

## **Appellate FAQ**

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### **Background Information on Appeals<sup>1</sup>**

What is an appeal?

An appeal is one of the next stages in the legal process after a trial in a criminal, family or civil matter. An appeal occurs when a party believes that an error was committed by the lower court, prosecuting attorney or defense attorney at any time during the proceedings.

How does a party begin the appellate process?

An appeal is started by the filing of a Notice of Appeal. In a criminal matter the Notice of

Appeal is served upon the people and filed with the court where the judgment or order was entered. In a Family Court matter the Notice is served upon the county agency that brought the petition and filed in the family court where the judgment or order was entered. In a civil matter the Notice of Appeal is served upon the opposing party and filed in the court in which the decision was issued. In addition, any other parties to the matter must be served with a copy of the Notice of Appeal, regardless of whether they may be affected by the appeal. Filing of the Notice of Appeal also requires the payment of any required filing fees. Once the Notice of Appeal has been filed the party requesting the appeal is referred to as the Appellant and the opposing party is now referred to as the Respondent.

How much time do you have to file a Notice of Appeal?

A party has 30 days to file their Notice of Appeal after they have been served with a copy of the judgment or order to appeal along with a notice of its entry. In a criminal matter the 30-day time line begins to run after you have been sentenced. This timeline is very rigid and can not be extended except for VERY extenuating circumstances.

What happens after the Notice of Appeal is filed?

Once the Notice of Appeal is filed the filing party must begin assembling the necessary documents, transcripts, and exhibits that will make up the Record on Appeal. After the Record is complete the Appellant will draft an Appellant's Brief outlining the meritorious issue(s) to be raised on appeal. Thereafter, the Respondent is given the opportunity to draft a Respondent's Brief. The Appellant then has the opportunity, but is not obligated, to draft a Reply Brief.

What is the timeline for an appeal?

The timeline for filing an appeal varies depending on the matter being appealed, including, but not limited to: the type of case; whether a trial was held in the lower court; the time needed to acquire any transcripts, exhibits, and court files; and time needed to research any and all issues to be raised. This process is called "perfecting the appeal." The timeline for filing briefs varies depending on the Appellate Division your appeal is going to be heard.

What courts are appeals taken in?

New York is divided into 4 departments which hear the majority of appeals from the trial level courts. These courts are called the Supreme Court, Appellate Division. The 1st Department encompasses Bronx and NY County; the 2nd Department includes: Dutchess, Kings, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester; the 3rd Department includes: Albany, Broome, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Madison, Montgomery, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington; and the 4th Department includes: Allegany, Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Herkimer, Jefferson, Lewis, Livingston, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Seneca, Steuben, Wayne, Wyoming, and Yates. The Federal Court System is similarly divided. The Federal Appeals are split by State and territory into 11 different circuits. The first circuit handles cases in: Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island. The second circuit handles matters in: Connecticut, New York and Vermont. The third circuit is responsible for: Delaware, New Jersey, Pennsylvania, and the Virgin Islands. The fourth circuit hears matters from:

Maryland, North Carolina, South Carolina, Virginia and West Virginia. The fifth circuit will hear federal cases from: Louisiana, Mississippi and Texas. The sixth circuit court is responsible for: Kentucky, Michigan, Ohio and Tennessee. The seventh circuit operates for: Illinois, Indiana and Wisconsin. The eighth circuit court handles matters for: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota. The ninth circuit covers: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington, Guam and the Northern Mariana Islands. The tenth circuit operates for the following states: Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming. The eleventh circuit has jurisdiction over: Alabama, Florida and Georgia.

Can my sentence/judgment be stayed while I am awaiting appeal?

In criminal matters, if you have been sentenced to prison that sentence, under certain circumstances, can be stayed and you can be released on bond or your own recognizance pending your appeal.

What possible outcomes can I expect in my criminal matter?

An appellate court must either affirm or reverse or modify the criminal court judgment, sentence or order.

<sup>1</sup>Information obtained from NY CPLR Articles 55 and 57, as well as David D. Siegel, *New York Practice*, (3d ed. 1999).