

CPLR 5602: Warning by Court of Appeals With Regard to Observance of Court Rules

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It is thus apparent that the efficacy of this new procedure will rest largely upon the still untested reaction of the foreign courts. If the procedure proves impractical, the New York courts may be compelled to devise yet another means of providing the requisite notice.

ARTICLE 56 — APPEALS TO THE COURT OF APPEALS

CPLR 5602: Warning by Court of Appeals with regard to observance of Court rules.

Failure to comply with the mandates of article 56 of the CPLR and the various court rules relating to appeals may result in dismissal of a litigant's motion for appeal or reargument.

In *In re Estate of Hart*¹⁴⁹ a motion for leave to appeal was filed from an order of the appellate division, and in *Blistein v. Kassner*¹⁵⁰ a motion was filed for reargument of a decision of the Court of Appeals. In both cases the motions were dismissed by the Court of Appeals since they failed to substantially comply with the Court rules.¹⁵¹ It should be noted that the dismissals were without prejudice and the motions could therefore be renewed upon filing the proper papers within thirty days. However, the Court warned the appellants that "[t]he new rules, simplifying practice in this court and conforming it to modern procedure, specify requirements for papers on motions, as well as on appeals, and the court will enforce compliance with these requirements."¹⁵²

In light of this warning by the Court, it is incumbent upon the practitioner to be familiar with the rules and comply with them; the Court may very well dismiss future nonconforming motions with prejudice.

ARTICLE 65 — NOTICE OF PENDENCY

CPLR 6515: Court utilizes discretionary power in cancellation of notice of pendency upon substitution of surety bond for property.

Under the common law doctrine of *lis pendens*, after the plaintiff had filed his bill or petition and the defendant had been served, any purchaser or encumbrancer of real property involved in the

¹⁴⁹ 24 N.Y.2d 158, 247 N.E.2d 148, 299 N.Y.S.2d 182 (1969).

¹⁵⁰ *Id.*

¹⁵¹ 22 NYCRR 500.1-500.9 (1969) contains the rules governing appeals. Among other requirements, 20 copies of the moving papers and brief must be filed with the Court, and the brief must show that the Court has jurisdiction of the motion and appeal. In addition, the questions of law presented must be identified and shall show why they merit review. In a motion for reargument of a prior decision, the points alleged to have been overlooked must be referred to.

¹⁵² 24 N.Y.2d at 160, 247 N.E.2d at 149, 299 N.Y.S.2d at 184.