

**SUPREME COURT, CIVIL BRANCH,
NEW YORK COUNTY
60 Centre Street, New York, N.Y. 10007**

**HELP CENTER
Room 116
646-386-3025**

How to Take an Appeal

Note: All persons involved in a lawsuit should consult an attorney. This office gives you information, forms and instructions on court procedures. As an office of this court, we cannot give legal advice or act as your advocate.

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 is started. This summary does not, however, address how to prosecute the appeal in detail. **Anyone thinking about an appeal should consult an attorney.** Information about how an appeal is to be argued, how many copies of appellate briefs must be filed and similar matters may be obtained from the Appellate Division, First Department, 27 Madison Avenue, New York, New York 10010, telephone number 212-340-0400. The procedures of the Appellate Division are accessible at www.nycourts.gov/courts/ad1/index.shtml.

Electronic Filing

The New York State courts operate an electronic filing program, the New York State Courts Electronic Filing System (“NYSCEF”), through which documents are filed with the County Clerk and the court. Although e-filing is normally mandatory in Supreme Court, Civil Branch, New York County, an unrepresented party may opt out of e-filing by filing a certain form with the clerk. As this monograph concerns taking an appeal in a case pending in this court, it is assumed that the filer previously opted out of e-filing. Thus, this monograph addresses only the steps to be taken in a paper case.

What is an Appeal?

An appeal is a procedure by which a party in one court may seek to have a judgment or order overturned in 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 **“respondents”** 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 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 or the issue in question, 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, New York County is, almost without exception, the Appellate Division, First 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, New York County should be prosecuted in the Appellate Division, First 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. Or 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 or the verdict of a jury.

The mere signing of an order or judgment does not set running the time period during which an appeal must be instituted (see below for the deadline). Generally speaking, an appeal may only be taken from an order or judgment that has been **entered**. 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 (**notice of entry**). 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. The stamp reads "Filed NY County Clerk [date of entry]."

In contrast with most orders, most judgments are not automatically "entered." The prevailing party must appear before the Judgment Clerk of the County Clerk (Room 141B, in the basement) 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, even if

they are not final. CPLR 5701(a)(2). An order is 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;
- (vii) in certain cases determines a statutory provision of the State to be unconstitutional; or¹
- (viii) grants a motion to reargue or determines a motion for leave to renew.

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

Usually, the party who succeeded in this court 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 unrepresented person is advised as strongly as words permit to pay close attention to the calendar when thinking about an appeal and to proceed quickly.**

How to Take an 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 is a copy of a form of notice of appeal.

To carry out the required service step, a copy of the notice of appeal must be served upon every other party to the lawsuit. In this instance, service may be made by regular first class U.S. mail; by registered or certified U.S. mail, though either form of mailing is not required; by personal delivery

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

² The 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.

to the attorneys for each of the parties; or by personal delivery to any other parties not represented by counsel. See also CPLR 2103. These papers must be served by someone who is over 18 years of age and is not a party to the case. The party appealing (the appellant) may not himself or herself serve the papers.

The appellant should also arrange for service in the same manner of a document known as a **pre-argument statement** (see CPLR 5531). This provides certain information about the case in which the appeal is being taken. The statement will be transmitted to the Appellate Division.

The person who has effectuated service must complete an affidavit of service which describes when service was made and upon whom service was made.

As stated, the appellant must also file the notice of appeal with the court. The filing is made with the County Clerk in Room 141 B at 60 Centre Street (the filing is not made with the Appellate Division). The appellant must file with the County Clerk two sets of documents, each in a legal (blue) back: (1) an original notice of appeal, to which must be annexed the original affidavit of service; and (2) a second original notice of appeal, the pre-argument statement; a copy of the order or judgment from which the appeal is being taken, and an affidavit of service.

At the time of filing, the appellant must pay a filing fee of \$65 to the County Clerk (payable by cash, Visa/Mastecard/American Express credit card, or money order payable to the New York County Clerk). In New York County, if you received a poor person order from the Supreme Court at the beginning of your case, you will not have to pay the \$65 fee for filing a notice of appeal. Otherwise, this fee, as well as the costs associated with **“perfecting” the appeal** in the Appellate Division (explained below), may be avoided only if the appellant obtains a **poor person order from the Appellate Division, not from this court.** It is not certain that the Appellate Division will grant a poor person order in any particular case. Some time is required to obtain such an order. Therefore, an appellant seeking a poor person order must do so quickly, to allow time to obtain the order and file the notice of appeal in a timely manner. As mentioned earlier, 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 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 of 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 assets 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 effectiveness 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 (initiating the appellate process) in the manner described above, the appealing party must pursue the appeal in a defined manner, which 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 of those proceedings so that the Appellate Division can have before it and can review a record of what transpired in the trial court. Most decisions issued by the Supreme Court, Civil Branch, New York 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, the appealing party must serve on the stenographer a written request for the transcript and must deposit the fee for the transcript, which is calculated based upon the length of the transcript. The office of the Court Reporters is Room 420 at 60 Centre Street and the phone number is 646-386-3050. **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. 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 interest 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. 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. CPLR 5525(d).

The appealing party must also prepare and submit the “record on appeal.” The appellant should review Article 55 of the Civil Practice Law and Rules and the rules of the Appellate Division, First Department for additional information about the record, deadlines for briefs, and other things. The appellant may also contact the office of the Appellate Division, First Department, 212-340-0400, for additional information. See also

www.nycourts.gov/courts/1jd/supctmanh/litigation_functions.shtml

[Print in black ink all areas in bold letters. Attach a copy of the order/judgment. Serve with a copy of this notice on all parties.]

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

-----X

Index Number

_____,
[fill in name(s)] Plaintiff(s)/Petitioner(s),

- against-

NOTICE OF ENTRY

_____,
[fill in name(s)] Defendant(s)/Respondent(s).

-----X

PLEASE TAKE NOTICE that the attached is a true copy of an **[circle one]** order / judgement in this matter that was entered in the office of the County Clerk of the Supreme Court, New York County, on **[fill in date of entry]** the ____ day of _____, 20____ .

Dated: _____, 20____

[date signed]

Plaintiff / Defendant
[sign your name and circle one]

[print your name]

[your address, telephone number]

To: **[Name, address and telephone number for each attorney for a party or the self-represented party in the case.]**

[Print in black ink all areas in bold letters. Attach a copy of the order/judgment. Serve with a copy of this notice on all parties.]

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

-----x

Index Number

[fill in name(s)] Plaintiff(s)/Petitioner(s),

- against-

NOTICE OF APPEAL

[fill in name(s)] Defendant(s)/Respondent(s).
-----x

HON. _____
[name of assigned Justice]

PLEASE TAKE NOTICE that the **[circle one]** plaintiff(s) / defendant(s) hereby appeal(s) to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department from an **[circle one]** order / judgement entered in this case in the office of the Clerk of the New York County on **[fill in date of entry]** the _____, 20____, which **[circle one]** order / judgement [describe the nature and effect of the order or judgement]

and this appeal is taken from **[Specify below whether the appeal is taken from the entire order / judgement, or only a portion of the order / judgement. Check box that applies.]**

- each and every part of that document as well as from the whole thereof; or
 the portions of the document that **[If less than all of the order or judgement is being appealed from, identify the parts appealed from]** _____

Dated: _____, 20____
[date signed]

Plaintiff / Defendant
[sign your name and circle one]

[print your name]

[your address, telephone number]

To: Hon. Milton Tingling
County Clerk, New York County

[List name, address, and telephone number for each attorney for a party or the self-represented party in the case.]

Attorney for _____
[name of party]

Attorney for _____
[name of party]

Attorney for _____
[name of party]

Attorney for _____
[name of party]

Supreme Court of the State of New York

Appellate Division: 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	<input type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	Filing Type	
<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"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<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.
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgment <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment <input type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment <input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Choose Court	County: Choose County
Dated:	Entered:
Judge (name in full):	Index No.:
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
Prior Unperfected Appeal and Related Case Information	
<p>Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.</p> <p>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:</p>	
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:
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court: Choose Court	County: Choose County
Judge (name in full):	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
<p>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.</p>	

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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4			
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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

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

Attorney/Firm Name:

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City:

State:

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Attorney/Firm Name:

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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):

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

-----x

Index Number

[fill in name(s)] Plaintiff(s)/Petitioner(s),

- against-

AFFIDAVIT OF SERVICE AFTER
COMMENCEMENT OF LITIGATION

[fill in name(s)] Defendant(s)/Respondent(s).

-----x

STATE OF NEW YORK

COUNTY OF _____ ss:

I, [name of person who served papers] _____,
being duly sworn, depose and say:

I am over 18 years of age and am not a party to this case.

I reside at [your address] _____

On [date of service] _____, 20__, at [time of day] _____ AM/PM, I served a true copy of
the following papers [identify papers served] _____,
in the following manner: [check box that applies]:

Personal Service By personally delivering the papers to [identify person served] _____
_____ at [address] _____

The individual I served had the following characteristics [check one box in each category]

- | <u>Sex</u> | <u>Height</u> | <u>Weight</u> | <u>Age</u> |
|---------------------------------|--------------------------------------|---|--|
| <input type="checkbox"/> Male | <input type="checkbox"/> Under 5' | <input type="checkbox"/> Under 100 lbs. | <input type="checkbox"/> 21 - 34 years |
| <input type="checkbox"/> Female | <input type="checkbox"/> 5'0" - 5'3" | <input type="checkbox"/> 100 - 130 lbs. | <input type="checkbox"/> 35 - 50 years |
| | <input type="checkbox"/> 5'4" - 5'8" | <input type="checkbox"/> 131 - 160 lbs. | <input type="checkbox"/> 51 - 61 years |
| | <input type="checkbox"/> 5'9" - 6'0" | <input type="checkbox"/> 161 - 200 lbs. | <input type="checkbox"/> Over 61 years |
| | <input type="checkbox"/> Over 6' | <input type="checkbox"/> Over 200 lbs. | |

Color of skin [describe] _____ Hair color _____

Other identifying features, if any [describe]: _____

Mail By mailing the same in a sealed envelope, with postage prepaid 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) indicated below:

Overnight Delivery Service By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. The delivery service used was [name of delivery service] _____

[Name(s) and address(es) of person(s) served by mail/overnight delivery]:

Sworn to before me this

_____ day of _____, 20__

[sign your name before a Notary]

Notary Public

[print your name]