

## FREQUENTLY ASKED QUESTIONS

### MOTION PRACTICE

#### Is there a filing fee for motions?

Yes. The fee is \$45 (see CPLR 8022 [b]) payable by attorney check, certified check or money order made payable to the Appellate Division, Fourth Department (no cash, personal checks or credit cards are accepted). There is no fee for motions in which poor person relief is requested, motions in matters in which poor person relief has been granted, motions made by an Attorney for the Child, or motions with respect to a criminal appeal.

#### How many copies of motion papers are required?

The originals of all submissions must be filed, together with proof of service upon all parties entitled to notice (see 22 NYCRR 1250.4 [a] [2]).

#### How do I determine the appropriate return date?

Unless otherwise required by statute, rule or order of the Court or any Justice thereof, motions must be made returnable at 10:00 a.m. on any Monday, or the first business day of the week if Monday is a holiday (see 22 NYCRR 1250.4 [a] [1]). At least 8 days' notice is required for motions that are personally served; 13 days' notice is required for motions that are served by regular mail; 9 days' notice is required for motions that are served by overnight delivery (see 22 NYCRR 1250.4 [a] [4]). In computing the notice period, the date upon which service is made shall not be included (see General Construction Law § 20).

#### When must I file the motion? What is the deadline for the filing of a response to the motion by the other parties?

All motions initiated by notice of motion must be filed with the clerk at least one week before the return date (see 22 NYCRR 1250.4 [a] [2]). Original answering and reply papers, with proof of service, must be filed no later than 4:00 P.M. of the business day preceding the return date (see 22 NYCRR 1250.4 [a] [5]).

What papers must I submit in support of my motion?

Unless otherwise required by statute, rule or order of the Court or any Justice thereof, the papers on a motion or cross motion must include the original notice of motion, supporting affidavit(s), and proof of service of the motion on all parties, a copy of the notice of appeal or other document which first invoked the jurisdiction of the Court, with proof of filing and proof or admission of service, and a copy of the order, judgment or determination sought to be reviewed, along with the court's decision, if any (see 22 NYCRR 1250.4 [a], 1000.4 [a]).

Will I be permitted to argue my motion?

No. Oral argument is not permitted (see 22 NYCRR 1250.4 [a] [8]).

Can I seek an adjournment of a motion?

One adjournment, for a period of 7 to 14 days, is permitted upon written consent of the parties to the appeal, filed no later than 10:00 a.m. on the return date (see 22 NYCRR 1250.4 [a] [9]).

Can I otherwise obtain more time to file answering or reply papers?

Any request for an extension of time to file answering or reply papers pursuant to 22 NYCRR 1250.4 (a) (5) must be made by motion, and supported by an affidavit demonstrating with particularity a reasonable excuse for the delay and an intent to file the papers within a reasonable time (see 22 NYCRR 1000.4 [d]).

I need to bring a motion before the Court by order to show cause; what should I do?

- Prepare a proposed order to show cause and supporting papers (the necessary supporting papers are the same as when proceeding by notice of motion);
- Call the Clerk's Office (585-530-3100) when you are ready to submit your papers and request the name of the Justice assigned to motions in the appropriate Judicial District. An application for an order to show cause pursuant to 22 NYCRR 1250.4 (b) must be directed to a Justice of this Court with chambers in the Judicial District from which the appeal or proceeding arises (see 22 NYCRR 1000.4 [b]);

- Serve the proposed order to show cause and supporting papers upon the other parties to the appeal or proceeding;
- Contact the chambers of the assigned Justice prior to submitting the papers to advise of the impending application and for further instructions;
- Submit your motion papers to the assigned Justice, including proof of service upon the other parties;
- If an order is signed, file the original order and motions papers and the filing fee (\$45) in the Clerk's Office (50 East Avenue, Rochester, New York 14604).

My appeal was dismissed for failure to perfect; what do I need to do to reinstate the appeal?

A motion to vacate the dismissal of an appeal may be made within one year of the date of dismissal. The Court requires, in support of the motion, an affidavit setting forth good cause for vacatur of the dismissal, an intent to perfect the appeal within a reasonable time, and sufficient facts to demonstrate that the appeal has merit (see 22 NYCRR 1250.10 [c]).