

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 October 12, 2010.

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

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

-against- M-4362
Ind. No. 3998/06

Benjamin Santiago,
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, rendered on or about January 14, 2010, for leave to have the appeal heard upon 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 upon 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.

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th 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 October 12, 2010.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Richard T. Andrias
Eugene Nardelli
James M. McGuire
Sheila Abdus-Salaam, Justices.

-----X
Benjamin Cunningham,
Plaintiff-Appellant,

-against-

M-4528
Index No. 401014/09

David Newman, M.D., et al.,
Defendants-Respondents.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about December 30, 2009,

And defendants having moved for an order dismissing plaintiff's appeal or, in the alternative, adjourning said appeal and directing plaintiff to file an appendix which complies with CPLR 5528 or, in the alternative, permitting defendants to file a supplemental appendix, with leave to seek costs for said appendix,

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 adjourning the appeal to the January 2011 Term with leave granted to defendants to file a supplemental appendix. 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 October 12, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Richard T. Andrias
Eugene Nardelli
James M. McGuire
Sheila Abdus-Salaam, Justices.

-----X
Constance Joyce Cheney by James
Cheney as Preliminary Executor of
the Estate of Constance Joyce Cheney,
Deceased,
Plaintiffs,

-against-

M-4743
Index No. 1573/07

Diane Wells,
Defendant.

-----X
Transamerica Occidental Life
Insurance Company,
Plaintiff,

-against-

Diane Wells and James Cheney, as
Representatives of the Estate of
Joyce Cheney, Deceased,
Defendants.

-----X

Limited guardian for defendant Diane Wells having moved for a stay of trial pending hearing and determination of a purported appeal from the order of the Supreme Court, New York County, entered on or about September 20, 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 pursuant to CPLR 5704(a) is denied and the interim relief granted by an order of a Justice of this Court, dated September 21, 2010, is hereby vacated.

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 October 12, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Richard T. Andrias
Eugene Nardelli
James M. McGuire
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of the Application of
Meryl Brodsky, Mark Feinsot and
Elect Meryl Brodsky to City Council
2005,

Petitioners-Appellants,

M-3799

Index No. 118316/06

-against-

New York City Campaign Finance Board,
Respondent-Respondent.

-----X

Petitioner-appellant Meryl Brodsky having moved for a stay of all proceedings pending hearing and determination of the appeal taken from the order and judgment (one paper) of the Supreme Court, New York County, entered on or about July 16, 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 October 12, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Richard T. Andrias
James M. Catterson
Dianne T. Renwick
Sallie Manzanet-Daniels, Justices.

-----X
Jaime Perez, an infant by his
Mother and Natural Guardian,
Nancy Torres, et al.,
Plaintiffs-Appellants,

-against-

M-3986
Index No. 13084/04

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

Plaintiffs-appellants having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on June 22, 2010 (Appeal No. 3106N),

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 October 12, 2010.

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

-----X

Satia Alrobaia, an infant by
her mother and natural guardian
Anita Severs, et al.,
Plaintiffs-Appellants,

M-3415
Index No. 23228/06

-against-

Park Lane Mosholu Corp., et al.,
Defendants-Respondents.

-----X

Defendants-respondents having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on June 1, 2010 (Appeal No. 2609),

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 October 12, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
David Friedman
James M. McGuire
Leland G. DeGrasse
Sallie Manzanet-Daniels, Justices.

-----X
New York County District Attorney's
Office,
Petitioner-Respondent,

-against-

M-3480
Index No. 570739/09

Jacqueline Robinson, New York City
Housing Authority and John and Jane
Doe Nos. 1-10 ,
Respondents.

-----X

Respondent Jacqueline Robinson having moved for leave to appeal to this Court from the decision and order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about May 17, 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 October 12, 2010.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzairelli
Eugene Nardelli
Rolando T. Acosta
Dianne T. Renwick, Justices.

-----X
The People of the State of New York
ex rel. Gaetano D'Attore,
Petitioner,

-against-

M-3541
Ind. No. 593/09

Juan Quinonez, Warden, Otis Bantum
Correctional Center, Rikers Island
Correctional Facility,
Respondent.

-----X

Petitioner having moved for leave to appeal to the Court of Appeals from the order of this Court entered on May 20, 2010 (M-341),

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 October 12, 2010.

PRESENT: Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Karla Moskowitz
Leland G. DeGrasse
Sallie Manzanet-Daniels, Justices.

-----X
Sheila Travis,
Plaintiff-Appellant,

Barry J. Moonan, et al., M-3829
Plaintiffs, Index No. 14018/06

-against-

Nassirou M. Batchi, et al.,
Defendants-Respondents.

-----X

Plaintiff-appellant Sheila Travis having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 1, 2010 (Appeal No. 2777),

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 October 12, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David B. Saxe
John W. Sweeny, Jr., Justices.

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

-against-

SEALED
M-2208
Ind. No. 692/96

Orlando Rodriguez, also known as
Miguel Figueroa,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on March 29, 2001 (Appeal No. 3687), unanimously affirming a judgment of the Supreme Court, New York County (Mary McGowan, J.), rendered on June 9, 1997, and the order denying 440 relief, Supreme Court, New York County, (John Stackhouse, J.), entered November 29, 1999,

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 October 12, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
Eugene Nardelli
Karla Moskowitz, Justices.

-----X
Rachel L. Arfa, et al.,
Plaintiffs-Respondents,

-against-

M-4042
Index No. 603602/05

Gadi Zamir, et al.,
Defendants-Appellants,

Eli Mor, et al.,
Defendants.

[And other Actions]

-----X

Plaintiffs-respondents having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 13, 2010 (Appeal No. 1351),

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 this Court, pursuant to CPLR 5713, certifies that the following question of law, decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals:

Was the order of this Court, which reversed the order of the Supreme Court, properly made?"

This Court further certifies that its determination was made as a matter of law and not in the exercise of discretion.

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 October 12, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
John W. Sweeny, Jr.
Karla Moskowitz
Rolando T. Acosta
Nelson S. Román, Justices.

-----X
Structure Tone, Inc.,
Plaintiff-Respondent,

-against-

M-4497
Index No. 106810/06

Universal Services Group, Ltd.,
Defendant-Appellant.

-----X
Universal Services Group, Ltd.,
Third-Party Plaintiff-Appellant,

-against-

Third Party
Index No. 590800/06

Pace Plumbing Corp., SBLM Architects,
P.C. and TREMCO Incorporated,
Third-Party Defendants-Respondents.

-----X
Universal Services Group, Ltd.,
Second Third-Party Plaintiff-Appellant,

-against-

Second Third Party
Index No. 590580/08

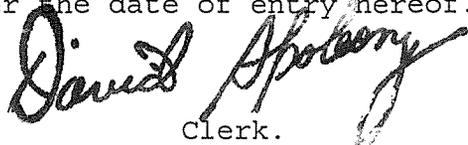
Prep-Crete Inc.,
Second Third-Party Defendant-Respondent.
-----X

Defendant/third-party and second third-party-plaintiff-appellant, Universal Services Group, Ltd., having moved for a stay of trial in the above-entitled action pending hearing and determination of the appeal taken from the order of the Supreme Court, New York County, entered on or about June 3, 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 granted on condition that the appeal is perfected on or before December 6, 2010 for the February 2011 Term. Upon failure to so perfect, an order vacating the stay may be entered ex parte, provided that respondent serves a copy of this order upon 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 October 12, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Dianne T. Renwick
Helen E. Freedman
Rosalyn H. Richter
Sheila Abdus-Salaam, Justices.

-----X
Morgan Stanley & Co., Inc.,
Plaintiff-Respondent,

-against-

M-3833
Index No. 602459/09

Michele Feeley,
Defendant-Appellant.

-----X

Defendant-appellant having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 1, 2010 (Appeal No. 3198),

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 October 12, 2010.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,
Dianne T. Renwick
Helen E. Freedman
Rosalyn H. Richter
Sheila Abdus-Salaam, Justices.

-----X
Charles McCoy and Mary Ann McCoy,
Plaintiffs-Respondents,

-against-

Metropolitan Transportation Authority,
Metro North Commuter Railroad,
Defendants-Appellants,

M-3952
Index No. 102384/00

-and-

Manhattan and Bronx Surface Transit
Operating Authority, New York City
Transit Authority and The City of
New York,
Defendants.

-----X

Defendants-appellants Metropolitan Transportation Authority and Metro North Commuter Railroad having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 1, 2010 (Appeal No. 3213, 3213A),

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 October 12, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Dianne T. Renwick
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X

In re Stephen Rosenblum,
Petitioner-Respondent,

-against-

M-3959
Index No. 101121/09

The New York City Conflicts of
Interest Board, et al.,
Respondents-Appellants.

- - - -

New York State United Teachers,
Amicus Curiae.

-----X

Respondents-appellants having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 1, 2010 (Appeal No. 3211),

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 October 12, 2010.

Present: Hon. Richard T. Andrias, Justice Presiding,
David Friedman
James M. Catterson
James M. McGuire
Nelson S. Román, Justices.

-----X
In the Matter of

Tyrique Alexandra B.,

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

M-1751B
Docket No. B957/09

- - - - -
Catholic Guardian Society and Home
Bureau, et al.,
Petitioners-Respondents,

Alexandra B. B., also known as
Alexandria Bridget B.,
Respondent-Appellant.

- - - - -
Hal Silverman, Esq., Lawyers for
Children,
Law Guardian for the Child.

-----X

Respondent-appellant mother 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 January 6, 2010, 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 therefor¹ 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. (The order of this Court entered on July 20, 2010 [M-1751A] is herewith recalled and vacated.)

ENTER:


Clerk.

¹Service 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 October 12, 2010.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
David Friedman
Eugene Nardelli
Rolando T. Acosta, Justices.

-----X

DRK, LLC, et al.,
Plaintiffs-Respondents,

-against-

M-3693
Index No. 114856/06

The Burlington Insurance Company
Defendant-Appellant.

-----X

Plaintiffs-respondents having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on June 29, 2010 (Appeal No. 3185-3185A),

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 October 12, 2010.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
James M. McGuire
Karla Moskowitz
Helen E. Freedman, Justices.

-----X
John Landrum Bryant et al.,
Plaintiffs-Appellants,

-against-

One Beekman Place, Inc., et al.,
Defendants-Respondents.

M-4265
Index No. 110233/08

-----X

Plaintiffs-appellants having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on May 25, 2010 (Appeal No. 2860),

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 October 12, 2010.

Present: Hon. David Friedman, Justice Presiding,
Eugene Nardelli
Leland G. DeGrasse
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----X
The National Black Theatre Workshop
Incorporated,
Plaintiff-Respondent,

-against-

M-4636
M-4469
Index No. 105906/08

Nubian Properties LLC, et al.,
Defendants-Appellants,

Harlem Apple, LLC,
Defendant-Appellant.
-----X

An appeal having been taken by defendants-appellants, Nubian Properties LLC, et al., from the order of the Supreme Court, New York County, entered on or about July 20, 2009; and an appeal having been taken by defendant-appellant, Harlem Apple, LLC, from the judgment of said Court, entered on or about August 31, 2009,

And respective defendants-appellants having moved by separate motions for an enlargement of time in which to perfect their respective appeals,

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

It is ordered that the motions are granted to the extent of enlarging defendants' time in which to perfect their appeals to the January 2011 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 October 12, 2010.

PRESENT: Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

-----X
Nazarius Cavan,
Plaintiff-Respondent,

-against-

M-3189
Index No. 570727/09

Jing C. Huang also known as Jimmy Huang,
also known as Jari Huang,
Defendant-Appellant.

-----X

Plaintiff-respondent having moved for leave to appeal to this Court from the decision and order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about January 21, 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 October 12, 2010.

PRESENT: Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

-----X
Marilyn Karp and Augusto Morselli, as
Executors of the Estate of Richard Lippold,
deceased,
Plaintiffs-Appellants,

-against-

Catholic Health System of Long Island,
Inc., individually and doing business
as St. Francis Hospital, St. Francis
Hospital, Inc., St. Francis Hospital,
Roslyn, NY, Alfred B. Randall, MD,
Meyer H. Abbittan, MD, Brian G. Boatman,
MD, Leon E. Schwechter, MD, Javier
Morales, MD, Gary Freeberg, MD, Jeffrey M.
Wolfe, MD, Jonathan Waxner, MD, Alan J.
Schecter, MD, Nassau Chest Physicians PC,
Brian T. McNelis, MD, Richard Stark, MD,
Arena Oncology Associates PC and
Physicians Diagnostic Imaging PC,
Defendants-Respondents,

M-3289
Index No. 570712/08

-and-

Interventional Cardiovascular Associates
PLLC, Advanced Internal Medicine Group,
PC and Jerome Fass, MD,
Defendants.

-----X

Plaintiffs-appellants having moved for leave to appeal to this Court from the decision and order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about January 14, 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 October 12, 2010.

PRESENT: Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

-----X
354 East 66th Street Realty Corp.,
a domestic Corporation,
Petitioner-Appellant-Respondent,

-against-

M-3435
Index No. 570485/09

Michael Curry and Mrs. Michael Curry,
Respondents-Respondents-Appellants.

-----X

Petitioner-appellant-respondent having moved for leave to appeal to this Court from the decision and order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about January 13, 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 October 12, 2010.

Present - Hon. John W. Sweeny, Jr., Justice Presiding,
John T. Buckley
Leland G. DeGrasse
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

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

-against-

M-4311A
Ind. No. 4816/08

Kiani Henderson,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about June 25, 2009, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

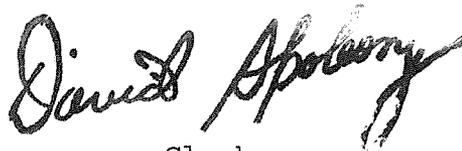
Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

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 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.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, 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. The order of this Court entered on October 29, 2009 (M-4311), is hereby recalled and vacated.

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 October 12, 2010.

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
Fitzroy Parker,
Plaintiff-Respondent,

-against-

Hilario Alacantara and Edgardo Contin,
Defendants-Appellants.

M-4756
Index No. 20634/04

-----X
Defendants-appellants having moved for a stay of trial pending hearing and determination of the appeal taken from the order of the Supreme Court, Bronx County, entered on or about April 7, 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 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-3636
Ind. No. 2655/08

Joel Molina,
Defendant-Appellant.

-----X

Defendant having moved 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 March 29, 2010, and for leave to prosecute the appeal as a poor person on the original record and upon a reproduced appellant's brief, and for assignment of counsel,

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 notice of appeal timely filed, 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.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Tel. No. (212) 577-3688 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-4056
Ind. No. 1272N/09

Anthony Shimukonas,
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about May 5, 2010, and for leave to prosecute the appeal as a poor person on the original record and upon a reproduced appellant's brief, and for assignment of counsel,

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 notice of appeal timely filed, 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.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Tel. No. (212) 577-3688 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-4055
Ind. No. 3596/09

Diana Montague Griffin,
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about April 20, 2010, and for leave to prosecute the appeal as a poor person on the original record and upon a reproduced appellant's brief, and for assignment of counsel,

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.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Tel. No. (212) 577-3688 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-4068
Ind. No. 2593/09

Francis Gill,
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about March 8, 2010, and for leave to prosecute the appeal as a poor person on the original record and upon a reproduced appellant's brief, and for assignment of counsel,

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, 11th 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-4080
Ind. No. 9730/98

Taiwn Jenkins,
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about June 2, 2010, and for leave to prosecute the appeal as a poor person on the original record and upon a reproduced appellant's brief, and for assignment of counsel,

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.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Tel. No. (212) 577-3688 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-4053
Ind. No. 3856/09

Andre Worrell,
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about January 26, 2010, for leave to prosecute the appeal as a poor person, 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 only to the extent of deeming the moving papers a timely filed notice of appeal.

The motion, to the extent that it seeks poor person relief, is denied, with leave to renew upon defendant's submission of a notarized affidavit, pursuant to CPLR 1101(a), setting forth facts sufficient to establish that defendant has no funds or assets with which to prosecute the appeal, including the amount and sources of his income and listing his property with its value.

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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-4058
Ind. No. 3590/08

Enrique Flores,
Defendant-Appellant.

-----X

Defendant having moved 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 5, 2010, for leave to prosecute the appeal as a poor person, 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 only to the extent of deeming the moving papers a timely filed notice of appeal.

The motion, to the extent that it seeks poor person relief, is denied, with leave to renew upon defendant's submission of a notarized affidavit, pursuant to CPLR 1101(a), setting forth facts sufficient to establish that defendant has no funds or assets with which to prosecute the appeal, including the amount and sources of his income and listing his property with its value.

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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

Joseph Fulton,
Defendant-Appellant.

M-4067
Ind. Nos. 4824/08
818/10

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about June 10, 2010, for leave to prosecute the appeal as a poor person, 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 only to the extent of deeming the moving papers a timely filed notice of appeal.

The motion, to the extent that it seeks poor person relief, 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 to post the \$7,500 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 October 12, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
Liliana Klinger,
Plaintiff-Appellant,

-against-

M-3903
Index No. 570214/10

Phillips Perera, M.D.,
Defendant-Respondent.

-----X

Plaintiff-appellant having moved for leave to appeal to this Court from the decision and order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about May 26, 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 October 12, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
Elaine Lupo,
Plaintiff-Respondent-Appellant,

-against-

M-3981
Index No. 570225/07

Alan M. Cass and Alan M. Cass &
Associates,
Defendants-Appellants-Respondents.

-----X

Plaintiff-respondent-appellant having moved for leave to appeal to this Court from the decision and order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about March 3, 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X

Ethel McRee,

Plaintiff-Appellant,

-against-

M-4001

Index No. 301840/07

Sam Trans Corp. and "John Doe",

Defendants-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, Bronx County, entered on or about October 30, 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 January 2011 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X

Gerald Pounder, an infant by his Grandmother and Legal Guardian, Wilhamena Crump, and Wilhamena Crump, Individually,

M-4115
Index No. 8583/00

Plaintiffs-Appellants,

-against-

Best Realty Co., et al.,

Defendants-Respondents.

-----X

Plaintiffs-appellants having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, Bronx County, entered on or about October 28, 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 January 2011 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
Stewart Title Insurance Company,

Plaintiff-Appellant,

-against-

M-4132
Index No. 601162/09

Liberty Title Agency, LLC, et al.,

Defendants-Respondents.
-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from the judgment of the Supreme Court, New York County, entered on or about October 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 granted to the extent of enlarging the time in which to perfect the appeal to the January 2011 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
Elizabeth Studdivant, as Proposed
Administratrix for the Estate of
Julia Jennings,

Plaintiff-Appellant,

-against-

M-4177
Index No. 15504/05

Bronx-Lebanon Hospital Center,

Defendant-Respondent.
-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, Bronx County, entered on or about October 28, 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 January 2011 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X

Pamela Lawrence,

Plaintiff-Respondent,

-against-

M-4259

Index No. 100020/09

217 Fifth Avenue Owners Corp.,
et al.,

Defendants-Appellants.

-----X

Defendants-appellants having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about December 4, 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 January 2011 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
Rosa Jones and Clarence Jones,

Plaintiffs-Appellants,

-against-

M-4002
Index No. 21844/03

New York City Health and Hospital Corporation, et al.,

Defendants-Respondents.
-----X

Plaintiffs-appellants having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, Bronx County, entered on or about October 9, 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 February 2011 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
In the Matter of the Application of

James Carrano,

Petitioner-Appellant,

For a Judgment, etc.,

M-4268

Index No. 101595/09

-against-

Raymond Kelly, as Police Commissioner
of the City of New York, et al.,

Respondents-Respondents.
-----X

Petitioner-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about September 3, 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 February 2011 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 October 12, 2010.

Present: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X

Frantz J. Leon,

Plaintiff-Appellant,

-against-

M-4003

Index No. 115641/07

New York City Transit Authority,

Defendant-Respondent.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about December 3, 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 March 2011 Term.

ENTER:


Clerk.

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

OCT 12 2010

Luis A. Gonzalez, Presiding Justice,
Peter Tom
Richard T. Andrias
Eugene Nardelli
Nelson S. Román, Justices.

-----X

In the Matter of Marc A. Bernstein
(admitted as Marc Alan Bernstein),
an attorney and counselor-at-law:

Departmental Disciplinary Committee M-2671
for the First Judicial Department, M-2698
Petitioner,

Marc A. Bernstein,
Respondent.

-----X

Disciplinary proceedings instituted by the Departmental
Disciplinary Committee for the First Judicial Department.
Respondent, Marc A. Bernstein, 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
February 8, 1982.

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

Arthur L. Aidala, for respondent.

IN THE MATTER OF MARC A. BERNSTEIN, A SUSPENDED ATTORNEY

Per Curiam

Respondent Marc A. Bernstein was admitted to the practice of law in the State of New York by the First Judicial Department on February 8, 1982, under the name Marc Alan Bernstein. At all times relevant herein, respondent has maintained an office for the practice of law within the First Judicial Department.

By order entered April 23, 2009, this Court immediately suspended respondent from the practice of law pursuant to 22 NYCRR 603.4(e)(1)(i), (ii) and (iii), based upon his failure to cooperate with the lawful demands of the Departmental Disciplinary Committee and his substantial admission under oath that he converted clients' settlement funds to his personal use, and other uncontested evidence of professional misconduct (*Matter of Bernstein*, 63 AD3d 87 [2009]).

In May and July 2009, respondent was charged in two separate indictments filed in Supreme Court, New York County, with nine counts of grand larceny in the second degree (Penal Law § 155.40[1]), a class C felony, seven counts of grand larceny in the third degree (Penal Law § 155.35), a class D felony, one count of scheme to defraud in the first degree (Penal Law § 190.65[1][a]), and two counts of scheme to defraud in the first degree (Penal Law § 190.65[1][b]), both class E felonies, for

stealing funds from escrow accounts. In March 2010, respondent was charged in an indictment filed in Supreme Court, New York County, with criminal tax fraud in the second degree (Tax Law § 1805), a class C felony, offering a false instrument for filing in the first degree (Penal Law § 175.35), a class E felony, and three counts of repeated failure to file income and earnings taxes (Tax Law § 1802[a]), a class E felony.

On April 5, 2010, respondent pleaded guilty to the felony charges in the first two indictments, as adjusted.¹ As to the March 2010 indictment, he pled guilty to offering a false instrument for filing in the first degree, and two counts of repeatedly failing to file State income tax returns for the years 2003 through 2007.

Specifically, respondent admitted that between 2006 and 2009, he stole settlement and escrow funds from 16 medical malpractice and personal injury clients and a \$900,000 deposit he was holding in escrow for a real estate purchaser. He also schemed to defraud approximately 13 additional clients in which he obtained property with a value in excess of \$1,000. The total amount of his theft is believed to be approximately \$2.2 million. Respondent also admitted that his filed New York State income tax return for 2008 contained material false information and

¹ Count 6 of the July 2009 indictment (3553/09), alleging scheme to defraud in the first degree was dismissed.

statements by which he understated and underpaid the taxes due on the money he stole by more than \$50,000, and that he repeatedly failed to file State personal income tax returns from 2003 through 2007. Respondent was ordered to pay a minimum of \$200,000 in restitution by June 3, 2010, his scheduled sentencing date, at which time a restitution hearing was to be held to determine the total amount of restitution to be ordered.

By petition dated May 12, 2010, the Disciplinary Committee seeks an order striking respondent's name from the roll of attorneys pursuant to Judiciary Law § 90(4)(a) and (b), upon the ground that he was automatically disbarred upon his conviction of a felony as defined by Judiciary Law § 90(4)(e) (*see Matter of Caro*, 46 AD3d 136 [2007]; *Matter of Szegda*, 42 AD3d 193 [2007]). Respondent's counsel was served with this motion but no response has been submitted.

Respondent's conviction of New York felonies constitutes grounds for automatic disbarment under Judiciary Law § 90(4) (*see Matter of Cherry*, 51 AD3d 119 [2008] [automatic disbarment based upon conviction of grand larceny in the second and third degree]; *Matter of DeGrasse*, 44 AD3d 107 [2007] [automatic disbarment based upon conviction of grand larceny in the second degree]). For the purposes of automatic disbarment, conviction occurs at the time of plea or verdict (*Matter of Sheinbaum*, 47 AD3d 49 [2007]; *Matter of Ramirez*, 7 AD3d 52 [2004]). Accordingly, the

Committee's motion to strike respondent's name from the roll of attorneys and counselors-at-law, pursuant to Judiciary Law § 90(4)(b), should be granted, and respondent's name stricken from the roll of attorneys and counselors-at-law, nunc pro tunc to April 5, 2010, the date of his plea.

By separate motion dated May 13, 2010, the Committee requests an order pursuant to 22 NYCRR 603.13(g) appointing an attorney to inventory respondent's files and to take such action as seems indicated to protect the interests of his clients on the ground that respondent has "stonewalled" every effort to return client files to those from whom he stole settlement funds. The clients need documents from their files to prove how much they are entitled to receive in restitution and to support their claims with the Lawyers' Fund for Client Protection.

The Committee advises that beginning in early 2009, after it sought respondent's interim suspension, and continuing through the fall of 2009, it has received a "steady stream of complaints" from respondent's clients alleging that, not only did he fail to disburse their settlement funds to them but that he completely stopped communicating with them. In March/April 2009, the Committee was contacted by Jordan Hecht, Esq., from whom respondent had subleased an office in the Hecht law firm's suite, reporting that respondent's clients were coming to the office to get their files but he could not release them because the files

did not belong to him. By June 2009, Mr. Hecht informed the Committee that respondent had removed his files from the office but left no instructions for contacting him.

During this same time period (March 2009), the District Attorney's Office endeavored to assist the complainants in obtaining their files so they could prove respondent's thefts, and aided them in filing claims with the Lawyers' Fund for Client Protection. According to an affidavit of ADA Keith, in September 2009, Judge Carruthers ordered respondent to produce all client files to the District Attorney's Office for return to his former clients, but respondent produced only 15 files. On March 19, 2010, Judge Carruthers ordered respondent to produce an inventory of his files by March 30, 2010, but he has not yet complied. ADA Keith further states that Archive Systems, Inc., has a storage facility in New Jersey at which respondent has placed dozens of boxes of files, yet respondent has not paid for the storage space and Archive's collection department is seeking payment. Based upon her conversation with the representative at Archive, ADA Keith states that "it seems clear that it will take a court appointed receiver or some other mechanism of the courts to get access to the client files locked in the New Jersey storage facility." In addition, respondent's attorney in the criminal proceeding informed ADA Keith that respondent handed over to a successor law firm the few cases and client files he considered

viable, ongoing matters and it is unclear if the affected clients were given notice of such transfer. Ms. Keith hopes that a receiver may be able to obtain the proper return of the complainants' property (their files) which they need for a restitution hearing.

The Committee adds that respondent's files in the storage facility are in danger of being destroyed and respondent's conduct has, in effect, obstructed the remaining clients from accessing their own files. Staff counsel notes that it is in respondent's own interest not to return said files so that his clients cannot prove their losses, thereby reducing the amount of restitution ordered by the court as well as the reimbursement he will owe to the Lawyers' Fund.

Accordingly, the Committee's petition to appoint an attorney pursuant 22 NYCRR 603.13(g) to inventory the client files of respondent, Marc A. Bernstein, Esq., and to take such action as seems indicated to protect the interests of his clients should be granted.

All concur.

Order filed.

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

OCT 12 2010

Luis A. Gonzalez, Presiding Justice,
David Friedman
John W. Sweeny, Jr.
Dianne T. Renwick
Helen E. Freedman, Justices.

-----X

In the Matter of Barry S. Siskin,
(admitted as Barry Siskin),
a suspended attorney:

Departmental Disciplinary Committee M-163C
for the First Judicial Department,
Petitioner,

Barry S. Siskin,
Respondent.

-----X

Disciplinary proceedings instituted by the Departmental
Disciplinary Committee for the First Judicial Department.
Respondent, Barry S. Siskin, was admitted to the Bar of the
State of New York at a Term of the Appellate Division of the
Supreme Court for the Second Judicial Department on June 25,
1980.

Alan W. Friedberg, Chief Counsel, Departmental
Disciplinary Committee, New York
(Elizabeth A. Palladino, of counsel), for petitioner.

Respondent pro se.

M-1069 (May 12, 2010)

In the Matter of BARRY S. SISKIN, AN ATTORNEY

PER CURIAM

Respondent Barry S. Siskin, was admitted to the practice of law in the State of New York by the Second Judicial Department on June 25, 1980. At all times relevant to this proceeding, respondent has maintained a law office within the First Judicial Department.

Respondent was suspended from the practice of law on June 4, 2009 for failing to respond to questions posed by the Departmental Disciplinary Committee concerning transfers from his escrow account and an unexplained decrease of funds in the account.

The Departmental Disciplinary Committee is now seeking an order: 1) pursuant to 22 NYCRR 603.4(g), disbarring respondent from the practice of law on the ground that he was suspended and has not appeared or applied in writing to the Committee or Court for a hearing or reinstatement within six months of the issuance of the order of suspension; and 2) pursuant to 22 NYCRR 603.13(g) for the appointment of an attorney to inventory respondent's files and to protect his former clients' interests.

The Departmental Disciplinary Committee alleges that in addition to respondent's failure to contact the Court or Committee, respondent did not fully comply with 22 NYCRR 603.13

(c) and (d) in that he was required to notify all of his clients about his interim suspension and either promptly advise those involved in litigated matters of the substitution of another attorney or move for leave to withdraw from pending proceedings. While respondent submitted an affidavit of compliance asserting that he complied with the Court's rules by sending a letter to clients advising them of his suspension and inability to practice law after June 4, 2009 and directing them to seek legal advice elsewhere, the Committee believes he failed to move to withdraw from any pending matters.

Since his suspension, 11 former clients and/or new counsel have sought help from the Committee in locating their case files, and the Committee's letters to respondent have gone unanswered or been returned. Also, 13 new disciplinary complaints filed with to the Committee have not been answered. Respondent's submissions to the Court in response to this application have not addressed the Committee's current concerns, and are related to the unfortunate events leading up to the suspension.

Since six months have elapsed since this Court issued the order of suspension, and respondent has failed to appear or apply in writing to either the Committee or Court for a hearing or reinstatement, the Committee's motion should be granted and respondent's name stricken from the roll of attorneys in the State of New York, effective immediately pursuant to 22 NYCRR

603.4(g) (*Matter of Fletcher*, 70 AD3d 63 [2009]; *Matter of Kennedy*, 55 AD3d 169 [2008]).

The Committee's request for appointment of an attorney to oversee the return or transfer of client files is supported by the record of requests made to the Disciplinary Committee and respondent's non-responsiveness to the Committee's inquiry.

Accordingly, that part of the petition seeking an order pursuant to 22 NYCRR 603.13(g) should also be granted and an attorney appointed as receiver to inventory respondent's clients' files immediately and to take appropriate action to protect the interests of these clients (*Matter of De La Cruz*, 286 AD2d 112 [2001]).

All concur.

Order filed.

PM ORDERS

ENTERED

OCTOBER 12, 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 October 12, 2010.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
Diane T. Renwick
Helen E. Freedman
Rosalyn H. Richter
Sheila Abdus-Salaam, Justices.

-----X
Nancy J. Caton, Michael S. Jurewicz,
Hrafnhildur Arnardottir, and
C Productions LLC,
Plaintiffs-Appellants,

-against-

Grand Machinery Exchange Inc. and
Paul Merandi,
Defendants-Respondents.

M-4517
M-4598
Index No. 101480/09

-----X

An appeal having been taken from the order and judgment (one paper) of the Supreme Court, New York County, entered on or about May 20, 2010 (mot. seq. no. 003),

And an order of this Court having been entered on June 22, 2010 (M-2726), granting plaintiffs a stay of eviction upon certain conditions including plaintiffs perfecting the aforesaid appeal for the November 2010 Term,

And defendants having moved for vacatur of the aforesaid order of this Court entered on June 22, 2010 (M-2726),

And plaintiffs having cross-moved for an enlargement of time in which to perfect the appeal with an extension of the stay afforded plaintiffs by the order of this Court entered on June 22, 2010 (M-2726), and for related relief,

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 to vacate the stay of eviction (M-4517) is granted unless plaintiffs perfect their appeal on or before November 8, 2010 for the January 2011 Term. Upon failure to so perfect, an order vacating the stay may be entered ex parte, provided that defendants-respondents serve a copy of this order upon plaintiffs-appellants within 10 days after the date of entry hereof. Plaintiffs' cross motion (M-4598) is granted to the extent of enlarging the time in which to perfect the appeal to said January 2011 Term. The stay of eviction previously afforded plaintiffs by the order of this Court entered on June 22, 2010 (M-2726) is continued upon the same conditions as to use and occupancy and upon condition stated above on the disposition of M-4517, that the appeal is perfected for said January 2011 Term. The cross motion is otherwise denied without prejudice to seeking relief in Supreme Court.

ENTER:

A handwritten signature in black ink, reading "David Apobony". The signature is written in a cursive, flowing style.

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 October 12, 2010.

Present: Hon. David Friedman, Justice Presiding,
Eugene Nardelli
Leland G. DeGrasse
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----X

Donald Kolb and Rose Kolb,

Plaintiffs-Appellants,

-against-

M-4431

Index No. 21145/06

Beechwood Sedgwick, LLC and Otis
Elevator Company,

Defendants-Respondents.

-----X

An appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about July 8, 2009, and said appeal having been perfected,

And plaintiffs-appellants having moved to adjourn the aforesaid appeal for late submission of plaintiffs' reply 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.

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 October 12, 2010.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
James M. Catterson
Karla Moskowitz
Rosalyn H. Richter, Justices.

-----X
Dale Kleinser,
Plaintiff-Appellant,

-against-

Mark Astarita, et al.,
Defendants-Respondents.

M-4041
Index No. 116844/06

-----X

An appeal having been taken from orders of the Supreme Court, New York County, entered on or about June 22, 2009, on or about November 6, 2009 and on or about July 1, 2010,

And defendants-respondents having moved for dismissal of the appeal with respect to the orders entered on or about June 22, 2009 and November 6, 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 without prejudice to defendants raising the issue directly on appeal.

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 October 12, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
James M. Catterson
Karla Moskowitz
Rosalyn H. Richter, Justices.

-----X
William Champion and Marianne Champion,
Plaintiffs-Respondents,

-against-

M-4464
Index No. 109708/09

Blue Water Advisors, Inc., also known
as Blue Water Advisors, LLC, and
Giddins & Claman LLP, also known as
Giddins, Claman LLP, also known as
Giddins Claman LLP, also known as
Giddins Claman & Langs, LLP,
Defendants-Appellants.

-----X

Defendants-appellants having moved for a stay of all proceedings in the above-entitled action pending hearing and determination of the appeal taken from the order of the Supreme Court, New York County, entered on or about April 26, 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 granted on condition that the appeal is perfected on or before November 8, 2010 for the January 2011 Term. Upon failure to so perfect, an order vacating the stay may be entered ex parte, provided that respondents serves a copy of this order upon appellants within 10 days after the date of entry hereof.

ENTER:



Clerk.