

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzairelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
Elaine Bennett,

Plaintiff-Respondent-Appellant,

-against-

New York City Transit Authority,

Defendant-Appellant-Respondent.  
-----X

M-1643X  
Index No. 14632/06

An appeal and cross appeal having been taken from the judgment of the Supreme Court, Bronx County, entered on or about October 6, 2009,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" March 26, 2010, and due deliberation having been had thereon,

It is ordered that the appeal and cross appeal are withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
Alfred Riddick,  
Plaintiff-Respondent,

-against-

Osman A. Swaray,  
Defendant-Appellant.

M-1670X  
Index No. 13709/07

-----X  
An appeal having been taken from an order of the Supreme Court, Bronx County, entered on or about July 2, 2009,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" March 30, 2010, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
Mariya Radeva,  
Plaintiff-Respondent,

-against-

M-1760X  
Index No. 113451/07

New York City Transit Authority,  
Defendant-Appellant.  
-----X

An appeal having been taken from a judgment of the Supreme Court, New York County, entered on or about September 4, 2009,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" April 1, 2010, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzaelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

Alessandro Gallardo, also known as  
Alessandro Galiardo, also known as  
Ziatko Galjasevic,

M-1768  
Ind. Nos. 1216/08  
1594/06

Defendant-Appellant.  
-----X

An appeal having been taken from a judgment of the Supreme Court, Bronx County, rendered on or about March 20, 2009,

Now, upon reading and filing the stipulation of the parties hereto, filed April 1, 2010, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzaelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against

M-1798  
Ind. No. 6969/01

Freddy Medina,  
Defendant-Appellant.

-----X

An appeal having been taken from the judgment of the Supreme Court, New York County, rendered on or about August 7, 2008,

Now, upon reading and filing the stipulation of the parties hereto, filed April 6, 2010, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzairelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
Spar Incentive Marketing, Inc.,  
Plaintiff-Appellant-Respondent,

-against-

Thomas F. Hunter, Stimulys, Inc.,  
Defendants-Respondents-Appellants,

M-1671  
Index No. 603634/05

-and-

John Harper Hawkins III,  
Defendant.

-----X

An appeal and cross appeal having been taken from the order of the Supreme Court, New York County, entered on or about February 5, 2009,

Now, upon reading and filing the stipulation of the parties hereto, filed March 29, 2010, and due deliberation having been had thereon,

It is ordered that the appeal and cross appeal, previously perfected for the February 2010 Term, is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzairelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
American Arbitration Association, Inc.,

Plaintiff-Respondent,

-against-

M-1603  
Index No. 115499/09

Laurus Capital Management, LLC,  
Eugene Grin, David Grin and Valens  
Capital Management, LLC,

Defendants-Appellants.  
-----X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about January 7, 2010 (mot. seq. no. 003),

Now, upon reading and filing the stipulation of the parties hereto, filed March 25, 2010, and due deliberation having been had thereon,

It is ordered that the appeal, previously perfected for the April 2010 Term, is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzairelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
Kaykhosrow Alvandi, individually  
and derivatively on behalf of  
Famitech, Inc.,  
Plaintiff-Respondent,

-against-

M-1732  
Index No. 650641/09

David Bassalali, Behnam Yadegari  
and Famitech, Inc.,  
Defendants-Appellants,

-and-

Louis Aaron Pepper,  
Defendant.

-----X

Appeals having been taken from the order of the Supreme Court, New York County, entered on or about January 4, 2010, and on or about January 13, 2010 (corrected Notice of Appeal dated February 3, 2010),

Now, upon reading and filing the stipulation of the parties hereto, filed April 1, 2010, and due deliberation having been had thereon,

It is ordered that the appeal(s), previously perfected for the May 2010 Term, are withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzairelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
MLVM Washington LLC,

Plaintiff-Respondent,

-against-

Term-Washington Street Garage Corp.,  
GB Development Group LLC and  
Gerald Brauser,

M-1563  
Index No. 103037/08

Defendants-Appellants.  
-----X

Plaintiff-respondent having moved for dismissal of the appeal taken from a judgment of the Supreme Court, New York County, entered on or about December 4, 2009 (mot. seq. no. 002),

Now, upon reading and filing the papers with respect to the motion, including correspondence from Luisa K. Hagemeyer, Esq. dated March 30, 2010 and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
RNK Capital LLC, Grey K Environmental  
Fund, LP, and Grey K Environmental  
Offshore Fund, Ltd.,  
Plaintiffs-Respondents,

-against-

M-1043  
Index No. 603483/06

Natsource LLC, Natsource Asset Management  
LLC, Natsource Transaction Services LLC,  
Natsource Europe Ltd., Natsource Japan Co.,  
Ltd., Michael Intrator, David Oppenheimer,  
and Jack Cogen,  
Defendants-Appellants,

Ben Richardson,  
Defendant.

-----X

Appeals having been taken from the orders of the Supreme Court, New York County, entered on or about July 12, 2009 and on or about February 17, 2010, respectively,

And defendants-appellants having moved for an order, inter alia, adjourning said appeal and for related relief,

Now, upon reading and filing the order of a Justice of this Court dated March 1, 2010 and the stipulation of the parties hereto, dated March 17, 2010, and due deliberation having been had thereon,

It is ordered that the appeal is adjourned to the June 2010 Term and so much of the motion seeking to supplement the record is deemed withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,  
David B. Saxe  
Eugene Nardelli  
James M. McGuire  
Karla Moskowitz, Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-1390  
Ind. No. 1475/07

Carlos Sanchez Alicea,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about May 5, 2008, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied, with leave to renew upon defendant's submission of a detailed notarized affidavit, pursuant to CPLR 1101(a), setting forth the amount and sources of funds to pay the fee of retained trial counsel, and to post the \$50,000 bail in the Supreme Court, the disposition thereof, and an explanation as to why similar funds are not available to prosecute the appeal. (The application shall include an affidavit of the source[s] of all funds utilized by defendant.)

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,  
David B. Saxe  
Eugene Nardelli  
James M. McGuire  
Karla Moskowitz, Justices.

-----X  
In the Matter of the Application of  
Robert L. Myers, doing business as  
B&G Roofing,  
Petitioner,

For a Judgment Pursuant to Article 78  
of the CPLR,

M-1071  
Index No. 111482/09

-against-

Jonathan Mintz, as Commissioner of  
the New York City Department of  
Consumer Affairs, and the City  
of New York,  
Respondents.

-----X

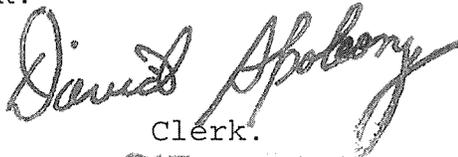
An Article 78 proceeding having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about November 16, 2009 (mot. seq. no. 001), to review a determination of respondent,

And petitioner having moved for a stay of revocation of movant's Home Improvement Contractor herein pending hearing and determination of the aforesaid proceeding,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present - Hon. Peter Tom, Justice Presiding,  
Angela M. Mazzairelli  
Richard T. Andrias  
David B. Saxe  
Leland G. DeGrasse, Justices.

-----x  
In re Edward F.,

Petitioner-Respondent,

-against-

Karima G.,

Respondent-Appellant.  
-----x

M-2140  
Docket Nos. V-14269/05  
V-04717-05/06A

An appeal having been taken to this Court from the order of the Family Court, New York County, entered on or about May 23, 2008, and said appeal having been heard,

And petitioner-respondent having moved for dismissal of the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied. (See Appeal No. 2633, decided simultaneously herewith.)

ENTER:

  
Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT - Hon. Peter Tom, Justice Presiding,  
David B. Saxe  
David Friedman  
Eugene Nardelli  
James M. Catterson, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

Mario Escobar,

M-912  
Ind. Nos. 3304/04  
3232/06  
Case No. 27525C/05

Defendant-Appellant.  
-----X

Defendant having renewed his motion for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, Bronx County, rendered on or about May 18, 2007 and from the judgment of **resentence** of said Court, rendered on or about October 26, 2007, and for related relief,

And orders of this Court having been entered on October 7, 2008 (M-3926) and January 15, 2009 (M-5686) having deemed the appeals timely and having granted appellant leave to prosecute said appeals as a poor person, and related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied as unnecessary said relief having already been granted by the aforesaid orders of the Court.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present: Hon. Angela M. Mazzaelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
In the Matter of a Proceeding for  
Custody and/or Visitation Under  
Article 6 of the Family Court Act.

- - - - -  
Susan A., M-1250  
Petitioner-Respondent, Docket Nos. V26145-07/07A  
V26145-07/07B  
V26146-07/07A  
V26146-07/09B  
-against-

Ibrahim A.,  
Respondent-Appellant.

-----X

An appeal having been taken from the order of the Family Court, Bronx County, entered on or about August 20, 2009,

And an order of said Family Court having been entered on or about February 2, 2010, modifying visitation,

And respondent-appellant having moved to withdraw the appeal following the aforesaid modification of his visitation privileges,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted, respondent's appeal having been rendered moot by the aforesaid order of the Family Court, entered on or about February 2, 2010.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

M-963  
Ind. No. 5735/04

Erlan Zapata,

Defendant-Appellant.  
-----X

Respondent having moved for an order dismissing ' defendant's appeal taken from a judgment of the Supreme Court, New York County, rendered on or about April 29, 2005,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

M-964  
Ind. No. 4406/07

Jorge Arias,

Defendant-Appellant.  
-----X

Respondent having moved for an order dismissing ' defendant's appeal taken from a judgment of the Supreme Court, New York County, rendered on or about September 23, 2008,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

Wei-Guan Lin, also known as Wei-Guang,

M-965  
Ind. Nos. 2489/02  
6644/06

Defendant-Appellant.  
-----X

Respondent having moved for an order dismissing defendant's appeal taken from a judgment of the Supreme Court, New York County, rendered on or about March 8, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

M-966  
Ind. No. 3038/05

Idelfonso Cuellargullar,

Defendant-Appellant.  
-----X

Respondent having moved for an order dismissing defendant's appeal taken from a judgment of the Supreme Court, New York County, rendered on or about November 3, 2006,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

M-1020  
Ind. No. 1901/05

Veli Lajiq,

Defendant-Appellant.  
-----X

Respondent having moved for an order dismissing defendant's appeal taken from a judgment of the Supreme Court, New York County, rendered on or about April 18, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

M-1021  
Ind. No. 2373/08

Andy Alba,

Defendant-Appellant.  
-----X

Respondent having moved for an order dismissing defendant's appeal taken from a judgment of the Supreme Court, New York County, rendered on or about January 27, 2009,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----x  
The People of the State of New York,  
Respondent,

-against-

M-1210  
Ind. No. 527/00

Dale Fleming,  
Defendant-Appellant.

-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of **resentence** of the Supreme Court, New York County, rendered on or about March 6, 2009, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of **resentence**. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11<sup>th</sup> Floor, New York, New York 10006, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

Joseph Rivera,  
Defendant-Appellant.

M-1111  
Ind. Nos. 2608/00  
1977/00

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, Bronx County, entered on or about February 1, 2010 denying resentencing, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to Sec 722 of the County Law. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York, 10007, Telephone No. 212-402-4100, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:

  
Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

M-1213  
Ind. No. 1871/09

Shelton Mosley, also known as  
J.D. Shelton,  
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from a judgment of the Supreme Court, New York County, rendered on or about September 22, 2009, for leave to prosecute the appeal as a poor person upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the moving papers a timely filed notice of appeal and permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11<sup>th</sup> Floor, New York, New York 10006, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Helen E. Freedman  
Rosalyn H. Richter  
Sallie Manzanet-Daniels, Justices.

-----X  
ABN Amro Bank, N.V., et al.,  
PLC,  
Plaintiffs-Respondents,

-against-

MBIA Inc., et al.,  
Defendants-Appellants.

SEALED  
M-1842  
Index No. 601475/09

-----  
Andrew M. Cuomo, Attorney General of  
the State of New York,  
Amicus Curiae.

-----X  
An appeal having been taken to this Court from the corrected order of the Supreme Court, New York County, entered on or about March 2, 2010, said appeal having been perfected for the June 2010 Term,

And Andrew M. Cuomo, Attorney General of the State of New York, having moved for leave to file a brief amicus curiae in connection with the aforesaid appeal, and to participate in argument,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the amicus curiae briefs submitted by the Attorney General along with the moving papers herein as filed. The motion is otherwise denied.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT - Hon. Angela M. Mazzarelli Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----x  
Banca Di Roma,  
Plaintiff-Respondent,

-against-

Mutual of America Life Insurance Company,  
Inc., Turner Construction Company and  
the Turner Corporation,  
Defendants-Appellants,

M-1456  
Index No. 103006/97

Hunter and Partners, Inc.,  
Defendants.

-----  
Turner Construction Company and  
The Turner Corporation,  
Third-Party Plaintiffs-Appellants,

-against-

Index No. 591068/97

Swanke, Hayden, Connell, Big Apple  
Wrecking and Safeway Environmental Corp.,  
Third-Party Defendants.

-----  
Turner Construction Company and  
The Turner Corporation,  
Second Third-Party  
Plaintiffs-Appellants,

-against-

Index No. 591251/99

Regional Hoisting & Scaffolding Inc.,  
Second Third-Party  
Defendant-Appellant.

-----x

Separate appeals having been taken to this Court from the order of the Supreme Court, New York County, entered on or about February 4, 2009 (mot. seq. no. 013),

And an order of this Court having been entered on January 7, 2010 (M-5271) consolidating the aforesaid appeals and enlarging the time in which to perfect said consolidated appeals to the June 2010 Term,

And defendants/third-party plaintiffs having moved for a further enlargement of time in which to perfect the consolidated appeals,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the consolidated appeals to the September 2010 Term.

ENTER:

  
Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT - Hon. Angela M. Mazzairelli, Justice Presiding,  
Rolando T. Acosta  
Leland G. DeGrasse  
Rosalyn H. Richter, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

M-1345  
Ind. No. 2456/08

Tyroy Peterkin,

Defendant-Appellant.  
-----X

Defendant-appellant having moved for an enlargement of time in which to perfect his appeal from a judgment of the Supreme Court, Bronx County, rendered on or about November 17, 2009,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the October 2010 Term.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,

Appellant,

-against-

M-1328  
Ind. No. 5260/06

Denard Butler,

Defendant-Respondent.  
-----X

Defendant having taken an appeal from the judgment of the Supreme Court, New York County, rendered on or about June 16, 2009,

And the People having taken an appeal from the order of said Court entered on or about June 16, 2009,

And the People having moved for an enlargement of time in which to perfect the appeal taken from the aforesaid order of the Supreme Court, New York County,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the People's time in which to perfect their appeal to the October 2010 Term, to which Term defendant's perfected appeal is adjourned.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
Beverly Childs and Michael Childs,

Respondents,

-against-

M-1334  
Index No. 305201/08

Syed Rahman,

Defendant.

-----X

Defendant having moved pursuant to CPLR 5704(a), for relief denied by a Justice of the Supreme Court, Bronx County, on or about March 5, 2010,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied.

Enter:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT - Hon. Angela M. Mazzaelli, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick,  
Helen E. Freedman  
Nelson S. Román, Justices.

-----X  
Sara Kinberg,  
Plaintiff-Appellant,

-against-

M-1305  
Index No. 1628/06

Yoram Kinberg,  
Defendant-Respondent.

-----X  
Sara Kinberg,  
Plaintiff-Appellant,

-against-

Index No. 21593/06

Jane Bevans,  
Defendant-Respondent.

-----X

An appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about June 22, 2009,

And plaintiff-appellant having moved for an order enlarging the record on appeal to include an order of the Supreme Court, Bronx County, entered on or about November 14, 2008 and to file a replacement or supplemental brief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied, and plaintiff is directed not to commence any further motion practice with respect to the above captioned actions without prior permission of the Court.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,  
John W. Sweeny, Jr.  
Karla Moskowitz  
Sallie Manzanet-Daniels  
Nelson S. Román, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

M-5383  
Ind. No. 1977/85

Clarence Gourdine, also known as  
Gourdine Sleepy,

Defendant-Appellant.  
-----X

A decision and order of this Court having been entered on October 17, 1989 (Appeal No. 37545), unanimously affirming a judgment of the Supreme Court, New York County (Schlesinger, J.), rendered on February 13, 1986,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said application is denied.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,  
John W. Sweeny, Jr.  
Sheila Abdus-Salaam  
Sallie Manzanet-Daniels, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

M-1335  
Ind. No. 3295/01

Isaias Flores,  
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, Bronx County, entered on or about January 19, 2010 denying resentencing, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to Sec 722 of the County Law. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York, 10007, Telephone No. 212-402-4100, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:

  
Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Sheila Abdus-Salaam  
Sallie Manzanet-Daniels, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

M-1376  
Ind. No. 5886/03

Jamel McRae,  
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, New York County, entered on or about March 11, 2010 denying resentence, for leave to have the appeal heard upon the original record and a reproduced appellants brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellants brief, on condition that appellants serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to Sec 722 of the County Law. The Clerk shall furnish a copy of such transcripts to appellants counsel, without charge, the transcripts to be returned to this Court when appellants brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11<sup>th</sup> Floor, New York, New York 10006, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellants shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:

  
Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present: Hon. Richard T. Andrias, Justice Presiding,  
James M. McGuire  
Karla Moskowitz  
Rolando T. Acosta  
Leland G. DeGrasse, Justices.

-----X  
Thomas J. Campbell,  
Plaintiff-Respondent-Appellant,

-against-

Action No. 1  
Index No. 600673/08

Robert B. McKeon, et al.,  
Defendants-Appellants-Respondents.

-----X  
Veritas Capital Management, L.L.C.,  
Veritas Capital Investments, LLC,  
Veritas Capital Management II, LLC,  
Veritas Capital Investments II, LLC,  
and Veritas Capital Fund Management,  
L.L.C.,  
Plaintiffs-Appellants-Respondents,

M-1485

Action No. 2  
Index No. 650058/08

-against-

Thomas J. Campbell,  
Defendant-Respondent-Appellant.

-----X

Counsel for the direct appellants in the above captioned actions having moved on consent for consolidation of the appeals and cross appeals in both actions taken from the orders of the Supreme Court, New York County, entered on or about November 28, 2008 and on or about February 2, 2009, respectively,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the respective appellants and cross appellants to prosecute the appeals and cross appeals in both actions upon 10 copies of one record and of one set each of appellants' and cross appellants' points covering all appeals. The attention of the parties is directed to Rule 600.11(d) with respect to a joint record and costs thereof.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present: Hon. Richard T. Andrias, Justice Presiding,  
David B. Saxe  
James M. Catterson  
Helen E. Freedman  
Sheila Abdus-Salaam, Justices.

-----X  
Nancy Cruz,  
Plaintiff-Appellant,

-against-

M-1121  
Index No. 104951/99

The City of New York,  
Defendant-Respondent.  
-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about May 4, 2009 (mot. Seq. No. 002),

And Earl A. Rawlins, Esq., having moved to be relieved as counsel on plaintiff's appeal, and for an enlargement of appellant's time in which to perfect said appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted on condition that within 10 days of the date of entry hereof counsel serves a copy of this order on all parties. Plaintiff's time in which to perfect the appeal is enlarged to on or before July 12, 2010 for the September 2010 Term, with no further enlargements to be granted.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

PRESENT - Hon. David B. Saxe, Justice Presiding,  
David Friedman  
Eugene Nardelli  
Helen E. Freedman  
Sheila Abdus-Salaam, Justices.

-----X  
In the Matter of

Joshua Jezreel M.,

A Dependent Child under 18 Years  
of Age Pursuant to §384-b  
of the Social Services Law,

-----  
The Children's Aid Society, et al.,  
Petitioners-Respondents,

M-1801  
Docket No. B-3982/08

Dennis M.,  
Respondent-Appellant.

-----  
Steven Banks, Esq.,  
Law Guardian for the Child.

-----X

Respondent-appellant having moved for leave to prosecute, as a poor person, the appeal from an order of the Family Court, New York County, entered on or about October 23, 2009, and for assignment of counsel, a free copy of the transcript, and related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and § 1120 of the Family Court Act, Dora M. Lassinger, Esq., 6 Howland Road, East Rockaway, NY 11518, Telephone No. (516) 887-8987, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available

therefor<sup>1</sup> within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk; (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. The Clerk of the Family Court shall transfer the record upon receipt of this order; and (4) directing appellant to perfect this appeal within 60 days of receipt of the transcripts. Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.

ENTER:

  
Clerk.

---

<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present: Hon. David Friedman, Justice Presiding,  
John W. Sweeny, Jr.  
Leland G. DeGrasse  
Rosalyn H. Richter  
Sallie Manzanet-Daniels, Justices.

-----X  
The People of the State of New York,

-against-

M-1047  
Docket No. 5852/09

Sheila M. Bolar,

Defendant.  
-----X

Defendant having moved pro se for leave to appeal to this Court from an order of observation of the Criminal Court, New York County, issued on or about February 20, 2009,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied, as no appeal lies from an order of observation issued pursuant to CPL 730.40 [1][2].

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present: Hon. David Friedman, Justice Presiding,  
John W. Sweeny, Jr.  
Leland G. DeGrasse  
Rosalyn H. Richter  
Sallie Manzanet-Daniels, Justices.

-----X  
Allstate Insurance Company, et al.,  
Plaintiffs-Respondents,

-against-

M-1019

M-1276

Belt Parkway Imaging, P.C., et al.,  
Defendants-Appellants,

Index No. 600509/03

Metroscan Resonance Imaging, Inc.,  
et al.,  
Defendants-Respondents.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about March 26, 2009 (mot. seq. no. 011),

And defendants-appellants having moved for an enlargement of time in which to perfect the aforesaid appeal (M-1019),

And plaintiffs-respondents having cross-moved to dismiss the aforesaid appeal (M-1276),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon,

It is ordered that defendants' motion (M-1019) is granted to the extent of enlarging the time in which to perfect the appeal to the September 2010 Term. Plaintiffs' cross motion to dismiss the appeal is granted unless the appeal is perfected for said September 2010 Term. Upon failure to so perfect, an order dismissing the appeal may be entered ex parte, provided plaintiffs-respondents serve a copy of this order upon defendants-appellants within 10 days after the date of entry hereof.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present: Hon. David Friedman, Justice Presiding,  
John W. Sweeny, Jr.  
Leland G. DeGrasse  
Rosalyn H. Richter  
Sallie Manzanet-Daniels, Justices.

-----X  
Kenzie Godfrey,  
Plaintiff-Respondent-Appellant,

-against-

G.E. Capital Auto Lease, Inc.,  
et al.,  
Defendants-Respondents,

M-1109  
M-1297  
Index No. 7963/02

Balhar Singh, Resihma Singh and  
Boating Adjei,  
Defendants-Appellants-Respondents.

-----X  
(And a third-party action)

An appeal and cross appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about April 29, 2009,

And defendants-appellants-respondents having moved for an enlargement of time in which to perfect the direct appeal (M-1109),

And plaintiff-respondent-appellant having cross-moved to dismiss defendants' direct appeal (M-1297),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon,

It is ordered that the motion to enlarge time (M-1109) is granted to the extent of enlarging the time in which to perfect the appeal and cross appeal to the September 2010 Term. The cross motion to dismiss defendants' direct appeal (M-1297) is granted unless the appeal is perfected for said September 2010 Term. Upon failure to so perfect, an order dismissing the appeal may be entered ex parte, provided plaintiff-respondent serves a copy of this order upon the defendants-appellants within 10 days after the date of entry hereof. Should defendants fail to so perfect, plaintiff is directed to perfect the cross appeal as a direct appellant for the next available term of court.

ENTER:

  
Clerk.

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

BEFORE: Hon. Richard T. Andrias,  
Associate Justice

-----X  
The People of the State of New York,

M-1620  
Ind. Nos. 261/79  
427/79  
30224/04

-against-

CERTIFICATE  
DENYING LEAVE

Ramon Alvarez,

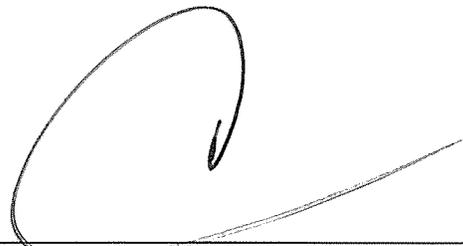
Defendant.

-----X

I, Richard T. Andrias, a Justice of the Appellate Division, First Judicial Department, do hereby certify that, upon application timely made by the above-named defendant for a certificate pursuant to Criminal Procedure Law Section 460.15, and upon the record and proceedings herein, there is no question of law or fact presented which ought to be reviewed by the Appellate Division, First Judicial Department, and permission to appeal from the Order of the Supreme Court, New York County, (Roger S. Hayes, J.), entered December 16, 2009, which denied defendant's motion pursuant to CPL 440.10, is hereby denied.

Dated: New York, New York  
April 23, 2010

**ENTERED**



Justice of the Appellate Division

MAY 06 2010

MAY 6 2010

Peter Tom, Justice Presiding,  
Richard T. Andrias  
David Friedman  
Eugene Nardelli  
Rosalyn H. Richter, Justices.

-----x

In the Matter of Kenneth J. Auslander,  
(admitted as Kenneth J. Auslander, Jr.),  
an attorney and counselor-at-law:

Departmental Disciplinary Committee M-5242  
for the First Judicial Department,  
Petitioner,

Kenneth J. Auslander,  
Respondent.

-----x

Disciplinary proceedings instituted by the Departmental  
Disciplinary Committee for the First Judicial Department.  
Respondent, Kenneth J. Auslander, was admitted to the Bar of  
the State of New York at a Term of the Appellate Division of  
the Supreme Court for the First Judicial Department on  
December 3, 1990.

Alan W. Friedberg, Chief Counsel, Departmental  
Disciplinary Committee, New York  
(Joseph J. Hester, of counsel), for petitioner.

Respondent pro se.

IN THE MATTER OF KENNETH J. AUSLANDER, AN ATTORNEY

PER CURIAM

Respondent Kenneth J. Auslander was admitted to the practice of law in the State of New York by the First Judicial Department on December 3, 1990 under the name Kenneth J. Auslander, Jr. At all times relevant to this petition, respondent maintained an office for the practice of law within the First Judicial Department. According to records maintained by the Office of Court Administration, respondent is delinquent in the payment of his registration fees for the 2008-2009 biennial registration period.

The Committee commenced an investigation of five separate complaints filed against respondent between October 2007 and November 2008, which involved his representation of the complainants in the sale of their cooperative apartments. Three complaints allege that respondent failed to pay the seller's transfer tax out of funds held in respondent's escrow account. The two others allege that respondent failed to provide closing statements after the apartment sales.

After some delay and after receiving extensions of time, respondent submitted answers to two of the complaints in December 2007 and January 2008, respectively, explaining that he was depressed and distracted as the result of his father's illness

and death. He did not submit answers to the remaining complaints despite receiving second letters from the Committee in December 2008 reminding him to do so. Respondent was thereupon directed, pursuant to subpoena, to appear for a deposition on February 11, 2009 and to bring with him his files on those three cases. Respondent failed to appear on that occasion but did appear for a deposition the following month, although without all of the requested records, which he agreed to provide within two weeks. Respondent attributed his various oversights culminating in the filing of the complaints against him to a pattern of procrastination that had affected him for approximately a year, his preoccupation with his real estate practice that was collapsing due to the recession, the need to provide care for his fatally ill father, a recent move and the birth of his first child. Respondent stated that he had no more than two or three clients.

Respondent thereafter failed to furnish the Committee with any of the items requested during the March deposition, and respondent was again deposed in late June 2009. Again he did not bring the requested client files, and again he promised to furnish them to the Committee within two weeks. By way of explanation for his lack of cooperation, he stated that he was depressed by his personal and professional difficulties and was consulting a psychologist, who had prescribed medication.

Respondent once more failed to produce the requested documents, prompting a letter requesting his appearance before the Committee on September 9, 2009. When he again failed to appear, an investigator ascertained that respondent had vacated his law office. Several days later, the investigator personally served respondent at his home address with a subpoena commanding him to appear for an October 23, 2009 deposition and to produce his escrow account records from 2000 to present. Respondent neither appeared nor produced the requested escrow records.

The Committee now seeks an order pursuant to 22 NYCRR 603.4(e)(1)(i) and (iii) immediately suspending respondent from the practice of law based upon his failure to cooperate with the Committee's investigation of professional misconduct and other uncontested evidence of misconduct that immediately threatens the public interest. Although granted an extension of time to answer, he has not submitted a response. The Committee notes that it has afforded respondent numerous opportunities to cooperate with its investigation. Nevertheless, he has failed to answer three of the complaints against him, provide requested documentation and appear for the October 2009 deposition. In further support of the motion, the Committee notes respondent's violation of Judiciary Law § 468-a for failing to file a 2008-2009 biennial registration statement and pay the prescribed fee.

Respondent's failure to cooperate with the Committee's

investigation is amply demonstrated by the record. Although respondent's deposition testimony indicates that some of the payments alleged by his clients to be outstanding may have been made, the complaints cannot be resolved without the escrow records requested by the Committee. And while respondent has offered excuses for his lack of cooperation, particularly his depressed mental state, there is no statement by his treating physician attesting to his depression or relating that condition to respondent's professional lapses. Thus, immediate suspension is warranted (22 NYCRR 603.4[e][1][i]; e.g. *Matter of Kaplan*, 49 AD3d 107 [2008]; *Matter of Benzing*, 43 AD3d 163 [2007]).

Furthermore, the failure to maintain current registration with the Office of Court Administration affords an independent basis for suspension (22 NYCRR 603.4[e][1][iii]; see *Kaplan*, 49 AD3d at 112; *Matter of Hest*, 308 AD2d 85 [2003]).

Accordingly, the Committee's motion should be granted and respondent suspended from the practice of law pursuant to 22 NYCRR 603.4(e)(1)(i) and (iii), effective immediately and until the further order of this Court.

All concur.

Order filed.

PM ORDERS

ENTERED

MAY 6, 2010

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 6, 2010.

Present: Hon. David Friedman, Justice Presiding,  
Eugene Nardelli  
Karla Moskowitz  
Helen E. Freedman  
Sallie Manzanet-Daniels, Justices.

-----X

In the Matter of the Application of the Dormitory Authority of the State of New York to acquire title in fee to certain real property for use in a project to expand and consolidate

**M-2320**  
Index No. 102934/01

John Jay College of Criminal Justice of the City University of New York.

-----  
River Center LLC, et al.,  
Claimants-Appellants-Respondents,

-against-

The Dormitory Authority of the State of New York,  
Condemnor-Respondent-Appellant.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about May 29, 2008, and an appeal and cross appeal having been taken from the judgment of said Court, entered on or about June 5, 2008, and said appeals and cross appeals having been perfected,

And claimants-appellants-respondents having moved for leave to correct their filed appellants' brief and to conform their reply brief to the corrected main brief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is referred to the appeal bench for disposition. Movant is directed to immediately file 10 copies of the proposed substitute main brief and reply brief and a separate filing of 10 copies of the respective charts indicating the proposed corrections/changes in movants' filings. Respondent-cross appellant is permitted to immediately file points addressing the issue of the substance of the proposed corrections/changes and to further address same at the time of argument of the appeal.

ENTER:

A handwritten signature in black ink, reading "David Apolony". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Clerk.