge shall advise the parties if oral argument of the application will be entertained.
- (d) Reargument or reconsideration. Requests for reargument or reconsideration shall be in letter form addressed to the clerk of the Court, with proof of service on the adverse party, and shall be assigned to the Judge who ruled on the original application. A request for reargument or reconsideration shall not be based on the assertion for the first time of new points, except for extraordinary and compelling reasons. Unless otherwise permitted by the assigned Judge, the reargument or reconsideration request shall be served not later than 30 days after the date of the certificate determining the application of which reargument or reconsideration is sought.
- (e) Counsel. This Court does not assign counsel for criminal leave applications. One set of motion papers addressed to this Court under section 500.21 of this Part for assignment of counsel on a criminal appeal may be filed, with proof of service of one copy on the adverse party, only after leave to appeal is granted.
- (f) Stay requests. Whether incorporated in an application for leave to appeal or made separately by letter with proof of service of one copy on the adverse party, a request for a stay (CPL 460.60; 530.50) shall state:
  - (1) whether the relief sought has been previously requested;
  - (2) whether defendant is presently incarcerated and the incarceration status, if known, of any co-defendants; and,
  - (3) if the defendant is at liberty,

- (i) whether a surrender date has been set; and
  - (ii) the conditions of release (e.g., on defendant's own recognizance or on a set bail amount).
- (g) Applications for extensions of time to seek leave to appeal. An application for an extension of time to seek leave to appeal (CPL 460.30) shall be by one set of motion papers in compliance with section 500.21 of this Part, with proof of service of one copy on the adverse party.

## MOTIONS

### **500.21 Motions - General Procedures.**

- (a) Return date. Regardless whether the Court is in session, motions shall be returnable on a Monday or, if Monday is a legal holiday, the first business day of the week unless otherwise provided by statute, order to show cause or stipulation so ordered by a Judge of the Court. Motions shall be submitted without oral argument, unless the Court directs otherwise. No adjournments shall be permitted other than in those limited instances provided by statute (CPLR 321[c] and 1022).
- (b) Notice and service. Movant shall serve a notice of motion and supporting papers on sufficient notice to each other party, as set forth in the CPLR and below. In computing the notice period, the date of service shall not be included.
  - (1) When movant's papers are personally served, movant shall give at least eight days' notice (CPLR 2214[b]).
  - (2) When movant's papers are served by regular mail, movant shall give at least 13 days' notice (CPLR 2103[b][2]).
  - (3) When movant's papers are served by overnight delivery service, movant shall give at least nine days' notice (CPLR 2103[b][6]).
  - (4) When movant's papers are served by facsimile transmission, movant shall comply with CPLR 2103(b)(5), and give at least eight days' notice.
- (c) Filing. Unless otherwise permitted by the Court or clerk of the Court, movant shall file its papers, with proof of service on each other party of the required number of copies, at Court of Appeals Hall no later than noon on the Friday preceding the return date. On or before the return date of the motion, respondent may file papers in opposition to the motion, with proof of service on each other party of the required number of copies. Submissions shall not be filed by facsimile transmission or electronic mail, except when

requested by the clerk of the Court. The Court's motion practice does not permit the filing of reply briefs and memoranda. A request for permission to file papers after the return date of the motion is governed by section 500.7 of this Part.

- (d) Number of required copies. Except in cases of indigency, where subsection (g) below applies, the number of copies required to be filed is as follows:

- (1) Motions for permission to appeal in civil cases. Movant shall file an original and six copies of its papers, with proof of service of two copies on each other party. Respondent may file an original and six copies of papers in opposition to the motion, with proof of service of two copies on each other party.
- (2) Motions for reargument of appeals, reargument of motions for permission to appeal and reargument of decisions on certified questions. Movant shall file an original and six copies of its papers, with proof of service of two copies on each other party. Respondent may file an original and six copies of papers in opposition to the motion, with proof of service of two copies on each other party.
- (3) Other motions. For motions other than those addressed in subsections (d)(1) and (2) above, movant shall file an original and one copy of its papers, with proof of service of one copy on each other party. Respondent may file an original and one copy of papers in opposition to the motion, with proof of service of one copy on each other party.

- (e) Fee required. Movant shall remit the fee, if any, required by section 500.3(b) of this Part with each motion and cross motion filed.
- (f) Form of papers. Movant's papers and opposing papers shall comply in form with section 500.1 of this Part. The papers shall include a disclosure statement pursuant to section 500.1(c) of this Part, if required.
- (g) Proof of indigency. Any motion may be made on one set of papers, with proof of service of one copy on each other party, where:

- (1) the motion requests poor person relief and contains the information required by CPLR 1101(a), or
- (2) movant provides a copy of an order, issued by any court in the action or proceeding to which the motion relates, granting that party poor person relief, together with a sworn affidavit that the same financial circumstances exist at the time of filing in the Court of Appeals as when the order granting poor person relief was issued.

## **500.22 Motions for Permission to Appeal in Civil Cases.**

- (a) Filing and notice. Movant shall file an original and six copies of its papers, with proof of

service of two copies on each other party. The motion shall be noticed for a return date in compliance with CPLR 5516 and section 500.21(b) of this Part.

- (b) Content. Movant's papers shall be a single document, bound on the left, and shall contain in the order here indicated:
- (1) A notice of motion (see CPLR 2214).
  - (2) A statement of the procedural history of the case, including a showing of the timeliness of the motion.
    - (i) If no prior motion for leave to appeal to the Court of Appeals was filed at the Appellate Division, movant's papers to this Court shall demonstrate timeliness by stating the date movant was served (see CPLR 2103[b]) with the order or judgment sought to be appealed from, with notice of entry.
    - (ii) If a prior motion for leave to appeal to the Court of Appeals was filed at the Appellate Division, movant's papers filed in this Court shall demonstrate that the timeliness chain is intact by stating:
      - (a) the date movant was served with the order or judgment sought to be appealed from, with notice of entry,
      - (b) the date movant served the notice of motion addressed to the Appellate Division upon each other party, and
      - (c) the date movant was served with the Appellate Division order denying leave to appeal with notice of entry.
  - (3) A showing that this Court has jurisdiction of the motion and of the proposed appeal, including that the order or judgment sought to be appealed from is a final determination or comes within the special class of nonfinal orders appealable by permission of the Court of Appeals (see CPLR 5602[a][2]).
  - (4) A concise statement of the questions presented for review and why the questions presented merit review by this Court, such as that the issues are novel or of public importance, present a conflict with prior decisions of this Court, or involve a conflict among the departments of the Appellate Division. Movant shall identify the particular portions of the record where the questions sought to be reviewed are raised and preserved.
  - (5) A disclosure statement pursuant to section 500.1(c) of this Part, if required.
  - (6) Copies of the order or judgment sought to be appealed from with notice of entry, as well as copies of all relevant orders, opinions or memoranda rendered in the courts below. The papers shall state if no opinion was rendered.

- (c) Additional documents. Movant shall file with its papers one copy of the record below, or appendix if the appendix method was used in the court below, and one copy of the briefs filed below by each of the parties.
- (d) Opposing papers. Respondent may file an original and six copies of papers in opposition to the motion, with proof of service of two copies on each other party. The opposing papers shall state concisely respondent's argument for dismissal or denial of the motion.

### **500.23 Amicus Curiae Relief.**

Any non-party other than the Attorney General seeking to file an amicus brief on an appeal, certified question or motion for leave to appeal must obtain permission by motion.

- (a) Motions.
  - (1) Amicus curiae relief on normal course appeals and normal course certified questions. Movant shall file an original and one copy of its papers, accompanied by one copy of a proposed brief, with proof of service of one copy on each other party. The motion shall be noticed for a return date no later than the Court session preceding the session in which argument or submission of the appeal or certified question is scheduled. If the motion is granted, an original and 24 copies of the brief shall be filed, with proof of service of three copies on each party, within the time set by the Court's order.
  - (2) Amicus curiae relief on appeals selected for review by the alternative procedure. Movant shall file an original and one copy of its papers, accompanied by an original and two copies of the proposed submission, with proof of service of one copy on each other party. The motion shall be noticed for a return date no later than the filing date set for respondent's submission on the appeal.
  - (3) Amicus curiae relief on motions for permission to appeal in civil cases. Movant shall file an original and one copy of its papers, accompanied by one copy of a proposed brief, with proof of service of one copy on each other party. The motion shall be noticed for a return date as soon as practicable after the return date of the motion for permission to appeal to which it relates. The granting of a motion to appear amicus curiae on a motion for permission to appeal does not authorize the movant to appear amicus on the subsequent appeal. A new motion for amicus curiae relief on the appeal must be brought pursuant to subsection (a) (1) or (2) above.
  - (4) Criteria. Movant shall not present issues not raised before the courts below. A motion for amicus curiae relief shall demonstrate that:
    - (i) the parties are not capable of a full and adequate presentation and that

- movants could remedy this deficiency;
- (ii) the amicus could identify law or arguments that might otherwise escape the Court's consideration; or
  - (iii) the proposed amicus curiae brief otherwise would be of assistance to the Court.
- (5) Opposing papers. Respondent may file an original and one copy of papers in opposition to the motion, with proof of service of one copy on each other party.
- (b) Amicus curiae filings by the Attorney General.
- (1) Amicus curiae relief on motions for permission to appeal in civil cases. The Attorney General shall file an original and one copy of the submission with proof of service of one copy on each other party. The submission shall be filed without leave of the Court on or before the return date of the motion for permission to appeal.
  - (2) Amicus curiae relief on normal course appeals and normal course certified questions. See Rule 500.12(e).
  - (3) Amicus curiae relief on appeals selected for review by the alternative procedure. See Rule 500.11(h).

#### **500.24 Motions for Reargument of Appeals, Motions and Decisions on Certified Questions.**

- (a) Filing and notice. Movant shall file an original and six copies of its papers, with proof of service of two copies on each other party. An original and one copy of a motion for reargument of a motion may be served and filed if filing of an original and one copy of papers was allowed on the underlying motion pursuant to section 500.21(d)(3).
- (b) Timeliness. Movant shall serve the notice of motion not later than 30 days after the appeal or motion sought to be reargued has been decided, unless otherwise permitted by the Court.
- (c) Content. The motion shall state briefly the ground upon which reargument is sought and the points claimed to have been overlooked or misapprehended by the Court, with proper reference to the particular portions of the record and to the authorities relied upon.
- (d) New matters. The motion shall not be based on the assertion for the first time of new arguments or points of law, except for extraordinary and compelling reasons.
- (e) Limitation on motions. The Court shall entertain only one motion per party for reargument of a specific appeal, motion or certified question decision.

- (f) Opposing papers. Except on those motions described in section 500.21(d)(3), respondent may file an original and six copies of papers in opposition to the motion, with proof of service of two copies on each other party. The opposing papers shall briefly state respondent's argument for dismissal or denial of the motion.

## **500.25 Emergency Matters; Orders to Show Cause.**

A request for emergency relief pending the determination of an appeal or a motion for permission to appeal shall be brought on by order to show cause. The applicant shall contact the clerk's office in advance of the filing. The papers shall be filed as directed by the clerk's office. The order to show cause shall include telephone and facsimile numbers for each attorney and self-represented party, and a statement giving reasons for granting the request. If there is no pending appeal or motion for permission to appeal, the order to show cause shall bring on a motion for leave to appeal or be accompanied by a notice of appeal or a motion for permission to appeal complying with section 500.22 of this Part. There is no fee for filing an order to show cause. If a Judge signs an order to show cause bringing on a motion, movant shall pay the fee, if any, required by section 500.3(b) of this Part.

## **PRIMARY ELECTION SESSION**

### **500.26 Primary Election Session Procedures.**

- (a) Appeals as of right or by permission of the Appellate Division.
- (1) Appellant shall immediately contact the clerk's office by telephone upon receipt of the order from which the appeal is taken.
  - (2) Appellant shall immediately orally notify each respondent of the appeal.
  - (3) Within the time directed by the clerk of the Court, appellant shall file:
    - (i) a copy of the notice of appeal or order granting leave and a preliminary appeal statement with proof of service on each other party;
    - (ii) 25 copies of appellant's Appellate Division brief and, where applicable, the record or appendix;
    - (iii) the original file, where applicable, which appellant shall obtain;
    - (iv) the fee, if any, required by section 500.3(a) of this Part;
    - (v) an original and 24 copies of a letter setting forth appellant's arguments in this Court with proof of service of one copy on each other party; and

- (vi) additional papers, if requested.
  - (4) Within the time directed by the clerk of the Court, respondent shall submit 25 copies of its Appellate Division brief, and may submit an original and 24 copies of a letter in opposition with proof of service of one copy on each other party.
- (b) Motions for permission to appeal.
- (1) Movant shall immediately contact the clerk's office by telephone upon receipt of the order from which movant seeks leave to appeal.
  - (2) Movant shall immediately orally notify respondent of the motion.
  - (3) Within the time directed by the clerk of the Court, movant shall file:
    - (i) an original and nine copies of a letter requesting permission to appeal with proof of service of one copy on each other party;
    - (ii) 10 copies of the Appellate Division decision and order;
    - (iii) 10 copies of the Supreme Court decision and order;
    - (iv) 10 copies of movant's Appellate Division brief, and, where applicable, the record or appendix;
    - (v) the original file, where applicable, which movant shall obtain; and
    - (vi) the fee, if any, required by section 500.3(b) of this Part.
  - (4) Within the time directed by the clerk of the Court, respondent shall submit 10 copies of its Appellate Division brief, and may submit an original and nine copies of a letter in opposition with proof of service of one copy on each other party.

## **CERTIFIED QUESTIONS**

### **500.27 Discretionary Proceedings to Review Certified Questions from Federal Courts and Other Courts of Last Resort.**

- (a) Whenever it appears to the Supreme Court of the United States, any United States Court of Appeals, or a court of last resort of any other state that determinative questions of New York law are involved in a case pending before that court for which no controlling precedent of the Court of Appeals exists, the court may certify the dispositive questions of law to the Court of Appeals.
- (b) The certifying court shall prepare a certificate which shall contain the caption of the case,

a statement of facts setting forth the nature of the case and the circumstances out of which the questions of New York law arise, and the questions of New York law, not controlled by precedent, that may be determinative, together with a statement as to why the issue should be addressed in the Court of Appeals at this time.

- (c) The certificate, certified by the clerk of the certifying court under its official seal, together with the original or a copy of all relevant portions of the record and other papers before the certifying court, as it may direct, shall be filed with the clerk of the Court.
- (d) The Court, on its own motion, shall examine the merits presented by the certified question, to determine, first, whether to accept the certification, and second, the review procedure to be followed in determining the merits.
- (e) If the certification is accepted, the clerk of the Court shall request any additional papers the Court requires for its review. The clerk of the Court shall notify the parties of the time periods for filing of briefs, if any, and calendaring of argument, if any, directed by the Court.
- (f) If the constitutionality of an act of the Legislature of this state is involved in a certification to which the State of New York or an agency is not a party, the clerk of the Court shall notify the Attorney General in accordance with the provisions of Executive Law § 71.
- (g) When a determination is rendered by the Court with respect to the questions certified, it shall be sent by the clerk of the Court to the certifying court.

**NEW YORK STATE  
COURT OF APPEALS**

**Preliminary Appeal Statement**

Pursuant to section 500.9 of the Rules of the Court of Appeals

1. CAPTION OF CASE (as the parties should be denominated in the Court of Appeals):

STATE OF NEW YORK                   COURT OF APPEALS

-against-

- 
2. Name of court or tribunal where case originated, including county, if applicable:
- 

3. Civil index number, criminal indictment number or other number assigned to the matter in the court or tribunal of original instance: \_\_\_\_\_

4. Docket number assigned to the matter at the Appellate Division or other intermediate appellate court: \_\_\_\_\_

5. Jurisdictional basis for this appeal:

- Leave to appeal granted by the Court of Appeals or a Judge of the Court of Appeals  
 Leave to appeal granted by the Appellate Division or a Justice of the Appellate Division  
 CPLR 5601(a): dissents on the law at the Appellate Division  
 CPLR 5601(b)(1): constitutional ground (Appellate Division order)  
 CPLR 5601(b)(2): constitutional ground (judgment of court of original instance)  
 CPLR 5601(c): Appellate Division order granting a new trial or hearing, upon stipulation for judgment absolute  
 CPLR 5601(d): from a final judgment, order, determination or award, seeking review of a prior nonfinal Appellate Division order  
 Other (specify) \_\_\_\_\_
- 

6. How this appeal was taken to the Court of Appeals (choose one) (see CPLR 5515[1]):

**NOTICE OF APPEAL**

Date filed: \_\_\_\_\_

Clerk's office where filed: \_\_\_\_\_

**ORDER GRANTING LEAVE TO APPEAL (civil case):**

Court that issued order: \_\_\_\_\_

Date of order: \_\_\_\_\_

**CERTIFICATE GRANTING LEAVE TO APPEAL (criminal case):**

Justice or Judge who issued order: \_\_\_\_\_

Court: \_\_\_\_\_

Date of order: \_\_\_\_\_

**7. Demonstration of timeliness of appeal in civil case (CPLR 5513, 5514):**Was appellant served by its adversary with a copy of the order, judgment or determination appealed from and notice of its entry?  yes  no

If yes, date on which appellant was served (if known, or discernable from the papers served): \_\_\_\_\_

If yes, method by which appellant was served:  personal delivery  
 regular mail  
 overnight courier  
 other (describe \_\_\_\_\_)Did the Appellate Division deny a motion for leave to appeal to this Court in this case?  yes  no

If yes, fill in the following information:

- a. date appellant served the motion for leave to appeal made at the Appellate Division: \_\_\_\_\_
- b. date on which appellant was served with the Appellate Division order denying such motion with notice of the order's entry: \_\_\_\_\_, and
- c. method by which appellant was served with the Appellate Division order denying such motion: \_\_\_\_\_ personal service  
\_\_\_\_\_ regular mail  
\_\_\_\_\_ overnight courier  
\_\_\_\_\_ other (describe \_\_\_\_\_)

## 8. Party Information:

Instructions: Fill in the name of each party to the action or proceeding, one name per line. Indicate the status of the party in the court of original instance and the party's status in this Court, if any. Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, third-party plaintiff, third-party defendant, intervenor. Examples of a party's Court of Appeals status include: appellant, respondent, appellant-respondent, respondent-appellant, intervenor-appellant.

No.	Party Name	Original Status	Court of Appeals Status
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

## 9. Attorney information:

Instructions: For each party listed above, fill in the name of the law firm and responsible attorney, if the party is represented. Where a litigant is self-represented, fill in that party's data in section 10 below.

### For Party No. \_\_ above:

Law Firm Name: \_\_\_\_\_

Responsible Attorney: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax: \_\_\_\_\_

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of Appeals?  yes  no

### For Party No. \_\_ above:

Law Firm Name: \_\_\_\_\_

Responsible Attorney: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax: \_\_\_\_\_

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of Appeals?  yes  no

### For Party No. \_\_ above:

Law Firm Name: \_\_\_\_\_

Responsible Attorney: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax: \_\_\_\_\_

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of Appeals?  yes  no

**For Party No. \_\_\_ above:**

Law Firm Name: \_\_\_\_\_

Responsible Attorney: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax: \_\_\_\_\_

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of

Appeals?  yes  no

**For Party No. \_\_\_ above:**

Law Firm Name: \_\_\_\_\_

Responsible Attorney: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax: \_\_\_\_\_

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of

Appeals?  yes  no

(Use additional sheets if necessary)

**10. Self-Represented Litigant information:**

**For Party No. \_\_\_ above:**

Party's Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax: \_\_\_\_\_

**For Party No. \_\_\_ above:**

Party's Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax: \_\_\_\_\_

**11. Related motions and applications:**

Does any party to the appeal have any motions or applications related to this appeal pending in the Court of Appeals?  yes  no

If yes, specify:

a. the party who filed the motion or application: \_\_\_\_\_

b. the return date of the motion: \_\_\_\_\_

c. the relief sought: \_\_\_\_\_

Does any party to the appeal have any motions or applications in this case currently pending in the court from which the appeal is taken?  yes  no

If yes, specify:

a. the party who filed the motion or application: \_\_\_\_\_

b. the return date of the motion: \_\_\_\_\_

c. the relief sought: \_\_\_\_\_

Are there any other pending motions or ongoing proceedings in this case? If yes, please describe briefly the nature and the status of such motions or proceedings: \_\_\_\_\_

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12. Set forth, in point-heading form, issues proposed to be raised on appeal (this is a nonbinding designation, for preliminary issue identification purposes only):

(use additional sheet, if necessary)

13. Does appellant request that this appeal be considered for resolution pursuant to section 500.11 of the Rules of the Court of Appeals (Alternative Procedure for Selected Appeals)?

\_\_\_\_yes    \_\_\_\_no

If yes, set forth a concise statement why appellant believes that consideration pursuant to section 500.11 is appropriate (see section 500.11[b]): \_\_\_\_\_

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14. Notice to the Attorney General.

Is any party to the appeal asserting that a statute is unconstitutional? yes no

If yes, has appellant met the requirement of notice to the Attorney General in section 500.9(b) of the Rules of the Court of Appeals? yes no

15. **ITEMS REQUIRED TO BE ATTACHED TO THIS STATEMENT:**

- A. A copy of the filed notice of appeal, a copy of the order granting leave to appeal (civil case), or a copy of the certificate granting leave to appeal (noncapital criminal case), whichever is applicable;**
- B. The order, judgment or determination appealed from to this Court;**
- C. Any order, judgment or determination which is the subject of the order appealed from, or which is otherwise brought up for review;**
- D. All decisions or opinions relating to the orders set forth in subsections B and C above; and**
- E. If required, a copy of the notice sent to the Attorney General pursuant to section 500.9(b) of the Rules of the Court of Appeals.**

Date: \_\_\_\_\_

Submitted by: \_\_\_\_\_

(Name of law firm)

\_\_\_\_\_

(Signature of responsible attorney)

\_\_\_\_\_

(Typed name of responsible attorney)

Attorneys for appellant \_\_\_\_\_

(Name of party)

-or-

Date: \_\_\_\_\_

Submitted by \_\_\_\_\_, pro se

(Signature of appellant)

\_\_\_\_\_

(Typed/printed name of self-represented appellant)