

**STATE OF NEW YORK
SUPREME COURT, APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT
P.O. BOX 7288, CAPITOL STATION
ALBANY, NY 12224**

**INSTRUCTIONS FOR MOVING TO WAIVE COSTS, FEES AND
EXPENSES**

- 1) At the top of the attached form is a Notice of Motion. The title of the case should be placed on the left hand side of the form and it should be written as the title appeared on the order or judgment appealed from. This is the caption. Below the caption is a sentence which begins "Please take notice...". The first date to be filled in is the date the attached affirmation in support of the motion was dated. The second date to be filled in is the return date of the motion, which should be a Monday after service of the motion papers upon all parties as described in paragraph 2 below.
- 2) The motion papers should be served on all parties (if a party is represented by an attorney, service of a copy should be made upon the attorney and, if a party is represented by the Office of the Attorney General, service of a copy should be made upon that office), and on the County Attorney of the County in which the papers from the lower court were filed. If service of the motion papers is done by personal delivery, the motion should be made returnable on a Monday at least eight (8) days after such service. If service of the motion papers is done by mail, the motion should be made returnable on a Monday at least thirteen (13) days after the motion papers are mailed.
- 3) As soon as possible after service of copies of the motion papers, the original motion papers, as well as proof that you have served the motion papers on the other parties and the County Attorney, should be forwarded to this office. If the motion is being made in connection with an appeal to this Court, you should also attach to the motion papers a copy of the order or judgment being appealed from, the decision, if any, upon which the order or judgment was based, and a copy of the notice of appeal.
- 4) **THERE WILL NOT BE ORAL ARGUMENT ON THE RETURN DATE OF THE MOTION.**

Please fill in the underlined spaces in the following form. Return the original to this Court, forward one copy to each of your adversaries, forward one copy to the County Attorney, and keep one for your records.

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

_____,

v

_____,

NOTICE OF MOTION
TO WAIVE COSTS,
FEES AND
EXPENSES

Index No.:

PLEASE TAKE NOTICE that, upon the annexed affirmation dated on the _____ day of _____, 20____, a motion will be made to this Court, on the _____ day of _____, 20____, in the City of Albany, New York for an order granting the appellant a wavier of costs, fees, and expenses.

Dated:

(Signature)

(Print Name)

(Address)

(Your name, address and telephone number)

DIN (if applicable) _____

(Telephone) _____

PLEASE TAKE NOTICE that, pursuant to section 1250.4 (a) (7) and (8) of the Practice Rules of the Appellate Division, this motion will be submitted on the papers, and the personal appearance of counsel or the parties is neither required nor permitted.

AFFIRMATION IN SUPPORT OF MOTION

1. What is your full name?

2. What is the nature of the above-entitled action or proceeding?

3. What is the nature of the order or judgment you have appealed from to this Court?

(Please attach hereto a copy of the order or judgment appealed from, the decision, if any, upon which the order or judgment is based, and a copy of your notice of appeal.)

4. a. An order or judgment has been entered in the Court Clerk's Office on

_____, 20_____.

b. A copy of that order or judgment was served on _____, 20_____.

5. a. Have you filed a copy of any notice of appeal in the County Clerk's office? Yes No
If yes, when?

b. If yes, have you served a copy of the notice of appeal on the respondent(s)?

Yes No If yes, when?

6. a. Were you represented by counsel? Yes No

If yes, counsel's name and address:

b. Was counsel assigned or retained? Assigned Retained

c. If you were represented by retained counsel in the court below, state the name and address of the person who paid his / her fee and the amount:

7. What relief are you seeking by this motion?

8. What facts are present to support your contention that there is merit to your appeal?
(Attach additional documentation, if necessary.)

9. Are you able to pay the costs, fees and expenses necessary to maintain (or respond to) the appeal? Yes No

10. What is your occupation? If you are a student, indicate the school which you attend and the name and address of the person who is paying your tuition, room and board.

11. Are you are employed? Yes No

If yes, state your weekly salary and provide the name and address of your employer.
Provide a copy of your most recent pay stub.

12. If married and your spouse is employed, what is his / her weekly gross salary and the name and address of his / her employer?

13. Do you receive financial support from anyone? Yes No

If yes, provide the name, relationship and address of this person or persons and the amount of support provided to you.

14. Do you provide financial support to anyone? Yes No
 If yes, please provide the name, relationship and address of this person or persons and the amount of support you provide.

15. Do you own real estate either by yourself or with someone else? Yes No

If yes, please provide the following information:

a. Other owner(s) (if any): _____

b. Location (street address, mailing address; Town, County, State):

c. Current value, including improvements: _____

d. Existing mortgages and/or liens (Attach additional sheet if required):

1. Name of bank, mortgagee or lien _____

2. Balance due: _____

16. List the location and amount of any savings or checking accounts held in your name or jointly with others (attach additional sheet if require d):

<u>Location (Bank)</u>	<u>Type</u>	<u>Owner(s)</u>	<u>Balance</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

17. Please state the year, make, model and value of any motor vehicle(s) owned by you and the amount of any existing loan(s):

18. Do you have any other assets not listed above? Yes No
If yes, please describe the assets(s) and state the value (attach additional sheet if required):

19. My gross monthly income and expenses are as follows:

INCOME:

My salary _____

My spouse's earnings _____

Other income _____

TOTAL _____

EXPENSES:

Rent or mortgage payment _____

Food _____

Utilities (heat, telephone, water, electric, cable) _____

Automobile expenses _____

Premiums on life or medical insurance policies _____

Repayment of loans _____

Name of creditor and amount _____

Other obligations, including maintenance and / or support _____

TOTAL _____

20. Is any other person beneficially interested in any recovery sought herein? Yes No

If so, is such person able to pay the costs, fees and expenses of responding to the appeal?
Yes No

21. Do you authorize the Court to make any inquiries or investigation concerning the answers given by you in this affirmation? Yes No

22. Did someone else complete this form on your behalf? Yes No
If yes, were the questions and answers read to you and are your answers true? Yes No

I affirm this _____ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature) _____
(Print Name) _____

AFFIRMATION OF SERVICE OF MAILING

On the _____ day of _____, 20____, I served a true copy of the annexed notice of motion and supporting affirmation by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known addressee(s) as indicated below:

(Insert below the name[s] and address[es] of the person[s] to whom you are mailing the papers being filed with this Court. If necessary, attach extra pages for additional names and addresses.)

Name & Address	Name & Address

I affirm this _____ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature) _____
(Print Name) _____