

**PART 671. ADDITIONAL DUTIES OF COUNSEL, AND THE COURT CLERK IN CRIMINAL ACTIONS, IN HABEAS CORPUS AND CPLR ARTICLE 78 PROCEEDINGS, IN PROCEEDINGS INSTITUTED BY MOTION MADE PURSUANT TO CPL 440.10 OR 440.20 AND FAMILY COURT ACT PROCEEDINGS**

§ 671.1 Application

(a) This Part of the rules is applicable in criminal actions or proceedings and in proceedings involving post-judgment motions made pursuant to CPL 440.10 or 440.20, and in habeas-corpus and CPLR Article 78 proceedings arising out of criminal actions or proceedings or accusatory instruments, indictments or informations.

(b) Unless the context requires otherwise, any reference herein to the defendant means either the defendant in a criminal action or proceeding or the defendant, the petitioner or the relator in a proceeding instituted on motion made pursuant to CPL 440.10 or 440.20 or in a proceeding under CPLR Article 78 or in a habeas corpus proceeding.

(c) Unless the context requires otherwise, any reference herein to counsel for the defendant means every attorney who represents the defendant (as herein defined), regardless of whether such attorney shall have been retained or whether he shall have been assigned by the court or whether he be the public defender.

(d) Unless the context requires otherwise, any reference herein to the People's counsel means either the district attorney or other prosecutor as defined in CPL 1.20, or, as the case may be, the Attorney General or the county attorney or any other attorney who may appear for the People or for any public official joined as a party in his official capacity.

Cross References

CPLR, see McKinney's Book 7B

Criminal Procedure Law, see McKinney's Book 11A

§ 671.2 Duration of Representation by Counsel for Defendant

In every criminal action or proceeding, specified in section 671.1 hereof the duration of the representation by counsel for the defendant shall be as follows:

(a) In the trial court, until determination of the action or proceeding and until counsel shall have performed the additional duties imposed upon him by these rules: and

(b) In the appellate court, until entry of the order determining the appeal and until counsel shall have performed the additional duties imposed upon him by these rules. Thereupon such counsel's representation shall come to an end.

§ 671.3 Additional Duties of Defendant's Counsel in the Trial Court

(a) Upon conviction in the trial court or upon denial in that court of a motion made pursuant to CPL 440.10 or 440.20 or the denial or dismissal of an application in a habeas corpus or CPLR article 78 proceeding, it shall be the duty of the counsel for the defendant, immediately after the pronouncement of the sentence or after service upon him of a copy of the order denying the motion or of the order or judgment denying or dismissing the application, to give, either by mail or personally, written notice to his client advising him of his right to appeal or to make application for permission to appeal or for a certificate granting leave to appeal pursuant to CPL 460.10 (subdivision 4); and requesting his written instructions as to whether he desires to take an appeal or make such application. Thereafter, if the client gives to counsel timely written notice of his desire to appeal or to make such application, counsel shall promptly serve and file the necessary formal notice of appeal or application to the appropriate appellate court. If the application be granted, then, within the time limitations and in the manner provided in CPL 460.10 (subdivision 4), counsel shall also file the order or certificate granting leave to appeal together with a written notice of appeal. Unless counsel shall have been retained to prosecute the appeal, the notice of appeal in every case shall contain the additional statement that it is being served and filed on appellant's behalf pursuant to this rule and that it shall not be deemed to be counsel's appearance as appellant's attorney upon the appeal.

(b) In counsel's written notice to his client advising him of the right to appeal or to make application for permission to appeal or for a certificate granting leave to appeal, counsel shall also set forth:

(1) the applicable time limitations with respect to the making of the application for permission to appeal or for a certificate granting leave to appeal and the prosecution of the appeal;

(2) the manner of instituting the appeal and, if a trial or hearing was held and stenographic minutes taken, the manner of obtaining a typewritten transcript of such minutes; and

(3) the appellant's right, upon proof of his financial inability to retain counsel and to pay the costs and expenses of the appeal, to make application to the appellate court for the following relief: for the assignment of counsel to prosecute the appeal; for leave to prosecute the appeal as a poor person and to dispense with printing; and if stenographic minutes were taken, for a direction to the clerk and the stenographer of the trial court that a typewritten transcript of such minutes be furnished without charge to the appellant's assigned counsel or, if appellant prosecutes the appeal pro se, to appellant.

(4) In such notice counsel shall also request the written instructions of his client, and if the client thereafter gives counsel timely written notice of his desire to make application for permission to appeal or for a certificate granting leave to appeal or to apply for the relief provided in paragraph (3) hereof, or to make any one or all of these applications, counsel shall proceed promptly to do so.

(c) Counsel shall also advise the client that in those cases where permission to appeal or where certificates granting leave to appeal are required, applications for the foregoing relief will be considered only if, as and when such permission is granted or such certificate is issued.

(d) In the event the People are the appellant and they elect to serve a copy of their notice of appeal, upon the defendant, pursuant to their authority to do so under CPL 460.10, subdivision (c), they shall also serve a copy thereof upon the attorney who last appeared for the defendant in the court in which the order or sentence being appealed was entered.

(e) If, pursuant to CPL 460.10, subdivision 1(c), the People as appellant elect to serve a copy of their notice of appeal in the first instance upon the attorney who last appeared for the defendant in the court in which the order or sentence being appealed was entered, or if they serve the attorney as required in subdivision (d) hereof, it shall be the duty of the attorney so served to give, either by mail or personally, written notice to his client confirming the fact that such appeal has been taken by the People. Such notice shall also advise his client of his right (1) to retain counsel to represent him as respondent on the appeal, or (2) to respond to the appeal pro se, or (3) upon proof of his financial inability to retain counsel and to pay the cost and expenses of responding to the appeal, to make application to the appellate court for the following relief: for the assignment of counsel to represent him as the respondent on the appeal; for leave to respond to the appeal as a poor person and to dispense with printing; and, if stenographic minutes were taken, for a direction to the clerk and the stenographer of the trial court that a typewritten transcript, of such minutes be furnished without charge to the respondent's assigned counsel or, if the defendant appears as respondent pro se, to respondent. In such notice counsel shall also request the written instructions of his client, and, if the client thereafter gives counsel timely written notice of his desire to make such application, counsel shall proceed promptly to do so.

(f) In the event, however, the attorney was the defendant's assigned counsel in the court in which the order or sentence being appealed was entered, such assignment shall remain in effect and counsel shall continue to represent the defendant as the respondent on the appeal until entry of the order determining the appeal and until counsel shall have performed any additional applicable duties imposed upon him by these rules, or until counsel shall have been otherwise relieved of his assignment. In the event the assignment remains in effect as herein provided, the written notice to the client as provided in subdivision (e) hereof may be dispensed with, except to the extent of confirming the fact that such appeal has been taken by the People.

#### **§671.4 Additional Duties of Defendant's Counsel in the Appellate Division or Other Intermediate Appellate Court**

(a) Immediately after entry of the order of the appellate division or other intermediate appellate court affirming the judgment of conviction or sentence or the order denying a motion made pursuant to CPL 440.10 or 440.20 or the order or judgment denying or dismissing a habeas corpus or CPLR Article 78 application or proceeding, it shall be the duty of the counsel for the defendant to give, either by mail or personally, written notice to his client advising him:

(1) of his right to make application for permission to take a further appeal or for a certificate granting leave to appeal to the Court of Appeals; and

(2) in the event such permission is granted or such certificate is issued, of his additional right, upon proof of his financial inability to retain counsel and to pay the costs and expenses of such further appeal, to make a concurrent application to the Court of Appeals for the assignment of counsel and for leave to prosecute such further appeal as a poor person and to dispense with printing. In such notice counsel shall also request the written instructions of his client. If the client thereafter gives to counsel timely written notice of his desire to make either or both of such applications, counsel shall proceed promptly to do so.

(b) In a habeas corpus or CPLR article 78 proceeding, however, if any two judges shall have dissented from the affirmance and if the dissent is on a stated question of law in relator's or petitioner's favor, counsel in his said written notice shall advise his client of his absolute right, without permission, to take a further appeal to the Court of Appeals. Upon receiving from the client written notice of his desire to prosecute such appeal, counsel shall file and serve promptly a formal notice of appeal accordingly. Unless counsel shall have been retained to prosecute the appeal, the notice of appeal shall contain the additional statement that it is being served and filed on appellant's behalf pursuant to this rule and that it shall not be deemed counsel's appearance as appellant's attorney upon the appeal.

(c) In the event the People are the appellant and they elect to serve a copy of their notice of appeal upon the defendant pursuant to their authority to do so under CPL 460.10, subdivision 5 (c ), they shall also serve a copy thereof upon the attorney who appeared for the defendant in the intermediate court.

(d) If, pursuant to said CPL 460.10, subdivision 5 (c ), the People as appellant elect in the first instance to serve a copy of their notice of appeal on the attorney who appeared for the defendant in the intermediate appellate court, or, if they serve the attorney as required in subdivision (c ) of this section, it shall be the duty of counsel for the defendant to give, either by mail or personally, written notice to his client confirming the fact that such appeal has been taken by the People. Such notice shall also advise him of his right (1) to retain counsel to represent him as respondent on the appeal, or (2) to respond to the appeal, pro se, or (3) upon proof of his financial inability to retain counsel and to pay the costs and expenses of responding to such appeal, to apply to the Court of Appeals for the assignment of counsel, for leave to respond to the appeal as a poor person and to dispense with printing. In such notice counsel shall also request the written instructions of his client. If the client thereafter gives counsel timely written notice of his desire to make such application, counsel shall proceed promptly to do so.

(e) In the event the appeal by the People results in an order of an intermediate appellate court adverse or partially adverse to the defendant-respondent. It shall be the duty of counsel to comply with the written notice provisions of subdivision (a) of this section applicable to an affirmance on an appeal by the defendant except that the term "further appeal" in paragraphs (1) and (2) thereof shall be deemed to read "appeal."

**Cross Reference**

CPLR, see McKinney's Book 7B  
Criminal Procedure Law, see McKinney's Book 11A

**§671.5 Additional Duties of the Court and the Court Clerk, Where Defendant Appeals Pro Se in the Trial Court**

If a defendant shall have appeared pro se in the trial court, then, upon imposing sentence or upon the denial of a motion made pursuant to CPL 440.10 or 440.20 or the denial or dismissal of the habeas corpus or CPLR Article 78 application or proceeding, the trial court shall concurrently advise the defendant of his right to appeal or to make application for permission to appeal or for a certificate granting leave to appeal, as the case may be. The court shall also concurrently advise the defendant of his additional right, upon proof of his financial inability to retain counsel and to pay the cost and expenses of the appeal, to apply to the appellate court for the assignment of counsel and for leave to prosecute the appeal as a poor person and to dispense with printing; and that where permission to appeal or a certificate granting leave to appeal is required, such application for poor person relief will be entertained only if, as and when such permission or certificate is granted. If in open court the defendant orally so requests or if thereafter he so requests in writing and such written request be timely received by the clerk of the trial court, said clerk shall forthwith prepare and serve and file an appropriate notice of appeal on defendant's behalf, or, if a certificate granting leave to appeal is required, serve and file the application therefore in accordance with the rule hereinabove provided with respect to such application. As a part of every such application the clerk shall annex and transmit the original record of the proceedings to the appellate court. Upon the determination of the application, the original record of the proceedings shall be returned to the trial court together with a certified copy of the order entered upon the application. A certified copy of such order shall also be sent to the defendant at his address shown in the application.

**Cross Reference**

CPLR, see McKinney's Book 7B  
Criminal Procedure Law, see McKinney's Book 11A

**§671.6 Additional Duties of Counsel for the People, Where Defendant Appears Pro Se in Appellate Court on Appeal in Criminal Action or Proceeding Instituted Upon Motion Made Pursuant to CPL 440.10 or 440.20**

On an appeal from a judgment of conviction or sentence or on an appeal from an order denying a motion made pursuant to CPL 440.10 or 440.20, if the defendant shall have appeared pro se and if the judgment, sentence or order shall have been affirmed, the copy of the order of affirmance which the People's counsel thereafter serves on the defendant shall have annexed or appended thereto or endorsed thereon the following notice:

## **NOTICE AS TO FURTHER APPEAL**

Pursuant to CPL 460.20, within 30 days after service upon you of a copy of the order of affirmance with notice of its entry, you have the right to apply for a certificate granting leave to take a further appeal to the Court of Appeals. Such application must be made either to the Chief Judge of the Court of Appeals by submitting it to the clerk of that court, as prescribed in CPL 460.20 (subdivisions 3b and 4), or to a justice of the Appellate Division of the Supreme Court in this department, as prescribed in section 670.7 of these rules and in CPL 460.20 (subdivisions 3a and 4).

The denial of such application by the first judge or justice to whom it is presented is final; thereafter a new application may not be made to any other judge or justice.

### **Cross Reference**

Criminal Procedure Law, see McKinney's Book 11A

### **§ 671.7 Additional Duties of Counsel for the People, Where Defendant Appears Pro Se in appellate Court on Appeal in Habeas Corpus or CPLR Article 78 Proceeding**

On an appeal from a judgment or order denying or dismissing a habeas corpus or a CPLR Article 78 application or proceeding, if the defendant shall have appeared pro se and if the judgment or order shall have been affirmed or modified, the copy of the order which the People's counsel thereafter serves on the defendant shall have annexed or appended thereto or endorsed thereon the following notice:

## **NOTICE AS TO FURTHER APPEAL**

If the affirmance by the Appellate Division is unanimous, then, pursuant to statute (CPLR 5602), within 30 days after service upon you a copy of the order of affirmance with notice of its entry, you may make application for permission to take a further appeal to the Court of Appeals. Such application must be made either: to the Appellate Division, or, upon its refusal, to the Court of Appeals; or directly to the Court of Appeals without first applying to the Appellate Division. If such permission be granted by either court, the appeal to the Court of Appeals will be deemed to have been taken without the necessity of serving or filing a formal notice of appeal.

If the affirmance by the Appellate Division is not unanimous and if the dissent is in your favor with respect to a stated question of law; or if the judgment or order appealed from be modified in a substantial respect, and if you are aggrieved by the modification and it is one which is within the power of the Court of Appeals to review, then, pursuant to statute (CPLR 5513, 5515, 5601), within 30 days after service upon you of a copy of the order with notice of its entry, you have the right (without permission) to take a further appeal to the Court of Appeals by serving your notice of appeal on the adverse party or upon his attorney and by filing such notice in the office where the judgment or order of the court of original instance was entered.

**Cross Reference**

CPLR, see McKinney's Book 7B

**§ 671.8 [Rescinded]**

**§ 671.9 Additional Duties of the Court and of Defendant's Counsel in Connection With Trial Court Transcripts**

Where furnishing of a daily copy of a transcript is ordered by the court, the ribbon copy thereof shall be delivered to the court and a carbon copy to counsel for the defendant. Both the court and counsel for the defendant shall be duty-bound to preserve their respective copies. At the conclusion of the trial or hearing, trial counsel for the defendant shall, if an appeal is taken, deliver said carbon copy to appellant's counsel immediately on being advised of the name and address of said appellant's counsel. At the conclusion of the trial or hearing and forthwith after the decision or verdict, as the case may be, the ribbon copy shall be delivered by the court to the county clerk for filing. The ribbon copy and the carbon copy shall constitute the two transcripts of the proceedings required by section 460.70 of the Criminal Procedure Law.

**Cross Reference**

Criminal Procedure Law, see McKinney's Book 11A

**§ 671.10 Duties of Assigned Counsel in the Surrogate's Court and the Family Court**

(a) Upon the entry of an order in the Surrogate's Court and Family Court from which an appeal may be taken, it shall be the duty of assigned counsel for the unsuccessful party, immediately after the entry of the order, to give either by mail or personally, written notice to the client advising of the right to appeal or to make application for permission to appeal, and request written instructions as to whether he or she desires to take an appeal or to make such application. Thereafter, if the client gives to counsel timely written notice of his or her desire to appeal or to make such application, counsel shall promptly serve and file the necessary formal notice of appeal, or make application to this court for permission to appeal. Unless counsel shall have been retained to prosecute the appeal, the notice of appeal may contain the additional statement that it is being served and filed on appellant's behalf pursuant to this rule and that it shall not be deemed to be counsel's appearance as appellant's attorney on the appeal.

(b) In counsel's written notice to the client advising of the right to appeal or to make application for permission to appeal, counsel shall also set forth:

(1) the applicable time limitations with respect to the taking of the appeal or the making of the application for permission to appeal:

(2) the manner of instituting the appeal, and, if a trial or hearing was held and stenographic minutes taken, the manner of obtaining a typewritten transcript of such minutes:

(3) the client's right, upon proof of his or her financial inability to retain counsel and to pay the costs and expenses of the appeal, to make application to this court for the assignment of counsel to prosecute, the appeal; and, if stenographic minutes were taken, for a direction to the clerk and the stenographer of the trial court that a typewritten transcript of such minutes be furnished without charge to assigned counsel or, if the client prosecutes the appeal pro se, to the client; and

(4) In such notice counsel shall also request the written instructions of his client, and if the client thereafter gives counsel timely written notice of his or her desire to make application for permission to appeal or to apply for the relief provided in paragraph (3), or to make any one or all of these applications, counsel shall proceed promptly to do so.

(c) Counsel shall also advise the client that in those cases where permission to appeal is required, applications for the foregoing relief will be considered only if such permission is granted.

(d) If the assigned counsel represented the successful party in the court in which the order being appealed was entered, such assignment shall remain in effect and counsel shall continue to represent the successful party as the respondent on the appeal until entry of the order determining the appeal and until counsel shall have performed any additional applicable duties imposed upon him or her by these rules, or until counsel shall have been otherwise relieved of his assignment.