

Appellate Division, Fourth Judicial Department
22 NYCRR Part 1000. Rules of Practice
Effective September 17, 2018

1000.1 General Provisions and Definitions

(a) Practice Rules of the Appellate Division

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

(b) Sessions of the Court

The Presiding Justice shall designate by order the terms of Court and the Clerk shall provide notice of designated terms to the Bar. Unless otherwise ordered by the Presiding Justice, the Court shall convene at 10:00 a.m. each day during a designated term.

1000.2 [Reserved]

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

(a) The Court does not require the filing of an initial informational statement pursuant 22 NYCRR 1250.3 (a).

(b) The Court does not have a settlement or mediation program pursuant to 22 NYCRR 1250.3 (c).

1000.4 Motions

(a) Proof of service required. In addition to proof of filing of the notice of appeal as required pursuant to 22 NYCRR 1250.4 (a) (3), a movant shall submit proof or admission of service of the notice of appeal.

(b) Order to show cause. An application for an order to show cause pursuant to 22 NYCRR 1250.4 (b) shall be directed to a Justice of this Court with chambers in the Judicial District from which the appeal or proceeding arises.

- (c) Family Court Act § 1114 and CPLR 5704 (a). Unless otherwise ordered by a Justice of this Court, an application for a stay pursuant to Family Court Act § 1114 or an application pursuant to CPLR 5704 (a) shall be made by order to show cause pursuant to 22 NYCRR 1250.4 (b).
- (d) Extension of time to file answering or reply documents. Any request for an extension of time to file answering or reply documents pursuant to 22 NYCRR 1250.4 (a) (5) shall be made by motion, and shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file the documents within a reasonable time.
- (e) Leave to File Amicus Curiae Brief. A motion for leave to file an amicus curiae brief shall be made in accordance with 22 NYCRR 1250.4 (f), and only one copy of the proposed brief shall be submitted with the motion. When permission to submit an amicus curiae brief is granted, the person or entity to whom it is granted shall file five hard copies and one digital copy of the brief with proof of service of one hard copy on each party. A person or entity granted permission to appear amicus curiae shall not be entitled to oral argument unless the Court directs otherwise.
- (f) Poor person relief.
 - (1) An affidavit in support of a motion for permission to proceed on appeal as a poor person shall, in addition to the matters listed in 22 NYCRR 1250.4 (d), list
 - (a) the movant's assets with their value; and
 - (b) the number of dependants the movant supports in the movant's present household.
 - (2) A motion for permission to proceed on appeal as a poor person and for assignment of counsel shall be served upon the County Attorney in the county from which the appeal arises.

1000.5 [Reserved]

1000.6 [Reserved]

1000.7 **Form and Content of Records and Appendices; Exhibits**

- (a) Proof of filing and service of notice of appeal. All records and appendices shall contain the notice of appeal with proof of service and filing.
- (b) Certification of Record or Appendix. Any dispute over a certification of the record or appendix pursuant to 22 NYCRR 1250.7 (g) or the contents of a record or appendix so certified shall be directed to the court from which the appeal is taken.
- (c) Failure to list document. In a criminal matter, the failure of the parties to list in the stipulation to the record on appeal any transcript, exhibit or other document that constituted a part of the underlying prosecution shall not preclude the Court from considering such transcript, exhibit, or other document in determining the appeal.
- (d) Appendices - criminal appeals. Pursuant to 22 NYCRR 1250.7 (d) (3), in a criminal matter, when permission to proceed as a poor person has been granted, the appendix to be filed and served by the appellant shall contain, in the following order: the description of the action required by CPLR 5531; a copy of the notice of appeal with proof of service and filing; a copy of the certificate of conviction and the judgment from which the appeal is taken; a copy of the indictment, superior court information or other accusatory instrument; all motion papers, affidavits and, to the extent practicable, written and photographic exhibits relevant and necessary to the determination of the appeal; and the stipulation of the parties or their attorneys to the complete record, the order settling the record, or the certification of the record pursuant to 22 NYCRR 1250.7 (g). The appellant shall also file a copy of any prior order entered by this Court or the trial court affecting the appeal including, but not limited to, an order that: expedites the appeal; grants permission to proceed on appeal as a poor person or on less than the required number of records and briefs; assigns counsel; grants an extension of time to perfect the appeal; grants a stay or injunctive relief; grants relief from dismissal of the appeal; or grants permission to exceed page limitations.

1000.8 Form and Content of Briefs

- (a) Cover color. Except in those appeals in which permission to proceed as a poor person has been granted, the cover of a hard copy brief of an appellant or petitioner shall be blue; the cover of a hard copy brief of a respondent shall be red; the cover of a hard copy reply brief shall be gray; the cover of a hard copy surreply brief shall be yellow; and the cover of a hard copy brief of an intervenor or amicus curiae shall be green. The cover of a hard copy pro se supplemental

brief in a criminal appeal shall be white, as shall the cover of a hard copy brief submitted by an Attorney for the Child. Covers of electronically-filed briefs shall likewise be colored to the extent practicable.

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

- (a) Extension of time to perfect. A motion for an extension of time to perfect an appeal pursuant to 22 NYCRR 1250.9 (b) shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to perfect the appeal within a reasonable time.
- (b) Extension of time to file brief. A stipulation to extend the time to file and serve a responsive brief pursuant to 22 NYCRR 1250.9 (g) (1) shall be filed on or before the date by which the brief was originally required to be filed. In no case shall the parties stipulate to, or apply by letter for, an extension of time to file and serve a responsive brief that would permit the filing and service of the brief within 30 days of the date upon which the matter is scheduled to be heard. A motion for an extension of time to file and serve a responsive brief pursuant to 22 NYCRR 1250.9 (g) (2) shall be supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file and serve the brief within a reasonable time.
- (c) Digital copies. In matters not subject to electronic filing, digital copies of the records, appendices and briefs filed pursuant to 22 NYCRR § 1250.9 (a), (c) and (d) shall comply with the technical specifications for electronically filed documents (Attachment A to 22 NYCRR Part 1245) and shall be filed and served as directed by the Clerk of the court.

1000.10 [Reserved]

1000.11 Additional Rules Relating to Criminal Appeals

- (a) Poor Person Relief and Assigned Counsel; Continuation of eligibility for assigned counsel on appeal. Relief pursuant to 22 NYCRR 1250.11 (a) (1) is contingent upon receipt of a properly filed and served notice of appeal and a copy of the order granting a defendant's application pursuant to CPL 380.55.
- (b) Application for Withdrawal of Assigned Appellate Counsel. When counsel who has been assigned to perfect an appeal on behalf of an indigent defendant

determines, after conferring with the defendant and trial counsel, that the appeal is frivolous, counsel may move to be relieved of the assignment pursuant to 22 NYCRR 1250.11 (f) (2) (*see People v Crawford*, 71 AD2d 38). The motion must be accompanied by a brief in which counsel states all points that may arguably provide a basis for appeal, with references to the record and citation of legal authorities. A copy of the brief, together with the motion, must be served upon the defendant at least 45 days before the return date of the motion. Together with the original motion papers and brief, counsel shall submit the papers that would constitute the record on appeal. Counsel shall also submit a copy of a letter to the defendant advising that he or she may elect to file a pro se response to the motion and/or a pro se supplemental brief.

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

- (c) Pro se supplemental briefs where counsel does not seek to withdraw. When assigned counsel does not move to be relieved as counsel and defendant has filed a pro se supplemental brief pursuant to 22 NYCRR 1250.11 (g) (2), the People may file and serve an original and five copies of a responding brief, with proof of service of one copy on the defendant and assigned counsel, no later than 45 days after defendant has served the pro se supplemental brief.

1000.12 Transferred Proceedings.

- (a) Original papers. A proceeding transferred to this Court pursuant to CPLR 7804 (g) shall be prosecuted upon the original papers, which shall include the notice of petition or order to show cause and petition, answer, any other transcript or document submitted to Supreme Court, the transcript of any proceedings at Supreme Court, the order of transfer and any other order of Supreme Court. When the proceeding has been transferred prior to the filing and service of an answer, a respondent shall file and serve an answer within 25 days of filing and service of the order of transfer. When a proceeding has been transferred to this Court pursuant to Executive Law § 298, the State Division of Human Rights shall file

with the Clerk the record of the proceedings within 45 days of the date of entry of the order of transfer.

- (b) Briefs, transcripts and oral argument. Upon receipt of the order of transfer and other documents from the court from which the transfer has been made, the Clerk shall issue a schedule for the filing and service of briefs, if any, the production of necessary transcripts and the calendaring of the proceeding.
 - (1) A petitioner shall file 5 hard copies and one digital copy of a brief, with proof of service of one copy on each respondent, as set forth in the scheduling order. If the brief is not timely filed and served, and no motion to extend the time for filing and service is made, the proceeding shall be deemed dismissed, without the necessity of an order.
 - (2) A respondent shall file 5 hard copies and one digital copy of a brief, with proof of service of one copy on each other party, as set forth in the scheduling order.

1000.13 [Reserved]

1000.14 [Reserved]

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

- (a) Calendar preference or adjournment. A motion for a calendar preference pursuant to 22 NYCRR 1250.15 (a) (2) shall be supported by an affidavit setting forth with particularity the compelling circumstances justifying the calendar preference. A motion to adjourn the calendaring of an appeal or proceeding shall be supported by an affidavit setting forth with particularity the compelling circumstances justifying an adjournment.
- (b) Scheduling Order. After an appeal is perfected or an original or transferred proceeding is filed or received, the Clerk shall, where appropriate, issue a scheduling order, which will specify the term of Court for which the matter has been scheduled and set a deadline for the service and filing of respondents' briefs and reply briefs, if any. A party or a party's attorney shall notify the Clerk in writing within 15 days of the date that the scheduling order was mailed of unavailability for oral argument on a specific date or on specific dates during the term.

- (c) **Calendar Notice.** The Clerk shall prepare calendars for each day of a Court term by designating for argument or submission appeals or proceedings that have been perfected or scheduled. A notice to appear for oral argument will be sent by the Clerk to all parties or their attorneys not less than 20 days prior to the term. Parties or counsel must appear as directed or submit on the brief.

- (d) **Oral Argument.**
 - (1) A party or a party's attorney who is scheduled to argue before the Court shall sign in with the Clerk's Office prior to 10:00 a.m. on the day of the scheduled argument. When oral argument is scheduled to commence at a time other than 10:00 a.m., a party or counsel shall sign in with the Clerk's Office prior to the time designated for the commencement of argument. Not more than one person shall be heard on behalf of a party. In the event that parties submit a joint brief, not more than one person shall be heard in the matter. When a brief has not been filed on behalf of a party, no oral argument shall be permitted except as otherwise ordered by this Court. Requests for oral argument shall be made by indicating on the cover of the brief the amount of time requested. The amount of time allowed shall be within the discretion of the Court.

 - (2) Unless otherwise provided by order of this Court, oral argument shall not be permitted in the following cases:
 - (A) an appeal from a judgment of conviction in a criminal case that challenges only the legality or length of the sentence imposed;

 - (B) an appeal from a determination pursuant to the Sex Offender Registration Act;

 - (C) a CPLR article 78 proceeding transferred to this Court in which the sole issue is whether there is substantial evidence to support the challenged determination; and

 - (D) any other cause in which this Court, in its discretion, determines that oral argument is not warranted.

 - (3) The Court does not permit rebuttal.

- (e) **Post-argument submissions.** Any request for leave to file a post-argument

submission shall be made in writing within five business days of oral argument, and shall be accompanied by a copy of the proposed submission.

1000.16 Orders

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

1000.17 [Reserved]