

THE QUICK GUIDE SERIES

New York Supreme Court

APPELLATE TERM—FIRST DEPARTMENT



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New York, New York 10007

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http://www.courts.state.ny.us/courts/appterm_1st.shtml



GUIDELINES
APPELLATE TERM—FIRST DEPARTMENT

*New York and The Bronx
Civil and Criminal Courts*

INTRODUCTION

This serves only as a quick reference guide for filing Briefs and Records on Appeal for civil and criminal 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. The rules of the Appellate Term—First Department cited herein appear in the *New York Supreme Court Rules*, §§ 640-640.10. For general appellate procedures, also consult the *Civil Practice Law and Rules*, §§ 5501-5532, 5601-5615, 5701-5713 and 8022.

September 2008
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

TABLE OF CONTENTS

	PAGE
INTRODUCTION	i
OUR COMPANY	ii
TABLE OF CONTENTS	iii
FILING THE NOTICE OF APPEAL	1
Time to Take Appeal.....	1
Taking an Appeal	1
TRANSCRIPT OF PROCEEDINGS.....	1
Preparation and Settlement of Transcript.....	1
PERFECTING THE APPEAL	2
Time to Perfect the Appeal	2
Papers Required on Appeal	3
Obtaining the Clerk’s Return.....	3
RECORD ON APPEAL	4
Specifications for Record on Appeal.....	4
Contents of Record on Appeal.....	5
CERTIFICATION PURSUANT TO CPLR 2105	6
STATEMENT PURSUANT TO CPLR 5531	7
STATEMENT OF NO OPINION.....	7
BRIEFS.....	8
Specifications for Briefs	8
Appellant’s Brief	9
Respondent’s Brief.....	9
Reply Brief	9
FEES	10
FILING AND SERVICE.....	10
ORAL ARGUMENT.....	10
NOTICE OF ARGUMENT AND COURT CALENDAR	11
SAMPLE COVER	12
CIVIL AND CRIMINAL COURT LISTINGS	13
APPELLATE SERVICES.....	14

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 Appellate Term.

File: 1 original and 1 copy
Notice of Appeal, Order or Judgment Appealed From
with Notice of Entry, Proof of Service

Serve: 1 copy

Filing Fee: \$30

TRANSCRIPT OF PROCEEDINGS

CPLR 1704 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.

Civil Appeals

The Appellant shall make any proposed amendments to the transcript and serve them with a Notice of Transmittal of Transcript and a copy of the transcript upon the Respondent within 15 days after receiving the transcript from the clerk or any other source. 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, a Stipulation Settling the Transcript at the end of the Record on Appeal. If the parties can not agree on the corrections to the transcript, the transcript has to be settled by the Civil Court Judge. No Affirmation of Compliance allowed. The original transcript shall be filed in the Appellate Term along with the reproduced Record on Appeal.

Criminal Appeals

The Appellant shall file the original transcript with the Appeals Clerk of the criminal court who shall then send the transcript to be settled by the Judge prior to filing them in the Appellate Term. The Appellant shall serve the District Attorney one copy of the transcript along with the Appellant's Brief.

PERFECTING THE APPEAL

§ 640.6(a)(1) Time to Perfect the Appeal

An appeal is said to be "perfected" when the Record on Appeal with the Clerk's Return, Appellant's Brief and Notice of Argument are collectively filed.

"When is my Record due?" Pursuant to § 640.6(a)(1), the Appellant shall procure the Clerk's Return from the original Court and perfect the appeal in the Appellate Term—First Department within 30 days after filing the Notice of Appeal. Any appeal not perfected within the 30 day period is subject to dismissal on motion by opposing counsel. Unlike the Appellate Division—First Department, the Appellate Term—First Department does not have a written rule specifying when an appeal is subject to dismissal by the Court *sua sponte*. In practice, the Appellate Term will accept an appeal past this 30 day rule due to delays in ordering and settling the transcript. However, attorneys are cautioned to not wait too long to perfect.

§ 640.2 and § 640.3 Papers Required on Appeal

An appeal from the Civil Court shall be heard upon the Clerk's Return and five copies of the reproduced Record on Appeal and Brief. An appeal from the small claims part of the Civil Court shall be heard upon the Clerk's Return and five copies of the Brief.

Pursuant to 640.3, appeals from the Criminal Court shall be heard on 5 copies of the Brief, the original papers as certified by the Clerk of the Criminal Court, and the Transcript of Proceedings certified by the Judge before whom the action was tried.

No Appendix in lieu of the Record on Appeal is allowed unless the Clerk's permission is first obtained.

Obtaining the Clerk's Return

The Clerk's Return is obtained by presenting to the Appeals Clerk of the Civil Court five sets of the reproduced and bound Record on Appeal with proof of service, along with the original Transcript of Proceedings, if any. The Appeals Clerk checks the bound Record on Appeal for compliance and will not accept a Record on Appeal that is not finalized. Only after the Appeals Clerk issues a Clerk's Return can the appeal be perfected in the Appellate Term—First Department. Since this process takes several hours, attorneys are cautioned to not wait until the last day.

A reproduced Record on Appeal is not required for criminal appeals. For criminal appeals from New York and Bronx counties, bring the original Transcript of Proceedings to the Appeals Bureau at 346 Broadway, Room 400 South, New York, New York 10013 (646-386-4949) in advance of the filing deadline. The Appeals Clerk will settle the original transcript with the Judge and send up the entire file—transcript and the rest of the documents along with the Clerk's Return—to the Appellate Term—First Department. The Appellate Term must receive the entire file before accepting the Appellant's Brief for filing. No Appendix or attachments to the Brief allowed. The Appellant shall serve one copy of the transcript along with one copy of the Appellant's Brief to the District Attorney.

RECORD ON APPEAL

§ 640.2 Specifications for Record on Appeal

- Overall Size:** 8½ × 11
- Pagination:** Pages shall be numbered consecutively, centered at the bottom. The first document after the table of contents shall be the Statement Pursuant to CPLR 5531. Do not use letters “A”, “R”, or any other letter, as prefix to numbers.
- 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. For trial exhibits, the headings shall also reference the in evidence page.
- Table of Contents:** The Record 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 admitted in evidence. All trial exhibits must be accounted for.
- Cover:** The Record 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 Civil Court Clerk’s Index Number, the appellate caption and court, the title of the document, the names, addresses and telephone numbers of the attorneys for all parties. The cover shall also indicate the Appellate Term Calendar Number on the upper left hand corner of the cover. This number is assigned upon receipt of the Appellant’s papers.
- Copies:** File 5 and Serve 1

§ 600.10 Contents of Record on Appeal

From a Final Judgment:

Table of Contents

Statement Pursuant to CPLR 5531 (with caption and title)

Notice of Appeal

Judgment Appealed From

Decision or Verdict

Pleadings (Summons and Complaint, Answer, Bill of Particulars)

Transcript of Proceedings (no condensed transcript)

Exhibits (if opposing counsel refuses to provide exhibits marked in evidence, place a copy of the letter requesting said exhibits with proof of service where exhibit would normally appear. All exhibits must be accounted for).

Any Other Reviewable Order or Opinion in the Case

Any Post-Trial Motions

Stipulation Dispensing with Reproduction of Exhibits

Stipulation Settling Transcript or Settlement of Transcript by Judge and Notice of Transmittal of Transcript with Proof of Service (no Affirmation of Compliance allowed)

Statement of No Opinion

Certification Pursuant to CPLR 2105

NOTE: Any handwritten Order or Decision must be retyped. Memoranda of Law are not normally part of the Record, unless they are specifically listed on the Order Appealed From. Pro Se Appellant's 2105 Certification must be notarized (even if Pro Se Appellant is an attorney).

From an Interlocutory Order:

Table of Contents

Statement Pursuant to CPLR 5531 (with caption and title)

Notice of Appeal

Order Appealed From

Pleadings (Summons and Complaint, Answer, Bill of Particulars)

Notice of Motion/Order to Show Cause with Supporting Affidavits
and any Exhibits

Affidavits in Opposition with any Exhibits

Reply Affidavits with any Exhibits

Statement of No Opinion

Certification Pursuant to CPLR 2105

NOTE: Any handwritten Order or Decision must be retyped.

Memoranda of Law are not normally part of the Record, unless they are specifically listed on the Order Appealed From. Pro Se Appellant's 2105 Certification must be notarized (even if Pro Se Appellant is an attorney).

CERTIFICATION PURSUANT TO CPLR 2105

I, _____, a member/associate of the firm of _____, attorney for the Appellant, hereby certify pursuant to Section 2105 of the CPLR that the foregoing papers constituting the Record on Appeal have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file in the office of the Clerk of the Civil Court, County of _____.

Dated:

Attorney for Appellant

STATEMENT PURSUANT TO CPLR 5531

[CAPTION]

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 original record.

STATEMENT OF NO OPINION

There are no other opinion rendered on this case other than the ones that appear on pages _____ to _____ of this Record on Appeal.

BRIEFS

§ 640.5 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 Civil Court Clerk's Index Number, the name of the counsel who will argue or submit the brief, the appellate caption and court, the title of the document, the names, addresses and telephone numbers of the attorneys for the party. The Appellate Term Calendar Number shall be stated on the upper left hand corner of the cover. This number is assigned upon receipt of the Appellant's papers.
- Typesize:** Briefs shall be set in a type of no less than 12 point and footnotes no less than 11 point. Lines are double spaced. The margins shall be at least one inch. Note: 12 point or larger is preferred.
- Page Limitation:**
- | | |
|--------------------|----|
| Appellant's Brief | 50 |
| Respondent's Brief | 50 |
| Reply Brief | 20 |
- Signed Original:** Briefs must be signed by the attorney.
- Attachments to Brief:** Particular attention is drawn to § 640.5(e), in which no addendum or appendix is allowed unless authorized by the court. This rule is strictly adhered to.
- Copies:** File 5 and Serve 1

§ 640.3 Appellant's Brief

Statement Pursuant to CPLR 5531 (only if the appellant is not filing a reproduced Record on Appeal)

Table of Contents

Questions Presented

Nature of the Case

Argument

Conclusion

For criminal appeals, the Appellant's Brief must contain a statement setting forth whether Defendant is presently incarcerated. If the Defendant was admitted to bail, the statement should set forth the date of the Order and the Court which admitted Defendant to bail. If a fine was paid, the statement should set forth the amount of the fine, the date of payment, the Criminal Court part or the prison in which payment was made and the receipt number.

§ 640.3 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. Consult the Appellate Term Calendar for due dates.

§ 640.3 Reply Brief

A Reply Brief shall contain a Table of Contents and Argument without repetition of the arguments made in the main Brief. Consult the Appellate Term Calendar for due dates.

FEES

There is no filing fee in the Appellate Term—First Department.

FILING AND SERVICE

Records and Briefs shall be deemed filed only as of the time they are actually received by the Clerk and shall be accompanied by proof of service upon all necessary parties.

Whenever service is made through the Post Office, such service must be made at least five days prior to the due date. If using overnight delivery service, it must be sent at least one day before the last day to file.

ORAL ARGUMENT

§ 640.6(a)(3)

All Brief covers shall indicate whether the appeal is to be argued or submitted and include the name of the attorney who will argue. Pursuant to 640.7(d), not more than 15 minutes shall be allowed to each side for argument. The date of oral argument shall be published in the *New York Law Journal*, commencing two weeks before the first day of the term. The date may also be obtained by calling the Appellate Term.

NOTICE OF ARGUMENT AND COURT CALENDAR

§ 640.6(a)(2)

Each appeal shall be noticed for a certain term of the Court. Upon filing the Record on Appeal and the Appellant's Brief in the Appellate Term—First Department, the Appellant shall also file a Notice of Argument with proof of service. This form places the appeal on the Court calendar for a specific term. Consult the Appellate Term—First Department calendar for the designated term filing deadlines of Records on Appeal and Briefs. The opening day of each term is also listed on the calendar. If oral argument is desired, a notation must be placed in the upper right hand corner of the brief.

Notice of Argument

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM—FIRST DEPARTMENT

[caption]

PLEASE TAKE NOTICE that the appeal in the above entitled action will be calendared for the _____ Term of this Court.

The argument will be heard at 60 Centre Street, Room 408, New York, New York 10007 at 10:00 a.m. at the opening day of the Term on ___ day of ___ 20___, or as soon thereafter as Counsel can be heard, as scheduled by the Clerk of the Court.

Dated:

Attorney for Appellant
Address and Phone Number

TO:

Attorney for Respondent
Address and Phone Number

SAMPLE COVER

CAL. NO. _____

To Be Argued By:

_____ County _____ Court Clerk's Index No. 0000/00

New York Supreme Court

APPELLATE TERM—FIRST DEPARTMENT

—◆◆◆—
RECORD PRESS, INC.,

Plaintiff-Appellant,

—against—

ALL OTHER PARTIES,

Defendants-Respondents.

BRIEF FOR PLAINTIFF-APPELLANT

LAW FIRM
Attorneys for Plaintiff-Appellant
Address
Phone

Of Counsel:

REPRODUCED ON RECYCLED PAPER

COURT LISTINGS

Civil

Civil Court—New York County
111 Centre Street
New York, New York 10013
646-386-5600

Appeals Division (Clerk's Return) 646-386-5606
Room 118

Civil Court—Bronx County
851 Grand Concourse
Bronx, New York 10451
718-618-2500

Appeals Division (Clerk's Return) 718-618-3517
Basement—Window 8

Housing Court—Bronx County
1118 Grand Concourse
Bronx, New York 10451
646-386-5500

Criminal

Criminal Court—New York County
100 Centre Street
New York, New York 10013
646-386-4500

Criminal Court—Bronx County
215 East 161st Street
Bronx, New York 10451
718-590-2858

Appeals Clerk
346 Broadway
New York, New York 10013
646-386-4949 (general)
718-618-3100 (Bronx)
(For Criminal Appeals from
New York and Bronx Counties)

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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

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