

## YOUR APPEAL

Answers to some basic questions about criminal appeals, the appellate process, and your representation on appeal by Appellate Advocates

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## INTRODUCTION

The purpose of this booklet is to let you know some basic facts about the appeals process and about Appellate Advocates, which has been assigned to represent you on your appeal. We hope that it will answer most of your questions and help you to understand and participate more knowledgeably in your appeal.

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## YOUR APPEAL

### **What Is A Criminal Appeal?**

An appeal is a review by a higher court of what happened in the lower or trial court. Its purpose is to determine whether any serious legal errors occurred at your trial, hearings, plea, or sentencing, which would require reversal or modification of your conviction or sentence. Convictions in Kings, Queens and Richmond Counties are appealed to the Appellate Division, Second Department. In some cases, a further appeal can be taken to the New York Court of Appeals.

### **What Will The Appeals Court Consider In Deciding My Case?**

An appeals court can consider only 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" consists of:

1. Minutes of all the important proceedings in the trial court, such as trials (usually including at least a portion of jury selection), pre-trial hearings, guilty pleas, and sentencing. We are not entitled to minutes of every adjournment or other court appearance in your case. However, if we believe there are additional minutes that are important for your appeal, we will obtain them. The record on appeal does **not** include grand jury minutes, and we are usually not able to obtain them because they are considered confidential.
2. Documents submitted to the lower court -- such as written motions, decisions on motions, notes from the jury, the Probation Department's pre-sentencing report, court-ordered psychiatric reports -- are also part of the record on appeal. Police reports are not generally available to us unless they were exhibits at trial or are attached to other papers in the court file.
3. Physical Evidence admitted at trial or a hearing -- such as photos of a line-up or crime scene -- may also be considered on appeal.

## **How Does An Appeals Court Make Its Decision?**

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

## **Will I Be Brought To Court For My Appeal?**

No. Since the appeals court cannot take testimony or consider new evidence, your presence is not required. However, if you are at liberty, you are welcome to attend the oral argument. If you are incarcerated, you may wish to have a friend or relative attend. Simply ask your attorney to inform you of the date on which your case is scheduled.

## **ABOUT APPELLATE ADVOCATES**

### **What Is Appellate Advocates?**

Appellate Advocates is a not-for-profit corporation. It was formed in 1995 solely for the purpose of providing high quality appellate representation to criminal defendants who cannot afford private counsel. We have a contract with New York City to provide representation for indigent defendants who are appealing criminal convictions from Brooklyn, Queens, and Staten Island. We are assigned to appeals by the Appellate Division and by the Court of Appeals.

Appellate Advocates handles *only* cases assigned to us by the courts. We are not able to represent or advise people whose cases are not officially assigned to us.

Appellate Advocates is headed by Lynn W. L. Fahey. She is the "Attorney of Record" to whom your case is officially assigned. An experi-

enced group of supervisors, attorneys, and paralegal and other support staff work with her to make certain that you obtain the best possible representation.

### **What Happens When My Case Is Assigned To Appellate Advocates?**

When Appellate Advocates receives the order of assignment in your case, we create a case file for you, send you this booklet, and begin the steps needed to make sure we get all the minutes and documents we need in order to brief your case. Receiving all the necessary minutes and documents usually takes several months. (If your case has been reassigned to us from another appellate attorney, this process may already be underway.) Once the record is substantially complete, your case is assigned to an individual Appellate Advocates attorney, who will prepare a brief on your behalf.

### **What Should I Do If I Have Questions Or Important Information About My Case?**

While we are waiting for the record to become complete, your case will remain with our expert paralegal staff. During this period, any questions you have about your case should be directed to our Chief Paralegal, Ms. Irene Wojcicki. She will be able to answer most of your questions about the status of your case and the appeals process. She will usually keep inquiries about the legal issues in your case with your case file, so that they can be considered by the attorney who is eventually assigned to your case.

The Chief Paralegal is in daily contact with Ms. Fahey and the other supervisors at Appellate Advocates and she will alert them to any issue or question that requires an attorney's immediate attention.

As soon as we have the complete record in your case, one of our attorneys will be assigned to prepare a brief on your behalf. Within a few days of receiving your case file, your attorney will write to you. You will then have the chance to write to your individual attorney about any legal issues you wish the attorney to consider and anything else about your case that you think your attorney should know. From the time he or she is assigned to prepare your brief, your individual attorney will have direct responsibility for your case and you should correspond directly with that attorney.

## **Is There Anything I Should Let Appellate Advocates Know Right Away?**

There are a few things that it is important for us to know **without delay**. Please let us know **immediately** if:

- your address changes;
- you have been given a stay of your sentence pending appeal;
- you have a life-threatening medical condition;
- you have any transcripts in your case or you know your attorney does;
- you either filed a 440 motion or received a decision on a 440 or other motion after you were sentenced;
- you have been resentenced or otherwise brought back 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;
- you have had any serious disciplinary action taken against you in jail or prison since your sentencing; or
- there is any other matter in your case that might require urgent attention.

## **Can I Phone My Attorney Or Have My Attorney Visit Me?**

If you are at liberty or otherwise able to make regular pay phone calls, of course you may phone your attorney to discuss your case. Unfortunately, however, our office is not able to accept collect calls except in unusual situations. If your attorney believes that yours is the rare case in which telephone contact is needed, he or she will provide you with a collect number to call.

The expense of receiving unnecessary collect calls from clients is prohibitive. Therefore, collect calls will be accepted only if your individual attorney has asked our receptionist to accept them. You may rest assured that your attorney will keep you informed by mail of all important developments in your case.

You may have a friend or relative phone your attorney, provided you have given us written permission to discuss your case with that person.

Since an appeal is based solely on the written record from the lower court, appellate attorneys almost never need to visit clients in person. If you

are at liberty, you may certainly make an appointment to visit your attorney. However, we do not have the resources to visit clients who are incarcerated at a distance from New York City, unless such a visit is required by unusual circumstances in a particular case.

## THE APPEALS PROCESS

### **How Long Will My Appeal Take?**

How long your appeal will take depends on several things, including whether you went to trial or pled guilty, the length of your trial, and how quickly we are able to obtain all of the minutes and documents we need for your case. It is common for a trial case to take 18 to 24 months between assignment of counsel on appeal and the court's decision. We will do everything we can to make sure your appeal is not delayed unnecessarily, but some things that can cause a delay are not within our control. There are four basic stages to an appeal:

(1) Gathering the record, which may 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 may take from a month to several months after the record is complete, depending on the length of your transcript, the complexity of your issues, and the length of time spent corresponding with you to obtain your views or investigating additional potential issues;

(3) Waiting to receive the District Attorney's brief and for the case to be calendared by the Court, which may take several months; and

(4) Waiting for the Court's decision. Most cases are decided within three or four months of oral argument or submission, but occasionally a decision takes much longer.

## **Why Does It Take So Long To Get The Record?**

The same order that assigned you counsel for your appeal also requires the County Appeals Clerk to order the court stenographers who recorded the proceedings in your case to type a copy of the minutes for our use on the appeal. Stenographers often have back orders of minutes, and new orders must wait their turn in line.

Sometimes, additional problems arise. If a stenographer is no longer employed by the court systems, his or her notes have to be located and typed out by another stenographer. If the court file is lost, or if it is unclear from the file precisely what proceedings occurred and when, the Appeals Clerk may have difficulty determining what minutes to order and from whom. Sometimes, the Appeals Clerk thinks he has ordered all the minutes, but when we received them, we discover that additional minutes must be ordered.

## **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, letters and phone calls lead to 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 the minutes are lost, most often the court will order a "reconstruction hearing" at which the people who were present testify about what they recall of the trial. If such a hearing is ordered, you will have a right to be present for it.

## **Is There Anything I Can Do To Get The 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 record in your case as soon as we can.



### **Is There Anything I Should Avoid Doing Because It Might Cause Delay?**

Yes. Do not make any motions or institute any legal proceedings relating to your case on your own; please discuss them with us first. They may cause serious and unnecessary delay of your appeal. They may also make it difficult or impossible to raise certain arguments on your behalf later. If you have any motions pending that relate to your case, please let us know about them immediately.

### **Is There Any Danger My Appeal Will Be Dismissed Because Of Delays?**

No. We will make sure that does not happen.

### **What Will Happen When My Minutes Are Complete?**

When the minutes in your case are substantially complete, we will assign your case to an individual attorney. That attorney will write to you shortly after receiving your case, and keep you informed of progress on your case from then on. Usually, an attorney will not begin work on your case until everything is complete, although an exception may be made when the missing item is relatively minor. Your individual attorney will decide when your case is complete enough to begin work on the brief.

### **Can I Get A Copy Of My Transcript?**

When we have received the complete minutes in your case, we will automatically make a copy of them and send it to you free of charge. It is important that you take good care of this copy of the transcript. If it is lost or destroyed, we will not be able to provide you with a free replacement.

If you want a second copy of the transcript, we will have to charge for making that additional copy. Please let us know, and we will advise you of the cost.

## ISSUE SELECTION AND BRIEFING

### **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 consider. Your attorney will also write to you, giving you a chance to bring up issues you are especially interested in. Once all potential issues are identified, your attorney must eliminate those that are not viable, and then assess the relative strengths and weaknesses of the viable issues.

Your attorney's aim is always to present the strongest appeal possible on your behalf. Often, the strongest appeal presents one or two compelling issues, rather than a larger number of issues, some of which are not as good.

All the attorneys at Appellate Advocates are experienced in both criminal and appellate law. They use their experience and judgment to decide what will make for the strongest presentation in each individual case. In order to make the best possible decisions on your behalf, your attorney will do legal research, examine the exhibits involved in your case, and confer with other experienced attorneys at Appellate Advocates.

The attorneys at Appellate Advocates are kept up-to-date on all important developments in the criminal law. They receive copies of decisions in criminal cases as they appear in the Law Journal, and attend regular office meetings to discuss new decisions of particular interest. Even after your brief is filed, your attorney will be aware of, and able to call to the Court's attention, any new decisions which are relevant to your case.

Finally, every brief filed by Appellate Advocates is subjected to a thorough supervision process, in which it is read and edited by a supervisor with many years of criminal appellate experience. This provides an additional guarantee that the brief filed on your behalf will be as good 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 to ask what your attorney plans to raise.

Frank and open communication between you and your attorney is extremely important. Do not hesitate to share your thoughts with your attorney. Your views are important to your attorney, just as your attorney's expertise and best judgment are important to you.

If you and your attorney cannot reach agreement as to what issues to raise, you have the right to ask the Appellate Division for permission to file a supplemental brief raising an additional issue or issues. Such requests should not be made before you receive your brief from your attorney, but **must be made within 30 days** of the date on which we mailed the brief to you. 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 District Attorney's office to respond to it.

### **Can I Raise An Issue On Appeal If My Lawyer Did Not Object At My Trial?**

The Appellate Division has 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" by defense counsel making a timely, specific objection, request (for example, for a curative charge), or mistrial motion. It is to your advantage to have a legal error "preserved," because then the Appellate Division must consider it, and must generally grant relief if it finds that the error was harmful.

If an issue is not "preserved," the Appellate Division may consider in its "interest of justice" jurisdiction, or may refuse to consider it. Reversals in the "interest of justice" usually occur only if the court believes an error was so important that to affirm the conviction would be inconsistent with a basic sense of justice and fairness. Attorneys will raise good issues even if they are not preserved, but interest of justice reversals usually do not occur unless the evidence of guilt is 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. 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 That Does Not Appear On The Record?**

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 that 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 foreclose 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. 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**

### **What Issues Can I Raise If I Pled Guilty?**

In general, there are far fewer issues that can be raised on appeal following a guilty plea than following a trial. Some issues that arose before a 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 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 pled guilty before the court rendered a formal decision on a

suppression issue, or if your plea bargain included a valid waiver of your right to appeal, you cannot raise the suppression issue on appeal.

In general, if you pled 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, and if the waiver was valid, then you cannot seek a sentence cut on appeal.

### **Can I Withdraw My Guilty Plea On Appeal?**

You cannot withdraw your guilty plea on appeal simply because you changed your mind after pleading guilty. If the record of your guilty plea indicates that the plea was entered improperly, you may be able to seek plea withdrawal, but doing so may subject you to the risk of a longer sentence. 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 pled guilty. In other words, the charges that were pending against you at that time will be revived. In order to know how great a risk you face, you must consider all the counts of the indictment under which you pled 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.

In most cases, the District Attorney is not willing to make a more favorable plea offer than he was in the first place. He 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 pled 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 People's case, they might be unable to try you, or they might be willing to give you a better plea offer than you got the first time around. If you decided 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 People 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.

## **SEEKING SENTENCE REDUCTION**

### **Can I Ask For A Reduction Of My Sentence?**

Yes, provided that you did not received the minimum permissible sentence and you did not waive your right to appeal (or your right to raise a sentence issue on appeal). We examine all waivers carefully to make sure that they are valid and binding.

The Appellate Division, as part of its "interest of justice" jurisdiction, may review your sentence for excessiveness and reduce it to any sentence within the legal range for the crime of which you were convicted. You should be aware, however, that the Appellate Division rarely reduces sentences.

## **How Do I Seek A Sentence Reduction?**

The rules of the Appellate Division, Second Department, provide that, if the only issue being raised on appeal concerns the legality, propriety, or excessiveness of sentence, the appeal may be brought in the form of a motion, rather than a brief. This procedure is quicker than filing a brief and waiting for the case to be calendared.

If other issues are being raised as part of your appeal, we would add a point to your brief, asking for a sentence reduction.

## **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. However, the Appellate Division, Second Department, has been willing in some cases to consider favorable information about a defendant's post-sentencing conduct. If we are seeking a sentence reduction by motion, we may be able to attach documentation to the motion itself and ask the Court to consider it.

If we are filing a brief because we are raising additional issues, we might not be able to get the Court to consider post-sentencing information.

Only official documentation is acceptable: letters of commendation or certificates of achievement from prison officials or programs are fine; letters from friends and relatives saying you are a changed person will not be accepted by the Court. Also, 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.

If you think you have significant post-sentencing information that is helpful to you, 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.

## **FROM BRIEFING TO DECISION**

### **After My Brief Is Filed, What Happens Next?**

When your attorney files your brief, he or she also provides copies to the District Attorney's office. An individual Assistant District Attorney will be assigned to the case, and will write a brief in opposition to ours. He or she will file it with the Court and give us copies, and your attorney will send a copy to you.

Although it is permissible to write reply briefs, it is unnecessary in most cases. In our experience, it is best to anticipate the arguments the District Attorney is likely to make, and address those issues head-on in our main brief. However, if your attorney thinks yours is the rare case in which a reply brief is called for, he or she will file one and send you a copy.

Once the Appellate Division has received all the briefs, it will place the case on an argument or submission calendar.

### **What Is The Difference Between Argument and Submission?**

When an attorney orally argues a case, he or she appears in person before the judges who are assigned to decide the case. The Assistant District Attorney who wrote the opposing brief also appears. Each side usually gets between 5 and 15 minutes to present its arguments and answer any questions the judges may have. Each attorney tries to highlight the strongest arguments and most helpful facts for his or her side of the case.

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

The Appellate Division, Second Department, requires that time for oral argument be requested on the cover of the brief. Since this must be done before your attorney sees the District Attorney's brief, many attorneys will request argument time even if they think the case should probably be submitted. Once they receive the District Attorney's brief, they make a final decision as to whether to argue or submit the case.



When the only issue raised concerns the legality or excessiveness of the sentence, the Appellate Division, Second Department, does not permit oral argument. In other cases with short records or relatively simple issues, the Court may also decide not to permit oral argument, even if the attorney has requested it.

### **How Will I Get The Court's Decision?**

The Court will send us a copy of its 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 Division, Second Department, usually issues an opinion in which it 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 them from the Court. Decisions are also printed in the *New York Law Journal*.

### **If I Win, What Happens Next?**

This depends on the relief the Court grants in your case. The most common forms of relief are a new trial, a dismissal, or a sentence reduction.

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 a trial 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 make certain the prison or parole authorities are notified to correct your records.

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

## **What Happens If I Lose?**

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

The Court of Appeals has much more limited jurisdiction than the Appellate Division. It can consider only "questions of law," which generally means issues preserved by your trial attorney's objection, request, or motion. It does not have "interest of justice" jurisdiction. Therefore, it cannot consider excessive sentence issues or most unpreserved issues. Even when the Court of Appeals has jurisdiction to consider the issues, leave applications are granted in only a small percentage of cases.

Your attorney will make a leave application for you, or you may do so yourself if you prefer. Leave applications must be made within 30 days of receipt of the Appellate Division's order. When your attorney sends you the order, he or she will also advise you about seeking leave in your case. If leave is granted, your Appellate Advocates attorney will continue to represent you in the Court of Appeals.

## **STAYS**

### **What Is A Stay Pending Appeal?**

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

### **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 expeditiously 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.

## **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 you 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. 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 get 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 extremely good.

Stays usually involve the posting of bail, and bail 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 abscond or commit additional crimes. Therefore, you are extremely unlikely to get a stay if **any** of the following are true:

- you have ever escaped, absconded, or bench warranted;
- you have been convicted of a violent crime;
- you are serving a long sentence; or
- you have a prior felony conviction.

Although no one factor is likely to get you a stay pending appeal, a bail application might be viable if most of the following factors are present in your case:

- the lack of any significant prior criminal record;
- the absence of violence;
- very strong appellate issues, especially if they might lead to dismissal of the charges;
- a short sentence;
- some extraordinary personal circumstance, such as a serious illness; or

other factors showing that you are a good bail risk, such as a perfect court attendance, 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 to us. 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 record and can review it. However, you can write us about a stay at any time and we will assess the appropriateness of making a stay application.

## **CONFLICTS OF INTEREST**

### **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 that 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 a single criminal defense organization usually cannot represent co-defendants. That is because, each time an attorney took some action on behalf of one of the co-defendants, he or she would have to consider the possibility that that action would harm the other co-defendant. Since the attorney would always have to consider the interest of both co-defendants, neither co-defendant would have the attorney's undivided loyalty.

## **What If Appellate Advocates Is Assigned To Represent Both Me And Someone Whose Interests Conflict With Mine?**

Appellate Advocates cannot represent co-defendants on appeal. Under some circumstances, 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 assigned to co-defendants, or to two clients who otherwise have conflicting interests in the case, we will continue to represent one of the clients and ask the Appellate Division to reassign the other client's case to a new attorney.

## **Will It Matter Who Represented Me or My Co-Defendant At The Trial Level?**

No. Appellate Advocates is completely independent from any other criminal defense organization. Therefore, regardless of who represented you or a co-defendant at trial, we will have no duty of loyalty to anyone but you.

We will act solely in your best interest, regardless of whether that helps or hurts any co-defendant. Also, we will make an independent 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 argument on your behalf.

The managers of Appellate Advocates, as well as some of its staff attorneys and other employees, were associated with the Criminal Appeals Bureau of The Legal Aid Society before coming to Appellate Advocates. However, since they are no longer associated with The Legal Aid Society, they have no organizational connection that could interfere with their loyalty to you. If you were represented by The Legal Aid Society at the trial level and you remain concerned that a former association with The Legal Aid Society might interfere with our representation of you, please write to us so that we can discuss the matter with you further.