

# **MOTION FOR LEAVE TO APPEAL IN A CIVIL CASE FORM FOR PRO SE LITIGANTS**

THIS FORM IS FOR USE IN CIVIL MATTERS BY PRO SE LITIGANTS ONLY. FOR INFORMATION ON APPLICATIONS SEEKING LEAVE TO APPEAL IN NON-CAPITAL CRIMINAL MATTERS, SEE COURT OF APPEALS RULES OF PRACTICE 500.20.

## **INSTRUCTIONS**

READ COURT OF APPEALS RULES OF PRACTICE, particularly 500.1, 500.2 500.3(b), 500.6, 500.7, 500.8(b), 500.21, 500.22 and 500.25

COMPLETE THE ATTACHED MOTION FORM AND ATTACH THE FOLLOWING PAPERS TO THE MOTION FORM:

## **PAPERS TO ATTACH**

Please attach copies of the following documents to your motion form:

1. The decision and order or judgment from which you seek leave to appeal.<sup>1</sup>
2. The lower court order or agency determination appealed to the Appellate Division.
3. The Appellate Division order denying leave to appeal to this Court (if any).

Using the Companion Filing Upload Portal accessible via the Court's website ([www.nycourts.gov/ctapps](http://www.nycourts.gov/ctapps)), you must also provide a digital copy of the motion and a digital copy of the briefs filed in the Appellate Division by each of the parties and the record or appendix used in the Appellate Division. You do not have to serve the Appellate Division briefs and record or appendix on the other parties. You may request to be relieved of the digital filing requirement by including with your motion filing a letter addressed to the Clerk of the Court with proof of service of one copy on each other party stating the reasons why submission of companion digital filings would present an undue hardship. Such request shall be accompanied by unbound copies of each party's Appellate Division briefs and the Appellate Division record or appendix.

---

<sup>1</sup> Generally, the proper appealable paper is an Appellate Division order. In some circumstances, the proper appealable paper would be a judgment, order or determination of another tribunal pursuant to a prior nonfinal Appellate Division order (see CPLR 5602[a][1][ii]).

## **AFFIDAVIT OF SERVICE**

You must provide an affidavit of service indicating service of one copy of your motion, with attachments, on all other parties.

### **FEES**

See Rules 500.3(b), 500.21(e). Include a certified check, cashier's check or money order in the amount of \$45.00 payable to "State of New York, Court of Appeals" or follow the instructions in Rules 500.3(b) and 500.21(g) and below for requesting poor person relief.

### **POOR PERSON RELIEF**

See Rule 500.3(b). If you cannot pay the filing fee or you desire some other form of poor person relief, your motion must be accompanied by (1) a motion for poor person relief pursuant to CPLR 1101(a) with proof of your current financial status, or (2) a copy of another court's order granting poor person relief in this case together with a sworn affidavit that the same financial circumstances exist now as when the order granting poor person relief was issued.

If you include the documents specified in either (1) or (2) above, you may serve and file only one copy of your motion papers, and you need not pay the filing fee when you file the motion for leave to appeal.

### **TIMELINESS OF MOTION**

A motion for leave to appeal must be served within thirty days (CPLR 5513[b]). The thirty day period begins upon (1) service of the judgment or order sought to be appealed from, with written notice of its entry, or (2) where a timely motion for leave to appeal has already been denied by the Appellate Division, service of a copy of the Appellate Division order denying the motion for leave to appeal, with written notice of its entry. Add one business day if service of the judgment or order was by overnight mail (CPLR 2103[6]) and five days if service was by regular mail (CPLR 2103[2]).

Uploading digital submissions to the Companion Filing Upload Portal (Rule 500.2) does not satisfy the service or filing requirements of the CPLR or the Court's Rules of Practice. The filer is responsible for meeting any applicable CPLR time limit by serving and filing as provided by the CPLR. The filer is responsible for meeting the Court's applicable due dates by filing the required number of paper documents with the Clerk's Office. Motions are deemed "filed" with the Clerk's Office on the date of receipt of the paper document.

The "Statement in Support of Motion" contains a timeliness checklist. Please fill out this checklist carefully and completely. For a more detailed discussion of timeliness, please refer to this Court's website ([www.nycourts.gov/courts/appeals](http://www.nycourts.gov/courts/appeals)). Under "Practice Aids," see the Court's Civil Practice Outline (Section II[E][2]).

COURT OF APPEALS  
STATE OF NEW YORK

\_\_\_\_\_  
*(Names of parties as set forth in the Appellate Division caption)*

\_\_\_\_\_,  
\_\_\_\_\_,  
v.  
\_\_\_\_\_,  
\_\_\_\_\_.\*

\_\_\_\_\_  
*(Indicate name of county)*  
County Clerk Index No.:

\_\_\_\_\_  
NOTICE OF MOTION FOR  
LEAVE TO APPEAL TO  
THE COURT OF APPEALS  
[AND FOR *(Specify additional  
relief, if any)* \_\_\_\_\_  
\_\_\_\_\_ ]

\*\*

\_\_\_\_\_  
PLEASE TAKE NOTICE that, upon the annexed statement pursuant to Rules 500.21 and 500.22 of the Court of Appeals Rules of Practice, signed on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
\_\_\_\_\_ will move this Court, at the Court of Appeals Hall, Albany, New York on  
*(Your Name)*  
\_\_\_\_\_, 20\_\_\_\_, for an order granting leave to appeal to this Court from the order  
*(Return Date)*\*\*\*  
or judgment of the \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_  
*(Name of Court)*  
[, and for \_\_\_\_\_].  
*(Specify additional relief, if any)\*\**

\_\_\_\_\_  
\*If you are moving for leave to appeal, you are the appellant in this Court; the opposing party is the respondent.

\*\* Add information within the brackets only if you are seeking relief in addition to leave to appeal.

\*\*\*Return Date (see Rule 500.21[a], [b]) - Court of Appeals motion returns days are only on Mondays, unless Monday is a legal holiday, in which case the return date shall be on the next available business day. If the motion is served in person, you must give 8 days' notice. If the motion is served by regular mail, you must give 13 days' notice. Set the return date of your motion for the first Monday on or after the notice period. If that Monday is a legal holiday, set the return date of your motion for the next available business day.

Answering papers, if any, must be served and filed in the Court of Appeals with proof of service on or before the return date of the motion.

There is no oral argument of motions, and no personal appearances are permitted.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

To: Clerk of the Court of Appeals  
Court of Appeals Hall  
20 Eagle Street  
Albany, New York 12207

*Insert the names and addresses of all other parties:*

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

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

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

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

**STATEMENT IN SUPPORT OF MOTION**

**Service of judgment or order sought to be appealed (Check which items apply, and fill in the blanks, if applicable.)**

- On \_\_\_\_\_, 20\_\_\_\_, my adversary served me with the order or judgment I am seeking leave to appeal from dated \_\_\_\_\_, 20\_\_\_\_, with notice of entry.

My adversary served me by (check one):

- personal service  
 overnight delivery  
 regular mail

- OR -

- My adversary did not serve me with the order or judgment that I am seeking leave to appeal from with notice of entry.

- OR -

- On \_\_\_\_\_, 20\_\_\_\_, I served my adversary with the order or judgment that I am seeking leave to appeal from with notice of entry. I served my adversary by (check one):

- personal service;  
 overnight delivery;  
 regular mail.

**Select Item 1 or Item 2 below:**

- (1) I did not move for leave to appeal to this Court at the Appellate Division, but came directly here. (If you check this box, go directly to QUESTIONS PRESENTED.)

- OR -

- (2)(a) I made a motion for permission to appeal to the Court of Appeals in the Appellate Division upon my adversary by (check one):

- personal service;  
 overnight delivery;  
 regular mail;

on \_\_\_\_\_, 20\_\_\_\_. (If you filled in subsection 2a, go to subsection 2b.)

- (2)(b) The Appellate Division denied my motion for permission to appeal to the Court of Appeals on \_\_\_\_\_, 20\_\_\_\_. My adversary (check one):

- never served me with the order;  
 served the Appellate Division order with notice of entry upon me on \_\_\_\_\_, 20\_\_\_\_ by (check one):

- personal service;  
 overnight delivery;  
 regular mail

**QUESTIONS PRESENTED** *(The legal issues you addressed in the courts below that you desire this Court to review. Please identify where in the record or appendix these issues were raised in the courts below. You may use additional paper if necessary.)*

**WHY THE COURT OF APPEALS SHOULD GRANT THE MOTION** *(For example, novel issue of law, issue of statewide importance, conflict in the law on the issue. You may use additional paper if necessary.)*

DATED: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_