



*State of New York
Court of Appeals*

*John P. Asiello
Chief Clerk and
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*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

May 11, 2020

NOTICE TO THE BAR

COMPANION FILING UPLOAD PORTAL

To facilitate virtual office operations of the Court of Appeals, the Court has amended its Rules of Practice to require, for motions and responses to Rule 500.10 jurisdictional inquiries, submissions in digital format as companions to the printed papers filed and served in accordance with the Court's Rules of Practice. The submission of these companion filings in digital format will be via a Companion Filing Upload Portal, similar to the Court-PASS system used to submit companion digital copies of briefs and record materials on appeals, certified questions, and judicial conduct matters.

The Court has also amended its Rules of Practice to reduce the number of printed copies that must be filed from 6 to 1 for civil motions for leave to appeal, reargument motions, and papers in opposition to those motions and from 10 to 1 for primary election session motions and papers in opposition to those motions. The Rules of Practice have been also changed to provide that the Appellate Division documents required by Rule 500.22 (c), Rule 500.26 (b) (3) (iv), and 500.26 (b) (4) shall be filed in digital format only.

Motions submitted with proof of indigency may still be made on one set of papers. Parties can request to be relieved of the digital submission requirements based on a showing of undue hardship.

Uploading digital submissions to the Companion Filing Upload Portal does not satisfy the service or filing requirements of the CPLR or the Court's Rules of Practice. The filer is responsible for meeting any applicable CPLR time limit by serving and filing as provided by the CPLR. The filer is responsible for meeting the Court's applicable due dates by filing the required number of paper documents with the Clerk's Office. Motions, papers in opposition to motions, and responses to Rule 500.10 jurisdictional inquiries are deemed "filed" with the Clerk's Office on the date of receipt of the paper document.

Relevant portions of the proposed amended Rules are attached and are effective May 27, 2020. Any responses to Rule 500.10 jurisdictional inquiries requested on or after May 27, 2020 and any motions returnable on or after June 1, 2020 must comply with the amended Rules. Questions may be directed to the Clerk's Office at 518-455-7700.

John P. Asiello
Chief Clerk and Legal Counsel to the Court

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 7th day of May, 2020.

Present, HON. JANET DiFIORE, Chief Judge presiding.

In the Matter

of

The Amendment of the Rules of Practice of the Court of Appeals
(22 NYCRR Part 500).

Pursuant to section 51 of the Judiciary Law, it is hereby

ORDERED that Part 500 of the Rules of Practice of the Court of Appeals is amended (22 NYCRR Part 500), effective May 27, 2020, or as soon thereafter as section 52 of the Judiciary Law is complied with, by deleting the bracketed material and adding the underlined material to sections 500.1, 500.2, 500.10, 500.21, 500.22, 500.23, 500.24 and 500.26, to read as follows:

500.1 General Requirements.

(n) Filing of papers. All papers filed shall be addressed to the Clerk of the Court at 20 Eagle Street, Albany, New York 12207, not to a Judge or Judges of the Court, and shall be served on each other party in accordance with the requirements of this Part.

Submissions shall [not] only be filed by facsimile transmission, [or] electronic mail, or other electronic transmission [except] when requested by the Clerk of the Court[.] or otherwise required by this Part.

500.2 Submission of Companion Digital Filings [Briefs and Record Material in Digital Format].

(a) The Court requires the submission of filings in digital format as companions to the required number of copies of paper filings required under sections 500.10, 500.11, 500.12, 500.14, 500.21, 500.22, 500.23, 500.24, 500.26 and 500.27 of this Part. [briefs and record material in digital format (see subsections 500.11(k); 500.12(h); 500.14(g); 500.23(a)(1)(ii); and 500.27(e) of this Part) as companions to the required number of copies of printed briefs and record material filed and served in accordance with this Part.]

(b) The companion [briefs and record material in digital format] digital filings shall comply with the technical specifications and instructions for submission available from the Clerk's Office.

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

(d) Unless otherwise permitted by the Clerk of the Court, companion [briefs and record material in digital format] digital filings required under sections 500.10, 500.11, 500.12 and 500.27 shall be received by the Clerk's Office no later than the filing due date for the printed [briefs and record material] filings. Companion digital filings required under sections 500.21, 500.22, 500.23 and 500.24 shall be submitted no later than seven days after the return date of the motion. Companion digital filings required under section 500.26 shall be submitted within the time directed by the Clerk of the Court.

(e) A request to be relieved of the requirements of this Part to submit companion [briefs and record material in digital format] digital filings shall be by letter addressed to the Clerk of the Court, 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] digital filings would present an undue hardship. Such request shall be accompanied by unbound copies of the required printed filings.

(f) The Clerk of the Court may reject [briefs and record material in digital format] companion digital filings that do not comply with the requirements of this Part or the technical specifications and instructions for submission available from the Clerk's Office.

500.10 Examination of Subject Matter Jurisdiction.

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

(b) Companion submission in digital format. Unless a request to be relieved of the

digital filing requirement is submitted pursuant to subsection 500.2(e) of this Part, each party shall submit in digital format its Jurisdictional Response. Appellant shall also submit in digital format one copy of the record below, or appendix if the appendix method was used in the court below, and one copy of the briefs or papers filed below by each of the parties. The Jurisdictional Response in digital format shall be identical to the filed original Jurisdictional Response, except it need not contain an original signature. All material submitted under this section shall comply with the technical specifications and instructions for submission available from the Clerk's Office. The Jurisdictional Response in digital format shall be received by the Clerk's Office no later than the due date for the printed filings.

500.21 Motions - General Procedures.

(b) Notice and service. Movant shall serve a notice of motion and supporting papers on sufficient notice to each other party, as set forth in the CPLR and subsections (b)(1), (2), (3) and (4) of this section. In computing the notice period, the date of service shall not be included.

(1) When [movant's papers are] the motion is personally served, movant shall give at least eight days' notice (CPLR 2214(b)).

(2) When [movant's papers are] the motion is served by regular mail, movant shall give at least 13 days' notice (CPLR 2103(b)(2)).

(3) When [movant's papers are] the motion is served by overnight delivery service, movant shall give at least nine days' notice (CPLR 2103(b)(6)).

(4) When [movant's papers are] the motion is served by facsimile transmission, movant

shall comply with CPLR 2103(b)(5), and give at least eight days' notice.

(c) Filing. In addition to the submission in digital format required by subsection 500.21(i) of this Part, u[U]nless otherwise permitted by the Court or Clerk of the Court, movant shall file its [papers] motion, with proof of service on each other party [of the required number of copies], at Court of Appeals Hall no later than noon on the Friday preceding the return date. On or before the return date of the motion, respondent may file papers in opposition to the motion, with proof of service on each other party [of the required number of copies]. Submissions shall not be filed by facsimile transmission or electronic mail, or other electronic transmission except when requested by the Clerk of the Court[.] or otherwise permitted by this Part. The Court's motion practice does not permit the filing of reply briefs and memoranda. A request for permission to file papers after the return date of the motion is governed by section 500.7 of this Part.

(d) Number of required copies. Except in cases of indigency, where subsection (g) of this section applies, movant shall file an original and one copy of its [papers] motion, with proof of service of one copy on each other party. Respondent may file an original and one copy of its papers in opposition to the motion, with proof of service of one copy on each other party. [the number of copies required to be filed is as follows:

(1) Motions for permission to appeal in civil cases. Movant shall file an original and six copies of its papers, with proof of service of two copies on each other party.

Respondent may file an original and six copies one copy of papers in opposition to the motion, with proof of service of two copies on each other party.

(2) Motions for reargument of appeals, reargument of motions for permission to appeal

and reargument of decisions on certified questions. Movant shall file an original and six copies of its papers, with proof of service of two copies on each other party.

Respondent may file an original and six copies of papers in opposition to the motion, with proof of service of two copies on each other party.

(3) Other motions. For motions other than those addressed in subsections (d)(1) and (2) of this section, movant shall file an original and one copy of its papers, with proof of service of one copy on each other party. Respondent may file an original and one copy of papers in opposition to the motion, with proof of service of one copy on each other party.]

(i) Companion submission in digital format. Unless a request to be relieved of the digital filing requirement is submitted pursuant to subsection 500.2(e) of this Part, each party shall submit in digital format its motion or opposition papers. The motion or opposition papers in digital format shall be identical to the filed original printed motion or opposition papers, except the digital filing need not contain an original signature. All material submitted under this section shall comply with the technical specifications and instructions for submission available from the Clerk's Office. The companion motion and opposition papers in digital format shall be submitted no later than seven days after the return date of the motion.

500.22 Motions for Permission to Appeal in Civil Cases.

(a) Filing and notice. In addition to the submission in digital format required by subsection 500.22(e) of this section, m[M]ovant shall file an original and [six copies] one copy of its [papers] motion, unless permitted to proceed pursuant to subsection 500.21(g),

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

(b) Content. [Movant's papers] The motion shall be a single document, bound on the left, and shall contain in the order here indicated:

(1) A notice of motion (see CPLR 2214).

(2) A statement of the procedural history of the case, including a showing of the timeliness of the motion.

(i) If no prior motion for leave to appeal to the Court of Appeals was filed at the Appellate Division, movant's papers to this Court shall demonstrate timeliness by stating the date movant was served (see CPLR 2103(b)) with the order or judgment sought to be appealed from, with notice of entry.

(ii) If a prior motion for leave to appeal to the Court of Appeals was filed at the Appellate Division, movant's papers filed in this Court shall demonstrate that the timeliness chain is intact by stating:

(a) the date movant was served with the order or judgment sought to be appealed from, with notice of entry,

(b) the date movant served the notice of motion addressed to the Appellate Division upon each other party, and

(c) the date movant was served with the Appellate Division order denying leave to appeal with notice of entry.

(3) A showing that this Court has jurisdiction of the motion and of the proposed appeal,

including that the order or judgment sought to be appealed from is a final determination or comes within the special class of nonfinal orders appealable by permission of the Court of Appeals (see CPLR 5602(a)(2)).

(4) A concise statement of the questions presented for review and why the questions presented merit review by this Court, such as that the issues are novel or of public importance, present a conflict with prior decisions of this Court, or involve a conflict among the departments of the Appellate Division. Movant shall identify the particular portions of the record where the questions sought to be reviewed are raised and preserved.

(5) A disclosure statement pursuant to subsection 500.1(f) of this Part, if required.

(6) Copies of the order or judgment sought to be appealed from with notice of entry, as well as copies of all relevant orders, opinions or memoranda rendered in the courts below. The papers shall state if no opinion was rendered.

(c) Additional documents. Movant shall file with its motion [papers] one copy of the record below, or appendix if the appendix method was used in the court below, and one copy of the briefs filed below by each of the parties [.] in digital format only, unless a request to be relieved of the digital filing requirements is submitted pursuant to subsection 500.2(e) of this Part. If a request to be relieved of the digital filing requirements is submitted pursuant to subsection 500.2(e) of this Part, movant shall file with its [papers] motion one unbound copy of the record below, or appendix if the appendix method was used in the court below, and one unbound copy of the briefs filed below by each of the parties.

(d) Opposing papers. In addition to the submission in digital format required by subsection 500.22(e) of this section, r[R]espondent may file an original and [six copies] one copy of papers in opposition to the motion, with proof of service of [two copies] one copy on each other party. The opposing papers shall state concisely respondent's argument for dismissal or denial of the motion.

(e) Companion submission in digital format. Unless a request to be relieved of the digital filing requirement is submitted pursuant to subsection 500.2(e) of this Part, each party shall submit in digital format its motion or opposition papers. Movant shall also submit in digital format one copy of the record below, or appendix if the appendix was used in the court below, and one copy of the briefs filed below by each of the parties. The motion, opposition and papers filed in the court below in digital format shall be identical to the filed original printed motion or opposition papers and papers filed in the court below, except it need not contain an original signature. All material submitted under this section shall comply with the technical specifications and instructions for submission available from the Clerk's Office. The companion motion and opposition papers in digital format shall be submitted no later than seven days after the return date of the motion.

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. 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 web site.

(a) Motions for amicus curiae relief.

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

(i) In addition to the submission in digital format required by subsection 500.23(c) of this section, m[M]ovant 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. The proposed brief shall conform to the word and page limits set forth in subsection 500.13(c) of this Part and the requirements of section 500.1 of this Part.

(ii) If the motion is granted, in addition to the submission in digital format required by subsection 500.12(h) of this Part, nine 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.

(2) Amicus curiae relief on appeals and certified questions selected for review by the alternative procedure. In addition to the submission in digital format required by subsection 500.23(c) of this section, m[M]ovant shall file an original and one copy of its

[papers] motion, accompanied by an original and [two copies] one copy 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. The proposed submission shall conform to the word and page limits set forth in subsection 500.11(m) of this Part and the requirements of section 500.1 of this Part.

(3) Amicus curiae relief on motions for permission to appeal in civil cases. In addition to the submission in digital format required by subsection 500.23(c) of this section, m[M]ovant 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. The granting of a motion to appear amicus curiae on a motion for permission to appeal does not authorize the movant to appear amicus curiae on the subsequent appeal. A new motion for amicus curiae relief on the appeal must be brought pursuant to subsection (a)(1) or (2) of this section.

(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 movant could remedy this deficiency;
- (ii) movant 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. In addition to the submission in digital format required by subsection 500.23(c) of this section, r[R]espondent 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. In addition to the submission in digital format required by subsection 500.23(c) of this section, t[T]he 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 subsections 500.12(e) and 500.13(c) of this Part and section 500.1 of this Part.

(3) Amicus curiae relief on appeals and certified questions selected for review by the alternative procedure. See subsections 500.11(j) and 500.11(m) of this Part.

(c) Companion submission in digital format. Unless a request to be relieved of the digital filing requirement is submitted pursuant to subsection 500.2(e) of this Part, each party shall submit in digital format its motion or opposition papers. Movant shall also submit in digital format the proposed amicus brief or submission. The motion, proposed amicus brief or submission, and opposition papers submitted in digital format shall be identical to the filed original printed motion or opposition papers, except the digital filing

need not contain an original signature. All material submitted under this section shall comply with the technical specifications and instructions for submission available from the Clerk's Office. The motion, proposed amicus brief or submission, and opposition papers in digital format shall be submitted within seven days of the return date of the motion.

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

(a) Filing and notice. In addition to the submission in digital format required by subsection 500.24(g) of this section, m[M]ovant shall file an original and [six copies] one copy of its [papers] motion, with proof of service of [two copies] one copy on each other party. [An original and one copy of a motion for reargument of a motion may be served and filed if filing of an original and one copy of papers was allowed on the underlying motion pursuant to subsection 500.21(d)(3) or (g) of this Part.]

(f) Opposing papers. [Except on those motions described in subsection 500.21(d)(3) of this Part,] In addition to the submission in digital format required by subsection 500.24(g) of this section, respondent may file an original and [six copies] one copy of papers in opposition to the motion, with proof of service of [two copies] one copy on each other party. The opposing papers shall briefly state respondent's argument for dismissal or denial of the motion.

(g) Companion submission in digital format. Unless a request to be relieved of the digital filing requirement is submitted pursuant to subsection 500.2(e) of this Part, each party shall submit in digital format its motion or opposition papers. The motion or opposition papers in digital format shall be identical to the filed original printed motion or

opposition papers, except the digital filing need not contain an original signature. All material submitted under this section shall comply with the technical specifications and instructions for submission available from the Clerk's Office. The companion motion and opposition papers in digital format shall be submitted within seven days of the return date of the motion.

500.26 Primary Election Session Procedures.

(b) Motions for permission to appeal.

(1) Movant shall immediately contact the Clerk's Office by telephone upon receipt of the order from which movant seeks leave to appeal.

(2) Movant shall immediately orally notify each other party of the motion.

(3) Within the time directed by the Clerk of the Court, movant shall file:

(i) an original and [nine copies] one copy of a letter requesting permission to appeal with proof of service of one copy on each other party;

(ii) [10 copies] one copy of the Appellate Division decision and order;

(iii) [10 copies] one copy of the Supreme Court decision and order;

[(iv) 10 copies of movant's Appellate Division brief and, where applicable, the record or appendix;]

~~(iv)~~[(v)] the original file, where applicable, which movant shall obtain; and

~~(v)~~[(vi)] the fee, if any, required by subsection 500.3(b) of this Part.

(4) Within the time directed by the Clerk of the Court, respondent [shall submit 10 copies of its Appellate Division brief, and] may submit an original and [nine copies] one copy of a letter in opposition with proof of service of one copy on each other party.

(5) Companion submission in digital format. Unless a request to be relieved of the digital filing requirement is submitted pursuant to subsection 500.2(e) of this Part, within the time directed by the Clerk of the Court, movant shall file in digital format a copy of the letter requesting permission to appeal, the Appellate Division decision and order, the Supreme Court decision and order, one copy of movant's Appellate Division brief and, where applicable, the record or appendix; respondent shall file in digital format a copy of respondent's Appellate Division brief and any letter in opposition. These filings in digital format shall be identical to the filed original papers, except the digital filings need not contain an original signature. All material submitted under this section shall comply with the technical specifications and instructions for submission available from the Clerk's Office.