

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 September 14, 2010.

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

-----X
Inventure Capital, LLC,

Plaintiff-Appellant,

-against-

M-3625
Index No. 601850/09

Amerasia Capital Partners, LLC,

Defendant-Respondent.
-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about April 16, 2010,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" July 15, 2010, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

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

-----X
Esther Creative Group, LLC,

Plaintiff-Respondent,

-against-

Tom Gabel, et al.,

Defendants-Appellants.
-----X

M-3847X
Index No. 112902/08

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about October 13, 2009,

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

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

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

-----X
Eyal Ben-Yosef & Yoram Moussaieff,

Plaintiffs-Respondents,

-against-

M-3853X
Index No. 602681/07

Yoram Hillel, et al.,

Defendants-Appellants.
-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about December 1, 2009 (mot. seq. no. 003),

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" July 29, 2010, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

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

-----X
Harry Hertzberg,

Plaintiff-Appellant,

-against-

M-3751
Index No. 309522/09

Community Center of Israel,

Defendant-Respondent.
-----X

An appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about February 4, 2010,

Now, upon reading and filing the stipulation of the parties hereto, filed July 23, 2010, and due deliberation having been had thereon,

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

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
David Friedman
Leland G. DeGrasse
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
JPMorgan Chase Bank, N.A.,
Plaintiff-Respondent,

-against-

M-3712
Index No. 603215/08

Controladora Comercial Mexicana S.A.B.
de C.V.,
Defendant-Appellant.

-----X
Barclays Bank PLC,
Plaintiff-Respondent,

-against-

M-3713
Index No. 603233/08

Controladora Comercial Mexicana S.A.B.
de C.V.,
Defendant-Appellant.

-----X
J. Aron & Company,
Plaintiff-Respondent,

-against-

M-3714
Index No. 603225/08

Controladora Comercial Mexicana S.A.B.
de C.V.,
Defendant-Appellant.

-----X
Merrill Lynch Capital Markets AG and
Merrill Lynch Capital Services, Inc.,
Plaintiffs-Respondents,

-against-

M-3715
Index No. 603214/08

Controladora Comercial Mexicana S.A.B.
de C.V.,
Defendant-Appellant.

-----X

(M-3712/M-3713)
(M-3714/M-3715)

-2-

September 14, 2010

Defendant-appellant Controladora Comercial Mexicana S.A.B. de C.V. having moved on consent by duplicate motions (M-3712/M-3713/M-3714/M-3715) for, inter alia, an enlargement of time in which to perfect the appeals taken from the orders of the Supreme Court, New York County, entered on or about March 18, 2010,

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 (M-3712/M-3713/M-3714/M-3715) are granted to the extent of enlarging the time in which to perfect the related appeals to the June 2011 Term, with leave to seek a further enlargement, if necessary.

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 September 14, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Eugene Nardelli, Justices.

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

-against-

M-2775
Ind. No. 474/03

Tyrone Jackson,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on April 24, 2007 (Appeal No. 858), unanimously affirming a judgment of the Supreme Court, New York County (Edwin Torres, J.), rendered on February 26, 2004,

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 September 14, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice
Peter Tom
John W. Sweeny, Jr.
James M. Catterson
Dianne T. Renwick, Justices.

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

-against-

M-3017
Ind. No. 5376/06

Steven Myers,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on April 9, 2009 (Appeal No. 286), unanimously affirming a judgment of the Supreme Court, New York County (William Wetzel, J.), rendered on February 25, 2008,

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 September 14, 2010.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe
Leland G. DeGrasse, Justices.

-----X
John Bykowsky,
Plaintiff,

The New York Urban Professionals
Athletic League, Inc.,
Plaintiff-Appellant,

-against-

M-2914
Index No. 600681/99

Irving Eskenazi, et al.,
Defendants-Respondents,

Bruce Radler, et al.,
Defendants.

-----X

Plaintiff-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on April 27, 2010 (Appeal No. 2625-2626),

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 September 14, 2010.

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

-----X
In re Marc Einsohn,
Petitioner-Appellant,

-against-

M-2964
Index No. 402027/08

New York City Department of Education,
Respondent-Respondent.

-----X

Petitioner-appellant having moved for reargument of the decision and order of this Court entered on May 6, 2010 (Appeal No. 2722),

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 September 14, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
James M. McGuire
Leland G. DeGrasse
Helen E. Freedman
Rosalyn H. Richter, Justices.

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

-against-

M-3422
Ind. No. 23/05

Nenad Jurlina,
Defendant-Appellant.

-----X

Defendant-appellant having moved for reargument of the decision and order of this Court entered on June 1, 2010 (Appeal No. 2923),

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 September 14, 2010.

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

-----X
Kevin Pludeman, et al.,

Plaintiffs-Appellants-Respondents,

-against-

M-3389

Index No. 101059/04

Northern Leasing Systems, Inc., et al.,

Defendants-Respondents-Appellants.
-----X

Defendants-respondents-appellants having moved for renewal, 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. 2065/2065A),

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 September 14, 2010.

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

-----X
The People of the State of New York
ex rel. V. Marika Meis, Esq., on
behalf of Shaun McManus,
Petitioner-Appellant,

-against-

Warden, Rikers Island Correctional
Facility and New York State Division
of Parole,
Respondent-Respondent.

M-2173
Ind. No. 891/09
Index No. 252377/09


-----X

Petitioner-appellant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, Bronx County, entered on or about October 23, 2009, which denied petitioner's writ of habeas corpus petition, for leave to have the appeal heard upon the original record and 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 denied, as unnecessary, the office of The Bronx Defenders having already perfected the appeal on petitioner-appellant's behalf.

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 September 14, 2010.

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

-----X
Robert Sumner, et al.,
Petitioners-Respondents,

-against-

M-3325
Index No. 100150/08

Daniel D. Hogan, etc., et al.,
Respondents-Appellants.

- - - - -
Troy Stables, LLC, et al.,
Petitioners-Respondents,

Index No. 100843/08

-against-

Daniel D. Hogan, etc., et al.,
Respondents-Appellants.

-----X

Petitioners-respondents 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. 2870),

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 September 14, 2010.

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

-----X

Escorp Inc.,
Petitioner-Landlord-Respondent,

-against-

M-2815
Index No. 570253/09

Gene Myers,
Respondent-Tenant-Appellant.

-----X

An order of this Court having been entered on May 13, 2010 (M-1418), denying petitioner-respondent leave to appeal to this Court from the order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about February 11, 2010,

And petitioner-respondent having moved for reargument of the aforesaid order of this Court,

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 September 14, 2010.

PRESENT: Hon. Richard T. Andrias, Justice Presiding
John W. Sweeny, Jr.
Eugene Nardelli
James M. Catterson
Leland G. DeGrasse, Justices.

-----X
Leslie Elliot Strong,
Plaintiff-Appellant,

-against-

Madeline Dubin,
Defendant-Respondent.

M-3494
Index No. 350078/05

-----X

Plaintiff-appellant having moved for reargument of the decision and order of this Court entered on May 13, 2010 (Appeal No. 1532),

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 September 14, 2010.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
John W. Sweeny, Jr.
James M. McGuire
Rolando T. Acosta, Justices.

-----X
Precision Performance, Inc.,
Plaintiff-Appellant,

-against-

M-2920
Index No. 13198/02

Manuel Perez, also known as Manuel
Perez Morales,
Defendant-Respondent.

-----X

Plaintiff-appellant having moved in the nature of a preliminary appellate injunction staying the sale, lease encumbrance or interference with the plaintiff's asserted lease hold of the premises known as 1159 Southern Boulevard, Bronx, New York, pending hearing and determination of the appeal taken from the order of the Supreme Court, Bronx County, entered on or about May 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 and the interim relief granted by an order of a Justice of this Court dated May 28, 2010, is 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 September 14, 2010.

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

-----X
Allen Proctor,
Petitioner-Appellant,

For a Judgment Pursuant to Article 78
of the CPLR,

M-3373
Index No. 401364/08

-against-

District Attorney, New York County,
Defendant-Respondent.
-----X

An appeal having been taken from the order and judgment (one paper) of the Supreme Court, New York County, entered on or about March 23, 2009,

And defendant-respondent having moved to dismiss the aforesaid appeal as moot and academic,

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 said appeal is dismissed.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

Present - Hon. David Friedman, Justice Presiding,
James M. Catterson
James M. McGuire
Rolando T. Acosta, Justices.

-----x
In the Matter of

Matthew R.,

A Person Alleged to be a Juvenile
Delinquent,

M-642
Docket No. D9261/08

Respondent-Appellant.
-----x

Assigned counsel for appellant having moved for leave to withdraw the appeal from the order of the Family Court, Bronx County, entered on or about May 1, 2009,

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

It is ordered that the motion is granted and the appeal is deemed withdrawn.

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 September 14, 2010.

Present - Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Sheila Abdus-Salaam, Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-3218
Ind. No. 1119/07

Lino Cacho,

Defendant-Appellant.

-----X

Counsel for defendant-appellant having moved for an order dismissing defendant's appeal taken from a judgment of the Supreme Court, Bronx County, rendered on or about January 16, 2008, without prejudice to reinstatement at such time appellant becomes amenable to the jurisdiction of this Court,

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 appeal withdrawn.

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 September 14, 2010.

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

-----X
In the Matter of the Application for
the Custody and Guardianship of

Isaac Howard M., and
Jaheim Terrance S.,

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

- - - - -
Jewish Child Care Association, et al., M-3260
Petitioners-Respondents, Docket Nos. B24283-84/08

Fatima M.,
Respondent-Appellant.

- - - - -
Elizabeth Posse, Esq.,
Law Guardian for the Children.

-----X
Respondent-appellant 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 April 27, 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, Lisa H. Blitman, Esq., 225 Broadway, Suite 1203, New York, New York 10007, Telephone No. 212-724-2792, 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 within 60 days of receipt of the transcripts. Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.

ENTER:


Clerk

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 September 14, 2010.

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

-----X

In the Matter of

Dynasia C.,

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

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

M-3158
Docket No. B670/09

Domonique C.,
Respondent-Appellant.

Steven Banks, Esq., The Legal Aid
Society, Juvenile Rights Division,
Law Guardian for the Child.

-----X

Respondent-appellant having moved for leave to prosecute, as a poor person, the appeal from an order of the Family Court, New York County, entered on or about April 20, 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, Howard M. Simms, Esq., 295 Greenwich St., #222, New York, New York 10007, Telephone No. 212-655-5802, 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

September 14, 2010

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 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:

A handwritten signature in cursive script that reads "David Apolony". The signature is written in dark ink and is positioned to the right of the word "ENTER:". Below the signature, the word "Clerk" is printed in a simple, sans-serif font.

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 September 14, 2010.

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

-----X
In the Matter of the Application for
the Custody and Guardianship of

Isaac Howard M., and
Jaheim Terrance M.,

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

- - - - -
Jewish Child Care Association, et al., M-3260
Petitioners-Respondents, Docket Nos. B24283-84/08

Fatima M.,
Respondent-Appellant.

- - - - -
Elizabeth Posse, Esq.,
Law Guardian for the Children.

-----X

Respondent-appellant 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 April 27, 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, Lisa H. Blitman, Esq., 225 Broadway, Suite 1203, New York, New York 10007, Telephone No. 212-724-2792, 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 within 60 days of receipt of the transcripts. Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.

ENTER:


Clerk

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 September 14, 2010.

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

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

-against-

M-3343
Ind. No. 3532/07

Richard Proano,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of **resentence** of the Supreme Court, New York County, entered on or about May 27, 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 and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

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

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.

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 September 14, 2010.

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

-----X
In the Matter of a Family Offense
Proceeding under Article 8 of the
Family Court Act.

Analusia P.,
Petitioner-Respondent,

M-3398

Docket No. O-3457/10

-against-

Warnell H.,
Respondent-Appellant.

-----X
Respondent-appellant 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 25, 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, Kenneth T. Tucillo, Esq., 385 Warburton Avenue, Hastings on Hudson, New York 10706, Telephone No. 914-439-4843, 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

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

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 within 60 days of receipt of the transcripts. Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.

ENTER:


Clerk

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 September 14, 2010.

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

-----X
In the Matter of the Application of
Desiree English,
Petitioner-Appellant,

For a Judgment Pursuant to Article 78
of the CPLR,

-against-

M-3608
Index No. 403053/09

New York City Housing Authority,
Respondent-Respondent.

-----X

Petitioner-appellant 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 June 16, 2010 (mot. seq. no. 001), 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 granted to the extent of permitting the appeal to be heard on the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the attorney for respondent and file 10 copies of such brief, together with the original record, with this Court. Appellant is permitted to dispense with payment of the required fee for the subpoena and 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 September 14, 2010.

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

-----X
Gentry T. Beach and Robert A. Vollero,
Plaintiffs-Appellants,

-against-

M-3518
Index No. 603611/08

Touradji Capital Management, LP and
Paul Touradji,
Defendants-Respondents.

(And other actions)

-----X

Defendants-respondents having moved for consolidation of the appeals taken from the orders of the Supreme Court, New York County, entered on or about September 21, 2009 and May 20, 2010, respectively,

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

It is ordered that the motion is granted to the extent of directing the Clerk to calendar the appeals for hearing together in the February 2011 Term, for which Term plaintiff Beach is directed to perfect his appeal from the order entered May 20, 2010, and to which Term the perfected appeal from the order entered on September 21, 2009 is adjourned. Defendants may respond to the consolidated appeals upon 10 copies of one respondents brief.

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 September 14, 2010.

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

-----X
In the Matter of the Bronx Committee
for Toxic Free Schools, et al.,
Petitioners-Respondents,

For a Judgment Pursuant to Article 78
of the CPLR,

M-3444
Index No. 13800/07

-against-

New York City School Construction
Authority, et al.,
Respondents-Appellants.
-----X

Respondents-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 27, 2008,

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

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

ENTER:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

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

-----x
Arshim Kameraj,

Plaintiff-Appellant,

-against-

M-3510
Index No. 308670/08

Haim Joseph,

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 June 2, 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 December 2010 Term.

ENTER:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

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

-----X
Wings Manufacturing Corporation,

Plaintiff-Appellant,

-against-

M-3476
Index No. 602633/08

Great American Insurance Company of
New York,

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 November 13, 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 September 14, 2010.

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

-----X
JPMorgan Chase Bank, N.A.,

Plaintiff-Respondent,

-against-

James G. Cheney,

Defendant-Appellant.
-----X

M-3471
Index No. 108009/09

Defendant-appellant having moved for a stay of enforcement of a judgment of the Supreme Court, New York County, entered on or about November 20, 2009, pending hearing and determination of the appeal taken from the order of the Supreme Court, New York County, entered on or about May 19, 2010 (mot. seq. no. 001),

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 September 14, 2010.

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

-----x
Richard Roach,
Plaintiff-Respondent,

-against-

M-3438
Index No. 100434/09

Elizabeth Benjamin,
Defendant-Appellant.
-----x

An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about November 27, 2009,

And an order of this Court having been entered on April 6, 2010 (M-1195), staying the re-letting of a certain apartment on condition, inter alia, appellant pays plaintiff arrears and use and occupancy and perfects the appeal for the September 2010 Term,

And plaintiff-respondent having moved to vacate the stay granted by the order of this Court entered on April 6, 2010 (M-1195),

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 September 14, 2010.

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

-----X
King Enterprises, Ltd., et al.,
Petitioners-Landlords-Appellants,

-against-

M-3385
Index No. 570534/09

Haley Glazer,
Respondent-Tenant-Respondent.

-----X

Petitioner-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 April 8, 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 September 14, 2010.

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

-----X
Tzvee Wood as Executor of the Estate of
Austin Wood,
Plaintiff-Appellant,

-against-

M-3351
Index No. 119109/06

NYU Hospitals Center, etc., et al.,
Defendants-Respondents,

-and-

New York City Department of Health
and Mental Hygiene,
Respondent.

-----X

Respondent having moved for dismissal of the appeal taken from the order of the Supreme Court, New York County, entered on or about April 7, 2009 (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 and the appeal is dismissed, as academic.

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 September 14, 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,
Appellant,

-against-

M-3701
Ind. No. 5645/06

Anthony Caldwell,
Defendant-Respondent.

-----X

Defendant having moved for leave to respond, as a poor person, to the appeal from the order of the Supreme Court, New York County, entered on or about June 3, 2010, for assignment of counsel 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) permitting movant to respond to the appeal upon a reproduced respondent's brief, on condition that one copy of such brief be served upon the attorney for the People and 10 copies thereof are filed with this Court, and (2) assigning, pursuant to Section 722 of the County Law, Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, New York 10006, Telephone No. 212-577-2523, as counsel for purposes of responding to the appeal. (See M-1994 entered June 11, 2009, and M-2292 entered June 11, 2009, copies of which are annexed hereto.)

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 June 11, 2009.

Present: Hon. Richard T. Andrias, Justice Presiding,
James M. Catterson
Dianne T. Renwick
Leland G. DeGrasse
Helen E. Freedman, Justices.

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

Appellant,

-against-

M-1994
Ind. No. 5645/06

Anthony Caldwell,

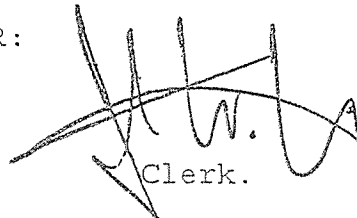
Defendant-Respondent.
-----X

Defendant-respondent having moved for leave to respond, as a poor person, to the People's appeal from the order of the Supreme Court, New York County, entered on or about April 2, 2009, 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 (1) permitting movant to respond to the appeal upon a reproduced respondent's brief, on condition that one copy of such brief be served upon the attorney for the People and 10 copies thereof are filed with this Court, and (2) assigning, pursuant to Section 722 of the County Law, Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, New York 10006, Telephone No. 212-577-2523, as counsel for purposes of responding to the appeal. (See M-2292, decided simultaneously herewith.)

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the first Judicial Department in the County of New York on June 11, 2009.

Present: Hon. Richard T. Andrias, Justice Presiding,
James M. Catterson
Dianne T. Renwick
Leland G. DeGrasse
Helen E. Freedman, Justices.

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

-against- M-2292
Ind. No. 5645/06

Anthony Caldwell,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of resentence of the Supreme Court, New York County, rendered on or about May 7, 2009, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for related relief,

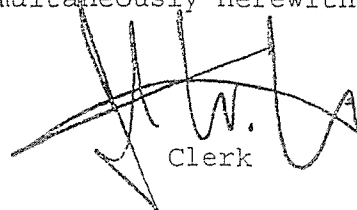
Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

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.

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

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 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. (See M-1994, decided simultaneously herewith.)

ENTER:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

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

-----X
Tirso Vincente,
Plaintiff-Appellant,

-against-

M-3658
Index No. 13204/06

Silverstein Properties, Inc., River
Place I, LLC, River Place Holdings
Limited Partnership and River Place
I Holdings, LLC,
Defendants-Respondents.

-----X
Silverstein Properties, Inc.,
Third-Party Plaintiff-Respondent,

-against-

Third Party
Index No. 84179/04

American Building Maintenance Co.
of New York, sued herein as American
Building Maintenance Company,
Third-Party Defendant-Respondent.

-----X

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

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

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

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

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

-----X
225 5th LLC,
Plaintiff-Respondent,

-against-

M-3726
Index No. 603326/08

24 Hour Fitness USA, Inc.,
Defendant-Appellant,

-and-

225 Fifth Avenue Retail LLC,
Ceres Realty Group LLC and WM
Neville & Sons USA LLC,
Defendants-Respondents.

-----X

Defendant-appellant 24 Hour Fitness USA, Inc. 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 29, 2009 (mot. seq. no. 001),

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 December 2010 Term.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

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

-----X
Ramon Perez and Francina Rodriguez,
Plaintiffs-Respondents,

-against-

Wendell Jordan,
Defendant,

M-3786
Index No. 6779/02

Shirley Roberts,
Intervenor-Appellant.
-----X

An appeal having been taken by intervenor Shirley Roberts from the order and judgment (one paper) of the Supreme Court, Bronx County, entered on or about December 28, 2009,

And Stephen G. Dickerman, counsel for appellant, having moved for an enlargement of time in which to perfect 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 to the extent of enlarging the time in which to perfect the appeal to on or before November 8, 2010 for 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 September 14, 2010.

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

-----x
Juanita Carmona, et al.,

Plaintiffs-Appellants,

-against-

M-3771
Index No. 25879/03

Kevin Ross Mathisson, M.D., et al.,

Defendants-Respondents.
-----x

An appeal having been taken to this Court from the order of the Supreme Court, Bronx County, entered on or about September 4, 2009,

And plaintiffs-appellants having moved for an enlargement of time in which to perfect the appeal, for expedited hearing of the appeal for the October 2010 Term, 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 enlarging the time in which to perfect the appeal to the December 2010 Term, and the Clerk is directed to calendar the appeal for hearing in the first week of said December 2010 Term.

ENTER:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 14, 2010.

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

-----X
Renee Eliasberg,

Plaintiff-Respondent,

-against-

Memorial Sloan-Kettering Cancer Center,
et al.,

M-3953
Index No. 112080/07

Defendants-Respondents,

-and-

MacKenzie Group, Inc.,

Defendant-Appellant.
-----X

Defendant-appellant having moved for a stay of trial pending hearing and determination of the appeal from the order of the Supreme Court, New York County, entered on or about April 23, 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 denied.

ENTER:


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 September 14, 2010.

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

-----X
Franklyn Gaucher,
Plaintiff-Respondent,

-against-

M-4294
Index No. 110964/05

By Design Associates, Inc., et al.,
Defendants-Respondents.

-----X
By Design Associates, Inc.,
Third-Party Plaintiff-Respondent,

-against-

Wilkinson Hi-Rise, LLC,
Third-Party Defendant-Appellant.

-----X

Third-party defendant-appellant 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 April 12, 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 September 14, 2010.

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

-----x
Margo Crespin,

Plaintiff-Respondent,

-against-

M-4172
Index No. 121404/03

Reebok Sports Club/NY,

Defendant-Appellant.
-----x

Defendant-appellant having moved for a stay of trial pending hearing and determination of the appeal from the order of the Supreme Court, New York County, entered on or about July 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 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 September 14, 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-4070
Ind. No. 32403C/05

George Melendez,

Defendant-Appellant.

-----X

Defendant-appellant having moved for leave to file a pro se supplemental brief in connection with the appeal from a judgment of the Supreme Court, Bronx County, rendered on or about July 15, 2008, 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.

ENTER:


Clerk

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

SEP 14 2010

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

-----x

In the Matter of Sylvain R. Jakabovics
(admitted as Sylvain Rene Jakabovics),
an attorney and counselor-at-law:

Departmental Disciplinary Committee
for the First Judicial Department,
Petitioner,

M-2807

Sylvain R. Jakabovics,
Respondent.

-----x

Disciplinary proceedings instituted by the Departmental
Disciplinary Committee for the First Judicial Department.
Respondent, Sylvain R. Jakabovids, 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
June 24, 1968.

Alan W. Friedberg, Chief Counsel, Departmental
Disciplinary Committee, New York
(Paul L. Friman, of counsel), for petitioner.

Michael S. Ross, for respondent.

M-2807 (6/11/10)

In the Matter of SYLVAIN R. JAKABOVICS

PER CURIAM.

Respondent Sylvain R. Jakobovics was admitted to the practice of law in the State of New York by the First Judicial Department on June 24, 1968, under the name Sylvain Rene Jakobovics. At all relevant times, he has maintained a law office within the First Judicial Department.

The Departmental Disciplinary Committee now moves, pursuant to 22 NYCRR 603.11, for an order accepting respondent's resignation from the practice of law and striking his name from the roll of attorneys. Respondent's affidavit of resignation, sworn to on April 28, 2010, complies with section 603.11 in that he states: (1) his resignation is submitted freely, voluntarily and without coercion or duress, and (2) that he is fully aware of the implications of submitting his resignation (see 22 NYCRR 603.11[a][1]). Respondent states further that he submits his resignation, which is equivalent to a disbarment, before formal charges have been proffered against him.

In addition, respondent asserts that he is aware that in or about September 2008, the Committee commenced a sua sponte investigation after receiving a dishonored check report from the Lawyers' Fund for Client Protection, which concerned respondent's failure to maintain in his firm's IOLA account funds that were

required to be held on behalf of various clients and third parties, and his deficient record keeping for the IOLA account (see 22 NYCRR 603.11[a][2]). Respondent acknowledges that as a result of his having a negative balance in his IOLA account and failing to maintain required records relating to the account, he could be charged with multiple violations of the Disciplinary Rules, including: DR 9-102(A), for commingling and misappropriating client funds; DR 9-102(D)(1), for failing to maintain specific records of all deposits identifying date, source, and description of each item deposited; DR 9-102(2), for failing to maintain the required records for special accounts; and DR 9-102(D)(9), for failing to maintain a ledger. Additionally, respondent acknowledges that he could not successfully defend himself on the merits against such charges (see 22 NYCRR 603.11[a][3]).

Respondent provides details of his misconduct which include overdrawing his IOLA account by withdrawing funds that he erroneously believed had been covered by a wire transfer and using the IOLA account to cash a personal check. Respondent acknowledges that his inadequate record keeping caused and compounded his problems, but points out that all obligations to clients or third parties were satisfied. Indeed, the Lawyers' Fund for Client Protection confirms that no claims have been made against respondent.

Respondent expresses embarrassment for his conduct, and states that, for his 42 years as an attorney, he has always had a good reputation for his work and his ethics. He takes full responsibility for his conduct and sincerely apologizes for it, and tenders his resignation because he feels "strongly that this is the honorable thing to do." Respondent states that presently he is winding down his practice.

Accordingly, the Committee's motion should be granted, respondent's resignation from the practice of law accepted, and his name stricken from the roll of attorneys nunc pro tunc to July 1, 2010.

All concur.

Order filed.

SEP 14 2010

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

Angela M. Mazzarelli, Justice Presiding,
Karla Moskowitz
Rolando T. Acosta
Helen E. Freedman
Rosalyn H. Richter, Justices.

-----x

In the Matter of Anthony Chiofalo,
an attorney and counselor-at-law:

Departmental Disciplinary Committee M-3073
for the First Judicial Department, M-3869
Petitioner,

Anthony Chiofalo,
Respondent.

-----x

Disciplinary proceedings instituted by the Departmental
Disciplinary Committee for the First Judicial Department.
Respondent, Anthony Chiofalo, 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 16, 1988.

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

Michael A. Gentile, for respondent.

IN THE MATTER OF ANTHONY CHIOFALO, AN ATTORNEY

PER CURIAM

Respondent Anthony Chiofalo was admitted to the practice of law in the State of New York by the Second Judicial Department on March 16, 1988, and at all times relevant to this matter has maintained an office for the practice of law within this Department.

The Departmental Disciplinary Committee (Committee) moves to confirm the findings of fact and conclusions of law after a hearing that sustained four charges arising out of respondent's use of offensive language and filing of a meritless lawsuit against his wife, her attorneys, and others. Respondent conceded liability as to charges 1 and 2, but contested charges 3 and 4. The Referee sustained all the charges, and recommended a sanction of a one-year suspension from the practice of law. The Hearing Panel agreed with the Referee's findings, but recommended a two-year suspension.

The Committee moves to disaffirm solely to increase the sanction from a two-year suspension to a three-year suspension. Respondent cross-moves to disaffirm to the extent of dismissing charges 3 and 4, and to impose a sanction of public censure or a suspension of no more than six months. For the reasons we state herein, we confirm the Hearing Panel's report and sustain all

four charges. However, because we find that a two-year suspension is appropriate in this case, we deny that part of the Committee's motion to increase the sanction from a two-year suspension to a three-year suspension.

Respondent, born in 1961, graduated from Fordham College and Law School, after which he worked at a number of law firms and corporations as in-house counsel. More recently, he has worked as a contract attorney on various projects. In 1990, he married. He has two sons from that marriage. In August 2005, the wife served respondent with divorce papers. During the course of the matrimonial action, respondent pleaded guilty in Bronx Criminal Court to a disorderly conduct violation, based on his contacting his wife and children in disregard of an order of protection. Apparently, the matrimonial action is not yet resolved.

Beginning in February 2006, and in spite of his divorce attorney's advice, respondent sent a series of hostile, obscene, and derogatory written messages to his wife, her successive lawyers, the children's law guardian, the law clerk for the judge presiding over his matrimonial matter and others. The correspondence was riddled with profanities, (primarily of a scatological and sexual nature), as well as ethnic slurs, sexist and homophobic remarks. He also threatened to cut off one attorney's pinkie finger and mail it to his wife. He insulted the judge presiding over the matrimonial case and, without basis,

questioned that judge's integrity. He accused opposing counsel of dishonesty and exploitation of the couple's children in order to obtain excessive fees.

In addition, in May 2007, respondent filed a frivolous pro se action in Federal Court in California, where he was living at the time, against at least 29 defendants, including his wife, her mother, the wife's contemporary and prior attorneys, the judge, three supervising judges, the American Bar Association (ABA) and the brokers who assisted with the sale of the marital home. The action essentially alleged a violation of civil rights under 42 USC §1983 in connection with his divorce. The Federal Court dismissed the case.

In June 2008, the Committee served respondent with four charges arising out of respondent's conduct and filing of the lawsuit. In charge 1, the Committee alleged that, by using "obscene, insulting, sexist, anti-Semitic language, ethnic slurs, and threats in correspondence to his wife's attorneys and others," respondent engaged in conduct prejudicial to the administration of justice, in violation of DR 1-102(A)(5) (22 NYCRR 1200.3[a][5]).

Charge 2 alleged that the same conduct adversely reflects upon respondent's fitness as a lawyer, in violation of DR 1-102(A)(7) (22 NYCRR 1200.3[a][7]).

Charge 3 alleged that, by "filing a meritless federal

lawsuit against his former wife, her attorneys, various Judges, and others, merely to harass or maliciously injure another," respondent violated DR 7-102(A)(1) (22 NYCRR 1200.3[a][1]).

Charge 4 alleged that, by filing the meritless action, respondent violated DR 7-102(A)(2) (22 NYCRR 1200.3[a][2]).

In his testimony before the Referee, respondent admitted that his insults were "vile," "disgusting," and "not acceptable ... for any member of our society, but particularly for a member of the bar"; he intended for them to be offensive and harmful, as well as to demonstrate how "witty" he was. He denied any sexist or racist beliefs, and claimed that he had acted out of pain, stress over his divorce and financial situation, and an "impaired" psychological state. He asserted that he had been taking medication that made him act "even more strangely," and stated that he had not been able to afford therapy on a regular basis. He testified that he had entertained suicidal thoughts, but never told a doctor because he was ashamed and could not afford treatment. Respondent conceded: "I cannot say I was totally unaware that I was engaging in irrational behavior".

When he initiated the Federal action, he was "very confused" and "stressed out," "impaired ... emotionally". However, he thought "there was enough room in our legal system that [he] could professionally address" issues of parental alienation. He protested that he was a transactional lawyer, not a litigator,

although he did research issues of personal jurisdiction and judicial immunity before filing. He claimed that he did not commence the action in California to harass the defendants, but only because he was living there at the time and could not afford to travel to New York. Respondent admitted that he had failed to keep the Federal Court apprised of his changes of address or to respond to the defendants' motions to dismiss. He stated that he had written to the Court to dismiss without prejudice so that he could later file in New York, but never checked the status of that request.

Respondent submitted letters of apology (all penned after the disciplinary proceeding had been commenced) and an apologetic e-mail (written before the charges were filed) that he had sent to some of the victims of his offensive conduct. He also declared his intention to undergo psychiatric treatment. He said he hoped to gain admission to the Texas bar, planned to volunteer with a battered women's shelter and eventually represent non-custodial fathers.

The Referee sustained all four charges and recommended a sanction of a one-year suspension. As noted supra, respondent admitted liability as to the first two counts, relating to his offensive missives. With respect to the second two charges, arising out of the Federal action, the Referee determined that there was no objective basis for believing that the lawsuit

served any basis other than to harass or injure the defendants by compelling them to appear in a distant jurisdiction. The Referee also noted that respondent's abandonment of the action soon after filing, his failure to respond to the defendants' dismissal motion, and his failure to advise the Court of his whereabouts burdened his adversaries and the Court, and undermined his claim of good faith.

In light of the pattern of conduct by a mature (in years) attorney, the Referee determined that a sanction more severe than the censure respondent requested was necessary. Under all the circumstances, the Referee recommended a one-year suspension.

A Hearing Panel heard oral argument on April 7, 2009. However, on May 12, 2009, the Hearing Panel reopened the record to receive additional documents from both parties. From the Committee, the Hearing Panel accepted e-mail messages, dated April 7-8, 14 and 21, 2009, from respondent to the wife's attorney and copied to others. These e-mails, although somewhat toned down, were in a similar vein, to respondent's earlier, offensive correspondence in that they included unfounded allegations and sexist remarks.

From respondent, the Hearing Panel accepted five letters from a psychiatrist dated October 22, 2008 to May 7, 2009 and addressed to respondent's counsel. The doctor stated that he had conducted an initial evaluation of respondent on October 8, 2008,

and thereafter saw him on a weekly basis, with gaps during the holidays. The doctor was not prescribing any medication. The final letter reported:

"He does continue to exhibit trends of grandiosity and episodic impulsivity and poor judgment. I continue to see those primarily as personality/adult development deficits rather than indicators of a serious psychiatric illness He continues to regress at times of stress and duress, particularly around financial, legal, and family issues. At these times, his narcissistic defenses come to fore, often to his detriment"

The Hearing Panel also accepted into the reopened record a July 2007 e-mail from respondent to counsel for some of the defendants in the Federal action indicating that respondent had requested a transfer of the case or dismissal without prejudice, and a printout of the Federal Court's docket sheet.

The Hearing Panel accepted the Referee's findings of fact and conclusions of law, and sustained all four charges, but recommended a sanction of two years instead of one. The Hearing Panel noted that respondent's e-mails sent in April 2009, after the Referee issued her report and after the original argument before the Panel, demonstrated that he continues to fail to "comprehend that his actions are inappropriate, insulting, and adversely reflect upon his fitness to practice law"

The Committee moves to confirm the findings of fact and conclusions of law sustaining all four charges, and to disaffirm

solely to increase the sanction from a two-year suspension to a three-year suspension. Respondent cross moves to disaffirm to the extent of dismissing charges 3 and 4 (relating to the Federal action) and to impose a sanction of public censure or a suspension of no more than six months.

To the extent respondent has not abandoned his argument that DR 7-102 (the basis of charges 3 and 4) is inapplicable because it prohibits a lawyer from engaging in certain conduct "[i]n the representation of a client," and he filed the Federal action pro se, the provision applies to pro se attorneys, whose clients are themselves (see *Matter of Maroney*, 259 AD2d 206 [1999]).

Charge 3 alleges that respondent's filing of the Federal action violated DR 7-102(A)(1), that states a lawyer shall not: "File a suit ... when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another." Respondent asserts that he did not "merely" intend to harass, but rather wished to bring attention to issues of parental alienation. That argument effectively concedes that he had no expectation of gaining any type of judicial relief, an inference his abandonment of the action confirms. Even if one were to entertain respondent's position that filing actions as a social commentary is acceptable behavior, he offers no excuse for his indiscriminate naming of defendants. For example, he included the brokers on the sale of the marital home, even though

he had approved the sale, and has never ventured an explanation as to the ABA. Thus, it is abundantly clear that respondent filed the Federal lawsuit merely to harass others.

Charge 4 alleges that respondent's filing of the Federal action also violated DR 7-102(A)(2), which states that a lawyer shall not: "Knowingly advance a claim or defense that is unwarranted under existing law," unless "it can be supported by good faith argument for an extension, modification, or reversal of existing law." Respondent contends that he had a subjective good faith belief that the judicial defendants' actions fell within an exception to the absolute immunity rule. Again, even accepting that assertion, his silence regarding the brokers and ABA is telling.

That the Federal Court dismissed respondent's action without prejudice and did not sanction him pursuant to Rule 11 of the Federal Rules of Procedure does not establish his compliance with DR 7-102(A)(1) and (2). Accordingly, charges 3 and 4 were properly sustained.

Respondent requests a sanction of censure or suspension of no more than six months, even if charges 3 and 4 are sustained. However, cases imposing lighter sanctions involve more limited conduct (*see Matter of Schiff*, 190 AD2d 293 [1993] [censure imposed where obscene and sexist epithets directed at opposing counsel took place during a single deposition]; *Matter of Delio*,

290 AD2d 61 [2001] [comments disrespectful of the court made in short colloquy and affirmation submitted three days later]; *Matter of McDonald*, 241 AD2d 255 [1998] [five vulgar and threatening messages left on answering machine one night when attorney was drunk]; *Matter of Golub*, 190 AD2d 110 [1993] [single, intemperate outburst after a decision in a highly publicized case]; *Matter of Kavanagh*, 189 AD2d 521 [1993] [attorney's insulting slurs against opposing counsel made in a single motion filing]; *Matter of Dinhofer* [257 AD2d 326 [1999] [in reciprocal proceeding, three month suspension warranted where accusations of judicial misconduct took place during a single telephone conference based upon a censure in the originating jurisdiction]). Censure was also imposed in *Matter of Hayes* (7 AD3d 108 [2004]), based on the attorney's accusations against the court and its clerk of racism following an unfavorable ruling. Even though the attorney had a prior admonition for similar misconduct (as well as a prior admonition for neglect), this Court apparently treated the incidents as isolated.

For a pattern of offensive language, without any other misconduct, this Court has suspended an attorney for six months for his pattern of vulgar and sexist comments, directed at female attorneys and teenage clients, and spanning more than 10 years (see *Matter of Kahn*, 16 AD3d 7 [2005]; see also *Matter of Mordkofsky*, 232 AD2d 863 [1996], *lv denied* 89 NY2d 817 [1997] [the

Third Department suspended for six months an attorney who had made numerous false accusations against judges and opposing counsel]; *Matter of Muller* (231 AD2d 296, 297-298 [1997]) [six-month suspension where the attorney made numerous harassing telephone calls to his former girlfriend over a period of time, and engaged in deceit to obtain information about her and to discredit her with her law school, but conduct was probably due to alcoholism]; *Matter of Simon* (32 AD2d 362 [1969] [attorney suspended for six months who prepared an affidavit containing scandalous charges, during a deposition in another matter made abusive and obscene statements to opposing counsel, whom he also struck, and had previously been censured for making contumacious comments toward judges]; *Matter of Wisehart*, 281 AD2d 23 [2001], *lv denied* 96 NY2d 935 [2001] [two-year suspension imposed against attorney who made numerous false accusations of bias and incompetence against two judges, and who used wrongfully obtained attorney work product in violation of court order]; *Matter of Raskin*, 217 AD2d 187 [1995] [one-year suspension where the attorney made derogatory and vituperative attacks on an opposing counsel in court documents, and aided a disbarred attorney in the improper practice of law].

Sanctions for the filing of frivolous actions generally range from censure to a one-year suspension (see *Matter of Belge*, 59 AD2d 497 [1977] [censure where attorney filed action merely to

harass and, as administrator for an estate, failed to timely petition for letters of administration or cooperate with the Surrogate's Court and counsel]; *Matter of Gilbert*, 268 AD2d 67 [2000] [in a reciprocal proceeding, attorney was suspended for six months for wrongfully placing a lien on a third person's funds, failing to promptly deliver a third person's funds, and neglecting to notify New York authorities of an earlier New Jersey public reprimand for negligent misappropriation of trust accounts]; *Matter of Bevans* (225 AD 427 [1929] [suspension for one-year where lawyer filed an action and mailed intemperate letters to numerous people, in which he falsely accused two judges and others of conspiracy to commit many crimes]).

That no "client" was injured does not avail respondent, because the individuals he named as defendants were victims of his misconduct. His lack of a prior disciplinary record is not truly a mitigating factor, but more in the nature of an absence of an aggravating factor. While divorce proceedings can most certainly be distressing, particularly when children are involved, they do not excuse long-term spiteful actions.

Respondent does not seriously contend that he was mentally impaired, and he admits that he was not "totally unaware that [he] was engaging in irrational behavior." Respondent did not demonstrate that he has remuneratively more rewarding prospects than his current work, that he himself characterized as paralegal

in nature, and thus he failed to establish that suspension will have a ripple effect of impairing his children's well-being. Respondent's remorse, that the Referee and the Hearing Panel found to be genuine, was not deep enough to deter him from engaging in the same hostile (though less profane) conduct during the pendency of the proceedings. Likewise, his return to bad behavior undermines his cooperation with the investigation. His rehabilitation is aspirational only, and even his therapist thought regression is likely. Thus, any mitigation is slight.

Respondent was not charged with contempt of the disciplinary proceeding for his renewed actions during the pendency of the matter, but at the very least, his conduct demonstrated a failure to appreciate the seriousness of his actions (*see Matter of Brecker*, 309 AD2d 77, 79-80 [2003] [attorney suspended for two years based on the attorney's use of "crude, vulgar, and abusive language" in numerous telephone calls and messages over a short period of time, conviction of criminal contempt and a prior admonition]). Moreover, the attorney in *Brecker* did not file a frivolous action, and his abusive and vulgar statements were uttered over a much shorter period. On balance, it is submitted that respondent's actions warrant a similar two-year suspension.

The three-year suspension the Committee requests appears to be unsupported by precedent. For example, in *Matter of Israel*, 205 AD2d 101 (1994), a three-year suspension was imposed on an

attorney who made three motions designed solely to harass his client, lied under oath, frustrated a judgment against him, neglected or incompetently handled several client matters, and lacked contrition. It is submitted that respondent's conduct was not as serious as in *Israel*, and therefore three years would be too severe a punishment.

Accordingly the Committee's motion is granted to the extent of confirming the findings of fact and conclusions of law as determined by the Hearing Panel and respondent is suspended from the practice of law for a period of two years, and the cross motion is denied.

All concur.

Order filed.