

Appeals from Letter Applications, Letter Orders, Conferences, Statutory Compliance, Part I

Every 9/11 I commemorate and dedicate an article in honor and memory of my wife, Angela Susan Scheinberg, to whom I was extraordinarily blessed to have been married. It is difficult and painful to process that a quarter of a century has passed since that fateful day—the day her life was savagely wrenched from me and from everyone who knew and loved her, forever altering the course of my life. Angela stood as a paradigm of kindness and integrity, serving as a true beacon of virtue. On this day of remembrance, I also honor every patriotic American whose life was taken on that tragic day.

September 10, 2026 at 12:00 PM By **Elliott Scheinberg**

This article focuses on what constitutes an appealable paper under CPLR 5512(a) and how the term “appealable paper,” a jurisdictional predicate to an appeal, has occasionally been judicially broadened with, shall we say, the wave of an appellate wand. This article also addresses the intersection between CPLR 5512 and CPLR 5701(a)(2), “appeals to the appellate division from supreme and county courts.”

As general background, in addition to CPLR 5512, three other jurisdictional predicates must be met before the Appellate Division may entertain the merits of an appeal: aggrievement (CPLR 5511); timeliness of the appeal (CPLR 5513), and CPLR 5515: “An appeal is taken by serving the notice of appeal on the opposing party and filing the notice of appeal (CPLR 5515(1)). CPLR 5515, “taking an appeal; notice of appeal,” *Matter of Long Is. Pine Barrens Socy., Inc. v Cent. Pine Barrens Joint Planning & Policy Com’n*, 113 AD3d 853, 855-56 [2d Dept 2014]. As we shall see, CPLR 5520(c) is the occasional saving lifeline to an otherwise dead appeal.

CPLR 5512

CPLR 5512(a) provides, in pertinent part: “Appealable paper. An initial appeal shall be taken from the judgment or order of the court of original instance ...” CPLR 5512(a) is jurisdictional: *Cioffi v. City of New York*, 14 A.D.2d 741 (1st Dept 1961) (“To become appealable the determination of a court must be in the form of an order of judgment.”); *Matter of Washington v. Annucci*, 153 AD3d 1504 [3d Dept 2017] (“As there is no language in Supreme Court’s decision that it is either a judgment or order of the court and no such judgment was entered, this court lacks jurisdiction at this time and the appeal must be dismissed (CPLR 5512[a]).

A bare decision is neither an order nor a judgment and, hence, is not appealable: *Sims v. Coughlin*, 86 NY2d 776 [1995] (“Appeal dismissed, without costs, by the Court of Appeals, sua sponte, upon the ground that no appeal lies from a decision.”); *Gunn v. Palmieri*, 86 NY2d 830 [1995]; *Howell v. State*, 169 A.D.3d 1208, n. 1 (3d Dept 2019) (“[A] decision is not an appealable paper.”); *Render v. Gizzo*, 129 A.D.3d 1488, 1489 (4th Dept 2015) (“[I]t is well settled that ‘[n]o appeal lies from a mere decision.’”)

Other instances, by no means exhaustive, of nonappealable papers, include: (1) memorandum decisions, *Arena v. City of New York*, 23 A.D.2d 847 (2d Dept 1965); (2) a decision directing “settle order,” *Smith v. United Church of Christ*, 95 A.D.3d 581 (1st Dept 2012); findings of fact and conclusions of law, *Tantleff v. Kestenbaum & Mark*, 131 A.D.3d 955 (2d Dept 2015) (E. Scheinberg, *The New York Civil Appellate Citator*, Chapter 8, 4th ed., 3 vols, 2026 for other instances).

CPLR 5701(a)(2), the Foundation of Appealability as of Right Lies in a Motion’s Having Been Made Upon Notice

CPLR 5701(a)(1) allows an appeal as of right from any final or interlocutory judgment except one entered subsequent to an order of the Appellate Division which disposes of all the issues in the action. *Community Related Services, Inc. (CRS) v. New York State Dept. of Health*, 151 A.D.3d 429 (1st Dept 2017); *Powell of New York*, 146 A.D.3d 701, 701-03 [1st Dept 2017].

CPLR 5701(a)(2) provides that an appeal may be taken from an order “where the motion it decided was made upon notice” (plus one of eight other statutory factors), essentially, made in accordance with CPLR 2214, i.e., no ex parte or sua sponte orders (which are addressed in CPLR 5701(a)(3)), ergo, 5512 + 5701(a)(2) = appealable as of right, both elements being present conjunctively. See, *Sholes v. Meagher*, 100 N.Y.2d 333 [2003], below.

Profs. David D. Siegel, Patrick Connors, McKinney’s Practice Commentaries, C5701:1 explain:

“Generally, CPLR 5701 is the main statutory source of the jurisdiction of the appellate division. It determines what is appealable. Judgments are appealable on the authority of paragraph 1 of subdivision (a); almost any order is appealable on the authority of paragraph 2. Paragraph 3 supplies the procedure whereby a party against whom an ex parte order has been granted the order itself is not appealable can obtain its appellate review.

“Appealability to the appellate division is broad. As a general rule, almost anything can be appealed to the appellate division on the authority of CPLR 5701, in contrast with the restrictions imposed by Article 56 on appeals to the Court of Appeals. Only a few restrictions exist on the appeal of right to the appellate division, and, when one of the of right exceptions is at hand, the order can be appealed by permission under subdivision (c) of CPLR 5701.”

In *Reyes v. Sequeira*, 64 A.D.3d 500, 883 N.Y.S.2d 494 [1st Dept 2009], the Appellate Division, citing the landmark decision *Sholes v. Meagher*, 100 N.Y.2d 333 [2003] underscored: “The absence of a motion is not a technical defect that can be overlooked; under *Sholes* a motion is required to generate an order that is appealable as of right.”

Although Oral Motions are not Appealable Some Oral Motions Have Been Reviewed Sua Sponte on Appeal

An oral motion is not appealable as of right (*Smith v. Smith*, 227 A.D.3d 1494 [4th Dept 2024], *Edwin P. v. Jenny L.B.*, 193 A.D.3d 463 [1st Dept 2021], *Luna v. Brodcom W. Dev. Co. LLC*, 177 A.D.3d 516, 517 [1st Dept 2019]; the aggrieved party should follow the steps in CPLR 5701(a)(3), also *Sholes v. Meagher*, 100 N.Y.2d 333 [2003]. Similarly, an order occurring by operation of law, e.g., a statute is not made on notice and is not appealable as of right.

Wells Fargo Bank, N.A. v. Hudson, 98 A.D.3d 576 [2d Dept 2012] (“on the court’s own motion, the notice of appeal from so much of the order as granted the oral application of the defendant Mahitima Baa to dismiss the complaint insofar as asserted against him is deemed to be an application for leave to appeal from that part of the order, and leave to appeal is granted (CPLR 5701(c)).”

In *Countrywide Funding Corp. v. Reynolds*, 41 A.D.3d 524 (2d Dept 2007), an action to foreclose a mortgage, the defendants appealed from an order that “granted the plaintiff’s oral application for leave to amend the complaint, granted the plaintiff’s motion for summary judgment against them, denied their cross motion to dismiss the complaint, or in the alternative, to preclude any testimony by the plaintiff, preclude documents not provided by the plaintiff, and strike the plaintiff’s note of issue and, sua sponte, directed those defendants to post a bond in the sum of \$180,000 before appealing.”

The Appellate Division, on its own motion, treated that branch of the appeal from “so much of the order as granted the plaintiff’s oral application for leave to amend the complaint as an application for leave to appeal from that part of the order, and leave to appeal is granted (CPLR 5701(c)).” Parenthetically, the Appellate Division ultimately modified the order “by deleting the provision thereof granting the plaintiff’s oral application for leave to amend its complaint and substituting therefor a provision denying the oral application.”

In a terse decision, *Ganz v. Florman*, 213 A.D.3d 434 (1st Dept 2023), the Appellate Division held: “plaintiffs’ failure to submit opposition papers to defendants’ motion to dismiss does not render the order an unappealable order entered upon default (CPLR 5511), as plaintiff appeared and orally opposed the motion during the final discovery conference.” This is a very sound ruling as 5701(a)(2) only requires the moving papers to have been made on notice.

Orders Following Court Conferences are not Appealable as of Right, the Corrective Measure: CPLR 5701(a)(3) and *Sholes v. Meagher*

Armstrong v. B.R. Fries & Assoc., Inc., 95 A.D.3d 697, 698 (1st Dept 2012) (“The status conference order itself is not appealable as of right because it is not an order which determined a motion made upon notice.”); *MJC Electric, Inc. v. Hudson Meridian Constr. Group, LLC*, 194 A.D.3d 574, 574–75 (1st Dept 2021) (“[T]he status conference order sua sponte dismissing the complaint was not appealable as of right (CPLR 5701(a)(2); *Sholes v. Meagher*, 100 N.Y.2d 333, 763 N.Y.S.2d 522, 794 N.E.2d 664 (2003); *Armstrong v. B.R. Fries & Assoc., Inc.*, 95 A.D.3d 697, 945 N.Y.S.2d 74 (1st Dept 2012)). Plaintiff followed proper procedure by “apply[ing] to vacate the order and then appeal[ing] from the denial of that motion so that a suitable record [could] be made and counsel afforded the opportunity to be heard on the issues.”); *Koczen v. VMR Corp.*, 300 A.D.2d 285 (2d Dept 2002) (“The compliance conference order at issue is not appealable as of right because it does not decide a motion made on notice (CPLR 5701(a)(2)...).

A party seeking appellate review of such an order must move to vacate or modify it, and appeal, if necessary, from the resulting order.”); *Mega Const. Corp. v. Benson Park Associates, LLC*, 60 A.D.3d 826 (2d Dept 2009) (“[The] preliminary conference order which directed the defendant... to serve its answer by Sept. 14, 2007, was not appealable as of right, it was procedurally proper for the defendant to cross-move to vacate and or modify that portion of the order and to extend the time to serve its answer.”)

An order made by telephone is predictably not appealable *220-52 Assoc. v. Edelman*, 241 A.D.2d 365, 368 (1st Dept 1997) dismissed the appeal as not appealable as of right because the order memorialized a directive made by telephone, rather than a decision made on a motion on notice.

Letters on Appeal

In *Reynoso v. Dennison*, 10 N.Y.3d 799 (2008), the Court of Appeals, sua sponte, tersely dismissed an appeal “upon the ground that the ... letter appealed from is not a judgment or an order from which an appeal to the Court of Appeals may be taken (CPLR 5512[a]; 5601).”; *Soule v. Lozada*, 240 AD2d 897, 898 [3d Dept 1997] “dismiss[ed] the purported appeal from Supreme Court's letter because that document is not an appealable paper.”

In *Buljeta v. Fuchs*, 209 A.D.3d 730 [2d Dept 2022], the Appellate Division rejected the mother’s contention that the Family Court should have entertained a motion to disqualify the father’s counsel as “the letter from the Family Court’s court attorney, which indicated that the court would not entertain such a motion, is not reviewable.”

Some Letter Orders Occasionally Receive Appellate Review

Although neither orders nor judgments, letter orders have, nevertheless, occasionally, received appellate review. Very recently, in *Perrotte v. Bloomberg, L.P.*, 246 AD3d 480 [1st Dept 2026], the First Department, citing its 2024 precedent, *Naramore v. Mount Sinai Health Sys., Inc.*, 227 AD3d 528 [1st Dept 2024], which held that an order from a status conference was appealable because “[t]he order was not issued sua sponte, but instead resolved plaintiff’s letter application, which defendants opposed through their own letter submissions... Under these circumstances, the process afforded the parties the opportunity to be heard and created a proper record for appellate review.”

Naramore puzzlingly concluded: “While a status conference order is typically not decided on a motion made upon notice and thus unappealable (...CPLR 5701[a][2]), here the order was not sua sponte but rather resolved defendants’ letter application, which plaintiff opposed. Under these circumstances, we conclude that the process “afforded [the parties] the opportunity to be heard” and created ‘a suitable record’ for appellate review.”

In *Hinton v. Saw Mill Club*, 250 AD3d 1039 [2d Dept 2026], the plaintiffs submitted a letter to the court arguing that the court overlooked the affidavit of one of their experts and requested that the court reconsider the its order. The defendant opposed the application by letter submission. The Supreme Court granted the plaintiffs' application for leave to reargue and, upon reargument, vacated the relevant portion of the order.

The Appellate Division entertained the defendant’s appeal holding that “the Supreme Court providently exercised its discretion in considering the letter application from the plaintiffs' attorney for leave to reargue... Under the circumstances presented, the defendant was not prejudiced by the lack of a formal notice of motion because it filed opposition to the plaintiffs' letter application on the merits.” *Matter of Smith v. Bombard*, 294 AD2d 673, 673-76 [3d Dept 2002] was a custody and visitation case.

The respondent filed a notice of appeal challenging each of various decisions, orders and amended orders and judgment. By letter order, Family Court, sua sponte, modified its decision and order pertaining to custody and visitation. No appeal was taken from the modified order: “As to Family Court's modification of its prior order issued nearly two months after respondent filed his notice of appeal, the failure by respondent to have filed an appeal with respect thereto precludes our review (CPLR 5513 [a]; 5515).”

In *State v. Benjamin*, 90 AD2d 914 [3d Dept 1982], the Supreme Court, in a letter decision, granted plaintiff-State’s motion for summary judgment to collect the balance on a student loan. The defendant appealed. The Appellate Division, citing CPLR 5520(c), treated the defendant’s notice of appeal as valid in the interest of justice.

But see, *Brandy B. v. Eden Cent. School Dist.*, 63 AD3d 1583, 1584 [4th Dept 2009], affd, 15 NY3d 297 [2010]. Therein the plaintiff commenced an action seeking damages for injuries sustained by her daughter who was sexually assaulted on a school bus. According to the plaintiff, the foster child of third-party defendants foster parents (foster parents) committed the assault. The Appellate Division “affirm[ed] the order in appeal No. 2 granting the motion (improperly denominated cross motion) of the foster parents for summary judgment dismissing the third-party complaint against them, for reasons stated in the letter decision of Supreme Court dated May 6, 2008.”

Also, in *Dudick v. Gulyas*, 4 AD3d 604 [3d Dept 2004], the parties had reached an agreement in an action for malicious prosecution: “Pursuant to the terms of the stipulation, Supreme Court entered judgment in favor of plaintiff for \$40,000 following defendant's failure to make the first required payment of \$15,000 by Dec. 31, 2001... When defendant failed to make the payment due by June 30, 2002, plaintiff made an application for a second amended judgment in the amount of \$51,374.09, representing both the \$40,000 and the \$20,000 judgments, plus interest, less the \$10,000 payment defendant made after his initial default.”

Supreme Court denied plaintiff's application by letter and interpreted the stipulation as entitling plaintiff to only one judgment for \$40,000. The plaintiff appealed. The Appellate Division, citing CPLR 5512(a), tersely reversed: “[w]e find that Supreme Court's letter decision has been properly reduced to an order and, thus, may be appealed by plaintiff.”

Part II continues with the review of cases that have treated nonappealable papers as appealable. This section also compares the Court of Appeals' treatment of statutory compliance flexibly in *Mashreqbank PSC v. Ahmed Hamad A1 Gosaibi & Bros. Co.*, 23 N.Y.3d 129 [2014] and inflexibly in *Sholes v. Meagher*, 100 N.Y.2d 333 [2003].

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Page printed from: <https://www.law.com/newyorklawjournal/2026/09/10/appeals-from-letter-applications-letter-orders-conferences-statutory-compliance-part-i/print/>

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