

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

NOTICE TO THE BAR AND LITIGANTS

Pursuant to CPLR 5529(a)(2) the court has adopted amendments to its rules to simplify and modernize the provisions relating to the format and content of records, appendices, and briefs. The present § 670.10, governing those matters, has been repealed and its content has been reorganized and clarified in three new sections, effective January 1, 2004. The format and content of records, appendices, and briefs is treated generally in a new § 670.10.1. Records and appendices are covered in detail in new § 670.10.2, and briefs in new § 670.10.3.

The most significant changes relate to the format of briefs. The new rules provide clear instructions on the formatting of briefs prepared on a computer (22 NYCRR 670.10.3[a], [c]), including the style of permissible typefaces, the size of type, the width of margins, line spacing, and numbering of pages. The length of computer-generated briefs will be measured by the number of words they contain, not their number of pages. The changes are consistent with those recently adopted by the Appellate Division for the First Judicial Department and with the rules relating to the form of briefs, appendices, and other papers applicable in Federal appellate courts (see FRAP 32).

Comments and suggestions regarding the new rules are welcome and may be sent by letter addressed to the Clerk of the Court at the courthouse located at 45 Monroe Place, Brooklyn, NY 11201, or by e-mail to ad2clerk@courts.state.ny.us.

The text of the new rules follows:

§ 670.10.1 Form and Content of Records, Appendices, and Briefs—Generally.

(a) *Compliance with Civil Practice Law and Rules.* Briefs, appendices and to the extent practicable, reproduced full records, shall comply with the requirements of CPLR 5528 and 5529 and reproduced full records shall, in addition, comply with the requirements of CPLR 5526.

(b) *Method of Reproduction.* Briefs, records, and appendices shall be reproduced by any method that produces a permanent, legible, black image on white paper. To the extent practicable, reproduction on both sides of the paper is encouraged.

(c) *Paper Quality, Size, and Binding.* Paper shall be of a quality approved by the chief administrator of the courts and shall be opaque, unglazed, white in color, and measure 11 inches along the bound edge by 8½ inches. Records, appendices, and briefs shall be bound on the left side in a manner that shall keep all the pages securely together; however, binding by use of any metal fastener or similar hard material that protrudes or presents a bulky surface or sharp edge is prohibited. Records and appendices shall be divided into volumes not to exceed two inches in thickness.

(d) *Designation of Parties.* The parties to all appeals shall be designated in the record and briefs by adding the word "Appellant," "Respondent," etc., as the case may be, following the party's name, e.g., "Plaintiff-Respondent," "Defendant-Appellant," "Petitioner-Appellant," "Respondent-Respondent," etc. Parties who have not appealed and against whom the appeal has not been taken, shall be listed separately and designated as they were in the trial court, e.g., "Plaintiff," "Defendant," "Petitioner," "Respondent." In appeals from the Surrogate's Court or from judgments on trust accountings, the caption shall contain the title used in the trial court including the name of the decedent or grantor, followed by a listing of all parties to the appeal, properly designated. In proceedings and actions originating in this court, the parties shall be designated "Petitioner" and "Respondent" or "Plaintiff" and "Defendant."

(e) *Docket Number.* The cover of all records, briefs, and appendices shall display the appellate division docket number assigned to the cause in the upper right-hand portion opposite the title.

(f) *Rejection of Papers.* The clerk may refuse to accept for filing any paper that does not comply with these rules, is not legible, or is otherwise unsuitable.

§ 670.10.2 Form and Content of Records and Appendices.

(a) *Format.* Records and appendices shall contain accurate reproductions of the papers submitted to the court of original instance, formatted in accordance with the practice in that court, except as otherwise provided in subdivision (d) of this section. Reproductions may be slightly reduced in size to fit the page and to accommodate the page headings required by CPLR 5529(c), provided, however, that such reduction does not significantly impair readability.

(b) *Reproduced Full Record.* The reproduced full record shall be bound separately from the brief, shall contain the items set forth in CPLR 5526, and shall contain in the following order so much of the following items as shall be applicable to the particular cause:

(1) A cover which shall contain the title of the action or proceeding on the upper portion and, on the lower portion, the names, addresses, and telephone numbers of the attorneys, the county clerk's index or file number, and the indictment number;

(2) The statement required by CPLR 5531;

(3) A table of contents which shall list and briefly describe each paper included in the record. The part of the table relating to the transcript of testimony shall separately list each witness and the page at which direct, cross, redirect and recross examinations begin. The part of the table relating to exhibits shall concisely indicate the nature or contents of each exhibit and the page in the record where it is reproduced and where it is admitted into evidence. The table shall also contain references to pages where a motion to dismiss the complaint or to direct or set aside a verdict or where an oral decision of the court appears;

- (4) The notice of appeal or order of transfer, judgment or order appealed from, judgment roll, corrected transcript or statement in lieu thereof, relevant exhibits and any opinion or decision in the cause;
 - (5) An affirmation, stipulation or order, settling the transcript pursuant to CPLR 5525;
 - (6) A stipulation or order dispensing with reproducing exhibits.
 - (i) Exhibits which are relevant to a cause may be omitted upon a stipulation of the parties which shall contain a list of the exhibits omitted and a brief description of each exhibit or, if a party unreasonably refuses to so stipulate, upon motion directed to the court. Exhibits thus omitted, unless of a bulky or dangerous nature, shall be filed with the clerk at the same time that the appellant's brief is filed. Exhibits of a bulky or dangerous nature (cartons, file drawers, ledgers, machinery, narcotics, weapons, etc.) thus omitted need not be filed but shall be kept in readiness and delivered to the court on telephone notice. A letter, indicating that a copy has been sent to the adversary, listing such exhibits and stating that they will be available on telephone notice, shall be filed with the clerk at the same time that the appellant's brief is filed.
 - (ii) Exhibits which are not relevant to a cause may be omitted upon stipulation of the parties which shall contain a list of the exhibits omitted, a brief description of each exhibit, and a statement that the exhibits will not be relied upon or cited in the briefs of the parties. If a party unreasonably refuses to so stipulate, a motion to omit the exhibits may be directed to the court. Such exhibits need not be filed; and
 - (7) The appropriate certification or stipulation pursuant to subdivision (f) of this section.
- (c) *Appendix.*
- (l) The appendix shall contain those portions of the record necessary to permit the court to fully consider the issues which will be raised by the appellant and the respondent including, where applicable, at least the following:
 - (i) notice of appeal or order of transfer;
 - (ii) judgment, decree, or order appealed from;
 - (iii) decision and opinion of the court or agency, and report of a referee, if any;
 - (iv) pleadings, if their sufficiency, content or form is in issue or material; in a criminal case, the indictment, or superior court information;

- (v) material excerpts from transcripts of testimony or from papers in connection with a motion. Such excerpts must contain all the testimony or averments upon which the appellant relies and upon which it may be reasonably assumed the respondent will rely. Such excerpts must not be misleading or unintelligible by reason of incompleteness or lack of surrounding context;
- (vi) copies of critical exhibits, including photographs, to the extent practicable; and
- (vii) The appropriate certification or stipulation pursuant to subdivision (f) of this section.

(2) If bound separately from the brief, the appendix shall have a cover complying with subdivision (b)(1) of this section and shall contain the statement required by CPLR 5531 and a table of contents.

(d) *Condensed Format of Transcripts Prohibited.* No record or appendix may contain a transcript of testimony given at a trial, hearing, or deposition that is reproduced in condensed format such that two or more pages of transcript in standard format appear on one page.

(e) *Settlement of Transcript or Statement.* Regardless of the method used to prosecute any civil cause, if the record contains a transcript of the stenographic minutes of the proceedings or a statement in lieu of such transcript, such transcript or statement must first be either stipulated as correct by the parties or their attorneys or settled pursuant to CPLR 5525.

(f) *Certification of Record.* A reproduced full record or appendix shall be certified either by: (1) a certificate of the appellant's attorney pursuant to CPLR 2105; (2) a certificate of the proper clerk; or (3) a stipulation in lieu of certification pursuant to CPLR 5532. The reproduced copy containing the signed certification or stipulation shall be marked "Original."

§ 670.10.3 Form and Content of Briefs.

(a) *Computer-generated briefs.* Briefs prepared on a computer shall be printed in either a serified, proportionally spaced typeface such as Times 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, words may not be in bold type or type consisting of all capital letters.

(1) *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.

(2) *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.

- (3) *Length.* 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 pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc.
- (b) *Typewritten briefs.* 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. The ribbon typescript of the brief shall be signed and filed as one of the number of copies required by section 670.8 of this Part. Typewritten appellants' and respondents' briefs shall not exceed 70 pages and reply briefs and amicus curiae briefs shall not exceed 35 pages, exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc.
- (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 in the center of the bottom margin of each page.
- (d) *Handwritten briefs.* Pro se litigants may serve and file handwritten briefs. Such briefs shall be neatly prepared in cursive script or hand printing in black ink. Pages shall be numbered consecutively in the center of the bottom margin of each page. The submission of handwritten briefs is not encouraged. If illegible or unreasonably long, handwritten briefs may be rejected for filing by the clerk.
- (e) *Application for permission to file oversized brief.* An application for permission to file an oversized brief shall be made to the clerk by letter stating the number of words or pages by which the brief exceeds the limits set forth in this section and the reasons why submission of an oversize brief is necessary. The letter shall be accompanied by a copy of the proposed brief, including a certificate if required by subdivision (f) hereof to the effect that the brief is in all other respects compliant with this section. The determination of the clerk may be reviewed by motion to the court on notice in accordance with section 670.5 of this Part.
- (f) *Certification of compliance.* Every brief, except those that are handwritten, shall have at the end thereof a certificate of compliance with this rule, stating that the brief was prepared either on a typewriter, a computer, or by some other specified means. If the brief was typewritten, the certificate shall further specify the size and pitch of the type and the line spacing used. If the brief was prepared on a computer, the certificate shall further specify the name of the typeface, point size, line spacing, and word count. A party preparing the certificate may rely on the word count of the processing system used to prepare the brief. The signing of the brief in accordance with section 130-1.1-a(a) of this Title shall also be deemed the signer's representation of the accuracy of the certificate of compliance.

(g) *Content of Briefs.*

(1) *Cover.* The cover shall set forth the title of the action or proceeding. The upper right hand section shall contain a notation stating: whether the cause is to be argued or submitted; if it is to be argued, the time actually required for the argument; and the name of the attorney who will argue (see § 670.20). The lower right hand section shall contain the name, address, and telephone number of the attorney filing the brief and shall indicate whom the attorney represents.

(2) *Appellant's Brief.* The appellant's brief shall contain, in the following order:

- (i) the statement required by CPLR 553l;
- (ii) a table of contents including the titles of the points urged in the brief;
- (iii) a concise statement of the questions involved without names, dates, amounts, or particulars. Each question shall be numbered, set forth separately, and followed immediately by the answer, if any, of the court from which the appeal is taken;
- (iv) a concise statement of the nature of the action or proceeding and of the facts which should be known to determine the questions involved, with supporting references to pages in the record or the appendix, including, if such be the case, a statement that proceedings on the judgment or order appealed from have been stayed pending a determination of the appeal;
- (v) the appellant's argument, which shall be divided into points by appropriate headings distinctively printed;
- (vi) if a civil cause is perfected on the original papers, the brief shall include either a copy of the order or judgment appealed from, the decision, if any, and the notice of appeal, or a copy of any order transferring the proceeding to this court;
- (vii) if the appeal is from an order involving pendente lite relief in a matrimonial action, the brief shall state whether issue has been joined and, if so, the date of joinder of issue, and whether the case has been noticed for trial;
- (viii) in criminal causes, the appellant's brief at the beginning shall also set forth
 - (A) whether an order issued pursuant to CPL 460.50 is outstanding, the date of such order, the name of the judge who issued it and whether the defendant is free on bail or on his or her own recognizance, and
 - (B) whether there were co-defendants in the trial court, the disposition with respect to such co-defendants, and the status of any appeals by such co-defendants; and

- (ix) a certificate of compliance, if required by subdivision (f) of this section.
- (3) *Respondent's Brief.* The respondent's brief shall contain, in the following order:
- (i) a table of contents including the titles of points urged in the brief;
 - (ii) a counterstatement of the questions involved or of the nature and facts of the action or proceeding, if the respondent disagrees with the statement of the appellant;
 - (iii) the argument for the respondent, which shall be divided into points by appropriate headings distinctively printed; and
 - (iv) a certificate of compliance, if required by subdivision (f) of this section.
- (4) *Appellant's Reply Brief.* The appellant's reply brief, unless otherwise ordered by the court, shall not contain an appendix, but shall contain, in the following order:
- (i) a table of contents;
 - (ii) the reply for the appellant to the points raised by the respondent, without repetition of the arguments contained in the main brief, which shall be divided into points by appropriate headings distinctively printed; and
 - (iii) a certificate of compliance, if required by subdivision (f) of this section.
- (h) *Addenda to Briefs.*
- (1) Briefs may contain an addendum composed 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.
 - (2) Unless otherwise authorized by order of the court, briefs may not contain maps, photographs, or other addenda.
- (i) *Constitutionality of State Statute.* Where the constitutionality of a statute of the State is involved in an appeal in which the State is not a party, the party raising the issue shall serve a copy of the brief upon the Attorney General of the State of New York who will be permitted to intervene in the appeal.