

INSTRUCTIONS FOR PERFECTING A CRIMINAL APPEAL

(Note: You must perfect your appeal within 90 days of the filing of the Notice of Appeal.)

- 1. Read these instructions carefully.**
- 2. If minutes were taken by an official court reporter, you must buy the minutes and see to it that the minutes are settled in the trial court. Then you must see to it that the clerk of the trial court files the entire record with this court. Until the record is filed in this court, we cannot accept your briefs. If there are no official minutes, then an affidavit of errors should have been filed by you in the trial court. If this has not been done, the appeal cannot be perfected.**
- 3. Fill out the enclosed forms.**
- 4. On a separate piece of paper, write out your statement, which is your story as to why this court should rule in your favor and sign it.**
- 5. Put the brief together in the following order:**
 - a. COVER SHEET,**
 - i. The caption remains in the same order as in the lower court. Under your name write “appellant” in the space provided. Your opponent is now the “respondent.”**
 - ii. Indicate the Appellate Term case number in the space provided at the top left corner.**
 - iii. Indicate whether you wish to submit your appeal to the court without oral argument (relying on your brief) or you wish to be present to argue on the date of the Ready Day calendar (you will be notified at a later time of the scheduled date).**
 - iv. Be sure to include your telephone number.**
 - b. STATEMENT PURSUANT TO RULE 5531 OF THE CPLR,**
 - c. PRELIMINARY STATEMENT PURSUANT TO 22 NYCRR 731.2(c)(3) OR 22 NYCRR 732.2(c)(3),**
 - d. YOUR STATEMENT,**
 - i. See #4 above.**
 - e. AFFIDAVIT OF SERVICE.**
 - i. Sample form attached.**
- 6. Make at least seven (7) copies of your brief.**
- 7. Have someone who is NOT a party to the action and who is over the age of 18 serve one (1) copy of the brief, and one (1) copy of the minutes upon the District Attorney of the County of your conviction or other official authorized by the District Attorney to prosecute the appeal. The person who serves the papers must then fill out an “Affidavit of Service” and have it sworn to before a notary public.**
- 8. The original and five copies of the appellant’s brief – with the Affidavit of Service attached to the original brief, shall be filed with this court, at the address listed below.**
- 9. Appellant’s briefs must be received in the Clerk’s office by 5 P.M. on the date they are due. Any briefs received after that time are late and will be returned.**

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

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

**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 _____ *Appellant's Brief* _____ 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 opposes the 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.