

# PERFECTING A WORKERS' COMPENSATION APPEAL INSTRUCTIONS FOR PRO SE APPELLANTS

Complete copies of the rules governing appellate practice referred to throughout these instructions can be found on the Court's website at [www.nycourts.gov/ad3](http://www.nycourts.gov/ad3).

## **GETTING STARTED:**

If you have not already done so, you must send written notice - called a Notice of Appeal - to the Secretary of the Workers' Compensation Board indicating that you are appealing the Board's decision to this Court. The written notice must be postmarked within **30 days** of the date the Board's decision was mailed to you. The Notice of Appeal must be sent to the following parties:

Original: Secretary of the Workers' Compensation Board  
328 State Street  
Schenectady, NY 12305

One Copy: Attorney General, Leticia James  
Department of Law, Labor Bureau  
28 Liberty Street, 15th Floor  
New York, NY 10005

One Copy: **ALL** parties listed on the Board's decision

It is also helpful if you keep a copy for your personal records.

Once the Notice of Appeal is filed, you have six months from the date on the document to perfect the appeal, absent a motion to dismiss by respondent (see Practice Rules of App Div, All Depts [22 NYCRR] § 1250.10 [a]). If the respondent makes a motion to dismiss, you must respond to that motion or dismissal may be granted on default. Also, the rules contain a provision by which the six-month period to perfect your appeal may be extended (see Practice Rules of App Div, All Depts [22 NYCRR] § 1250.9 [b]).

## **PERFECTING AN APPEAL:**

To begin perfecting an appeal, the appellant must send a **Proposed Record List** (sample below) to all parties to determine which documents that were before the Board are necessary to be included in the Record on Appeal. Once all parties have signed the Record List, the appellant may begin to compile the Record on Appeal.

The appellant must provide the Court with six copies of a stipulated Record on Appeal and a signed original and five copies of an appellant's brief. In the alternative, an appellant can file a single copy of a stipulated Record on Appeal and a signed original and five copies of an appellant's brief and stipulated appendix.

## **THE RECORD ON APPEAL MUST CONTAIN THE FOLLOWING DOCUMENTS:**

- A Cover Page listing:
  - Title of the case
  - Name, address and phone number of all parties (or their counsel)
  - Designation of each party
- CPLR 5531 Statement
- Table of Contents
- All the documents listed in the Record List (in chronological order beginning with the earliest date)
- The signed Record List
- A stipulation as to the correctness of the entire record, signed by all parties. Alternatively, if the parties are unable to stipulate to the correctness, the record must be settled by the Workers' Compensation Board.

All pages of the Record must be numbered in a single consecutive series. Please remember that the Appellate Division is a review Court and can only consider those documents that were before the Workers' Compensation Board. This Court cannot see any new evidence or review any papers that were not before the Board when the decision being appealed was rendered.

If perfecting an appeal using the appendix method, the appendix **MUST** be stipulated to by all parties (see Practice Rules of App Div, All Depts [22 NYCRR] § 1250.7 [g]) and **MUST** contain all of the information and documents specified in the Practice Rules of the Appellate Division, All Departments [22 NYCRR] § 1250.7 (d). Any documents cited to in the appellant's brief and all other documents reasonably assumed to be relied upon by the respondent should also be included. All cites in the appellant's brief must be to page numbers of the appendix.

## Sample Record on Appeal, Appellant's Brief and Appendix

### **THE APPELLANT'S BRIEF MUST CONTAIN THE FOLLOWING DOCUMENTS:**

- A Cover Page
- A Table of Contents
- Statement of Facts
- Questions Presented
- Points of Argument
- Conclusion
- A Signature

### **BRIEF FORMAT** (see Practice Rules of App Div, All Depts [22 NYCRR] § 1250.8 [b])

- Handwritten or Typed
  - If typed: Times New Roman, 14-point font; 14,000 maximum word-limit; **must** contain a Printing Specifications Statement at the end.
  - If handwritten: Blue or black ink, 50 page maximum.
- Double Spaced
- One Inch Margins
- Pages must be numbered in a single consecutive series
- Any cites in the brief must be to page numbers of the Record on Appeal or Appendix

### **PLEASE BE ADVISED:**

This Court is entitled to receive a filing fee in the amount of \$315 upon the filing of the Record on Appeal. For waiver of the fee and for permission to proceed on the Original Workers' Compensation Board file, the appellant may apply to this Court to proceed as a poor person. This motion is available on the Court's website at [www.nycourts.gov/ad3](http://www.nycourts.gov/ad3) under the "Forms" tab.

**If you require any additional information,  
please feel free to call the Clerk's Office at (518) 471-4777.**

Appeal No. \_\_\_\_\_

To be Submitted

STATE OF NEW YORK  
APPELLATE DIVISION

SUPREME COURT  
THIRD DEPARTMENT

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In the Matter of the Claim of

\_\_\_\_\_,  
Appellant,

v

\_\_\_\_\_,  
Respondent.

Workers' Compensation Board,  
Respondent.

**WCB No.** \_\_\_\_\_

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## APPELLANT'S BRIEF

\_\_\_\_\_  
(Name)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_  
(Telephone)

**BRIEF**  
**TABLE OF CONTENTS**

Page No.

I.	Table of Authorities .....	
	Not required by the Court's Rules, but useful to the Court.	
II.	Preliminary Statement.....	
III.	Questions Presented .....	
	A concise statement, not exceeding two pages, 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.	
IV.	Statement of Facts .....	
	A concise statement of the nature of the case and the facts which should be known to determine the questions involved. The Statement of Facts should be accurate, concise, comprehensive and organized in such a way that the issues will be easily understood, with supporting references to pages of the Record on Appeal or the appendix.	
V.	Argument .....	
	Appellant's argument, divided into points by appropriate headings (and subheadings if desired).	
	a. POINT I - (Identify).....	
	b. POINT II - (Identify).....	
VI.	Conclusion .....	
	Appellant must sign the conclusion page.	

## **Statement of Facts**

The claimant, a licensed practical nurse (LPN), injured her right knee in a work-related accident on 00/00/0000. The subject workers' compensation claim was initiated by the filing of the Employer's Report of Work-Related Accident/Occupational Disease (C-2) dated 00/00/0000. **(R.15)**. On claimant's initial visit to Dr. John Doe, an orthopedist, claimant was diagnosed with a medical collateral ligament strain of the right knee. **(R.17)**. Dr. John Doe did note that claimant "has no past medical history of having difficulty with her knee." **(R.17)**

In an Independent Medical Examination (IME) report by Dr. John Doe dated 00/00/0000 **(R.20-24)**, Dr. John Doe history notes that claimant's right knee injury occurred "when she was pushing a cart and was run into by a resident who was riding on a motorized scooter. She stated that she experienced a twisting injury to her right knee which was associated with pain and a popping sensation." **(R.21)**. In his report, Dr. Person agreed with Dr. Jane Doe's diagnosis of preexisting right knee arteritis and also confirmed no history of prior injury to claimant's right knee **(R.22-23)**. Dr. Person also noted that the claimant "has a congenital aortic valve abnormality as well as a recent diagnosed ventricular septal aneurysm.

\*All references are to the Record in this Sample. When using the Appendix Method, the references will be to the Appendix and will read (A. for Appendix Page #) instead of (R. for Record Page #).

Conclusion

For all of these reasons, we respectfully request that this Court reverse the determination of the Workers' Compensation Board that the accident at issue did not arise in and out of the course of employment.

Dated:

\_\_\_\_\_  
\*  
Jane Doe, Pro Se  
Address  
Telephone

\*You must sign brief in accordance with the Rules of the Chief Administrator (see 22 NYCRR 130.1.1-a). When filing your brief, one copy must contain your original signature, the other copies should be a copy of your signature.

Appeal No. \_\_\_\_\_

To be Submitted

STATE OF NEW YORK  
APPELLATE DIVISION

SUPREME COURT  
THIRD DEPARTMENT

In the Matter of the Claim of

\_\_\_\_\_,  
Appellant,

v

\_\_\_\_\_,  
Respondent.

Workers' Compensation Board,  
Respondent.

**WCB No.** \_\_\_\_\_

## APPELLANT'S APPENDIX

\_\_\_\_\_  
(Name)

\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

**APPENDIX  
TABLE OF CONTENTS**

	<u>Page No.</u>
I. Notice of Appeal dated 00/00/0000 .....	A #
II. Decision of the Board dated 00/00/0000 .....	A #
III. Excerpts from Hearing held 00/00/0000 .....	A #
IV. Exhibit – Medical Record .....	A #

PLEASE NOTE: The Notice of Appeal and the Workers' Compensation Board decision must be included in the Appendix (see Practice Rules of App Div, All Depts [22 NYCRR] §1250.7 [d]). Here list all of the documents you wish to include in the appendix in chronological order and number each page with a Capital "A" before each number. Only copies of those documents that were before the Workers' Compensation Board and are part of the Original Record can be included in the Appendix. Any new evidence that was not before the Board will be rejected.

Appeal No. \_\_\_\_\_

To be Submitted

STATE OF NEW YORK  
APPELLATE DIVISION

SUPREME COURT  
THIRD DEPARTMENT

In the Matter of the Claim of

\_\_\_\_\_,  
Appellant,

v

\_\_\_\_\_,  
Respondent.

Workers' Compensation Board,  
Respondent.

**WCB No.** \_\_\_\_\_

### RECORD ON APPEAL

(Appellant's Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney General of the State of NY  
Attorney for Respondent (WCB)  
Department of Law, Labor Bureau  
28 Liberty Street, 15th Fl.  
New York, NY 10005

(Respondent Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Respondent) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**\*Include the addresses of all parties on the bottom of the cover page.**

# RECORD ON APPEAL TABLE OF CONTENTS

**\*After the CPLR 5531 Statement, the Notice of Appeal and the Board Decision being appealed from,  
ALL PAPERS MUST BE IN CHRONOLOGICAL ORDER, STARTING WITH THE OLDEST.**

	<u>Page No.</u>
1. Statement Pursuant to CPLR 5531.....	
2. Notice of Appeal dated 00/00/0000 .....	
3. Notice of Board Decision & Memorandum of Decision, filed 00/00/0000, appealed from .....	
4. Handwritten Letter of Jane Doe, dated 00/00/0000 .....	
5. Letter of John Doe, Director, Board Review Bureau dated 00/00/0000 .....	
6. Handwritten Letter of Jane Doe, dated 00/00/0000 .....	
7. Handwritten Letter of Jane Doe, dated 00/00/0000 .....	
8. Letter of John Doe, Director, Board Review Bureau dated 00/00/0000 .....	
9. Certificate of Death of John Doe .....	
10. Marriage License of Jane Doe & John Doe .....	
11. Marriage Certificate of Jane Doe & John Doe .....	
12. Report of Divorce, Annulment or Dissolution of Marriage of John Doe .....	
13. Handwritten note of Jane Doe, dated 00/00/0000 (Received by WCBd on 00/00/0000) .....	
14. Decree of Annulment between John Doe & Jane Doe .....	
15. Board Order of Restoral, filed 00/00/0000 .....	
16. Transcript of Hearing held 00/00/0000 .....	
17. Memorandum of Decision, filed 00/00/0000 .....	
18. Notice of Decision filed 00/00/0000 .....	
19. Record List Stipulation .....	
20. Stipulation as to Correctness of Entire Record on Appeal .....	

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**SAMPLE CPLR 5531 STATEMENT**

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Appeal No. \_\_\_\_\_

To be Submitted

STATE OF NEW YORK  
APPELLATE DIVISION

SUPREME COURT  
THIRD DEPARTMENT

---

In the Matter of the Claim of

\_\_\_\_\_,  
Appellant,

v

Statement Pursant  
To CPLR 5531

\_\_\_\_\_,  
Respondent.

Workers' Compensation Board,  
Respondent.

**WCB No.** \_\_\_\_\_

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1. The case number assigned by the Workers' Compensation Board is \_\_\_\_\_.
2. The full names of the original parties are \_\_\_\_\_, Appellant, and \_\_\_\_\_, Respondent. There has been no change in the parties (or describe any change if applicable).
3. The proceeding was commenced on \_\_\_\_\_ at the Workers' Compensation Board.
4. The nature and object of the action are as follows: (Describe)
5. This is an appeal from a Memorandum of Board Panel Decision dated \_\_\_\_\_.
6. This appeal is on a reproduced full record.  
This appeal is on the original record and the appendix method is being used.  
(Whichever is applicable)

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## STIPULATION

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### Proposed Record List

Appeal No. \_\_\_\_\_

To be Submitted

STATE OF NEW YORK  
APPELLATE DIVISION

SUPREME COURT  
THIRD DEPARTMENT

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In the Matter of the Claim of

\_\_\_\_\_,  
Appellant,

v

Statement Pursant  
To CPLR 5531

\_\_\_\_\_,  
Respondent.

Workers' Compensation Board,  
Respondent.

**WCB No.** \_\_\_\_\_

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PLEASE TAKE NOTICE that, pursuant to section 850.14 (b) of the Rules of the Appellate Division, Third Department, within 20 days after service of this notice, you are hereby requested to stipulate to the contents of the following record list. Upon your failure to serve upon appellant and other parties in interest objections or amendments thereto, within the time prescribed, you will be deemed to have accepted said Record List as consisting of all the papers necessary and relevant to the issues being raised on appeal.

ISSUE: Whether the Workers' Compensation Board erred in denying claimant's request for reinstatement of death benefits even though she promptly requested reinstatement after she discovered that her second marriage was void ab initio.

It is hereby stipulated and agreed by the parties that the Record List shall consist of the following items:

1. Statement Pursuant to CPLR 5531
2. Notice of Appeal dated 00/00/0000
3. Notice of Board Decision & Memorandum of Decision, filed 00/00/0000, appealed from.
4. Handwritten Letter of Jane Doe, dated 00/00/0000
5. Letter of John Doe, Director, Board Review Bureau dated 00/00/0000
6. Handwritten Letter of Jane Doe, dated 00/00/0000
7. Handwritten Letter of Jane Doe, dated 00/00/0000
8. Letter of John Doe, Director, Board Review Bureau dated 00/00/0000
9. Certificate of Death of John Doe
10. Marriage License of Jane Doe & John Doe
11. Marriage Certificate of Jane Doe & John Doe
12. Report of Divorce, Annulment or Dissolution of Marriage of John Doe
13. Handwritten note of Jane Doe, dated 00/00/000 (Received by WCBd on 00/00/0000)
14. Decree of Annulment between John Doe & Jane Doe
15. Board Order of Restoral, filed 00/00/0000
16. Transcript of Hearing held 00/00/0000
17. Memorandum of Decision, filed 00/00/0000
18. Notice of Decision filed 00/00/0000
19. Record List Stipulation
20. Stipulation as to Correctness of Entire Record on Appeal

Dated: \_\_\_\_\_

\_\_\_\_\_  
Appellant

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney General

Dated: \_\_\_\_\_

\_\_\_\_\_  
Respondent

Dated: \_\_\_\_\_

\_\_\_\_\_  
Respondent

## AFFIDAVIT OF SERVICE OF MAILING

STATE OF NEW YORK )  
 COUNTY OF \_\_\_\_\_ ) ss.:

\_\_\_\_\_, being duly sworn, says:

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served a true copy of the annexed stipulation by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known addressee(s) as indicated below.

**\*\*\*Fill in the name(s) and address(es) of the person(s) to whom you are mailing the papers being filed with this court. If necessary attach extra pages for additional names and addresses.**

NAME & ADDRESS	
Workers' Compensation Board Attorney General Barbara Underwood Department of Law, Labor Bureau 28 Liberty Street, 15th Fl. New York, NY 10005	

(Signature) \_\_\_\_\_

(Print Name) \_\_\_\_\_

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 (Notary Public)