

INSTRUCTIONS FOR PERFECTING A CRIMINAL APPEAL

(Note: You must perfect your appeal within 120 days from the date of sentence.)

1. Read these instructions carefully.
2. If minutes were taken by an official court reporter, you must buy the minutes and see to it that the minutes are settled in the trial court. Then you must see to it that the clerk of the trial court files the entire record with this court. Until the record is filed in this court, we cannot accept your briefs. If there are no official minutes, then an affidavit of errors should have been filed by you in the trial court. If this has not been done, the appeal cannot be perfected.
3. Fill out the enclosed forms.
4. On a separate piece of paper, write out your statement, which is your story as to why this court should rule in your favor.
5. Put the brief together in the following order:
 - a. COVER SHEET,
 - i. The caption remains in the same order as in the lower court. Under your name write "appellant" in the space provided. Your opponent is now the "respondent."
 - ii. Indicate the Appellate Term case number in the space provided at the top left corner.
 - iii. Indicate whether you wish to submit your appeal to the court without oral argument (relying on your brief) or you wish to be present to argue on the date of the Ready Day calendar (you will be notified at a later time of the scheduled date).
 - iv. Be sure to include your telephone number.
 - b. STATEMENT PURSUANT TO RULE 5531 OF THE CPLR,
 - c. PRELIMINARY STATEMENT PURSUANT TO 22 NYCRR 731.2(c)(3) OR 22 NYCRR 732.2(c)(3),
 - d. YOUR STATEMENT,
 - i. See #4 above.
 - e. AFFIDAVIT OF SERVICE.
 - i. Sample form attached.
6. Make at least six (6) copies of your brief.
7. Fill out the form "NOTE OF ISSUE" and make at least two (2) copies of it.
 - a. Who will submit or argue your appeal: Provide your name or the name of your attorney on the appeal.
8. Have someone who is NOT a party to the action and who is over the age of 18 serve one (1) copy of the Note of Issue, one (1) copy of the brief, and one (1) copy of the minutes upon the District Attorney of the County of your conviction or other official authorized by the District Attorney to prosecute the appeal. The person who serves the papers must then fill out an "Affidavit of Service" and have it sworn to before a notary public.
9. The original Note of Issue, together with the original and three copies of the appellant's brief – with the Affidavit of Service attached to the original, shall be filed with this court, at the address listed below, together with two blank, stamped post cards, one addressed to you and one to the D.A. or his authorized representative.
10. Briefs must be received in the clerk's office by 5 P.M. on the date they are due. Any briefs received after that time are late and will be returned.

APPELLATE TERM
111 LIVINGSTON STREET
ROOM 1901

BROOKLYN, NEW YORK 11201-5078

If you have any questions, call the Clerk's office at (718) 643-5730.

Case No. _____

Choose one:
() to be submitted
() to be argued

APPELLATE TERM OF THE SUPREME COURT
_____ AND _____ JUDICIAL DISTRICTS

_____ X

PEOPLE OF THE STATE OF NEW YORK,

v.

_____ X

BRIEF OF APPELLANT

Signature: _____

Name:

Address:

Telephone No.:

COVER FOR BRIEF

APPELLATE TERM OF THE SUPREME COURT
____ AND ____ JUDICIAL DISTRICTS

_____ X

PEOPLE OF THE STATE OF NEW YORK,

v.

_____ X

STATEMENT PURSUANT TO RULE 5531 OF THE CPLR

1. The index number in the Court below is:
2. Appeal is from a judgment of conviction of the _____ Court,
_____ County.
3. Defendant was found guilty of:
4. Defendant was sentenced to:
5. Date of sentence:
6. Name of sentencing Judge:
7. This appeal is on the original record pursuant to the rules of this court.

APPELLATE TERM OF THE SUPREME COURT
____ AND ____ JUDICIAL DISTRICTS

_____x

PEOPLE OF THE STATE OF NEW YORK,

v.

_____x

PRELIMINARY STATEMENT PURSUANT TO 22 NYCRR 731.2(c)(3)
OR 22 NYCRR 732.2(c)(3)

1. Was there a stay or suspension of the execution of sentence pending appeal? _____.

2. If there was a stay,
 - a) State the name of the Judge who granted the stay:
_____.
 - b) State the date of the order: _____.
 - c) State whether the defendant is free on bail or free on his own recognizance: _____.

APPELLATE TERM OF THE SUPREME COURT
____ AND ____ JUDICIAL DISTRICTS

_____ X

PEOPLE OF THE STATE OF NEW YORK

v.

NOTE OF ISSUE

_____ X

The date of judgment of conviction being appealed and the Court and County from which the appeal was taken.

Does the District Attorney represent the People or has he authorized another party, if so give party's name and address.

Who will submit or argue your appeal:

Note of Issue filed by:

**DO NOT USE THIS FORM
SAMPLE FOR INSTRUCTIONS ONLY**

AFFIDAVIT OF SERVICE BY MAIL

**THIS FORM IS TO BE FILLED OUT BY THE PERSON
WHO MAILS THE PAPERS TO YOUR OPPONENT. IT
MUST BE SWORN TO BEFORE A NOTARY PUBLIC.**

STATE OF NEW YORK, _____ COUNTY WHERE SWORN TO _____ ss.:

NAME OF PERSON WHO SERVES PAPERS _____, being duly
sworn, deposes and says, that deponent is NOT a party to the action, is over
18 years of age and resides at _____
ADDRESS OF PERSON WHO SERVES PAPERS _____.

That on the DATE PAPERS _____ day of ARE SERVED _____, 2_____
deponent served the within Appellant's Brief and Note of Issue _____ upon
opponent(s) NAME OF OPPONENT(S) _____
at ADDRESS OF OPPONENT(S) _____

(or if the opponent[s] is [are] represented by attorney[s])

upon NAME OF ATTORNEY(S) _____ attorney(s) for
opponent(s) at ADDRESS OF ATTORNEY(S) _____

the address designated by said opponent(s) or said attorney(s) for that
purpose by depositing a true copy of same enclosed in a postpaid properly
addressed wrapper, in --a post office -- official depository under the
exclusive care and custody of the United States Post Office Department
within the State of New York.

(SIGNATURE)

(To be completed by Notary Public at the
time affidavit is signed)

Sworn to before me this

_____ day of _____, 2_____

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, _____ SS.:
(COUNTY WHERE SWORN TO)

_____, being duly sworn, deposes and says, that deponent is NOT a party to the action, is over 18 years of age and resides at _____

(ADDRESS OF PERSON WHO SERVES PAPERS)

That on the _____ day of _____, 2____ deponent served the within Appellant's Brief and Note of Issue upon opponent(s) _____

(NAME OF OPPONENT[S])

at _____

(ADDRESS OF OPPONENT[S])

(or if the opponent[s] is [are] represented by attorney[s])

upon _____ attorney(s) for opponent(s) at _____

(ADDRESS OF ATTORNEY[S])

the address designated by said opponent(s) or said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in --a post office -- official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

(SIGNATURE)

(To be completed by Notary Public at the time affidavit is signed)

Sworn to before me this

_____ day of _____, 2_____

PRO SE GLOSSARY OF TERMS

APPELLANT:

The party that files a notice of appeal.

RESPONDENT:

The party who did not file the notice of appeal.

TRIAL COURT/LOWER COURT/COURT OF ORIGINAL JURISDICTION:

The court in which the legal action began is referred to as the trial court. These courts include the Civil and Criminal Courts of the City of New York in Kings, Queens and Richmond counties; the Justice, Village, City, Town, and District Courts (and only civil appeals from County Courts) in Dutchess, Nassau, Putnam, Orange, Rockland, Suffolk, and Westchester counties. Appeals from these courts are taken to the Appellate Term, 2nd Department.

NOTICE OF APPEAL:

This is the form used by someone to begin the appeal process. This form, after it is filled out, is served upon the other party(ies) in the action and then filed in the trial court.

MOTION:

A formal request to the court for some type of relief (e.g. to stay all proceedings, to dismiss the appeal, to vacate the dismissal, etc.).

NOTICE OF MOTION:

This is the form that identifies who is making the motion, when the motion is returnable (to be submitted to the court), and, what relief the movant is seeking.

MOVANT:

The person who is making the motion.

RETURN DATE:

The date the motion will be submitted to the court.

AFFIDAVIT IN SUPPORT OF THE MOTION:

This is the written explanation, **sworn** to by the movant, setting forth why the court should grant the relief requested. When the movant is also the appellant, this affidavit must give a sufficient showing of merit to the appeal. This means that the movant must give the court reason to believe that the appellant stands a good chance of winning the appeal.

Note: there are two types of affidavits generally associated with motions, an **affidavit in support of the motion** and an **affidavit of service**. An affidavit is a statement sworn to before a notary public. An affidavit of service is a different type of affidavit and is explained in "Proof of Service".

SERVICE:

Service or serving papers means causing some type of papers to be delivered to someone. Service must be upon the attorney representing your opponent (if he or she has an attorney) or upon the party, if the party does not have an attorney.

PROOF OF SERVICE:

The legal requirement for service is that unless otherwise specified by the court, all service must be by third party service (by someone who is not a party to the action, they can be a relative or a friend). The third party must serve the papers upon your opponent. Service can either be personal service, the third party actually hands the papers to your opponent or their attorney, or service can be by mail, the third party mails the papers to your opponent. Under either method, the third party must prove that the service was done. Proof is provided by submitting an affidavit of service, or by having the party upon whom the papers are served, sign and date a copy of the papers indicating that he or she has received the papers.