

days after the date the appeal is filed. The respondent's brief must be filed no later than 31 days before the first day of the term and you may file a reply brief (replying to respondent's brief) no later than 24 days before the first day of the term. In addition, the Notice of Argument and brief must be filed within 120 days of the service of the Notice of Appeal.

If you are appealing to the Appellate Term, Second Department, your brief must be filed within 90 days after filing the Notice of Appeal. The respondent's brief must be filed 21 days after your brief, and you may file a reply seven days after service of respondent's brief.

These time limits may be extended by permission of the Appellate Term.

Each Appellate Term has specific requirements concerning certain information that must be included in the brief, as well as concerning the kind of paper to be used, how long the briefs can be, how many copies must be filed and how many served.

If you retain a lawyer for the appeal, or if the appellate court has assigned you one, all these matters will be handled by your attorney.

### Oral argument

If either the appellant or the respondent asks, the Appellate Term will schedule the appeal for oral argument. This is an opportunity to stand before a panel of two or three Appellate Term judges and try to focus their attention on the strongest elements of the appeal. The parties can respond to questions from the judges, clear up any confusion that may be in the minds of a judge or alleviate a judge's concern.

### How is an appeal decided?

After the Appellate Term has reviewed the briefs and record and, where applicable, heard oral argument, it will issue a written "order and decision." The order and decision will state whether the trial court committed any errors requiring a different outcome. If such errors occurred, the order will specify how they will be corrected, which may include holding additional proceedings before the trial court, or the Appellate Term may simply reverse or direct the trial court

to modify the judgment, order or sentence from which the appeal was taken.

### Are other remedies available beyond the appeal?

If you are dissatisfied with an Appellate Term's decision and order, you may be able to seek further review by a higher court called the New York Court of Appeals. Such appeals are permitted only after the party has first obtained permission from a judge of the Court of Appeals to bring an appeal there. You can ask for this permission by writing a letter to the Clerk of the Court of Appeals, sending a copy to respondent, explaining why you think the Appellate Term was wrong. Copies of the briefs and the Appellate Term's decision should be included with the letter.

If you are represented by counsel, your lawyer will make this application for you upon request.

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As you can see, an appeal can be an effective way for correcting trial court errors but taking an appeal is a complex, time-consuming, and expensive process. This pamphlet is just a broad outline of what is involved and does not cover all the rules in each Appellate Term. It is best to appeal with the help of an attorney, either one you have hired or one that the Appellate Term assigns to represent you. You will also be able to get help from the Appellate Term Clerk's Offices:

Appellate Term, First Department  
60 Centre Street  
New York, New York 10007  
Tel: 646-386-3040

Appellate Term, Second Department  
141 Livingston Street, 15th Floor  
Brooklyn, New York 11201  
Tel: 347-401-9580  
[www.nycourts.gov](http://www.nycourts.gov)

For more information about the Appellate Terms of New York's Supreme Court, please visit [www.nycourts.gov/courts/lowerappeals.shtml](http://www.nycourts.gov/courts/lowerappeals.shtml)

This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association in cooperation with the Committee on Courts of Appellate Jurisdiction.

# LEGALEase

## Appeals to the Appellate Term – Criminal Cases



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This pamphlet explains how to appeal if you were convicted of a misdemeanor, violation or traffic offense in the Criminal Court of New York City, or the district, justice or city courts in Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties.

## What is an appeal?

If you believe that the trial court (this pamphlet uses the term “trial court” to cover all the different courts that handle criminal cases except for the Supreme Court and county court) made an error in your case, you may appeal the court’s judgment or order to a higher court called “the Appellate Term.” The party requesting the appeal is called “the appellant” and the opposing party is called “the respondent.”

An appeal is not a new trial. No witnesses will be heard by, and no new evidence or facts will be presented to, the Appellate Term. Instead, the appeal is based on the “record” that was made before the trial court, which consists of all of the proceedings that occurred and documents that were filed.

The Appellate Term will decide whether the trial court made any error that requires further action such as a new trial, a new hearing, or dismissal of the charges. The Appellate Term can also send the case back to the trial court to change the sentence or may change the sentence itself. Keep in mind that the judgment of the trial court (including the sentence) remains in effect while your appeal is being considered unless it is “stayed,” meaning suspended from operating during the appeals process. Generally, you must make a written request to the trial court or the Appellate Term for a stay.

## Which Appellate Term will hear my appeal?

There are two Appellate Terms in New York State. The Appellate Term for criminal trial courts in Manhattan and the Bronx is called the Appellate Term for the First Judicial Department.

The Appellate Term for the Second Judicial Department has two separate parts. The Appellate Term for the Second, Eleventh, and Thirteenth Judicial Districts hears criminal appeals from

Brooklyn, Queens, and Staten Island trial courts. The Appellate Term for the Ninth and Tenth Judicial Districts hears criminal appeals from trial courts in Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties.

## How does the appeal process begin?

In the case of an appeal from a judgment of conviction and sentence, the appellate process begins when a party “takes” an appeal. Taking an appeal means serving a “notice of appeal” on the prosecutor and filing it with the trial court. The notice of appeal must be filed within 30 days of the date you are sentenced. If you were represented by an attorney in the trial court, your attorney must file the notice of appeal if you ask him or her to do so.

The notice of appeal is a document that informs the other party that you wish to have a judgment or sentence reviewed by the Appellate Term. The notice identifies all of the parties involved in the case and sets forth the nature of the appeal. Without this document an appeal cannot be pursued.

If the trial court denied your motion under Criminal Procedure Law (C.P.L.) §§ 440.10 or 440.20, you can only appeal if a Justice of the Appellate Term gives you permission. You can ask for permission by filing a motion in the Appellate Term and serving a copy on the prosecutor. If you were represented by an attorney in the trial court, your attorney must file the motion if you ask him or her to do so.

The prosecutor is also allowed to appeal some orders, such as an order dismissing the charges or granting a motion to suppress. If such an order is entered in Manhattan or the Bronx, and you are represented by an attorney, that attorney must notify you that the prosecutor has the right to appeal. The attorney must also notify you if the prosecutor files a notice of appeal. If the prosecutor files a brief on the appeal, and no attorney has appeared for you in the Appellate Term, your trial attorney must advise you of your right to hire a lawyer for the appeal, handle the appeal yourself, or ask the Appellate Term to assign a lawyer.

If an order that the prosecutor can appeal is entered in Dutchess, Nassau, Orange, Putnam,

Rockland, Suffolk or Westchester counties, and you are represented by an attorney, that attorney must notify you that the prosecutor has the right to appeal. The attorney must also notify you if the prosecutor files a notice of appeal and of your right to hire a lawyer for the appeal, handle the appeal yourself, or ask the Appellate Term to assign a lawyer.

## Stay of judgment pending appeal

Criminal defendants almost always want a stay of the order or judgment against them pending appeal. A stay technically may be issued by a justice of the Appellate Term or by a justice of the Supreme Court of the judicial district embracing the county in which the judgment was entered. In practice, however, justices of the Appellate Terms do not entertain such motions, but refer the defendant to a justice of the Supreme Court who will act on the application (i.e., an affidavit or affirmation, a copy of lower court’s order, a copy of the Notice of Appeal, and a receipt for the fee paid in filing the notice of appeal) pursuant to C.P.L. § 460.50. Importantly, this practice applies only to the initial application for a stay; once a stay has been granted by a justice of the Supreme Court, the Appellate Term has the inherent power to extend that stay and will entertain a motion to do so.

Under certain circumstances, the People may also want a stay of the order or judgment entered against the defendant. For example, C.P.L. § 460.40(2) provides for an automatic stay when the people appeal from an order reducing counts of an indictment or dismissing it and directing the filing of a prosecutor’s information.

## How much will an appeal cost?

Pursuing an appeal can be costly. While there is no filing fee when appealing a criminal conviction, there may be other expenses such as attorney’s fees and the costs of transcribing and reproducing a record of the trial court proceedings. If you think you cannot afford these costs, you might be able to obtain poor person status. The Appellate Term may assign an attorney if you ask for one and order that you receive a free copy of the transcript. Also, many of the costs and fees may be waived or paid by the government. To apply for poor person status, you must file a sworn statement that lists

your assets and income, demonstrating that you are unable to pay the necessary expenses in the Appellate Term. You will also have to serve this application on the prosecutor.

## What happens after a notice of appeal is filed?

The appellant is responsible for making sure that a transcript is prepared. The appellant then must arrange for the “original record” (the transcript and the trial court file) to be sent by the clerk of the trial court to the Appellate Term. With the permission of the Appellate Term, an “abbreviated” or “abridged” record, containing “so much of the evidence or other proceedings as it may deem necessary to a consideration of the questions raised on the appeal,” may be filed instead of the original record. The First Department requires that this be done within 30 days of the service of the notice of appeal. The Second Department does not have a time requirement.

The appellant is also responsible for filing with the court, and serving upon the respondent, an appellate brief together with proof of service of one copy of the transcript on the respondent.

The brief is a document that tells the story of your case and presents your arguments as to why the Appellate Term should decide in your favor. The brief should also include the remedy sought, such as reversing or vacating the judgment or the sentence, or modification of an order. Researching and writing the appellate brief is hard work, so it is often the most costly part of an appeal if you are hiring a lawyer to do it.

After the appellant files a brief with the court and serves it on the opposing side, the respondent will likely file a brief in response to the appellant’s brief. In general, the respondent will argue that the proceedings in the trial court were correct and/or that any error that may have occurred was insufficient to require the Appellate Term to alter the trial court’s decisions. Appellant can then file a reply to respondent’s brief.

If you are appealing to the Appellate Term, First Department, you must file a Notice of Argument with the brief, noticing the appeal for a particular “term” of the court; there are 10 terms, each spanning about a month. The appeal is placed on the term whose first day is at least 53