

Appellate General Information

In New York, indigent defendants convicted of a crime have the right to appeal to an intermediate appellate court and to have counsel assigned to represent them in their appeal. Representation may encompass not only a direct appeal to a higher court, but also CPL Article 440 motions and federal habeas corpus petitions. Indigent parties in a wide range of Family Court proceedings also have the right to appeal and to have counsel assigned to represent them in their appeals.

The mission of the Office of Indigent Legal Services is to improve the quality of mandated representation provided to such criminal defendants and Family Court litigants, pursuant to County Law Article 18-B. Providing quality mandated representation is essential to protecting the constitutional right to counsel, whether under the U.S. Constitution as in criminal appeals, or under the State Constitution as in many Family Court appeals. There can be no equal justice where the kind of an appeal a person enjoys depends on the amount of money he has. *Douglas v. California*, 372 US 353, 355 (1963).

Quality appellate representation is crucial to a fair system of justice, since it can correct errors that occurred at the criminal trial or Family Court fact-finding hearing and at sentencing or dispositional proceedings. In addition to helping to ensure fair trials and hearings and just outcomes for the individual litigants, appeals have a vital corrective function in signaling to the legal system and the public what the substantive and procedural laws require to protect the rights of criminal defendants and Family Court litigants.

The Appellate Defender Council is a unique group devoted to quality in mandated appellate representation in New York State court criminal and Family Court appeals. Established by the State Office of Indigent Legal Services in 2018, the Council is a group of 21 appellate attorneys from throughout the state. Many members lead institutional programs that provide appellate representation in criminal and/or Family Court cases. In addition, Council members include experienced appellate attorneys from ILS, NYSDA, public defender offices, and assigned counsel programs. The Council seeks to address appellate issues of statewide importance; to provide

insights and ideas about how to best improve appellate representation using funding available via statewide implementation of *Hurrell-Harring* reforms; and to present quality trainings presented by highly experienced attorneys. For more information see the [Appellate Defender Council page](#).

Appellate Division Rules of Practice

[Statewide Rules](#) [pdf]

[June 29, 2018 Joint Order](#) [pdf]

[First Dept. Local Rules](#) [pdf]

[Second Dept. Local Rules](#) [pdf]

[Third Dept. Local Rules](#) [pdf]

[Fourth Dept. Local Rules](#) [pdf]

Appellate Standards and Best Practices

To provide guidance to attorneys providing mandated appellate representation to criminal defendants and Family Court litigants, ILS has published Appellate Standards and Best Practices, found in the Appellate Links below. As set forth in the standards, effective representation encompasses many elements, including:

- Obtaining the appropriate training to provide competent representation.
- Ensuring that no conflicts of interest exist.
- Obtaining complete records and carefully selecting viable issues.
- Communicating with clients, visiting them where feasible, and counseling them about risks presented and issues identified.
- Preparing well-researched, well-reasoned, and well-written briefs.

- Where resources permit, having briefs reviewed by another, more experienced attorney.
- Preparing thoroughly for oral arguments.
- Making leave applications to the New York Court of Appeals.
- Where resources permit, providing holistic representation, including assisting clients with parole hearings and, upon release, with re-entry issues.
- In appropriate cases, preparing CPL Article 440 motions.
- In appropriate cases, seeking relief in federal court after state remedies have been exhausted.

ILSAPP Listserv

ILS administers an appeals listserv (“ILSAPP”) for attorneys who provide mandated trial and appellate representation to criminal defendants and/or Family Court litigants. ILSAPP is open to any attorney who is employed by a Legal Aid Society, Public Defender or Conflict Defender Office or who accepts assignments from an assigned counsel panel—so long as such attorneys do not also represent the interests of a prosecutor’s office or a child protective agency.

ILSAPP is a forum to discuss practice and policy issues, post questions and announcements, and receive feedback from colleagues—all directed at improving the quality of mandated appellate representation. ILS also uses ILSAPP to provide weekly Decisions of Interest regarding noteworthy criminal and family law cases and occasionally to transmit provider resources to the appellate community. Anyone on the ILSAPP listserv may post messages and materials. To join the listserv, send an email to [Cynthia Feathers](#).

Trial and Appellate Resources

Resources for trial and appellate attorneys are provided below. These include all the materials we have provided via ILSAPP. We thank the authors of these invaluable manuals, CLEs and templates for generously giving us permission to post them to our website for the benefit of the public defense community.

- [Sample 440 Motions](#)
- [Decisions of Interest](#)
- [CPL 30.30 Manual for 2020, Published by the Monroe County Public Defender's Office](#) [pdf]
- [A Defense Attorney's Guide to SORA Proceedings](#) [pdf]
- [A Defense Attorney's Guide to SORA Modification Proceedings, by Alan Rosenthal, Esq.](#) [pdf]
- [Preservation Training for Trial Lawyers, by the Office of the Appellate Defender](#) [pdf]
- [Issues on Appeal and 440 Motions Involving Non-Citizens, by the Legal Aid Society of Westchester County](#) [pdf]
- For model materials to use in developing a CPL article 440 *Padilla* motion, go [here](#).
- [Court of Appeals Analyses from the Legal Aid Bureau of Buffalo](#)

Center for Appellate Litigation Materials:

- [Court of Appeals Updates](#)
- [Issues to Develop at Trial Newsletters](#)

Appellate Links

COURTS

[New York State Court of Appeals](#)

Appellate Division

[First Department](#)

[Second Department](#)

[Third Department](#)

[Fourth Department](#)

[United States Supreme Court](#)

[U.S. Court of Appeals for the Second Circuit](#)

U.S. District Court:

[Northern District of NY](#)

[Southern District of NY](#)

[Eastern District of NY](#)

[Western District of NY](#)

STANDARDS

[ILS Appellate Standards and Best Practices](#) [pdf]

[ILS Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest](#) [pdf]

[ILS Standards for Parental Representation in State Intervention Matters](#) [pdf] (pp. 35 and 43-46 address appellate representation)

[NYSBA Revised Standards for Providing Mandated Representation](#)

BLOGS

[Habeas Corpus Blog](#)

[New York Court Watcher Blog](#)

[Pace Law School Criminal Justice Blog](#)

[SCOTUS Blog](#)

[Wrongful Convictions Blog](#)

OTHER

[Immigrant Legal Resource Center](#)

[National Association of Criminal Defense Lawyers](#)

DOCCS:

[Home Page](#)

[Inmate Lookup](#)

[Handbook for Families and Friends of Inmates](#)

[Board of Parole Handbook](#)

[New York State Defenders Association Home Page](#)

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[Print](#)

[Table of Contents](#)