

FREQUENTLY ASKED QUESTIONS

Practice and Procedures in the Appellate Division, First Department

General Information

Q: What rules govern practice in the Appellate Division, First Department?

A: 1. The Practice Rules of the Appellate Division, approved by joint order of the four departments of the Appellate Division ([22 NYCRR] Part 1250, effective September 17, 2018); and

2. Rules of Practice of the Appellate Division, First Judicial Department ([22 NYCRR] Part 600, effective September 17, 2018).

Parts 1250 and 600 should be read in conjunction with the Electronic Filing Rules of the Appellate Division ([22 NYCRR Part 1245), which became effective on March 1, 2018.

E-filing is mandatory in all matters in the First Department, except for attorney matters.

Taking An Appeal

Q: How do I take an appeal?

A: If an order or judgment is appeal as of right, by serving and filing a notice of appeal, together with an informational statement (the form may be found on the Court's website) and a copy of the order or judgment appealed from. Permission to appeal is obtained by making a motion for leave to appeal ([22 NYCRR] § 1250.4[c]).

Q: Where do I file a notice of appeal or a motion for leave (permission) to appeal?

A: 1) A notice of appeal must be served upon your adversary and filed in the office of the clerk of the court of original instance (where the matter was commenced) within 30 days after service of a copy of the order or judgment appealed from with notice of entry. The County Clerk is the clerk of the Supreme Court in New York and Bronx County. The filing fee is \$65.00.

2) A motion for leave to appeal is filed in the Appellate Division. The motion must include a copy of the order or judgment and decision, if any, of the court below, a statement of the ground of the alleged errors and if leave was denied at the lower court, a copy of the order denying leave to appeal ([22 NYCRR] 1250.4[c]).

Q: After I file a notice of appeal, what must I do to have my matter heard and decided?

A: After an appeal is taken by filing a notice of appeal, it must be “perfected.” Perfecting an appeal means preparing and filing the requisite documents to place the case on the court’s calendar. The documents include a full record or appendix, a brief and a note of issue.

Q: How do I perfect an appeal?

A: There are several methods to perfect an appeal ([22 NYCRR] 1250.5). The two most common are the full record method and the appendix method.

Q: What is the difference between the full record method and the appendix method of perfecting an appeal and why would I choose to use one rather than the other?

A: The full record method requires the reproduction of all the materials that constitute the record at the trial level. It is used where the issues raised on appeal require the examination of all the trial materials. The appendix method is used where limited issues are raised on appeal and certain materials may be omitted from the printed appendix (CPLR 5528[a][5]).

Q: In what type of matters is a party allowed to proceed on the original record?

A: Rule 1250.5(e) lists the matters which may be perfected on the original record.

Q: When is an appellant required to subpoena a certified copy of the original record on appeal from the County Clerk?

A: A party perfecting on the appendix method or on the original record is required to serve a subpoena upon the clerk of the court of original instance (County Clerk in New York and Bronx Counties) requiring all documents constituting the record on appeal to be filed with the Clerk of the Appellate Division.

Q: Is there a required format for a full record or appendix on appeal? What should I include in a full record or appendix?

A: Yes. Rule 1250.7 sets forth the form and content of records and appendices.

Q: Is there a required format for a brief?

A: Yes. Rule 1250.8 sets forth the form and content requirements for an appellant’s brief, a respondent’s brief and a reply brief. Computer-generated appellant’s and respondent’s brief shall not exceed 14,000 words and reply and amicus curiae briefs cannot exceed 7,000 words.

Q: Are there special requirements for records and appendices on cross appeals and concurrent appeals?

A: Yes. The appealing parties are required to file a joint record or joint appendix and shall share equally the cost of the joint record or appendix.

Q: What is a note of issue?

A: A note of issue is a document, prepared by the appellant, which must be filed when perfecting an appeal (a sample note of issue is on the Court's website). The note of issue must state 1) the term of the court for which the appeal is noticed; 2) the date of the notice of appeal; 3) the date the judgment or order appealed from was entered; 4) the name of the justice who made the decision; 5) the nature of the appeal or cause; and 6) the index or indictment number and the Appellate Division case number, if any.

Q: How much time do I have to perfect an appeal?

A: An appeal must be perfected within six months of the date of the notice of appeal or an order granting leave to appeal.

Q: May I get an extension of the 6-month period within which to perfect?

A: Yes. A party who needs more time to perfect an appeal may obtain an enlargement of time to do so under Rule 1250.9(b):

- 1) An initial extension up to 60 days may be obtained by stipulation of the parties or the appellant may apply by letter, on notice to all parties.
- 2) An appellant may apply by letter, on notice to all parties, for a second extension up to an additional 30 days.
- 3) Thereafter, any further request for an extension of time to perfect must be made by motion.

The initial request must be made before the six-month perfection period expires and the second request must be made before the initial extension expires.

Q: What will happen if I do not perfect an appeal within six months (and any obtained extension)?

A: A civil matter not perfected with six months of the date of the notice of appeal will be deemed dismissed.

Q: What may I do to reinstate a dismissed appeal?

A: When an appeal has been deemed dismissed for failure to perfect, the appellant must file a motion to vacate the dismissal within one year of the date of the dismissal.

Q: What am I required to do when I am ready to perfect my appeal?

A: Within 14 days of filing a notice of appeal, self-represented litigants who voluntarily participate in e-filing and attorneys must register as an authorized e-filer with the New York State Courts Electronic Filing System (NYSCEF), and enter all information requested. Once you are ready to perfect the appeal, e-file the full record or appendix, brief and the note of issue stating the term for which the appeal is noticed.

Q: How many hard copies of the records or appendices and briefs must be served and filed?

A: Attorneys and self-represented litigants who participate in e-filing do not have to serve and file hard copies, unless requested by the Court. Exempt litigants and attorneys must serve one hard copy of the record or appendix and brief on each adversary and file the original and one unbound copy, with proof of service, with the Court. The same applies to answering and reply briefs.

Q: What is the schedule for filing a respondent's answering brief and an appellant's reply?

A: The schedule for the filing of respondent's brief and the reply brief for each term is set forth in the Court's annual calendar which is posted on the Court's website. Generally, a respondent must serve and file an answering brief at least 27 days before the first day of the term for which the matter has been noticed. The appellant may file a reply brief within nine days after service of the respondent's brief.

Q: Is a party allowed to include material as an addendum to a brief?

A: The only materials that may be included at the back of a brief are decisions, statutes, rules, regulations and other similar matter cited in the brief that are not published or are difficult to obtain.

Q: How may I withdraw a pending appeal?

A: (1) An unperfected appeal may be withdrawn by letter application to the court, with service on all parties. A copy of the notice of appeal and order or judgment appealed from shall be attached to the letter.

(2) An appeal that has been perfected may be withdrawn by leave of the court on a written stipulation of discontinuance signed by the parties or their attorneys. In the absence of a stipulation, the appellant may move for permission to withdraw the appeal.

Calendaring and Oral Argument

Q: How will I find out when my case is calendared?

A: The court publishes its term and day calendars in the New York Law Journal and on the court's website. The litigants are not directly notified. A party may call the general clerk's office at (212)-340-0422 on the Monday after reply briefs are due to obtain the date on which an appeal has been calendared.

Q: When are oral arguments held?

A: The court generally convenes in the courtroom of the courthouse located at 27 Madison Avenue in Manhattan at 2:00 p.m. on Tuesday, Wednesday and Thursday. On occasion, the court will hold a Friday session at 10:00 a.m. The schedule is posted on the Court's website.

Q: May I orally argue my appeal?

A: Oral argument is permitted on enumerated appeals. Oral argument is not allowed on non-enumerated matters, exception by permission of the court. (22 NYCRR) 600.15(a) sets forth which appeals are enumerated.

Q: How do I notify the court that I would like to orally argue my appeal?

A: A request for argument time is made by placing a notation on the upper right-hand corner of the cover of the main brief and the argument time requested.

Q: How much time is permitted for oral argument?

A: On the argument of an enumerated appeal, the maximum time permitted is 15 minutes per side. Any party may for good cause request additional argument time by written letter submitted before the day of argument.

Q: What will happen if I do not make an argument time request on the cover of my brief?

A: If an argument request is not made on the party's main brief, the appeal will be deemed submitted. The court will decide the appeal on the record and written briefs.

Q: May I adjourn an appeal that has been calendared?

A: Once an appeal is calendared for a specific date, it may only be adjourned by an application.

Motions

Q: What documents are required to file a motion?

A: Notice of motion and supporting affidavit/affirmation and exhibits, if any, which shall include a copy of 1) notice of appeal; 2) order/judgment sought to be reviewed, the decision, if any; 3) proof of service. Unless a litigant or an attorney is exempt from e-filing, motions must be e-filed and formatted as one bookmarked PDF.

Q: How many copies of motion papers are required?

A: If e-filed, no hard copies are required. If exempted from e-filing, only the original motion papers must be filed.

Q: Is there a fee to file a motion or cross-motion?

A: Yes. The filing fee for a motion is \$45 (CPLR 8022[b]). There is no fee to file a motion which seeks poor person relief pursuant to CPLR 1101(a).

Q: When are motions returnable?

A: Motions are returnable ONLY at 10:00 a.m. on a Monday unless otherwise ordered by the court or a justice the court. If Monday is a legal holiday, motions are returnable the next day (Tuesday).

Q: When do I have to file the motion papers with the Court?

A: Motion papers must be filed with the Court at least one week before the return date.

Q: Must I appear on the return date and may I argue my motion?

A: All motions are submitted; you do not have to appear on the return date. No argument is permitted.

Q: Can I seek an adjournment of a motion?

A: Yes. One adjournment for a period of 7 or 14 days is permitted upon written consent of the parties. If the consent of all the parties is not obtained, a party may make an application for an adjournment.

Q: How do I make a request or application for interim/emergency relief?

A: Applications for interim relief are handled in-person (unless the court excuses an appearance or grants a request to appear remotely). The moving papers – notice of motion papers or an order to show cause - shall include the information set forth in Section 1250.4(b)(1). The court has a form – Summary Statement on Application for Expedited Service and/or Interim Relief – which is also required. The form is available as a fillable PDF on the Court's website.

Q: Do I have to notify my adversary that I am making an application for interim relief?

A: Yes. Reasonable notice must be given to your adversary as to the day and time when the application will be presented. The Court will not entertain ex parte applications.