

SUPREME COURT, CIVIL BRANCH
QUEENS COUNTY
SELF-REPRESENTED INFORMATION OFFICE

NOTE: PERSONS WITHOUT COUNSEL ARE ADVISED TO CONSULT AN ATTORNEY. NEITHER THE SELF-REPRESENTED INFORMATION OFFICE NOR ANY MEMBER OF THE COURT'S STAFF MAY OFFER LEGAL ADVICE, PREPARE YOUR PAPERS OR ACT AS YOUR ATTORNEY.

HOW TO TAKE AN APPEAL

A person who is dissatisfied with an order or judgment of the court in his or her case may, under certain circumstances, take an appeal to a higher court. This summary attempts to outline what is appealable, where an appeal is prosecuted and how the appellate process should be initiated. This summary does not, however, purport to address the prosecution of appeals in detail. Anyone thinking about an appeal should consult an attorney. Information about how to appeal is to be argued, how many copies of appellate briefs must be filed and similar matters may be obtained from the Appellate Division, Second Department, 215 Monroe Place, Brooklyn, New York 11201 (Tel. No. 718-875-1300).

What is an Appeal?

An appeal is a procedure by which a party who has been adversely affected by what he or she believes to have been an error by a Justice of one court may seek to have that judgment overturned (Reversed) on a higher court. The party who proceeds with the appeal is called the appellant. All parties against whom the appellant seeks reversal (regardless of their posture in this Court) are referred to as "respondent" with respect to the appeal. The appeal is not a form of new trial. Basically, the same evidence that was before the trial court is placed before the appellate court (unless the appeal concerns a

claim that the trial Justice improperly admitted or excluded certain evidence) and the parties to the appeal argue, on papers and at a brief oral argument, that the trial Justice, in reaching his or her decision on that evidence, did or did not commit an error that requires reversal. This evidence is called the record on appeal (or the record).

The Appellate Court Structure

The appellate court that hears appeals from the Supreme Court, Civil Branch, Queens County is, almost without exception, the Appellate Division, Second Department. The next level in the appellate hierarchy is occupied by the Court of Appeals, Albany, New York, which is the State's highest court. An appeal from the Supreme Court, Civil Branch, Queens County should be prosecuted in the Appellate Division, Second Department. Thereafter, it may be possible to pursue an appeal in the Court of Appeals, but the conditions for doing so are beyond the scope of this summary. The Court of Appeals will hear almost no appeals that do not first make their way through the appellate process in the Appellate Division.

What Rulings are Appealable?

The general rule is that the only thing that may be appealed from is a judgment or order. An order, roughly speaking, is a written determination of the court that resolves a request of a party for some relief prior to trial. This sort of request is called a motion.

A judgment is, generally speaking, a determination by the court that sets forth the results of an entire case or of a discrete claim for relief in a case. A judgment might, for instance, award plaintiff a sum of money or award judgment to defendant dismissing

a case. A judgment may resolve only one or some of a number of claims made in a case. Generally speaking, a judgment is signed by a Justice or by the County Clerk in accordance with a written directive issued by the Justice.

The mere signing of an order or judgment does not set running the time period during which an appeal must be instituted. Generally speaking, an appeal may only be taken from an order or judgment that has been entered, and the deadline to take the first steps in an appeal depends upon the date that a copy of the judgment or order was served upon the parties to the case together with formal written notice that it has been entered. In this context, "entry" is the formal filing in the Office of the County Clerk and recording in the Clerk's records of the order or judgment in question. The "entry" date is reflected by the date stamped by the Clerk on the original order or judgment.

Generally speaking, in contrast with most orders, judgments are not automatically "entered." The prevailing (winning) party must appear before the Judgment Clerk in the Office of the County Clerk (Room 100) and request entry of the judgment. When the papers are in proper form, the Judgment Clerk will enter the judgment formally in the records of the County Clerk, at which point the judgment officially becomes binding and is appealable. Ordinarily, it is the responsibility of the prevailing party to prepare the form of judgment that is to be signed by the Justice and/or entered by the Clerk.

Only a party to a case who is "aggrieved" (i.e., has been harmed) by an order or judgment may pursue an appeal of it. Generally speaking, all judgments are appealable as a matter of right. Many orders are appealable as a matter of right, even if they are not final. (See Civil Procedures Laws and Rules section 5701(a)(2). (The CPLR for short)).

Specifically, an order is thus appealable if it arises out of a motion made on notice and if it

(i) grants, refuses, continues or modifies a provisional remedy, such as an injunction;

(ii) settles, grants or refuses an application to resettle a transcript or statement on appeal;

(iii) grants or refuses a new trial (with exceptions);

(iv) involves some part of the merits;

(v) affects a substantial right;

(vi) in effect determines the action and prevents a judgment from which an appeal might be taken;

or

(vii) in certain cases determines a statutory provision of the State to be unconstitutional.¹

The Deadline for Taking an Appeal

An appeal as of right must be taken within 30 days after the party taking the appeal has been served with a copy of the judgment or order from which the appeal is to

¹Some other matters are appealable as of right. See CPLR 5701(a)(3). Some other matters are appealable only by permission. CPLR 5701(b) and (c). Permission to appeal can be granted only where the aggrieved party makes a motion requesting permission to appeal.

be taken, together with notice of its entry. Annexed hereto as Appendix A is a copy of a notice of entry.

Usually, the party who succeeded is the one who serves the copy of the order or judgment with notice of entry. However, the losing party may do so if he or she wishes. In that case, the 30-day period commences from the time of this service.²

With only a few, very narrow exceptions, this 30-day period may not be altered. The parties cannot extend this time by their agreement, nor may the court grant a motion to extend the time.

The failure of the appellant to take the appeal in timely fashion will deprive the Appellate Division of jurisdiction to hear the appeal. That court will and must dismiss the appeal. The appeal may not be pursued even if all other parties to the case wish that to happen. IN SHORT, THE SELF-REPRESENTED PERSON IS ADVISED AS STRONGLY AS WORDS PERMIT TO PAY CLOSE ATTENTION TO THE CALENDAR WHEN THINKING ABOUT TAKING AN APPEAL.

How to Take an Appeal

²The 30-day period applies to appeals as of right and those brought by permission. As to appeals that require permission, a notice of appeal is not served and filed at the outset; permission must be obtained first. To obtain this, a motion for permission must be made and the motion must be made within the 30-day period or else the opportunity to appeal will be lost. If the motion is made on time, the fact that it is not decided until after the 30-day period has expired does not affect the opportunity to appeal.

An aggrieved party who wishes to take an appeal as of right must do so by serving and filing a document known as a notice of appeal. Annexed to this summary as Appendix B is a copy of a form of notice of appeal.

Copies of this notice must be served upon all of the other parties to the case. Service in this instance may be by regular first class U.S. mail or by personally delivering it to the attorney(s) for each of the other parties, or upon the party himself or herself if unrepresented by an attorney. Service (i.e., mailing or personal deliver) must be made by someone who is over 18 years of age and is not a party to the case (i.e., the party appealing may not himself or herself effect service).

The party appealing must also file the original notice of appeal, together with an original affidavit proving that the notice was served. This affidavit must be made by the person who served the paper stating under oath when and how the paper was served and upon whom it was served. The affidavit must be signed before a notary public. The filing of the original notice of appeal with attached original affidavit(s) of service and a copy of the order or judgment appealed from must take place in the office of the Queens County Clerk.

In order to complete the filing, the appellant must also file a document known as a pre-argument statement. A copy of a form of pre-argument statement is annexed hereto as Appendix C. (The pre-argument statement and its attachments will be transmitted to the Appellate Division and will summarize for that court the appeal being brought.)

The appellant must also pay a fee to the County Clerk of \$50.00. This fee (as well as there expenses) may be avoided only if the appellant obtains a court order

known as a poor person order. Some complexity is involved in obtaining such an order. A poor person order for relief from fees on appeal must be obtained from the Appellate Division, not from this court. A poor person order received from this court at the outset of a case will not relieve an appellant of the obligation to pay this \$50 fee. It is not certain that the Appellate Division will be willing to sign a poor person order in any particular case. In addition, some time will be consumed in obtaining such an order and, as noted above, there is a rigid time limit within which an appeal must be taken. Failure to take an appeal in a timely fashion will result in the dismissal of the appeal.

Cross-Appeals

A party who has not initiated an appeal may, upon receipt of a notice of appeal, wish to take an appeal too, that is, cross-appeal. Any party taking a cross-appeal must also be "aggrieved" in some way, i.e., he or she must have actually been harmed in some respect by what is contended to have been an error of the court. The cross-appealing party must also serve and file a notice of appeal (or make a motion for permission to appeal if permission is required) within 30 days after service of the order or judgment with notice of entry, or within 10 days after service upon him or her of the adverse party's notice of appeal or motion for leave to appeal, whichever is longer.

Effect of the Appeal on the Order or Judgment

The taking of an appeal does not necessarily halt the effectiveness of the order or judgment from which the appeal is taken. If an appeal is taken by the State of New York or any of its governmental subdivisions, the order or judgment which is the subject of the appeal is automatically stayed, that is, put on "hold." CPLR 5519(a). Other

litigants will receive an automatic stay if they put up monies or other asserts or post a bond sufficient to satisfy the judgment and commit to paying over in the event the appeal is unsuccessful.

In an appropriate case, if the appealing party makes a motion to stay the effective date of the order or judgment during the appeal, this court (or the Appellate Division) may, in its discretion, issue an order granting the stay. See CPLR 5519(c).

"Perfecting" the Appeal

In addition to taking the appeal in the manner described above, the appealing party must pursue the appeal in certain defined ways. This is known as "perfecting" the appeal.

If the appeal is taken from a judgment or order arising out of a trial or hearing at which sworn testimony was taken in open court, the appellant must "order" the transcript (the court reporters's minutes) of those proceedings, so that the Appellate Division can have it before it and can review the record of what transpired in the trial court. Most decisions issued by the Supreme Court, Civil Branch, Queens County are issued on the basis of motion papers only and therefore in such instances no transcript is required.

In cases where the order or judgment arose out of a trial or hearing at which oral evidence was taken in open court before a court stenographer (reporter), the appealing party must serve on the stenographer (Court Reporter) (the office of the Court Reporters is Room 301/303 and the phone number is (718) 520-3450) a written request for the transcript and must deposit the fee for the transcript, which is calculated based upon the length of the transcript. THIS REQUEST MUST BE SERVED WITHIN THE PERIOD ALLOWED FOR THE TAKING OF THE APPEAL, DISCUSSED ABOVE.

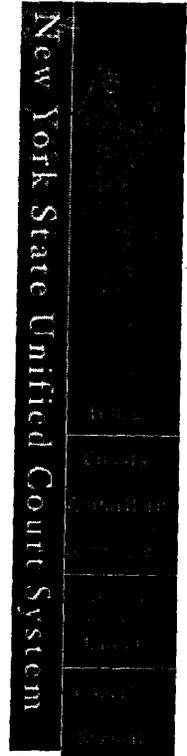
The parties may agree that only a portion of the proceedings will be transcribed (typed). This agreement should be in writing and should identify the portions of the transcript to be transcribed. The transcript is often very expensive and it may be in the interests of both sides to a case to limit expense by entering into an agreement of this sort.

Once the court reporter has transcribed the record of the proceedings in response to a request, he or she will deliver an original and one copy of the transcript to the appealing party. The appealing party should review it for errors. The appealing party should then serve a copy of the transcript on the other party, together with a list of suggested corrections, identified by page and line. The parties should consult one another and endeavor to agree as to what corrections should be made. If the parties cannot agree, the dispute will have to be resolved by the trial Justice, but it is strongly suggested that the parties should not impose this burden on the court. See CPLR 5525.

If the parties can agree, they can prepare a written statement of the case, which may be used in place of a transcript.

The appealing party must also prepare and submit the "record on appeal." The appellant should review Article 55 of the CPLR and the rules of the Appellate Division for additional information about the record, deadlines for briefs, and other things. The appellant may also contact the office of the Clerk of the Appellate Division, Second Department (718) 875-1300 for additional information.

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



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 - MHL Article 10

HON. RANDALL T. ENG
Presiding Justice



APRILANNE AGOSTINO
Clerk of the Court

45 Monroe Place
Brooklyn, NY 11201

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_____ Court of the State of New York
County of _____

NOTICE OF APPEAL

Index No.:

PLEASE TAKE NOTICE that *(insert your name)* _____
hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Second
Judicial Department, from a *(insert judgment, order, decree, etc.)* _____ of the
_____ Court, _____ County, dated
_____.

Dated: _____, New York
_____, 200__

Yours, etc.,

Signature

(Print Name)

(Address)

(Telephone Number)

To: *(Insert below the name and address of the clerk of the trial court and the names and addresses of all opponents)*

Supreme Court of the State of New York

Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance
- against -		Date Notice of Appeal Filed
		For Appellate Division
Case Type		Filing Type
<input type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278
<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review		
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.		
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation
<input type="checkbox"/> Contracts	<input type="checkbox"/> Estate Matters	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Torts		

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
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- | | | | |
|--|---|---|---|
| <input type="checkbox"/> Amended Decree | <input type="checkbox"/> Determination | <input type="checkbox"/> Order | <input type="checkbox"/> Resettled Order |
| <input type="checkbox"/> Amended Judgement | <input type="checkbox"/> Finding | <input type="checkbox"/> Order & Judgment | <input type="checkbox"/> Ruling |
| <input type="checkbox"/> Amended Order | <input type="checkbox"/> Interlocutory Decree | <input type="checkbox"/> Partial Decree | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Decision | <input type="checkbox"/> Interlocutory Judgment | <input type="checkbox"/> Resettled Decree | |
| <input type="checkbox"/> Decree | <input type="checkbox"/> Judgment | <input type="checkbox"/> Resettled Judgment | |

Court: Choose Court	County: Choose County
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Dated:	Entered:
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Judge (name in full):	Index No.:
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Stage: <input type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
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Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? Yes No
 If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
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Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
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Judge (name in full):	Order of Transfer Date:
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CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
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Judge (name in full):	Dated:
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Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1			
2			
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

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Attorney/Firm Name:

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E-mail Address:

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City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

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Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

_____ X

(Fill in name(s)) Plaintiff(s)/Petitioner(s)

- against -

Index Number

_____ / _____

Affidavit of Service

(Fill in name(s)) Defendant(s)/Respondents(s)

_____ X

STATE OF NEW YORK
COUNTY OF _____ SS:

I, _____ being duly sworn says: (NAME OF PERSON WHO SERVES PAPERS) I am not a party to the action, am over 18 years of age And reside at _____ (ADDRESS OF PERSON SERVING PAPERS). On _____, 20__ (DATE OF SERVICE), I served a true copy of the following papers, _____ (IDENTIFY THE PAPERS SERVED) which are attached to this affidavit, in the following manner: [CHECK ONE]

_____ By personally delivering the papers to: _____ [PERSON SERVED] at [ADDRESS] _____.

PERSONAL The individual I served had the following characteristics: [FILL IN]

SERVICE ___ Male ___ Female ___ Skin Color ___ Hair Color

___ 21-34 yrs. ___ 35-50 yrs. ___ 51-61 yrs. ___ Over 61

___ 120-150 lbs. ___ 151-181 lbs. ___ Over 182 lbs.

Approximate height _____

Other distinguishing features _____

_____ By mailing the same in a sealed envelope, with postage prepaid
MAIL 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 address of the addressee(s) as
indicated below:

_____ By depositing the same with an overnight delivery service in a wrapper properly
OVERNIGHT addressed. Said delivery was made prior to the latest time designated by the
DELIVERY overnight delivery service for overnight delivery.

SERVICE The delivery service used was _____. The
name(s) and address(es) of person(s) served are indicated below:

Name(s) and address(es) of Person(s) served:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[SIGN NAME] Before a Notary

[PRINT NAME]

Sworn to before me this
____ day of _____, 20__.

Notary Public