



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

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CLERK OF THE COURT

NOTICE TO ASSIGNED COUNSEL

Criminal Cases

The enclosed decision and order assigns you to prosecute a criminal appeal. Your work as an assigned counsel is an important public service for which you have the thanks of the Court. The defendant is now your client and he or she is depending upon you to prosecute the appeal promptly and to the best of your ability.

Assigned counsel must work diligently to perfect the appeal as soon as is reasonably possible. Your progress will be carefully monitored and you should communicate with the court, by letter addressed to the attention of the Assigned Counsel Clerk, regarding any difficulties that might delay perfection of the case. You may not reject this assignment or delay perfection of the appeal based on any view of your own as to its relative lack of merit. You may only be relieved of your assignment upon motion, after a showing of good cause. Six major steps in your representation of the defendant can be identified, namely, (1) communicating with the defendant, (2) insuring that the stenographic minutes of the proceedings in the case are transcribed and filed, (3) preparing the brief, (4) perfecting the appeal by serving and filing the brief and issuing a subpoena for the original papers, (5) protecting the rights of a defendant who has been released pursuant to a stay of the execution of the judgment of conviction, and (6) complying with your post-decision responsibilities.

1. Communicate with the defendant. Promptly advise the defendant of your assignment as counsel and ask for any suggestions that he or she may have as to the points to be presented on the appeal. Based on your own examination of the record and the defendant's suggestions, decide upon the issues to be presented in your brief. If you believe certain issues are frivolous, you should so advise the defendant in your correspondence with him or her, but should make no mention of those issues in your brief.

This Court may not be in possession of current information as to the whereabouts of criminal defendants. If your client is at liberty, obtain his or her last known address from the file in the trial court. If your client was sentenced to a term of imprisonment in a State prison, you may use the inmate lookup internet page of the New York State Department of Correctional Services at <http://nysdocslookup.docs.state.ny.us/kinqw00>. If you do not have internet access, you may contact the State Inmate Locator of the Department of Correctional Services at 518 457-0043. Before you attempt to obtain current information by telephone from that office, you must know the defendant's name and date of birth, or his or her NYSIS Number or Prisoner Identification Number. An examination of the case file in possession of the clerk of the trial court should provide the appropriate information.

2. Insure that the stenographic minutes of the proceedings in the case are transcribed and filed. The decision and order that assigns you as counsel for the defendant also directs the court reporters to prepare and file two copies of the transcript of the stenographic minutes of the proceedings in the case. A copy of the order has been sent directly to the trial court. To insure it is received and acted upon, you should also send a copy to the court. If you are not notified within a reasonably short time that the transcripts have been prepared, it is your responsibility to follow up with the trial court. If your efforts in the trial court are unavailing, contact one of the following persons:

<i>Kings County</i>	Brian McAllister or Ada Milam	347-296-1258
<i>Queens County</i>	Tanisha LaCruise or Marlene Rosa	718-298-1515
<i>Richmond County</i>	Anthony DiStefano	718-675-8760
<i>Nassau County</i>	Joyce Barbarino	516-493-3684
<i>Suffolk County</i>	Susan Engler or Frank Tropea	631-852-2628
<i>Westchester County</i>	Carmela Cavallo	914-824-5459
<i>Dutchess</i>	Michael Thompson	845-431-1720
<i>Orange</i>	Philomena Kaczor	845-476-3443
<i>Putnam</i>	Lisa D'Angelo	845-208-7854
<i>Rockland</i>	John Hussey	845-483-8303

The order of assignment directs the clerk of the trial court to furnish you with one of the copies of the transcript. You will use it to prepare the defendant's brief. When you serve that brief on the District Attorney, you must also turn over to him or her the copy of the transcript furnished to you by the clerk of the trial court.

3. Prepare the brief. Upon receipt of the minutes you should promptly prepare the defendant's brief. The form and content of an appellant's brief are covered at length in §§ 670.10.1 and 670.10.3 of this Court's rules and the brief you prepare must comply with those sections.

When you prepare a brief raising substantive issues you should mail a copy to the defendant together with a letter advising that he or she may apply to this Court, within 30 days after the date you mail the brief, for permission to file a pro se brief in which any additional issues may be set forth. Your attention is directed to the Court of Appeals decision in *People v Vasquez* (70 NY2d 1).

If, however, after carefully examining the record you are unable to find a non-frivolous issue, you must nevertheless submit a brief pursuant to *Anders v California* (386 US 738) setting forth a digest of the essential facts, a statement that you have found no non-frivolous issues which could be raised on the appeal, a request to be relieved, and a statement that you have communicated with the defendant advising him or her of your views. Send a copy of your brief to the defendant, annexing to it a letter explaining that you have been unable to find a non-frivolous issue and advising that he or she may, as of right, file a *pro se* supplemental brief and receive a copy of the minutes and may exercise that right by advising the Appellate Division in writing of the intention to do so within 30 days of the date of mailing of your letter (*see Anders v California, supra; People v Gonzalez*, 47 NY2d 606; *People v Casiano*, 67 NY2d 906; 22 NYCRR 670.12[g][2]). File the brief, with the annexed letter, in the office of the clerk of the court. An example of an appropriate *Anders* letter is available on the Court's web site at www.nycourts.gov/courts/ad2/formsandpracticeaids.shtml. In regard to the filing of an *Anders* brief, your attention is directed to this Court's decision in *Matter of Giovanni S.*, (89 AD3d 252).

The order of assignment directs the probation department, upon service on it of a copy of that order, to provide you with a copy of the report prepared in connection with the defendant's sentencing. If the sole viable issue on appeal is the excessiveness or legality of the sentence imposed, perfect the appeal expeditiously by motion pursuant to § 670.12(c) of the rules of this Court. If other issues are presented, you should advance any viable issue concerning the sentence in the defendant's brief. In either case, if you have raised an issue concerning the excessiveness or legality of the defendant's sentence, you must serve a copy of the probation report upon the District Attorney with your brief and file a copy of that report in this Court.

4. Perfect the appeal. After the brief is completed, send a copy to the defendant (*see* 22 NYCRR 670.12[g][1]). Serve one copy on the District Attorney (*see* 22 NYCRR 670.8[a]) together with the copy of the transcript that you received from the clerk of the trial court (*see* 22 NYCRR 670.12[d]).

Subpoena the papers constituting the original record from the clerk of the trial court and cause them to be filed in this Court prior to the filing of the brief (*see* 22 NYCRR 670.9[d][2]).

File nine copies of the brief in this Court, including proof of mailing of a copy to the defendant, proof of service upon the District Attorney, and an extra copy of the statement required by CPLR 5531 (*see* 22 NYCRR 670.8[a]; 670.12[g][1]). If you are filing an *Anders* brief, you must also include a copy of your letter sent pursuant to § 670.12(g)(2).

5. Protect the rights of a defendant who has been released pursuant to a stay of the execution of the judgment of conviction. If the defendant has been released on a stay of execution of judgment (CPL 460.50) and the appeal cannot be perfected within 120 days of the issuance of the stay, you must make a motion for an extension of the stay *prior to the expiration of the 120-day period* or the defendant will be subject to arrest. In the event that such an application becomes necessary, your supporting papers must detail your efforts to perfect the appeal within the time limited, the reasons for the delay, and the steps that you have taken or will take in order to overcome any obstacles to perfection.

6. Motions pursuant to CPL Article 440. The making of a motion pursuant to CPL article 440 does not fall within the parameters of your assignment to represent the defendant on appeal from a judgment of conviction. If you wish to be assigned to represent the defendant for that purpose, you may make a motion in the trial court for that relief.

7. Comply with your post-decision responsibilities. You must notify the defendant of this Court's determination on the appeal and fulfill your responsibilities under § 671.4 of the rules of this Court (22 NYCRR 671.4), which require that you advise the defendant of his or her right to apply for a certificate granting leave to appeal to the Court of Appeals and to make that application if the defendant so requests.