



Practice Advisory: *Anders* Briefs

What is an *Anders* Brief?

In *Anders v California* (386 US 738 [1967]), the United States Supreme Court established the procedures that must be followed by assigned counsel seeking to withdraw from a criminal appeal after a conscientious review of the record shows that no nonfrivolous issues exist to raise on appeal. The Court held that the constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate on behalf of the client, as opposed to that of amicus curiae (*Anders*, 386 US at 744). If counsel finds an appeal would be wholly frivolous and seeks to withdraw, that request must be accompanied by a brief—an “*Anders* brief¹”—referring to anything in the record that might arguably support the appeal (*id.*; see also *People v Saunders*, 52 AD2d 833 [1st Dept 1976]). The client should then have an opportunity to review counsel’s brief and file a brief of their own arguing any points they choose (*Anders* at 744; *Saunders* at 833). “[T]he court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous” (*Anders* at 744). *Anders* briefs may be filed in both criminal and Family Court appeals.

When is an Appellate Issue “Wholly Frivolous”?

Anders did not define the term “wholly frivolous,” or set forth criteria for determining what makes an issue “arguable” on appeal. But the Supreme Court has since acknowledged that an “arguable issue” in the “more normal sense” means that the issue is “nonfrivolous and thus warrant[s] a merits brief” (see *Smith v Robbins*, 528 US 259, 285 [2000]). Further guidance regarding the definition of a “frivolous issue” can be found in New York civil law: “An action is deemed frivolous when it is commenced or continued in bad faith without any reasonable basis in law or fact and could not be supported by a good-faith argument for an extension, modification or reversal of existing law” (*Smullens v MacVean*, 183 AD2d 1105, 1107 [3d Dept 1992] citing CPLR 8303-a).

The Problem with *Anders* Briefs

Anders briefs present an inherent conflict of interest for appellate attorneys because they require counsel to argue against their client’s interests by asserting that no nonfrivolous issues exist for appeal. This assertion is in tension with an attorney’s duty to zealously represent their client and to not take a position adverse to their client’s interests, because it leaves it to the court, or the client in a *pro se* response, to identify any viable arguments.

¹ Note: In the Fourth Department an *Anders* brief may also be referred to as a *Crawford* brief (see *People v Crawford*, 71 AD2d 38 [4th Dept 1979]).

In addition, too often *Anders* briefs are filed when nonfrivolous issues could have been raised on appeal. As the cases below demonstrate, intermediate appellate courts in New York regularly reject *Anders* briefs where attorneys have overlooked colorable appellate issues. In those cases, courts grant the motion to be relieved only to assign new counsel to represent the client on appeal, restarting the appellate process. This causes delay for the client and wastes valuable time and resources.

Instead, the best practice is for attorneys to carefully examine the record to be sure that there truly are no nonfrivolous issues that can be raised. If possible, it is better to identify even a weak issue and advocate for your client by filing a standard brief challenging—in a criminal case—the conviction and/or sentence, or—in a Family Court appeal—by arguing that the trial court’s decision was not supported by a sound and substantial basis in the record and arguing that the appellate court need not defer to Family Court’s credibility findings. If there truly are no nonfrivolous issues in a case, the best practice is to counsel the client to voluntarily discontinue the appeal, rather than file an *Anders* brief. Only if the client is unwilling to do so does an *Anders* brief become an option of last resort.

Reasons Why Courts Reject *Anders* Briefs

Between January 2024 and April 2025, New York appellate courts rejected more than 20 *Anders* briefs and assigned new counsel to pursue the appeals. These briefs were found to be deficient for numerous reasons, including:

- **The presence of at least one nonfrivolous issue** that could have been raised on appeal, such as: (a) whether appellant’s appeal waiver was valid; (b) whether the sentence was excessive; (c) whether the court should have ordered an updated PSI prior to sentencing; and (d) whether appellant’s motion to withdraw the plea was properly denied ([People v Trent](#), 231 AD3d 751 [2d Dept 2024]; [People v Bryan](#), 231 AD3d 1290 [3d Dept 2024]; [People v Picard](#), 234 AD3d 718 [2d Dept 2025]).
- **Deficiencies in the brief:** (a) counsel did not provide an adequate statement of facts or highlight facts in the record that might support the appeal; (b) counsel did not analyze potential appellate issues, such as whether appellant’s plea was knowing, voluntary, and intelligent, whether the appeal waiver was invalid, or whether the sentence was unduly harsh and severe; and (c) counsel’s brief contained summary conclusions and turned counsel into an “advisor to the court on the merits of the appeal” ([Matter of Alexi P.](#), 230 AD3d 792 [2d Dept 2024]; [People v Lisbon](#), 233 AD3d 799 [2d Dept 2024]; [Matter of Liana A.](#), 235 AD3d 969 [2d Dept 2025]; [People v Brown](#), 236 AD3d 919 [2d Dept 2025]).
- **Lack of communication:** There was no indication that appellate counsel had communicated with the client ([People v Gordon](#), 233 AD3d 799 [2d Dept 2024]).

How To Avoid Filing *Anders* Briefs

Practice Tip 1: Consider all possible issues

Before filing an *Anders* brief, counsel should consider all potential appellate arguments to determine whether there are any issues to raise on appeal. A non-exhaustive list of the issues counsel should consider is attached to the end of this guide. If you have reviewed the record, evaluated all potential issues, and believe that there are no issues available to raise on appeal, it is a good idea to seek a second opinion. You can request a consultation with one of the Statewide Appellate Support Center attorneys by completing the [intake form](#) on the ILS website.

Practice Tip 2: The Stipulation to Discontinue or Withdraw

If counsel's thorough review of the record reveals that there really are no nonfrivolous issues to raise on appeal, counsel can ask the client to sign a stipulation to discontinue (sometimes called a "stipulation to withdraw"). A template stipulation to discontinue is available on the [ILS website](#). If pursuing this option, consider the following approach:

- **Talk to your client:** Schedule a confidential legal visit, legal phone call, or in-office meeting with your client. Advise your client about all of the issues you considered raising on appeal and explain why none of those issues are available under the circumstances of the case.
 - Perhaps you can't argue that the sentence was unduly harsh and severe because the client received the minimum sentence allowable; a suppression issue was waived because the client pled guilty before a hearing; nothing in the record supports an argument that the plea was not knowing, voluntary, and intelligent; or the only issues available to raise present a risk which your client does not want to take.
 - Similarly, perhaps the Notice of Appeal was filed from a Family Court order entered on consent and there were no contested orders brought up for review; or the order was made on your client's default, requiring a motion to vacate the default in Family Court before an appeal may be taken.
- **Bring compassion:** Your client has likely waited a significant amount of time—often more than a year—to discuss their case with an appellate attorney. Additionally, even when expedited, Family Court appeals take much longer than Family Court trial proceedings, which may be difficult for clients to understand. Remember that they may be disappointed or frustrated to hear that you didn't find any issues to raise on appeal.
- **Listen to your client:** If you are struggling to identify any appellate issues to raise, this is a good opportunity to talk to your client about any issues they might have identified in their case. You may discover arguments that can be raised either on appeal or via a CPL § 440 motion in a criminal case, or via motion practice or a new

proceeding in Family Court. For instance, your client may believe they were mistreated by police, that they received ineffective assistance of counsel, or that they were not present for a material portion of the proceedings. In Family Court, circumstances may have changed since the entry of the court's initial order that may make a return to Family Court, rather than appeal, the most favorable option to achieve your client's goals. Regardless of the nature of the client's concerns, it is important to listen to them attentively and to respectfully ask follow-up questions to determine whether any of the proposed arguments may be worth pursuing. For instance, consider the following:

- Was there police misconduct—either on or off the record—that could support a viable suppression argument, a *Brady* claim, or even an actual innocence claim?
 - Did defense counsel fail to interview witnesses that could have provided exculpatory testimony or material impeachment evidence? What advice did defense counsel give to your client when they discussed pleading guilty?
 - Does your client have reason to believe that the prosecution failed to turn over evidence that would have been the basis for a viable speedy trial claim?
 - Does your client have grounds to move in Family Court to vacate the order under CPLR § 5015?
 - Reminder: Under County Law § 722(5), counsel assigned to a criminal appeal, or another designated attorney, can be compensated for representation and expenses related to investigating and/or filing 440 motions. (If you have any questions about this, please reach out to SASC via the [intake form](#) on the ILS website.)
-
- **Recommend discontinuing the appeal:** If your conversation with the client yields no viable issues, you can explain to the client that at this point you would recommend they discontinue the appeal. If you are meeting with the client in person, you can bring a copy of the stipulation to discontinue, but don't pressure the client to sign it during your meeting. Ask your client if they have any additional questions for you and then give them a few weeks to decide how they want to proceed. In these situations, it's helpful to give your client a timeframe for getting back to you with their decision so the process doesn't stall for too long. If you don't hear from them within the agreed upon time, follow up by letter or legal call.

Last updated: June 2025

DISCLAIMER: The ILS Statewide Appellate Support Center ("SASC") provides outlines, templates, and other resources. While every effort has been made to ensure that such materials are up-to-date, accurate, and complete, they are provided on an "as is" basis, with no express or implied guarantees of accuracy or completeness. Use of SASC resources does not create an attorney-client relationship between the user and the SASC.

Non-Exhaustive Issue-Spotting Guide: Criminal Appeals

Pre-Trial Issues:

- Were there any pre-trial motions filed? If so, were any denied, in whole or in part?
- Was there a suppression claim that was resolved against appellant?
- Are there any issues with the accusatory instrument? (Does every count of the indictment charge an actual crime and allege that appellant committed every element of that crime? If there was an SCI, was it properly executed?)
 - For an SCI to be properly executed the waiver of indictment must be in writing and signed in open court and the charges must be the same as those in the felony complaint, or lesser included offenses. Also, the crime charged in the felony complaint cannot be a class A felony.

Plea Issues:

(For more issues, see [ILS' Guilty Plea Issue Spotting Outline](#))

Note on Risk Counseling: Before challenging a guilty plea on appeal, counsel must determine what risks exist and talk to the client about whether they wish to accept those risks. A successful challenge to your client's guilty plea will reverse their conviction and reinstate the accusatory instrument. Your client would face the same sentencing exposure they did before pleading guilty (any time they have already served for the crime will count towards any future sentence they receive). After discussing the risks with your client during a legal visit or legal call, it is advisable to send your client a risk letter outlining those risks in writing and requesting your client consent to them in writing before proceeding with the appeal.

- If appellant waived the right to appeal, was that waiver valid?
- Was the plea knowing, voluntary, and intelligent?
 - Was appellant advised of their *Boykin* rights?
 - Did appellant admit to all elements of the crime?
 - Did the plea colloquy negate any elements of the crime?
 - Did the court, counsel, or prosecutor misstate the maximum potential sentence or any component of the plea agreement?
 - Did the court threaten to impose the maximum sentence if appellant was convicted after trial?
 - Was there a question about appellant's competency to plead guilty and should the court have ordered a 730 exam?
 - Was appellant advised of the direct consequences of pleading guilty (e.g., immigration consequences, post-release supervision, loss of license, fines)?
- Did appellant move to withdraw the guilty plea?
 - If so, how did defense counsel respond? Did defense counsel take an adverse position to appellant's motion?
- Was appellant denied the effective assistance of counsel? (*See below:* some of these issues may need to be raised via a 440 motion.)

Trial Issues:

- Are there any preserved issues that could be argued? Did defense counsel make any objections during trial that the court overruled?
- Are there any unpreserved issues that could be raised, under the Appellate Division's interests-of-justice jurisdiction (CPL 470.15 [3]), or via IAC claim? (E.g., legal sufficiency, weight of the evidence.)
- Were there any errors during jury selection, such as a *Batson* issue, exclusion from sidebar discussions with prospective jurors or failure to dismiss a biased juror?
- Was appellant denied the effective assistance of counsel at trial? (*See below*: some of these issues may need to be raised via a 440 motion.)
 - Did counsel fail to adequately prepare for trial? (Did counsel fail to review surveillance video? Did counsel fail to investigate or obtain relevant medical records? Did counsel fail to consult with experts?)
 - Did counsel elicit prejudicial evidence or open the door to the prosecutor introducing prejudicial evidence?
 - Did counsel fail to object to instances of prosecutorial misconduct?
 - Did counsel fail to request a jury instruction to which appellant would have been entitled, including an affirmative defense?
 - Did counsel fail to lodge a colorable or meritorious motion, e.g., suppression, speedy trial, etc.?
- Were there any instances of prosecutorial misconduct in the prosecutor's opening statement, summation, or cross-examination of appellant?
- Did the court refuse to issue requested instructions or issue them over objection?

Sentencing Issues:

- Was appellant eligible for youthful offender adjudication? If so, was YO considered? If considered and denied, were there any legal errors, or did the court abuse its discretion in denying YO?
- Was appellant DVSJA-eligible? If so, was a hearing requested? If a hearing took place, were there legal or factual errors made by the court?
- Was appellant sentenced as a predicate offender? If so, were there errors committed in adjudicating appellant a predicate?
- Did appellant receive more than the minimum sentence?
- Was appellant's sentence within the appropriate legal range?
- Was an enhanced sentence improperly imposed?
- Were fines, fees, or surcharges imposed which can be reduced or vacated?
- Was an improper probation condition imposed?
- Was an order of protection improperly issued?

Ineffective Assistance of Counsel Issues:

- Was appellant denied the effective assistance of counsel? (*Note: IAC claims requiring proof outside the appellate record must be raised via a CPL § 440 motion. See [ILS' Post-Conviction Litigation Resources](#) for guidance and sample motions. Even for IAC claims that could likely be raised via direct appeal, there may be strategic reasons to raise them via 440 motion and, if unsuccessful, to seek leave to appeal from that denial and ask to consolidate the 440 appeal with the direct appeal.*)
 - Did counsel fail to raise a meritorious speedy trial claim?
 - Did counsel fail to make a suppression motion or challenge all potential suppression issues?
 - Did counsel fail to make other key pretrial motions?
 - Did counsel fail to advise appellant of a plea offer?
 - Did counsel take a position adverse to appellant?
 - Did counsel misadvise appellant about pleading guilty? (Did counsel misadvise appellant about the possible outcome of trial, provide incorrect advice about sentencing exposure, or fail to advise client about immigration consequences?)

Last updated: June 2025

DISCLAIMER: *The ILS Statewide Appellate Support Center (“SASC”) provides outlines, templates, and other resources. While every effort has been made to ensure that such materials are up-to-date, accurate, and complete, they are provided on an “as is” basis, with no express or implied guarantees of accuracy or completeness. Use of SASC resources does not create an attorney-client relationship between the user and the SASC.*

Non-Exhaustive Issue-Spotting Guide: Family Court Appeals

Family Court caselaw is often highly fact-specific. This has pros and cons: on one hand, it can be difficult to find clear errors of law committed by the trial court, because appellate rulings often rely heavily on the specific facts of each case; but on the other hand, the wide variety of factual scenarios often means that you can find caselaw to support your argument that the trial court's order was erroneous. Rather than black and white legal rules, Family Court caselaw often exists in shades of gray, which you must creatively analogize to the facts of your case. Beyond arguing that Family Court's order was an abuse of its discretion because of its substance, here are a few additional potential issues to look for in Family Court cases:

- Even if the final order on the case was on consent, were there contested orders beforehand that an appeal from the final order brings up for review?
- Was there a request for a hearing that was denied?
- Any other denied applications, especially of a procedural nature? For example, was a request for an adjournment denied? Did everyone get to testify that wanted to? Should there have been a *Lincoln* hearing/in-camera testimony of the child?
- Did the trial court allow inadmissible evidence?
- Did the trial court specifically make all the required factual findings to issue its order? For example, a finding of changed circumstances justifying a custody modification; a finding that the parties were in an intimate relationship to justify an order of protection; or a finding that someone violated a clear mandate of the court for a contempt order?
- Was counsel ineffective?
- Is this a (rare) case where the trial court violated a clear prohibition against certain types of orders? For example:
 - Did it condition a parent's visitation on the consent of the other parent?
 - Did the court refuse to legally recognize a parent solely because they were non-biological?
 - Did the court find neglect or imminent risk solely because the respondent parent was a victim of domestic violence?
 - Did the court order agency supervision of a non-respondent parent where the children were never removed from that home?

Last updated: June 2025

DISCLAIMER: The ILS Statewide Appellate Support Center ("SASC") provides outlines, templates, and other resources. While every effort has been made to ensure that such materials are up-to-date, accurate, and complete, they are provided on an "as is" basis, with no express or implied guarantees of accuracy or completeness. Use of SASC resources does not create an attorney-client relationship between the user and the SASC.