

THE QUICK GUIDE SERIES

New York Supreme Court

APPELLATE DIVISION—FOURTH DEPARTMENT



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GUIDELINES

APPELLATE DIVISION—FOURTH DEPARTMENT

*Herkimer, Jefferson, Lewis, Oneida, Onondaga, Oswego,
Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne,
Yates, Allegany, Cattaraugus, Chautauqua, Erie, Genesee,
Niagara, Orleans and Wyoming*

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—Fourth Department cited herein appear in the *New York Supreme Court Rules*, Article 4, §§ 1000-1000.19. For general appellate procedures, also consult the *Civil Practice Law and Rules*, §§ 5501-5532, 5601-5615, 5701-5713 and 8022.

April 2004
Record Press Inc.

Natasha R. Monell, Esq.
Staff Counsel

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

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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.

CPLR 5515 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, Order or Judgment Appealed From
with Notice of Entry, Proof of Service

Serve: 1 copy

Filing fee: \$65

TRANSCRIPT OF PROCEEDINGS

CPLR 5525(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.

The Appellant shall include on perfecting the appeal, either an Affirmation of Compliance, or a Stipulation Settling the Transcript at the end of the Record on Appeal or the Appendix.

PERFECTING THE APPEAL

An appeal is said to be “perfected” when the Record and Appellant’s Brief are collectively filed.

“When is my Record due?” Pursuant to § 1000.2 and § 1000.12, all appeals shall be perfected within 60 days of service of the Notice of Appeal. An appeal not perfected within the 60 day period is subject to dismissal on motion by opposing counsel. It is our experience that these motions are rarely, if ever, granted. An appeal not perfected within **nine months** of service of the Notice of Appeal is subject to dismissal without motion. The majority of appeals are perfected on the 9-month rule. Respondent’s Brief shall be filed and served within 30 days of service of the Appellant’s Brief. Appellant’s Reply Brief shall be filed within 10 days after service of the Respondent’s Brief.

Pursuant to § 1000.4(b), when two or more parties take an appeal from a single order or judgment, or two or more orders or judgments, the appeals may be consolidated on motion or on stipulation of the parties. When one party appeals from two or more orders or judgments in the same action, the party may move to consolidate the appeals.

COURT CALENDAR

§ 1000.10

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 issue a scheduling order that will specify the term of the Court for which the matter has been scheduled and set a deadline for the service and filing of Respondent’s Brief and Appellant’s Reply Brief.

RECORD OR APPENDIX

§ 1000.3 The Record v. Appendix Method

The Record on Appeal consists of all documents before the Judge at the time the Order or Judgment Appealed From was rendered. The 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—Fourth 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. The Appendix may be bound with the Brief if it is not voluminous.

§ 1000.4(a)(3) 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”.
- 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. No condensed transcript allowed. 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. The cover of the Record or Appendix shall be white. The cover shall contain the original County Court Clerk’s Index Number, the Fourth 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—Fourth Department Case Number shall be assigned by the clerk upon receipt of the Appellant’s papers.
- Copies:** File 11 Records, or 10 Appendices and 1 Record
Serve 2 Records, or 2 Appendices and 1 Record

§ 1000.4(a) Contents of a Record on Appeal

From a Final Judgment:

Table of Contents

Statement Pursuant to CPLR 5531

Notice of Appeal (with proof of service and filing)

Judgment Appealed From

Judgment Roll (Pleadings)

Transcript of Proceedings (if any)
(No Condensed Transcript Allowed)

Exhibits

Any Other Reviewable Order or Opinion in the Case

Any Post-Trial Motions

Stipulation Settling the Transcript or Affirmation of Compliance

Stipulation Dispensing with Reproduction of Exhibits

Stipulation Pursuant to CPLR 5532/or Settled by the lower
court Judge

From an Interlocutory Order:

Table of Contents

Statement Pursuant to CPLR 5531

Notice of Appeal (with proof of service and filing)

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

Stipulation Pursuant to CPLR 5532/or Settled by the lower
court Judge

§ 1000.4(d) Mandatory Contents of an Appendix

Table of Contents

Statement Pursuant to CPLR 5531

Notice of Appeal (with proof of service and filing)

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)

Stipulation Pursuant to CPLR 5532 (This is only required if it is a Joint Appendix)

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

§ 1000.4(f) Specifications For Briefs

Overall Size: 8½ × 11

Cover: All briefs shall have a stiff cover and be bound on the left hand side. The cover shall contain the original County Court Clerk's Index Number, the Fourth 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—Fourth Department Case Number shall be assigned by the Clerk upon receipt of the Appellant's papers.

**Page Limitation
and Cover Color:**

Appellant's Brief	Blue	70
Respondent's Brief	Red	70
Reply Brief	Gray	35

Signed Original: Briefs must be signed by the Attorney.

Copies: File 10 and Serve 2

Type Size: Briefs shall be set in a type of no less than 11 point. Lines are double spaced. The margins shall be at least one inch.

Briefs shall contain no footnotes.

§ 1000.4(f)(6) Appellant’s Brief

- Table of Contents
- Table of Authorities
- Questions Presented
- Nature of the Case
- Statement of Facts
- Argument
- Conclusion

§ 1000.4(f)(6) 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 parties a scheduling order which shall require Respondent to serve and file a brief within 30 days from the date of service of the Appellant’s brief.

§ 1000.4(f)(6) 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 shall be filed within 10 days of service of the Respondent’s Brief.

FEES

§ 1000.3(b)

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

Records, Appendices and Briefs will be deemed filed in the Fourth Department only as of the time they are actually received by the Clerk, and shall be accompanied by proof of service upon all necessary parties. Service can be performed by mail as long as it is postmarked by the U.S. Postal Service on or before the due date. Five days shall be added to the prescribed period. If service is by overnight delivery through the Postal Service, one day shall be added to the prescribed period.

ORAL ARGUMENT

§ 1000.11

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 counsel notice of the date on which a case will be argued.

COMPANION FILINGS ON CD-ROM

§ 1000.3(h)

The submission of Briefs, Records and Appendices, on interactive compact disk, read-only memory (CD-ROM) as companions to the requisite number of printed Briefs, Records or Appendices filed and served in accordance with the rules is allowed and encouraged provided that all parties have stipulated to the filing of the companion CD-ROM.

The Court may, by order on motion by any party or sua sponte, require such filing.

The companion CD-ROM Brief, Record or Appendix must comply with the current technical specifications available from the clerk's office.

The companion CD-ROM Brief, Record or Appendix must be identical in content and format (including page numbering) to the printed version, except that each also may provide electronic links (hyperlinks) to the complete text of any authorities cited therein, and to any document or other material constituting the record on appeal.

Ten disks or sets of disks must be filed, with proof of service of at least one disk or set of disks on each party, along with a copy of the parties' stipulation or the Court's order permitting or requesting such filing.

Unless otherwise directed by order of the Court, a companion CD-ROM shall be filed no later than 10 days after the printed Record, Appendix or Brief is filed.

SAMPLE COVER

To Be Argued By:

Time Requested: __ Minutes

_____ County Clerk's Index No. 000000

New York Supreme Court

APPELLATE DIVISION—FOURTH DEPARTMENT

RECORD PRESS, INC.,

Plaintiff-Respondent,

—against—

**CASE NO.
0000-00000**

ALL OTHER PARTIES,

Defendants-Appellants.

BRIEF FOR DEFENDANTS-APPELLANTS

LAW FIRM

Attorney for Defendants-Appellants

Address

Phone

Of Counsel:

SUPREME COURT LISTINGS

Supreme Court – Herkimer County
301 N. Washington
Herkimer, New York 13350
(315) 867-1209

Supreme Court – Jefferson County
State Office Building
10th Floor, 317 Washington Street
Watertown, New York 13601
(315) 785-7906

Supreme Court – Lewis County
7660 State Street
Lowville, New York 13367
(315) 376-5347

Supreme Court – Oneida County
200 Elizabeth Street
Utica, New York 13501
(315) 798-5890

Supreme Court – Onondaga County
401 Montgomery Street
Syracuse, New York 13202
(315) 671-1030

Supreme Court – Oswego County
25 E. Oneida Street
Oswego, New York 13126
(315) 349-3277

Supreme Court – Cayuga County
152 Genesee Street
Auburn, New York 13021
(315) 255-4320

Supreme Court – Livingston County
2 Court Street
Geneseo, New York 14454
(585) 243-7060

Supreme Court – Monroe County
99 Exchange Blvd.
Rochester, New York 14614
(716) 428-2020/2331

Supreme Court – Ontario County
27 North Main Street
Canandaigua, New York 14424
(585) 396-4239

Supreme Court – Seneca County
48 W. Williams Street
Waterloo, New York 13165
(315) 539-7021

Supreme Court – Steuben County
3 E. Pulteney Square
Bath, New York 14810
(607) 776-9631

Supreme Court – Wayne County
Wayne County Hall of Justice
54 Broad Street, Room 106
Lyons, New York 14489
(315) 946-5459

Supreme Court – Yates County
415 Liberty Street
Penn Yan, New York 14527
(315) 536-5126

Supreme Court – Allegany County
7 Court Street
Belmont, New York 14813
(585) 268-5800

Supreme Court – Cattaraugus
County
County Center
303 Court Street
Little Valley, New York 14755
(716) 938-9111, Ext. 388

Supreme Court – Chautauqua
County
1 North Erie Street
Mayville, New York 14757
(716) 753-4000

Supreme Court – Erie County
Erie County Hall
50 Delaware Avenue
Buffalo, New York 14202
(716) 845-2600

Supreme Court – Genesee County
Genesee County Courts Facility
1 W. Main Street
Batavia, New York 14021
(585) 344-2550

Supreme Court – Niagara County
775 3rd Street
Niagara Falls, New York 14302
(716) 278-1800

Supreme Court – Orleans County
Courthouse Square
3 South Main Street
Albion, New York 14411
(585) 589-4457

Supreme Court – Wyoming County
147 N. Main Street
Warsaw, New York 14569
(585) 786-3148

APPELLATE SERVICES

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We transmit, subpoena, retrieve or copy court's files on request.

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Our paralegals thoroughly review, organize, and index your record/appendix documents in compliance with each court's requirements.

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Our composition department is experienced with proper formatting of briefs for every appellate court.

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Custom-made imaging and document-management software is used to scan documents and store them electronically for more efficient pagination and revisions.

Working with Proofs

We produce a courtesy proof of your record/appendix within 72 hours—providing you with a final opportunity to make corrections.

Finalizing and Printing

Since your documents are stored electronically, we are able to quickly finalize and print the necessary copies of your record/appendix and brief.

Service and Filing

We serve and file your documents with any of the state and federal appellate courts.

CaseMonitor®

Technology which allows our staff to electronically monitor the Court Calendar for the New York State, Appellate Division First and Second Departments and notify you when your appeal is scheduled for oral argument.

Website

Your legal practice will benefit from fast access to information and rules on the Internet. Our goal at Record Press is to present you with the most informative and useful Website in the industry.