

Appellate Division, Second Department

Motion Practice - FAQ

Q1: How do I make a motion?

A: If a party needs to seek interim relief from the court during the course of an appeal or proceeding, he or she must make a motion, which may be brought on by a notice of motion or order to show cause. How to make a motion in this court is explained in chapter 8 of the court's Guide to Civil Practice, and in § 1250.4 of the Practice Rules of the Appellate Division and § 670.4 of this court's rule (22 NYCRR 1250.4; 670.4).

Q2: How can I maintain the status quo during an appeal?

A: Where compliance with the terms of a judgment or order during the pendency of an appeal threatens to change the status quo and render that appeal academic, the appellant may seek a stay of enforcement pursuant to CPLR 5519. Where ongoing acts not commanded or forbidden by the judgment or order would similarly tend to render the appeal academic, the appellant may move for an injunction pursuant to CPLR 5518. In either case, if the threat of change is imminent, the appellant may bring on a motion for a stay or injunction by an order to show cause containing a temporary restraining order (TRO) that would maintain the status quo during the pendency of the motion (CPLR 5518).

A party seeking a temporary restraining order must give reasonable notice of the date and time when, and location where, the order to show cause will be presented and the relief being requested accompanied by a copy of the papers the party seeking relief intends to present to the court for filing (22 NYCRR 1250.4[b][2]; 670.4[a][1]). Absent exigent circumstances, the custom is to give such notice by telephone at least 24 hours in advance. An order to show cause containing a temporary restraining order must be personally presented for signature by an attorney or by the party if he or she is self-represented (proceeding pro se).

Q3: When and where can I present an order to show cause for signature?

A: An order to show cause may be presented for signature at the Appellate Division courthouse located at 45 Monroe Place in Brooklyn, Mondays through Fridays, excepting public holidays, between the hours of 9 a.m. and 5 p.m. Additionally, individual Justices may be available to entertain an order to show cause in their home chambers, which should be contacted in advance to make an appointment.

Q4: When and where are motions returnable?

A: A motion brought on by notice of motion may be made returnable only at 10:00 a.m. on a Monday (22 NYCRR 1250.4[a][1]), and must be served in accordance with CPLR 2103 and made on the notice required by CPLR 2214. The return date of a motion brought on by order

show cause and the method and time of its service are fixed by the Justice who signs it. All motions are returnable at the Appellate Division courthouse.

Q5: How many copies of motion papers are required?

A: Only the original.

Q6: Are motions submitted or argued?

A: All motions are submitted.

Q7: Must I appear on the return date?

A: No calendar of motions is called and no appearance is permitted or required (22 NYCRR 1250.4[a][8]).

Q8: Can I seek an adjournment of a motion?

A: Written requests for an adjournment, supported by a showing of good cause, may be made by letter to the court's motion department or by facsimile transmission to it at (212) 401-9114, with a copy to each other party to the appeal or proceeding.

Q9: Can I seek more time to serve and file answering or reply papers?

A: Written requests for additional time to answer a motion or to file a reply, may be made by letter to the court's motion department or by facsimile transmission to it at (212) 401-9114, with a copy to each other party to the appeal or proceeding.

Q 10] Is there a fee to make a motion or cross motion?

A] CPLR 8022[b] provides that the fee for filing a motion or cross motion regarding a civil appeal or special proceeding is \$45. However, no fee is payable for a motion or cross motion which seeks poor person relief pursuant to CPLR 1101[a].