

**THE QUICK GUIDE SERIES**

**New York Supreme Court**

**APPELLATE DIVISION—THIRD DEPARTMENT**

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# GUIDELINES

## APPELLATE DIVISION—THIRD DEPARTMENT

*Albany, Columbia, Greene, Rensselaer, Schoharie, Sullivan, Ulster,  
Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery,  
Saint Lawrence, Saratoga, Schenectady, Warren, Washington,  
Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego,  
Schuyler, Tioga and Tompkins*

## INTRODUCTION

This serves only as a quick reference guide for filing Briefs, Records on Appeal, and Appendices for civil appeals. **THE QUICK GUIDE SERIES** outlines procedures on how documents should be sequenced, paginated, indexed, titled, printed and bound. In addition, it contains formatting requirements for briefs as well as information on service and filing deadlines. Please call Record Press for clarification, and our expert paralegal staff will assist you. For a comprehensive reference, consult the actual rules of the court. The rules of the Appellate Division—Third Department cited herein appear in the *New York Supreme Court Rules*, Article 3, §§ 800-800.24. For general appellate procedures, also consult the *Civil Practice Law and Rules*, §§ 5501-5532, 5601-5615, 5701-5713 and 8022.

July 2009  
Record Press Inc.

Natasha R. Monell, Esq.  
*Staff Counsel*

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<b>THE QUICK GUIDE SERIES</b>	
<b>NEW YORK SUPREME COURT</b>	<b>UNITED STATES COURT OF APPEALS</b>
Appellate Division—First Department	First Circuit
Appellate Division—Second Department	Second Circuit
Appellate Division—Third Department	Third Circuit
Appellate Division—Fourth Department	Fourth Circuit
Appellate Term—First Department	Fifth Circuit
Appellate Term—Second Department	Sixth Circuit
	Seventh Circuit
	Eighth Circuit
	Ninth Circuit
	Tenth Circuit
	Eleventh Circuit
	Federal Circuit
	District of Columbia Circuit
<b>NEW YORK STATE COURT OF APPEALS</b>	<b>UNITED STATES SUPREME COURT</b>

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## **FILING THE NOTICE OF APPEAL**

### **CPLR 5513 Time to Take Appeal**

The Notice of Appeal or Motion for Leave to Appeal shall be filed within 30 days after service of a copy of the Order or Judgment with Notice of Entry. The Notice of Cross-Appeal shall be filed within 10 days after service of the first Notice of Appeal.

### **§ 800.24 Taking an Appeal**

The Notice of Appeal is filed with the Clerk of the Court of original instance. It is the responsibility of the Clerk to transmit the Notice of Appeal to the appropriate department of the Appellate Division.

**File:** 1 original and 2 copies  
Notice of Appeal, Pre-Calendar Statement  
Order or Judgment Appealed From with Notice  
of Entry, Proof of Service

**Serve:** 1 copy

**Filing fee:** \$65

### **§ 800.24 Pre-Calendar Statement**

1. The title of the underlying action or proceeding and the date of commencement.
2. The full names of the original parties and any change in the parties.
3. The names, addresses, telephone and facsimile numbers of counsel for Appellant and Respondent.
4. The Court, Judge or Justice, and county from which the appeal is taken, together with the index number and the request for judicial intervention (RJI) number.
5. The specific nature and object of the underlying action or proceeding.
6. A clear and concise statement of the issues to be raised on the appeal, the grounds for reversal or modification, and the specific relief sought on the appeal.
7. Whether there is another appeal or related action or proceeding, briefly describing same.

## **TRANSCRIPT OF PROCEEDINGS**

### **§ 800.6(c) Preparation and Settlement of Transcript**

It is the Appellant's duty to serve upon the Court Reporter a Request for a Transcript of the Proceedings. Within 15 days after receiving the transcript from the Court Reporter, the Appellant shall make any proposed amendments and serve them with a Notice of Settlement and a copy of the transcript upon the Respondent. Within 15 days after such service, the Respondent shall make any proposed amendments or objections to the proposed amendments of the Appellant and serve them upon the Appellant. The original transcript shall be corrected by the Appellant.

Pursuant to CPLR 5525(c), the Appellant shall include on perfecting the appeal, either a Stipulation Settling the Transcript or Order Settling the Transcript at the end of the Record on Appeal.

## **PERFECTING THE APPEAL**

The date of the Notice of Appeal or the date of entry of an Order Granting Leave to Appeal determines the date by which the appeal must be perfected. An appeal is said to be “perfected” when the Record and Appellant’s Brief are collectively filed.

“When is my Record due?” Pursuant to § 800.9(a), the Record on Appeal shall be filed within 60 days from the date of service of the Notice of Appeal. However, § 800.12 further states that an appeal shall be deemed abandoned unless “perfected” within **nine months** from the date of the Notice of Appeal. The majority of appeals are perfected on the 9 month rule. Opposing counsel may move to dismiss the appeal based on the 60 day rule. However, it is our experience that these motions are rarely, if ever, granted, and usually an Order is issued that puts the Appellant “under order” to perfect by a specific date.

Pursuant to § 800.9(b) and (c), the Clerk shall mail to each Respondent a scheduling memorandum which shall require Respondent to serve and file Respondent’s Brief within 45 days from the date of the scheduling memorandum or within such shorter time as the scheduling memorandum may direct. Appellant’s Reply Brief shall be filed within 10 days after service of Respondent’s Brief.

Pursuant to § 800.9(e), in the case of cross-appeals, unless otherwise directed by order of the Court made pursuant to a motion on notice, the Plaintiff shall be Appellant. The Answering Brief shall be served and filed within 30 days after service of the first Brief. The Appellant’s Reply Brief shall be served and filed within 10 days after service of the Answering Brief. A Reply Brief to the cross-appeal may be served and filed within 10 days after service of Appellant’s Reply Brief.

## **COURT CALENDAR**

### **§ 800.11**

Appeals shall be placed on the general calendar in the order perfected and, subject to the discretion of the Court, will be heard in order. The Clerk shall give counsel notice regarding the due date for the Respondent’s Brief and the date on which the appeal will be argued.

## **RECORD OR APPENDIX**

### **§ 800.4 The Record v. Appendix Method**

A Record on Appeal consists of all documents before the Judge at the time the Order or Judgment Appealed From was rendered. An Appendix consists of excerpts of the record that are necessary for full consideration of the questions presented for review.

It is best to proceed by the Record on Appeal method in the Appellate Division—Third Department. If the Appendix method is used by the Appellant, the Appellant shall still file with the Clerk, along with 10 copies of the Appendix, a single bound copy of the papers constituting the Record on Appeal, prepared with table of contents, page numbers and headings. One copy of the bound Record shall also be served to opposing Counsel along with 2 copies of the Appendix.

Pursuant to § 800.7(b), when the Appendix method is used, the single copy of the Record must be stipulated to by the parties or settled by the judge before whom the proceedings were held. If the Respondent fails to make any proposed amendments or objections to the Record within 20 days after service of it upon him, the Record, certified as correct by the Appellant, shall be deemed correct and may be filed with an Affirmation of Compliance. The Appendix may be bound with the Brief if it is not voluminous.

Pursuant to § 800.8(c), the Respondent may also file an Appendix containing relevant portions of the record omitted from Appellant's Appendix.

## **§ 800.5 Specifications for a Record or Appendix**

- Overall Size:** 8½ × 11
- Pagination:** Pages shall be numbered consecutively, centered at the top. Folios in an Appendix shall be preceded by the letter “A”. Records shall be divided into volumes not to exceed one and one-half inches in thickness.
- Page Heading:** Each document shall have a page heading on the first page, with a brief description of the document together with the page numbers of the first and last pages thereof.
- Table of Contents:** The Record or Appendix shall contain a table of contents listing in order and briefly describing the papers included. The part relating to transcript of testimony shall separately state as to each witness the page at which direct, cross, redirect and recross examination begins. The part relating to exhibits shall briefly describe each exhibit and shall indicate the page where offered or admitted in evidence, and whether the exhibit has been omitted from the Record or Appendix.
- Cover:** The Record or Appendix shall have a stiff cover and be bound on the left hand side. There are no color requirements for the cover. The cover shall contain the original County Court Clerk's Index Number, the Third Department Case Number, the appellate caption and court, the title of the document, the names, addresses and telephone numbers of the attorneys for all parties. An Appellate Division—Third Department Case Number shall be assigned by the Clerk upon receipt of the Appellant's papers.
- Copies:** File 10 Records, or 1 Record and 10 Appendices  
Serve 2 Records, or 1 Record and 2 Appendices

## **§ 800.5 Contents of a Record on Appeal**

### ***From a Final Judgment:***

Table of Contents  
Statement Pursuant to CPLR 5531  
Notice of Appeal  
Judgment Appealed From  
Judgment Roll (Pleadings)  
Transcript of Proceedings (if any)  
    (No Condensed Transcript Allowed)  
Exhibits (All exhibits, whether omitted from the Record  
    or not shall be listed on the table of contents)  
Any Other Reviewable Order or Opinion in the Case  
Any Post-Trial Motions  
Stipulation Settling the Transcript or Order Settling the Transcript  
Stipulation Dispensing with Reproduction of Exhibits  
Certification Pursuant to CPLR 2105 or  
    Stipulation Pursuant to CPLR 5532

### ***From an Interlocutory Order:***

Table of Contents  
Statement Pursuant to CPLR 5531  
Notice of Appeal  
Order Appealed From  
Motion Papers/Order to Show Cause  
Affidavits in Support with any Exhibits Annexed Thereto  
Affidavits in Opposition with any Exhibits Annexed Thereto  
Reply Affidavits with any Exhibits Annexed Thereto  
Certification Pursuant to CPLR 2105 or  
    Stipulation Pursuant to CPLR 5532

## **§ 800.8(b) Mandatory Contents of an Appendix**

Table of Contents

Notice of Appeal

Order or Judgment Appealed From

Any Pleadings Relevant to the Issues Being Raised on Appeal

Any Other Relevant Portions of Motions, Opinions,  
Transcripts or Exhibits (No Condensed Transcript Allowed)

Note: Pursuant to § 800.7(b), when the appendix method is used, the single copy of the record must be stipulated by the parties or settled by the judge before whom the proceedings were held. The procedure for settlement or a single copy of the record shall be in the manner provided by CPLR 5525(c).

### **STATEMENT PURSUANT TO CPLR 5531**

1. The index number of the case is \_\_\_\_\_.
2. The full names of the original parties are \_\_\_\_\_, Plaintiff(s) and \_\_\_\_\_, Defendant(s). There has been no change in the parties (or describe any change).
3. The action was commenced in \_\_\_\_\_ Court,  
\_\_\_\_\_ County.
4. The action was commenced on \_\_ \_\_\_\_\_, 20\_\_, by service of summons and complaint; the answer of Defendant was served on \_\_ \_\_\_\_\_, 20\_\_, (continue to detail service of all pleadings).
5. The nature and object of the action are as follows:  
  
(describe)
6. This appeal is from an order (or judgment, decree, etc.) of Honorable \_\_\_\_\_, entered in favor of \_\_\_\_\_, against \_\_\_\_\_ on \_\_ \_\_\_\_\_, 20\_\_, which (describe order).
7. (Whichever is applicable)  
  
The appeal is on a full reproduced record.  
  
The appeal is on the appendix method.  
  
Leave to prosecute the appeal on the original record was granted by the Court.

## **BRIEFS**

### **§ 800.8(a) Specifications for Briefs**

- Overall Size:** 8½ × 11
- Cover:** All briefs shall have a stiff cover and be bound on the left hand side. There are no color requirements for the cover. The cover shall contain the original County Court Clerk's Index Number, Third-Department Case Number, the name of the attorney who will argue or submit the brief, the time requested for oral argument, the appellate caption and court, title of the document, the names, addresses and telephone numbers of the attorneys for the party. An Appellate Division—Third Department Case Number shall be assigned by the Clerk upon receipt of the Appellant's papers.
- Typesize:** Briefs shall be set in a type of no less than 12 point. Footnotes should be at least 10 points. Lines are double spaced. The margins shall be at least one inch.
- Page Limitation:**
- |                    |    |
|--------------------|----|
| Appellant's Brief  | 70 |
| Respondent's Brief | 35 |
| Reply Brief        | 15 |
- Signed Original:** Briefs must be signed by the attorney.
- Copies:** File 10 and Serve 2

### **CPLR 5528 Appellant's Brief**

Table of Contents  
Questions Presented  
Nature of the Case  
Argument  
Conclusion

### **CPLR 5528 Respondent's Brief**

A Respondent's brief may omit the Questions Presented and Nature of the Case unless the Respondent disagrees with statements made by the Appellant, in which case a Counterstatement of Questions Presented and Nature of the Case shall be made. After the Record and Appellant's Brief have been filed, the Clerk shall mail to the Respondent a scheduling memorandum which shall require Respondent to serve and file a brief within 45 days (or earlier) from the date of the scheduling memorandum.

### **CPLR 5528 Reply Brief**

A Reply Brief shall contain a Table of Contents and Argument without repetition of the arguments made in the main brief. The Reply Brief is due within 10 days after service of the Respondent's Brief.

## **FEES**

### **§ 800.23**

Upon filing a Record on Appeal, the Appellant shall pay the Appellate Division a filing fee of Three Hundred and Fifteen Dollars (\$315.00).

There is also a Forty-Five Dollar (\$45) fee upon filing a motion or cross-motion with respect to a civil appeal or special proceeding.

## **FILING AND SERVICE**

All papers may be filed and served either by personal delivery or by mail. If sent by mail, they shall be considered filed or served only upon receipt.

## **ORAL ARGUMENT**

### **§ 800.10**

The attorney for each party shall indicate on the brief cover, whether argument is desired and the amount of time requested. The Clerk shall give the attorney notice of the date on which a case will be argued.

## **SPECIAL PROCEEDINGS**

See specific Appellate Division—Third Department rules regarding Worker's Compensation Appeals, and review proceedings under Education Law, Labor Law, Public Health Law and Tax Law.

**SAMPLE COVER**

*To Be Argued By:*

*Time Requested: \_\_ Minutes*

Appellate Division — Third Department Case No. 00000

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**New York Supreme Court**

APPELLATE DIVISION—THIRD DEPARTMENT

—◆◆◆—  
RECORD PRESS, INC.,

*Plaintiff-Appellant,*

—against—

ALL OTHER PARTIES,

*Defendants-Respondents.*

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**BRIEF FOR PLAINTIFF-APPELLANT**

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LAW FIRM

*Attorneys for Plaintiff-Appellant*

Address

Phone

*Of Counsel:*

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\_\_\_\_\_ County Clerk's Index No. 000/00

## **SUPREME COURT LISTINGS**

Supreme Court – Albany County  
16 Eagle Street, Room 102  
Albany, New York 12207  
518-285-8989

Supreme Court – Columbia County  
401 Union Street  
Hudson, New York 12534  
518-828-7858

Supreme Court – Greene County  
320 Main Street  
Catskill, New York 12414  
518-943-2230

Supreme Court – Rensselaer County  
Congress & Second Street  
Troy, New York 12180  
518-285-5025

Supreme Court – Schoharie County  
290 Main Street  
P.O. Box 669  
Schoharie, New York 12157  
518-295-8342

Supreme Court – Sullivan County  
414 Broadway  
Monticello, New York 12701  
845-794-4066

Supreme Court – Ulster County  
285 Wall Street  
Kingston, New York 12401  
845-340-3377

Supreme Court – Clinton County  
County Government Center  
137 Margaret Street  
Plattsburgh, New York 12901  
518-565-4715

Supreme Court – Essex County  
7559 Court Street, P.O. Box 217  
Elizabethtown, New York 12932  
518-873-3370

Supreme Court – Franklin County  
355 W. Main Street, P.O. Box 70  
Malone, New York 12953  
518-481-1748

Supreme Court – Fulton County  
Fulton County Office Building  
223 W. Main Street, Room 214  
Johnstown, New York 12095  
518-736-5539

Supreme Court – Montgomery County  
58 Broadway  
P.O. Box 1500  
Fonda, New York 12068  
518-853-4516

Supreme Court – Saint Lawrence County  
48 Court Street  
Canton, New York 13617  
315-379-2219

Supreme Court – Saratoga County  
30 McMaster Street  
Ballston Spa, New York 12020  
518-885-2224

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612 State Street  
Schenectady, New York 12305  
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1340 State Route 9  
Lake George, New York 12845  
518-761-6355

Supreme Court – Washington County  
383 Broadway  
Fort Edward, New York 12828  
518-746-2170

Supreme Court – Broome County  
P.O. Box 1766, Room 204  
Binghamton, New York 13902  
607-778-2448

Supreme Court – Chemung County  
203 Lake Street, 6th Floor  
P.O. Box 588  
Elmira, New York 14902  
607-737-2847

Supreme Court – Chenango County  
5 Court Street  
Norwich, New York 13815  
607-337-1457

Supreme Court – Cortland County  
46 Greenbush Street, Suite 301  
Cortland, New York 13045  
607-753-5013

Supreme Court – Delaware County  
3 Court Street  
Delhi, New York 13753  
607-746-2131

Supreme Court – Madison County  
P.O. Box 545  
North Court Street  
Wampsville, New York 13163  
315-366-2267

Supreme Court – Otsego County  
197 Main Street, P.O. Box 710  
Cooperstown, New York 13326  
607-547-4364

Supreme Court – Schuyler County  
105 9th Street, Unit 35  
Watkins Glen, New York 14891  
607-535-7760

Supreme Court – Tioga County  
16 Court Street, P.O. Box 307  
Oswego, New York 13827  
607-687-0544

Supreme Court – Tompkins County  
320 N. Tioga Street, P.O. Box 70  
Ithaca, New York 14851  
607-272-0466

County Court – Hamilton County  
P.O. Box 780  
Indian Lake, New York 12842  
518-548-3211

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