

CENTER FOR APPELLATE LITIGATION

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ISSUES TO DEVELOP AT TRIAL - *Special “SAP” Part Edition*

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This month’s issue is specifically directed at trial practitioners who appear in Summons Court (the “Summons All-Purpose Part”) in New York and Bronx Counties. For those familiar with the SAP Part, you’d have to look pretty hard to find any due process. It’s the land that Boykin forgot. Pleas are routinely entered and fines agreed to without even the semblance of a factual allocation, a waiver of trial rights, or sometimes even a statement of the charge itself. The summons may be defective, but since the attorney usually doesn’t see it until he or she is before the court, there is little opportunity for a considered challenge. Simply put, many of these pleas, if appealed, could result in relief, likely dismissal given the minor nature of the charge. Yet few appeals are taken. We think this is because lawyers might not realize appeals can be taken, that there are issues to appeal, or that filing the necessary paperwork is simple to do.

In this month’s issue, we debunk the myths about appeals from summons parts.

TOP 10 MYTHS ABOUT APPEALS FROM SUMMONS PARTS

MYTH #1. There is no appeal from a summons conviction.

Wrong. CPL 450.10 authorizes an appeal as of right from a “judgment” in a “criminal action”, including summonses. CPL 1.20 (13-16). Any conviction in the summons part is appealable as of right to the intermediate appellate court.

MYTH #2. If you consent to adjudication by a JHO, there is no right to appeal.

Wrong. The right to appeal is not affected.

MYTH #3. If a trial lawyer files a notice of appeal from a summons conviction, they have to do the appeal themselves.

Wrong. If the defendant cannot afford counsel on appeal, the appellate court will assign an appellate lawyer to represent the defendant, and order the record transcribed and turned over to the appeals lawyer.

MYTH #4. There is no right to appeal if the client pleaded guilty.

Wrong. See answer to #1 above. (Moreover, even if there is a purported appeal waiver, the right to appeal still exists, as with all criminal convictions.)

MYTH #5. Filing a notice of appeal from a summons conviction is complicated.

Wrong, it is no more complicated than filing any notice of appeal (“NOA”). In fact, if the summons is adjudicated at 1 Centre Street on the 16th Floor - the location of the summons parts for New York and Kings County - it is extremely easy. The citywide appeals clerk for criminal court (including the summons parts) is in Room 1623 just down the hall. The defendant can go in there and the appeals clerks will do up the notice of appeal for him, and serve and file it. (This is true for all Criminal Court matters in New York City.)

Even for an attorney, filing a NOA is a simple clerical task. The only important thing to remember is timing (within 30 days of the imposition of sentence).

MYTH #6. Filing a notice of appeal will automatically undo the plea and revive the summons..

Wrong. Filing a NOA simply preserves your client’s right to appeal, whether then or down the road — it doesn’t set anything in motion by itself. And an appellate lawyer will not seek to undo a client’s plea without their specific informed consent.

- Anything that would result in the undoing of the plea and the revival of the summons would never be pursued on appeal (even if available as an issue) without extensive dialogue with the client about possible risks.
- In fact, most summons appeals will never result in revival of the summons anyway; in most cases, a successful appeal means dismissal no matter what the issue.

MYTH #7. The client will have to come back to court for the appeal.

Wrong. As with all appeals, no appearance by the defendant is requested or required.

MYTH #8. There is nothing to appeal in a summons case.

The contrary is true. If the summons is defective in any respect, the case will be dismissed, regardless of whether you raised the issue or the defendant took a plea. And, depending upon the JHO, many pleas do not meet constitutional muster and will result in dismissal of the case on appeal.

MYTH # 9. There is no record created in the summons part.

Wrong. Everything is electronically recorded and a transcript will be created if there is an appeal. When the appellate court assigns a lawyer to the appeal, it also orders that the transcript be done up and given to the appeals lawyer along with the court file papers.

MYTH #10. Getting an appeals lawyer assigned is complicated.

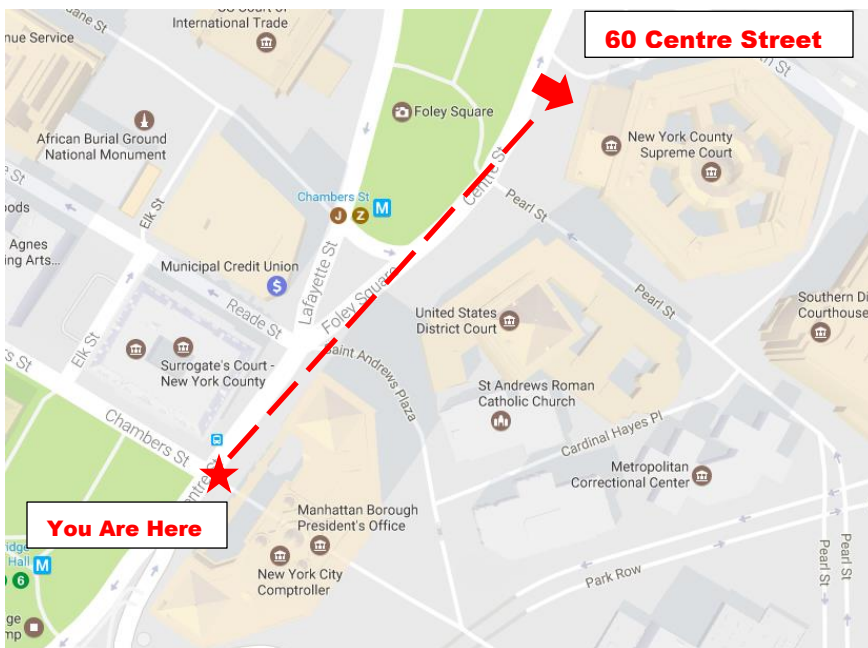
If the client is motivated, it is not that complicated. With respect to New York County, for example, the client simply takes the NOA that the clerk in Room 1623 gives him, takes it to 60 Centre Street, Room 401 (the office of the clerk of the Appellate Term) and asks them to assign a lawyer. The clerk there will assist the client.

**ATTACHED ARE HANDY INSTRUCTIONS FOR APPEALING FROM THE
SUMMONS PART IN NEW YORK COUNTY.**

FEEL FREE TO COPY AND PROVIDE THEM TO YOUR SAP-PART CLIENTS

HOW TO TAKE AN APPEAL FROM A CONVICTION IN THE SUMMONS PART 1 CENTRE STREET, 16th Floor (Manhattan)

1. You have a right to appeal your conviction to an appellate court, even if you pleaded guilty. An appellate court is a higher court that can review whether any mistakes were made by the summons court. To take an appeal, follow these instructions:
2. Take a copy of your summons to Room 1623, right down the hall. (If you are paying a fine today, first pay the fine, then go to Room 1623).
3. Room 1623 is the office of the Appeals Clerk. Ask them to file a **notice of appeal** on your behalf. The Clerk there will handle the notice of appeal and serve a copy on the DA's office. The clerk will also give you a copy of the notice of appeal.
4. If you do not have money to hire a lawyer, you will need to get the court to assign you an attorney to handle the appeal. To get a lawyer assigned, bring your copy of the notice of appeal to 60 Centre Street, Room 401. This is the office of the Appellate Term, First Department. It is a 3 minute walk (see map below).
5. In Room 401, show them the notice of appeal and ask for help in getting a lawyer assigned to your appeal. The Clerk there will help you.

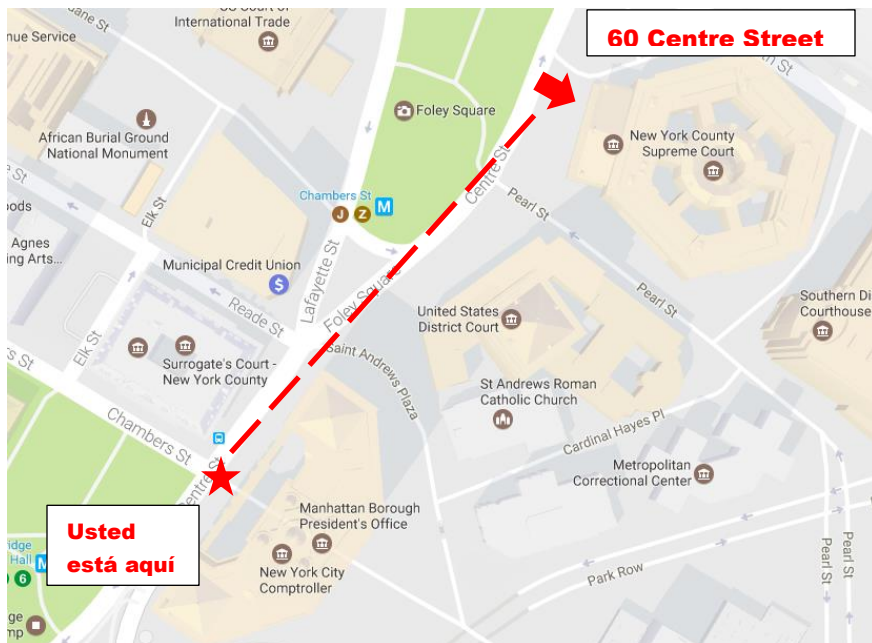


Directions to 60 Centre Street, Room 401: Go out of this building by the same entrance you came in. Once outside the building, go north on Centre Street. 60 Centre Street is a short walk. Enter the building and go to Room 401 on the 4th Floor.

Para español, voltee la página.

CÓMO APELAR UNA CONDENA DE LA PARTE DE CITACIONES 1 CENTRE STREET, PISO NÚMERO 16 (Manhattan)

1. Usted tiene el derecho de apelar su condena en una corte de apelación, aunque se haya declarado culpable. Una corte de apelación es una instancia superior que puede averiguar si fueron cometidos errores por la parte de citación. Para apelar, siga estas instrucciones:
2. Traiga una copia de su citación a la sala 1623 al final del pasillo. (Si tiene que pagar una multa, páguela primero, luego vaya a la sala 1623).
3. La sala 1623 es la oficina de la Appeals Clerk (“secretaria de apelaciones”). Pídales que presenten un **notice of appeal** (“notificación de apelación”) en nombre suyo. La secretaria se hará cargo de la notificación de apelación y hará una entrega oficial a la oficina del fiscal. La secretaria también le dará una copia de la notificación de apelación.
4. Si no tiene dinero para contratar a un abogado, necesitará que la corte le asigne un abogado que se hará cargo de la apelación. Para que un abogado sea asignado, traiga su copia de la notificación de apelación a 60 Centre Street, sala 401. Esta es la oficina del Appellate Term, First Department. Queda a tres minutos caminando (vea el mapa abajo).
5. En la sala 401, muéstreles la notificación de apelación y pida que le ayuden a conseguir un abogado para la apelación. La secretaria le ayudará.



Instrucciones para llegar al 60 Centre Street, sala 401:
Salga del edificio por la misma puerta que usó para entrar. Cuando esté afuera, siga al norte en Centre Street. 60 Centre Street será un corto paseo. Entre al edificio y vaya a la sala 401 en el 4º piso.