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Appeals from the Appellate Term to the Appellate Division

For cases decided by the Appellate Term of the Supreme Court, which generally hears appeals from the limited jurisdiction Civil Court of the City of New York, a further appeal can be taken to the Appellate Division, which can only be obtained by permission (CPLR 5703(a)). Permission must first be obtained by a motion to the Appellate Term, and if refused by that Court, then by motion to the Appellate Division. There generally are no restrictions on the types of orders and judgments (whether interlocutory, final, etc.) for which permission to appeal may be sought. *See also* New York Civil Court Act, Article 17.

The Appellate Division that is asked to grant leave for an appeal is generally the one in the department for the county where the order or judgment appealed from was entered and heard (CPLR 5711). The timing of these motions is the same as those described in the main article -- the motion for leave must be made within 30 days after service of the order of judgment with notice of entry (plus whatever additional time is applicable for the manner of service). Likewise, although some of the details are different, many of the strategies set forth in the main article for motions for leave to the Court of Appeals are applicable to motions for leave to the Appellate Division.

Typical of most courts, the Appellate Term also provides for motions to reargue. As discussed in the main article, the normal strategy is to make the initial motion in the Appellate Term a combined motion for reargument and/or leave. However, as with motions to reargue made in the Appellate Division, First Department, motions for reargument in all the Appellate Terms must be made within 30 days from the date of order. The practitioner should also be aware that, as was the case in the main article for motions made in the Appellate Division, First Department, that in the Appellate Term, the deadline for the motion to reargue will usually run out first as the reargument aspect of the motion must be made within 30 days after the date of the order (App. Term First Dept. Rule 640.9(a); App. Term for the Second and Eleventh Judicial Districts Rule 731.11; App. Term for the Ninth and Tenth Judicial Districts Rule 732.11). A motion to reargue, if not combined with a motion for leave, is not appealable and does not extend the time to seek leave to appeal.

For motions made in the various Appellate Terms, there are few requirements for the form and content of the motion. The Appellate Term, First Department requires that the moving papers set forth the questions to be reviewed (which is required in; Rule 640.9(b)(1)). Suggestions in the main article for the form and content of the motions would also apply, however.

When the motion is made to the Appellate Division, both the First and Second Departments (which together cover all Appellate Terms), require that the motion contain a copy of the lower court order and opinion, a copy of the Appellate Term order denying leave, a copy of the Appellate Term record, if any, and "a concise statement of the grounds of the alleged error" (Rules 600.3(b)(2) & 670.6(b)(2)).

In all courts, if the appeal is from 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 in the event of an affirmance by the Appellate Division (CPLR 5703(a), Rules 600.3(b)(2), 670.6(b)(2), 640.9(b)(2), 731.11(d), 732.22(d)).