

Appeal Checklist

Appellate Division Third Department

NOTICES OF APPEAL

ALL NOTICES OF APPEAL FOR THE THIRD DEPARTMENT MUST BE FILED IN THE COURT OF ORIGINAL INSTANCE.

1 ORIGINAL + 2 COPIES OF EACH OF THE FOLLOWING DOCUMENTS MUST BE FILED

- A Notice of Appeal
[available at www.dickbailey.com]
- A completed Pre-Calendar Statement
[available at www.dickbailey.com]
- A copy of the Order or Judgment Appealed From, and a copy of the Opinion or Decision, if any
- Proof of service of 1 copy on each adversary
- \$65.00 filing fee

THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS FROM THE DATE THE ORDER/JUDGMENT IS SERVED WITH NOTICE OF ENTRY. THE NOTICE OF CROSS-APPEAL MUST BE FILED WITHIN 10 DAYS AFTER SERVICE OF THE FIRST NOTICE OF APPEAL. IF SERVICE BY MAIL, ADD 5 DAYS.

The lower court will then transmit your Notice of Appeal to the Appellate Division, Third Department.

§800.9(a), states that the Appellant's Appeal shall be filed within 60 days from the date of service of the Notice of Appeal.

§800.12, further states that an appeal shall be deemed abandoned unless "perfected" within nine months from the date on the Notice of appeal.

After 60 days, opposing counsel may move to dismiss the appeal based on §800.9 (a). Those motions are rarely made, and when they are the court will, in almost all instances issue an Order for the Appellant to perfect by a certain date.

After 9 months the appeal will be placed on a dismissal calendar.

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BRIEFS

*Printed on 8½ x 11 inch paper with no less than 1 inch margins,
Formatting is checked and corrected on all briefs at DICK BAILEY SERVICE.*

Appellant's Brief—70 page limit

Due within nine months of the date of the Notice of Appeal.

- Cover—*Indicating Argument Time or Submission*
- Table of Contents
- Table of Authorities *(optional)*
- Questions Presented
- Nature of the Case—*A concise Statement of Nature and Facts with references to page numbers in the Record*
- Argument—*Divided into points with appropriate headings*
- Conclusion—*Original ink signature required*

Respondent's Brief—35 page limit

A scheduling order is issued by the court to set forth filing date (generally 45 days)

- Cover—*Indicating Argument Time or Submission*
- Table of Contents
- Table of Authorities *(optional)*
- Counterstatement of Questions Presented *(optional)*
- Counterstatement of Nature of the Case *(optional)*
- Argument—*Divided into points with appropriate headings*
- Conclusion—*Original ink signature required*

Appellant's Reply Brief—15 page limit

Due within 10 days of service of Respondent's brief (15 for mailing, 11 for overnight)

- Cover—*Indicating Argument Time or Submission*
- Table of Contents
- Table of Authorities *(optional)*
- Argument—*Clearly divided into points with no repetition of the arguments in the main Brief*
- Conclusion—*Original ink signature required*
- Certificate of Compliance—*No signature required*

Briefs may contain an addendum composed of decisions, statutes, ordinances, rules, regulations, local laws or other similar matter, cited therein that were **NOT PUBLISHED OR OTHERWISE READILY AVAILABLE**. Unless ordered by the court, briefs may not contain maps, photographs or other addenda. Charts are not permitted in brief.

All Briefs, Records and Appendices shall be bound on the left in a manner that will keep pages securely together, however use of any metal fastener or similar hard material that presents a bulky or sharp edge is prohibited!

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RECORD ON APPEAL

The Record on Appeal shall consist of accurate reproductions of the papers and other exhibits from the court of original instance, upon which the Judgment or Order being appealed was founded.

1 ORIGINAL + 9 COPIES MUST BE FILED

2 COPIES MUST BE SERVED ON EACH ADVERSARY

To the extent practicable, 2 sided printing is encouraged.

Books must be printed on 8½ x 11 inch paper.

Volumes may not exceed one and one half inches in thickness.

Contents of the Record:

Appeal From a Final Judgment:

- Cover
- Table of Contents
- Statement Pursuant to CPLR §5531
- Notice of Appeal
- Judgment Appealed From
- Any Opinion or Decision in the Cause
- Judgment Roll
- Corrected/Settled Transcripts of Proceeding (if applicable)
- Exhibits
- Post Trial Motions
- Statement or Order settling Transcript Pursuant to CPLR §5525
- Stipulation or Order dispensing with Reproducing Exhibits
- Certification Pursuant to CPLR §2105 or Stipulation Pursuant to CPLR §5532

Appeal From an Interlocutory Order:

- Cover
- 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
- Affidavits in Opposition with any Exhibits
- Reply Affidavits with any Exhibits
- Certification Pursuant to CPLR §2105 or Stipulation Pursuant to CPLR §5532

**Materials not submitted to the trial court are not part of the record.
Anything dated after the Notice of Appeal is not part of the record.**

Notes:

- Filing fee check (\$315.00) payable to the Appellate Division, Third Department is due upon filing.
- Condensed format of transcripts is prohibited.
- Transcripts should be settled at least 15 days before the date of filing and corrected in the printed copy of the record.
- Extensions of time are granted pursuant to rule §670.8 (d).

For a full set of Rules of Procedure, visit our website:

www.dickbailey.com

Or call: **800-531-2028**

APPENDIX METHOD

The appendix shall contain all portions of the record necessary to permit the court to fully consider the issues which will be raised by the Appellant and the Respondent.

1 ORIGINAL + 9 COPIES OF THE APPENDIX + 1 COPY OF FULL RECORD
2 COPIES MUST BE SERVED ON EACH ADVERSARY + 1 COPY OF FULL RECORD

Contents of the Appendix:

- Cover
- Statement Pursuant to CPLR §5531
- Table of Contents
- Notice of Appeal
- Judgment or Order Appealed From
- Any Opinion or Decision in the cause
- Any Pleadings relevant to issues to be raised on appeal
- Motions with Supporting, Opposing and Reply Papers pertinent to issues on appeal
- Material excerpts from Transcripts of Testimony, such must contain portions upon which the appellant relies and upon which it may be reasonably assumed the respondent will rely.
- Copies of critical Exhibits
- Statement settling Transcript Pursuant to CPLR §5525
- Certification Pursuant to CPLR §2105 or Stipulation Pursuant to CPLR §5532

One Full Record on Appeal must be produced, served and filed along with the Appendix. The Record must be prepared with an index, page numbers and headings. The Record must be stipulated to by the parties or settled by the judge.

If an appendix fails to comply with the rules of the court, opposing counsel may move the court to compel the appellant to file a further appendix.

If the Appendix and Brief are within the 1½ inch rule, they may be bound together.

Notes:

- Filing fee check (\$315.00) payable to the Appellate Division, Third Department is due upon filing..
- Condensed format of transcripts is prohibited.
- The full set of transcripts must be settled, even if not reproduced in the appendix.

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