



LexisNexis®

Print and Digital Solutions

New York Civil Practice: Civil Practice Law and Rules (Weinstein, Korn and Miller), Pub. #00805, updated four times per year—2018 releases included the following developments:

Release 169 issued in September 2018 advises that the practitioner should beware of a potential danger associated with using an order to show cause where the statute of limitations is about to expire. The jurisdictional time limits established by CPLR 306-b for service of process apply. As outlined in ¶ 403.02 Time of Service Specified and ¶ 403.04 Order to Show Cause May Be Granted and Served in Lieu of Notice of Petition, where the 15-day period following the expiration of the statute of limitations had expired prior to the date the court signed the order to show cause, it was held the lower court properly dismissed the action. *Matter of Genting N.Y., LLC v. New York City Env'tl. Control Bd.*, 158 A.D.3d 684, 73 N.Y.S.3d 68 (2d Dep't 2018).

Release 170 will be issued in December 2018 and features analysis of the statewide Practice Rules of the Appellate Division (22 NYCRR, part 1250), adopted by the four Judicial Departments of the Appellate Division on December 12, 2017 and revised by joint order on June 29, 2018, which took effect on September 17, 2018. This analysis will continue well throughout 2019.

Until 2018, there were significant variations among the respective Appellate Division Departments. However, as detailed in ¶ 5530.00 Procedural Context of CPLR 5530: Filing and Service, new statewide Practice Rules of the Appellate Division were adopted. While uniformity has been achieved in many respects, there still remain areas of divergence and the Departments have each adopted their own set of supplemental rules.

In addition, electronic filing was implemented in the Appellate Division on March 1, 2018. Practitioners should be particularly aware of the statewide Appellate Division rules (i) requiring the filing of an initial informational statement together with the notice of appeal (except in the Fourth Department); and (ii) providing for the dismissal of a civil appeal for failure to perfect within six months of the date of the notice of appeal.

This initial informational statement on a form approved by the court and in a number directed by the court is to be filed together with the notice of appeal or transfer order and the order or judgment appealed from. See ¶ 5530.04 Additional Required Document—Initial Informational Statement. This is important for the First, Second and Third Departments as they had originally required the filing of their own particular documents with the notice of appeal. While the Fourth Department has opted out of this requirement, it should be noted that in the First Department, the attorneys, parties and any additional parties of interest may be ordered to appear before a special master (or such other person designated by the court) to attend a pre-argument conference. Within 10 days of such an order, respondent's counsel is to file a counterstatement, with proof of service, setting forth (i) any issues proposed to be raised on appeal, if respondent disagrees with the issues identified by the appellant in the informational statement, (ii) how respondent challenges assertions in the informational statement, and (iii) an explanation of the grounds for granting respondent's relief. If the parties enter into a stipulation at the conference, the court is to file an approval order.

SPECIAL ALERT TO NEW YORK CIVIL PRACTICE: CPLR—The statewide Practice Rules of the Appellate Division (22 NYCRR, part 1250), adopted by the four Judicial Departments of the Appellate Division on December 12, 2017, and revised by joint order on June 29, 2018, took effect on September 17, 2018.

Here is the link to the **Practice Rules of the Appellate Division**: <http://www.nycourts.gov/courts/ad1/Part1250PracticeRules.pdf>

In addition, below are links to view the supplemental individual rules adopted by each Department:

Appellate Division, First Department—<http://www.nycourts.gov/courts/ad1/NewLocalRules600.pdf>

Appellate Division, Second Department—<http://www.nycourts.gov/courts/ad2/pdf/Local%20Rules.pdf>

Appellate Division, Third Department—<http://www.nycourts.gov/ad3/Rules%20of%20Practice%20Part%20850.pdf>

Appellate Division, Fourth Department—<https://www.nycourts.gov/courts/ad4/Clerk/Part1000-LocalPracticeRules.pdf>

Also, follow for the continuing implementation of electronic filing in the Appellate Division, which commenced on March 1, 2018. Practitioners should consult the applicable Department Rules for updated information:

First Department: <http://www.nycourts.gov/COURTS/AD1/efiling.html/>

Second Department: <http://www.nycourts.gov/courts/AD2/efiling/>

Third Department: <http://www.nycourts.gov/ad3/>

Fourth Department: <https://ad4.nycourts.gov/efile/>

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Other products or services may be trademarks or registered trademarks of their respective companies. © 2018 LexisNexis. 1118