



*State of New York
Court of Appeals*

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Notice to the Bar

On October 16, 2008, the Court of Appeals revised 22 NYCRR part 500 (Court of Appeals Rules of Practice) and 22 NYCRR part 530 (Review of Determinations of the State Commission on Judicial Conduct), effective November 5, 2008, or as soon thereafter as section 52 of the Judiciary Law is complied with.

A commentary on the revisions is attached. The new rules and commentary are also available on the Court's web site: www.nycourts.gov/courts/appeals.

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GUIDE TO THE 2008 REVISIONS TO 22 NYCRR PARTS 500 AND 530

Background

In 2005, the Court of Appeals approved a comprehensively reformulated set of practice rules, known as the Court of Appeals Rules of Practice (22 NYCRR part 500). These rules became effective on September 1, 2005. Their adoption followed the Court's consideration of public comment solicited and received.

In 2007, the Court determined to reconsider Part 500 in light of the two years of practice experience under its new rules. The Court also decided to revise 22 NYCRR part 530, which governs procedures on review of determinations of the State Commission on Judicial Conduct, to conform portions of Part 530 to the Part 500 practice rules.

On October 16, 2008, the Court promulgated the new Parts 500 and 530, effective November 5, 2008, or as soon thereafter as section 52 of the Judiciary Law is complied with. A commentary on the revisions follows.

22 NYCRR part 500 (Court of Appeals Rules of Practice):

500.1 General Requirements

This rule was amended to clarify the definition of "papers filed" (§501[b]), and to separately highlight information that shall be provided for all filings (§§501[d]-[h]).

500.5 Sealed Documents and Confidential Material

Subsection (e) was added to address the filing of confidential matter subject to a statutory proscription against publication.

500.6 Developments Affecting Appeals, Certified Questions, Motions and Criminal Leave Applications

This rule was expanded to require counsel on an appeal to timely inform the clerk's office of any changes in the status of related litigation originally reflected on appellant's preliminary appeal statement, and of related litigation initiated after that statement was filed in this Court.

500.11 Alternative Procedure for Selected Appeals

Subsection (e) was added to set forth the Court's longstanding practice on alternative review

appeals of not permitting appellants to file a reply brief, except where so authorized by the Court or on the Court's own motion.

Subsection (h) was added to require counsel to indicate in its 500.11 letter the status of any related litigation.

500.13 Content and Form of Briefs in Normal Course Appeal

Subsection (a), governing the contents of briefs on normal course appeals, was expanded to require that any disclosure statement required by subsection 500.1(f), and an indication of the status of any related litigation, each be included before the table of contents in the party's principal brief. The subsection was further expanded to require appellant to include a statement demonstrating the Court's jurisdiction over the appeal and the reviewability of issues raised on the appeal.

Subsection (b), treating brief covers, was expanded to state that plastic covers shall not be used.

500.14 Records, Appendices and Exhibits in Normal Course Appeals

Subsection (b)(5) was amended to require, as relevant to the appeal, the inclusion of the jury charge. The subsection was further amended to require inclusion of any testimony, affidavits, jury charge or exhibits cited in the brief of the party filing the appendix.

Subsection (e) was added to require that a reproduced record or appendix contain the statement required by CPLR 5531.

500.15 Extensions of Time

This section was amended by deleting the requirement that requests for extensions of time for filing papers on appeal be made no earlier than 20 days before the filing due date set by the clerk's office or otherwise prescribed by the Rules. The change was prompted by the currency of the Court's calendar and the Court's experience that the requirement no longer served a useful purpose in managing appeals.

500.16 Failure to Proceed or File Papers

Subsection (b) was revised to clarify that a party can seek judicial review of dismissal and preclusion orders by motion on notice.

500.20 Criminal Leave Applications

Subsection (a) (2) was amended to require an applicant to state affirmatively that no such application for the same relief was brought to a justice of the Appellate Division, as only one such application is available.

Subsection (b)(1)(v) was added to require a defendant corporation or business entity to file a disclosure statement pursuant to §500.1(f).

Section (f) was revised to require that requests for a stay either be stated prominently at the beginning of the application letter or made by separate letter with proof of service.

Section (g), addressing applications for extensions of time to seek leave to appeal, was expanded to state the supporting papers and information that shall be filed with the application.

500.21 Motions - General Procedures

Section (h) was added to clarify the Court's practice of automatically filing and entering orders issued on motions. The section further advises that the Court has no procedure for filing additional papers, such as proof of service of a copy of the order with notice of entry.

500.23 Amicus Curiae Relief

Section (a) was restructured to highlight separately the requirements for a motion for amicus relief.

Subsection (a)(1)(3) changes the filing deadline for amicus curiae motions addressed to appeals scheduled for the January and September sessions. The regular deadline for amicus relief -- a return date no later than the session preceding the session in which oral argument or submission of an appeal or certified question is scheduled -- did not adequately provide for matters scheduled for the January and September sessions. Accordingly, the revised subsection provides that when an appeal or certified question is scheduled for argument or submission during the Court's January or September session, any motion for amicus relief shall be noticed for a return date no later than the first Monday in December or August, respectively. The subsection was further revised to encourage all potential amici to telephone the Clerk's office for instructions and to view information on the Court's web site regarding calendar status and session dates.

Subsection (a)(3) amends the Court's current amicus motion practice to allow movant to request expressly that, if amicus relief was granted on a successful motion for leave to appeal, permission be simultaneously granted movant to file an amicus brief on the appeal.

22 NYCRR part 530 (Review of Determinations of the State Commission on Judicial Conduct):

530.2 Petitioner's Papers - Content and Time for Filing

530.4 Service and Filing of Respondent's Brief and Appendix

530.7 Motions

These sections were revised to require parties to file 24, rather than the previous ten, copies of petitioner's and respondent's papers, and of amicus briefs, on requests for review.

530.4 Service and Filing of Respondent's Brief and Appendix

This section was amended to allow respondent Commission to file an appendix of record material not found in petitioner's appendix.

530.6 Extensions of Time; Failure to Proceed or File Papers

This section was completely revised to conform the Court's practice on requests for review with the Court's practice (see discussion of Rule 500.15 above) on regular appeals under Part 500.

530.7 Motions

Subsection (a) reduces from nine to six the number of required copies of a brief or motion filed in connection with motions for reargument and motions to suspend a judge or justice.

Subsection (c) was completely revised to conform the Court's practice regarding motions for amicus relief on requests for review with that adopted for amicus motions directed to regular appeals under Part 500 (see discussion of Rule 500.23[a][1][3] above).

530.9 Withdrawal of Request for Review

This section was revised to conform to the Court's current practice under Part 500 concerning withdrawal requests received before and after argument or submission, respectively.

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