

Civil Appeals to the Albany County Court

The following information is intended to provide a general overview of an appeal of a decision or judgment of a local civil court to the Albany County Court. For specific procedural information, statutory language and court rules concerning the appellate process, please refer to the relevant legal sources cited in the passages on the attached sheet, or you may wish to consult with an attorney to represent you on the appeal.

The County Court Clerk's Office does not provide legal forms for use in the appeal process. The required paperwork and documentation must be obtained and prepared by the appellant.

Expenses related to an appeal may include, but are not limited to, a \$30. fee charged in the local court upon filing a Notice of Appeal, as well as costs associated with obtaining the transcripts of the local court proceedings. Individuals who are eligible for Poor Person Status may make an application to have the filing fee waived in the local court.

Filing a Notice of Appeal does not automatically prevent an adversary from taking steps to enforce (collect) the judgment of the local court. You can seek a stay of the judgment pending determination of the appeal by filing an undertaking (bond or cash payment) with the local court.

County Court has no authority to rehear or retry a case and its review is limited in scope to a consideration of only the facts and evidence presented at the local court proceeding.

Generally, when deciding an appeal, County Court will consider only whether the local court judge correctly applied the law in the case. An appeal of a Small Claims Court case will be determined upon the basis of whether "substantial justice" was done between the parties.

Please note that there are strict time limitations imposed for filing a Notice of Appeal and "perfecting" (completing, serving and filing the required documentation) the appeal with the County Court as more particularly set forth in the applicable law and court rules.

Note: Court personnel are not permitted to give legal advice

Generally, the following procedure is applicable when taking and perfecting a civil appeal to the Albany County Court:

Legal References cited in the following passages:

- a) New York Civil Practice Law and Rules (CPLR)
- b) McKinney's New York Rules of Court (22 NYCRR 202.55)
- c) Uniform City Court Act (UCCA)
- d) Uniform Justice Court Act (UJCA)

1. An appeal is taken (commenced) by serving on the adverse party a **Notice of Appeal** *and* filing it in the local court in which the judgment or order is entered (CPLR §5515). The notice shall indicate the party taking the appeal, the judgment or order appealed from and the court to which the appeal is taken.

2. A \$25. fee is charged upon the filing of a Notice of Appeal with the local civil court. An undertaking (cash payment or bond) may be filed in the local court (CPLR §5519) which will stay the enforcement of the local court judgment pending determination of the appeal. Please consult the local court clerk's office for specific information regarding the filing of an undertaking.

3.
 - a) The minutes (stenographic *or* electronic recording) of the local court proceedings are transcribed upon the request of the appellant. Please note there is a cost to the appellant to have the transcripts produced by the court reporter which will vary by the length of the proceedings. All parties will review the record and either agree to stipulate to the accuracy of the transcript of the proceedings or if they disagree, the record will be settled by court order. The appellant serves a copy upon the respondent(s). A hearing regarding the settlement of the record may or may not be conducted (Article 1700 UCCA/UJCA).

 - b) Where there was no stenographic or electronic record made of the local court proceedings, the local court clerk's office will certify the court's record and forward it to the County Court as part of their **Return on Appeal** (the local court file).

4. The local court clerk's Return on Appeal (UCCA/UJCA §1704) includes:
 - Notice of Appeal
 - Summons *or* Notice of Petition
 - Pleadings
 - Evidence
 - Judgement, judgment roll or order
 - Opinion of court (if any)
 - All other necessary papers and proceedings
 - Judge's endorsement settling the record or stipulation settling the record
 - Stenographic/electronic transcript of the minutes (if proceedings recorded)
 - Court Clerk's certification of the transmitted papers
 - Undertaking (if posted)

5. The Return is submitted to the Albany County Court by the local court clerk together with the transcript(s), if any, or the certified record of the court.
6. The County Court will notify all parties of the assigned index number (CPLR §8018(b)(4)) and acknowledge receipt of the local court's Return on Appeal (22 NYCRR 202.55).
7. Within 20 days of the County Court's receipt of the Return on Appeal from the local court, the appellant must schedule the appeal for submission to the assigned judge at the next Special Term of the County Court. A **Notice of Argument** and **Statement of Contentions or Appellant's Brief** should be filed (with proof of service) with the County Court Clerk and copies served upon the respondent indicating that the case will be submitted at a Special Term Calendar Call to be held on the date noted therein. Special Term calendar dates may be obtained from the County Court Clerk's Office in Room 102 in the County Courthouse. Notices of Argument must allow at least 14 days notice of the calendar date to the respondent (22 NYCRR 202.55(a)).
8. The respondent has 12 days from the date of receipt of the Appellant's Brief or Statement of Contentions to file a response thereto (22 NYCRR 202.55(a)). It is the responsibility of the respondent to serve a copy of their answering papers upon the appellant after filing the original copy with the County Court Clerk (with proof of service).

NOTE: In Albany County Court, an appeal is usually decided on the submitted papers without requiring an appearance in court by the parties. Should the parties desire and agree to argue the appeal, a request for oral argument should be submitted with the Notice of Argument. If the request is granted by the assigned judge, oral argument will be scheduled for a future date and the parties will be notified by chambers.

Upon motion and for good cause shown, a County Court judge may grant an extension of time in which to notice the appeal for calendaring (22 NYCRR 202.55(c)).

A respondent may make a motion in County Court to dismiss the appeal for failure to perfect within the time period set forth by statute (22 NYCRR 202.55(b)).

9. The appeal will be assigned to a County Court judge when the Notice of Argument and Appellant's Brief or Statement of Contentions is filed with the County Court Clerk. There are many proceedings, civil and criminal, pending before the Albany County Court judges. The appeal will be submitted to the assigned judge in the order in which it is received by the Court Clerk and a decision will be rendered after due deliberation by the court.
10. When the County Court judge has decided the appeal, the original decision and all papers considered on the appeal will be filed with the Albany County Clerk's Office by the County Court Clerk. Copies of the decision, together with a **Notice of Entry** indicating the date of filing with the County Clerk, will be forthwith provided to all parties including the clerk of the local court from which the appeal was taken.