



**SUFFOLK ACADEMY OF LAW**  
*The Educational Arm of the Suffolk County Bar Association*  
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## **NEW DEVELOPMENTS IN E-FILING IN THE NEW YORK STATE APPELLATE DIVISION**

### **FACULTY:**

**Eric J. Kuperman, Esq.**  
**John McGorty**



**March 9, 2022**  
**Suffolk County Bar Association, New York**

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**There's a whole new way to obtain your CLE certificate! It's fast, easy and best of all you can see the history of courses that you've attended!**

**Within 10 days of the course you attended, your CLE Certificate will be ready to view or print. Follow the instructions below:**

1. Go to SCBA.org
2. Member Log In (upper right corner)
3. If you **do not** know your username or password, click the area below and enter your email that is on file with SCBA. Follow the prompts to reset your username and password.
4. After you log in, hover over your name and you will see “Quick Links”. Below that you will see:
  - a. My SCBA
  - b. My CLE History
  - c. Update My Information
  - d. Update My Committees
5. Click on **My CLE History**, you will see the courses you have attended. Off to the right side you will see the Icon for certificates. You are now able to download the certificate, print it or save it. You may go to your history and review the courses you have taken in any given year!
6. **CLE certificates will no longer be mailed or emailed.** Certificates will be available within 10 days after the course.



## **Eric J. Kuperman, Esq., Executive Vice President of Sales**

After Eric graduated from law school in 1997, he began his litigation career and practiced for the better part of a decade before segueing into a career as a litigation support consultant to lawyers and law firms across the nation.

Since 2006, he has focused primarily on assisting attorneys with their appellate and e-discovery needs. He is Vice President of Appellate Services at PHP, the leading Appellate Services Provider in New York City, and an attorney with e-discovery, a leading e-discovery and litigation support provider.

Eric specializes in appeals in all New York State courts ranging from the Appellate Divisions up through the New York State Court of Appeals, the Second Circuit Court of Appeals and the United States Supreme Court. In addition, he has handled appeals in New Jersey as well as many Federal Circuit Courts of Appeal across the Country.

During college, Mr. Kuperman clerked in the New York State Court system for the Law Department. Thereafter, while in law school, he held two internships, one with the Attorney General and the other with New York State Supreme Court Justice Beatrice Shainswit. In further preparation for his forthcoming litigation career, he participated in an Intensive Trial Advocacy Program during his third year in law school. Following graduation, he worked mostly as a civil defense litigator, representing major insurance carriers, both domestically and internationally. An ever-growing part of his practice, Mr. Kuperman became intrigued with appellate practice and ultimately drafted briefs and argued before the Appellate Division First Department.

Mr. Kuperman is proud to have hundreds of clients who look to him for guidance in all facets of litigation support, ranging from discovery needs through appeal. His knowledge of practice and procedure, fastidious attention to detail and availability at all hours, have endeared him to his loyal clients. Moreover, he teaches CLE classes on the Appellate Process, including but not limited to the e-filing requirements of NYSCEF in the Appellate Division.

Mr. Kuperman is a graduate of New York University with a B.A. in Politics and a minor in Economics. He received his J.D. from the Benjamin N. Cardozo School of Law in 1997. He was a published writer for, and an Editor of, the Cardozo Women's Law Journal. He is admitted to practice law in New York, New Jersey and Connecticut. Eric lives in New Jersey with his wife and three children. He is a weekend warrior athlete, coach, creative writer, amateur singer/musician and tutor.

## **JOHN MCGORTY, Executive Vice President of Business Development**

Thereafter, Mr. McGorty segued into the Mortgage industry, managing a team of loan officers for a Commercial/Residential Mortgage Broker. While brokering transactions, John always dealt directly with clients. As with his experience in the financial sector, John very easily and quickly gained his clients' trust by virtue of his wealth of experience in the business world. John McGorty attended Marist College where he was Captain of the baseball team and selected in the 2003 Major League Baseball amateur draft by the Detroit Tigers. In addition to having played at the high school, college and professional levels, John has also spent a significant amount of time coaching baseball at the NCAA Division I and II levels. He was also an assistant coach for Marist and Dowling Colleges for a combined five years. In 2009, after graduating from Dowling with a Bachelor's Degree in History, he led Dowling to the NCAA Division II College World Series in Cary, North Carolina.

In 2011, John joined PrintingHouse Press where he immediately began working directly with clients. He became a very quick study in the appellate arena and has since assisted countless attorneys in perfecting appeals and filing appellate briefs in the State and Federal Courts. His success can be attributed to the combination of a customer service-oriented background together with a thorough knowledge of appellate practice and procedure. He is an integral part of the PHP team and works closely with the other veterans of the very seasoned staff. Most recently, John has been teaming up with fellow appellate consultant, Eric Kuperman, Esq. in administering a CLE pertaining to local appellate procedures.

In 2017 John was named in LI Business News's 40 Under 40. He continues to take an active role in his community and is a member of both the "We Care" Golf Committee—the charitable arm of the Nassau County Bar Association—and the Nassau Women's Bar Golf Committee, as well as the Advisory Board for Molloy College Legal Studies. He lives with his wife and two kids in Sayville, where he was inducted to the Sayville Athletic Hall of Fame.

# Current Procedures for E-Filing at the NYS Appellate Division

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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.*

# OVERVIEW

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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 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

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## AD1

- If not yet expired, then the 6 month deadline is still your deadline to perfect.
- NYSCEF cases to be e-filed in ordinary course.

## AD2

- 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).

## AT2

- Now has its own portal for filings
- Hard copies are required but by appointment

# ORAL ARGUMENTS

## AD<sub>1</sub>

- Commencing with the March 2022 Term (March 1, 2022), oral arguments will be held in-person at the courthouse located at 27 Madison Avenue. As usual, oral arguments will take place on Tuesdays, Wednesdays, and Thursdays at 2:00 p.m., and if necessary, on Fridays at 10:00 a.m.

## AD<sub>2</sub>

- Beginning Monday, February 28, 2022, and subject to any future change in protocol the notice of which will be timely posted on our website, all oral arguments on appeal at the Appellate Division, Second Judicial Department will be held in person at the courthouse located at 45 Monroe Place, Brooklyn, New York or at such alternate locations as may be announced by the Court.

# 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.**
- IV. In the Second Department, all cases are to be e-filed as long as they're **e-filed in Supreme Court.**

# 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

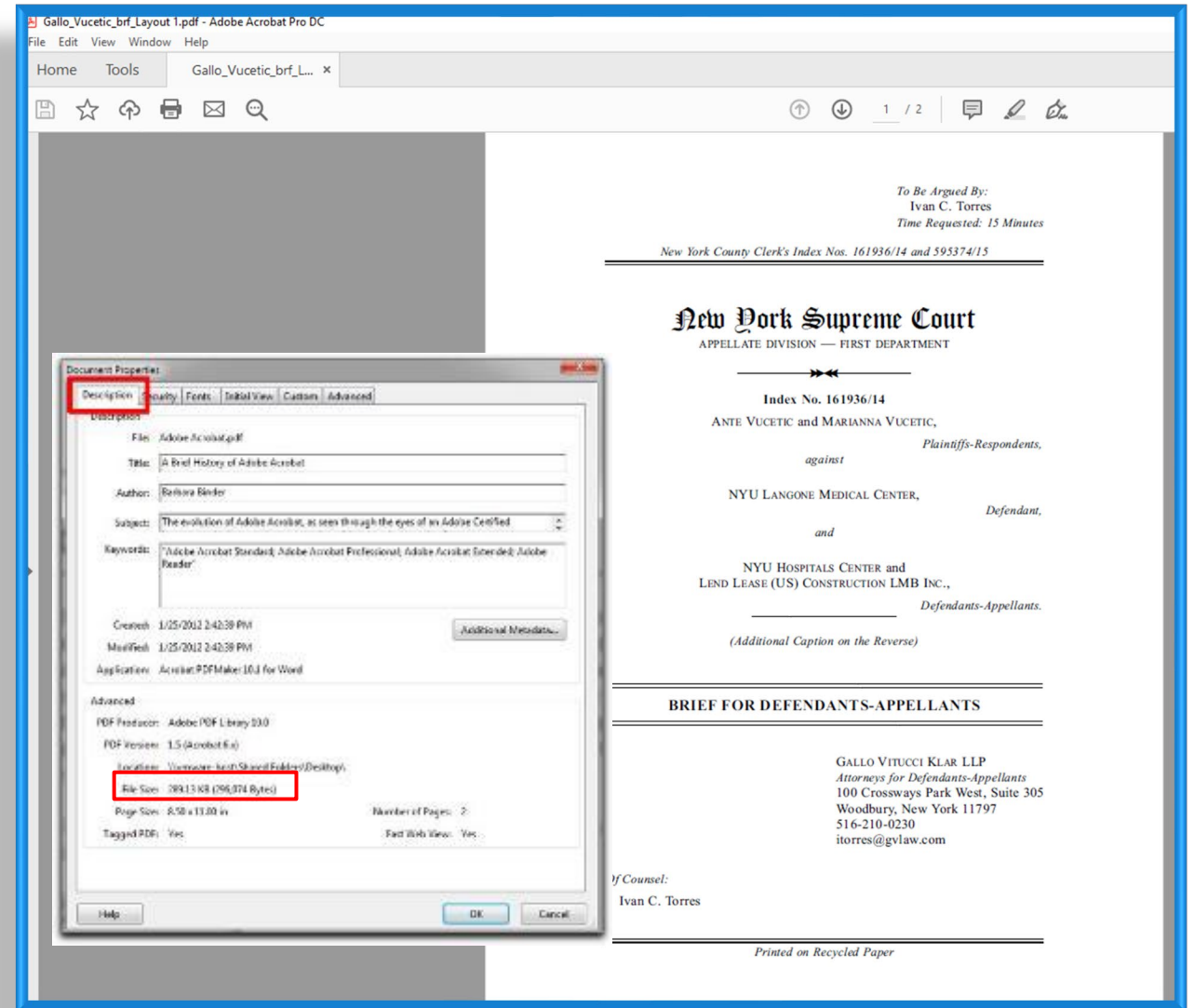
This is the Statement of  
Authorization for  
Electronic Filing. It **MUST**  
be uploaded when filing  
as an authorized filing  
agent.

# 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 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 (CONTINUED)

- 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**”
- 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

## 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.



# 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

The screenshot shows the 'New York State Unified Court System' interface for NYSCEF. It displays case information for '2018-04083 - Appellate Division - 2nd Dept', including the short caption 'SRP 2012-4, LLC' and case type 'Civil Action - General'. The 'Re-file Document' section is highlighted, showing a document titled 'Document 19 - REPLY BRIEF'. A red box highlights the 'Document 19 - REPLY BRIEF' label. Below this, there is a 'File Name' field with a 'Choose File' button and a note 'No file chosen'. To the right is an 'Exhibit Number/Letter' field. Further down are fields for 'Additional Document Information', 'Comments for Clerk', and 'Document Security' (with checkboxes for sealing and social security number). At the bottom are 'Cancel' and 'Re-file Document' buttons.

# 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.
- V. The Court requires briefs with hyperlinks, to cited primary authorities (constitutions, case law, statutes, rules and regulations) available on **Westlaw, Lexis, or state or federal government websites**. Citations to secondary and other sources should not be hyperlinked. All citations (with or without hyperlinks) shall appear in standard citation form.

# AD2 BRIEFS (CONTINUED)

## 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 (CONTINUED)

- 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 remaining noted for the current Term.
  - i. No stip to the June Term permitted.
- 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 remaining noted for the current Term.
- II. 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**.
- III. 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 (CONTINUED)

## 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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## **SCBA Lawyers Helping Lawyers Committee**

**The SCBA Lawyers Helping Lawyers Committee** provides free and confidential assistance to those in the legal community who are concerned about their alcohol or drug use and/or mental health or wellbeing or that of a colleague or family member.

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**Please call the  
Lawyers Helping Lawyers Helpline at (631) 697-2499  
to speak with an attorney who will provide support and recommend  
resources. All calls are private and confidentiality is protected under  
Judiciary Law Section 499. (Lawyer Assistance Committee)**

***Feel Free to Join Us at Our Weekly Recovery Meeting***