

COURT NOTICES

AMENDMENT OF RULE Rules of the Court of Appeals

State of New York
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the 15th day
of November 2010

Present, HON. JONATHAN LIPPMAN, Chief Judge, presiding.

In the Matter
of
the Amendment of the Rules of the Court of Appeals
(22 NYCRR Part 500).

In pursuance of section 51 of the Judiciary Law, it is hereby
ORDERED, that Part 500 (22 NYCRR Part 500) of the present
Rules of the Court of Appeals be and they hereby are amended by
deleting the bracketed material and adding the underlined material, ef-
fective December 8, 2010, or as soon thereafter as section 52 of the
Judiciary Law is complied with, to read as follows:

The present section 500.2 of Part 500 of Title 22 is repealed in its
entirety and a new section 500.2 is substituted therefor:

500.2 Submission of Briefs and Record Material in Digital Format.

*(a) The Court requires the submission of briefs and record material
in digital format (see sections 500.11[k]; 500.12[h]; 500.14[g]; and
500.23[a][1][ii] of this Part) as companions to the required number
of copies of printed briefs and record material filed and served in ac-
cordance with this Part.*

*(b) The companion briefs and record material in digital format
shall comply with the current technical specifications available from
the clerk's office.*

*(c) The companion briefs and record material in digital format shall
be identical to the original printed briefs and record material, except
they need not contain an original signature.*

*(d) Unless otherwise permitted by the clerk, companion filed briefs
and record material in digital format shall be received by the clerk's
office no later than the filing due date for the printed briefs and rec-
ord material.*

*(e) A request to be relieved of the requirements of this Part to submit
companion briefs and record material in digital format shall be by let-
ter addressed to the clerk, with proof of service of one copy on each
other party, and shall specifically state the reasons why submission of
companion briefs and record material in digital format would present
an undue hardship.*

The following sections of part 500 of title 22 are amended as
indicated:

500.11 Alternative Procedure for Selected Appeals.

(a) On its own motion, the Court may review selected appeals by an
alternative procedure. Such appeals shall be determined on the inter-
mediate appellate court record or appendix and briefs, the writings in

the courts below and additional letter submissions on the merits. The
clerk of the Court shall notify all parties by letter when an appeal has
been selected for review pursuant to this section. Appellant may
request such review in its preliminary appeal statement. Respondent
may request such review by letter to the clerk of the Court, with proof
of service of one copy on each other party, within five days after the
appeal is taken.

(b) Appeals may be selected for alternative review on the basis of:

- (1) questions of discretion, mixed questions of law and fact or af-
firmed findings of fact, which are subject to a limited scope of review;
- (2) recent, controlling precedent;
- (3) narrow issues of law not of statewide importance;
- (4) nonpreserved issues of law;
- (5) a party's request for such review; or
- (6) other appropriate factors.

(c) Appellant's filing. *In addition to the submission in digital format
required by paragraph (k) of this section, [W]within 25 days after the
date of the clerk of the Court's letter initiating the alternative review
procedure, appellant shall:*

- (1) file three copies of the intermediate appellate court record or
appendix and three copies of each brief filed by each party in the in-
termediate appellate court. Original exhibits to be relied upon which
are not in the record or appendix at the intermediate appellate court
shall be filed or, if they are on file with the clerk of the trial court,
subpoenaed to this Court and the Court so advised by letter. Such
exhibits shall be clearly identified and, where appropriate, their
authenticity shall be certified or stipulated to;

- (2) file an original and two copies of a letter stating its arguments
in support of appellant's position on the merits. If appellant objects to
review pursuant to this section, the letter shall also explain that posi-
tion;

- (3) include as part of its submission a disclosure statement pursu-
ant to section 500.1(f) of this Part, if necessary;

- (4) file proof of service of one copy of its arguments on each
other party; and

- (5) remit the fee, if any, required by section 500.3(a) of this Part.

(d) Respondent's filing. *In addition to the submission in digital
format required by paragraph (k) of this section, [W]within 20 days
after service of appellant's submission, respondent shall file an origi-
nal and two copies of a letter stating its arguments in support of its po-
sition on the merits. If respondent objects to review pursuant to this
section, the letter shall also explain that position. Respondent shall
include in its submission a disclosure statement pursuant to section
500.1(f) of this Part, if necessary, and file proof of service of one copy
of its arguments on each other party.*

(e) Appellant's reply. A reply is not permitted unless authorized by
the Court upon request of the appellant, which shall accompany the
proposed filing, or on the Court's own motion.

(f) Abandonment of arguments. A party shall be deemed to have
abandoned any argument made in the intermediate appellate court
briefs not addressed or reserved in the [written] letter submission to
this Court.

(g) Review of subject matter jurisdiction. An appeal selected for
review pursuant to this section is subject to dismissal on the Court's
own motion, should it be determined that the Court is without subject
matter jurisdiction.

(h) Related litigation. Where necessary, each letter filing shall indicate the status of any related litigation as of the date of the letter's filing.

(i) Termination of alternative procedure. If the Court terminates its review of the appeal pursuant to this section before disposition, the clerk of the Court will notify counsel by letter and set a schedule for full briefing of the appeal.

(j) Amicus curiae relief. The Attorney General of the State of New York may file, no later than the filing date set for respondent's submission, an original and two copies of an amicus curiae submission without leave of the Court, with proof of service of one copy on each party. Any other proposed amicus curiae shall request amicus curiae relief pursuant to section 500.23(a)(2) of this Part.

(k) *Companion Submission in Digital Format. Each appellant, respondent and amicus curiae shall submit in digital format its letter stating its position on the merits or its amicus curiae argument.*

The letter in digital format shall be identical to the filed original printed letter, except it need not contain an original signature, and it shall comply with the technical specifications available from the clerk's office. Appellant shall also submit in digital format each brief filed by each party in the intermediate appellate court, the intermediate appellate court record or appendix, and original exhibits to be relied upon that are not in the record or appendix at the intermediate appellate court. Unless otherwise permitted by the clerk, letters, Appellate Division briefs and Appellate Division records or appendices in digital format shall be received by the clerk's office no later than the filing due date for the printed materials.

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

(a) Scheduling letter. Generally, in an appeal tracked for normal course treatment, the clerk of the Court issues a scheduling letter after the filing of the preliminary appeal statement. A scheduling letter also issues upon the termination of an inquiry pursuant to section 500.10 or 500.11 of this Part. The scheduling letter sets the filing dates for record material and briefs.

(b) Appellant's initial filing. *In addition to the submission in digital format required by section 500.14(g) of this Part, [O]n or before the date specified in the scheduling letter, appellant shall serve and file record material in compliance with section 500.14 of this Part, and shall remit the fee, if any, required by section 500.3(a) of this Part. In addition to the submission in digital format required by paragraph (h) of this section, [A]ppellant also shall file an original and [24]19 copies of a brief, with proof of service of three copies on each other party. If no scheduling letter is issued, appellant's papers shall be served and filed within 60 days after appellant took the appeal by (1) filing a notice of appeal in the place and manner required by CPLR 5515, (2) entry of an order granting a motion for leave to appeal in a civil case, or (3) issuance of a certificate granting leave to appeal in a criminal case.*

(c) Respondent's filing. *In addition to the submission in digital format required by paragraph (h) of this section and section 500.14(g) of this Part, [O]n or before the date specified in the scheduling letter, respondent shall serve and file an original and [24]19 copies of a brief and an original and 19 copies of a supplementary appendix, if any, with proof of service of three copies on each other party. If no scheduling letter is issued, respondent's papers shall be filed within 45 days after service of appellant's brief.*

(d) Reply briefs. A reply brief is not required but may be served and filed by appellant on or before the date specified in the scheduling letter. If no scheduling letter is issued, a reply brief may be served and filed within 15 days after service of respondent's brief. Where cross appeals are filed, the cross appellant may serve and file a reply brief to the main appellant's responsive brief. *In addition to the submission in digital format required by paragraph (h) of this section, [A]n original and [24]19 copies of a reply brief shall be served and filed, with proof of service of three copies on each other party.*

(e) Amicus curiae briefs. The Attorney General of the State of New York may file, no later than the filing date set for respondent's brief, and in addition to the submission in digital format required by paragraph (h) of this section, an original and [24]19 copies of an amicus curiae brief without leave of the Court, with proof of service of

three copies on each party. Any other proposed amicus curiae shall request amicus curiae relief pursuant to section 500.23(a)(1) of this Part.

(f) Briefs in response to amicus curiae briefs. Briefs in response to an amicus curiae brief are not required but may be served and filed by a party whose position is adverse to that of the amicus curiae. The brief shall be served and filed within 15 days after the date of this Court's order granting a motion for amicus curiae relief or within 15 days after the service of an amicus curiae brief by the Attorney General of the State of New York. *In addition to the submission in digital format required by paragraph (h) of this section, [A]n original and [24]19 copies shall be filed, with proof of service of three copies on each other party and one copy on each amicus curiae.*

(g) Sur reply briefs. Sur reply briefs are not permitted.

(h) *Companion Submission in Digital Format. Each appellant, respondent and amicus curiae shall submit in digital format its brief and record material. The brief and record material in digital format shall be identical to the filed original printed brief and record material, except they need not contain an original signature, and they shall comply with the technical specifications available from the clerk's office. Unless otherwise permitted by the clerk, briefs and record material in digital format shall be received by the clerk's office no later than the filing due date for the printed brief and record material.*

500.14 Records, Appendices and Exhibits in Normal Course Appeals.

(a) Record material. Appellant shall supply the Court with record material in one of the following ways:

(1) Appellant may subpoena the original file to this Court from the clerk of the court of original instance or other custodian, and submit original exhibits to be relied upon, and, *in addition to the submission in digital format required by paragraph (g) of this section, supplement these with an original and [24]19 copies of an appendix conforming to subdivision (b) below, with proof of service of three copies of the appendix on each other party.* If appellant is represented by assigned counsel, or has established indigency, an oral or written request may be made of the clerk of this Court to obtain the original file.

(2) *In addition to the submission in digital format required by paragraph (g) of this section, [A]ppellant may file with the clerk of the Court one copy of the reproduced record used at the court below. This record shall be supplemented by an original and [24]19 copies of an appendix conforming to subdivision (b) below, with proof of service of three copies of the appendix on each other party.*

(3) *In addition to the submission in digital format required by paragraph (g) of this section, [A]ppellant may file with the clerk of the Court an original and [24]19 copies of a new and full record which shall include the record used at the court below, the notice of appeal or order granting leave to appeal to this Court, the decision and order appealed from to this Court, and any other decision and order brought up for review, with proof of service of three copies of the new record on each other party.*

(b) Appendix. An appendix shall conform to the requirements of CPLR 5528 and 5529, and shall be sufficient by itself to permit the Court to review the issues raised on appeal without resort to the original file (see subsection [a][1] of this section) or reproduced record used at the court below (see subsection [a][2] of this section). The appendix shall include, as relevant to the appeal, the following:

(1) the notice of appeal or order or certificate granting leave to appeal;

(2) the order, judgment or determination appealed from to this Court;

(3) any order, judgment or determination which is the subject of the order appealed from, or which is otherwise brought up for review;

(4) any decision or opinion relating to the orders set forth in subsections (b)(2) and (3) above; and

(5) the testimony, affidavits, jury charge and written or photographic exhibits useful to the determination of the questions raised on appeal or cited in the brief of the party filing the appendix.

(c) Respondent's appendix. A respondent's brief may include a supplementary appendix.

(d) Inadequate appendix. When appellant has filed an inadequate appendix, respondent may move to strike the appendix (see section 500.21 of this Part) or, *in addition to the submission in digital format required by paragraph (g) of this section*, may submit an original and [24]19 copies of an appendix containing such additional parts of the record as respondent deems necessary to consider the questions involved, with proof of service of three copies of the appendix on each other party. The Court may direct appellant to supplement the appendix with additional parts of the record it deems necessary to consider the questions involved.

(e) Description of action or proceeding. The reproduced record and additional papers or the appendix shall contain the statement required by CPLR 5531.

(f) Correctness of the record. The correctness of the reproduced record or the appendix and additional papers shall be authenticated pursuant to CPLR 2105 or stipulated to pursuant to CPLR 5532.

(g) *Companion Submission in Digital Format. Each appellant shall submit in digital format its appendix pursuant to part (a)(1) of this section, appellate division record and appendix pursuant to part (a)(2) of this section, or new and full record pursuant to part (a)(3) of this section. If a respondent files an appendix pursuant to part (d) of this section, such respondent shall submit in digital format such appendix. The record material in digital format shall be identical to the filed original printed record material, except it need not contain an original signature, and it shall comply with the technical specifications available from the clerk's office. Unless otherwise permitted by the clerk, record material in digital format shall be received by the clerk's office no later than the due date for the printed record material.*

500.23 Amicus Curiae Relief.

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

(a) Motions for amicus curiae relief.

(1) Amicus curiae relief on normal course appeals and normal course certified questions.

(i) Movant shall file an original and one copy of its motion papers, accompanied by an original amicus brief, with proof of service of one copy of the motion and one copy of the brief on each other party.

(ii) If the motion is granted, *in addition to the submission in digital format required by section 500.12(h) of this Part*, [24]19 copies of the brief shall be filed, with proof of service of three copies on each party, within the time set by the Court's order.

(iii) The motion shall be noticed for a return date no later than the Court session preceding the session in which argument or submission of the appeal or certified question is scheduled. When an appeal or certified question is scheduled for argument or submission during the Court's January or September session, the motion shall be noticed for a return date no later than the first Monday in December or the first Monday in August, respectively.

Potential amici seeking information are encouraged to contact the Clerk's office by telephone during business hours. Information on the calendar status of appeals and certified questions, Court session dates and appropriate return dates for amicus motions also is available on the Court's Internet website.

(2) Amicus curiae relief on appeals and certified questions selected for review by the alternative procedure. Movant shall file an original and one copy of its papers, accompanied by an original and two copies of the proposed submission, with proof of service of one copy on each other party. The motion shall be noticed for a return date no later than the filing date set for respondent's submission on the appeal.

(3) Amicus curiae relief on motions for permission to appeal in civil cases. Movant shall file an original and one copy of its papers, accompanied by an original amicus brief, with proof of service of the motion and one copy of the brief on each other party. The motion shall be noticed for a return date as soon as practicable after the return date of the motion for permission to appeal to which it relates. Movant may expressly request that, if amicus relief is granted on the motion for permission to appeal, and if permission to appeal is granted, leave also

be granted for movant to submit an amicus brief on the appeal. Absent such request and the grant of such leave, the granting of a motion to appear amicus curiae on a motion for permission to appeal does not authorize the movant to appear amicus on the subsequent appeal. In such case, a new motion for amicus curiae relief on the appeal must be brought pursuant to subsection (a) (1) or (2) above.

(4) Criteria. Movant shall not present issues not raised before the courts below. A motion for amicus curiae relief shall demonstrate that:

(i) the parties are not capable of a full and adequate presentation and that movants could remedy this deficiency;

(ii) the amicus could identify law or arguments that might otherwise escape the Court's consideration; or

(iii) the proposed amicus curiae brief otherwise would be of assistance to the Court.

(5) Opposing papers. Respondent may file an original and one copy of papers in opposition to the motion, with proof of service of one copy on each other party.

(b) Amicus curiae filings by the Attorney General.

(1) Amicus curiae relief on motions for permission to appeal in civil cases. The Attorney General shall file an original and one copy of the submission with proof of service of one copy on each other party. The submission shall be filed without leave of the Court on or before the return date of the motion for permission to appeal.

(2) Amicus curiae relief on normal course appeals and normal course certified questions. See Rule 500.12(e).

(3) Amicus curiae relief on appeals and certified questions selected for review by the alternative procedure. See Rule 500.11(j).

