

## CPLR ARTICLE 55: APPEALS.

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A review on appeal brings up any non-final order affecting final outcome (if not already reviewed).

Any order denying a new trial is appealable, as is any ruling or remark of a trier to which the appellant objected.

Where the appeal is taken from a judgment which set aside a jury verdict as excessive in favor of a lower amount, the Appellate Court cannot order more than the jury originally did.

The Appellate Term (lowest) and Division (mid-level) review questions of Fact & Law; the Court of Appeals (highest) deals only with Law [EXCEPT where reviewing NEW facts found by the Appellate Division].

The party taking an appeal is styled the APPELLANT; and the adverse party is the RESPONDENT.

Appeals - or motions for permission to appeal - shall be made within 30 days after service of the order appealed, together with notice of entry. Except that if service is other than personal, statutory "extra time" periods apply (refer to prior notes).

A CROSS-APPEAL may be taken within 10 days of service of the Notice of Appeal, notwithstanding that the period in which to appeal such order be already expired.

The disability or death of a party's attorney *before* the time to appeal expires, extends such time until 60 days after such death or disability.

An appeal is "TAKEN" when Notice of Appeal served AND filed; OR: when Order allowing such appeal on motion for permission is entered.

Notices of Appeal are filed with the Court of "original instance" (where order entered), an appeal of another appeal is filed with the Clerk of appellate court which determined the initial appeal. In any case where appeal will be taken to the Court of Appeals, the Clerk of Court where notice filed shall send a copy *forthwith* to the Court of Appeals.

Motions for permission to appeal shall be noticed for the next available motion day at least 8 days after date of notice, and not more than 15 (unless later if no earlier motion day).

STAY of Enforcement of appealed judgment may be WITHOUT COURT

ORDER, if: the Appellant is the STATE; an undertaking is made pursuant to an order of the trial court; installments are paid pursuant to an order; property or instrument at issue is deposited with the court pending outcome.

**EXCEPT:** that an order to re-instate a license of: a Corporation or Partnership with no more than 5 stockholders/partners, and 10 or fewer employees; or a sole proprietor, or a natural person; stay of proceedings due to appeal by State is only for 15 days.

An INSURER may stay enforcement against itself for an action against a policyholder by filing a statement of liability - as sworn to by an officer - with SERVICE upon the creditor or attorney, and delivery or mail to debtor. This procedure does NOT stay enforcement against debtor for amounts above and beyond the liability of the insurance policy.

Court *from which* OR *to which* an appeal is taken MAY modify such stay; EXCEPT that ONLY the appellate court may do so when the STATE is an appellant.

STAY continues until 5 days after service of order on appeal; if such appellate order be then appealed *within such 5 days*, stay continues until 5 days after NEW order.

Preferences are granted for certain appeals arising out of Family Court proceedings.

An appellant shall provide notice and fees to a STENOGRAPHER, who shall then prepare the RIBBON and CARBON copy of the transcript; OR 2 copies if not typed. No transcript is necessary if there was no jury trial, and the only issue(s) on appeal are questions of law as applied *after* final submission of the case for decision.

The Appellant shall make any changes to the transcript deemed necessary, and serve the transcript with amendments upon the Respondent within 15 days or original receipt. The Respondent may then make corrections/amendments, and send it back within 15 days of service. Afterwards, the Judge or other trier shall SETTLE the transcript on request of either party, and on 4 days notice to the other.

If there was no stenographic record, the appellant shall make a STATEMENT in lieu thereof, and serve the Respondent. Whereupon Respondent shall make any changes, and send back within 10 days. Trier to settle statement any time thereafter.

All printed or reproduced papers filed with the appellate court shall be 8 & 1/2 x 11 inches. Subject matter shall appear on top of the first page of each document; AND on every page of testimony shall be the witnesses' name(s), and designate the party who called such witness, as well as designate what type of questioning (direct, cross, etc...).

Appellant and Respondent shall each prepare BRIEFS, including a Table of

Contents, Concise Statement (not more than 2 pages) regarding questions raised for appeal; Concise Statement of nature of case; Argument; and Appendix. The Court can impose costs (or deny them) to any party not complying with the formula as provided by rule herein.

Briefs shall be in permanent, legible, black ink, on white paper. Briefs shall be 8 & 1/2 inches by 11, each paper headed, and points numbered.

Appellant files brief within 20 days of settlement of transcript/statement, and serves 3 copies on Respondent. Respondent replies with own brief within 15 days thereafter, then the Appellant can respond to the reply within 10 days.

The Appellant shall also file a statement listing: the index number of underlying case; parties names originally, and any changes made; Court and County where action commenced; Dates of commencement, as well as when each pleading served; a description of the case; date and type of order/judgment entered; method of appeal: full record, or printed/reproduced OR original record (if so, why? and was Leave of the Court granted?).

Parties or attorneys may stipulate to the record on appeal rather than certify it.