

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 January 27, 2011.

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-26
Ind. No. 1871/09

Shelton Mosley,
Defendant-Appellant.

-----X

An appeal having been taken from judgment of the Supreme Court, Bronx County, rendered on or about September 22, 2009,

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

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

E N T E R:


DEPUTY 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 January 27, 2011.

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-27
Ind. No. 2692/06

George Ortiz,
Defendant-Appellant.

-----X

An appeal having been taken from judgment of the Supreme Court, Bronx County, rendered on or about June 4, 2009,

Now, upon reading and filing the stipulation of the parties hereto, filed January 3, 2011, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

E N T E R:


DEPUTY 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 January 27, 2011.

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-28
Ind. No. 1682/09

Winston Darnell,
Defendant-Appellant.

-----X

An appeal having been taken from a judgment of the Supreme Court, New York County, rendered on or about January 28, 2010,

Now, upon reading and filing the stipulation of the parties hereto, dated January 3, 2011, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

E N T E R:


DEPUTY 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 January 27, 2011.

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-40
Ind. No. 1276/03

Fernando Torres,
Defendant-Appellant.

-----X

An appeal having been taken from judgment of the Supreme Court, New York County, rendered on or about January 29, 2009,

Now, upon reading and filing the stipulation of the parties hereto, filed January 3 2011, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

E N T E R:


DEPUTY 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 January 27, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Rolando T. Acosta
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----x
In the Matter of the Application of
Mikhail Bashmet,
Petitioner-Appellant,

For a Judgment, etc.,
-against-
M-6249
M-35
Index No. 104836/09

Tino Hernandez, etc.,
Respondent-Respondent.
-----x

Respondent-respondent having moved for dismissal of the appeal from the order and judgment (one paper) of the Supreme Court, New York County entered on or about February 5, 2010 (M-6249),

And petitioner-appellant having cross-moved for an enlargement of time in which to perfect said appeal (M-35),

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 is granted unless the appeal is perfected for the June 2011 Term. Upon failure to so perfect, an order dismissing the appeal May be entered ex parte, provided respondent serves a copy of this order upon petitioner within 10 days after the date of entry hereof. The cross motion for an enlargement of time is granted accordingly.

ENTER:


DEPUTY 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 January 27, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
David B. Saxe
James M. Catterson
Rolando T. Acosta, Justices.

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

-against-

M-5994
Ind. No. 4637/03

Isaac Diggins,
Defendant-Appellant.

-----X

An order of this Court having been entered on February 2, 2006 (M-288), granting defendant's motion for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about December 14, 2005, and assigning Richard M. Greenberg, Esq., as counsel to prosecute the appeal,

And an order of a Justice of this Court having been entered on May 18, 2010 (M-5820), granting defendant leave to appeal to this Court pursuant to CPLR 460.15 from the order of the Supreme Court, New York County, entered on or about October 19, 2009, and consolidating the appeals herein,

And defendant having moved for leave to prosecute the appeal from the order entered on or about October 19, 2009 as a poor person, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, for the assignment 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 the motion is granted and the poor person relief previously granted in connection with defendant's direct appeal (M-288) entered February 2, 2006, is extended pursuant to the order of a Justice of this Court entered on May 18, 2010 (M-5820), and the assignment of Richard M. Greenberg as counsel for purposes of prosecuting the direct appeal is extended to cover same. Sua sponte, the time within which appellant shall perfect the appeal is enlarged to the September 2011 Term.

ENTER:


DEPUTY 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 January 27, 2011.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Angela M. Mazzarelli
Richard T. Andrias
Rosalyn H. Richter, Justices.

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

-against-

M-6093
Ind. No. 1581/09

Herbert Henriquez,
Defendant-Appellant.

-----X

Defendant having renewed the motion for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about April 20, 2010, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of 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.

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.

E N T E R:


DEPUTY 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 January 27, 2011.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Angela M. Mazzairelli
John W. Sweeny, Jr.
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X
In the Matter of

Christina M.,

A Person Alleged to Be a Juvenile
Delinquent,

M-5729

Docket No. D23950/09

Respondent-Appellant.
-----X

Respondent-appellant having moved for leave to prosecute the appeal from an order of the Family Court, Bronx County, entered on or about October 6, 2010, as a poor person, for assignment of counsel, a free copy of the transcript, 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 (1) assigning, pursuant to Section 35 of the Judiciary Law and Section 1120 of the Family Court Act, Daniel R. Katz, Esq., 339 West 88th Street, Apt. #3, New York, NY 10024, Telephone No. (212) 579-5719, 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 State of New York from funds available therefor;¹ 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 in compliance with Rule 600.11 of the Rules of this Court, 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:


DEPUTY CLERK

¹Service of appellant's brief upon respondent 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 January 27, 2011.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
David B. Saxe
James M. Catterson
Rolando T. Acosta, Justices.

-----X
Evelyn Konrad,
Plaintiff-Appellant,

-against-

M-5902
Index No. 102110/10

William Brown,
Defendant-Appellant.

-----X

An appeal having been taken from the order and judgment of the Supreme Court, New York County, same Justice, entered on or about September 14, 2010 and September 30, 2010, respectively,

And defendant-appellant having moved for an order enlarging the record on appeal to include an order entered November 12, 2010 (mot seq. no. 002) same Court and Justice and certain other documents including sub-exhibits 1 through 8 in her record on 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 to the extent of enlarging the record on appeal to include the aforesaid documents, (CPLR §5517 [b]).

ENTER:


DEPUTY 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 January 27, 2011.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
David B. Saxe
James M. Catterson
Rolando T. Acosta, Justices.

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

Chris Mullusky,
Petitioner,

M-6065
Index No. 113984/09

For a Judgment Pursuant to Article 78
of the CPLR,

-against-

New York City Department of Parks
and Recreation, et al.,
Respondents.

-----X

An Article 78 proceeding to review a determination of respondents, having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about January 13, 2010,

And petitioner having moved for an enlargement of time in which to perfect 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 granted to the extent of enlarging the time in which to perfect the proceeding to the June 2011 Term.

ENTER:


DEPUTY 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 January 27, 2011.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
David B. Saxe
James M. Catterson
Rolando T. Acosta, Justices.

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

-against-

M-6082
Case No. 61425C/09

Samuel Mercado,
Defendant-Appellant.

-----X

An appeal having been taken from the judgment of the Supreme Court, Bronx County, rendered on or about August 24, 2010,

And an order of a Justice of this Court having been entered on September 30, 2010 (M-4971), granting defendant a stay of execution of judgment and bail pending hearing and determination of the aforesaid appeal,

And defendant-appellant having moved for a an enlargement of time in which to perfect said appeal and to continue the stay afforded him by the order of a Justice of this Court entered September 30, 2010 (M-4971),

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 on or before March 21, 2010 for the June 2011 Term, and the stay previously afforded appellant is continued.

ENTER:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Angela M. Mazzairelli
Karla Moskowitz
Rolando T. Acosta
Nelson S. Román, Justices.

-----X
Lawrence Horn and Judith Miller,
Plaintiffs-Respondents,

-against-

Manhattan Embassy Co., A Limited
Partnership, Helmsley-Spear, Inc.,
Defendants,

Quality Cleaning Corp.,
Defendant-Appellant.
-----X

M-5840
M-5789
Index No. 117878/06

Appeals having been taken from orders of the Supreme Court, New York County, entered on or about January 27, 2010 and September 29, 2010 (mot. seq. no. 002), respectively,

And defendant-appellant Quality Cleaning Corp. having moved (M-5840) for an enlargement of time in which to perfect their appeal from the order of the Supreme Court, New York County, entered on or about January 27, 2010,

And plaintiffs-respondents having cross moved (M-5789) to dismiss the appeal from the order of the Supreme Court, New York County, entered on or about January 27, 2010, for failure to timely perfect,

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 (M-5840) is granted to the extent of enlarging the time in which to perfect the appeals, which are *sua sponte* consolidated to the September 2011 Term. The cross-motion (M-5789) is granted unless the consolidated appeals are perfected for said Term.

ENTER:


DEPUTY 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 January 27, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Angela M. Mazzairelli
Karla Moskowitz
Rolando T. Acosta
Nelson S. Román, Justices.

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

-against-

M-5945
Ind. No. 1635/02

Pablo Almonte,
Defendant-Appellant.

-----X

Defendant-appellant having moved for leave to file a pro se supplemental brief in connection with an appeal from a judgment of the Supreme Court, New York County, rendered on or about June 19, 2003, for a copy of the trial transcripts and for an enlargement of time in which to file said pro se 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 granted to the extent of directing defendant to serve and file 8 copies of his pro se supplemental brief on or before March 21, 2011 for the June 2011 Term, to which Term the appeal is adjourned. The Clerk of the Court is directed to forward to the Warden at the State correctional facility wherein defendant is incarcerated a transcript of the minutes relating to defendant's appeal, said transcript to be made available to appellant and returned by appellant to this Court when submitting the pro se supplemental brief hereto. The appeal will not be heard unless and until all material furnished to appellant has been returned.

E N T E R:


DEPUTY 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 January 27, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Rolando T. Acosta
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----x
Yolanda Taveras,

Plaintiff-Appellant,

-against-

M-6302
Index No. 305438/09

The New York City Housing Authority,

Defendant-Respondent.
-----x

Plaintiff-appellant having moved for a stay of the order of the Supreme Court, Bronx County, entered on or about December 20, 2010, pending hearing and determination of the appeal taken therefrom,

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:


DEPUTY 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 January 27, 2011.

PRESENT - Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
David B. Saxe
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----X
In the Matter of

Brandon R.,

A Dependent Child under 18 Years
of Age Alleged to be Abused and/or
Neglected Under Article 10 of the
Family Court Act.

Commissioner of Social Services of
the City of New York,
Petitioners-Respondents,

M-5727
Docket No. NN-10009/07

Chrystal R.,
Respondent-Appellant.

Lawyers for Children,
Law Guardian for the Child.

-----X

An order of this Court having been entered January 7, 2010 (M-5496) consolidating the appeals from the orders of the Family Court, New York County, entered on or about March 25, 2009 and November 4, 2009, respectively, and permitting appellant to prosecute said consolidated appeals as a poor person, and related relief,

And respondent-appellant counsel having moved to withdraw the aforesaid appeals as academic based on a Court order terminating respondent's parental rights to the subject child,

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

Ordered that the appeals are deemed withdrawn.

ENTER:


DEPUTY 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 January 27, 2011.

Present: Hon. Peter Tom, Justice Presiding,
David Friedman
James M. Catterson
Diane T. Renwick
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of

Aaliyah H.,

A Person Alleged to Be a Juvenile
Delinquent,

M-5712
Docket No. D9607/10

Respondent-Appellant.
-----X

Respondent-appellant having moved for leave to prosecute the appeal from an order of the Family Court, Bronx County, entered on or about October 6, 2010, as a poor person, for assignment of counsel, a free copy of the transcript, 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 (1) assigning, pursuant to Section 35 of the Judiciary Law and Section 1120 of the Family Court Act, Richard L. Herzfeld, Esq., 555 Fifth Avenue, 14th Fl., New York, NY 10017, Telephone No. (212) 818-9019, 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 State of New York from funds available therefor;¹ 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 in compliance with Rule 600.11 of the Rules of this Court, 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:


DEPUTY CLERK

¹Service of appellant's brief upon respondent 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 January 27, 2011.

PRESENT: Hon. Peter Tom,, Justice Presiding,
Angela M. Mazzarelli
David Friedman
Dianne T. Renwick
Leland G. DeGrasse, Justices.

-----X
Ydaiza Decastro,
Plaintiff-Appellant,

-against-

M-6112
Index No. 23683/05

Andrews Plaza Housing Associates, L.P.
and Metro Management & Development, Inc.,
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, Bronx County, entered on or about February 19, 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 to the extent of enlarging the time in which to perfect the appeal to the June 2011 Term.

E N T E R:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
Dianne T. Renwick
Leland G. DeGrasse, Justices.

-----X
905 5th Associates, Inc. And Pamela
Lipkin, M.D.,
Plaintiffs-Appellants-Respondents,

-against-

My Home Remodeling, Inc., RDM
Renovation Corp.,
Defendants-Respondents-Appellants,

M-6152
Index No. 100662/06

Richard and Liane Weintraub and Rick
Kramer,
Defendants-Respondents-Respondents,

My Home, LLC,
Defendants.

-----X

An appeal and cross appeals having been taken from the order of the Supreme Court, New York County, entered on or about April 2, 2010 (mot. seq. no. 020),

And the respective appellants having moved for an enlargement of time in which to perfect the appeal and cross 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 appeal and cross appeals, which are, *sua sponte*, consolidated, to the June 2011 Term. Appellants are permitted to prosecute the appeals upon 9 copies of one record and one copy of appellants' points covering the aforesaid appeals. The parties' attention is directed to 22 NYCRR §600.11.

ENTER:



DEPUTY 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 January 27, 2011.

Present - Hon. Peter Tom, Justice Presiding,
Angela M. Mazzairelli
Diane T. Renwick
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----x
Israel Montalvo,
Plaintiff-Respondent,

-against-

M-6267
Index No. 105506/08

The New York and Presbyterian Hospital,
Defendant,

-and-

The Trustees of Columbia University in
the City of New York, et al.,
Defendants-Appellants.

-----x
An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about July 2, 2010, and said appeal having been perfected,

And defendants-appellants having moved for a stay of trial herein pending hearing and determination 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 granted.

ENTER:


DEPUTY 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 January 27, 2011.

Present: Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Helen E. Freedman
Rosalyn H. Richter
Sheila Abdus-Salaam, Justices.

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

Respondent,

-against-

Alberto Polanco,

Defendant-Appellant.
-----X

M-5924
Ind. Nos. 5431/03
5431N/03
8560/00

An appeal having been taken from the judgment of the Supreme Court, New York County, rendered on or about May 25, 2005,

And an order of this Court having been entered on February 16, 2006 (M-292) granting defendant poor person relief and the assignment of appellate counsel,

And an order of this Court having been entered on July 27, 2010 (M-2315), granting defendant's motion to substitute counsel for the second time and assigning Andrea Risoli, Esq., for purposes of prosecuting defendant's appeal,

And defendant having once again moved for an order relieving current counsel, Andrea Risoli, Esq., and substituting her with new counsel, or, in the alternative, granting summary reversal and a new trial or for the dismissal of defendant's 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.

ENTER:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

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

-against-

M-6201
Ind. No. 5673/07

Joshua C. Trimiar,
Defendant-Appellant.

-----X

An order of this Court having been entered on September 28, 2010 (M-3457), inter alia, assigning Robert S. Dean, Esq., as counsel to prosecute defendant's appeal from a judgment of the Supreme Court, New York County, rendered on May 29, 2009,

And counsel having moved for an order abating the appeal by reason of appellant's death, remanding the matter to the trial court to vacate the judgment of conviction, and dismissing the indictment,

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 dismissing the appeal because of appellant's death on November 16, 2010, and remanding the matter to the Supreme Court, New York County, for proceedings to vacate the judgment of conviction and to dismiss the indictment. (See *People v Matteson*, 75 NY2d 745; *People v Mintz*, 20 NY2d 753, 770.)

ENTER:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X

Mark Collins,
Plaintiff,

-against-

M-6078
Index No. 350021/06

Lorna Collins,
Defendant.

-----X

Plaintiff 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 October 26, 2010 (mot. seq. no. 011), and for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief,

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

It is ordered that said motion is denied.

ENTER:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
Patrick Sanders,
Plaintiff-Appellant,

-against-

M-6036
Index No. 16640/07

Aqua-Chlor Enterprises, Inc.,
Defendant-Respondent,

-and-

IMS Hospital Services, Inc.,
Defendant.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, Bronx County, entered 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 granted to the extent of enlarging the time in which to perfect the appeal to the June 2011 Term.

E N T E R:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
In the Matter of

Brianna H. and
Lianna H.,

Children Under 18 Years of Age Alleged
to be Neglected Pursuant to Article 10
of the Family Court Act.

- - - - -
Administration for Children's Services,
Petitioner-Respondent,

M-6077
Docket Nos. NA-2166/09
NA-2167/09

Odalis G.,
Respondent-Appellant,

Charles H.,
Respondent.

- - - - -
Martin Mohr, Esq.,
Attorney for the Children.

-----X
Respondent-appellant having moved for an enlargement of time in which to perfect the appeal from order of the Family Court, Bronx County, entered on or about May 24, 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 to the extent of enlarging the time in which to perfect the appeal to on or before March 21, 2011 for the June 2011 Term.

E N T E R :


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
Lizzette Rivera,
Plaintiff-Respondent,

-against-

M-6129
Index No. 109199/06

New York City Transit Authority, et al.,
Defendants-Appellants.

-----X

Defendants-appellants having moved for an enlargement of time in which to perfect the appeal from a judgment of the Supreme Court, New York County, entered on or about February 23, 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 to the extent of enlarging the time in which to perfect the appeal to the June 2011 Term.

E N T E R:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
Seaview Mezzanine Fund LP,
Plaintiff-Appellant,

-against-

M-6305
Index No. 105540/09

Marc LoPresti, Esq., et al.,
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, New York County, entered on or about February 23, 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 to the extent of enlarging the time in which to perfect the appeal to the June 2011 Term.

E N T E R:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
Kent Swig,
Plaintiff-Appellant,

-against-

M-6056
Index No. 305920/10

Elizabeth Swig,
Defendant-Respondent.

-----X

Plaintiff-appellant having moved for a stay of a document production provision pending hearing and determination of the appeals taken from the orders of the Supreme Court, New York County, entered on or about November 23, 2010 and December 6, 2010, respectively, 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, and the interim relief granted by an order of a Justice of this Court, dated December 28, 2010, is hereby vacated.

ENTER:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
230 West 41st Street, LLC,
Plaintiff,

-against-

M-6127
Index No. 111528/06

Civetta-Cousins JV, LLC,
Defendant-Appellant,

-and-

FCR Construction Services, LLC, et al.,
Defendants-Respondents.

-----X
FCR Construction Services, LLC, et al.,
Third-Party Plaintiffs-
Respondents,

-against-

Third-Party
Index. No. 590222/08

John V. Dinan Associates, Inc.,
Third-Party Defendants-
Respondents,

-----X
Defendant-appellant having moved for an enlargement of time in which to perfect the appeal 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 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 on or before March 21, 2011 for the June 2011 Term, with leave to seek a further enlargement, if necessary.

E N T E R:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
Carol Fink-Hagy,
Plaintiff-Respondent,

-against-

M-6135
Index No. 350259/02

Ralph Hagy,
Defendant-Appellant.

-----X

Defendant-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, New York County, entered on or about February 3, 2010 (mot. seq. no. 034),

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 June 2011 Term.

E N T E R:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
John W. Sweeny, Jr.
Helen E. Freedman
Nelson S. Román, Justices.

-----X

MH Residential 1, LLC, et al.,
Petitioners-Respondents,

-against-

M-5095
Index No. 570081/08

John Barrett, et al.,
Respondents-Appellants,

"John Doe", et al.,
Respondents.

-----X

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 September 14, 2010 (Appeal No. 2241),

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:


DEPUTY 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 January 27, 2011.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
David Friedman
James M. Catterson
Dianne T. Renwick
Leland G. DeGrasse, Justices.

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

-against-

M-5929
Ind. No. 6191/07

Ronald Brown,
Defendant-Appellant.

-----X

Defendant-appellant having moved for leave to file a pro se supplemental brief in connection with an appeal from a judgment of the Supreme Court, New York County, rendered on or about March 19, 2009, for a copy of the trial transcripts and for an enlargement of time in which to file said pro se 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 granted to the extent of directing defendant to serve and file 8 copies of his pro se supplemental brief on or before March 21, 2011 for the June 2011 Term, to which Term the appeal is adjourned. The appeal will not be heard unless and until all material furnished to appellant has been returned.

ENTER:


DEPUTY 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 January 27, 2011.

Present - Hon. Richard T. Andrias, Justice Presiding,
John W. Sweeny, Jr.
Karla Moskowitz
Leland G. DeGrasse
Sheila Abdus-Salaam, Justices.

-----x
Aileen Johnson, et al.,

Plaintiffs-Respondents,

-against-

M-5975
Index No. 8435/06

Felix E. Garcia,

Defendant-Appellant.
-----x

An appeal having been taken to this Court from the order of the Supreme Court, Bronx County, entered on or about August 30, 2010, and said appeal having been perfected,

And defendant-appellant having moved for a stay of trial pending hearing and determination 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 granted.

ENTER:


DEPUTY 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 January 27, 2011.

PRESENT - Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. McGuire
Sheila Abdus-Salaam
Nelson S. Román, Justices.

-----X
In the Matter of

Kamilah Aminah Abdula K.,
also known as Kamilah A. K.,
also known as Kamilah K.,

Dependent Children Under 18 Years
of Age Pursuant to §384-b of the Social
Services Law of the State of New York.

- - - - -
Cardinal McCloskey Services, et al.,
Petitioners-Respondents,

M-5820
Docket No. B-18812/09

Jarmila O., also known as
Jarmila M. O.,
Respondent-Appellant.

- - - - -
Paul Sweeney, Esq.,
Attorney 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, Bronx County, entered on or about October 15, 2010, and for assignment of counsel, a free copy of the transcript, 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 (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Andrew Baer, Esq., 299 Broadway, Suite 1415, New York, New York 10007, Telephone No. (212) 233-0318, as counsel for purposes of prosecuting the appeal;

January 27, 2011

(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) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, 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:



DEPUTY 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 January 27, 2011.

PRESENT - Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. McGuire
Sheila Abdus-Salaam
Nelson S. Román, Justices.

-----X
In the Matter of

Latavia H.,
Queen A.,
Randy A.,
Sincere A.,

Dependent Children Under 18 Years
of Age Alleged to be Abused and/or
Neglected Under Article 10 of the
Family Court Act.

M-5827
Docket No. NN-5883-6/08

Administration for Children's
Services,
Petitioner-Respondent,

Randy A., Sr.,
Respondent-Appellant.

Steven Banks, Esq., The Legal Aid
Society, Juvenile Rights Division,
Attorney for the Children.

-----X
Respondent-appellant father having moved for leave to prosecute, as a poor person, the appeal from an order of the Family Court, Bronx County, entered on or about February 2, 2010, and for assignment of counsel, a free copy of the transcript, 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 (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Andrew Baer, Esq., 299 Broadway, Suite 1415, New York, New York 10007, Telephone No. (212) 233-0318, 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) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, 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.

E N T E R:


DEPUTY 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 January 27, 2011.

PRESENT - Hon. David B. Saxe, Justice Presiding,
David Friedman
Sheila Abdus-Salaam
Nelson S. Román, Justices.

-----X
In the Matter of

Khalil A. and Kawane A.,
Respondents,

Dependent Children under 18 Years
of Age Pursuant to §384-b of the
Social Services Law for the State
of New York .

M-5825
Docket No. B6753-54/08

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

Sabree A.,
Respondent-Appellant.

- - - - -
Michael S. Bromberg, Esq.,
Attorney for the Children.
-----X

Simon Turkel, Esq., Family Court Attorney for the subject children, having moved for leave to respond, as a poor person, to the appeal from an order of the Family Court, New York County, entered on or about July 24, 2009, and for assignment of counsel for purposes of responding to the appeal, 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 (1) permitting the subject child to respond to the appeal upon a reproduced respondent's brief, on condition that one copy of such brief be served upon the attorneys for respondent-appellant and 8 copies thereof be filed with this court, and (2) assigning, pursuant to section 18b of the County Law and §1120 of the Family Court Act, Michael S. Bromberg, Esq., 44 Hampton St, Sag Harbor, New York, New York 11963, Telephone No. (631) 725-0641, as counsel for purposes of responding to the appeal.

E N T E R:


DEPUTY 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 January 27, 2011.

Present: Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----X
York Hunter Construction Services,
Inc.,
Plaintiff,

-against-

Great American Custom Insurance
Services, Inc., et al.,
Defendants,

M-123
Index No. 109049/06

Utica First Insurance Company, formerly
known as Utica Fire Insurance Company
of Oneida County, N.Y.,
Defendant,

Liberty Mutual Insurance Company,
Claimant-Intervenor.

-----X
Claimant-intervenor having moved, pursuant to CPLR 5704(a), for an order of this Court granting certain relief denied by a Justice of the Supreme Court, New York County, on or about January 5, 2011,

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:


DEPUTY 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 January 27, 2011.

Present - Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----x
Norman Alexander,
Plaintiff,

-against-

Spanierman Gallery, LLC, and
Ira Spanierman,
Defendants-Appellants,

Universe Antiques, Inc., et al.,
Defendants-Respondents.

M-6327
Index No. 105535/07

-----x
Marjorie Buckley,
Cross-Claim Plaintiff-Respondent,

-against-

Spanierman Gallery, LLC, and
Ira Spanierman,
Cross-Claim Defendants-Appellants.

-----x
Defendant-appellant Ira Spanierman having moved for a stay of a hearing for an assessment on damages pending hearing and determination of the appeal from the order of the Supreme Court, New York County, entered on or about October 22, 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:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in in the County of New York on January 27, 2011.

PRESENT: Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----X

William Kamen, Bruce Matarese,
Michael J. Salvo and Mahendra R. Vora,
Plaintiffs-Respondents,

-against-

M-6147
M-66
Index No. 603530/09

Keith Weithorn,
Defendant-Appellant.

-----X

Appeals having been taken from the judgment and order of the Supreme Court, New York County, entered March 18, 2010 and November 17, 2010 (mot. seq. no. 003), respectively, and said appeals having been perfected,

And an order by a Justice of this Court dated December 15, 2010 having granted an interim stay of the aforesaid judgment and order appealed,

And defendant-appellant having moved (M-6147) for a further stay of enforcement of judgment and of further proceedings pending hearing and determination of the aforesaid appeals,

And plaintiffs-respondents having cross moved (M-66) to dismiss the aforesaid appeals due to omission of certain documents from the record on 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 (M-6147) is granted to the extent of continuing the interim relief granted by a Justice of this Court on December 15, 2010 pending hearing and determination of the appeals. The cross-motion (M-66) to dismiss is denied, and plaintiffs-respondents are granted leave to file, a supplemental record on appeal, which shall include the documents set forth in their exhibit to the cross-motion including those documents numbered 9 through 16 on the judgment roll, with costs to await the appeal, with their respondents brief on or before March 2, 2011 for the April 2011 Term, to which Term the appeal is adjourned.

ENTER:


DEPUTY 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 January 27, 2011.

PRESENT - Hon. David Friedman, Justice Presiding,
Rolando T. Acosta
Dianne T. Renwick
Leland G. DeGrasse, Justices.

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

-against-

M-6092
Ind. No. 3912/04

Courtney Greely,
Defendant-Appellant.

-----X

Defendant having renewed the motion for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about November 1, 2006, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of 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.

E N T E R:


DEPUTY 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 January 27, 2011.

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

-----X
Probate Proceeding,
Will of Rocky H. Aoki,
also known as Hiroaki Aoki,
Deceased.

- - - - -
Keiko Ono Aoki,
Petitioner-Respondent,

M-5949
File 2604/08

-against-

Kana Aoki Nootenboom et al.,
Respondents-Objectants-Appellants,

Jennifer Burke Crumb,
Respondent-Objectant.

-----X

Objectants having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on November 23, 2010 (Appeal No. 3362N),

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 Supreme Court, as affirmed by the this 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:


DEPUTY CLERK

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

JAN 27 2011

Peter Tom,	Justice Presiding,
Angela M. Mazzaelli	
Richard T. Andrias	
Leland G. DeGrasse	
Helen E. Freedman,	Justices.

-----x

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

Departmental Disciplinary Committee for the First Judicial Department, Petitioner,	M-2860
--	--------

David A. Dorfman,
Respondent.

-----x

Disciplinary proceedings instituted by the Departmental
Disciplinary Committee for the First Judicial Department.
Respondent, David A. Dorfman, 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
March 25, 1992.

Alan W. Friedberg, Chief Counsel, Departmental
Disciplinary Committee, New York
(Kevin P. Culley, of counsel), for petitioner.

Richard M. Maltz, for respondent.

M-2860 -- July 26, 2010

IN THE MATTER OF DAVID A. DORFMAN, AN ATTORNEY

PER CURIAM

Respondent was admitted to the practice of law in the State of New York by the Second Judicial Department on March 25, 1992 under the name David Alan Dorfman. At all times relevant to this proceeding, respondent has maintained an office for the practice of law in the First Judicial Department.

This matter was the subject of a prior disciplinary proceeding arising out of misrepresentations respondent made to a client, Ricky Baker, in a resume (304 AD2d 273 [2003]). After being hired by Baker to bring suit against the New York City Department of Health as a result of a medical testing error, respondent failed to file a timely notice of claim and failed to seek leave to file a late notice, resulting in dismissal of the action and prompting Baker to bring suit for legal malpractice and fraud in the Southern District of New York (*Baker v Dorfman*, 1999 WL 191531 [SD NY 1999], *affd* 239 F3d 415 [2nd Cir 2000]). A federal jury found that respondent had indeed induced Baker to retain him by furnishing a resume that patently misrepresented respondent's experience as a litigator. The jury awarded Baker compensatory damages of \$360,000 and punitive damages of \$25,000 (id.).

In the previous disciplinary proceeding, this Court found

that respondent:

"violated Code of Professional Responsibility DR 1-102(a)(4) (22 NYCRR 1200.3) by making material misstatements in his resume that deceived his client, which constituted fraudulent and dishonest conduct; that he violated DR 6-101(a)(1) (22 NYCRR 1200.30) by undertaking representation on a matter that he knew or should have known he lacked the competence to handle, without associating himself with a lawyer who would have been competent to handle the matter; that he violated DR 6-101(a)(3) in that he neglected a legal matter by failing to seek court permission to file a late notice of claim and failing to file the complaint until after the statute of limitations had expired; and that his initial failure to make required payments in satisfaction of the judgment against him reflected adversely on his fitness as a lawyer in violation of DR 1-102(a)(5) and (7)" (304 AD2d at 275).

Due to respondent's inexperience as a lawyer, his lack of disciplinary history and expression of remorse, among other factors, we deemed public censure to be the appropriate sanction for his professional misconduct (*id.*).

Baker's attempts to collect on the judgment were frustrated by respondent's formation of a professional limited liability corporation (PLLC), resulting in a further federal action declaring the PLLC to be respondent's successor in interest (*Baker v Dorfman*, 2000 WL 1010285 [SD NY 2000], *aff'd* 232 F3d 121 [2nd Cir 2000]). The PLLC then sought and was awarded protection in bankruptcy. Baker and respondent entered into a bankruptcy stipulation in the reduced amount of \$175,000, plus interest, to

be paid over a period of 10 years. When respondent made only a few payments under the agreement, Baker brought a breach of contract action in federal court, culminating in a magistrate's recommendation that respondent be directed to make payment under court order, under penalty of civil contempt for any lapse (see *Baker v Dorfman*, 2005 WL 742692 [SD NY 2005]). The court, noting that respondent "has continually defaulted on his payments to Baker," adopted the recommendation (*Baker v Dorfman*, 2005 WL 713329, *4 [SD NY 2005]).

After respondent repeatedly failed to make payments required under the agreement, the federal court modified its order and imposed various restrictions on respondent, inter alia, limiting his business and personal expenditures and generally confining his personal travel to the City of New York and his business travel to New York State and New Jersey (*Baker v Dorfman*, 2006 WL 988756) [SD NY 2006]. The order was subsequently modified and certain provisions added, but respondent's compliance was still not forthcoming. The federal court — indicating that respondent may have violated added requirements to report expenses in excess of \$100, to limit hiring at his law firm and restrict support staff to two full-time staff members — referred the matter for prosecution by the United States Attorney for the Southern District of New York (*Baker v Dorfman*, 2006 WL 988747 [SD NY 2006]). Respondent ultimately pleaded guilty to

one count of criminal contempt in violation of 18 USC § 401(3), and on December 19, 2007, the court sentenced him to two years' probation, including six days' community confinement in a halfway house.

On March 12, 2009, the Disciplinary Committee filed a petition seeking an order finding that the criminal contempt conviction constitutes a "serious crime" under Judiciary Law § 90(4)(d) and directing that respondent show cause before the Committee why a final order of censure, suspension or disbarment should not be made. By unpublished order entered June 12, 2009, this Court granted the serious crime petition and directed respondent to appear for a hearing on the appropriate sanction. Meanwhile, on April 2, 2009, respondent was charged in the Southern District with violating his probation.

In testimony before a Hearing Panel in October 2009, respondent disclosed that in the Spring of that year, after the instant "serious crime" petition was filed, he settled the Baker judgment for \$50,000 using money provided by his wife. Respondent acknowledged that he had engaged in professional misconduct resulting in the malpractice judgment against him. As to his guilty plea to criminal contempt for engaging more than 2 full-time employees without court leave, respondent simply stated that he "took responsibility for everything that was done" because he was "in charge," leading the Committee to assert in

the petition that while respondent "accepts liability for his misconduct, he does not accept responsibility for his misconduct."

As to his violation of probation, on May 28, 2009, respondent pleaded guilty to traveling outside the judicial district without court leave – to Paris in 2008 and to Rome in March 2009. Respondent also pleaded guilty to lying to a probation officer in March 2009 concerning the Paris trip, which he only acknowledged after being required to produce his passport for inspection. While professing unawareness of the travel restrictions before the Hearing Panel, respondent had conceded such knowledge at his plea allocution some four months earlier. In a post-hearing submission that included documents relevant to his probation violation, respondent admitted that, in addition to the two European trips, he had traveled to Arizona and Boston in 2008 without court leave.

On August 6, 2009, respondent was sentenced in Federal District Court on the probation violation. While commenting on respondent's "various dishonest and deceptive maneuvers to avoid paying a judgment that he owed Mr. Baker," which was construed as a "pattern of deception," the court concluded that "this is something deeply embedded in his character, not something that's going to change . . . during a period of supervision." The court thereupon sentenced respondent to 30 days' imprisonment without

any further period of supervision.

In mitigation, the Hearing Panel noted that the reason for respondent's European travel was to participate in marathons in connection with his fund-raising efforts on behalf of the Leukemia & Lymphoma Society, which was prompted by his diagnosis with lymphoma. The Panel also noted that respondent's malpractice in connection with the Baker matter had already been the subject of a judgment in federal court and a prior disciplinary proceeding in this Court.

The Hearing Panel concluded that respondent's failure to accept responsibility for his professional failings was aggravated by his lack of candor in misrepresenting that he was unaware of the travel restrictions imposed by the federal court. Not only were the particular restrictions contained in the judgment of probation provided to him at his December 2007 sentencing, restrictions on personal travel outside New York City were incorporated into the court's prior order issued in June 2005. The Panel recommended a suspension of two years. Respondent proposes that he be suspended for a period of six months. The Disciplinary Committee now moves for an order confirming the Panel's recommendation (22 NYCRR 603.4[d]; 605.15[e] [2]).

There is no question that a conviction of criminal contempt constitutes a serious crime for which a period of suspension may

be imposed (see e.g. *Matter of Cutler*, 227 AD2d 8 [1996] [six-month suspension]). While respondent was sentenced for his contumacy, satisfaction of the judgment to which his contempt related was only motivated by the commencement of the instant disciplinary proceedings. While this Court accepts that respondent's travels were undertaken for a worthy purpose, it remains that he made no attempt to obtain the requisite leave of court and subsequently demonstrated a lack of candor, both to his probation officer and the Hearing Panel, concerning his awareness of the restrictions imposed on his mobility. Maintaining that his misconduct was not undertaken with a venal motive, respondent notes that it relates to a single matter and attributes his repeated violations of court orders to a "failure to focus" on the terms of his probation. Yet respondent displayed remarkable focus in his efforts to avoid making payments on the Baker judgment, including resorting to the reorganization of his law practice as a PLLC, bankruptcy, and willful disobedience of court orders, all of which were exacerbated by his violation of the terms of his probation and his misrepresentations before the Hearing Panel. The extent of an attorney's misconduct may warrant a substantial sanction even where only a single matter is involved (see *Matter of Kantor*, 241 AD2d 103 [1998], lv denied 92 NY2d 813 [1998] [five-year suspension where fraud was concealed over a four-year period]). The sustained pattern of misconduct

that preceded respondent's criminal contempt conviction is inconsistent with either inadvertence or the absence of venal intent, and respondent's post-conviction duplicity is hardly an indication of remorse. Thus, suspension for a period of one year is warranted (*see Matter of Leeds*, 87 AD2d 96 [1982] [attorney convicted of criminal contempt and sentenced to 30 days' incarceration suspended for one year where no remorse expressed]; *compare Matter of Giampa*, 211 AD2d 212 [1995], *lv denied* 86 NY2d 731 [1995], *cert denied* 516 US 1009 [1995] [attorney engaged in contemptuous behavior in five separate cases, some resulting in criminal contempt convictions, suspended for one year where no remorse shown]).

Accordingly, the Committee's motion should be granted and respondent suspended from the practice of law in the State of New York for one year.

All concur.

Order filed.