

FOR A CRIMINAL APPEAL:
INSTRUCTIONS FOR MOTION TO REARGUE

- (A) Fill in your name.
- (B) Your name.
- (C) Date your supporting affidavit was sworn to before a notary public. (see next page)
- (D) Same as (A).
- (E) 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 the District Attorney or other authorized representative. **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 the District Attorney or other authorized representative, 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.

(F) The date of the order you wish to have reargued.

NOTE: A MOTION FOR LEAVE TO APPEAL IS MADE DIRECTLY TO THE NEW YORK STATE COURT OF APPEALS IN ALBANY. THEY ARE LOCATED AT 20 EAGLE STREET, ALBANY, NEW YORK 12207-1095. THEIR TELEPHONE NUMBER IS 518-455-7700.

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. 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 the District Attorney or other authorized representative. 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**

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

**NOTICE OF MOTION
TO REARGUE**

V.

(A)

Defendant.

Please take notice that upon the annexed affidavit of (B) dated the (C)day of , 2 the defendant will move this Court at a term thereof to be held at the Courthouse of the Appellate Term of the Supreme Court, (D) Judicial Districts, at 141 Livingston Street, 15th Floor, Brooklyn, New York 11201, on the day of (E) ,2 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 (F) , 2 .

Yours,

(sign your name)

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

**TO: NAME OF DISTRICT ATTORNEY OR OTHER
AUTHORIZED REPRESENTATIVE**

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

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Plaintiff,

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Yours,

(sign your name)

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

**TO: NAME OF DISTRICT ATTORNEY OR OTHER AUTHORIZED
REPRESENTATIVE**

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 MAILES 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* _____ 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.