

FOR A CIVIL APPEAL:
INSTRUCTIONS FOR MOTION TO REARGUE OR FOR
LEAVE TO APPEAL TO THE
APPELLATE DIVISION, 2ND DEPARTMENT

- (A) Fill in the Names of the original parties -- exactly as they appear on the summons and complaint or on the petition.
- (B) Your name.
- (C) Date your supporting affidavit was sworn to before a notary public.
(see next page)
- (D) Fill in the capacity in which you appeared in the action or proceeding. You either appeared as a plaintiff, defendant, petitioner or respondent.
- (E) Same as (A).
- (F) 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. If service is by mail, the return date must be at least thirteen (13) days after service, by a third party, of a copy of all the papers upon your opponent if your opponent is not represented by an attorney. 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.** For instance, if you are going to have the papers served on October 1, the return date can be no earlier than October 14.

If service is done by personal service, such as 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. For example, if the papers are personally handed to your opponent or your opponent's attorney on October 1, the return date can be no earlier than October 9.

NOTE: The return date cannot be on Saturday, Sunday or a legal holiday.

- (G) The date of the order you wish to have reargued or appealed to the Appellate Division.

On a separate piece of paper write your affidavit in support of the motion which contains your reasons why the court should allow you to reargue your case, or, why the court should grant you leave to appeal to the Appellate Division. Start your affidavit by including the following information:

- a) the index number of the case in the lower court;
- b) the name of the lower court;
- c) whether the appeal is from an order or a judgment and the date of the order or judgment.

THE AFFIDAVIT MUST BE SWORN TO BEFORE A NOTARY PUBLIC.

Attach the completed forms to the affidavit in support of the motion and then attach a copy of the order or judgment appealed from, the notice of appeal and proof the notice of appeal was filed.

Have someone over 18 years of age and not a party to the action serve a copy of the within 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 is provided by submitting an affidavit of service sworn to before a notary public, 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 the party received the papers.

Attach the AFFIDAVIT OF SERVICE to the original Motion papers and mail them to:

**APPELLATE TERM
141 LIVINGSTON STREET 15th FLOOR
BROOKLYN, NY 11201**

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

NOTE: THERE ARE NO APPEARANCES REQUIRED ON THE RETURN DATE. ALL MOTIONS ARE BY SUBMISSION ONLY.

APPELLATE TERM OF THE SUPREME COURT
2nd, 11th & 13th AND 9th & 10th JUDICIAL DISTRICTS

**SAMPLE FORM FOR
INSTRUCTIONS
ONLY**

(A)

V.

NOTICE OF MOTION
TO REARGUE OR
FOR LEAVE TO APPEAL
TO THE APPELLATE
DIVISION, SECOND
DEPARTMENT

Please take notice that upon the annexed affidavit of (B)
dated the (C)day of _____, 20____ the (D) _____ will move this Court at a
term thereof to be held at the Courthouse of the Appellate Term of the
Supreme Court, (E) _____ Judicial Districts, at 141 Livingston Street,
15th Floor, Brooklyn, New York 11201, on the day of (F) _____, 20____ at 10:00
o'clock in the forenoon of that day or as soon thereafter as can be heard, for
an order granting reargument of the order of this court dated (G) _____, 20____
or, in the alternative for leave to appeal from said order to the Appellate
Division, Second Department.

Yours,

(sign your name)

PRINT your name
your address
including city, state and zip code
telephone number

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

NOTE: On the return date, all motions and proceedings are deemed submitted. Oral argument is not permitted (22 NYCRR 731.7 & 732.7).

**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 OR YOUR
OPPONENT'S ATTORNEY IF THEY ARE REPRESENTED. IT
MUST BE SWORN TO BEFORE A NOTARY PUBLIC.**

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

*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 Motion to Reargue or for Leave to Appeal to the
Appellate Division 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____

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.

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 by 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.