

THE QUICK GUIDE SERIES

New York Supreme Court

APPELLATE DIVISION—FIRST DEPARTMENT

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GUIDELINES

APPELLATE DIVISION—FIRST DEPARTMENT

New York and The Bronx

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 staff of attorneys and paralegals will assist you. For a comprehensive reference, consult the actual rules of the court. The rules of the Appellate Division—First Department cited herein appear in the *New York Supreme Court Rules*, Article 1, §§ 600-600.19. For general appellate procedures, also consult the *Civil Practice Law and Rules*, §§ 5501-5532, 5601-5615, 5701-5713 and 8022.

April 2013
Record Press Inc.

Natasha Monell Arez, Esq.
Staff Counsel

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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.

§ 600.17 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 1 copy
Notice of Appeal, Pre-Argument Statement,
Order or Judgment Appealed From
with Notice of Entry, Proof of Service

Serve: 1 copy

Filing fee: \$65

§ 600.17 Pre-Argument Statement

Title of the action.

Full names of original parties and any change in the parties.

Names, addresses and telephone numbers of attorneys for the Appellant and Respondent.

State whether appeal is from an order or a final judgment, the date, the court, and county from which appeal is taken.

State whether there is any additional appeal pending in the same action, the date of entry of the order or judgment, and attach a copy of the notice of appeal and the pre-argument statement.

State whether there is any related action or proceeding now pending in any court of this or any other jurisdiction, and if so, the status of any such case.

State the nature and object of the cause of action or special proceeding.

State as briefly as possible the result reached in the court below.

State as briefly as possible the grounds for seeking reversal, annulment or modification.

TRANSCRIPT OF PROCEEDINGS

§ 600.5(e) 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 an Affirmation of Compliance, or a Stipulation Settling the Transcript at the end of the Record on Appeal or the Appendix.

Note: The First Department does not allow condensed transcripts for sworn testimony.

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, Appellant’s Brief and Note of Issue are collectively filed.

“When is my Record due?” Pursuant to § 600.5(b)(2)(c) and (d), the Record on Appeal shall be filed within 30 days from the date of the Notice of Appeal or, if a Transcript of Proceedings is involved, within 30 days after settlement of the transcript. However, § 600.11(a)(3) further states that an appeal will not be placed on the calendar unless “perfected” within **9 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 30 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” for a specific term. Pursuant to § 600.11(a)(1) and (2), if the Record on Appeal is filed first, the Appellant’s Brief shall be filed within 20 days.

Pursuant to § 600.11(d), all parties appealing from the same Order or Judgment shall consult and thereafter file a Joint Record on Appeal, or a Joint Appendix. The cost shall be borne equally by the appealing parties.

COURT CALENDAR

The Appellate Division–First Department publishes an annual Calendar that lists the due dates of all appellate documents according to terms. Each appeal is noticed for a specific term. Consult the Calendar for due dates of all Records or Appendices and Briefs.

RECORD OR APPENDIX

§ 600.5 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. The Appendix consists of excerpts of the record that are necessary for full consideration of the questions presented for review.

If the record is voluminous, it may be in the Appellant's best interest to proceed on the Appendix method. If a Transcript of Proceedings is involved, the lower court record may be incomplete with respect to a copy of the transcript itself and the trial exhibits, which are normally given back to Counsel at the end of the trial. These must be filed in the Appellate Division to complete the record, or dispensed with by way of stipulation. Although the Appellant may proceed on the Appendix method, the "Original" record must be subpoenaed from the lower court before the Appellate Division will accept an Appendix for filing. Allow several days for transfer of the Clerk's file, which must be received by the Appellate Division prior to the filing of the Appendix.

Subpoena fee: \$25.00 in both New York and Bronx Counties

File:

- 1 copy of Subpoena
- 2 copies of Pre-Argument Statement
- 2 copies of Statement of Attorney
- 4 copies of Clerk's Certificate

§ 600.10 Specifications for a Record or Appendix

- Paper:** 8½ × 11 white 50% recycled paper
- 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. The part relating to exhibits shall briefly describe each exhibit and shall indicate the page where offered or admitted in evidence.
- 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 appellate caption and court, the title of the document, the names, addresses, telephone numbers and email addresses of the attorneys for all parties. The cover shall also indicate that the Record or Appendix was reproduced on 50% recycled paper.
- Copies:** File 8 paper copies plus 1 electronic copy
Serve 2 paper copies plus 1 electronic copy

§ 600.10 Contents of a Record on Appeal

From a Final Judgment:

Table of Contents
Statement Pursuant to CPLR 5531 or Pre-Argument Statement
Notice of Appeal
Judgment Appealed From
Judgment Roll (Pleadings)
Transcript of Proceedings (if any) (No Condensed Transcripts)
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 “So Ordered”
Certification Pursuant to CPLR 2105 or
Stipulation Pursuant to CPLR 5532

From an Interlocutory Order:

Table of Contents
Statement Pursuant to CPLR 5531 or Pre-Argument Statement
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

§ 600.10 Mandatory Contents of an Appendix

Table of Contents

Statement Pursuant to CPLR 5531 or Pre-Argument Statement

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

Stipulation Settling Transcript or Affirmation of Compliance

Certification Pursuant to CPLR 2105 or
Stipulation Pursuant to CPLR 5532

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

§ 600.10 Specifications for Briefs

Paper: 8½ × 11 white 50% recycled paper

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, the name of the attorney who will argue or submit the brief, the appellate caption and court, the title of the document, the names, addresses, telephone numbers and email addresses of the attorneys for the party. The cover shall indicate that the brief was reproduced on 50% recycled paper.

Format: Briefs shall be double spaced. Only footnotes, headings and indented quotations may be single spaced. The margins shall be at least one inch. The text on each page shall not exceed 7 x 9 ½ inches.

Except in headings, words may not be in bold type or type consisting of all capital letters. Narrow or condensed type faces and/or condensed font spacing may not be used.

Either a serified proportionally spaced or a serified monospace typeface may be used.

Serified Proportional (i.e. Times Roman)

Proportionally spaced typeface shall be no less than 14 point size, with the exception that footnotes shall be in type of no less than 12 point size, and headings shall be in type of no greater than 15 point size.

Serified Monospace (i.e. Courier)

Monospaced typeface shall be no less than 12 point size (containing no more than 10½ characters per inch), with the exception that footnotes shall be in

type no less than 10 point size, and headings shall be in type no greater than 14 point size.

Word Limitation: A word count calculation shall include all printed text on each page of the body of the brief. Except by permission of the Court, principal briefs shall not exceed 14,000 words or 70 pages. Reply briefs shall not exceed 7,000 words or 35 pages.

Printing Specification Statement: Briefs shall include at the end a Printing Specification Statement, that specifies the processing system, typeface, point size and word count as calculated by the processing system used to prepare the brief.

Signed Original: Briefs must be signed by the attorney.

Attachments to Brief: Particular attention is drawn to Rule 600.10(d)iii, in which no addendum or appendix is allowed unless authorized by the court. This rule is strictly adhered to.

Copies: File 8 paper copies plus 1 electronic copy
Serve 2 paper copies plus 1 electronic copy
Note: Avoid use of excessive bullet points.

PRINTING SPECIFICATION STATEMENT

This computer generated brief was prepared using a proportionally spaced/monospaced typeface.

Name of typeface:

Point size:

Line spacing:

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of authorities, proof of service, certificate of compliance, or any authorized addendum is _____.

§ 600.10 Appellant's Brief

Pre-Argument Statement or Statement Pursuant to CPLR 5531
(only for Appellant's Brief)

Table of Contents

Table of Authorities

Questions Presented

Nature of the Case

Argument

Conclusion

Printing Specification Statement

§ 600.10 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 First Department Calendar for due dates.

§ 600.10 Reply Brief

A Reply Brief shall contain a Table of Contents, Table of Authorities, Argument without repetition of the arguments made in the main brief and a Printing Specification Statement. Consult the First Department Calendar for due dates.

REQUIREMENTS FOR TYPOGRAPHY IN BRIEFS

The rule regarding brief format contains detailed requirements for the production of briefs. It is designed not only to make documents more readable but also to ensure that different methods of reproduction (and different levels of technological sophistication among lawyers) do not affect the length of a brief. The following information may help you better understand the formatting requirements:

The rule distinguishes between proportional and monospaced fonts, and between serif and sans-serif type. It also requires knowledge of points and pitch.

Proportionally spaced type uses different widths for different characters. A monospaced face, by contrast, uses the same width for each character. Most typewriters produce monospaced type, and most computers also can do so using fonts with names such as “Courier” or “Courier New.” The rule leaves to each lawyer the choice between proportional and monospaced type.

This sentence is in a proportionally spaced font; as you can see, the m and i have different widths.

This sentence is in a monospaced font; as you can see, the m and i have the same width.

Serifs are small horizontal or vertical strokes at the ends of the lines that make up the letters and numbers. The next line shows two characters enlarged for detail. The first has serifs, the second does not.

Y Y

Studies have shown that long passages of serif type are easier to read and comprehend than long passages of sans-serif type. The rule accordingly limits the principal sections of briefs to serif type, although sans-serif type may be used in headings and captions.

This sentence is in New Century Schoolbook, a proportionally spaced font with serifs. Baskerville, Bookman, Caslon, Garamond, Georgia, and Times are other common serif faces.

This sentence is in Helvetica, a proportionally spaced sans-serif font. Arial, Eurostile, Trebuchet, Univers, and Verdana are other common sans-serif faces.

Type must be large enough to read comfortably. Because some computer versions of monospaced type do not come to exactly 10 characters per inch, the rule allows up to 10½ characters per inch, including punctuations and spaces.

Proportionally spaced characters vary in width, so a limit of characters per line is not practical. Instead the rule requires a minimum of 14-point type. “Point” is a printing term for the height of a character. Word processing and page layout programs can expand or condense the type using tracking controls, or you may have access to a condensed version of the face. Do not use these. Condensed type is prohibited. It offers no benefit to counsel under an approach that measures the length of briefs in words rather than pages, and it is to your advantage to make the brief as legible as possible.

This is 9-point type.

This is 10-point type.

This is 11-point type.

This is 12-point type.

This is 12-point type, condensed. Condensed type is not acceptable.

This is 13-point type.

This is 14-point type.

The principal type must be a plain, roman style. In other words, the main body of the document cannot be bold, italic, capitalized, underlined, narrow, or condensed. This helps to keep the brief legible. Boldface and all-caps text should be used sparingly.

FEES

§ 600.15

Upon filing a Record on Appeal or an Appendix, 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. The check should be made payable to the “Appellate Division, First Department”.

NOTE OF ISSUE

§ 600.11(b)

The date the Notice of Appeal was served.

The date the Record on Appeal was filed.

The nature of the appeal or cause.

The Court and County in which the action was commenced.

The Index (or Indictment) Number.

The date the Judgment or Order was entered, and the name of the Justice who made the decision.

The Term and Year for which noticed.

The names, addresses and telephone numbers of the attorneys for all parties.

FILING AND SERVICE

§ 600.11(e)

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.

Pursuant to § 600.11(e), whenever service of a Brief, a Record or an Appendix is made through the Post Office, such service must be made at least five days prior to the due date.

ELECTRONIC FILING REQUIREMENT

§ 600.11(b)

1. Opening briefs. Appellant or the moving party shall file nine copies of the brief, or brief and appendix (or record on appeal) with proof of service of two copies. Where a typewritten brief is authorized or the appeal is from the Family Court, eight copies of the brief may be filed and one copy may be served.

2. One of the copies of each brief, appendix (or record on appeal) shall be filed and served by e-mail, and that copy shall satisfy the Clerk's Office's specifications for filing a text-searchable portable document format file by e-mail.

3. E-mails shall be directed

- i. in civil matters (except Family Court matters) to AD1copy-civil@courts.state.ny.us
- ii. in criminal matters to AD1copy-criminal@courts.state.ny.us
- iii. in Family Court matters to AD1copy-family@courts.state.ny.us

b. Answering and Reply Briefs. The respondent or opposing party shall file nine copies of the answering brief, or brief and appendix with proof of service of two copies. Where a typewritten brief is authorized or the appeal is from the Family court, eight reproduced copies of the brief may be filed and one copy may be served. One of the copies of each brief shall be filed and served by e-mail, and that copy shall satisfy the Clerk's Office's specifications for filing a text-searchable portable document format file by e-mail. The appellant or moving party may file a like number of copies of a reply as were filed of the main brief, with proof of service of the same number of copies as were served of the main brief.

Note: The electronic file is equal to one paper copy.

ORAL ARGUMENT

§ 600.11(f)

All brief covers shall indicate whether the Brief is to be argued or submitted and include the name of the attorney who will argue. The Appellant is responsible for filing the Oral Argument Request Form on behalf of all the parties. See First Department Calendar for due dates. Failure to submit this form will result in forfeiture of oral argument for all parties.

Parties will not be notified when the case is scheduled for argument. They should check the Court Calendar in the *New York Law Journal*, or contact the First Department.

ORAL ARGUMENT REQUEST

Appellate Division—First Department

27 Madison Avenue

New York, New York 10010

Notice for _____ Term, 20__

The attorneys for the parties in this appeal have consulted, pursuant to Rule § 600.11(f) of this Court, and desire:

to argue

Appellant requests _____ minutes.

Respondent requests _____ minutes.

to submit this appeal without argument.

(Signed) _____

Counsel for the _____

SAMPLE COVER

To Be Argued By:

_____ County Clerk's Index No. 0000/00

New York Supreme Court

APPELLATE DIVISION—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 number

Of Counsel:

_____@_____.com

REPRODUCED ON RECYCLED PAPER

SUPREME COURT LISTINGS

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New York, New York 10007
(646) 386-5955

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851 Grand Concourse
Bronx, New York 10451
(866) 797-7214

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.