

MOTION FAQs

Q1: How do I make a motion?

A: If a party needs to seek incidental 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. Motion practice in this Court is governed by Section 1250.4 of the Practice Rules of the Appellate Division and Section 850.4 of this Court's rules (22 NYCRR 1250.4, 850.4). All purpose motion forms, with instructions, are available on this Court's website at www.nycourts.gov/ad3.

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; see also Family Ct Act § 1114 [b])).

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]). Absent exigent circumstances, the custom is to give such notice by telephone at least 24 hours in advance. In addition to the notice required by 22 NYCRR 1250.4 (b) (2), the party seeking relief is also required to provide advance notice to the Court of its intention to present the application or order to show cause (22 NYCRR 850.4 [a] [1]). To the extent practicable, the party seeking relief shall also provide to the Court a copy of the papers the party intends to present to the Court for filing (22 NYCRR 850.4 [a] [1]).

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

A: Once notice has been provided to the Court pursuant to 22 NYCRR 850.4 (a) (1), the party seeking relief will be advised as to when and where the order to show cause may be presented for signature.

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 in the Robert Abrams Building for Law and Justice, P.O. Box 7288, Capitol Station, Albany, New York 12224-0288.

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 (518) 471-4747, 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 may be made by letter to the Court's motion department or by facsimile transmission to it at (518) 471-4747, with a copy to each other party to the appeal or proceeding.

Q10: 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]. Additionally, no fee is payable for a motion or cross motion made in the context of an unemployment insurance appeal.