

THE QUICK GUIDE SERIES

New York Supreme Court

APPELLATE TERM—SECOND DEPARTMENT



**141 Livingston Street, 15th Floor
Brooklyn, New York 11201
718-643-5731**

www.courts.state.ny.us/courts/appterm_2nd.shtml



GUIDELINES

APPELLATE TERM—SECOND DEPARTMENT

SECOND AND ELEVENTH JUDICIAL DISTRICTS
Kings, Richmond and Queens

NINTH AND TENTH JUDICIAL DISTRICTS
*Dutchess, Orange, Putnam, Rockland,
Westchester, Nassau and Suffolk*

INTRODUCTION

This serves only as a quick reference guide for filing Briefs 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. For a comprehensive reference, consult the actual rules of the court. The rules of the Appellate Term—Second Department cited herein appear in the *New York Supreme Court Rules*, §§ 730-732.12. For general appellate procedures, also consult the *Civil Practice Law and Rules*, §§ 5501-5532, 5601-5615, 5701-5713 and 8022.

December 2005
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 OF PAPERS

Pursuant to § 730.1, all motions and appellate papers addressed to either of the Appellate Terms—Second Department shall be made returnable to:

Office of the Clerk of the Court
APPELLATE TERM—SECOND DEPARTMENT
111 Livingston Street
Room 1902
Brooklyn, New York 11201
718-643-5731

FILING THE NOTICE OF APPEAL

CPLR 5513 Time to Take Appeal

The Notice of 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: varies

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.

Civil Appeals

The Appellant shall make any proposed amendments to the transcript and serve the transcript with a Notice of Settlement upon the Respondent within 15 days after receiving the transcript from the court reporter. 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 and filed with the Clerk of the Civil or County Court. The Clerk of the Civil or County Court shall then organize and send the entire file, along with the settled transcript, to the Appellate Term—Second Department.

Criminal Appeals

The Appellant shall file the original transcript with Clerk of the Criminal Court. The Clerk shall send the transcript to be settled by the Judge and then file all the original papers in the Appellate Term. Upon perfecting the appeal, the Appellant shall serve the District Attorney one copy of the transcript along with the Appellant's Brief. Such copy of the transcript shall be returned by the District Attorney to the Appellant upon the argument or submission of the appeal, unless otherwise indicated.

PERFECTING THE APPEAL

An appeal is said to be “perfected” when the Appellant’s Brief and Note of Issue are collectively filed in the Appellate Term—Second Department.

§ 731.1 and § 732.1 Records on Appeal and Clerk’s Return

Upon receipt of the Notice of Appeal, the Appeals Clerk in the lower Court shall assemble the original papers, including the settled Transcript of Proceedings, issue a Clerk’s Return and send the entire file to the Appellate Term.

The Clerk’s Return and the original papers constitute the Record on Appeal. Unless otherwise ordered by the Appellate Term, an Appellant may, but need not, print copies of the Record on Appeal. The parties may attach as exhibits to their briefs relevant portions of the record. The Appellate Term must receive the entire file from the lower Court before accepting the Appellant’s Brief for filing.

§ 731.8 and § 732.8 Time to Perfect the Appeal

An appeal in a civil case shall be perfected within 90 days from the date of receipt by the Appellate Term—Second Department of the original papers with the Clerk’s Return from the Court of original instance. An appeal in a criminal case shall be perfected within 120 days from the date of the Judgment of Conviction. An appeal not perfected within the time limitation is subject to dismissal on the Court’s own motion.

§ 731.4 and § 732.4 Calendar of Appeals

An appeal is placed on the Appellate Term’s calendar when the Appellant files a Note of Issue, along with the Appellant’s Brief. Notification of the appointed term to which an appeal has been assigned shall be published in the *New York Law Journal* not less than twelve days prior to the date of said term. Attorneys for all parties shall be notified by postal card not less than five days prior to the date of said term.

§ 731.4 and § 732.4 Papers Required on Appeal

The Note of Issue, four copies of Appellant's Brief, and proofs of service shall be filed in the Appellate Term, together with blank, stamped post cards, addressed to each and every Appellant and Respondent, on or before the first Friday of any given month the appeal is to be noticed. In a criminal appeal, a proof of service of one copy of the Transcript of Proceedings shall be filed together with four copies of Appellant's Brief and a Note of Issue, with proofs of service.

Four copies of the Respondent's Brief shall be filed on or before the third Friday of the month in which the Note of Issue is deemed filed.

Four copies of the Reply Brief shall be filed on or before the fourth Friday of the month in which the Note of Issue is deemed filed.

BRIEFS

§ 731.2 and § 732.2 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 Court Clerk's Index Number, the name of the counsel who will submit or argue the brief and the time requested for argument, 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.

Typesize: 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.

Page Limitation:	Appellant's Brief	50
	Respondent's Brief	50
	Reply Brief	25

Signed Original: Briefs must be signed by the attorney.

Copies: File 4 and Serve 1

Appellant's Brief

Statement Pursuant to CPLR 5531

Table of Contents

Questions Presented

Nature of the Case

Argument

Conclusion

In criminal appeals, the Appellant's Brief at the beginning shall also set forth: either the entire judgment or order appealed from, or its material provisions, including its date; the sentence imposed, if any; and a statement whether an order issued pursuant to CPL 460.50 is outstanding and, if so, the date of such order, the name of the Judge who issued it and whether the Appellant is free on bail or on his own recognizance.

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.

Reply Brief

A Reply Brief shall contain a Table of Contents and Argument without repetition of the arguments made in the main Brief.

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. The appeal is on the original record.

NOTE OF ISSUE

§ 731.4(b) and § 732.4(b)

NEW YORK SUPREME COURT
APPELLATE TERM—SECOND DEPARTMENT
____ AND ____ JUDICIAL DISTRICTS

[caption]

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

1. The Judgment or Order appealed from, the date thereof and the Court from which the appeal was taken.
2. The attorneys for the respective parties, their addresses and telephone numbers, and the name, if known, of counsel who will argue the appeal.
3. The identity of the party filing the Note of Issue.

NOTE: The filing of a Note of Issue with proof of service places the appeal on the calendar.

FEES

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

FILING AND SERVICE

Briefs will be deemed filed in the Appellate Term—Second 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

All Brief covers shall indicate whether the appeal is to be argued or submitted, and include the name of the attorney who will argue and the time requested. Pursuant to § 731.6 and § 732.6, 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*, or the date may be obtained by calling the Appellate Term.

SAMPLE COVER

CAL. NO. _____

To Be Argued By:

Time Requested: __ Minutes

New York Supreme Court

APPELLATE TERM—SECOND DEPARTMENT

_____ and _____ *Judicial Districts*

—◆◆◆—
RECORD PRESS, INC.,

Plaintiff-Appellant,

—against—

ALL OTHER PARTIES,

Defendants-Respondents.

BRIEF FOR PLAINTIFF-APPELLANT

Of Counsel:

LAW FIRM

Attorneys for Plaintiff-Appellant

Address

Phone

_____ County _____ Court Clerk's Index No. 00000/00

APPELLATE SERVICES

Paralegal Services

Our experienced paralegals offer procedural assistance to any federal or state appellate court, so your appeal is always in compliance.

In-Court Work

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

Document Production

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

Typographical Services

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

Scanning and Electronic Pagination

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.