

## **HOW TO APPEAL A CRIMINAL OR TRAFFIC MATTER FROM A JUSTICE COURT TO THE WAYNE COUNTY COURT**

These guidelines are intended to help you understand the process through which your case can be reviewed on appeal

If you believe that the Justice Court has erred in your case, you may appeal the Conviction of a Criminal or Traffic matter from the Justice Court or an Order or Judgment of the Justice Court. **An Appeal is not a new trial. It is a review of the court proceedings of and documents from the Town or Village Court.** You may only submit evidence which was presented at the trial or proceeding held in the Justice Court.

The next page is a general checklist which will guide you through the process, step-by-step. However, please be sure to read the entire packet as you complete each task

If, after reading these instructions, you have any questions regarding the appeal process, you may contact the County Court Clerk's office at 315-946-5459. The staff of the County Court may not provide legal advice or provide opinions about your case. The staff can only provide you with appeal procedures and processes.

Please note that the Court has the option to extend time lines as indicated in this document. Requests for extensions should be provided to the County Court, in writing.

If you still wish to proceed with the appeal, complete and file the following paperwork:

**STEP I: FILE CRIMINAL NOTICE OF APPEAL**

- Complete 2 copies of the Notice of Appeal form (attached) within 30 days of the judgment.
- Serve an **original** Notice of Appeal on the Justice Court
- Serve a **copy** of the Notice of Appeal on the District Attorney
- Complete Affidavit of Service (attached) (To be completed by a person over 18 not a party to the action.)
- File an **original** Notice of Appeal and Affidavit of Service with the Wayne County Clerk.

**STEP II: AFFIDAVIT OF ERRORS and JUSTICE COURT RECORD ON APPEAL**

- Complete Affidavit of Errors and Request to Prepare Record on Appeal form (attached).
- Serve **copy** of Affidavit of Errors on Justice Court within 30 days of filing of Notice of Appeal. \_\_
- Serve **copy** of Affidavit of Errors on District Attorney's Office within 3 days of filing Affidavit of Errors on the Justice Court.
- Complete Affidavit of Service (attached)
- File **original** Affidavit of Errors and **original** Affidavit of Service with the Wayne County Court
- Wait for Justice Court to prepare Record on Appeal (Appellant will be notified of transcript costs, if any)
- Justice Court will schedule Settlement Conference with both parties.
- Justice Court will file the Record on Appeal with the County Court and notify the parties by mail.

**STEP III: NOTICE OF ARGUMENT, BRIEF and MEMORANDUM OF LAW**

- The County Court Clerk will advise, in writing, of the specific filing deadlines of the Notice of Argument, Brief, and Memorandum of Law.
- Within 20 days after the Record on Appeal has been filed with the County Court.  
Complete Notice of Argument form (attached). Indicate if Oral Argument is or is not being requested  
Prepare Brief and Memorandum of Law  
Serve **copy** of Notice of Argument, Brief and Memorandum of Law on the District Attorney.  
Complete Affidavit of Service-Notice of Argument (attached)  
File Notice of Argument (original and two copies), Brief, Memorandum of Law and Affidavit of Service at the Wayne County Court.
- The District Attorney will have 12 days to file a written Reply.
- If Oral Argument has been requested, County Court will advise both parties of the court date.

**STEP IV: DECISION AND ORDER**

- Wait for Judge's written Decision

## I. NOTICE OF APPEAL

Within 30 days of the sentence, resentence, or Order or Judgment of the Justice Court:

- ▶ Complete 2 copies of the **Notice of Appeal** (form attached). File the Notice of Appeal with the Justice Court which imposed the sentence or issued the Order.
- ▶ Serve a copy of the **Notice of Appeal** on the Prosecutor (the Wayne County District Attorney) either by mail or personal service.
- ▶ Complete the **Affidavit of Service** (form attached) that the Notice of Appeal has been served on the Justice Court and the Prosecutor. The Affidavit of Service is a sworn statement by someone other than the appellant, you, and is over the age of 18 who attests that a copy was provided to the Wayne County District Attorney and the Justice Court. The Affidavit of Service must be notarized.
  
- ▶ File, by mail or personal service, the following documents with the:

Wayne County Clerk  
9 Pearl Street, Box 608  
Lyons, New York 14489

- **Original of the Notice of Appeal.**
- **Affidavit of Service**

Throughout the appellate process, all documents which you file with the County Clerk and the County Court must also be served upon the Wayne County District Attorney.

**If you were represented by assigned counsel in the justice court and your attorney will be representing you on the appeal, (s)he must make the appropriate application to the County Court for assignment of counsel and for preparation of and payment of two sets of transcripts, if a court reporter was present, as necessary for the appeal (CPL § 460.70[1]).**

STATE OF NEW YORK : COUNTY OF WAYNE

COURT: (TOWN) (VILLAGE) of \_\_\_\_\_  
(Name of Town or Village)

\_\_\_\_\_  
The People of the State of New York

NOTICE OF APPEAL

Docket No. \_\_\_\_\_

Vs.

\_\_\_\_\_  
Defendant  
\_\_\_\_\_

TAKE NOTICE that the Appellant hereby appeals to the County Court of Wayne County  
from the conviction rendered on \_\_\_\_\_ finding the defendant guilty  
(Date of Conviction)  
of \_\_\_\_\_ and  
(Charge[s] convicted)  
sentence rendered on \_\_\_\_\_ and from every intermediate Order therein made  
(Date of Sentence)  
in the ( TOWN) (VILLAGE) of \_\_\_\_\_.  
(Name of Town or Village)

Dated: \_\_\_\_\_

To: 1. Wayne County Clerk  
9 Pearl Street, Box 608  
Lyons, New York 14489

\_\_\_\_\_  
(Name of Appellant)

\_\_\_\_\_  
(Address of Appellant)

2. \_\_\_\_\_  
(Name of Justice Court)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Mailing Address of Justice Court)

3. Wayne County District Attorney  
Hall of Justice  
54 Broad Street  
Lyons, New York 14489

STATE OF NEW YORK : COUNTY OF WAYNE

COURT: (TOWN) (VILLAGE) of \_\_\_\_\_  
(Name of Town or Village)

\_\_\_\_\_  
The People of the State of New York

AFFIDAVIT OF SERVICE  
OF NOTICE OF APPEAL

Docket No. \_\_\_\_\_

Vs.

\_\_\_\_\_  
Defendant  
\_\_\_\_\_

\_\_\_\_\_, being duly sworn, deposes and says:  
(Name of person serving document)

1. I am not a party to this action, am over the age of 18 years and reside at the following  
address: \_\_\_\_\_

2. On \_\_\_\_\_, 20 \_\_\_\_, I served the within NOTICE OF APPEAL

upon the Wayne County District Attorney, 54 Broad Street, Hall of Justice, Lyons, NY 14489 by:

- (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York
- (PERSONAL SERVICE) personally delivering a true copy of the same
- (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

and upon the (TOWN) (VILLAGE) Court of \_\_\_\_\_ by:  
(Name of Justice Court)

- (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York
- (PERSONAL SERVICE) personally delivering a true copy of the same
- (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Person Providing Service)

Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Notary Public

(File this completed form with the Wayne County Court, 54 Broad Street, Lyons, NY 14489)

## **II. AFFIDAVIT OF ERRORS and JUSTICE COURT RECORD ON APPEAL:**

Following the filing of the Notice of Appeal, the appellant has thirty (30) additional days to complete and file an **Affidavit of Errors** (form attached). The Affidavit of Errors must be mailed or personally served on the Justice Court. Within three (3) days of filing with the Justice Court, filed by mail or personal service on the Wayne County District Attorney.

The appellant should complete an **Affidavit of Service** (form attached) and file the original **Affidavit of Errors** and **Affidavit of Service** with the County Court.

An **Affidavit of Errors** is a your statement outlining the errors that you believe were made by the Justice Court.

The **Affidavit of Errors** also notifies the Justice Court to prepare the **Record on Appeal**. The **Record on Appeal** is the Justice Court's summary of the facts, evidence, and responses to the alleged errors as listed in the Affidavit of Errors. The **Record** will also include all pleadings and relevant documents within the Justice Court case file.

If a Court Reporter was present for the trial or if the proceedings were audio taped, you may be required to pay for the cost of the transcript unless you are granted poor person status by the County Court.

Once prepared, the **Record** will include the transcript(s) and the Justice Court will schedule a Settlement Conference. Once the Record is Settled with both parties, the Justice Court will file the **Record on Appeal** with the County Court with a cover letter indicating the documents which are included in the Record. The Justice Court should also send a copy of the cover letter to the appellant and District Attorney.

STATE OF NEW YORK : COUNTY OF WAYNE

COURT: (TOWN) (VILLAGE) of \_\_\_\_\_  
(Name of Town or Village)

\_\_\_\_\_  
The People of the State of New York

AFFIDAVIT OF ERRORS and  
REQUEST TO PREPARE RECORD ON APPEAL

Docket No. \_\_\_\_\_

Vs.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
TO: TOWN /VILLAGE COURT OF \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, depose and say:

1. I am the Defendant / Appellant and I am appealing my judgment of conviction rendered by the Justice Court on \_\_\_\_\_.  
(Date of Conviction)

2. I have attached a general outline of the errors which I believe occurred in the Justice Court relative to my conviction.

3. I believe these errors warrant a reversal of my conviction and/or remand of this matter to the Justice Court for further proceedings.

4. I hereby request that the Record on Appeal be prepared and forwarded to the County Court. If a Court Reporter was present or if the matter was audio recorded and a transcript of the proceedings will need to be prepared, I understand that I will be responsible for the payment of two transcripts; one of which will be sent to me and the other will be filed with the Justice Court for inclusion in the Record on Appeal. **Please send me a list of transcribers. I understand that I will select a transcriber from the approved list and advise you of the same.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Defendant's Signature)

Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

To: 1. \_\_\_\_\_  
(Name and Address of Justice Court)

\_\_\_\_\_  
\_\_\_\_\_

2. Wayne County District Attorney  
Hall of Justice  
54 Broad Street  
Lyons, New York 14489

(After service, file this completed form with the Wayne County Court, 54 Broad Street, Lyons, NY 14489)

STATE OF NEW YORK : COUNTY OF WAYNE

COURT: (TOWN) (VILLAGE) of \_\_\_\_\_  
(Name of Town or Village)

\_\_\_\_\_  
The People of the State of New York

AFFIDAVIT OF SERVICE  
AFFIDAVIT OF ERRORS and  
REQUEST TO PREPARE RECORD ON APPEAL

Docket No. \_\_\_\_\_

Vs.

\_\_\_\_\_, being duly sworn, deposes and says:  
(Name of person serving document)

1. I am not a party to this action, am over the age of 18 years and reside at the following  
address: \_\_\_\_\_

2. On \_\_\_\_\_, 20\_\_\_\_, I served the within REQUEST TO PREPARE THE RECORD  
ON APPEAL and AFFIDAVIT OF ERRORS  
upon \_\_\_\_\_ at \_\_\_\_\_ by:  
(Name of Opposing Party or Attorney) (Address of Opposing Party or Attorney)

- (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York
- (PERSONAL SERVICE) personally delivering a true copy of the same
- (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

and upon the (TOWN) (VILLAGE) Court of \_\_\_\_\_ by:  
(Name of Justice Court)

- (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York
- (PERSONAL SERVICE) personally delivering a true copy of the same
- (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Person Providing Service)

Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

(File this completed form with the Wayne County Court, 54 Broad Street, Lyons, NY 14489)

### III. NOTICE OF ARGUMENT AND BRIEF

After the **Record** is filed with the Wayne County Clerk, you will be notified that you have twenty (20) days to:

- ▶ Complete the **Notice of Argument** form (attached) and indicate if you are or are not requesting Oral Argument before the Court. Leave the date and time blank on the Notice of Argument form. Even if you request Oral Argument, the County Court may determine that Oral Argument is not necessary and may decide the appeal on the submitted papers.
- ▶ Prepare a **Brief and Memorandum of Law**. The Brief and Memorandum of Law is your detailed statement listing the specific errors you believe were made in the Justice Court. Include or attach any legal authority which you believe supports your argument.
- ▶ Serve a copy of the **Notice of Argument** and the **Brief and Memorandum of Law** on the Wayne County District Attorney and complete an Affidavit of Service.
- ▶ File the **Notice of Argument** (original and two copies), the **Brief and Memorandum of Law**, and **Affidavit of Service** with the County Court.

If the Court sets a date for oral argument, you will be notified by mail of that date. The Court will also notify the District Attorney's Office of the date of oral argument.

Note: Within twelve (12) days of receipt of the Notice of Argument and Brief and Memorandum of Law, the Wayne County District Attorney may serve upon you and submit a **Reply Brief and Memorandum of Law** to the Court with a completed Affidavit of Service attesting that the **Reply Brief** has been served on you.

STATE OF NEW YORK : COUNTY OF WAYNE  
COURT: (TOWN) (VILLAGE) of

\_\_\_\_\_ (Name of Town or Village)

\_\_\_\_\_  
The People of the State of New York

NOTICE OF ARGUMENT

Vs.

Docket No. \_\_\_\_\_

\_\_\_\_\_  
Defendant

(Select one box):

**I DO REQUEST ORAL ARGUMENT.**

I understand that if my request for oral argument is not granted, the appeal will be decided on the papers that I and the responding party have submitted.

I further understand that if my request for oral argument is granted, this is not an opportunity for a re-trial and that I can not produce new evidence.

**I DO NOT REQUEST ORAL ARGUMENT**

I understand that the appeal will be decided on the papers which I and the responding party have submitted.

TAKE NOTICE that the Appeal in the above entitled action will be brought for argument

before this Court at the next term thereof, to be held at:

Wayne County Courthouse  
54 Broad Street  
Village of Lyons, New York

on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ at \_\_\_\_\_ a.m. / p.m. of that day.  
(Do not complete this section - this will be completed by the court if needed)

Dated: \_\_\_\_\_

To: 1. Wayne County Clerk  
9 Pearl Street, Box 608  
Lyons, New York 14489

\_\_\_\_\_  
(Name of Appellant)

2. Wayne County District Attorney  
Hall of Justice, 54 Broad Street  
Lyons, New York 14489

\_\_\_\_\_  
(Telephone Number)

(After service, file this completed form with the Wayne County Court, 54 Broad Street, Lyons, NY 14489)

STATE OF NEW YORK : COUNTY OF WAYNE  
COURT: (TOWN) (VILLAGE) of

\_\_\_\_\_  
(Name of Town or Village)

\_\_\_\_\_  
The People of the State of New York

BRIEF AND  
MEMORANDUM OF LAW

Docket No. \_\_\_\_\_

Vs.

\_\_\_\_\_  
Defendant  
\_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, depose and say:

1. I am the Defendant / Appellant and I am appealing my judgment of conviction rendered

by the Justice Court on \_\_\_\_\_.  
(Date of Conviction)

**2. I have attached a detailed statement concerning the specific errors I believe were made in the Justice Criminal Court, my specific arguments and the legal authority (if any) which support my statement.**

3. I believe these errors warrant a reversal of my conviction and/or remand of this matter to the Justice Court for further proceedings.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Defendant's Signature)

Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

To: 1. Wayne County Clerk  
9 Pearl Street, Box 608  
Lyons, New York 14489

2. Wayne County District Attorney  
Hall of Justice, 54 Broad Street  
Lyons, New York 14489

(After service, file this completed form with the Wayne County Court, 54 Broad Street, Lyons, NY 14489)

STATE OF NEW YORK : COUNTY OF WAYNE

COURT: (TOWN) (VILLAGE) of \_\_\_\_\_  
(Name of Town or Village)

\_\_\_\_\_  
The People of the State of New York

AFFIDAVIT OF SERVICE  
(NOTICE OF ARGUMENT,  
BRIEF, and  
MEMORANDUM OF LAW)

Docket No. \_\_\_\_\_

Vs.

\_\_\_\_\_  
Defendant

\_\_\_\_\_, being duly sworn, deposes and says:  
(Name of person serving document)

1. I am not a party to this action, am over the age of 18 years and reside at the following  
address: \_\_\_\_\_

2. On \_\_\_\_\_, 20 \_\_\_\_, I served the within  
(Select all that apply)

NOTICE OF ARGUMENT

BRIEF

MEMORANDUM OF LAW

OTHER \_\_\_\_\_

(Name[s] of documents)

upon the Wayne County District Attorney as follows:

- (FIRST CLASS MAIL) by depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York
- (PERSONAL SERVICE) by personally delivering a true copy of the same
- (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) by depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Person Providing Service)

Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Notary Public

(File this completed form with the Wayne County Court, 54 Broad Street, Lyons, NY 14489)

#### **IV. DECISION AND ORDER ON APPEAL**

After all of the documents have been received by the Court, the time to submit a Reply has expired, and oral argument, if granted, has taken place, the County Court Judge is ready to decide the appeal. A copy of the Decision will be mailed to all parties or attorneys.

#### **V. IMPORTANT INFORMATION**

- ▶ If you fail to comply with these guidelines, the County Court may dismiss the appeal.
- ▶ The following references may be helpful when preparing your appeal:
  - **Criminal Procedure Law 460.10 and 460.70**
  - **Uniform Justice Court Act, Article 17 - Appeals**
  - **Uniform Rules of the State of New York - Trial Courts, Section 200.33**
- ▶ To assist you in this process, various forms are attached.
- ▶ Unless the County Court issues a Stay of the sentence, the defendant will be required to serve any jail sentence or pay any fines and surcharges imposed by the Justice Court.