



*State of New York
Court of Appeals*

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

December 11, 2020

NOTICE TO THE BAR
COMPANION FILING UPLOAD PORTAL
CRIMINAL LEAVE APPLICATIONS

The Court has amended its Rules of Practice to require submissions in digital format as companions to the printed papers filed and served in connection with criminal leave applications (see Rule 500.20). The submission of criminal leave application filings in digital format will be via the Companion Filing Upload Portal that is currently used to submit companion digital copies of civil motions and Rule 500.10 Jurisdictional Responses.

The Rules of Practice have been also changed to provide that the intermediate appellate court documents required by Rule 500.20(b) shall be filed in digital format only.

Parties can request to be relieved of the digital submission requirements based on a showing of undue hardship.

An applicant is required to file at Court of Appeals Hall hard copies of the initial leave letter application, the order sought to be reviewed and proof of service on the responding party. If an applicant chooses to supplement the criminal leave application with additional submissions, the additional submissions must be filed at Court of Appeals Hall in hard copy, with proof of service on the responding party. If a responding party chooses to oppose the criminal leave application with responding submissions, the responding submissions must be filed at Court of Appeals Hall in hard copy, with proof of service on applicant.

The parties will be notified of the Judge assigned to determine the criminal leave application, be provided with instructions to upload digital companion submissions and given deadlines to do so. Parties will upload the initial leave letter application, order sought to be reviewed, intermediate appellate court documents and additional submissions (applicant) and responding submissions (responding party).

Relevant portions of the proposed amended Rules are attached and are effective December 30, 2020. Criminal leave applications filed on or after December 30, 2020 must comply with the amended Rules.

Questions may be directed to the Clerk's Office at 518-455-7700.

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 9th
day of December, 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 December 30, 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 500.2(a) and (d) and 500.20(a), (b), (d), (e), (f) and (g) to read as follows:

500.2 Submission of Companion Digital Filings.

(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, 500.20, 500.21, 500.22, 500.23, 500.24, 500.26 and 500.27 of this Part.

(d) Unless otherwise permitted by the Clerk of the Court, companion 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 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 sections 500.20 and 500.26 shall be submitted within the time directed by the Clerk of the Court.

500.20 Criminal Leave Applications.

(a) Letter application. In addition to the submission in digital format required by subsection 500.20(e) of this Part, a[A]pplications to the Chief Judge for leave to appeal in a criminal case (CPL 460.20) shall be by letter addressed to 20 Eagle Street, Albany, New York 12207, and shall be sent to the attention of the Clerk of the Court, with proof of service of one copy on the adverse party. The letter shall indicate:

- (1) the names of all codefendants in the trial court, if any, and the status of their appeals, if known;
- (2) that no application for the same relief has been addressed to a justice of the Appellate Division, as only one application is available;
- (3) whether an oral hearing on the application, in person or by telephone conference call, is requested; and
- (4) the grounds upon which leave to appeal is sought. Particular written attention shall be given to reviewability and preservation of error, identifying and reproducing the particular portions of the record where the questions sought to be reviewed are raised and preserved. [After the application is assigned to a Judge for review, counsel will be given an opportunity to serve and file additional submissions, if any, and opposing counsel will be given an opportunity to respond. A reply is not permitted unless authorized by the assigned Judge.]

(b) Material to be provided with application.

- (1) Orders of intermediate appellate courts determining appeals to those courts. An application

for leave to appeal from an intermediate appellate court order determining an appeal taken to that court shall include:

(i) [one copy of] each brief submitted on defendant's behalf and the People's behalf to the intermediate appellate court 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, the application shall include one unbound copy of each brief submitted on defendant's and the People's behalf to the intermediate appellate court;

[(ii) one copy of each brief submitted by the People to the intermediate appellate court;]

(ii) [(iii)] the order and decision of the intermediate appellate court sought to be appealed from;

(iii) [(iv)] all relevant opinions or memoranda of the courts below, along with any other papers to be relied on in furtherance of the application; and

(iv) [(v)] if defendant is a corporation or other business entity, a disclosure statement pursuant to subsection 500.1(f) of this Part.

(2) Orders of intermediate appellate courts determining applications for writs of error coram nobis. An application for leave to appeal from an intermediate appellate court order determining an application for coram nobis relief shall include:

(i) the order and decision sought to be appealed from;

(ii) the papers in support of and opposing the application filed in the intermediate appellate court, as well as the briefs filed on the underlying appeal, if available, 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, the application shall include one unbound copy of the papers in support of and opposing the application filed in the intermediate appellate court, as well as the briefs filed on the underlying appeal, if available; and

(iii) the intermediate appellate court decision and order sought to be vacated, [as well as the briefs filed on the underlying appeal, if available.]

(c) Assignment. The Chief Judge directs the assignment of each application to a Judge of the Court through the Clerk of the Court; counsel shall not apply directly to a Judge or request that an application be assigned to a particular Judge. The assigned Judge shall advise the parties if an oral hearing on the application will be entertained.

(d) Additional and Responding Submissions. After the application is assigned to a Judge for review, the applicant will be given an opportunity to serve and file additional submissions, if any, and the adverse party will be given an opportunity to respond. A reply is not permitted unless authorized by the assigned Judge. In addition to the submission in digital format required by subsection 500.20(e) of this Part, hard copy additional and responding submissions shall be addressed to 20 Eagle Street, Albany, New York 12207, and shall be sent to the attention of the assigned Judge, with proof of service of one copy on the adverse party.

(e) Companion submission in digital format.

(1) Unless a request to be relieved of the digital filing requirement is submitted pursuant to subsection 500.2(e) of this Part, the following materials are required to be submitted in digital format:

(i) subsection 500.20(a) letter application and subsection 500.20(b) material to be provided with the application;

(ii) subsection 500.20(d) additional and responding submissions; and

(iii) subsection 500.20(f) reargument or reconsideration requests.

(2) All material submitted under this section shall comply with the technical specifications and instructions for submission available from the Clerk's Office, be submitted within the time directed by the Clerk of the Court and be identical to the filed original printed materials except they need not contain original signatures.

(f) [(d)] Reargument or reconsideration.

(1) In addition to the submission in digital format required by subsection 500.20(e) of this Part, r[R]equests for reargument or reconsideration shall be in letter form addressed to the Clerk of the Court, with proof of service on the adverse party, and shall be assigned to the Judge who ruled on the original application. Copies of the papers filed on the underlying leave application need not be filed. A request for reargument or reconsideration shall not be based on the assertion for the first time of new points, except for extraordinary and compelling reasons.

(2) Unless otherwise permitted by the assigned Judge, the reargument or reconsideration request shall be served not later than 30 days after the date of the certificate determining the application of which reargument or reconsideration is sought. Only one request for reargument or reconsideration per party of a specific criminal leave application is permitted.

(g) [(e)] Counsel. This Court does not assign counsel for criminal leave applications. One set of motion papers addressed to this Court under section 500.21 of this Part for assignment of counsel on a criminal appeal may be filed, with proof of service of one copy on the adverse party, only after leave to appeal is granted.

(h) [(f)] Stay requests. Whether prominently set forth at the beginning of a letter application

for leave to appeal or made by separate letter with proof of service of one copy on the adverse party, [a request for] an applicant seeking a stay (CPL 460.60; 530.50) should contact the Clerk's Office in advance of the filing and file the stay request as directed by the Clerk's Office. A stay request shall state:

- (1) whether the relief sought has been previously requested;
- (2) whether defendant is presently incarcerated and the incarceration status, if known, of any codefendants; and,
- (3) if the defendant is at liberty:

- (i) whether a surrender date has been set; and
- (ii) the conditions of release (e.g., on defendant's own recognizance or on a set bail amount).

(i) [(g)] Applications for extensions of time to seek leave to appeal. An application for an extension of time to seek leave to appeal (CPL 460.30) shall be by one set of motion papers in compliance with section 500.21 of this Part, with proof of service of one copy on the adverse party. The motion shall be accompanied by a copy of the order sought to be appealed[, and one copy of each brief filed in the intermediate appellate court or, in the case of an order granting or denying an application for a writ of error coram nobis, the papers filed in the intermediate appellate court in support of and in opposition to the application for the writ. If no opposing papers were filed, the motion papers filed in this Court must clearly so state.] If the motion for an extension of time is granted and the motion is treated as a timely criminal leave application, the parties must comply with the submission in digital format requirements of subsection 500.20(e).