

## INSTRUCTIONS FOR MOTION

### Page 1

- (A) Fill in the names of the original parties exactly as they appear on the summons and complaint or on the petition.
- (B) If you already have an appeal pending with the Appellate Term and have a docket number, write the number in the space indicated.
- (C) The Lower Court Index Number is the case number given to you by the court where your case is originally from.
- (D) Indicate the type of relief you are requesting. If the relief is not listed, mark “OTHER” and write the relief you are seeking.
- (E) Write your name.
- (F) Write the date you signed your affirmation in support.
- (G) Fill in the capacity in which you appeared in the action or proceeding. You appeared as a plaintiff, claimant, defendant, petitioner or respondent.
- (H) This is the return date of your motion, that is, the date the court will hear your motion. Before these papers are served, you must select a return date. The return date must be on any **Thursday** (if Thursday is a legal holiday, the next business day of the week) after the service of your motion on your opponent. Motions are to be filed with the court one week before the return date.

Service of your motion upon your opponent must be done by a third party (someone who is not named in the proceeding and is 18 years of age or older.) If service is by first class mail, the return date must be at least thirteen (13) days after service. If your opponent is represented by an attorney, service must be made upon said attorney. **Do not include the day of service in the 13 day calculation.** If service is by overnight mail, the return date must be at least nine (9) days after service.

If service is done by personal service (where the person serving the papers actually hands the papers to your opponent or your opponent’s attorney) the return date must be at least eight (8) days thereafter.

- (I) Check the appropriate box indicating the type of relief you are requesting.
- (J) Sign and print your name. Write your full address and phone number.
- (K) Write the name and address of the opponent or attorney (if the opponent is represented by an attorney).

**Pages 2 & 3**

- (L) Fill in the names of the original parties exactly as they appear on the summons and complaint or on the petition.
- (M) If you already have an appeal pending with the Appellate Term and have a docket number, write the number in the space indicated.
- (N) The Lower Court Index Number is the case number given to you by the court where your case is originally from.
- (O) Indicate the type of relief you are requesting.
- (P) Indicate the county where you are signing your affirmation in support of the motion.
- (Q) Write your name.
- (R) Fill in the capacity in which you appear in the action or proceeding. You are either the appellant or the respondent.
- (S) Indicate the type of relief you are requesting.
- (T) Indicate the type of proceeding.
- (U) In paragraphs 3, 4, 5 and 6, write the reasons you are making your notice of motion. \*\*  
**\*\*If you are moving to vacate a dismissal of your appeal, you must set forth a reasonable excuse for your default AND how your appeal has merit.**
- (V) Indicate in #7 whether any previous notices of motion was filed with this court requesting the same relief as this motion.
- (W) Summarize the relief you are requesting.
- (X) Put the date the papers are being signed and the county where the papers are being signed.
- (Y) Date and sign your affirmation in support.

## **Pages 4 & 5**

### **SERVICE OF MOTION**

Attach the completed notice of motion to the affirmation and then attach a copy of the order or judgment appealed from, the notice of appeal, proof the notice of appeal was filed and all papers and exhibits upon which the motion is based.

Have someone 18 years of age or older and not a party to the action serve a copy of the motion and all supporting papers upon your opponent if they are not represented by an attorney. If your opponent is represented by an attorney, service must be made upon said attorney.

### **PROOF OF SERVICE**

Proof of service is provided by submitting an affirmation of service, or by having the party upon whom the papers are served (if they are personally served) sign and date a copy of the papers indicating that they received the papers.

## **FILING OF MOTION**

Attach the AFFIRMATION OF SERVICE to the original MOTION papers and mail them to:

**APPELLATE TERM  
141 LIVINGSTON STREET 15<sup>th</sup> FLOOR  
BROOKLYN, NY 11201**

**OR**

file the MOTION and AFFIRMATION OF SERVICE through this court's digital portal at:  
[http://www.nycourts.gov/courts/ad2/Digital\\_Submission\\_AT2.shtml](http://www.nycourts.gov/courts/ad2/Digital_Submission_AT2.shtml)

**All motions initiated by notice of motion shall be filed with the Clerk's Office at least one week before the return date.**

**All opposition papers and reply papers to any motion or order to show cause shall be filed with the Clerk's Office in accordance with this court's Rules in Section 731.4 (b).**

**All motions are on submission and oral argument WILL NOT be permitted.**

If you have any questions, call the Clerk's Office at (347) 401-9580.

## SAMPLE FORM FOR INSTRUCTIONS ONLY

### APPELLATE TERM OF THE SUPREME COURT

APPELLATE TERMS: 2<sup>ND</sup>, 11<sup>TH</sup> & 13<sup>TH</sup> and 9<sup>TH</sup> & 10<sup>TH</sup> JUDICIAL DISTRICTS

\_\_\_\_\_

**(A)**

**(B)** Appellate Term

Docket # \_\_\_\_\_

**(C)** Lower Court Index #

v. \_\_\_\_\_

**(D) NOTICE OF MOTION**

SAMPLE

\_\_\_\_\_

Please take notice that upon the annexed affirmation of **(E)** dated the **(F)** day of **(F)**, 2 \_\_\_\_\_ the **(G)** will move this Court at a term thereof to be held at the Courthouse of the Appellate Term of the Supreme Court, 2<sup>nd</sup>, 11<sup>th</sup>, & 13<sup>th</sup> or 9<sup>th</sup> & 10<sup>th</sup> Judicial Districts, at 141 Livingston Street, 15<sup>th</sup> Floor, Brooklyn, New York 11201, on or before the **(H)** day of \_\_\_\_\_, 2 \_\_\_\_\_ :

**(I)**

- to dismiss the appeal for lack of prosecution.
- to dismiss the appeal as untimely.
- to vacate the order of this court dated \_\_\_\_\_ dismissing the appeal.
- for leave to reargue, or in the alternative, leave to appeal to the Appellate Division, Second Department from an Order of this court dated \_\_\_\_\_. (Write the date of the order of this court you are requesting to reargue or leave to the Appellate Division )
- to enlarge the time to perfect the appeal.
- to enlarge the time to serve and file the respondent's brief.
- to enlarge the time to serve and file the reply brief.
- other: \_\_\_\_\_.

Yours,

\_\_\_\_\_ **(J)**

(sign your name)

PRINT **(J)**

Your Name \_\_\_\_\_

Your Address \_\_\_\_\_

City, State and Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

TO: NAME OF OPPONENT OR ATTORNEY (if opponent is represented by an attorney) **(K)**

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERMS: 2<sup>ND</sup>, 11<sup>TH</sup> & 13<sup>TH</sup> and 9<sup>TH</sup> & 10<sup>TH</sup> JUDICIAL DISTRICTS

(L)

(M) Appellate Term  
Docket # \_\_\_\_\_

v.

(N) Lower Court Index #  
\_\_\_\_\_

(O) AFFIRMATION IN SUPPORT  
OF MOTION

State of New York )  
County of \_\_\_\_\_ (P) \_\_\_\_\_ ) s.s.:

SAMPLE

I, \_\_\_\_\_ (Q) \_\_\_\_\_, affirm that:

1. I am the \_\_\_\_\_ (R) \_\_\_\_\_ in the above entitled proceeding and make this affirmation in support of the motion to/for \_\_\_\_\_ (S) \_\_\_\_\_.

2. The type of the above entitled proceeding is as follows: (T)

<input type="checkbox"/> Landlord & Tenant (non-payment)	<input type="checkbox"/> Criminal
<input type="checkbox"/> Landlord & Tenant (holdover)	<input type="checkbox"/> Traffic Violation
<input type="checkbox"/> Small Claims	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Civil	

My grounds or reasons are as follows: \*\* (U)

SAMPLE

\*\* if you are moving to vacate a dismissal of your appeal, you must set forth: 1) a reasonable excuse for your default; AND 2) how your appeal has merit.

3. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SAMPLE

7. No previous application has been made for this relief requested herein except: **(V)**  
(If any application has been made, it must be described below.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREFORE, I request that the court grant me the following relief: **(W)**

\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_ **(X)** \_\_\_\_\_, 20\_\_

\_\_\_\_\_, New York

I affirm this \_\_\_ **(Y)** \_\_\_ day of \_\_\_\_\_, 20\_\_\_, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

SAMPLE

\_\_\_\_\_  
**(Y)**  
(SIGNATURE OF THE PERSON MAKING MOTION)

**INSTRUCTIONS FOR FILLING OUT THE**  
**AFFIRMATION OF SERVICE FORM**

**(THIS FORM MUST BE FILLED OUT BY A THIRD**  
**PARTY WHO IS NOT A PARTY OF THE ACTION AND**  
**IS 18 YEARS OF AGE OR OLDER)**

- (A) Caption: Write the names of the parties involved in the case. The caption must be written in the same order that it is in the court where your case is originally from;
- (B) Write the Appellate Term Docket Number (if known);
- (C) Write the Lower Court Index Number;
- (D) Write the county within which the affirmation of service is signed;
- (E) The third party must write their name;
- (F) The third party must write their address;
- (G) The third party must write the date the papers were served;
- (H) Indicate the type of motion that was served;
- (I) Select the method used to serve the opponent or opponent's attorney;
- (J) Write the opponent's name and address. If the opponent is represented by an attorney, the attorney must be served and the affirmation of service must have the attorney's name and address;
- (K) The person serving must put the date the papers were signed and the county where the papers were signed;
- (L) The person serving must date and sign the affirmation of service.

# SAMPLE AFFIRMATION OF SERVICE FORM

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE TERMS: 2<sup>ND</sup>, 11<sup>TH</sup> & 13<sup>TH</sup> AND 9<sup>TH</sup> & 10<sup>TH</sup> JUDICIAL DISTRICTS

## AFFIRMATION OF SERVICE

(A)

-against-

Appellate Term Docket #:

(B)

Lower Court Index Number#

(C)

State of New York )

County of (D) ) s.s.:

(E) , affirms that:

1. The deponent is NOT a party to the action, is 18 years of age or older and resides at:

(F)

2. On the \_\_\_ day of (G) \_\_\_, 2\_\_\_, the deponent served one copy of the following described paper upon the person or persons listed in paragraph 4 hereof:

Motion for/to (H)

3. The method of service on each of said persons was: (I)

- By delivering the paper(s) to the person personally pursuant to CPLR 2103 (b)(1).
- By mailing the paper(s) to the person at the address designated by them for that purpose by depositing the same in a first class, postpaid, properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the State of New York pursuant to CPLR 2103 (b)(2).
- Where the person served is an attorney, by leaving the paper(s) with the person in charge of the office of that attorney, pursuant to CPLR 2103 (b)(3).
- By dispatching the paper(s) to the person by overnight delivery service at the address designated by the person for that purpose, pursuant to CPLR 2103 (b)(6).
- Other: \_\_\_\_\_

4. The name of the person or names of the persons served and the address or addresses at which service was made are as follows: \_\_\_\_\_

(J)

Dated: (K) \_\_\_, 20\_\_\_  
\_\_\_\_\_, New York

I affirm this (L) \_\_\_ day of \_\_\_\_\_, 20\_\_\_, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(L)  
\_\_\_\_\_  
(SIGNATURE OF PERSON SERVING PAPERS)