

Your Appeal



*Everything you
need to know
about your appeal
and as our client.*



Center for Appellate Litigation
120 Wall Street-28th Floor
New York, NY 10005
(212) 577 - 2523

Introduction

About CAL

The Center for Appellate Litigation, or CAL, is a not-for-profit law firm that handles appeals and post-conviction proceedings assigned to us by the Appellate Division, First Department; the Appellate Term, First Department; and the Court of Appeals. We have a contract with New York City to provide representation for poor defendants pursuing appeals from criminal convictions in New York (Manhattan) and Bronx Counties who cannot afford to hire an attorney. We are committed to legal excellence and maintain a client-centered approach to law. We distinguish ourselves by finding innovative ways to apply our high standards of zealous representation in and out of the courtroom.

About this Booklet

The purpose of this booklet is to provide you with more information about the appeals process as a whole and about CAL. We hope that it will answer most of your questions and help you to understand and participate more knowledgeably in your appeal.

Table of Contents

Your Appeal	2
Appeals at CAL.....	4
The Appeals Timeline	8
Issue Selection & Briefing	12
Appeals from Guilty Pleas.....	16
From Briefing to Decision	21
Stays.....	25
Conflicts of Interest.....	28
Other CAL Services	30

YOUR APPEAL

The Basics



What is a criminal appeal?

An appeal is a review by a higher court of what happened in the lower court or trial court. Its purpose is to determine if any serious legal errors occurred at your trial, hearings, plea, or sentencing, which would require reversal or modification of your conviction or sentence. Convictions arising from New York (Manhattan) and Bronx Counties are appealed to the Appellate Division, First Department or the Appellate Term, First Department. In some cases, a further appeal can be taken to the state's highest court, the New York Court of Appeals.

What will the Court consider when deciding my case?

An appeals court can only consider the evidence contained in the official record from the lower court, which is called the "**Record on Appeal.**" An appeal is not a new trial, and an appeals court cannot consider new evidence.

The Record on Appeal is made up of:



1. Transcripts for all of the important proceedings from your case in trial court. This can include trials, jury selection, pretrial hearings, guilty pleas, and sentencing. We are not entitled to minutes of every adjournment or court

appearance in your case. However, if we believe there are additional minutes that are important for your appeal, we will make efforts to obtain them. Please note, the record on appeal does not include grand jury minutes, and we are usually unable to obtain them since they are considered confidential.



2. Documents submitted to the lower court during your case. Any motions, decisions on motions, notes from the jury, the Probation Department's presentencing report, and court-ordered psychiatric reports are also part of the record on appeal. Police reports are generally not available unless they were exhibits at trial or were attached to other documents in the court file.



3. Physical evidence admitted at trial or a hearing. Photos of a line-up or crime scene, and other physical evidence may also be considered on appeal.

How does the Appeals Court make its decision?

Each appeal is decided by a panel of three to five appellate judges. When deciding a case, the judges consider the record from the lower court, the briefs setting forth legal arguments on each side, and if applicable, oral arguments by the attorneys. Oral arguments are not required. Your attorney will decide whether your case should be argued orally or submitted to the court for consideration on the record and briefs alone.

Will I be brought to Court for my appeal?

Since the appeals court cannot take testimony or consider new evidence, your presence is not required in court. If you are in custody, you will not be produced, but you are welcome to have a friend or relative attend the oral argument. If you are at liberty, you are welcome to attend. Your attorney will provide you with the date of the oral argument.

APPEALS AT CAL

Procedural Information



How is my case assigned to CAL?

Once you have filed a notice of appeal and asked for counsel, the appellate court will issue an order of assignment, indicating that CAL will represent you on your appeal. We *only* handle cases assigned to us by the courts. As a result, we are not able to represent or advise people whose cases are not officially assigned to us.

CAL is headed by Robert S. Dean. He is the “Attorney of Record” to whom your case is officially assigned on the order of assignment. That does not necessarily mean that he will be the attorney handling your appeal. An experienced group of supervisors, attorneys, paralegals and other support staff work with him to make

certain you obtain the best possible representation.

What happens when my case is assigned to CAL?

When we receive the order of assignment for your case, we create a file for you, send you this booklet, and start working to ensure we receive the record on appeal and all other materials necessary to brief your case. Additionally, we may set up a client visit between you and one of our staff to give you an introduction to the appellate process and allow you to express any concerns or specific issues about your case or incarceration.

Receiving all the minutes and documents usually takes six to nine months. If your appeal has been reassigned to us from another appellate attorney, this process might already be underway. Once the record on appeal is substantially complete, your case will be assigned to an attorney at CAL who will write to you and prepare your brief.

What should I do if I have questions or important information about my case?

While you are waiting for the record to be complete, your case will remain with our Managing Attorney, David Klem. During this time, any questions you have about your case should be directed to him or to Stacey Simone, the Chief Paralegal. They will be able to answer most of your questions about the status of your case and

the appeals process. They will keep your inquiries about the legal issues in your case with your file so that they can be considered by the attorney who ultimately is assigned to your case.

Mr. Klem and Ms. Simone are in daily contact with Mr. Dean and other supervisors at CAL, and will alert them to any issue or question that requires immediate assistance.

Additionally, if someone from our staff comes to visit you, they can take down your questions and concerns and put them in your file for your assigned attorney.

After the record is complete and an attorney is assigned to your case, your attorney will write to you. You will then have the chance to write to or talk with your individual attorney about any legal issues you would like the attorney to consider or anything else you would like them to know about your case. From the time your attorney is assigned to your case, he or she will have direct responsibility for your case and you should correspond with him or her directly.

Is there anything I should let CAL know right away?

There are a few things that are important for us to know **right away**. Please let us know **immediately** if:

- Your address changes;
- You have been given bail pending appeal;

- You have a life-threatening medical condition;
- You have any transcripts in your case or know that your trial attorney has transcripts;
- You filed a CPL § 440 or other motion after you were sentenced;
- A 440 or other post-sentencing motion related to your case has been decided;
- You have been resentenced or otherwise brought to court on your case after your original sentencing;
- You have been arrested for or convicted of a crime or charged with violating parole or probation since your sentencing;
- Immigration authorities have contacted you regarding deportation or removal; or
- There is any other matter involved in your case that you believe might require immediate attention.

Can I call my attorney or have my attorney visit me?

You are welcome to call your attorney to discuss your case. If you are at liberty, or otherwise able to make phone calls, you can reach us at (212) 577-2523. Our office is also able to accept collect calls for those who are in custody at (212)-577-2531. Please keep in mind that we can only accept these calls during our business hours of 9:00am to 5:00pm. Additionally, please refrain from third-party calling, as such calls do not ensure the confidentiality

of your conversation. You may also have friends or relatives call us as long as you have provided CAL with written permission to speak with them.

While an appeal is based solely on the written record from the lower court, appellate attorneys may visit clients in person. If you are at liberty, you can make an appointment to visit your attorney.

THE APPEALS TIMELINE

A Breakdown of the Process



How long will my appeal take?

The appellate timeline will depend on several things, including whether you went to trial or pleaded guilty, how long your trial was, and how quickly we are able to obtain all of the minutes and documents needed for your case. It is common for a trial case to take 18-24 months between assignment of counsel on appeal and the court's decision on appeal. We will do everything possible to ensure that your appeal is not unnecessarily delayed. However, some things that can cause delays are out of our control. There are four basic stages to an appeal:

 **1. Gathering the record**, which can take many months in a trial case, especially if the record is long or the stenographers involved are no longer employed by the court system.

 **2. Preparing the brief**, which can take several months or more after the record is complete, depending on the length of your transcript, the complexity of the issues in your case, and the length of time spent corresponding with you to obtain your views or investigating potential issues.

 **3. Waiting to receive the District Attorney's brief and for the case to be calendared by the Court**, which usually takes around six months.

 **4. Getting the Court's decision**. Most cases are decided between three weeks and several months after the date of oral argument or submission. However, occasionally a decision takes much longer than that.

Why does it take so long to get the record?

The order assigning CAL to your case is the same order in which the County Appeals Clerk has requested the minutes for your case. Stenographers often have back orders of minutes and the new orders must wait their turn in line.

Sometimes, additional problems arise. If a stenographer is no longer employed by the court system, his or her notes have to be located and transcribed by another stenographer. If the court file is lost, or it is unclear from the file what proceedings occurred on what date, the Appeals Clerk may have difficulty determining what minutes to order and from whom.

Sometimes, the Appeals Clerk thinks all of the minutes have been ordered when they haven't, and we discover it after receiving the record.

What can be done if minutes are delayed?

When minutes have been ordered and are delayed, we write or phone the stenographers involved urging them to complete the minutes as soon as possible. In most cases, this follow up results in the production of the minutes. If not, we serve the stenographer with a formal "demand for compliance" warning that the minutes must be produced by a particular date. If they are not, we may make a motion to have the stenographer held in contempt.

In some cases, a motion for summary reversal can be made if the minutes are not produced for an extraordinarily long time, or if substantial portions of the minutes turn out to be hopelessly lost. If minutes are lost, most often the Court will order a "reconstruction hearing" at which people who were present at your initial hearing or trial testify as to what happened. If such a hearing is ordered, you will have a right to be present for it.

Is there anything I can do to get minutes faster?

If you or your trial attorney have copies of any minutes in your case, please let us know immediately. Otherwise, there is nothing you can do. We will make every

effort to get the complete records in your case as soon as possible.

Is there anything I should avoid doing because it might cause delay?

Yes. Do not make any motions or institute any legal proceedings related to your case on your own; please discuss any motions with us first. If you don't, it may cause serious and unnecessary delays of your appeal. It can also make it difficult or impossible to raise certain arguments on your behalf later.

If you have any pending motions related to your case, please let us know immediately.

Is There Any Danger My Appeal Will Be Dismissed Because of Delays?

No. We will ensure this doesn't happen.

What Will Happen When My Minutes Are Complete?

When the minutes are substantially complete, we will assign your case to an individual attorney. This attorney will usually not begin working on your case until the record is complete, although an exception can be made if the outstanding document is relatively minor. Your attorney will decide when the case is complete and work on the brief can begin. Your attorney will update you on his or her progress.

Can I get a copy of the record on appeal in my case?

Yes. If you would like a copy, let your attorney know after you have been informed that we have received the completed record. Your attorney will then mail you a copy.

Issue Selection & Briefing

Strategy and Guidelines



How will my attorney decide what issues to raise?

First, your attorney will read the entire record in your case and identify possible issues to raise. Your attorney will also write to you, giving you a chance to bring up issues that especially interest you. Once all potential issues have been identified, your attorney will determine which issues are viable and which issues present the strongest appeal.

Your attorney's aim is always to present the strongest possible appeal on your behalf. Often, this means presenting one or two compelling issues rather than a large number of issues, some of which are stronger and some weaker. Your attorney at CAL will draw upon his or her experience to determine what will make the strongest presentation in each case.

In order to make the best possible decisions on your behalf, your attorney will do legal research, examine the exhibits in your case, and consult other experienced CAL attorneys.

The attorneys at CAL are kept up-to-date on all important developments in criminal law. They receive copies of recently-decided criminal cases and attend regular meetings to discuss new decisions of interest. Even after your brief has been filed, your attorney will know of new decisions relevant to your case, and will be able to bring them up to the Court.

Finally, every brief filed by CAL is subject to a thorough revision process in which it is read and edited by a supervisor with many years of criminal appellate experience. This process provides an additional guarantee that the brief filed on your behalf will be as strong as possible.

If there is an issue I would like my attorney to consider raising, what should I do?

Write to your attorney as soon as he or she is assigned to your case. Do not hesitate to suggest issues to your attorney or ask what your attorney plans to raise.

Frank and open communication between you and your attorney is extremely important. Your views are important to your attorney, and your attorney's expertise and judgment are important to

you. If you and your attorney disagree about which issues to raise, you have the right to ask the Appellate Division for permission to file a supplemental brief raising additional issues. Such requests should not be made before you receive the brief from your attorney, but must be made soon afterwards. If you seek permission to file a supplemental brief, your appeal will be delayed by the amount of time it takes you to file the supplemental brief and the prosecution to respond to it.

Can I raise an issue on appeal if my lawyer did not object at my trial?

It depends on the circumstance. The Appellate Division and the Appellate Term have jurisdiction to consider both **“issues of law”** and **“interest of justice issues.”**

Although there are a few exceptions, an issue of law generally exists only when it has been **“preserved”** in the lower court. This means the issue has been identified and addressed in trial court by your defense attorney making an objection, making a specific request, or moving for a mistrial. It is to your advantage to have a legal error preserved, because then the appellate court must consider it and must generally grant relief if it finds that the error was harmful.

If an issue was not preserved, the appellate court could consider it in the interest of justice. This usually only occurs if the court believes an error was so important that not addressing it would be inconsistent with a

basic sense of justice and fairness. Attorneys will raise good issues even if they are not preserved, but the Appellate Division and the Appellate Term may not consider them. Additionally, the appellate courts rarely reverse a conviction based upon an unpreserved issue unless the evidence of guilt was weak, the error was especially serious, or there was a pattern of several errors that made the trial unfair.

An issue that is **“waived,”** rather than merely unpreserved, may not be raised on appeal, except in unusual circumstances. A waiver will occur if defense counsel fails to move to suppress an identification, confession, or physical evidence prior to trial. A guilty plea automatically waives many issues. A waiver may also occur if defense counsel specifically rejects something the court was willing to do for the defense.

Can I raise an issue which does not appear in the record?

No – not on direct appeal, which is limited to the record on appeal. However, Criminal Procedure Law Article 440 provides that a motion may be made in the trial court to set aside the judgment of conviction if certain specific criteria are met. 440 motions are most often used to raise issues of newly discovered evidence (significant evidence that could not have been produced at the time of the trial), improper conduct which does not appear on the record, and ineffective assistance of trial counsel.

You should not try to file a 440 motion on your own. Doing so may delay your case or even prevent you from raising a good issue later on.

If you believe you have grounds for a 440 motion, or if you have any off-the-record information that you think might help you, please let your attorney know about it without delay. Your attorney can then help you assess the viability of a 440 motion. If your attorney decides that you have a strong 440 issue, he or she may be able to file the motion for you and then seek to consolidate it with the direct appeal. At the least, he or she will be able to advise you as to how to proceed so you do not delay or jeopardize your appeal.

Appeals From Guilty Pleas

How a Plea Affects Your Appeal



What is the Plea Project at CAL?

Since almost all defendants are told they must waive their rights to appeal as part of the sentencing bargain, appeals in a plea case can be a challenge. Your case will be carefully examined as a result.

When considering appeals from a plea, we:

- Aggressively challenge waivers of the right to appeal;

- Scrutinize predicate convictions, particularly those from out of state;
- Seek refunds for fees that violate the ex post facto clause; and
- Litigate excessive and illegal sentences.

Raising certain issues on appeal could require a withdrawal of your guilty plea. There can be risks associated with pursuing a plea withdrawal. To ensure that we cause no harm, risks associated with plea vacatures are identified and discussed at length with you before proceeding. You, with full advice and consultation, make the decision on whether to seek a withdrawal of your plea.

Sometimes, there might not be any meritorious issues to raise. Although other appellate attorneys file briefs with no merit, or “**Anders Briefs**,” CAL rarely does. We would rather spend our time meeting with you, discussing the issues in your case, and deciding on the course of action together.

What issues can I raise if I pleaded guilty?

In general, there are far fewer issues that can be raised on appeal if you plead guilty. Some issues that happened prior to your guilty plea are automatically waived when you plead guilty and therefore cannot be raised on appeal. These include issues

based on state statutory rights, such as 30.30 (state speedy trial) and 40.20 (state double jeopardy), and issues that relate to what would occur at a trial, such as severance, evidentiary, or Sandoval issues.

For the most part, constitutional issues litigated prior to a guilty plea and decided at or after a suppression hearing can be raised on appeal. However, if you pleaded guilty before the court rendered a formal decision on a suppression issue, you cannot raise that issue on appeal.

In general, if you pleaded guilty and did not get the minimum sentence allowed by law, you can seek a sentence reduction on appeal. However, if part of your plea bargain included a waiver of your right to appeal your sentence, then you cannot seek a sentence reduction on appeal if the waiver was valid. Many appeal waivers, however, are not valid.

Can I withdraw my guilty plea on appeal?

It depends. You cannot withdraw your guilty plea on appeal simply because you changed your mind after pleading guilty. However, if the record of your guilty plea indicates that the plea was entered improperly, you may be able to seek a plea withdrawal. Doing so may subject you to the risk of a longer sentence, however. If you think you might have grounds for plea withdrawal and wish to withdraw your guilty plea, you should let your attorney know.

What risks do I face if I try to withdraw my guilty plea?

The answer to this question may be very complicated, and you should discuss it thoroughly with your attorney, who will be in the best position to advise you. It will depend on what you were charged with, what you pled guilty to, whether any additional indictments or investigations were "covered" by your guilty plea, what sentence you received, what the permissible sentencing range is for the various counts involved, and what your chances are of being convicted or acquitted at a trial.

The actual risk will vary greatly from case to case. The following, however, will provide some general information:

If you succeed in withdrawing your guilty plea on appeal, you will be placed back in the position you were in before you pleaded guilty. In other words, the charges that were pending against you at that time will be reinstated. In order to know how great a risk you face, you must consider all the counts of the indictment under which you pleaded **and** any other indictments, pending charges, or pending investigations that were "covered" by your guilty plea, since you are likely to face all these again.

The District Attorney may not be willing to make a more favorable plea offer than they did originally. The DA could force you to choose between pleading guilty to the entire indictment and going to trial. If you went to trial and were convicted, especially

of a higher count or additional counts, you might end up with a longer prison sentence than the one you are currently serving.

If you pleaded guilty after losing a suppression hearing, the risks might be different. If you win the suppression issue on appeal, the District Attorney would not be able to use the suppressed evidence against you at a new trial. If that evidence was extremely important to the prosecution's case, they might be unable to retry you, or they might be willing to give you a better plea offer than you got the first time around. If you then decide to go to trial, your chances of acquittal might be better than they were originally.

On the other hand, if the evidence suppressed on appeal is relatively minor, the prosecution might still be able to get a conviction without it. In that situation, what was a good plea deal originally might remain a good plea deal even with the evidence suppressed. Then it might not be worthwhile for you to pursue the suppression issue on your appeal.

If I have been doing well since I was sentenced, can that help me get a time cut?

Technically, information about anything that occurred after your sentencing is not part of the record on appeal and cannot be included in an appellate brief. The First Department is particularly strict about this rule. Nevertheless, in truly exceptional cases, it is possible to make a formal motion to have unusually helpful

information made part of the record. There is no guarantee, however, that the Court will grant such a motion.

If you think you have significant post-sentencing information that is helpful, please provide it to your attorney. Whether it is worth trying to submit it to the Court will vary from case to case, depending on the impressiveness of the information, the sentence, and the facts of the crime. Your attorney can advise you.

Only official documentation is acceptable: letters of commendation or certificates of achievement from prison officials or programs are fine, but letters from friends and relatives saying you are a changed person will not be accepted by the Court. Also, please be aware that, if you produce favorable post-sentencing information, the District Attorney would then be free to bring up any unfavorable post-sentencing information, such as disciplinary problems in prison.

From Briefing to Decision

What Happens Next?



After my brief is filed, what happens next?

When your attorney files your brief, an individual Assistant District Attorney will be assigned to the case, and will write a brief in opposition to ours. This process may take several months. Your attorney will

send a copy of the prosecution's brief to you when the assigned Assistant District Attorney files it.

Although it is possible to write additional briefs in response, it is not necessary in all cases. In our experience, it is best to anticipate the arguments that the District Attorney is likely to make, and address those issues head-on in the main brief. However, if your attorney thinks a reply brief would be helpful, he or she will file one and send you a copy.

When all the briefing is complete, the Appellate Division will place the case on its calendar.

What is the difference between argument and submission?

When an attorney orally argues a case, he or she appears in person before the assigned judges. The Assistant District Attorney who wrote the opposing brief also appears. Each side usually gets between 5 and 10 minutes to present its arguments and answer any questions the judges have. Each attorney highlights the strongest arguments and most helpful facts for his or her side of the case.

When a case is submitted, the attorney does not appear in court. Instead, the case is decided based on the briefs and the record. Your attorney will carefully consider whether oral argument or submission is best in your case.

How will I get the Court's decision?

The court will send us a copy of the order deciding your appeal. An order can affirm a judgment, modify it, or reverse it. If the only issue was excessiveness of sentence, the order will probably not be accompanied by a written opinion explaining the court's reasoning. However, in all other cases, the appellate court usually issues an opinion in which it briefly explains why it decided your appeal as it did.

Your attorney will send you a copy of the order and opinion as soon as we receive it from the court. Decisions are also published on the Appellate Division's website: www.nycourts.gov/reporter/slipid/x/aidxtable_1.shtml.

If I win, what happens next?

If you win, you will get a remedy, depending on the type of error that occurred in your case. The remedy will usually be either a new trial, dismissal of some or all of the charges against you, or a reduction of your sentence.

If you are given a new trial, your attorney will do all the paperwork needed to get you back to court and arrange to have an attorney represent you.

If the Court dismisses the charges against you completely, so that the People cannot

try you again, your attorney will do everything necessary to secure your release and correct your records.

If the Court reduces your sentence, your attorney will notify the appropriate prison and parole authorities to correct your records.

If the Court grants some other type of relief, your attorney will explain what will happen next.

What happens if I lose?

If the Appellate Division or the Appellate Term affirms your conviction, you have the right to request that the Court of Appeals, New York's highest court, consider your case. This is called **"making a leave application."**

Criminal defendants have no automatic right of appeal to the Court of Appeals and must ask permission through the leave application. The Court of Appeals has limited jurisdiction and can only consider **"questions of law"** (issues preserved by your trial attorney's objection, request, or motion). It does not have any **"interest of justice"** jurisdiction. This limited jurisdiction means the court can't consider excessive sentence issues or unpreserved issues.

Your attorney will consult with you about this and can file this leave application for you. Leave applications must be made

within 30 days of receipt of the Appellate Division's decision.

Even when the Court of Appeals has jurisdiction, it grants leave in only a small number of cases each year. That being said, CAL has obtained leave in a significant number of cases. If leave is granted, your attorney will continue to represent you in the Court of Appeals.

Stays

General Information & Expectations



What is a stay pending appeal?

In some relatively rare cases, it is possible to remain out of prison until your appeal is decided on a **"stay pending appeal,"** also called **"bail pending appeal."**

Can I apply for a stay?

Only one application for a stay can be made. Therefore, if your trial judge was specifically asked for a stay and refused to grant one, you cannot apply for one again. Also, you cannot apply for a stay if you were convicted of a Class A felony.

Anyone else can apply for a stay, but they are rarely granted. However, if you obtain a stay and your conviction is later affirmed, you will have to start serving the remainder of your sentence again. You will not receive

credit toward your sentence for the time you were at liberty on the stay. For this reason, some clients prefer not to seek stays unless their chances of reversal are very good.

Stays usually involve the posting of bail, and the amount is generally set at about twice the amount of your bail before trial. Therefore, you should also think about what amount of bail you would be able to raise.

What are my chances of getting a stay?

Judges want to be as certain as possible that, if they grant a stay application, you will not flee or commit additional crimes. Therefore, you are unlikely to get a stay if you:

- have ever escaped, absconded, or bench warranted; or
- have a criminal record that is either long or violent.

It is also rare that a stay would be granted if you pleaded guilty, unless you had an extremely strong suppression issue to raise on appeal. Factors that a judge might consider favorable in ruling on a stay application include:

- the lack of any substantial prior criminal record;
- the absence of violence;
- very strong appellate issues, especially if they might lead to outright dismissal of the charges;

- a short sentence;
- some extraordinary personal circumstance such as serious illness;
- any other factor which suggests you are a good bail risk, such as a perfect record of appearing in court, community ties, solid employment, or a supportive family.

What should I do if I would like to ask for a stay?

Let us know and we will send you a questionnaire to fill out and return. We will use the information you provide, as well as what we already know about your case, to assess your eligibility for a stay and your chances of obtaining one. Since the strength of your appellate issues is important to a stay application, it is sometimes best to apply for a stay only after we receive your complete record and can review it. However, you can write to us about a stay at any time and we will assess the appropriateness of making a stay application.

What should I do if I already have a stay?

It is very important that you notify us immediately if you have a stay. We must act swiftly to make sure that the stay is extended pending the filing and determination of your appeal. Otherwise, your stay might expire and you could be rearrested.

Conflicts of Interest

Ensuring Counsel's Loyalty



What is a conflict of interest?

A client is entitled to the undivided loyalty of his or her attorney. An obligation to some other person or organization which could interfere with the attorney's duty of undivided loyalty to a client is called a *conflict of interest*.

For example, a single attorney or criminal defense organization usually cannot represent co-defendants. That is because your attorney would have to consider the possibility of an action in one case affecting the other negatively. Since the attorney would always have to consider the interests of both co-defendants, neither co-defendant would have the attorney's undivided loyalty.

What if CAL is assigned to represent both me and someone whose interests conflict with mine?

CAL cannot represent co-defendants on appeal. Usually, the appellate courts will not assign co-defendants to our office. Occasionally, however, two clients may have conflicting interests because of their involvement in the same case, even though they are not technically co-defendants. If we are ever assigned to co-defendants, or

to two clients who otherwise have conflicting interests, we will continue to represent one, and ask the appellate courts to reassign the other client's case to a new attorney.

Does it matter who represented my co-defendants at the trial level?

If a criminal defense organization represented one co-defendant at the trial level, it would continue to owe that client a duty of loyalty. Therefore, it could not represent a different co-defendant (or anyone else with a conflicting interest in the case) on appeal. The organization's duty of loyalty to its trial-level client would mean it could not give its undivided loyalty to the appeals client.

However, representation by CAL does not generally present this problem. Since we are completely independent from any other criminal defense organization, there is no organizational obligation that might interfere with our duty to act solely in your best interest.

Does it matter who represented me at the trial level?

A *conflict of interest* may occur when a single defense organization represents the same client both at the trial level and on appeal. An appeals attorney usually is not free to complain about the representation

provided by a trial attorney from the same organization. If either the client or the appeals attorney believes that such a complaint should be made on the appeal, the appeals attorney's loyalty to the organization would conflict with his or her duty of undivided loyalty to the client.

Again, this is generally not a problem at CAL since we are independent of any other criminal defense organization and do not represent people at trial.

Your CAL attorney will be completely free to make an assessment of the performance of your trial attorney. If your appeals attorney believes that there is merit to an argument that the trial representation you received was inadequate, and that raising that issue would increase your chances of success on appeal, nothing would prevent him or her from raising that issue on your behalf.

Other CAL Services

Exploring the Range of our Work



As a CAL client, your representation is not limited solely to your appeal. We have many other projects and services to offer.

Parole Advocacy

This project brings clients, client advocates, and attorneys together to compile a comprehensive submission to the Parole Board in cases where the Board has discretion to grant parole release. We

submit a parole advocacy letter on your behalf that helps to present a complete picture of your case to the Board.

All clients serving indeterminate sentences with upcoming discretionary parole appearances are eligible for the Parole Advocacy Project. We do not provide this service for merit release or for conditional release. The process begins up to six months before the scheduled hearing.

Conditions of Confinement

If you are facing challenges such as obtaining proper medical and mental health treatment, being harassed by fellow inmates, or not being allowed access to the law library, CAL can advocate on your behalf. We regularly intervene to help clients negotiate these kinds of challenges and can seek a facility transfer for you if appropriate.

Re-Entry Services

The Re-Entry Program helps you to identify your needs upon release, plan for the future, and access the services you deserve. We can assist you with finding employment, accessing mental and medical health care, setting up benefits, finding transitional housing, seeking counseling, accessing educational programs, and finding other programming. Our social worker is experienced in re-entry and well-connected in the community. She has access to many programs and can provide referrals

when appropriate.

Justice First Project

There is no debate that the criminal justice system generates wrongful convictions. However, traditional appellate practice cannot address this serious problem since new evidence cannot be entered on appeal. That is why CAL developed the Justice First Project. Our mission is to ensure that wrongful convictions are detected and investigated as early in the appellate process as possible. Cases referred to the project typically involve issues such as mistaken identifications, unreliable confessions, ineffective assistance of counsel, and prosecutorial misconduct.

Through careful screening, cases that warrant additional factual investigation are quickly identified so that effective strategies can be developed and implemented. Teams of attorneys, law student interns, and legal fellows work together to ensure that no possible avenue of investigation goes unpursued. This approach has been remarkably successful, resulting in numerous reversals.

Immigrant Justice Project

Many noncitizens unknowingly plead guilty to offenses that will result in deportation or have other negative immigration consequences. In a landmark decision in 2010, the United States Supreme Court ruled that noncitizens must receive

affirmative, competent advice about the immigration consequences of a guilty plea. In the wake of this decision, we began our Immigrant Justice Project.

While CAL has always strived to address the legal issues at the intersection of criminal and immigration law, this project allows us to focus on protecting the rights of our noncitizen clients and pursuing post-conviction relief for them. We fight tirelessly to provide the quality legal assistance our clients deserve, regardless of their citizenship.

In addition to using our expertise on behalf of our court-assigned noncitizen clients, we also pursue relief for indigent noncitizens facing immigration penalties as a result of New York or Bronx County convictions. These cases are referred to us by the Immigrant Defense Project.

SORA Project

In New York State, individuals who are convicted of a registerable sex offense must have a hearing to determine their risk of sexual re-offense (otherwise known as a SORA hearing). The court's determination then affects the reporting requirements for that individual and the disclosure of their personal information on the internet. Since SORA hearings can have a serious effect on an individual's life, and because it is difficult to make a reliable calculation of one's risk of re-offense, individuals in this position have the right to counsel.

CAL provides zealous representation at these hearings. We gather extensive

records and prepare legal arguments to advocate on our client's behalf.

We also represent our clients on any appeals that follow from these hearings. Additionally, the law permits individuals with a previously imposed moderate or high risk level to petition the court for a lower risk level. CAL attorneys work with our clients to request relief from the most severe reporting requirements and show the court how our clients have successfully changed their lives.

Human Trafficking

In 2010, the New York State Legislature enacted a law that allows survivors of human trafficking to file a motion to clear their records of convictions resulting from trafficking.

While the legislation did not ensure a right to counsel, CAL joined forces with the Urban Justice Center's Sex Worker's Project and a host of other appellate organizations, to provide eligible individuals in New York City with appointed counsel. CAL works fervently to remove the criminal label from those who have been victimized and help our clients move forward with their lives.

DLRA Project

Beginning in 2004, the New York State Legislature began to reform the harsh drug sentences known as the Rockefeller Drug Laws (RDL). The sentences from these laws often carried very long mandatory prison terms. With the reform came the

opportunity for individuals serving these RDL sentences to return to court to ask for a new, shorter sentence in line with current sentencing procedures.

As the law continues to evolve, we continue to bring motions for our clients in these positions. We have been at the forefront of the appellate litigation in this area and have won significant victories in the Appellate Division and the Court of Appeals. CAL's prompt action and aggressive advocacy have won many of our clients shorter sentences, often earning them immediate release and the opportunity for therapeutic treatment of their addiction.

IFP Project

Indigent criminal defendants in New York who wish to appeal their convictions have no right to counsel when applying for poor person relief and the assignment of counsel on appeal. They must instead meet the requirements imposed by the appellate courts on their own. Recognizing that poor defendants who wish to appeal may struggle with this procedure, CAL began extending offers to help individuals whose efforts to obtain assigned appellate counsel had already failed.

The result has been hugely successful. Dozens of poor individuals who might have otherwise unwittingly forfeited their right to appeal by failing to file the proper documents with the court, have, with CAL's assistance, successfully had counsel assigned.

We hope this brochure has been helpful in answering any questions you might have regarding your appeal and our office. If you have any remaining questions or concerns, please contact your assigned attorney. If you have not yet been assigned to an attorney, you can write to us at the following address:

Center for Appellate Litigation
120 Wall Street-28th Floor
New York, NY 10005
Attn: Managing Attorney

Phone: (212) 577-2523
Collect Calls: (212) 577-2531
Fax: 212-577-2535



Legal Excellence. Enduring Compassion.