

Appellate Lawyer PREPARATION

SERVING THE NEEDS OF APPELLATE LAWYERS

ELECTRONIC FILING QUESTIONS

Paul LaMar | Executive Vice President of Appellate Services | *PHP*

Ever since electronic filing has been instituted at the Appellate Division level I have had a number of attorneys call and ask me to assist them on a number of matters.

Q: *If I am filing a Brief in the Appellate Division-Second Department does my Brief need to be hyperlinked and bookmarked if it is not coming from a county included in e-filing at the Appellate Division?*

A: Regardless of whether or not your appeal is deemed to be an e-filed case at the Appellate Division-Second Department all Briefs being filed at the court must be bookmarked and hyperlinked. The Briefs which are not considered e-filed are uploaded to the court's internal portal. Whatever cases, statutes, etc. are listed in the Table of Authorities must be hyperlinked at the back of the Brief with the case law.

Q: *I have an appeal coming out of a county which is designated as an e-filed county for the Appellate Division-Second Department, however it has not been e-filed at the lower court. Do I need to e-file at the Appellate Division?*

A: Since the appeal was not e-filed in the lower court the rules do not apply to e-filing at the Appellate Division. You find this mostly on appeals with an index number prior to 2012.

Q: *I have an appeal serving and filing at the Appellate Division-First Department. Do I need to have the cases hyperlinked at the back of my Brief? It is not considered an e-filed case.*

A: Unlike the Appellate Division-Second Department, the Appellate Division-First Department does not require any of the cases to be hyperlinked, whether the appeal is considered e-filed or not.

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THE WRITTEN AND UNWRITTEN RULES OF FILING APPELLATE BRIEFS IN THE NEW YORK STATE APPELLATE DIVISION, FIRST & SECOND DEPARTMENTS

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For the most part, in the First and Second Departments the content, formatting and guidelines for all briefs are identical. However, there are a few requirements and rules that differ from one Court to the next.

For instance, the requirements regarding typeface, point size, spacing and margins are exactly the same: Times New Roman (other fonts are accepted) 14 point font, 12 point footnotes, double spaced with one inch margins is standard for both the First and Second Departments.

Text within the body of the brief may not be in boldface or all caps. For emphasis, the Court allows any text to be italicized or underlined only (though not excessively). However, you may use all caps only if the text you are referring to was filed in all caps in the lower Court. Also, you may use all caps in any headings or sub-headings. Bullet points are acceptable in the Second Department, but not in the First. The most common alternative is to use dashes, which the First Department will accept.

A table of contents and a table of authorities is required in both the First and Second Departments.

In both the First and Second Departments; the word count for all appellants, and respondents, briefs is 14,000 words. When filing a reply brief the word limit is 7,000. In order to file an oversized brief, the Court requires a copy of the brief prior to filing along with a letter application seeking the Court's permission.

A compliance document must be included as the last page of the brief. The First Department and Second Department ask that the document have the title "Printing Specifications Statement," containing the processing system, typeface, point size and word count (pursuant to CPLR 600.10(d)(1)(v)). Neither the First nor the Second Department requires this document to contain a signature.

When filing a non-NYSCEF Brief filed in the Second Department, you must nevertheless convert the brief to an e-brief and upload same to the Second Department web portal. An e-brief must contain electronic bookmarks to the table of authorities, including case law, statutes and any other references found therein. The First Department requires an e-brief for NYSCEF cases only.

There are multiple departments at PHP that review each brief with a fine tooth comb to ensure compliance with the aforementioned requirements. We pride ourselves on protecting our clients and dealing with any potential issues prior to serving and filing their brief in Court.

¹Another commonly used font is "Courier": 12 point font (10 point footnotes).

APPELLATE DIVISION, FIRST & SECOND DEPARTMENTS: ENSURING THAT THE CO-APPELLANT OR CROSS-APPELLANT SHARES IN THE COST OF THE JOINT RECORD/APPENDIX.

Maria Andrades | Director of Operations | ***PHP***

Appellate Division, First Department: “The parties shall consult and thereafter file a joint record or joint appendix ...The cost of the joint record or joint appendix and the transcript, if any, shall be borne equally among the parties. (see ‘600.11(d))”

Appellate Division, Second Department: “Unless otherwise ordered by the court, all parties appealing from the same order or judgment shall consult and thereafter file a joint record or joint appendix which shall include copies of all notices of appeal. The cost of the joint record or the joint appendix, and the transcript, if any, shall be borne equally by the appealing parties. (see ‘670.8(c))”

Although the rule spells it out clearly, there are many times when your co-appellant or cross-appellant is reluctant or unwilling to share in the cost of the Joint Record or Joint Appendix.

As the rules in both Appellate Division, First and Second Departments suggest, you should contact your adversaries with respect to the contents of the Joint Record or Joint Appendix to ensure that all appellants are on the same page. Do not simply assume that if you were served with a notice of appeal/cross-appeal that your adversary is aware of the cost-splitting rule and will happily comply with it. Moreover, it may very well be that your adversary may not intend to perfect the appeal. In that instance, it would revert to a Record or Appendix and cost splitting would be rendered moot. In addition, when reviewing the Order being appealed, determine whether any other parties were adversely affected by the subject Order. If so, call that party to inquire as to whether he or she intends to appeal that portion of the Order that adversely affected them.

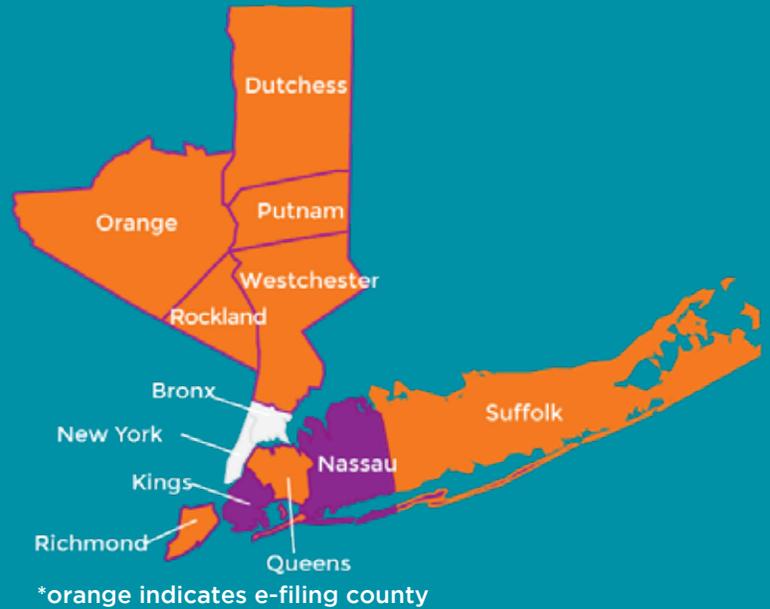
If all else fails and your adversary refuses to share in the cost of the Joint Record or Joint Appendix, you may be forced to move to compel him to do so in the Appellate Division. Rest assured that the Appellate Division will not take kindly to the flouting of the very clearly stated rule regarding cost splitting.



AD2 E-FILING EXPANSION

As of July 1, 2019, all e-filed Queens County (Supreme and Surrogate's Court) Notices of Appeal will be subject to AD2's e-filing requirements via NYSCEF. In addition, Notices of Appeal which pre-date July 1, 2019, but which are perfected on or after August 15, 2019, will also be subject to AD2's e-filing requirements.

Appeals arising out of e-filed Richmond County cases may be perfected via NYSCEF at AD2 provided all parties so stipulate prior to perfection.



NEXT ISSUE HIGHLIGHTS:

NYS APPELLATE DIVISION SECOND DEPARTMENT DOCKET NUMBERS

**NYS APPELLATE DIVISION, FIRST DEPARTMENT:
ARE PHOTOGRAPHS PERMITTED TO BE INCLUDED IN A BRIEF?**

ENLARGEMENTS OF TIME AT THE SECOND CIRCUIT

ABOUT PHP

Since its inception in 1970, PHP has worked diligently to become the East Coast's leading appellate services provider. Throughout the years, PHP has sustained a highly knowledgeable and experienced team of professionals whose mantra has always been to provide the legal community with unparalleled appellate printing and litigation support. With a shared dedication and broad knowledge base, PHP's staff of appellate consultants, paralegals and production specialists is renowned for its in-depth familiarity with the appellate rules and internal operating procedure of all the State Courts, the 13 Federal Circuit Courts and the United States Supreme Court.

We have developed numerous high-value solutions that go beyond the scope of the company's well-known appellate printing services. With the PHP Client Portal, the first in the industry, attorneys have 24/7 online access to all Records, Appendices and Briefs they have filed with the Court; possess the ability to track the date, time, location and position on the calendar for oral arguments; and receive instant notifications when their appeals are served and filed.

PHP has also brought to its clients an informative video series called On the Record that aims to clarify any misconceptions regarding New York State and Federal appellate practice.

Technological advancements are not PHP's sole focus, though. We are making great strides to personally connect with our clients by sponsoring countless legal association events and presenting Continuing Legal Education courses on appellate procedure— both live courses and online webinars for our clients' convenience.

PHP is constantly striving to deliver innovative solutions that address the needs of our clients as well as the needs of the appellate industry at large.



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