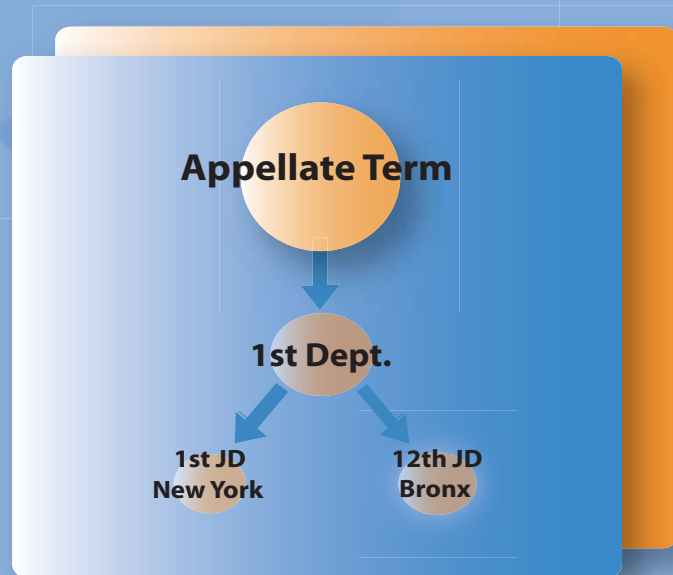


Supreme Court of the State of New York
Appellate Term: **First Judicial Department**

Rules of Procedure



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**PROCEDURE
IN THE
APPELLATE TERM—
FIRST JUDICIAL DEPARTMENT**

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§ 640.1. Jurisdiction

The Appellate Term of the Supreme Court for the First Judicial Department shall hear and determine all appeals from the Civil Court of the City of New York and the Criminal Court of the City of New York in the Counties of New York and Bronx at such times and places as may be designated by the Appellate Division of the Supreme Court, First Judicial Department.

Appellate Term violated judicial policy barring conflicting rulings by courts of coordinate jurisdiction where Supreme Court, during pendency of defendants' appeal to Appellate Term, granted plaintiff's motion to transfer case from Civil Court, which had denied defendants' dismissal motion, and Appellate Term thereafter issued order reversing Civil Court order and dismissing complaint; Appellate Term's dismissal of action was clearly inconsistent with Supreme Court's order granting removal which, by implication, recognized merit of plaintiff's case.

§ 640.2. Appeals from Civil Court; papers required on appeal

- (a) Appeals from the Civil Court shall be heard upon the return made by the clerk pursuant to the provisions of New York City Civil Court Act, section 1704 and five copies of the record and briefs, or upon the clerk's return and five copies of the briefs and appendices, typewritten or reproduced by any other method authorized by CPLR 5529.
- (b) Appeals from the small claims part of the Civil Court shall be heard upon the clerk's return and five copies of the briefs reproduced by any authorized method.
- (c) The parties may elect to proceed upon a statement in lieu of a record in accordance with the provisions of CPLR 5527. In the event of such election, the appeal shall be heard upon five copies of the statement and briefs reproduced by any authorized method.
- (d) Where copies of the record are filed, the reproduced record shall be of the size specified in CPLR 5529 and on paper of a quality approved by the State Administrator with a substantial cover and fastened at the left hand edge. The pages of the record shall be consecutively numbered at the bottom, and at the top of each page containing testimony there shall be noted the name of the witness, by whom called and whether the examination is on direct, cross or re-direct.

§ 640.3. Appeals from Criminal Court; papers required on appeal

- (a) Appeals from the Criminal Court shall be heard on the original papers, certified by the clerk of the Criminal Court, a stenographic transcript of the minutes of proceedings, certified by the judge before whom the action was

tried, or in the case of the death or disability of such judge, in such manner as the court directs, and five copies of the briefs.

- (b) For good cause shown, the court may hear the appeal on an abbreviated record containing so much of the evidence or other proceedings as it may deem necessary to a consideration of the questions raised thereby, and five copies of the briefs.
- (c) The appellant's brief must contain, at the beginning, the statement required by CPLR 5531 and a statement setting forth whether defendant is presently incarcerated. If the defendant was admitted to bail, the statement should set forth the date of the order and the court which admitted defendant to bail. If a fine was paid, the statement should set forth the amount of the fine, the date of payment, the Criminal Court part or the prison in which payment was made and the receipt number. (Formerly § 640.2, Sub (b), renumbered, eff July 1, 1973; former § 640.3, renumbered § 640.6)

Each exhibit or copies thereof shall have affixed thereto a notation as to the page of the transcript where it was admitted in evidence. (Formerly § 640.2, Sub (c), renumbered, eff July 1, 1973; former § 640.4, renumbered § 640.7)

§ 640.5. Briefs—what to contain

- (a) Briefs shall be on paper of the same size and quality as is required for the record on appeal by subdivision (a) of section 640.2. The name of counsel who is to argue or submit the appeal shall appear at the upper right hand corner of the first or cover page of the brief and the calendar number of the appeal shall be stated in the upper left hand corner.
- (b) In the absence of a specification that the appeal is to be argued, it shall be marked submitted and oral argument shall not be heard.
- (c) Testimony referred to in a brief must be accompanied by reference to the page of the record or transcript where such testimony appears.
- (d) The main brief of any party shall not exceed 50 pages, and reply briefs shall not exceed 20 pages unless authorized by a justice of the court prior to the filing of any such brief. On appeals from the Criminal Court, appellant's brief shall contain the statement required by subdivision (c) of section 640.3.
- (e) Unless authorized by the court, or these rules, briefs to which are added or appended any matter shall not be accepted for filing.

§ 640.6. Time within which to perfect appeal; calendar of pending appeals; dismissals

(a) *Appeals from the Civil Court.*

- (1)** Appellant shall procure the clerk's return pursuant to section 1704 of the New York City Civil Court Act to be filed within 30 days after the filing of the notice of appeal.
- (2)** Fifteen days before the first day of each term, the clerk of the Appellate Term shall cause a calendar to be published in the New York Law Journal of all appeals in which the clerk's return has been filed since the last publication of such a calendar. The appeals shall be listed in the order that the returns are received and the date each return was filed shall be stated. The publication of the calendar shall serve as notice to the parties of the filing of the return.
- (3)** Within 60 days after the filing of the return either party may notice the appeal for argument:
 - (i)** If noticed by appellant, the appellant shall file a notice of argument at least 53 days before the first day of the term for which the appeal shall have been noticed, together with the following: proof of service thereof; five copies of the record or appendix with proof of service of one copy, if the appeal is to be heard on copies of the record or appendix; five copies of appellant's brief with proof of service of one copy; and such exhibits or copies thereof as are not included in the record or return, unless such exhibits are in the possession of the respondent. At least 31 days before the beginning of the term, respondent shall file five copies of the answering brief with proof of service of one copy and such exhibits or copies thereof not required to be filed by appellant. Five copies of a reply brief with proof of service of one copy may be filed at least 24 days before the first day of the term for which the appeal shall have been noticed.
 - (ii)** The respondent may notice the appeal for argument by serving and filing a notice of argument at least 68 days before the first day of the term for which respondent shall notice the appeal with proof of service. At least 53 days before the first day of the term, unless the court otherwise directs, appellant shall file five copies of appellant's brief with proof of service of one copy of the brief. Where appellant so files, respondent may serve and file an answering brief at least 31 days before the first day of the term. If appellant fails to serve and file the brief and fails to appear on the call of the calendar, the court may affirm the judgment or order appealed from or, in its discretion, dismiss the appeal with

costs upon the call of the calendar. Five copies of the reply brief with proof of service of one copy may be filed 24 days before the first day of such term.

(iii) If neither party notices the appeal for argument within the time prescribed by this section, the appeal shall be dismissed unless for good cause shown an enlargement of time is granted by the court.

(b) *Appeals from the Criminal Court.*

- (1) Appellant shall procure the original papers or abbreviated record to be filed within thirty days after service of the notice of appeal, and appellant shall then notice the appeal for argument or submission, within 120 days from the date of service of the notice of appeal, by filing the notice of argument and briefs, with proof of service of one copy of each paper filed at least 53 days before the first day of the appointed term; proof of service of one copy of a transcript of the minutes of the proceedings shall be filed with the notice of argument, such copy to be returned to the appellant upon the argument or submission of the appeal. Unless otherwise ordered, five copies of the respondent's brief with proof of service of one copy shall be filed not later than 31 days prior to the first day of the term and five copies of a reply brief with proof of service of one copy may be filed not later than 24 days prior to the first day of the appointed term. An appellant who is incarcerated under the judgment appealed from may bring the appeal on for argument or submission on ten days' notice, after the record is filed, by filing a notice of argument and five copies of the appellant's brief, with due proof of service of one copy, in which event five copies of the respondent's brief with proof of service of one copy shall be filed not later than seven days after the service of appellant's brief, and five copies of a reply brief with proof of service of one copy may be filed not later than two days after the service of respondent's brief.
- (2) If appellant fails to notice the appeal within the time specified in the foregoing paragraph, the appeal will be dismissed on motion of the respondent unless an enlargement of time is granted by the court for good cause shown.
- (3) Fifteen days before the first day of each term, the clerk shall cause a calendar to be published in the New York Law Journal of all cases in which a copy of the notice of appeal has been filed with him in accordance with the provisions of section 460.10 of the Criminal Procedure Law. If an appeal is not noticed for argument within 120 days from the date of service of the notice of appeal and no enlargement of time is obtained, such appeal may be dismissed by the court.

- (4) The clerk shall prepare a special day calendar for each appointed term of the appeals subject to dismissal for failure on the part of the appellant to comply with this section. Each such special day calendar shall be published in the *New York Law Journal* at least five days prior to, as well as on the day when that calendar is to be called, and the clerk shall cause a postal card notice to be mailed to the appellant at his last known address and to his attorney five days prior to the first day of such publication. (Am. as § 640.3, Sept. 13, 1971, renumbered eff July 1, 1973; former § 640.6, renumbered § 640.9, am. eff June 1, 1988; Sub (a) Par (3) and Sub (b) am, eff July 1, 1973, for the terms commencing Sept. 1993.)

§ 640.7. Calendar; argument of appeals

- (a) Unless otherwise ordered, the calendar of appeals shall be called on the first day of the term for which they have been noticed. The calendar call shall commence at such time as the court shall direct.
- (b) The clerk shall cause the calendar of appeals and the time the calendar will be called to be published in the *New York Law Journal* six days before the first day of each term.
- (c) At any time prior to the call of the calendar the parties may file a stipulation submitting an appeal without oral argument provided, however, that all of the required papers have been served and filed. In the event of the filing of such stipulation, attendance at the calendar call shall not be required.
- (d) Not more than 15 minutes shall be allowed to each side for argument except in such cases where additional time is granted by the court. No brief, communication or other paper shall be accepted after submission or argument of an appeal unless authorized by the court. (Formerly § 640.4, renumbered eff July 1, 1973; former § 640.7, renumbered § 640.10)

§ 640.8. Motions generally

- (a) Motions may be noticed for any day of the term and must be submitted without oral argument. The appropriate county clerk's index number must appear on all motion papers.
- (b) If an appeal on the calendar is affected by the motion, the calendar number of the appeal must be stated on the moving papers.
- (c) All moving and opposing papers, with proof of service, shall be filed with the clerk on or before the return day at 10 a.m. and submitted without oral argument. (Formerly § 640.5, renumbered, eff July 1, 1973; former § 640.8, repealed, filed Sept. 16, 1971)

§ 640.9. Reargument; leave to appeal to Appellate Division; stay

- (a) *Reargument.*
 - (1) Motions for reargument shall be made within thirty days after the date of the order determining the appeal.
 - (2) Papers in support of a motion for reargument shall concisely state the points claimed to have been overlooked or misapprehended by the court, with proper reference to the particular portion of the record, and the authorities relied upon.
- (b) *Leave to appeal to the Appellate Division in civil matters.*
 - (1) Applications for permission to appeal to the Appellate Division pursuant to CPLR 5703(a) shall be made in the manner and within the time prescribed by CPLR 5513(c) and 5516.
 - (2) The moving papers shall set forth the questions to be reviewed by the Appellate Division. If the appeal is to review a determination granting or affirming the granting of a new trial or hearing, the moving papers must also contain a stipulation by the appellant consenting to the entry of judgment absolute against the appellant in the event of an affirmance by the Appellate Division.
- (c) *Stay.* If a stay is desired pending a determination of a motion for reargument or leave to appeal, application may be made for an order incorporating such stay. (Formerly § 640.6, renumbered eff July 1, 1973, am, eff June 1, 1988)

§ 640.10. Leave to appeal to the court

- (a) Applications to a justice of the Appellate Term for leave to appeal pursuant to the provisions of section 1702(c) of the New York City Civil Court Act shall be made on notice and within the time prescribed by CPLR 5513(c).
- (b) The papers in support of such application must contain a copy of the opinion, if any, and a copy of the record in the court below, a concise statement of the grounds of alleged error, and a copy of the order of the lower court denying leave, if any.
- (c) Applications for a certificate granting leave to appeal pursuant to the provisions of sections 450.15 and 460.15 of the Criminal Procedure Law must be made in the following manner:

- (1) the application must be addressed to the court for assignment to a justice of the Appellate Term;
- (2) the application must be in writing and upon reasonable notice to the people;
- (3) the application must be made within thirty days after service upon the defendant of a copy of the order from which he seeks to appeal; and
- (4) the application must set forth the questions of law or fact to be reviewed, and must contain a statement as to whether or not any such application has previously been made. (Add, as § 640.7, eff Sept. 13, 1971, renumbered, eff July 1, 1973)

Part 661

[Omitted and Repealed]

Note: All of Part 661, except § 661.7, was repealed effective January 6, 1986. Section 661.7 is omitted since it relates to criminal actions and proceedings.