

E-FILING AT THE NYS APPELLATE DIVISION & THE COVID-19 PANDEMIC

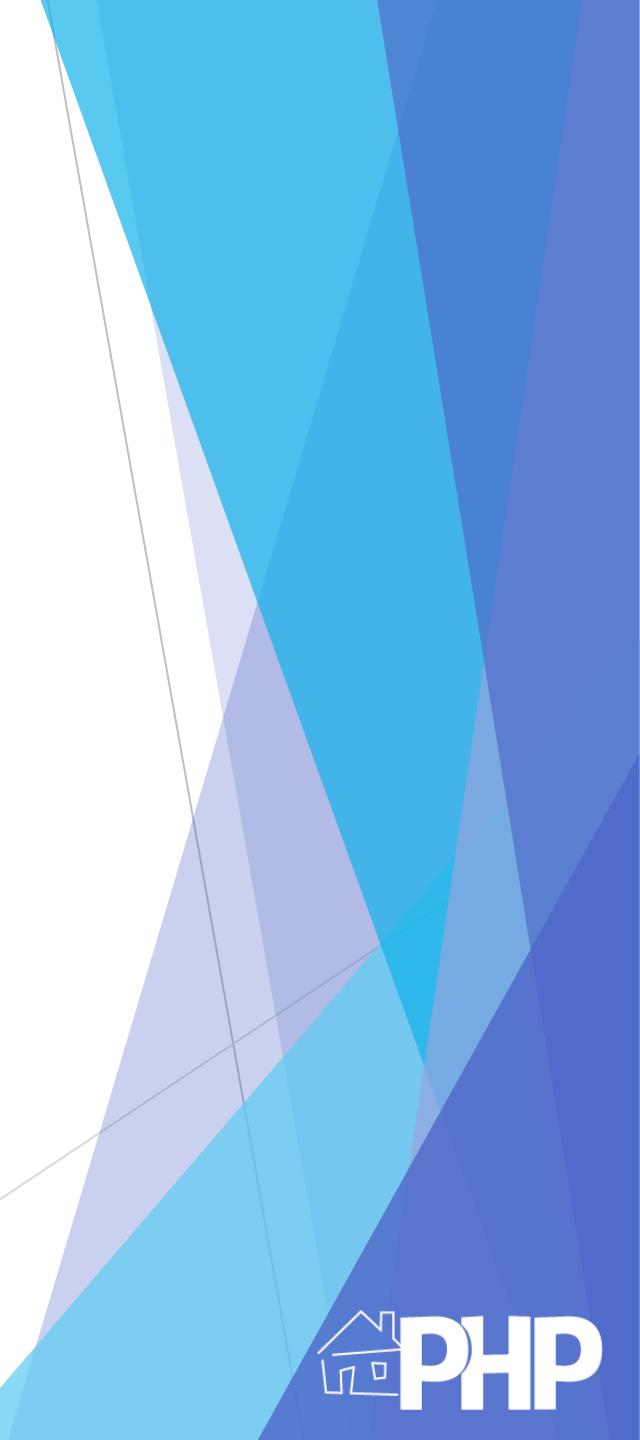
PRESENTED BY: ERIC J. KUPERMAN, ESQ. & JOHN MCGORTY

Disclaimer: Please be advised that the content of this presentation is subject to change as e-filing rules are updated by the Courts, especially during the COVID-19 crisis.

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LEARNING OBJECTIVES



- I. Discuss the Fundamentals of E-Filing
- II. Recognizing the Impact of COVID-19 on Court Operations
- III. Understanding Appellate Division First & Second Department Requirements
- IV. Understanding NYSCEF Requirements

BASIC GUIDELINES ON E-FILING



* For AD1 and AD2, they are only applicable to e-filed cases in lower court.

* AD1 has an amended rule in which ALL cases being subject to NYSCEF (even non-e-filed) if perfected after July 1, 2020 where the NOA is prior to June 1, 2020.

COVID-19 COURT UPDATES

AD1

- ▶ All matters currently perfected are for the September Term.
- ▶ If your NOA expired during the general suspension, then due for the Sep. Term.
- ▶ If not yet expired, then the 6 month deadline is still your deadline to perfect.
- ▶ All cases (NYSCEF and Non-NYSCEF) are encouraged to be perfected ASAP so that the Court is not inundated with filings when its doors reopen.
- ▶ NYSCEF cases to be e-filed in ordinary course.
- ▶ Non-NYSCEF cases to be e-filed via AD1 portal (which requires NYSCEF credentials).

AD2

- ▶ General suspension Order still stands except for Criminal and Actively Managed cases (which were subject to the May 6, 2020 Order which lifted that suspension).
- ▶ No extension requests are being accepted at this time.
- ▶ All cases (NYSCEF and Non-NYSCEF) are encouraged to be perfected ASAP so that the Court is not inundated with filings when its doors reopen.
- ▶ NYSCEF cases to be e-filed in ordinary course.
- ▶ Non-NYSCEF cases to be e-filed via AD2 portal (which does NOT require NYSCEF credentials).

AD3

- I. **ORDERED** that for any non-perfected matters in which the deadlines for perfection were affected by the March 17, 2020 order suspending all deadlines, the deadlines for perfection shall be set as follows:

If your deadline to perfect was: **The perfection deadline is now:**

▶ March 17 - March 27	July 8
▶ March 30 - April 10	July 15
▶ April 13 - April 24	July 22
▶ April 27 - May 8	July 29
▶ May 11- May 22	August 5

- II. For any perfection deadline on or after May 26 through June 22, the deadline is extended an additional 45 days;

AT2

- ▶ Now has its own portal for filings
- ▶ Hard copies will be needed once the court opens

AD1 E-FILING REQUIREMENTS

- I. The First Department expanded the categories of appeals subject e-filing. **As of January 1, 2020, e-filing became mandatory in:**
 - i. *all case types e-filed (mandatory or consensual) in the Supreme Court, Bronx and New York Counties; and*
 - ii. *Contested Matrimonial.*
- II. **Mandatory e-filing requires all documents, as defined in 22 NYCRR 1245.1(d), to be e-filed.**
- III. AD1 has an amended rule in which **ALL cases being subject to NYSCEF (even non-e-filed) if perfected after July 1, 2020 where the NOA is prior to June 1, 2020.**

AD2 E-FILING REQUIREMENTS

- I. **AD2 e-filing is required in the following appeals in all matters originating and e-filed in Supreme and Surrogate's Courts in Orange, Dutchess, Suffolk, Westchester, Putnam, Rockland, Nassau and Queens Counties:**
 - i. The Court will mandate e-filing in all matters originating and electronically filed in the Supreme and Surrogate's Courts in Richmond County. This requirement will be effective in the following appeals:
 - i. Where the notice of appeal is dated on or after April 1, 2020, and
 - ii. Where the notice of appeal is dated prior to April 1, 2020, and the appeal is perfected on or after May 15, 2020.

*There is a high likelihood that e-filing will expand to Kings County in 2020

NOTICE OF APPEAL

I. Includes:

- i. NOA
- ii. Order with Notice of Entry (NOE)
- iii. Case Informational Statement pursuant to 22 NYCRR 1250.3[a]
- iv. 30 days from order with NOE to file your NOA via NYSCEF
- v. Within 14 days of filing the NOA, counsel must register or confirm registration as an authorized e-filer with NYSCEF. Thereafter, the Court will assign an Appellate Case number.

RECEIPTS

Within 7 days of receipt from the Court of an appellate case number for the matter, Appellant shall:

I.

serve upon all parties in hard copy as provided by CPLR 2103 notification of that case or docket number, together with other pertinent information about the case and such documents as the court shall require, a Notification of Case Number approved by the Appellate Division; and

II.

e-file proof of service of this notification

* 20 days to complete Respondent registration via NYSCEF

*Pro Se parties are not typically on NYSCEF and therefore must be served with hard copies of all appellate filings even in e-filed appeals.

ANYONE REGISTERED VIA NYSCEF WILL BE SERVED THEREBY:

- I. **If it is prior to the expiration** of the **20-day period** for entry of Respondent's information when perfecting the appeal, the Appellant shall serve the Respondent in hard copy and the NYSCEF filing shall contain Proof of Service, only if the Respondent has not registered.
- II. **Upon expiration** of the **20-day period** for entry of Respondent's information, service and filing by and upon all parties shall be by e-filing. Thereafter, an attorney who has neither entered information nor given notice as an exempt attorney shall be deemed served with any e-filed document.
- III. **Practical Consequences:**
The Respondent will not know an appeal has been perfected and will wind up having to request an extension of time once he finds out. Just more paperwork on Court's end. Therefore, it is recommended to encourage all parties to be on the same page and get registered ASAP.

RESPONDENT REGISTRATION

- I. At this point, the matter is marked by the AD as “**Full Participation**” and hard copy service of all papers thereafter is not required. Of course, hard copy service is always permitted as a courtesy.
- II. AD1 and AD2 are lax with the timing requirements right now, but you should do your best to comply with them. Even if you are beyond any of the days mentioned above, register ASAP to ensure compliance.

ELECTRONIC FILING AGENTS

- I. An authorized e-filer may designate another person or entity, including an Appellate Services Provider, to e-file documents on his or her behalf by completing a Statement of Authorization
- II. Such filing agent shall e-file the Statement of Authorization prior to or together with the first e-filing in that action by the agent.
- III. The principal authorized e-filer shall retain full responsibility for any document e-filed by such filing agent.
- IV. PHP is happy to handle any and all aspects of your e-filing requirements.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : DEPARTMENT

STATEMENT OF AUTHORIZATION FOR ELECTRONIC FILING

(Individual Attorney Authorizing Filing Agent)

I, _____, Esq. (Attorney Registration No. _____), am an authorized user of the New York State Courts Electronic Filing System ("NYSCEF") (User ID _____). I hereby authorize _____ or any employee of _____ who possesses a NYSCEF filing agent ID ("the filing agent") to utilize his/her NYSCEF filing agent ID to file documents on my behalf and at my direction in any e-filed appellate cause or matter in which I am counsel of record through the NYSCEF system, as provided in Appellate Division E-Filing Rule 1245.3(e).

This authorization extends to any appeal or transferred matter in which I have entered electronically my initializing information, any original proceeding I have commenced by e-filing, or any cause or matter in which I have entered electronically information as a respondent or other party, as well as to any cause or matter in which I may authorize the filing agent to take such action, as provided in the Appellate Division E-Filing Rules.

This authorization extends to any and all documents I generate and submit to the filing agent for filing in any such cause or matter. This authorization shall be e-filed prior to or together with the first e-filing by the filing agent. As the principal authorized e-filer, I understand that I retain full responsibility for any document e-filed by the filing agent.

This authorization also extends to matters of payment, which the filing agent may make in the manner provided by the Appellate Division.

This authorization regarding this filing agent shall continue until I revoke it in writing on a prescribed form delivered to the E-Filing Resource Center.

Dated:

Signature

City, State and Zip Code

Print Name

Phone

Firm/Department

E-Mail Address

Street Address

AD-EF-03A
(eff. 3/1/18)

FILING AGENT

This is the Statement of Authorization for Electronic Filing. It MUST be uploaded when filing as an authorized filing agent.

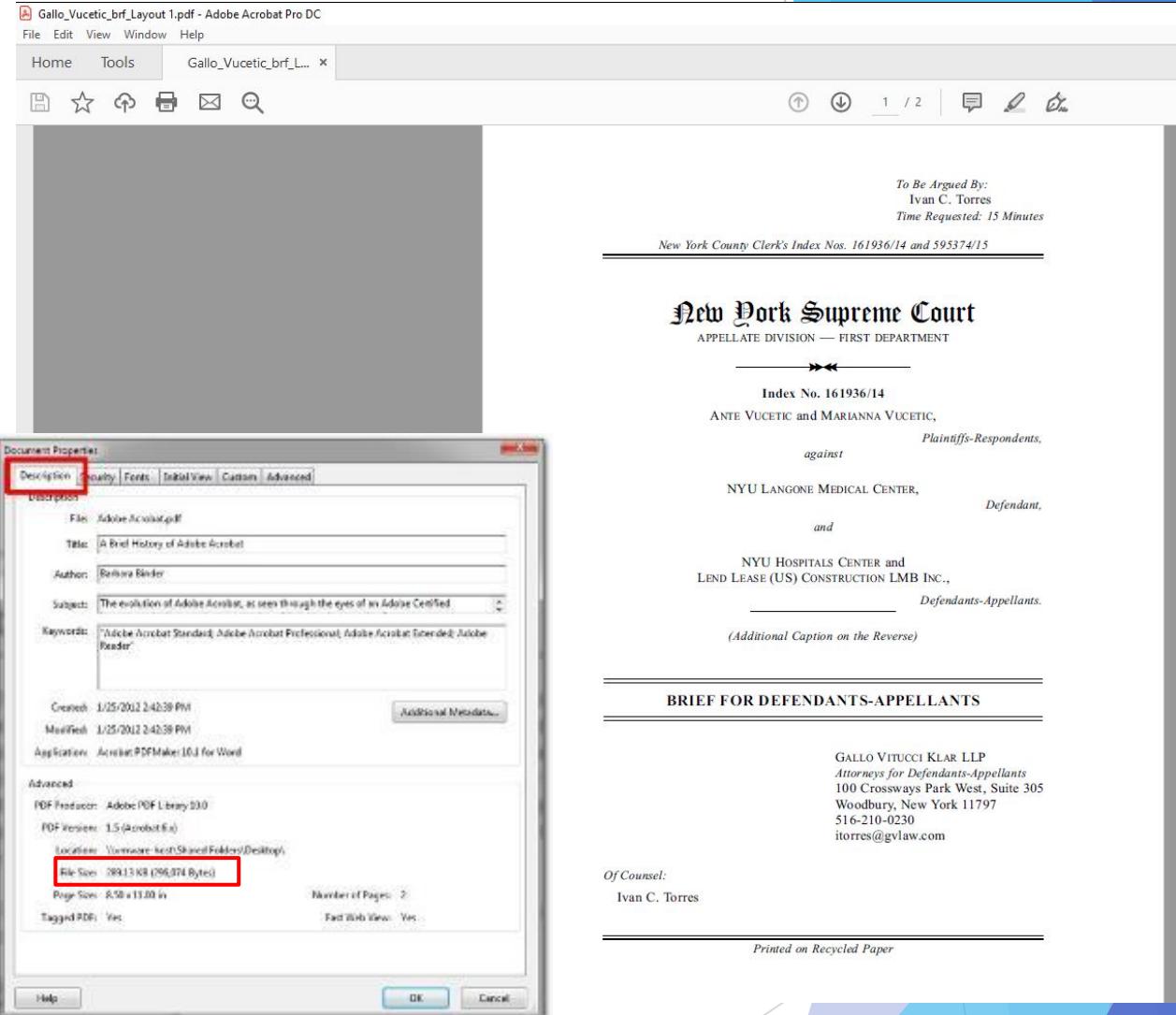
EXEMPT FROM E-FILING

Must demonstrate that you don't have the computer hardware or the know-how. In this day and age, a very tough threshold to meet.

E-FILING APPEALS

- FORMAT

- I. Appeals shall be e-filed
- II. **MUST** be searchable
PDF-A format and
properly bookmarked
- III. No greater than 100 MB
in size.



FILING HARD COPIES

1 original and 5 copies of appellate:

- Briefs
- Records
- Appendices

- I. Authorized e-filers shall delay the filing of such additional hard copies of documents until receipt of **email notification***** that the clerk has “processed” the e-filing.
- II. The e-filer shall file the hard copies **within two business days** of such notification.
- III. A failure to file such additional hard copies of documents shall cause the filing to be deemed incomplete. Again, the timing requirements at AD1 and AD2 are not being strictly enforced yet.

***The Courts WILL be expecting the hard copies eventually. The process is just delayed because of COVID-19 concerns.**

FILING HARD COPIES

IV. *** this email notification is not always sent.

Sometimes, the Appellate Division simply changes the status of an e-filed document from “**Pending**” to “**Processed**” (AD2 varies)

V. It is within two business days of the matter being marked “**Processed**” that the hard copies are to be filed with the Appellate Division. Thus, it becomes necessary to **log into NYSCEF daily** to check on the status of your e-filing. PHP also tracks this.

MOTIONS

I. To be e-filed and 1 hard copy to be filed with Court (once marked "Processed"). - Return date must be a Monday.

- i. Where a motion or application seeks interim or emergency relief, the court may permit the initial submissions of a party or parties to be filed and served in hard copy (with a Notice of Hard Copy submission on an AD form), and e-filed thereafter.

II. E-filing an Order to Show Cause

- i. The proposed Order to Show Cause (OSC) should be uploaded on the Appellate Division NYSCEF prior to filing the hard copy.
- ii. If a TRO is requested, the movant must appear in person with 24 hours notice to the adversary.
- iii. Once the OSC is signed, the movant will be required to upload the conformed copy of the OSC on the Appellate Division NYSCEF.
- iv. If the movant comes in to file the hard copy without uploading it first, they will be instructed to upload the proposed OSC and conformed copy on NYSCEF.
- v. Once processed one copy of the final conformed copy must be filed.

DISMISSED MOTIONS

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M266276
E/sl

RUTH C. BALKIN, J.P.
JEFFREY A. COHEN
ROBERT J. MILLER
COLLEEN D. DUFFY, JJ.

2018-13435

DECISION & ORDER ON MOTION

Thomas F. Keane, et al., appellants,
v Fern Flomenhaft, respondent.

(Index No. 56593/16)

Motion by the appellants to extend the time to perfect an appeal from an order of the Supreme Court, Westchester County, dated October 30, 2018.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is dismissed for failure to comply with the Electronic Filing Rules of the Appellate Division (see 22 NYCRR 1245.6[c]).

BALKIN, J.P., COHEN, MILLER and DUFFY, JJ., concur.

ENTER:

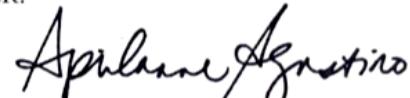


Aprilanne Agostino
Clerk of the Court

ORDERED that the motion is dismissed for failure to comply with the Electronic Filing Rules of the Appellate Division (see 22 NYCRR 1245.6[c]).

BALKIN, J.P., COHEN, MILLER and DUFFY, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

DISMISSED MOTIONS

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M269651
E/s

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
ANGELA G. IANNACCI
LINDA CHRISTOPHER, J.J.

2019-12089

DECISION & ORDER ON MOTION

Brenda Dye, respondent,
v Stephen Okon, etc., et al., appellants,
et al., defendant.

(Index No. 709016/15)

Motion by the appellants to stay all proceedings in the above-entitled action, including the trial, pending hearing and determination of an appeal from an order of the Supreme Court, Queens County, dated September 10, 2019.

Upon the papers filed in support of the motion and no papers having been filed in opposition or in relation thereto, it is

ORDERED that the motion is dismissed for failure to comply with the Electronic Filing Rules of the Appellate Division (see 22 NYCRR 1245.6[a][1][ii]).

MASTRO, J.P., CHAMBERS, IANNACCI and CHRISTOPHER, JJ., concur.

ENTER

ER: *Aprilane Agostini*

Aprilanne Agostino
Clerk of the Court

February 14, 2020

DYE v OKON

ORDERED that the motion is dismissed for failure to comply with the Electronic Filing Rules of the Appellate Division (*see* 22 NYCRR 1245.6[a][1][ii]).

MASTRO, J.P., CHAMBERS, IANNACCI and CHRISTOPHER, J.J., concur.

ENTER:

ER:
Apilane Agostino

Aprilanne Agostino
Clerk of the Court

DISMISSED MOTIONS

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M269736
kbp/

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
ANGELA G. IANNACCI
PAUL WOOTEN, JJ.

2019-13365

DECISION & ORDER ON MOTION

Manuel Roel, respondent,
v Joe Hsu, et al., appellants, et al., defendants.

(Index No. 709652/17)

Motion by the appellants for a preference in the calendaring of an appeal from an order of the Supreme Court, Queens County, dated October 23, 2019.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is dismissed for failure to comply with the Electronic Filing Rules of the Appellate Division (see 22 NYCRR 1245.6[c]).

RIVERA, J.P., CHAMBERS, IANNACCI and WOOTEN, JJ., concur.

ENTER: *Aprilanne Agostino*

Aprilanne Agostino
Clerk of the Court

February 14, 2020

ROEL v JOE HSU

ORDERED that the motion is dismissed for failure to comply with the Electronic Filing Rules of the Appellate Division (see 22 NYCRR 1245.6[c]).

RIVERA, J.P., CHAMBERS, IANNACCI and WOOTEN, JJ., concur.

ENTER:

Aprilanne Agostino

Aprilanne Agostino
Clerk of the Court

CORRECTED E-FILINGS VIA NYSCEF

- I. If a minor error is made on the e-filing, **NYSCEF** will post a **“Returned for Correction”** notification and you will receive an email advising what correction needs to be made.

- II. Once made, you **do not restart the filing process**. Rather, you click on the **“Re-file Document”** link provided by the Court and upload the corrected document



New York State Unified Court System
NYSCEF - New York State Courts Electronic Filing (Live System)

2018-04083 - Appellate Division - 2nd Dept

Short Caption: SRP 2012-4, LLC -
Case Type: Civil Action - General

Re-file Document

Document
19 - REPLY BRIEF

File Name (Max size 100 MB) *
 No file chosen

Exhibit Number/Letter

Additional Document Information

Comments for Clerk

Document Security (check all that apply):

Document was sealed by Court Order in court of original instance
(I am including a copy of the Sealing Order with this filing)

Document contains Social Security Number

SEALED FILINGS

- I. Matters which are subject to a sealing order may still be filed via NYSCEF.

- II. When filing, there is a filing option to indicate that the matter is sealed. That box should simply be checked and the sealing order uploaded via NYSCEF in addition to the actual Record/Brief being filed.

AD2 BRIEFS

- I. Whether an appeal is subject to the NYSCEF e-filing requirements or not, AD2 is now requiring that **ALL briefs contain bookmarks to the authorities cited in those briefs.**
- II. **Bookmarks** should take the reader to a copy of the cited authority, that is, the case, statute or rule, which will be part of the brief submitted.
- III. For NYSCEF briefs, the “**e-briefs**” are uploaded when perfecting.
- IV. For hard copy filings, the “**e-briefs**” are to be uploaded separately to the **AD2 portal**. This is to be done after the acceptance by AD2 of the hard copy filing.

AD2 BRIEFS

V. Practical Consequences:

- i. PHP needs your briefs, along with the authorities cited, **as early as possible**. We have historically told our clients that we need the briefs by the morning they are filing.
- ii. We must obtain a PDF of the authorities cited in your brief for you and then **hyperlink those authorities within your brief**. We will ensure compliance in this process.
- iii. This is time consuming and given the volume of briefs being handled daily, we now need the brief (and authorities cited) from you **the day prior to its deadline**.

EXTENSION OF TIME TO PERFECT

- I. In **AD1**, letter application with cc to all counsel, to extend the time to perfect an appeal up to **60 days**. 60 days runs from expiration of Notice of Appeal.
- II. In **AD2**, letter application with cc to all counsel, to extend the time to perfect an appeal up to **60 days**. 60 days runs from the day you ask for time.
- III. Second letter application with cc to all counsel, to extend the time to perfect by up to an **additional 30 days**. AD1 runs from the expiration date of the last request, AD2 runs from when you ask for the time.
- IV. Any further application for an extension of time to perfect the appeal shall be made by **motion**.

EXTENSION OF TIME TO PERFECT

- IV. If the appellant **fails to perfect within 6 months**, the matter shall be deemed automatically dismissed without further order. This is only if no extension has been requested.
- V. In order to pursue the appeal, appellant must make a **Motion to Vacate Dismissal** (§ 1250.10) within one year of the date of the dismissal.
- VI. In support of the motion, the movant shall **submit an affidavit** setting forth good cause for vacatur of the dismissal, an intent to perfect the appeal or proceeding within a reasonable time, and sufficient facts to demonstrate a meritorious appeal or proceeding.

EXTENSION OF TIME TO FILE A RESPONDENT'S BRIEF

- I. AD1 - stip to the next Term or brief extension up to a week while keeping in current Term.
- II. AD2 - letter or stip up to 30 days.
- III. AD2 - The parties may stipulate or a party may apply by letter with cc to all counsel, to extend the time to file and serve a Respondent's Brief by up to an **additional 30 days**.

EXTENSION OF TIME TO FILE A REPLY BRIEF

- I. AD1- stip to the next Term or brief extension up to a week while keeping in current Term.
- II. AD2 – letter or stip up to 10 days.
- III. AD2 - The parties may stipulate or a party may apply by letter with cc to all counsel to extend the time to file and serve a reply brief by **up to 10 days**.
- IV. No more than **two** such stipulations or applications shall be permitted.

AD1 TIDBITS

- I. **All Briefs** must now contain a time request for oral argument on the cover (AD1 no longer has a Time Request Form).
- II. **No addenda** to briefs. It should be submitted in a separate marked envelope.
- III. **Notice of Citation**
 - i. if you intend to hand something to the bench in hard copy at the time of argument, you must complete a Notice of Citation form on the day of argument and hand it in together with whatever is being handed up for Judicial Notice.
- IV. **Appendix** now requires a **2105** (it never used to).

AD1 TIDBITS

V. Pro Hac Vice Applications

- i. Should be made no later than 3-4 days prior to filing deadline
- ii. Original Cert. of Good Standing of attorney to be admitted
- iii. Aff. in Support on his behalf.
- iv. Letter from Sponsoring attorney
- v. NYSCEF-upload the request (assuming a NYSCEF case).

V. Withdrawal of appeals - perfected appeals via stip. Unperfected appeals via letter with cc to all counsel.

VI. Extension requests are presumed granted per letter request. No more formal decisions.

AD2 TIDBITS

I. Section 670.7 Form and Content of Records and Appendices; Exhibits

- i. Supplemental Record. A supplemental record shall only be accepted for filing in the following circumstances:
 - a. where directed or permitted by order of the court; or
 - b. where accompanied by a stipulation in which it is agreed that **the contents of the supplemental record are properly part of the Record on Appeal as that term is defined in CPLR 5526 and section 1250.7(b) of the Practice Rules of the Appellate Division (22 NYCRR §1250.7[b]) but were inadvertently omitted from the Record on Appeal previously filed with the court.**

ANY QUESTIONS?



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