

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

ADM 2008-0917

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 immediately, amend parts 730, 731 and 732 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows (additions in text are indicated by underlining and deletions by ~~striking through~~):

- I. Amend paragraph (1) of subdivision (a); paragraph (1) of subdivision (c); and subdivision (f) of § 730.1, as follows:

**§ 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) (l) Establish an Appellate Term of the Supreme Court in and for the Second and Eleventh Judicial Districts, which shall be held from time to time ~~in courtroom 1902 at 111 Livingston Street, in the County of Kings, and at the courthouse located at 88-11 Sutphin Boulevard in the county of Queens and at such other places~~ in those judicial districts as may be designated by the Chief Administrator of the Courts.

\* \* \*

(c) (1) Establish an Appellate Term of the Supreme Court in and for the ninth and tenth judicial districts ~~within said department which shall be held from time to time at the courthouse located at Supreme Court Drive, in the County of Nassau, and at the courthouse located at 111 Grove Street, in the County of Westchester, and at such other places~~ in those judicial districts as may be designated by the Chief Administrator of the Courts.

\* \* \*

(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 Clerk of the Court, 444 141 Livingston Street, 15<sup>th</sup> Floor, Brooklyn, NY New York 11201.

- II. Adopt new section 730.3, as follows:

**§ 730.3 General Provisions and Definitions.**

(a) Unless the context requires otherwise, as used in this part and parts 731 and 732 of this title:

(1) The word perfection refers to the filing of an appellant's brief after an appeal is on the general calendar.

(2) The term cross appeal refers to an appeal taken by a party whose interests are adverse to a party who has appealed from the same order or judgment.

(b) All briefs, motions, affirmations, and any other papers will be deemed filed only as of the time they are actually received by the clerk and they shall be accompanied by proof of service as required by CPLR 2103.

(c) If a period of time prescribed by this part and parts 731 and 732 is measured from the service of a record, brief, or other paper 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.

(d) Unless the context requires otherwise, if a period of time prescribed by parts 731 and 732 for the performance of an act ends on a Saturday, Sunday, or public holiday, the act will be deemed timely if performed by 5 P.M. of the next business day.

(e) 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.

(f) If an appeal or the underlying action or proceeding is wholly or partially settled or if any issues are wholly or partially rendered moot, or if the calendaring, restoration, or disposition of the appeal is affected by the bankruptcy or death of a party, the inability of counsel to appear, an order of rehabilitation, or some other circumstance, the parties or their counsel shall immediately notify the court. Any attorney or party who, without good cause shown, fails to comply with the requirements of this subdivision shall be subject to such costs and/or sanctions as the court may direct.

(g) Any attorney or party to a civil appeal who, in the prosecution or defense thereof, engages in frivolous conduct as that term is defined in 22 NYCRR subpart 130-1.1(c), shall be subject to the imposition of such costs and/or sanctions as authorized by 22 NYCRR subpart 130-1 as the court may direct.

III. Amend subdivisions (b) and (c), and repeal existing subdivision (d) and adopt a new subdivision (d) of § 731.4, as follows:

**§ 731.4 Calendar of appeals.**

\* \* \*

(b) An appeal on the general calendar in which a record has been filed may be placed on the appeal calendar ~~for to be assigned to an appointed term by filing a note of issue containing the following information:~~ an original and five copies of the appellant's brief as set forth in subdivision (c) of this section.

(1) the title of the appeal;

- ~~(2) the judgment or order appealed from, the date thereof and the court from which the appeal was taken;~~
- ~~(3) the attorneys for the respective parties, their addresses and telephone numbers, and the name, if known, of counsel who will argue the cause;~~
- ~~(4) the identity of the party filing the note of issue.~~

~~(c) The note of issue, with proof of service, together with the original and three five copies of the appellant's brief, with proof of service of one copy, shall be filed with the court: within the time prescribed by section 731.8 of this part. together with blank, stamped post cards, addressed to each and every appellant and respondent on or before the first Friday of any given month; In addition to the foregoing, in criminal causes appeals proof of service upon the respondent of one copy of a transcript of the minutes of all proceedings shall be filed together with the note of issue appellant's brief, such copy to be returned by the respondent to the appellant upon the argument or submission of the appeal. The original and ~~three~~ five copies of the respondent's brief, with proof of service of one copy, shall be filed on or before the third Friday of the month in which the note of issue is deemed filed: not more than 21 days after service of the appellant's brief. The original and ~~three~~ five copies of a reply brief, with proof of service of one copy, shall be filed not later than the fourth Friday of the month in which the note of issue is deemed filed: not more than seven days after service of respondent's brief.~~

~~(d) Notification of the appointed term to which an appeal has been assigned shall be published in the New York Law Journal not less than 12 days prior to the date of said term. Appellants and respondents or their attorneys shall be notified by postal card not less than five days prior to the date of said term.~~

~~(d) A day calendar listing the appeals scheduled for argument or submission on a particular date shall be published in the *New York Law Journal* not less than 12 days prior to such date. Appellants and respondents, or their attorneys, shall be notified of the calendar date by mail not less than five days prior to such date. Notification by either of such means shall be deemed sufficient.~~

IV. Amend § 731.5, as follows:

**§ 731.5 Preferences; consolidation.**

~~Any party to an appeal, for good cause shown, may move for a preference upon notice to all other parties to the appeal.~~

(a) 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 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 preference under CPLR 5521 may be obtained upon good cause

shown by a motion directed to the court on notice to the other parties to the appeal.

(b) 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 731.8 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.

V. Amend paragraph (c) and adopt a new paragraph (d) of § 731.6 as follows:

**§ 731.6 Oral argument or submission.**

\* \* \*

(c) When any party shall have noted on his or her filed brief, or, before the cause appeal appears on the day calendar, shall have filed his or her written consent or stipulation or otherwise notified the clerk that he or she intends to submit the cause appeal without argument, such party need not appear on the calendar call. ~~Any provisions of the rules requiring the filing of any papers as herein prescribed, shall mean the filing thereof, in the clerk's office of the Appellate Term, with proof of service in accordance with 2103 CPLR. In criminal causes, proof of service of one copy of a transcript of all proceedings shall be filed together with the note of issue, such copy to be returned to the appellant upon the argument or submission of the appeal.~~

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

VI. Amend paragraphs (a), (b) and (c), and adopt a new paragraph (d) of § 731.8 as follows:

**§ 731.8 Dismissals on the court's own motion; enlargements of time.**

(a) Unless an ~~extension or~~ enlargement of time is ~~directed by the court for good cause shown, granted in accordance with subdivision (d) of this section,~~ an appeal in a civil case which has not been ~~noticed for argument perfected~~ after having been on the general calendar for more than 90 days shall be subject to dismissed dismissal.

(b) Except as otherwise provided in CPL 460.70 and subject to the applicable provisions of CPL 470.60, and unless ~~for good cause shown an extension or~~ enlargement of time is ~~granted by the court, in accordance with subdivision (d) of this section,~~ an appeal in a criminal case in which a ~~note of issue was~~ has not filed been perfected within 90 days after ~~the last day in which a~~ the notice of appeal was ~~required to be filed~~ shall be dismissed.

(c) The clerk shall prepare a ~~special day calendar for each appointed term of the appeals subject to dismissal for failure on the part of the appellant to perfect the same in~~ comply compliance with this rule. ~~Each such special day~~ 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, ~~when that calendar is to be called, and in~~ In criminal cases, the clerk shall cause a ~~postal-card~~ notice to be mailed to the appellant ~~or~~ and his or her attorney five days prior to the first day of such publication.

(d) *Enlargements 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 enlargement of time to perfect or to serve and file a brief may be obtained as follows:

(1) *By Stipulation.* The parties may stipulate to enlarge the time to perfect an appeal by up to 60 days, to file an answering brief by up to 30 days, and to file a reply brief by up to 10 days. Not more than one such stipulation per perfection or filing shall be permitted. Such a stipulation shall not be effective unless so ordered by the clerk.

(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 clerk or a Justice may grant reasonable enlargements of time to comply. An application pursuant to this paragraph shall be made by letter, addressed to the 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 731.7 of this part.

VII. Amend subdivisions (b) and (c) and repeals existing subdivision (d) and adopt a new subdivision (d) of § 732.4, as follows:

**§ 732.4 Calendar of appeals.**

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(b) An appeal on the general calendar in which a record has been filed may be placed on the appeal calendar ~~for to be assigned to an appointed term by filing a note of issue containing the following information: an original and five copies of the appellant's brief as set forth in subdivision (c) of this section.~~

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~~(2) the judgment or order appealed from, the date thereof and the court from which the appeal was taken;~~

~~(3) the attorneys for the respective parties, their addresses and telephone numbers and the name, if known, of counsel who will argue the cause;~~

~~(4) the identity of the party filing the note of issue.~~

(c) ~~The note of issue, with proof of service, together with the original and three five copies of the appellant's brief, with proof of service of one copy, shall be filed with the court: within the time prescribed by section 732.8 of this part. together with blank, stamped post cards, addressed to each and every appellate and respondent on or before~~

~~the first Friday of any given month; In addition to the foregoing, in criminal causes appeals proof of service upon the respondent of one copy of a transcript of the minutes of all proceedings shall be filed together with the note of issue appellant's brief, such copy to be returned by the respondent to the appellant upon the argument or submission of the appeal. The original and three five copies of the respondent's brief, with proof of service of one copy, shall be filed on or before the third Friday of the month in which the note of issue is deemed filed. not more than 21 days after service of the appellant's brief. The original and three five copies of a reply brief, with proof of service of one copy, shall be filed not later than the fourth Friday of the month in which the note of issue is deemed filed not more than seven days after service of the respondent's brief.~~

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~~(d) A day calendar listing the appeals scheduled for argument or submission on a particular date shall be published in the *New York Law Journal* not less than twelve days prior to such date. Appellants and respondents, or their attorneys, shall be notified of the calendar date by mail not less than five days prior to such date. Notification of either of such means shall be deemed sufficient.~~

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~~Any party to an appeal, for good cause shown, may move for a preference upon notice to all other parties to the appeal.~~

(a) 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 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 preference under CPLR 5521 may be obtained upon good cause shown by a motion directed to the court on notice to the other parties to the appeal.

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(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 732.8 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.

IX. Amend paragraph (c) and adopt a new paragraph (d) of § 732.6 as follows:

**§ 732.6 Oral argument or submission.**

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(c) The clerk shall prepare a ~~special day~~ calendar for ~~each appointed term~~ of the appeals subject to dismissal for failure on the part of the appellant to perfect the same in comply compliance with this rule. ~~Each such special day~~ 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, ~~when that calendar is to be called, and in~~ In criminal cases, the clerk shall cause a ~~postal card~~ notice to be mailed to the appellant ~~or~~ and his or her attorney five days prior to the first day of such publication.

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(1) By Stipulation. The parties may stipulate to enlarge the time to perfect an appeal by up to 60 days, to file an answering brief by up to 30 days, and to file a reply brief by up to 10 days. Not more than one such stipulation per perfection or filing shall be permitted. Such a stipulation shall not be effective unless so ordered by the clerk.

(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 clerk or a Justice may grant reasonable enlargements of time to comply. An application pursuant to this paragraph shall be made by letter, addressed to the 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 732.7 of this part.

Dated: Brooklyn, New York  
September 17, 2008



For the Court:

A handwritten signature in black ink, appearing to read "A. Gail Prudenti".

A. Gail Prudenti  
Presiding Justice

Attest:

A handwritten signature in black ink, appearing to read "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court