

Pro se Appeals Manual

A Guide for Self-Represented Litigants
Providing Basic Information about Civil Appeals

Compiled by the Committee on Courts of
Appellate Jurisdiction of the New York State Bar Association
in Collaboration with
the Appellate Division, Third Judicial Department
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I. INTRODUCTION

This Pro Se Appeals Manual provides basic information about the steps to take if you are representing yourself in an appeal in a civil case before the Appellate Division, Third Judicial Department, known as the “Third Department.” People representing themselves are called “pro se” litigants. Civil cases are non-criminal cases. The Third Department is a mid-level appeals court that decides appeals in cases from 28 upstate counties.

This Manual is designed to give you an overview of the process and help you, whether you are an appellant—the party initiating the appeal because of dissatisfaction with the lower court’s order or judgment—or a respondent responding to an appeal by the other side.

There are a couple of key concepts to keep in mind. First, appeals are not intended to retry a case or present new evidence. The appellate court can generally only consider the documents that were before the court below. They cannot consider new evidence or review papers that were not before the trial court judge when he or she rendered the decision and order or judgment being challenged.

Second, it is very desirable to be represented by an experienced appellate attorney, since doing an appeal effectively generally requires legal training, experience, and skill. If you cannot afford to retain an attorney, you should contact the Third Department to see if you qualify for assigned counsel. For many appeals from Family Court orders involving custody and visitation and abuse and neglect, assigned attorneys are available to indigent litigants.

In addition, you might qualify for representation through the New York State Bar Association’s Pro Bono Appeals Program. This program provides free representation in selected appeals for applicants who make 250% or less of Federal Poverty Guidelines and have an appeal to the Third Department involving the essentials of life (education, family stability, health, housing, public benefits, subsistence income, and unemployment insurance). For information, go to www.nysba.org/probonoappeals.

If you do represent yourself, you must comply with the rules governing appeals, and you will be held to the same standards as parties represented by attorneys. In addition, you should be aware that there may be expenses associated with bringing an appeal, including for transcripts, filing fees, and printing costs. If you qualify for poor person relief, the court will waive filing fees, and in some cases, you can file and serve a reduced number of copies of your appeal papers.

The Third Department Clerk’s Office may be able to answer questions you have. The phone number is (518) 471-4777. However, court staff cannot give legal advice. This Manual also does not provide legal advice and cannot be used as legal authority. Instead, it simply provides basic information about the appeals process.

Be sure to consult the relevant laws and the Third Department Rules of Practice found at the end of the Manual. Also, check the court's website to see if there have been any changes in the Rules: www.nycourts.gov/ad3.

If there are any differences between this Manual and the latest Rules found on the court's website, the Rules control and should be followed.

This Manual has been prepared as a public service by the New York State Bar Association Committee on Courts of Appellate Jurisdiction, in collaboration with the Third Department. Our thanks to Cynthia Feathers, Esq., co-chair of the Committee, and attorneys Elizabeth Bernhardt, Annette Hasapidis, George Hoffman, Linda Johnson, and Henry Mascia for their efforts in creating this Manual. Thanks also go to Hon. Karen K. Peters, Presiding Justice of the Third Department, and the Clerk's Office, for their insights, input, and support, and to the Rural Law Center of New York and The Legal Project, our dedicated partners in the Pro Bono Appeals Program.

II. NOTICE OF APPEAL

Before you can appeal, you must have a written paper called either an "order" or "judgment" that has been "entered," or filed, in the appropriate Clerk's Office, usually by the winning party. You cannot appeal from a verdict, report, ruling or decision. Also, you cannot appeal from an order or judgment entered against you based on your default. Instead, you must first make a motion to vacate the default.

Once there has been an order or judgment, it is essential that you do a proper notice of appeal or you will lose your right to an appeal. The notice of appeal requires simple information, but the time period for doing it is quite short. If you miss the deadline, you will lose the right to appeal.

Generally, you have 30 days from when the order or judgment is served by the winning party on the losing party with a notice that the document has been entered (called "notice of entry"). A few additional days are added when service of notice of entry is made by mail. The rules are slightly different for Family Court appeals and are beyond the scope of this Manual.

The contents of the notice of appeal are very basic. You use the "caption," or title of the case that was used in the lower court and state what order or judgment you are appealing from and what court you are appealing to. Sample notices of appeal are found in **FORMS** (pages 13 and 14).

Along with the notice of appeal, you will generally file these additional documents: a pre-calendar statement, a copy of the order or judgment appealed from, any decisions the order or judgment is based on, and an affidavit of service.

In addition, if you are filing a notice of appeal with the County Clerk regarding a County Court or Supreme Court order, there is a \$65 filing fee. There is no filing fee for Family Court, Surrogate's Court or Court of Claims appeals.

The pre-calendar statement is a form required by the Third Department for purposes of its Civil Appeals Settlement Program, which is described in this Manual. The information required is set forth clearly on the form, which is provided in **FORMS** (pages 15 to 17). A pre-calendar statement is not required in certain types of cases, which are listed in the Rules of Practice found at the end of the Manual.

A copy of the notice of appeal and accompanying documents must be served on the other party, or if the party is represented, on his or her attorney. If an attorney for the child was involved in the case, he or she must be served as well. Service by mail is acceptable.

Then the notice of appeal and the other documents must be filed in the appropriate office. For appeals from County or Supreme Court orders or judgments, the notice of appeal is filed with the County Clerk, along with the filing fee. You can make a motion for poor person relief to be relieved of the filing fee. Check with the clerk of the lower court to see if more than one copy of the notice of appeal is required. For appeals from Family Court orders, the notice of appeal is filed with the Family Court Clerk.

III. CIVIL APPEALS SETTLEMENT PROGRAM ("CASP")

Soon after the notice of appeal and pre-calendar statement have been filed, you may receive a notice from the Civil Appeals Settlement Program, known as "CASP," informing you that the appeal has been selected for a settlement conference. Not all cases are scheduled for a CASP conference. If your case is selected, you must attend the conference, unless you receive permission not to. The notice will identify the judicial hearing officer who will preside at the conference and the date, time, and place of the conference.

The purpose of a CASP conference is to facilitate settlement. While the process usually works best when both parties are represented by competent counsel, there can be conferences when one or both parties are pro se litigants. Settlements can benefit the parties by allowing them to avoid the delay, expense, and risk of an appeal. The parties control the outcome, rather than letting the appellate judges decide their fate.

Many conferences are held in the Alfred E. Smith Building in Albany, but some are held in other locations for the convenience of parties and attorneys located in distant counties. If you cannot appear on the date scheduled, you must promptly contact CASP to request a postponement.

CASP provides the parties with the opportunity to present a written statement describing the case and issues and settlement proposals. If you are going to do so, be sure to make such a submission at least 10 days before the conference.

Generally, both parties and their attorneys, if any, appear at the conference. If an attorney for the child was involved in the case, he or she attends, but the child does not. When both parties are represented, the judicial hearing officer will often speak to the attorneys first to get an understanding of settlement possibilities, and then he or she may call the parties into the conference room. Typically, the conference lasts one hour.

Beware that consideration of an appeal by CASP does not excuse the parties from meeting Third Department deadlines. It is also important to realize that, although the Third Department provides CASP, everything that is discussed in conferences is completely confidential. If the case does not settle and the appeal goes forward, the judicial hearing officer will not provide any information to the appellate judges about the conference. Also, while you are required to participate when a conference has been scheduled, you are not required to settle. That is always up to you.

IV. MOTIONS

During the appeal process, it may become necessary to request various types of relief. Typically, these requests are made by filing motions with the Third Department. The court requires that certain procedures be followed, as set forth in its Rules of Practice found at the end of the Manual.

The notice of motion must contain the caption of the case, the relief sought, the return date (the date when the court will formally take the motion under consideration), and certain standard language, including a statement that personal appearances on the return date are neither required nor permitted. The affidavit is your sworn statement, signed before a notary public, explaining the situation and why you are entitled to the relief you are seeking. Sometimes you will need to attach exhibits to your motion papers.

Typically, motions must be made “returnable” on (have a return date of) a Monday. If the motion papers are served by personal delivery, the motion should be returnable eight or more days after service. If the papers are served by mail, then the motion must be returnable at least 13 days after such service.

One set of original motion papers must then be filed with the Third Department, along with an affidavit of service and a \$45 filing fee. Motions are generally decided by the court within a few weeks of the return date, but sometimes it takes much longer.

A complete description of the various types of motions and the kinds of information and allegations you must make is beyond the scope of this Manual. You should feel free

to call the Third Department Clerk's Office with questions about a given motion. The following is a brief description of common types of relief sought by motions. **FORMS** (pages 31 to 38) contains general motion papers, as well as instructions regarding a motion for poor person status.

Motion for permission to proceed as a poor person: If you qualify for poor person relief, the fees associated with filing motions (\$45) and many kinds of appeals (\$315) are waived. In addition, the number of copies of the record, brief, and appendix to be served and filed is reduced in some cases. Note that if you do have to pay motion or appeal filing fees, you must use a bank check or money order.

Motion for a stay: Typically, the filing of a notice of appeal does not suspend the enforcement of the order or judgment being challenged. So it may be wise to ask the Third Department to stay, or prevent the enforcement of, the order or judgment until the appeal is decided.

Motion to dismiss appeal for failure to timely prosecute: Once the notice of appeal is filed, the appellant has nine months from the date of the notice of appeal to "perfect," or complete, the appeal, unless the respondent makes a motion to dismiss before then.

If the appellant does not perfect the appeal within 60 days after service of the notice of appeal, the respondent can make a motion to dismiss the appeal. To receive an extension, the appellant will need to provide an excuse for the delay. If the appellant does not perfect the appeal within nine months, the respondent can make a motion to dismiss it then. At that point, the appellant will need to provide not only an excuse, but also a showing of merit to the appeal.

In the event that the appellant determines that the appeal will not be perfected within the nine-month time period, then before the end of that period, he or she should make a motion for an extension of time to perfect the appeal. In the motion, the appellant must show a reasonable excuse for the delay and merit to the appeal.

Motion for reargument: If you are unsuccessful in an appeal to the Third Department, you can ask the court to reconsider your appeal or, in the alternative, to grant permission to appeal to the state's highest court, the Court of Appeals.

V. RECORD ON APPEAL

The appellant is responsible for putting together the record on appeal, which contains all of the papers the trial Judge considered when he or she rendered the decision; the decision; the order or judgment appealed from; and the notice of appeal. Many judges list the papers they considered on the last page of the decision, and that can be a useful guide in putting together the record.

If there was a trial and the transcript was not produced, your first step will usually be to obtain a copy of the transcript. If the transcript is long, this may be expensive, and it may take months. You can make a motion seeking free transcripts, but such relief is typically only granted in criminal and certain family law cases involving indigent appellants. Other documents needed for the record on appeal may be obtained from your trial attorney, if any, the Court Clerk (for a fee), and opposing counsel.

FORMS (pages 18-20) contains a sample of the cover page and Table of Contents for a record on appeal. You will see that the notice of appeal and order or judgment being challenged belong at the beginning of the record, and then typically other documents appear in chronological order.

FORMS (page 21) also contains a sample of the CPLR 5531 Statement that belongs at the beginning of the record, right after the Table of Contents. This statement contains certain basic information about the case, as required by statute, such as the names of the parties, when the action was commenced, the nature of the action, and whether you are using the full record method (multiple copies of the complete record) or the appendix method, explained below. The final document should be the stipulation to the record. Where you are appealing from a decision and order deciding a motion, the record may consist of the motion (and all exhibits), papers opposing the motion (and all exhibits), the decision and order, and the notice of appeal. The summons and complaint must also be included if such pleadings are not an exhibit to the motion papers.

If you are appealing from a judgment entered on a trial verdict, the record may consist of the pleadings, trial transcript, exhibits received in evidence, the judgment, and the notice of appeal. Usually the court reporter prepares an index of witnesses and exhibits, found at the end of the transcript, and this is very helpful in providing a complete Table of Contents.

Once you have compiled your record, there are two things you should do before making copies of it. First, obtain proof that the record on appeal is accurate and complete. Typically, you do that by sending the proposed record to your adversary and having him or her sign a stipulation. A sample stipulation is contained in **FORMS** (pages 24-25).

When you send the proposed record to the other side, you can include a notice found in **FORMS** (page 22-23). A CPLR 5525 notice is used for records containing transcripts. A Rule 800.7(b) notice is used for appeals employing the appendix method. The notice gives the other side a certain amount of time to make objections or amendments to the

record. If the respondent fails to stipulate as to the correctness of the transcripts or record, a motion must be made to the lower court judge to settle the record. (A non-attorney cannot certify to the correctness of the record.)

Next, number the pages and put the numbers in the table of contents. There are a few “tricks” to keep in mind. If the court stenographer consecutively numbered all days of the trial transcript, there is no need to renumber those pages. All remaining pages of the record can be distinguished with a small “a” after each number. Also, if certain documents appear over and over in the record, you need not repeat them. Simply insert a sheet stating where the document can be found in the record. The record should be bound along the left margin, like a book; and each volume should not exceed 1½” in thickness.

VI. THE BRIEF

The brief has two functions. It tells a story about what happened in the trial court; and it explains how the law impacts your facts and shows that the lower court’s decision was right or wrong.

The first major section of the brief, called the “Statement of Facts,” should provide the court with a clear and accurate summary of facts needed to understand the case and your argument. You should be sure to reveal important facts that are negative or harmful to your position, not just facts that help you.

To write the Statement of Facts, you must review the record, page by page, and cite to the appropriate page for every statement you make. If the Statement of Facts is more than a few pages long, use subheads for major sections, such as “Pleadings,” “Trial,” and “Decision and Order.”

The second major section of the brief, called the “Argument,” presents relevant law and then shows how the law relates to your facts. To write the Argument, you will first need to do some legal research. A good starting point to identify relevant law will probably be the motion papers, if any, and the lower court’s decision. There are two basic types of law that may be relevant: statutes, or laws enacted by the legislature, and cases, or decisions made by courts.

Typically, briefs set forth some key New York State appellate decisions with facts similar to yours and the outcome you seek. You can argue that the Third Department panel of judges considering your case should apply the same logic and reach the same result. If there are appellate decisions similar to yours, but with an outcome you do not want, you should show how those cases were different from yours.

There are many places you can go to do free legal research. The New York State Library in Albany has a vast law collection and helpful reference librarians. You can apply for a

borrower's card that allows you to access free online research materials. For more information, go to www.nysl.nysed.gov.

State law requires that every county have a law library available to the general public. Most of these libraries provide statutes, case law, legal encyclopedias, and other materials. Some provide free online legal research.

At www.nycourts.gov/lawlibraries/publicaccess.shtml you will find a list of these libraries. Cornell University Law School provides many legal materials online at www.law.cornell.edu, and Google Scholar gives you access to thousands of legal opinions and articles.

After completing the legal research, you will be ready to write the Argument. There should be a separate point for every major argument you are presenting. In the point heading, you can sum up your argument in one sentence, then set forth relevant law, and finally discuss how the law is relevant to your facts.

You need not repeat the facts at great length, since you have already explained them in the Statement of Facts section. Conclude the Argument section with a clear statement of the relief you are seeking, such as affirmance, modification, reversal, or remittal. A sample conclusion is in **FORMS** (page 30).

After you have written the Statement of Facts and Argument, you will need to add the following elements to the beginning of your brief:

A cover page with basic information, as shown in the sample in **FORMS** (page 30). Note that, if you want to orally argue the appeal, you should say so on the cover and state the amount of time you want (10 minutes is typical). If you do not want to orally argue, you say "To be submitted."

A Table of Contents for the brief and appendix, if any. A sample is in **FORMS** (page 31).

Question Presented, concisely stating the legal issues your brief will discuss. A sample is in **FORMS** (page 28.)

The respondent's brief follows many of the same basic rules and principles as the appellant's brief in terms of format and the required numbers of copies to be served and filed. Of course, the key difference is that the respondent's brief responds to arguments set forth by the appellant. If the respondent believes that the appellant's appendix is incomplete, he may file his or her own appendix.

The Third Department Rules of Practice provide different page limits for respondent's briefs than appellant's briefs. The appellant's main brief should be at most 70 typewritten pages; and the respondent's brief should be at most 35 typewritten pages. Reply briefs should be at most 15 typewritten pages. Only in extraordinary

circumstances should you exceed these limits. You will need permission from the court to file an overly long brief, and the court is strict about granting such permission.

VII. THE APPENDIX

The appendix method allows you to provide the court with only a single copy of the record, rather than the usual one original and nine copies. Instead, you make multiple copies of the portions of the record that the court should consider to decide the appeal.

This will include the decision, order or judgment, notice of appeal; relevant portions of the motions or transcripts cited in the statement of facts of your brief to support your argument; and also relevant portions that the other side can be expected to rely upon.

The appendix method is a good choice if the record is very large, you want to focus the appellate court's attention on only a fraction of the pages, and you want to save copying costs. The Third Department Rules of Practice say that the appendix method should be used for Family Court appeals.

With the appendix method, while you will save costs, you will spend extra time in preparing the appendix.

After you have written the statement of facts, you should make a list of all the pages you cited, in the order in which they appear in the record. Then make copies of those pages and renumber them A1, A2, A3, etc. After renumbering the pages, in your brief, replace cites to the record with cites to the appendix you created.

If the appendix is more than 100 or 200 pages long, you should make it a volume separate from the brief, with its own separate cover and Table of Contents. If the appendix is short, you can combine the brief and appendix into one document. A sample Table of Contents for an appendix can be found in **FORMS** (page 27).

VIII. FILING THE APPEAL

Once you have completed the record, brief, and appendix, if any, it is time to serve and file, or "perfect," your appeal. Your brief must follow a certain format, including one-inch margins, double spacing, and 14-point type (no handwritten briefs are permitted). See **FORMS** (pages 26-30) for samples. When the record, brief, and appendix are copied, they must be bound together on the left side in book fashion. The court prefers to have documents copied on both sides. If the record is huge, it should be split into volumes, so that no volume is more than 1½" thick.

If you are using the full record method, you will file an original and nine copies of the record, and an original and nine copies of your brief, except in Family Court cases, when you file an original and six copies of the record and brief. The original record is

the one containing the stipulation to the record with original signatures. The original brief is the one containing your original signature at the end. You serve one copy of the record and two copies of the brief. Service by mail is acceptable.

If you are using the appendix method, you file a single copy of the record, an original of the brief and appendix, and nine copies of the brief and appendix, except for Family Court cases, when you file an original and six copies of the brief and appendix.

You must also file an affidavit of service and the filing fee. As discussed in the Motions section, you can make a motion for poor person relief seeking a waiver of the filing fee. Where you are required to file an original and nine copies of the record and brief or brief and appendix, you may also seek the right to proceed with a reduced number of copies.

IX. AFTER THE APPEAL IS PERFECTED

After the appellant has perfected the appeal and the Third Department has processed and accepted his or her papers, the respondent will receive a scheduling letter providing a deadline for when his or her brief is due. The respondent's brief will be due about 45 days later, but he or she can seek a 30-day extension from the Clerk's Office. The letter will also give the case a six-digit A.D. number that should then be used on the cover of the parties' papers and correspondence. It is also helpful to have that number when you call the court with questions about your case.

After the respondent's brief is served and filed, the appellant has the opportunity to submit a reply brief to narrowly address points raised in the respondent's brief that are not adequately dealt with in the first brief filed by the appellant. A reply brief is due within 10 days after the respondent's brief is served. Once the appellant's and respondent's briefs have been filed, the Third Department will notify the parties to let them know what Term of the court the appeal has been scheduled for.

If you plan to orally argue the case, you should review the letter listing dates on which the oral argument may occur and promptly notify the court if you have a conflict on any of those dates. The month before oral argument, you will be notified of the actual date and time of oral argument. A couple of weeks before oral argument, a more detailed notice will be posted on the court's website, including the four or five judges assigned to your appeal and the amount of time granted to each party for oral argument.

Oral argument is a precious opportunity to have a formal discussion with the court about the essential points of your case and to answer the court's questions. You should be prepared and respectful. Introduce yourself and summarize the key points in your arguments. Remember that the judges have read the briefs and a "bench memo"

prepared by law clerks and are familiar with the facts. If the judges ask questions, answer honestly and to the best of your ability.

Usually within two months of oral argument, on a Thursday, the court will render a decision and order that will be posted to the court’s website by noon and will be mailed to you. More than two-thirds of appeals result in affirmance. The Third Department may also modify, or change some aspect of, the order or judgment; or it may reverse the lower court’s order or judgment. Sometimes the matter will be remitted, or sent back, to the lower court for further proceedings.

As discussed in the Motions section of the Manual, if you are not pleased with the outcome in the Third Department, you can make a motion for reargument or for permission to appeal to the Court of Appeals. Motions for permission to appeal involve some complex legal procedural considerations that are beyond the scope of this Manual.

X. FORMS

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**NOTICE OF APPEAL TO APPELLATE DIVISION, THIRD DEPARTMENT
FROM ORDER/JUDGMENT OF LOWER COURT**

STATE OF NEW YORK

_____ COURT: COUNTY OF _____

Plaintiff(s) ,

v

Defendant(s) .

**NOTICE OF
APPEAL**

Index No.:

PLEASE TAKE NOTICE that _____, the _____
[plaintiff(s) / defendant(s)] in this action, hereby appeal[s] to the Appellate Division of the Supreme
Court, Third Judicial Department, from the _____
[order / judgment] of _____ Court entered in the office of the clerk of _____
County on the _____ day of _____, 20 ____, and from each and
every part thereof.

Dated: _____

(Signature) _____

(Print Name) _____

(Address) _____

(Telephone) _____

TO: _____

(Name[s] and address[es] of attorney[s] for other party/parties)

Note: The notice of appeal must also be filed in the office where the judgment or order of the court of original instance is entered (CPLR 5515 [1]).

**NOTICE OF APPEAL TO APPELLATE DIVISION, THIRD DEPARTMENT
FROM ORDER/JUDGMENT OF FAMILY COURT**

STATE OF NEW YORK

FAMILY COURT

COUNTY OF _____

**NOTICE OF APPEAL
Family Court**

In the Matter of _____,
Petitioner ,

Docket No. _____

- against -

Respondent .

(Use lower Court caption)

PLEASE TAKE NOTICE that the above named _____ Petitioner (s) or
Respondent (s) hereby appeal(s)
to the Appellate Division of the Supreme Court, Third Judicial Department, from an Order entered in
the office of the Family Court Clerk of _____ County on the _____ day of _____, 20 _____
which _____

and from each and every part thereof. ***(Or describe the portion of the Order appealed if not the whole thereof.)***

Dated: _____

(Signature) _____

(Print Name) _____

(Address) _____

(Telephone) _____

TO: Family Court Clerk (Original) _____

Address of Court _____

(also send a copy to all other adverse parties and to the Attorney for the Child, if any)

- *** File with Family Court the original and two copies of the Notice of Appeal, together with one copy of a Pre-calendar statement and proof of service of these papers upon all adverse parties or their attorneys and the Attorney for the Child, if any;
- *** Serve one copy of the notice of appeal and one copy of the Pre-calendar statement upon all adverse parties or their attorneys and the Attorney for the Child, if any;
- *** Please note that Pre-calendar statements are not required in Family Court proceedings involving child abuse or neglect, juvenile delinquency or persons in need of supervision.

PRE-CALENDAR STATEMENT
State of New York
Supreme Court - Appellate Division
Third Judicial Department

Case Title: Set forth the full case title.

County Index No.
RJI No.
Date of Commencement

Parties Involved: Set forth the full names of the original parties and any change in parties.

Party Name (eg. John Doe)	Original Status (eg. Defendant)	Appellate Status (eg. Appellant)
------------------------------	------------------------------------	-------------------------------------

Counsel for Appellant(s): Set forth the name, address, telephone number and facsimile telephone number of counsel for appellant(s).

Counsel for Respondent(s) and Counsel for Other Parties: Set forth the name, address, telephone number and facsimile telephone number of counsel for respondent(s) and for each other party.

Court, Judge and County: Identify the court, judge or justice, and the county from which the appeal is taken.

Nature and Object of Action or Proceeding: Concisely set forth the nature and object of the underlying action or proceeding.

Appellate Issue(s): Set forth a clear and concise statement of the issue(s) to be raised on the appeal, the grounds for reversal or modification to be advanced and the specific relief sought on the appeal.

Other Related Matters: Indicate if there is another related action or proceeding, identifying and briefly describing same.

Submitted by:

Signature

Print Name:

Attorney for:

Date:

Attachments: Check

1. Copy of order or judgment appealed from. attached
2. Copy of opinion or decision. attached
 does not exist
3. Copy of notice of appeal or order granting
 leave to appeal. attached

Attach copies, not originals. File this original form with attachments when original notice of appeal is filed in the office where the judgment or order of court of original instance is entered. A copy of this document must be served upon all counsel and pro se parties. (effective 11/12/97).

#503500

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

JOHN SMITH,
Respondent,

-against-

MARY DOE,
Appellant.

Albany County Index No. 1234-10

RECORD ON APPEAL

Joe P. Attorney, Esq.
Attorney for Appellant
45 Main St.
Albany, NY 12207
(518) 455-2222

Mary J. Litigant
Respondent pro se
10 Broadway
Saratoga Springs, NY
(518) 587-3333

**SAMPLE TABLE OF CONTENTS FOR RECORD ON APPEAL
(NON-TRIAL)**

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SAMPLE CPLR 5531
STATEMENT

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

[TITLE]

1. The docket number of the case in Family Court is -----.
2. The full names of the original parties are -----, Petitioner, and -----, Respondent. There has been no change in the parties (or describe any change).
3. The proceeding was commenced in Family Court, ---- County.
4. The proceeding was commenced on -----, 19 --, by service of a petition.
5. The nature and object of the proceeding are as follows: (describe).
6. This appeal is from an order of Honorable ----, entered in favor of ---- on ----, which (describe).
7. (Whichever is applicable)
The appeal is on a full reproduced record.
The appeal is on the original record; the appendix method is being used.
8. (Whichever is applicable)
The order to be reviewed was rendered after a trial or hearing.
The order to be reviewed was not rendered after a trial or hearing.

NOTICE TO COUNSEL

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

Title of the Case

TO: *Respondent's attorney*

PLEASE TAKE NOTICE that pursuant to section 800.7 of the Rules of Practice of the Appellate Division, Third Department, you are hereby required, within 20 days of the date of this service, to either sign the Stipulation as to the correctness of the Record on Appeal, or to make and serve proposed amendments or objections thereto.

PLEASE TAKE FURTHER NOTICE that upon your failure to comply with said rule within 20 days of the date of this service, the appellant *pro se* will make a motion before the Appellate Division, Third Department, to accept the Record on Appeal, without your signature on the CPLR 5532 stipulation.

DATED:

Yours, etc.

pro se appellant

NOTICE TO SETTLE TRANSCRIPT

Supreme Court
State of New York

Appellate Division
Third Judicial Department

TITLE

Request for Respondent
Proposed Amendments
And Objections to
Certified Transcript
CPLR 5525(c)

Name & Address of Respondent

PLEASE TAKE NOTICE that transmitted to you within the record on appeal served on March 9, 2004 is a copy of the transcripts in the above action certified as correct by the court reporter, together with appellant's proposed amendments.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 5525(c) you are required to sign the attached stipulation or make proposed amendments or objections to the proposed transcript and serve them upon the undersigned within fifteen (15) days from the receipt of this notice. If you fail to sign the stipulation or make any amendments or objections to the transcript, a motion will be made to the lower Court Judge to settle the transcript.

DATED:

Yours truly,

TO:

SAMPLE STIPULATION

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

Title of Case

IT IS HEREBY STIPULATED by and between the parties hereto that the foregoing record contains correct and complete copies of all pertinent papers in this appeal.

Dated:

Appellant pro se

Dated:

Respondent

503500

Argued by: James P. Attorney, Esq.
Time Requested: 10 minutes
(or)
To be Submitted

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

JOHN SMITH,

Plaintiff-Respondent

-against-

MARY DOE,

Defendant,

and

FRANK JONES,

Defendant-Appellant.

APPELLANT’S BRIEF
or
APPELLANT’S BRIEF AND APPENDIX

Attorney & Attorney, LLP
(James P. Attorney, Esq., of Counsel)
Attorney for Appellant Frank Jones
45 Main Street
Albany, NY 12201
(518) 555-1212

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***REQUIRED DOCUMENTS IN AN APPENDIX [See § 800.8(b)]**

Note: When perfecting using the appendix method, please note that you may only cite in your brief to pages of the appendix – NOT the record. You may cross-reference the record on appeal, but you cannot cite only to the record on appeal.

QUESTIONS PRESENTED

1. Did the trial court err in refusing to give a missing witness charge?
It is submitted such refusal constituted reversible error.
2. (Argument 2 in the form of a question.)
3. (Argument 3 in the form of a question.)

duty to defend as well as its duty to indemnify.

The Trial Court also erred in finding that a provision of the Lease between Cohoes and Arcy, which expressly precludes said parties and their respective insurers from bringing any subrogation or indemnification claims against each other, was “not at issue before the court”. (R-11). As acknowledged by the Trial Court in its Order, the Stipulation of Settlement entered into in the underlying actions expressly preserved Inscorp’s right to litigate “the priority of coverage between Travelers and Inscorp in regard to the underlying actions”. (R.9). Given that the application of this Lease provision would render Travelers the primary and sole insurer liable for the losses in question, it is clearly and directly relevant to the issue of “priority of coverage”, which again was expressly preserved.¹

Moreover, Inscorp’s Complaint expressly pled that Travelers “should not be permitted to sue Cohoes” and that “Travelers’ lawsuit again Cohoes must be dismissed”, and Travelers’ papers below not only admitted this fact, but spent a considerable portion disputing same. If Travelers believe that Inscorp’s Complaint was ambiguous as to the bases for this claim, Travelers certainly had the right and opportunity to serve a Bill of Particulars and/or bring a motion seeking an amplification of Inscorp’s allegations. Travelers did neither, and Inscorp’s

¹ At the very least, a material question of fact exists as to the parties’ intent and understanding of the phrase “priority of coverage”, and the Trial Court improperly placed itself in the role of “finder of fact” in “determining” Inscorp’s and Cohoes’ understanding of this phrase.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the decision of the lower Court be affirmed in all respects.

Dated: July 2, 2007

Respectfully submitted,

James P. Attorney, Esq.
Attorney for Appellant Frank Jones

Please fill in the underlined spaces on the following form with answers appropriate to your motion. Motions are returnable in this Court on a Monday (or if a Monday falls on a holiday, on the next business day). You must give 13 days' notice (prior to the return date) if you serve your adversary (or adversaries) by mail or 8 days' notice if you use personal service. Return the original motion papers to this office, serve your adversary (or adversaries) with one copy, and provide this office with proof of service. You should attach to your papers a copy of your notice of appeal, a copy of the order or judgment appealed from, and a copy of the written decision upon which the order or judgment was based.

STATE OF NEW YORK SUPREME COURT

APPELLATE DIVISION THIRD DEPARTMENT

MOTION FOR

-vs-

Case No. _____

PLEASE TAKE NOTICE, that upon the annexed affidavit, sworn to the _____ day of

_____, 20 ____ a motion will be made at a term of this Court to be held in the City of Albany, New York, on the _____ day of _____, 20 ____, for an order (specify relief which you seek) _____

Dated: _____

(Signature) _____

(Print Name) _____

(Address) _____

(Telephone) _____

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEW YORK

COUNTY OF _____ ss.:

_____, being duly sworn, deposes and says:

1. I am the _____ in the above-entitled action.

I have appealed to the Appellate Division from an order or judgment of the _____
Court of _____ County, dated _____.
(Specify the status of the appeal)

2. By this motion I seek the following relief: _____

3. The grounds for the motion and reasons the relief should be granted are (attach additional documentation, if necessary): _____

(Signature) _____

(Print Name) _____

Sworn to before me this _____

day of _____.

Notary Public

AFFIDAVIT OF SERVICE OF MAILING

STATE OF NEW YORK)

COUNTY OF _____) ss.:

_____, being duly sworn, deposes and says:

On the _____ day of _____, 20____, I served a true copy of the annexed notice of motion and supporting affidavit by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known addressee(s) as indicated below:¹

(Signature) _____

(Print Name) _____

Sworn to before me this _____

day of _____.

Notary Public

¹ Insert name(s) and address(es) of the person(s) to whom you are mailing the papers being filed with this court.

NEW YORK SUPREME COURT
APPELLATE DIVISION, THIRD DEPARTMENT
BOX 7288, CAPITOL STATION
ALBANY, NY 12224

INSTRUCTIONS FOR MOVING FOR PERMISSION TO PROCEED
ON APPEAL AS A POOR PERSON

1) Pursuant to CPLR 1101, any party may make a motion to the court to which an appeal has been taken for permission to proceed as a poor person. Attached is a form which may be used to make a motion to this court for such relief.

2) At the top of the form is a Notice of Motion. The title of the case should be placed on the left hand side of the form and it should be written as the title appeared on the order or judgment appealed from. Below the caption is a sentence which begins "Please take notice...". The first date to be filled in that sentence is the date the affidavit in support of the motion, which is also a part of the form, is notarized. The second date to be filled in that sentence is the return date of the motion, which is the date the motion will be considered by the court. The motion may be made returnable on any Monday.

3) The motion papers should be served on all parties (if a party is represented by an attorney, service should be made on the attorney) and on the County Attorney of the County in which the papers from the lower court were filed. If service of the motion papers is done by personal delivery, the motion should be made returnable on a Monday at least eight (8) days after such service. If service of the motion papers is done by mail, the motion should be made returnable on a Monday at least thirteen (13) days after the motion papers are mailed.

4) As soon as possible after service of copies of the motion papers, the original motion papers, as well as proof that you have served the motion papers on the other parties and the County Attorney, should be forwarded to this office. You should also attach to the motion papers a copy of the order or judgment being appealed from, the decision, if any, upon which the order or judgment was based, and a copy of the notice of appeal.

5) ORAL ARGUMENT ON THE RETURN DATE OF THE MOTION IS NOT ALLOWED. The motion will be submitted to the court on the return date, and you will be notified of the decision in about 14 days.

Please fill in the underlined spaces in the following form. Return the original to this court, forward one copy to each of your adversaries, forward one copy to the County Attorney, and keep one for your records.

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

_____,
_____,
-vs-
_____,
_____.

Notice of Motion for
Permission to Proceed as
Poor Person on Appeal

Please take notice that, upon the annexed affidavit, sworn to on the _____ day of _____, _____, a motion will be made to this court, on the _____ day of _____, _____, in the City of Albany, New York, for an order granting the appellant permission to appeal as a poor person.

Dated: _____ (Your signature)

(Your name, address and telephone number)

1. What is your full name?

2. What is the nature of the above-entitled action?

3. What is the order or judgment you have appealed from to this court? (Please attach hereto a copy of the order or judgment appealed from, the decision, if any, upon which the order or judgment is based, and a copy of your notice of appeal.

4. What relief are you seeking by this motion?

5. What facts are present to support your contention that there is merit to your appeal? (Attach additional documentation, if necessary.)

6. Are you able to pay the costs, fees and expenses necessary to maintain the appeal? _____

7. Are you single () married () separated () divorced?

8. What is your occupation? If you are a student, indicate the school which you attend and the name and address of the person who is paying your tuition, room and board.

9. If you are employed, what is your gross weekly salary and the name and address of your employer?

10. If married and your spouse is employed, what is his/her weekly gross salary and the name and address of his/her employer?

11. If not living with your spouse, divorced spouse or children and you contribute weekly to their support, what is your weekly support payment? _____

12. If not living with your spouse or divorced spouse and you receive support from him or her for yourself or your children, what is the weekly amount of support you receive?

13. (a) Do you or your spouse have any bank accounts in your

individual names or jointly with each other or any other person? _____

(b) Do you have any insurance policies, stocks, bonds, trust accounts or any other investments in your name, or jointly in your name and any other person?

14. If you or your spouse own automobiles, what is the year and model, monthly payments, if financed, to whom the payments are made and the number of remaining payments?

15. Do you own your home or do you rent? _____

16. What is the approximate market value, present mortgage balance, name of bank or other financing institution and monthly payments on any home owned by you in your own name, your spouse's name or jointly with your spouse or any other person?

17. Do you have any other assets not covered by the preceding questions in this statement?

18. My gross monthly income and expenses are as follows:

INCOME:

My salary _____
My spouse's earnings _____
Other income of mine or any members of my immediate family _____

TOTAL _____

EXPENSES:

Rent or mortgage payment	_____
Food	_____
Utilities (heat, telephone, water, electric)	_____
Automobile expenses	_____
Premiums on life or medical insurance policies	_____
Repayment of loans	_____
Name of creditor and amount	_____
_____	_____
_____	_____

TOTAL _____

19. Is any other person beneficially interested in any recovery sought herein? _____ If so, is such person able to pay the costs, fees and expenses of maintaining the appeal?

20. Do you authorize the court to make any inquiries or investigation concerning the answers given by you in this affidavit?

21. If the answers in this questionnaire are not in your handwriting, were the questions and answers read to you and are your answers true?

Signature (Print name below signature)

Sworn to before me this _____ day
of _____, _____.

Notary Public

(Revised 12/17/03)

XI. LIST OF COUNTIES IN THIRD DEPARTMENT

Albany
Broome
Chemung
Chenango
Clinton
Columbia
Cortland
Delaware
Essex
Franklin
Fulton
Greene
Hamilton
Madison
Montgomery
Otsego
Rensselaer
St. Lawrence
Saratoga
Schenectady
Schoharie
Schuyler
Sullivan
Tioga
Tompkins
Ulster
Warren
Washington

Part 800

Rules of Practice

Section

- 800.1 Court sessions; four justices present
- 800.2 Motions; special proceedings; stays
- 800.3 Applications to a justice for leave to appeal to Appellate Division or Court of Appeals
- 800.4 Alternative methods of prosecuting appeals and review proceedings
- 800.5 Record on appeal or review
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- 800.10 Oral argument
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- 800.12 Appeals and proceedings deemed abandoned
- 800.13 Appeals from family court
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- 800.15 Appeals from orders concerning grand jury reports
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- 800.19 Transferred proceedings
- 800.20 State human rights proceedings
- 800.21 Action on submitted facts
- 800.22 Orders; settlement; costs
- 800.23 Fees of the Clerk of the Court
- 800.24-a Pre-calendar Statement for Civil Appeals
- 800.24-b Civil Appeals Settlement Program

Revised: September 18, 2012

Section 800.1 Court sessions; four justices present.

Unless otherwise ordered, court sessions shall commence at 1:00 p.m., except on Friday and the last session day of a term, when they shall commence at 9:30 a.m. A term of court shall be deemed to continue until the day on which the next term convenes, and the court may reconvene at any time during recess. When a cause is argued or submitted to the court with four justices present, it shall, whenever necessary, be deemed submitted also to any other duly qualified justice of the court, unless objection is noted at the time of argument or submission.

Section 800.2 Motions; special proceedings; stays

(a) Motions. Unless otherwise directed by order to show cause, motions shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not court is actually in session, upon notice prescribed by CPLR 2214. Motions may not be argued except by permission of the court or a justice thereof. Counsel shall promptly notify the court clerk when such permission is granted. A notice of motion shall give notice to adverse parties that the motion will be submitted on the papers and that their personal appearance in opposition to the motion is neither required nor permitted. An order to show cause shall also give notice to adverse parties (1) whether the motion will be argued or submitted and (2) whether their personal appearance in opposition to the motion is permitted. Papers and memoranda shall be typewritten. The original moving papers shall be filed with proof of service as soon as possible. Papers in opposition to a motion made pursuant to notice of motion shall be filed at or before 11 a.m. on the Friday before the return day. Papers in opposition to an order to show cause shall be filed at or before 9 a.m. of the return date of the order. The moving papers on motions for permission to appeal to the Court of Appeals on certified questions shall state the questions proposed. A motion for permission to appeal to the Court of Appeals pursuant to CPLR 5602(a) shall be granted upon the approval of a majority of the justices comprising the panel assigned to consider the motion. On motions for reargument, a copy of the decision and any opinion of the court shall be attached to the moving papers.

(b) Special proceedings. Unless otherwise directed by order to show cause, original special proceedings instituted in this court (e.g., removal proceedings, mandamus and prohibition) shall be made returnable on a motion day, at 1:30 p.m., upon notice prescribed by CPLR 403 or CPLR 7804(c), unless a different time is otherwise fixed by applicable statute. The moving and

opposing parties shall submit the original and six copies of their papers with proof of service of a copy on each adversary. Moving papers shall be filed within 24 hours after service upon respondent, and opposing papers shall be filed as prescribed by applicable CPLR section, unless otherwise directed by the court.

(c) Review Proceedings Under Education Law, Labor Law, Public Health Law, and Tax Law. Unless otherwise provided by order to show cause, review proceedings commenced in this court pursuant to section 6510 of the Education Law, sections 220 or 220-b of the Labor Law, section 230-c of the Public Health Law or section 2016 of the Tax Law shall be made returnable on a motion day, on not less than 20 days' notice, as provided in CPLR 7804(c). Within 60 days from service of respondent's answer, petitioner shall file an original and nine copies of a reproduced full record on review and 10 copies of petitioner's brief, or a single copy of the record and 10 copies of petitioner's brief and appendix, with proof of service of one copy of the record and two copies of the brief, or two copies of the brief and appendix, upon respondent. Within 45 days from service of petitioner's brief, respondent shall file 10 copies of a brief or brief and appendix, with proof of service of two copies on petitioner. Petitioner may file a reply brief within 10 days of service of respondent's brief. The record to be filed by petitioner shall be stipulated to by the parties and shall include the petition, answer, reply and affidavits, if any, the administrative determination sought to be reviewed, and the hearing transcript and exhibits. In proceedings pursuant to section 2016 of the Tax Law, the stipulated record shall also include the determination of the administrative law judge, the decision of the tax appeals tribunal, the stenographic transcript of the hearing before the administrative law judge, the transcript of any oral proceedings before the tax appeals tribunal and any exhibit or document submitted into evidence at any proceeding in the division of tax appeals upon which such decision is based.

(d) Stays. When an order to show cause presented for signature makes provision for a temporary stay or other interim relief, except as to the time and manner of service, the party seeking such relief must inform the justice or the clerk at the time of submission of the order that the opposing party has been notified of the application and whether such party opposes or consents to the granting of the interim relief sought.

Section 800.3 Applications to a justice for leave to appeal to Appellate Division or Court of Appeals.

An application to a justice of the Appellate Division for leave to appeal in a civil case (CPLR 5701[c]), or in a criminal action or proceeding (CPL 460.15; CPL 460.20), may, but need not be, addressed to a named justice, and, unless otherwise directed by order to show cause, shall be made returnable at the court's address in Albany, in the manner provided in section 800.2(a) of this Part. Such an application may not be argued unless the justice to whom it is made or referred otherwise directs.

Section 800.4 Alternative methods of prosecuting appeals and review proceedings.

An appeal or transferred review proceeding may be prosecuted upon a full record reproduced by any method approved for briefs and appendixes by CPLR 5529, by the appendix method, or upon an agreed statement in lieu of record.

(a) Reproduced full record. When the full record is reproduced, appellant shall file with the clerk the original and nine copies prepared in accordance with section 800.5 of this Part, with proof of service of one copy upon each adverse party.

(b) Appendix method. When the appendix method is used, appellant shall file with the clerk a single copy of the papers constituting the record on appeal or record on review prepared in accordance with section 800.5 of this Part, with proof of service of a copy upon each adverse party or, in lieu thereof, appellant may file with the clerk proof of service of a notice upon each adverse party that the single copy of the record has been filed in the office of the clerk of this court. In the alternative, when serving appellant's brief, appellant may serve the single copy of the record upon respondent and shall so state in an affidavit of service. A respondent upon whom the single copy of the record has been served shall file the record with the clerk of this court within 30 days from the date of its service upon him. When there are two or more adverse parties, appellant shall obtain instructions from the clerk for use of a single record by respondents and its filing with the clerk. Appellant's or petitioner's brief shall contain an appendix in compliance with section 800.8(b) of this Part.

(c) Appeals by indigent parties. An appeal in a criminal case, or in a civil case by a person who has been granted permission by this court to proceed as a poor person, may be prosecuted by the appendix method authorized by subdivision (b) of this section. Appellant shall file seven copies of a typewritten brief and appendix with proof of service of one copy upon each adversary. Respondent may likewise file seven copies of a brief with proof of service of one copy upon each adversary. The clerk of the court from which the appeal is taken, after service upon him of a copy of the decision of this court, shall furnish without charge to a person granted permission to proceed as a poor person one copy of the stenographic transcript of trial or hearing minutes and one copy of any other paper or document on file in his office which is material and relevant to the appeal. In criminal and family court cases the court may, where such is necessary for perfection of the appeal, direct the clerk of the court to send a copy of the stenographic transcript of trial or hearing minutes on file in his office to the clerk of this court, who shall attach it to the single copy record upon which the appeal shall be prosecuted.

(d) Agreed statement in lieu of record. If an appeal is prosecuted pursuant to CPLR 5527, appellant shall reproduce the agreed statement as a joint appendix in a manner authorized by CPLR 5529; shall prefix thereto a statement pursuant to CPLR 5531; and shall, within 30 days after approval of the statement by the court from which the appeal is taken, file the required number of copies, with proof of service of one copy upon each adverse party.

Section 800.5 Record on appeal or review.

(a) Form and content. A record on appeal or record on review shall be on good quality, white, unglazed paper and shall comply with CPLR 5526 as to size and form. Carbon copies will not be accepted. Bulky records shall be divided into volumes not to exceed one and one-half inches in thickness and shall be bound on the left margin with a flat clasp or similar type of fastener. The record shall contain, in the following order, so much of the following items as shall be applicable to the particular appeal or proceeding:

(1) a soft cover containing the title and the names, addresses and telephone numbers of attorneys;

(2) a table of contents which shall list and briefly describe each paper included in the record, each witness' testimony and each exhibit. The part

relating to a transcript of testimony shall separately state as to each witness the page at which direct, cross, redirect and recross examination begins. The part relating to exhibits shall briefly describe each exhibit and shall indicate the page where offered or admitted in evidence and whether the exhibit has been omitted from the record;

(3) a statement pursuant to CPLR 5531;

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

(5) a stipulation or order settling the transcript pursuant to CPLR 5525(c);

(6) a stipulation dispensing with reproducing any exhibits. Exhibits may be omitted from the record pursuant to stipulation of counsel or by permission of the presiding justice. Omitted exhibits which are material to the issues raised on appeal shall be filed when briefs are filed. All exhibits, whether omitted from the record or not, shall be listed and briefly described in the table of contents;

(7) the appropriate certification or stipulation as required by section 800.7 of this Part.

(b) Exhibits. Exhibits which are material to the issues raised by any party shall be made available to the court. Exhibits not relevant, as well as bulky, dangerous or irreplaceable exhibits, need not, however, be filed unless the clerk otherwise directs. Except in appropriation cases, appellant when filing his brief shall also file the original or a certified copy of each exhibit upon which he relies or has reason to believe a respondent will rely. Exhibits under a respondent's control or under the control of a third person shall be filed either pursuant to a five-day written demand served by appellant upon a respondent or pursuant to a subpoena duces tecum issued in accordance with CPLR, article 23. Appellant shall also file with his brief proof of service of such a demand or subpoena, together with a list of all relevant exhibits. In appropriation cases, each party shall file with his brief two copies of each appraisal report upon which he relies.

800.6 Transcript.

(a) Number required. In civil cases, the court reporter or stenographer shall furnish petitioner or appellant with the ribbon copy of the typewritten

transcript and, when the appendix method of appeal is used, the ribbon copy, or a copy of equal quality, shall be included in the single-copy record on appeal for use by the parties and the court.

(b) Form. Court reporters and stenographers who report administrative agency hearings shall furnish transcripts on 11 by 8-1/2-inch white, opaque paper of good quality. Pages shall contain page headings as required for appendices by CPLR 5529(c). The transcript shall be prefaced with a table of contents showing the location of direct, cross and redirect examination of witnesses; motions for dismissal; the jury charge; the verdict and motions addressed to it; and the admission of exhibits in evidence, with a brief description of each. (c) Settlement of transcript. A transcript shall be stipulated to by the parties or settled in the manner provided by CPLR 5525(c).

Section 800.7 Certification of record.

(a) Reproduced full record. A reproduced full record shall be certified either by (1) a certificate of appellant's or petitioner's attorney pursuant to CPLR 2105, (2) a certificate of the proper clerk, or (3) a stipulation in lieu of certification pursuant to CPLR 5532. The reproduced copy containing the signed certification or stipulation shall be marked "Original Record". When a record contains a transcript, it shall be settled in the manner provided in section 800.6(c) of this Part.

(b) Single copy of record. When the appendix method is used, the single copy of the record must be stipulated to by the parties or, if the parties are unable to stipulate, settled by the judge before whom the proceedings were held. The procedure for settlement of a single copy record shall be in the manner provided by CPLR 5525(c), except that, if respondent shall fail to make any proposed amendments or objections to the record within twenty days after service of it upon respondent, the record, certified as correct by appellant's or petitioner's attorney, shall be deemed correct and may be filed with an affirmation by counsel certifying to compliance with the requirements of this section and the lack of proposed amendments or objections by respondent.

(c) Attorney for the Child. Upon any appeal in which an attorney for the child appears for a non-appellant child, the provisions of this section permitting or requiring respondent to stipulate to the record on appeal shall also apply to and include the attorney for the child.

Revised: September 18, 2012

Section 800.8 Form and content of brief and appendix.

(a) Briefs. Briefs shall comply with CPLR 5528 and 5529, shall contain on the cover the name and address of counsel who will argue the appeal and the estimated time of argument, and shall be on good quality, white, unglazed paper. Carbon copies will not be accepted. Except with permission of the court, briefs shall not exceed the following limitations: petitioner's or appellant's brief, 50 printed or 70 typewritten pages; respondent's brief, 25 printed or 35 typewritten pages; reply brief, 10 printed or 15 typewritten pages; supplemental pro se brief filed pursuant to section 800.14 (a) of this Part and amicus curiae brief, 25 printed or 35 typewritten pages.

(b) Appendixes. An appendix shall comply with CPLR 5529 and may be bound in the brief or separately. Appellant's appendix shall contain such parts of the record on appeal as are necessary to consider the questions involved, including at least the following:

- (1) notice of appeal;
- (2) judgment, decree or order appealed from;
- (3) decision and opinion of the court or agency, and report of a referee, if any;
- (4) pleadings, if their sufficiency, content or form is in issue or material; in a criminal case, the indictment;
- (5) relevant excerpts from transcripts of testimony or of averments in motion papers upon which appellant relies or has reason to believe respondent will rely; in addition, in a criminal case, the sentencing minutes;
- (6) charge to the jury; and
- (7) copies of critical exhibits, including photographs, to the extent practicable.

(c) Inadequate appendix. If an appendix fails to comply with this section, the adverse party, within 10 days from its receipt, may move to compel a party to file a further appendix. A respondent may also file an appendix to respondent's brief containing relevant portions of the record omitted from appellant's brief.

Section 800.9 Filing and service of papers.

(a) Record and appellant's brief. Except where a different time limit or a different number of copies of papers is otherwise permitted herein, appellant shall cause to be filed with the clerk of this court, within 60 days after service of the notice of appeal, either (1) the original and nine copies of a reproduced full record and 10 copies of appellant's brief; (2) the single copy of the record, together with 10 copies of a brief and appendix, or (3) 10 copies of the agreed statement in lieu of record and 10 copies of a brief; with proof of service of one copy of the record and two copies of the brief, or two copies of a brief and appendix, upon each respondent.

(b) Respondent's brief. After the record on appeal and appellant's brief, or brief and appendix, have been accepted for filing, the clerk shall mail to each respondent a scheduling memorandum which shall require respondent to serve and file respondent's brief within 45 days from the date of the memorandum or within such shorter time as the memorandum may direct. Each respondent shall file the same number of copies of respondent's brief as appellant shall have filed, with proof of service of two copies upon each appellant. Upon any appeal in which an attorney for the child appears for a non-appellant child, the provisions of this subdivision regarding mailing of the scheduling memorandum and filing of respondent's brief shall also apply to and include the attorney for the child.

(c) Reply brief. Appellant may file a corresponding number of copies of a reply brief within 10 days after service of respondent's brief, with proof of service of two copies upon each respondent.

(d) Effect of failure to comply. Upon appellant's or petitioner's failure to comply with any provision of this Part, or for any other unreasonable delay in prosecuting an appeal or proceeding, respondent may move to dismiss for lack of prosecution. Upon respondent's failure to comply with any provision of this Part, in the discretion of the court, costs and disbursements of the appeal may be imposed against respondent or respondent's attorney, irrespective of the outcome of the appeal.

(e) Cross-appeals. In the case of cross-appeals, unless otherwise directed by order of the court made pursuant to a motion on notice, the plaintiff shall be appellant and shall file and serve the record and brief, or brief and appendix, first. The answering brief and appendix shall be filed and served within

30 days after service of the first brief and shall include the points of argument on the cross-appeal. A reply brief shall be filed and served within 10 days after service of the answering brief. A reply brief to the cross-appeal may be served within 10 days after service of appellant's reply brief.

Section 800.10 Oral argument.

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

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

(b) Any party seeking permission for oral argument in any of the cases specified in subdivision (a) (1) through (4) of this section shall submit a letter application therefor, on notice to all parties, within 10 days after the filing of appellant's or petitioner's brief together with proof of service upon respondent. Any party seeking permission for oral argument in a case specified in subdivision (a) (5) of this section shall submit a letter application therefor, on notice to all parties, within 10 days after being advised by the clerk that there will be no oral argument. The application shall specify the reasons why oral argument is appropriate and the amount of time requested.

(c) In cases not specified in subdivision (a) of this section, each counsel shall notify the clerk whether argument is desired and, if so, shall indicate on the cover of the brief the amount of time requested. Unless otherwise ordered, each side shall be allowed not more than 30 minutes for argument on appeals from

judgments, in actions on submitted facts, and in special proceedings transferred to or instituted in this court and 15 minutes on appeals from nonfinal orders.

Section 800.11 Day calendar assignments; adjournments; additions.

The clerk shall prepare day calendars for each court term by scheduling for argument or submission cases in which the record and appellant's brief have been filed and in which the respondent's brief has been filed or the date for filing and serving respondent's brief has been fixed pursuant to section 800.9(b) of this Part. The clerk shall give counsel notice of the date on which a case will be argued. After notice of day calendar assignment has been given, a case may not be moved to a different day unless request is made at least 14 days prior to commencement of the term for which it has been scheduled. The granting of a request to reschedule a case shall not serve to extend the time to file respondent's brief. A case not argued by a party when reached shall be submitted without oral argument on the papers filed. A case may be added to a term upon written stipulation signed by counsel and approved by the court.

Section 800.12 Appeals and proceedings deemed abandoned.

A civil appeal or proceeding shall be deemed to have been abandoned where appellant or petitioner shall fail to serve and file a record and brief within nine months after the date of the notice of appeal or order of transfer, or, in the case of a proceeding instituted in this court, within nine months after the date of the order to show cause or notice of petition commencing the proceeding; and the clerk of this court shall not accept or file any record or brief attempted to be filed beyond the nine-month period unless directed to do so by order of the court. Such an order shall be granted only pursuant to a motion on notice supported by an affidavit setting forth a reasonable excuse for the delay and facts showing merit to the appeal or proceeding.

Section 800.13 Appeals from Family Court.

An appeal from Family Court shall be prosecuted by the appendix method authorized by section 800.4(b) of this Part upon a single copy of the record prepared in accordance with section 800.5 of this Part and upon seven copies of a brief and appendix in compliance with section 800.8(b) of this Part. Application

for assignment of counsel and for permission to proceed as a poor person shall be made to this court pursuant to section 1120 of the Family Court Act.

Section 800.14 Appeals in criminal cases.

An appeal authorized by the Criminal Procedure Law shall be prosecuted by the appendix method authorized by section 800.4(b) of this Part. The single copy record in a criminal case shall comply with section 800.5 of this Part, except that, in addition to the relevant items listed in section 800.5(a) of this Part, it shall also contain the indictment, hearing and trial transcripts, motion papers, if any, and sentencing minutes. When the clerk of the trial court has been directed, pursuant to section 800.4(c) of this Part, to furnish a copy of a transcript to this court, the transcript may be omitted from the single copy record.

(a) Briefs and appendixes. Briefs and appendixes shall comply with CPLR 5528 and section 800.8 of this Part. Where defendant has been assigned counsel, defendant may file one original and six copies of a supplemental pro se brief no later than 45 days after assigned counsel has mailed to defendant the brief filed by the assigned counsel.

(b) When to be heard; service of briefs. Unless appellant's time is enlarged by order, appellant's counsel shall file the single copy record and seven copies of a brief and appendix within 60 days after the last day for filing a notice of appeal, with proof of service of one copy upon the appellant and one copy upon respondent. Respondent, within 30 days after service of appellant's brief and appendix, shall file seven copies of a brief and appendix, with proof of service of two copies upon appellant's counsel, who shall forthwith furnish a copy of respondent's brief to appellant. The clerk shall schedule the appeal for argument or submission at the next term of court commencing more than 30 days after the service and filing of the record on appeal and appellant's brief and appendix, unless an extension to file respondent's brief shall have been granted pursuant to section 800.9(b) of this Part.

(c) Enlargement of time. Application by appellant for an enlargement of time in a criminal case shall be by motion on notice and shall be accompanied by an affidavit satisfactorily explaining the delay. The affidavit shall state (1) the date of conviction; (2) whether by trial or plea; (3) whether appellant is free on bail; (4) the date the notice of appeal was filed; (5) the date the trial transcript was ordered; (6) whether the transcript has been filed; (7) if the complete transcript

has not been filed, the date it is expected to be filed; and (8) the date appellant's brief and appendix will be filed.

(d) Oral argument. Unless otherwise ordered by the court, appeals may be submitted without oral argument. The time allowed for oral argument shall be as provided in section 800.10 of this Part.

(e) Remittitur. Upon entry of the order on this court's decision, the original record on appeal shall be remitted to the clerk of the criminal court with a copy of the order.

(f) Reargument of appeal. Motions for reargument must be made within 60 days after service upon the moving party of a copy of the court's order, with written notice of its entry, except that when a party has entered the order, the time shall be computed from the date of entry.

(g) Where only sentence in issue. When the sole question raised on appeal concerns the legality, propriety or excessiveness of the sentence imposed, the appeal may be heard upon a shortened record on appeal consisting of the notice of appeal, sentencing minutes, and minutes of the plea, if appellant pleaded guilty. The record, which shall be clearly labeled "Record on Appeal from Sentence", shall contain a statement pursuant to CPLR 5531 and shall be stipulated to or settled in the manner provided in section 800.7(b) of this Part. The appeal shall be prosecuted, and may be scheduled for oral argument or submission, in the manner provided in subdivision (b) of this section. A copy of the presentence investigation report shall be filed with the clerk.

(h) Expedited criminal appeal of order reducing indictment or dismissing indictment and directing filing of prosecutor's information.

(1) This subdivision shall govern the procedure for an expedited appeal, pursuant to CPL 210.20(6)(c), 450.20 (1-a) and 450.55, of an order by a superior court reducing a count or counts of an indictment or dismissing an indictment and directing the filing of a prosecutor's information.

(2) After the people file and serve a notice of appeal pursuant to CPL 460.10(1), either party may request that the court expedite the appeal. If a request is made, the court shall hear the appeal on an expedited basis as set forth in this subdivision.

(3) (i) The court shall establish an expedited briefing schedule for the appeal. Briefs may be typewritten or reproduced. The people shall file nine copies of a brief and an appendix, which shall include a copy of the indictment and the trial court's decision and order. The respondent shall file nine copies of a brief and, if necessary, an appendix. One copy of the brief and appendix shall be served on opposing counsel.

(ii) The appeal may be taken on one original record, which shall include copies of the indictment, the motion papers, the trial court's decision and order, and the notice of appeal.

(iii) The People shall file with the Appellate Division, separately from the record, one copy of the grand jury minutes.

(iv) The court shall give preference to the hearing of an appeal perfected pursuant to this subdivision and shall determine the appeal as expeditiously as possible.

(4) Unless otherwise ordered by the Appellate Division, if the defendant is represented in the superior court by court-assigned counsel, such counsel shall continue to represent the defendant in any appeal by the People of an order reducing an indictment or dismissing an indictment and directing the filing of a prosecutor's information. (amended effective 4/29/91).

(i) Service of Order. Service of a copy of the order upon appellant in accordance with CPL 460.10 (5) (a) shall be made pursuant to CPLR 2103.

Section 800.15 Appeals from orders concerning grand jury reports.

The mode, time and manner for perfecting an appeal from an order accepting a report of a grand jury pursuant to paragraph (a) of subdivision 1 of section 190.85 of the Criminal Procedure Law, or from an order sealing a report of a grand jury pursuant to subdivision 5 of section 190.85 of the Criminal Procedure Law, shall be in accordance with section 800.14 of this Part governing appeals in criminal cases. Appeals from such orders shall be preferred causes and may be added to a term calendar either by stipulation or upon motion. The record, briefs and other papers on such an appeal shall be sealed and not be

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available for public inspection. Unless otherwise directed by the court, oral argument will not be allowed.

Section 800.16 Appeals in election cases.

Appeals in proceedings brought pursuant to any provision of the Election Law shall be prosecuted upon a single-copy record and seven copies of a brief and appendix pursuant to the method specified in section 800.4 (b) of this Part. Such appeal shall be given preference and shall be brought on for argument on such terms and conditions as the presiding justice may direct upon application of any party to the proceeding.

Section 800.17 Unemployment insurance appeals.

An appeal from a decision of the Unemployment Insurance Appeal Board may be prosecuted in accordance with written instructions which are available from the clerk of the court or the Department of Law, Employment Security Bureau, 120 Broadway, 26th Floor, New York, New York 10271.

Section 800.18 Workers' compensation appeals.

(a) Papers on appeal. An appeal from a decision of the Workers' Compensation Board shall be heard upon one copy of the papers constituting the record list as herein prescribed, together with an appendix to appellant's brief, which shall comply with section 800.8 of this Part and contain a copy of each item of the record necessary to consider the questions raised, including those items appellant reasonably assumes will be relied upon by a respondent. Respondent's brief may contain an appendix which, however, shall contain only such additional parts of the record as are necessary to consider the questions involved, or the parties may agree upon a joint appendix. Where all papers in the record on appeal are deemed relevant to the issues, appellant may proceed upon the required number of copies of the record on appeal, and in the event of such an election an appendix shall not be required.

(b) Record list.

(1) Appellant shall prepare a statement of the issues he intends to present for review by the Appellate Division, together with a list of the papers relevant to those issues. Transcripts of testimony shall be

listed according to date, and each paper and exhibit listed shall, where possible, be designated by date and brief description.

(2) Unless, within 45 days after service of a notice of appeal, the Workers' Compensation Board shall vacate, modify or rescind the decision which is the subject of the appeal, within 30 days after expiration of said 45 days or, in the event the board sooner determines that it will not vacate, modify or rescind the decision, within 30 days after the board serves a notice of such determination on appellant, appellant shall serve a copy of the proposed record list upon the Attorney General and each party affected by the board decision, together with a written stipulation reciting that the papers, testimony and exhibits listed therein constitute all of the papers necessary and relevant to the issues. Appellant shall also serve upon the parties affected a written request to stipulate to the contents of the record list within 20 days. Within 20 days after such service, any party so served may make objections or amendments to the record list and serve them upon appellant.

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

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

(5) When filing the original record on appeal, appellant shall file the record list, together with the stipulation, board decision or affirmation. Hearing transcripts, certified as correct by the hearing reporter, shall, in the absence of objection, also be deemed correct.

(6) A decision of the board upon an application to settle a record list shall be reviewable by motion pursuant to section 800.2(a) of this Part. The moving papers shall contain a copy of the board decision and the papers submitted to the board upon the application. Where necessary, the court will obtain the board's file for use on the motion.

(c) Form and content of record. A record on an appeal pursuant to section 23 of the Workers' Compensation Law shall comply as to form with section 800.5(a) of this Part and shall contain:

(1) a soft cover containing the title and names, addresses and telephone numbers of the attorneys;

(2) a table of contents which shall list and briefly describe each paper, including the date thereof, included in the record and each exhibit. The part relating to a transcript of testimony shall separately state as to each witness the page at which direct, cross, redirect and recross examination begins. The part relating to exhibits shall briefly describe each exhibit and shall indicate the page where admitted in evidence and whether the exhibit has been omitted from the record;

(3) a statement pursuant to CPLR 5531;

(4) the notice of appeal and, in chronological order, the papers set forth in the record list;

(5) a stipulation dispensing with reproducing any exhibits in the record. Omitted exhibits which are material to the issues raised shall be filed when briefs are filed; and

(6) a certification or stipulation in lieu thereof.

(d) Certification of record. The record on appeal shall be certified as true and correct by the secretary or other designee of the Workers' Compensation Board, by a certificate of appellant's attorney pursuant to CPLR 2105, or by a stipulation in lieu of certification pursuant to CPLR 5532.

(e) Filing and service of papers. Within 60 days after the last day to agree upon objections or amendments to the record list, or, when the parties are unable to agree, within 60 days from settlement of the record list by the board, or, if no objections or amendments to the record list have been served, within 60 days from the last day to serve them, appellant shall file with the clerk the record

on appeal together with 10 copies of appellant's brief and appendix, with proof of service of one copy of the record and two copies of appellant's brief and appendix upon the Attorney General and each respondent affected by the board's decision. Respondent's brief shall be served and filed in accordance with the provisions of section 800.9(b) of this Part, except that a respondent shall file proof of service of two copies of a respondent's brief upon every other interested party to the appeal.

(f) When to be heard; application of rules. Appeals shall be scheduled at terms designated for workers' compensation appeals in accordance with the provisions of section 800.11 of this Part. The Attorney General may continue an appeal to a subsequent term by filing, within 14 days from service of appellant's brief, proof of service of a notice of adjournment. Except as otherwise provided in this section, the provisions of this Part governing appeals generally shall apply to workers' compensation appeals.

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

Section 800.19 Transferred proceedings.

An article 78 proceeding transferred to this court pursuant to CPLR 7804(g), and an appeal transferred from another department pursuant to CPLR 5711, may be prosecuted in any manner authorized by section 800.4 of this Part. Unless otherwise ordered by the court, the rules governing the content, number and form of records, briefs and appendixes shall apply, except that petitioner or appellant shall serve and file the required papers within 60 days after the entry of the order of transfer.

Section 800.20 State human rights matters.

(a) Appeals. An appeal from an order or judgment of the Supreme Court determining a proceeding pursuant to section 298 of the Executive Law shall be prosecuted upon a record consisting of the original papers and the record before the State Division of Human Rights together with seven copies of appellant's brief and appendix, with proof of service of one copy upon each respondent. Appellant's appendix shall contain at least the notice of appeal, the order or judgment appealed from, the decision of the court below and the determination and order of the State Division of Human Rights. Each respondent shall file seven copies of a brief with proof of service of one copy upon appellant. Briefs and

appendices shall comply with and be filed within the time specified by sections 800.8 and 800.9 of this Part.

(b) Transferred proceedings. A proceeding transferred to this court for disposition pursuant to section 298 of the Executive Law may be prosecuted upon a single copy of the record on review which shall consist of the notice of petition and petition, answer, reply, if any, the original record and transcript of the public hearing held before the State Division of Human Rights and the division's determination and order. Petitioner shall file seven copies of a brief and appendix, with proof of service of one copy upon each named respondent. Each respondent shall file seven copies of a brief or brief and appendix with proof of service of one copy upon petitioner. Briefs and appendices shall comply with and be filed within the time specified by sections 800.8 and 800.19 of this Part. Unless the court directs otherwise, the division shall file the original record and transcript of public hearing within 45 days of entry of the order of transfer.

Section 800.21 Action on submitted facts.

An original agreed statement of facts in an action submitted to this court pursuant to CPLR 3222 shall be filed in the office of the county clerk, and a copy shall be appended to appellant's brief as a joint appendix. A statement required by CPLR 5531 shall be prefixed thereto. Briefs shall be served and filed in the manner and in accordance with the time requirements prescribed by sections 800.9 and 800.11 of this Part for appeals.

Section 800.22 Orders; costs.

The orders, appointments, assignments and directions of the court shall be signed by the presiding justice or the clerk of the court. Costs in workers' compensation and unemployment insurance appeals shall be taxed by the clerk in accordance with CPLR 8403.

Section 800.23 Fees of the Clerk of the Court.

(a) Fee on civil appeals and proceedings. In accordance with CPLR 8022, the clerk of the court is directed to charge and is entitled to receive a fee of three hundred fifteen dollars, payable in advance, upon the filing of a record on a civil appeal or statement in lieu of record on a civil appeal, or upon the filing of a notice of petition or order to show cause commencing a special proceeding. The fee shall be paid by check or money order and payment in full shall accompany

the record on appeal, statement in lieu of record, notice of petition or order to show cause. A civil appeal or special proceeding shall not be scheduled for argument or submission until the fee is received and the clerk may return a document not accompanied by the fee. The clerk shall not charge or receive a fee from: (1) the State, or any agency or officer thereof, or any party or governmental entity specifically exempted by law from the payment of such fee; (2) any party who by statute, rule or order of the court has been authorized to proceed as a poor person; or (3) a claimant upon an appeal from a decision of the Unemployment Insurance Appeal Board.

(b) Fee on Motions and Cross Motions. In accordance with CPLR 8022, the clerk of the court is also entitled, upon the filing of each motion or cross motion with respect to a civil appeal or special proceeding, to a fee of forty-five dollars, payable in advance. No fee shall be imposed for a motion or cross motion which seeks leave to appeal as a poor person pursuant to CPLR 1101(a).

(c) Other fees. In accordance with Judiciary Law §265, the clerk of the court is directed to charge and is entitled to receive in advance the following fees on behalf of the State:

- (1) For a large, embossed certificate attesting to admission as an attorney and counselor at law, twenty dollars.
- (2) For a printed certificate attesting to admission, good standing and registration as an attorney and counselor at law, five dollars.

Section 800.24-a Pre-calendar Statement for Civil Appeals.

(a) In every civil case in which a notice of appeal is filed or an order granting leave to appeal is entered, except in appeals in proceedings pursuant to the Election Law and CPLR articles 70 and 78, appeals in family court proceedings involving child abuse or neglect, juvenile delinquency or persons in need of supervision, appeals from decisions of the Unemployment Insurance Appeal Board and Workers' Compensation Board, and appeals pursuant to section 168-n (subd. 3) of the Correction Law, appellant shall also file, together with the notice of appeal or order granting leave to appeal, a pre-calendar statement.

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(b) The pre-calendar statement, entitled as same, must set forth:

- (1) The title of the underlying action or proceeding and the date of commencement;
- (2) The full names of the original parties and any change in the parties;
- (3) The name, address, telephone number and facsimile telephone number of counsel for appellant;
- (4) The name, address, telephone number and facsimile telephone number of counsel for each respondent and counsel for each other party;
- (5) The court, judge or justice, and county from which the appeal is taken, together with the index number and the request for judicial intervention (RJI) number;
- (6) The specific nature and object of the underlying action or proceeding (e.g., automobile negligence personal injury action seeking money damages; breach of contract action seeking specific performance; family court proceeding seeking modification of child custody and visitation order; divorce action involving equitable distribution; real property action involving a boundary-line dispute and adverse possession);
- (7) A clear and concise statement of the issues to be raised on the appeal and the grounds for reversal or modification to be advanced;
- (8) Whether there is another pending appeal or pending related action or proceeding, briefly describing same.

(c) Appellant shall attach to the pre-calendar statement a copy of the order or judgment appealed from, the opinion or decision, if any, and a copy of the notice of appeal or order granting leave to appeal.

(d) The clerk of the court from which the appeal is taken shall promptly transmit the pre-calendar statement and its attachments to the Appellate Division, Third Department.

(e) Forms. The pre-calendar statement shall read substantially as follows:

PRE-CALENDAR STATEMENT
State of New York
Supreme Court - Appellate Division
Third Judicial Department

Case Title: Set forth the full case title.

County Index No. _____
RJI No. _____
Date of Commencement _____

Parties Involved: Set forth the full names of the original parties and any change in parties.

Party Name	Original Status
Appellate Status (eg. John Doe) (eg. Appellant)	(eg. Defendant)

Counsel for Appellant(s): Set forth the name, address, telephone number and facsimile telephone number of counsel for appellant(s).

Counsel for Respondent(s) and Counsel for Other Parties: Set forth the name, address, telephone number and facsimile telephone number of counsel for respondent(s) and for each other party.

Court, Judge and County: Identify the court, judge or justice, and the county from which the appeal is taken.

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Nature and Object of Action or Proceeding: Concisely set forth the nature and object of the underlying action or proceeding.

Appellate Issue(s): Set forth a clear and concise statement of the issue(s) to be raised on the appeal, the grounds for reversal or modification to be advanced and the specific relief sought on the appeal.

Other Related Matters: Indicate if there is another related action or proceeding, identifying and briefly describing same.

Submitted by: _____
Signature

Print Name:
Attorney for:
Date:

Attachments:

Check

1. Copy of order or judgment appealed from.
_____attached
2. Copy of opinion or decision.
_____attached
_____does not exist
3. Copy of notice of appeal or order granting leave to appeal.
_____attached

Attach copies, not originals. File this original form with attachments when original notice of appeal is filed in the office where the judgment or order of court of original instance is entered. A copy of this document must be served upon all counsel and pro se parties.

Section 800.24-b Civil Appeals Settlement Program.

(a) The court, in those cases in which it deems it appropriate, will issue a notice directing the attorneys for the parties and the parties themselves (unless the court excuses a party's personal presence) to attend a pre-calendar

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conference before such person as it may designate to consider settlement, the limitation of issues and any other matter which such person determines may aid in the disposition of the appeal or resolution of the action or proceeding. Where parties are represented by counsel, only attorneys fully familiar with the action or proceeding, and authorized to make binding stipulations or commitments, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.

(b) Any attorney or party who, without good cause shown, fails to appear for or participate, with the familiarity and authorization described in subdivision (a) of this section, in a regularly scheduled pre-calendar conference, or who fails to comply with the terms of a stipulation or order entered following a pre-calendar conference, may be subject to such sanctions and/or to such costs in the form of reimbursement for actual expenses incurred and reasonable attorneys' fees as the court may direct.

(c) Should a pre-calendar conference not be scheduled within 30 days after the filing of a pre-calendar statement, any party may, upon notice, apply to the court by letter requesting such conference. The application shall include a brief statement indicating why a conference would be appropriate.

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