

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: SECOND DEPARTMENT
RULE BOOK



22 NYCRR PART 730, 731, and 732 of Title
PRACTICE RULES OF THE APPELLATE TERM:
SECOND DEPARTMENT

***** EFFECTIVE JANUARY 1, 2020 *****

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Supreme Court of the State of New York

Appellate Division: Second Judicial Department

ADM 2019-1016.2

The Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, pursuant to the authority vested in it by New York Constitution article VI, § 8, and 22 NYCRR 80.3(a)(5),

DOES HEREBY, effective January 1, 2020, rescind Parts 730, 731 and 732 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York, and adopt new Parts 730 and 731 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York, as follows:

PART 730 ESTABLISHMENT AND JURISDICTION OF APPELLATE TERMS

Section 730.1 Establishment and Jurisdiction of Appellate Terms

The Appellate Division of the Supreme Court, Second Judicial Department, pursuant to the authority vested in it, does hereby, effective January 2, 1968 and as amended:

(a) (1) Establish an Appellate Term of the Supreme Court in and for the Second, Eleventh and Thirteenth Judicial Districts, which shall be held from time to time at such places in those judicial districts as may be designated by the Chief Administrator of the Courts.

(2) The Chief Administrator of the Courts shall, with the approval of the Presiding Justice of the Appellate Division, Second Judicial Department, designate the Supreme Court justices assigned to the Appellate Term of the Supreme Court in and for the Second, Eleventh and Thirteenth Judicial Districts.

(b) Direct that the Appellate Term of the Supreme Court in and for the Second, Eleventh and Thirteenth Judicial Districts, hereinabove established, shall have jurisdiction to hear and determine all appeals authorized by law to be taken:

(1) from an order or judgment of the Civil Court of the City of New York entered in the counties of Kings, Queens and Richmond, and

(2) from a judgment, sentence or order of the Criminal Court of the City of New York in any of said counties.

(c) (1) Establish an Appellate Term of the Supreme Court in and for the Ninth and Tenth Judicial Districts which shall be held from time to time at such places in those judicial districts as may be designated by the Chief Administrator of the Courts.

(2) The Chief Administrator of the Courts shall, with the approval of the Presiding Justice of the Appellate Division, Second Judicial Department, designate the Supreme Court justices assigned to the Appellate Term of the Supreme Court in and for the Ninth and Tenth Judicial Districts.

(d) (1) Direct that the Appellate Term of the Supreme Court in and for the Ninth and Tenth Judicial Districts, hereinabove established, shall have jurisdiction to hear and determine all appeals authorized by law to be taken to the County Court or to the Appellate Division from any court in any county within the Ninth Judicial District or the Tenth Judicial District other than appeals from the Supreme Court, the Surrogate's Court, the Family Court or criminal appeals from the County Court.

(2) Direct that an appeal authorized by CPL 450.10 and 450.20 to be taken to intermediate courts shall be taken to the Appellate Term of the Supreme Court in and for the Ninth and Tenth Judicial Districts, hereinabove established, in accordance with its rules applicable thereto but not inconsistent with the applicable provisions of the CPL, where such appeal is from a judgment, sentence or order of a local criminal court and all classifications thereof (as defined and set forth in CPL 10.10) located in this department but outside New York City.

(3) In addition to, but not in limitation of, the foregoing, such Appellate Term shall have jurisdiction to hear and determine all appeals:

(A) from the District Court of Nassau County, the District Court of Suffolk County and any other district court hereafter established in any county within the Ninth Judicial District; and

(B) from any town, village or city court within either the Ninth Judicial District or the Tenth Judicial District; and

(C) in civil matters, from any county court within either the Ninth Judicial District or the Tenth Judicial District.

(e) The Appellate Term of the Supreme Court in and for the Second, Eleventh, and Thirteenth Judicial Districts and the Appellate Term of the Supreme Court in and for the Ninth and Tenth Judicial Districts shall jointly employ the nonjudicial personnel heretofore appointed to and employed in the predecessor Appellate Term previously discontinued, reserving for further order the disposition to be made of the books, records, papers, documents, furniture, equipment and other property of such predecessor Appellate Term, which in the interim shall be held jointly by, and may be used in the conduct severally of the business of, the aforesaid separate Appellate Terms hereby established.

(f) Direct that all motions addressed to either of the Appellate Terms shall be made returnable and all briefs, stipulations, and correspondence shall be filed in the Office of the Chief Clerk, as provided on the court's website at www.nycourts.gov/courts/AD2/AppellateTerm.shtml.

Section 730.2 General Provisions and Definitions

(a) Unless otherwise indicated, any reference to the court means the Appellate Term for the Second, Eleventh & Thirteenth Judicial Districts and the Appellate Term for the Ninth & Tenth Judicial Districts.

(b) Unless the context requires otherwise, as used in this Part and Part 731 of this Title:

(1) The word “perfection” refers to the requirements for placing an appeal on the court’s appeal calendar.

(2) The term “cross appeal” refers to an appeal taken by a party whose interests are adverse to a party who previously appealed from the same order or judgment as relates to that appeal and cross appeal.

(3) The word “concurrent,” when used to describe appeals, refers to those appeals which have been taken separately from the same order or judgment by parties whose interests are not adverse to one another as relates to those appeals.

(4) The word “consolidation” refers to the combining of two or more appeals arising out of the same action or proceeding in one record and one brief.

(5) The term “Chief Clerk” refers to the Chief Clerk of the Appellate Terms of the Supreme Court, Second Judicial Department.

(c) All records, briefs, motions, affirmations, and other submissions will be deemed filed only as of the time they are actually received by the Chief Clerk and they shall be accompanied by proof of service upon all necessary parties pursuant to CPLR 2103.

(d) If a period of time prescribed by Part 731 is measured from the service of a record, brief, or other submission and service is by mail, five days shall be added to the prescribed period. If service is by overnight delivery, one day shall be added to the prescribed period.

(e) Unless the context requires otherwise, if a period of time prescribed by Part 731 for the performance of an act ends on a Saturday, Sunday, or public holiday, the act will be deemed timely if performed before the close of business on the next business day.

(f) An Appellate Term docket number will be assigned to every appeal. All papers and correspondence thereafter filed shall prominently display the applicable docket number or numbers in the upper left-hand corner of the first page above the title of the case.

(g) Signing of documents. The original of every hard copy document submitted for filing in the office of the Chief Clerk shall be signed in ink in accordance with the provisions of section 130-1.1-a (a) of this Title. Copies of the signed original shall be served upon all parties to the appeal and shall be filed in the office of the Chief Clerk whenever multiple copies of a submission are required to be served and filed in accordance with the provisions of this Part.

(h) Appearance of Counsel

(1) Counsel who has filed a notice of appeal on behalf of a party shall be regarded as counsel of record for that party in this court, except where:

(A) the notice of appeal contains a statement indicating that counsel has not been retained for purposes of appeal, or

(B) counsel who filed the notice of appeal was assigned in the court of original instance, and that assignment has not been extended to the appeal by statute, order or rule.

(2) In any matter in which counsel files a document in this court on behalf of a party who is not otherwise represented by counsel of record in this court, filing counsel shall be regarded as counsel of record for that party in this court.

(3) Unless the court directs otherwise, there shall be only one counsel of record for a party in connection with any matter pending in this court.

(4) Counsel of record may be changed by:

(A) The filing of a consent to change attorney or substitution of counsel in this court which is on notice to all parties, executed by both counsel of record and incoming counsel, if there is one, and signed and acknowledged by the affected party; or

(B) Successfully moving this court for permission to withdraw as counsel.

(5) Upon the filing of a notice of appearance on notice to all parties in a cause or matter, counsel shall be regarded as counsel of record for a party who is not otherwise represented in this court in connection with the cause or matter.

(6) Counsel who is retained by counsel of record to serve as appellate counsel may inform the court as to that status by filing a writing indicating same on notice to all parties. All records, appendices and briefs filed by the appellate counsel must bear the name, address, telephone number and e-mail address of counsel of record, along with that of appellate counsel, and must indicate appellate counsel's status as such.

730.3 Settlement or Withdrawal of Motion or Appeal; Notice of Change in Circumstances

(a) **Withdrawal of Motion.** A moving party may file a written request to withdraw a motion at any time prior to its determination.

(b) **Withdrawal of Appeal.**

(1) Unperfected appeals may be withdrawn by letter application to the court, with service on all parties.

(2) An appeal that has been placed on the appeal calendar, but which has not yet been assigned to an appointed term, may be withdrawn by leave of the court upon the filing with the court of a written stipulation of withdrawal signed by the parties or their attorneys and, in criminal appeals, by the appellant personally. Absent such a stipulation, an appellant may move for permission to withdraw such an appeal. An appeal that has been perfected and in which no respondent's brief has been filed may be withdrawn by letter application to the court, with service on all parties.

(3) (A) An appeal which has been assigned to an appointed term may be withdrawn by leave of court upon the filing with the court, prior to the date of the appointed term, of a written stipulation signed by the parties or their attorneys and, in criminal appeals, by the appellant personally. Absent such a stipulation, an appellant may, prior to the date of the appointed term, move for permission to withdraw such an appeal.

(B) On or after the date of a term to which an appeal has been appointed, an appellant may move for permission to withdraw an appeal which has been assigned to that term. Such motions will be granted only in limited circumstances and upon a showing of cause. A motion for such a withdrawal must be supported by:

(i) a written stipulation signed by the parties or their attorneys and, in criminal appeals, by the appellant personally, and

(ii) documentation establishing when the event upon which the withdrawal is based occurred. If such event occurred prior to the date of the appointed term, an explanation for the delay in notifying the court of that event must be provided.

(c) Notice of Change of Circumstances. The parties or their attorneys shall immediately notify the court when there is a settlement of a matter or any issue therein or when a matter or any issue therein has been rendered moot. The parties or their attorneys shall likewise immediately notify the court if the appeal should not be calendared because of the death of a party, bankruptcy or other appropriate event. Any such notification shall be followed by an application for appropriate relief. Any party or attorney who, without good cause shown, fails to comply with the requirements of this subdivision may be subject to the imposition of sanctions.

PART 731 RULES OF PRACTICE FOR THE APPELLATE TERMS

Section 731.1 Court Sessions

Unless otherwise ordered, the court will convene at 10:00 a.m. on the first day of each appointed term. The court may be convened on any subsequent day or days during the term by directive of the presiding justice or, in the absence of the presiding justice, the associate justice presiding, which directive shall specify the three justices who shall constitute the court at any such session.

Section 731.2 Filing of Notice of Appeal and Request for Appellate Term Action

(a) Where an appeal is taken in a civil action or proceeding, the notice of appeal shall be served and filed in the court of original instance in accordance with CPLR 5515 (1). A duplicate copy of the notice of appeal, together with a copy of the order or judgment being appealed from and a completed Request for Appellate Term Action (RATA) Form, shall be filed by the appellant. Thereupon, the clerk of the court of original instance shall endorse the filing date upon such instruments and transmit the duplicate copy of the Notice of Appeal, the order or judgment being appealed from and RATA to the Chief Clerk.

(b) An appeal is taken in a criminal action or proceeding by following the procedures set forth in CPL 460.10 (2) or (3).

Section 731.3 Civil Appeals Management Program

(a) The Chief Clerk may issue a notice in any settlement or mediation program directing the attorneys for the parties, the parties themselves, unless the court excuses a party's personal appearance, and such additional parties in interest as the court may direct to attend a conference before such person as it may designate to consider settlement, the limitation of issues and any other matter that such person determines may aid in the disposition of the appeal or resolution of the underlying action or proceeding. Attorneys and representatives who appear must be fully familiar with the underlying action or proceeding, and must be authorized to make binding stipulations or commitments on behalf of the party represented.

(b) Counsel to any party may apply to the court by letter at any time requesting a settlement or mediation conference. The application shall include a brief statement indicating why a conference would be appropriate.

(c) Upon the failure of any party, representative or counsel to appear for or participate in a settlement or mediation conference, or to comply with the terms of a stipulation or order entered following such a conference, the party or counsel may be subject to sanctions.

Section 731.4 Motions---Generally

(a) Unless otherwise required by statute, rule or order of the court or any justice thereof, every motion shall be made returnable at 10:00 a.m. on any Thursday (or if Thursday is a legal holiday, the next business day of the week), and on such other days as the court may direct and shall be submitted without oral argument. Cross motions shall be made returnable on the same day as the original motion and shall be served personally, by overnight delivery service or by electronic means, and filed at least three days before the return date.

(b) All motions initiated by notice of motion shall be filed with the Chief Clerk at least one week before the return date. All papers in opposition or in reply shall be filed with the Chief Clerk before 5:00 p.m. of the business day preceding the return date. All papers in opposition to any motion by an order to show cause or in reply thereto, shall be filed with the Chief Clerk on or before 5:00 p.m. of the return date. The originals of all such papers shall be filed.

(c) Unless otherwise directed by the court, a motion shall be served with sufficient notice to all parties as prescribed by CPLR 2214 (b) and in a manner set forth in CPLR 2013. Answering and reply documents, if any, shall be served within the time period prescribed by CPLR 2214 (b) or as directed by a justice of the court. In computing the notice period, the date upon which service is made shall not be included.

(d) The papers in support of every motion or proceeding must contain a copy of:

- (1) the notice of appeal or other paper which first invoked the jurisdiction of this court,
- (2) the order, judgment, or determination sought to be reviewed and the decision, if any, and
- (3) all papers and exhibits upon which the motion is based.

(e) The Chief Clerk may reject papers or deem a motion to be withdrawn or abandoned for the failure to comply with any of these rules.

(f) Poor Person Relief.

(1) All Appeals. An affidavit in support of a motion for permission to proceed as a poor person, with or without a request for assignment of counsel, shall set forth the amount and sources of the movant's income; that the movant is unable to pay the costs, fees and expenses necessary to prosecute or respond in the matter; whether trial counsel was assigned or retained; whether any other person is beneficially interested in any recovery sought and, if so, whether every such person is unable to pay such costs, fees and expenses; and such other information as the court may require.

(2) In a civil appeal, an affidavit in support of a motion for permission to proceed as a poor person shall, in addition to meeting the requirements of section 731.4 (f) (1) of this Part, set forth sufficient facts so that the merit of the contentions can be ascertained (CPLR 1101 [a]).

(3) Civil Appeals. Applicants for poor person relief in civil appeals shall comply with the service requirements of CPLR 1101(c).

(4) Criminal Appeals. In a criminal appeal, an affidavit in support of a motion for permission to proceed on appeal as a poor person shall, in addition to meeting the requirements of section 731.4 (f) (1), set forth the following: the date and county of conviction; whether the defendant is at liberty or in custody; the name and address of trial counsel; whether trial counsel was appointed or retained and, if retained, the source of the funds for such retention and an explanation as to why similar funds are not available to retain appellate counsel; whether the defendant posted bail during the trial proceedings; and, if bail was posted and the defendant is currently in custody, an explanation as to why the funds used to post such bail are not available to retain appellate counsel.

(g) Admission Pro Hac Vice. An attorney and counselor-at-law or the equivalent may apply for permission to appear pro hac vice with respect to a particular matter pending before the court pursuant to 22 NYCRR 520.11 by providing an affidavit stating that the applicant is a member in good standing in all the jurisdictions in which the applicant is admitted to practice and that the applicant is associated with a member in good standing of the New York bar, which member shall be the attorney of record in the matter. The applicant shall attach to the affidavit an original certificate of good standing from the court or other body responsible for regulating admission to the practice of law in the state in which the applicant maintains his or her principal office for the practice of law. The New York attorney of record in the matter shall provide an affirmation in support of the application.

(h) Leave to File Amicus Curiae Brief. A person or entity who is not a party to an appeal or proceeding may make a motion to serve and file an amicus curiae brief. An affidavit or affirmation in support of the motion shall briefly set forth the issues to be briefed and the movant's interest in the issues, and shall include one copy of the proposed brief. The proposed brief may not duplicate arguments made by a party to the appeal or proceeding. Unless permitted by the court, a person or entity granted permission to file an amicus curiae brief shall not be entitled to oral argument.

Section 731.5 Leave to Appeal to the Appellate Term

(a) Applications to a justice of the Appellate Term for leave to appeal pursuant to the provisions of CPLR 5701 (c) and 1702 (c) of the New York City Civil Court Act, Uniform District Court Act, Uniform City Court Act or Uniform Justice Court Act shall be made on notice within the time prescribed by CPLR 5513 (b).

(b) The papers in support of such application must contain a copy of the opinion, if any, and a concise statement of the grounds of alleged error, and shall state whether a similar application was made in the court below.

(c) Applications for certificates or orders granting leave to appeal under CPL 450.15 and 460.15 shall be governed by the following special rules:

(1) The application shall be in writing and shall be made and filed with the Chief Clerk, with proof of service upon the district attorney or any other prosecutor who appeared for the People in the criminal court in which the order sought to be reviewed was rendered, within 30 days after service upon the applicant of a copy of the order.

(2) The application shall be addressed to the court for assignment to a justice and shall include:

(A) the name and address of the applicant and the name and address of the district attorney or other prosecutor, as the case may be;

(B) the docket or index number;

(C) the questions of law or fact which it is claimed ought to be reviewed;

(D) any other information, data, or matter which the applicant may deem pertinent in support of the application; and

(E) a statement that no prior application of such certificate has been made.

(3) in addition, the papers in support of the application shall include a copy of the order sought to be reviewed and a copy of the memorandum or opinion of the court below or a statement that there was none.

(4) Within 15 days after service upon the district attorney or other prosecutor, as the case may be, of a copy of the application and of the papers in support thereof, the district attorney or other prosecutor shall file answering papers or a statement that there is no opposition to the application, with proof of service upon the applicant, if appearing pro se, or upon the attorney making the application on behalf of the applicant. Such answering papers shall include a discussion of the merits of the application or shall state, if such be the case, that the application does not contain any allegations other than those alleged in the papers submitted by the applicant in the court below and that the prosecutor relies on the record, the answering papers contained therein and the memorandum or opinion of such court, if there be any.

(5) Unless the justice designated to determine the application shall otherwise direct, the matter shall be submitted and determined upon the foregoing papers and without oral argument.

Section 731.6 Calendar of Appeals; Preferences; Consolidation

(a) The general calendar shall consist of:

(1) all appeals in a civil action or proceeding in which copies of the notice of appeal, the order or judgment appealed from, and RATA Form have been transmitted to this court by the court of original instance; and

(2) all appeals in a criminal action or proceeding in which a duplicate notice of appeal or an affidavit of errors and the court's return have been transmitted to the Chief Clerk as required by CPL 460.10 (1)(e), (2) and (3)(d).

(b) Preferences.

(1) Any party to an appeal entitled by law to a preference in the hearing of the appeal may serve and file a demand for a preference which shall set forth the provision of law relied upon for such preference and good cause for such preference. If the demand is sustained by the court, the appeal shall be preferred.

(2) A party not entitled to preference by law may move for a calendar preference for good cause shown.

(c) Consolidation.

(1) A party may consolidate appeals from civil orders and/or judgments arising out of the same action or proceeding provided that each appeal is perfected timely pursuant to section 731.7 of this Part.

(2) Appeals from orders or judgments in separate actions or proceedings cannot be consolidated but may, upon written request of a party, be scheduled by the court to be heard together on the same day.

Section 731.7 Time, Number and Manner of Filing Appeals; Extensions of Time

(a) An appeal on the general calendar in which a record has been filed may be placed on the appeal calendar to be assigned to an appointed term by filing an original and four copies of the appellant's brief as set forth in subdivisions (b) and (c) of this section.

(b) (1) In an appeal in a civil action or proceeding, the original and four copies of the appellant's brief, with proof of service of one copy upon each of the parties to the appeal, shall be filed with the court within six months of the date of filing of the notice of appeal.

(2) For appeals in which a reproduced printed record is required by section 731.9 (a) (2) of these rules, the reproduced printed record must be served and filed in accordance with that section

prior to or in conjunction with the service and filing of the appellant's brief. An additional copy of the brief and reproduced printed record on appeal shall be filed digitally in accordance with instructions provided on the court's website at www.nycourts.gov/courts/AD2/AppellateTerm.shtml.

(c) In an appeal in a criminal action or proceeding, the original and four copies of the appellant's brief, with proof of service of one copy upon each of the parties to the appeal, shall be filed with the court within six months of the taking of the appeal pursuant to CPL 460.10 (2) or CPL 460.10 (3) (c). Proof of service upon the respondent of one copy of a transcript of the minutes of all proceedings shall be filed together with the appellant's brief. The copy of the transcript shall be returned by the respondent to the appellant upon the argument or submission of the appeal.

(d) (1) The original and four copies of a respondent's brief, with proof of service of one copy, shall be filed not more than 21 days after service of the appellant's brief. The original and four copies of a reply brief, with proof of service of one copy, shall be filed not more than seven days after service of the last served respondent's brief.

(2) For appeals in which a reproduced printed record is required by section 731.9 (a) (2) of these rules, an additional copy of the respondent's brief and the reply brief shall be filed digitally in accordance with instructions provided on the court's website at www.nycourts.gov/courts/AD2/AppellateTerm.shtml.

(e) A calendar listing the appeals scheduled for argument or submission on a particular date shall be published in the New York Law Journal and/or on the court's website not less than 12 days prior to such date. Appellants and respondents, or their attorneys, shall also be notified of the calendar date by mail or email not less than five days prior to such date. Notification by any of the aforesaid methods shall be deemed sufficient notice.

(f) Concurrent and Cross Appeals.

(1) All parties appealing from the same order or judgment on an appeal perfected on a reproduced full record pursuant to section 731.9 (a) (2), shall consult and thereafter file a joint record which shall include copies of all notices of appeal, unless otherwise ordered by the court. The cost of the joint record and the transcript, if any, shall be borne equally by the appealing parties.

(2) The joint record and the briefs of concurrent appellants shall be served and filed together. The time to do so in accordance with subdivisions (a) and (b) of this section shall be measured from the latest date on the several concurrent notices of appeal.

(3) The answering brief on a cross appeal shall be served and filed not more than 21 days after service of the appellant's brief or briefs and the joint record, if applicable, and it shall include the points of argument on the cross appeal. An appellant's reply brief may be served and filed not more than 21 days after service of the answering brief. A cross appellant's reply brief may be served and filed not more than seven days after service of an appellant's reply brief.

(g) Extensions of time. Except where the court has directed that an appeal be perfected or that a brief be served and filed by a date certain, an extension of time to perfect or to serve and file a

brief may be obtained as follows:

(1) By stipulation. The parties may stipulate to extend the time to perfect an appeal by up to 60 days, to file an answering brief by up to 21 days, and to file a reply brief by up to seven days. Not more than one such stipulation per perfection or filing shall be permitted. Such a stipulation shall not be effective unless filed with the court.

(2) For cause. Where a party shall establish a reasonable ground why there cannot or could not be compliance with the time limits prescribed by this section, or such time limits as extended by stipulation pursuant to paragraph (1) of this subdivision, the Chief Clerk or a justice may grant reasonable extensions of time to comply. An application pursuant to this paragraph shall be made by letter, addressed to the Chief Clerk, with a copy to the other parties to the appeal. Orders made pursuant to this paragraph shall be reviewable by motion to the court on notice pursuant to section 731.4 of this Part.

(h) Every application for an extension of time or for an adjournment in an appeal from a judgment of conviction in a criminal action or proceeding, whether on motion or stipulation, shall include, in addition to a showing of good cause, a statement subscribed by counsel setting forth:

(1) the sentence imposed and whether the defendant is free on bail or on his own recognizance by reason of the issuance of an order pursuant to CPL 460.50 and, if so, the date of such order and the name of the judge who issued the same; and

(2) whether the court has previously granted any extension of time.

(i) Where such application pertains to an appeal in a criminal action which is on the dismissal calendar referred to in section 731.8 (c), such application shall be filed with the Chief Clerk at least two days prior to the day on which the appeal is scheduled to appear on such calendar.

Section 731.8 Dismissal on the Court's Own Motion

(a) Unless an extension of time is granted in accordance with section 731.7 (g), an appeal in a civil action or proceeding which has not been perfected after having been on the general calendar for more than six months shall be deemed abandoned, and shall be subject to dismissal.

(b) Application to Restore Abandoned Appeal. When an appeal is deemed abandoned pursuant to section 731.8 (a) of these rules, the Chief Clerk or a justice may grant reasonable extensions of time to perfect. An application pursuant to this paragraph shall be made by letter, addressed to the Chief Clerk, with a copy to the other parties to the appeal.

(c) Except as otherwise provided in CPL 460.70 and subject to the applicable provisions of CPL 470.60, and unless an extension of time is granted in accordance with section 731.7 (g), an appeal in a criminal action or proceeding which has not been perfected within six months of the taking of the appeal pursuant to CPL 460.10 (1) (d) or CPL 460.10 (3) (c) shall be dismissed.

(d) The Chief Clerk shall prepare a calendar of the appeals subject to dismissal for failure on the part of the appellant to perfect the same in compliance with this rule and with section 731.7 of these rules. Such dismissal calendar shall be published in the New York Law Journal at least five

days prior to, as well as on the dismissal day. In a criminal action or proceeding, the Chief Clerk shall cause a notice to be mailed or emailed to the appellant or the appellant's attorney five days prior to the first day of such publication.

(e) Motion to Vacate Dismissal. When an appeal has been dismissed pursuant to subdivision (d) or by order of the court for failure to perfect, a motion to vacate the dismissal may be made within one year of the date of the dismissal. In support of the motion, the movant shall submit an affidavit setting forth good cause for vacatur of the dismissal, an intent to perfect the appeal or proceeding within a reasonable time, and sufficient facts to demonstrate a meritorious appeal or proceeding.

Section 731.9 Records on Appeal

(a) (1) Civil appeals shall be prosecuted on the original record, as set forth in section 1704 of the New York City Civil Court Act, Uniform District Court Act, Uniform City Court Act or Uniform Justice Court Act, as applicable, except as set forth in subdivision (a) (2) herein.

(2) Reproduced full record. If all parties to an action or proceeding governed by the New York City Civil Court Act, Uniform District Court Act or Uniform City Court are represented by counsel, the appeal must, unless good cause is shown, be prosecuted on a reproduced full record. The reproduced full record shall comply with the requirements of CPLR 5526. An original and four copies of the record, duly certified as provided below, shall be filed with proof of service of one copy upon each of the other parties to the appeal. An additional copy of the brief and reproduced printed record on appeal shall be filed digitally in accordance with instructions provided on the court's website at www.nycourts.gov/courts/AD2/AppellateTerm.shtml.

(A) Where the appeal is prosecuted on a full, reproduced record, it must be accompanied by a certificate of the clerk of the trial court, certifying that it was prepared in compliance with, and contains all of the papers required by Section 1704 of the New York City Civil Court Act, Uniform District Court Act or Uniform City Court Act, as applicable. It may not contain a transcript that is reproduced in condensed format such that two or more pages of transcript in standard format appear on one page.

(B) Exhibits. The parties may stipulate to dispense with reproduction of exhibits in the full reproduced record on grounds that (i) the exhibits are not relevant or necessary to the determination of an appeal, and will not be cited in the parties' submissions; or (ii) the exhibits, though relevant and necessary, are of a bulky or dangerous nature, and will be kept in readiness and delivered to the court on telephone notice.

(C) In lieu of certification by the clerk of the court of original instance, the record may be certified by the appellant's attorney pursuant to CPLR 2105; or by a stipulation in lieu of certification pursuant to CPLR 5532. The reproduced copy containing the signed certification or stipulation shall be marked "Original."

(3) For good cause shown, the Chief Clerk or a justice of the Appellate Term may authorize a party otherwise subject to subdivision (a) (2) of this Rule, to prosecute the appeal on the original record. An application pursuant to this paragraph shall be made by letter, addressed to

the Chief Clerk, with a copy sent to each of the parties to the appeal, within 30 days after the notice of appeal has been filed.

(4) (A) Civil appeals from the County Court are governed by CPLR 5525, 5526 and 5527, and may be prosecuted on the original record, in which case the appellant shall subpoena from the clerk of the court from which the appeal is taken all the papers constituting the record on appeal and cause them to be filed with the Chief Clerk prior to the filing of the briefs.

(B) Where a subpoena is required to be served upon the clerk of the court of original instance pursuant to this section, the clerk from whom the papers are subpoenaed shall compile the original papers constituting the record on appeal and cause them to be transmitted to the Chief Clerk, together with a certificate listing the papers constituting the record on appeal and stating whether all such papers are included in the papers transmitted.

(b) (1) In criminal actions or proceedings, the appeal shall be heard on the original papers, certified by the clerk of the court from which the appeal is taken, the court's return when the same is required by statute, a stenographic transcript of the proceedings settled by parties to the appeal or, in the event the parties cannot settle, the judge before whom the action was tried, or in case of the death or disability of such judge, in such manner as this court directs.

(2) For good cause shown, the court may hear the appeal on an abridged record containing so much of the evidence or other proceedings as it may deem necessary to a consideration of the questions raised on the appeal.

Section 731.10 Form, Style and Content of Briefs

(a) The form, style and content of all briefs shall conform to the provisions of CPLR 5528 and 5529. In addition, the Appellate Term docket number shall be stated at the upper left-hand corner of the cover page of each brief, and each party's main brief shall specify whether the appeal is to be argued or submitted, and shall state the name of counsel who is to argue or submit, in the upper right-hand corner thereof.

(b) Unless otherwise directed by the court, statute, or rule, the appellant's main brief shall include at the beginning the statement required by CPLR 5531.

(c) In criminal appeals, the appellant's main brief shall also set forth at the beginning thereof:

(1) the entire judgment or order appealed from, or its material provisions, including its date;

(2) the sentence imposed, if any; and

(3) a statement setting forth whether an order issued pursuant to CPL 460.50 is outstanding and, if so, the date of such order, the name of the judge who issued it and whether the appellant is free on bail or on his own recognizance.

(d) The original of the brief shall be signed and filed with the number of copies required by section 731.7 (a) of this Part.

(e) Page Limits.

(1) Computer-generated briefs.

(A) Briefs prepared on a computer shall be printed in either a serified, proportionally spaced typeface such as Times New Roman, or a serified, monospaced typeface such as Courier. Narrow or condensed typefaces and/or condensed font spacing may not be used. Except in headings and in quotations of language that appears in such type in the original source, words may not be in bold type or type consisting of all capital letters.

(i) Briefs set in a proportionally spaced typeface. The body of a brief utilizing a proportionally spaced typeface shall be printed in 14-point type, but footnotes may be printed in type of no less than 12 points.

(ii) Briefs set in a monospaced typeface. The body of a brief utilizing a monospaced typeface shall be printed in 12-point type containing no more than 10½ characters per inch, but footnotes may be printed in type of no less than 10 points.

(B) Computer-generated appellants' and respondents' briefs shall not exceed 14,000 words, and reply and amicus curiae briefs shall not exceed 7,000 words, inclusive of point headings and footnotes and exclusive of signature blocks and pages including the table of contents, table of citations, proof of service, certificate of compliance, or any addendum authorized pursuant to subdivision (g).

(2) Typewritten briefs.

(A) Typewritten briefs shall be neatly prepared in clear type of no less than elite in size and in a pitch of no more than 12 characters per inch.

(B) Typewritten appellants' and respondents' briefs shall not exceed 50 pages and reply briefs and amicus curiae briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any addendum authorized pursuant to subdivision (g).

(C) Margins, line spacing and page numbering of computer-generated and typewritten briefs. Computer-generated and typewritten briefs shall have margins of one inch on all sides of the page. Text shall be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Pages shall be numbered consecutively.

(3) Handwritten briefs.

(A) Self-represented litigants and persons filing pro se supplemental briefs may serve and file handwritten briefs. Such briefs shall be neatly prepared in cursive script or hand printing in black or blue ink.

(B) Handwritten appellants' and respondents' briefs shall not exceed 50 pages and reply briefs and amicus curiae briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance or any addendum authorized pursuant to subdivision (g). Pages shall be numbered consecutively. The submission of handwritten briefs is not encouraged. If illegible, handwritten briefs may be rejected for filing by the Chief Clerk.

(f) Where a brief pursuant to *Anders v California* (386 US 738) has been filed, a copy of a letter to the defendant advising that the defendant may file a *pro se* supplemental brief and, if the defendant wishes to file such a brief, that the defendant must notify this court no later than 45 days after the date of mailing of counsel's letter of the defendant's intention to do so, shall be filed with the brief.

(g) Briefs may include addenda that are composed exclusively of decisions, statutes, ordinances, rules, regulations, local laws, or other similar matter cited therein that were not published or that are not otherwise readily available.

Section 731.11 Oral Argument or Submission

(a) No more than 15 minutes will be allowed for argument on each side, except by express permission of the court.

(b) In the event that any party's main brief shall fail to set forth the appropriate notations with respect to the argument or submission of the appeal, as required by section 731.10 (a) of these rules, the appeal will be deemed to have been submitted without oral argument by that party.

(c) When any party shall have noted on that party's filed brief, or, before the appeal appears on the day calendar, shall have filed that party's written consent or stipulation or otherwise notified the Chief Clerk that the party intends to submit the appeal without argument, such party need not appear at the call of the calendar.

(d) The court, in its discretion, may deny oral argument of any appeal.

Section 731.12 Motions to Reargue, Resettle or Amend; Motions for Leave to Appeal to the Appellate Division

(a) Motions to reargue an appeal, to resettle an order or to amend a decision shall be made within 30 days after the appeal shall have been decided, except that for good cause shown, the court may consider any such motion when made at a later date.

(b) In an appeal in a civil action or proceeding, a motion for leave to appeal to the Appellate Division made to this court from an adverse determination of the Appellate Term shall be made in the manner and within the time prescribed by CPLR 5513 (b) and 5516.

(c) The papers in support of such motions shall concisely state the points claimed to have been overlooked or misapprehended by the court, with appropriate references to the particular portions of the record or briefs and with citation of the authorities relied upon.

(d) A motion for leave to appeal to the Appellate Division in a civil action or proceeding from an order granting or affirming the granting of a new trial or hearing shall contain a stipulation that if the order appealed from be affirmed, judgment absolute may be entered against the moving party.

Section 731.13 Stay of Judgment Pending Appeal to the Appellate Term for the Ninth and Tenth Judicial Districts

Upon application of a defendant, pursuant to CPL 460.50, for an order staying or suspending the execution of the judgment pending the determination of an appeal taken to the Appellate Term, such order may be issued by a justice of the Appellate Term for the Ninth and Tenth Judicial Districts or a justice of the Supreme Court of the judicial district embracing the county in which the judgment was entered.

Section 731.14 Decisions and Orders; Costs

(a) A decision and order of this court determining an appeal or a motion shall be drafted by the court and shall be entered in the office of the Chief Clerk. Such an order shall be deemed entered on the date upon which it was issued.

(b) Costs and disbursements upon any appeal or motion shall be allowed only as directed by order of this court. In the absence of a contrary direction, the award by this court of costs shall be deemed to include disbursements, pursuant to CPLR 8301.

DATED: Brooklyn, New York
October 16, 2019



ALAN D. SCHEINKMAN
Presiding Justice

SUPREME COURT, STATE OF NEW YORK
APPELLATE DIVISION SECOND DEPT.
I, APRILANNE AGOSTINO, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on 10/16/19 and that this copy is a correct transcription of said original. IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on 10/23/19.
Aprilanne Agostino