

## **THE APPEAL PROCESS DEMYSTIFIED**

### **How is an appeal taken?**

Some orders and judgments are appealable as of right, others only by permission. Appeals as of right are taken by serving and filing a notice of appeal (CPLR 5515). Permission to appeal is obtained by making a motion for that relief (CPLR 5516).

### **When must a notice of appeal be filed or motion for leave to appeal be made?**

In a civil case pending in the *Supreme Court or Surrogate's Court*, a notice of appeal must be served and filed in the office of the clerk of the court of original instance **within 30 days after service upon the appellant of a copy of the order or judgment to be appealed with written notice of its entry**, or, if the appellant has served the order or judgment with notice of its entry, within 30 days of that service (CPLR 5513[a]). A motion for permission to appeal must be made within the same time limits and, if permission to appeal has already been denied by order of the court whose determination is sought to be reviewed, within 30 days after service of that order and notice of its entry (CPLR 5513[b]).

An appeal from the *Family Court* must be taken (1) within 30 days after service by a party or a law guardian upon the appellant of the order sought to be reviewed, (2) within 30 days after receipt by the appellant of a copy of the order in open court, or (3) within 35 days after mailing of the order to the appellant by the clerk, whichever is earliest (Family Ct Act § 1113).

An appeal from the *Court of Claims* must be taken within 30 days after service by a party of the order or judgment sought to be reviewed with notice of its entry, or within 30 days after service upon the appellant of a certified copy of the order or judgment by the clerk of the court (Court of Claims Act § 25).

### **Where and how do I serve and file a notice of appeal?**

An appeal as of right is taken by **serving a notice of appeal on the adverse party and filing it in the office where the judgment or order of the court of original instance is entered** (CPLR 5515[1]). In the Second Department two additional copies of the notice of appeal must be filed, to each of which must be affixed a form called a Request for Appellate Division Intervention, a copy of the order or judgment appealed from, and a copy of the opinion or decision, if any (22 NYCRR 670.3[a]).

### **Where and how do I make a motion for leave to appeal?**

Whether an order or judgment is appealable by permission and what court is authorized to grant permission varies depending on the court in which the action originated, the courts from and to which the appeal is to be taken, and the nature of the order or judgment appealed from. A person who desires to appeal must check the statutes governing appeals from and to those courts. How to make a motion is explained in chapter 8 of this court's Guide to Civil Practice.

### **How do I perfect an appeal?**

After an appeal is taken by filing a notice of appeal or obtaining leave to appeal, it must be "perfected". Perfecting an appeal means doing all the acts necessary to place the case on the court's calendar (22 NYCRR 670.2[a][4]). There are several different methods by which appeals may be perfected; they are described in § 670.9 of the court's rules (22 NYCRR 670.9) and in chapter 5 of the court's Guide to Civil Practice.

### **What is the difference between the full record method and the appendix method of perfecting an appeal and why would I choose to use one rather than the other?**

The full record method involves the reproduction of all the materials specified in CPLR 5526 that constitute the record. It is used where the issues to be raised on the appeal require the examination and consideration of all those materials. The appendix method, on the other hand, is used where the issues to be raised on the appeal are limited and do not require examination of all the materials constituting the record; material that is not germane to the issues to be raised may be omitted from the printed appendix (CPLR 5528[a][5]; 22 NYCRR 670.10.2[c][1]).

### **How much time do I have to perfect my appeal?**

In civil cases an appeal must be perfected within **six months of the date of the notice of appeal [2<sup>nd</sup> Department] or nine months of the date of the notice of appeal [1<sup>st</sup> Department]** (or order granting leave to appeal) (22 NYCRR 670.8[e][1]). In criminal cases an appeal by the defendant must be perfected within nine months from the date of the notice of appeal, unless a motion for assignment of counsel to prosecute the appeal is made within that time (22 NYCRR 670.8[f]).

### **If I run out of time to perfect or to file a brief, how can I ask for more?**

A party who needs more time to perfect or to file a brief must obtain an enlargement of time to do so. The procedure is described in the court's rules.

### **Mailing will NOT suffice on the last day to file a brief or other paper with the court.**

All records on appeal, briefs, appendices, motions, affirmations, and other papers will be deemed filed in this court only as of the time they are actually received by the clerk and that they must be accompanied by proof of service upon all necessary parties pursuant to CPLR 2103.

**What is the schedule for filing a respondent's answering brief and an appellant's reply brief?**

A respondent must serve and file an answering brief within 30 days after service of the appellant's brief and an appellant may serve and file a reply brief within 10 days after service of the respondent's answering brief. These periods are subject to extension based on the method of service (see, e.g., CPLR 2103[b][2], [6]). Moreover, if the last day of such a period is a Saturday, Sunday, or a public holiday, service and filing may be made on the next succeeding business day (General Construction Law § 25-a[1]).

**How many copies of records or appendices and briefs must be served and filed?**

Where the full record method or the appendix method is used to perfect an appeal, the appellant must serve two copies of the record or appendix and the brief on each adversary and file nine copies with the court. Where the original papers method is used, only one copy of the brief need be served on each adversary; however, nine copies must still be filed with the court. The same principle applies to answering and reply briefs.

**For more information, please call App1Source at (516) 858-0222.**