

The New York State Appellate Division ... and the case of the retroactive rules

This summer has brought the much-anticipated unification of the Appellate practice rules in New York State. The court has compiled Statewide Practice Rules of the Appellate Division, (**22 NYCRR Part 1250**) (http://www.courtalert.com/3229/Part1250PracticeRules_20180703.pdf) that applies to all four appellate divisions. These changes, some of which have taken the community by surprise, come into effect September 17, 2018.

The most surprising was the change in time to perfect an appeal in the appellate division first department. The court, covering New York and Bronx counties, handles some of the country's largest cases. Previously, an appellant had nine (9) months to perfect an appeal. The new rules provide only six (6) months, adopting the practice of the other appellate divisions.

This rule change is not like most other rule changes, this one applies retroactively. On July 26 the court has determined that the new practice rules will apply to (1) all matters commenced in the Appellate Division, or in which a notice of appeal to the Appellate Division is filed, on or after the effective date, and (2) **all matters pending in the Appellate Division on the effective date**, unless otherwise ordered by the Court upon a showing that application of the rules would result in substantial prejudice to a party or would be manifestly unjust or impracticable under the circumstances.

If a party has filed a notice of appeal between December 17, 2017 and February 17, 2018, they had calendared a deadline to perfect of nine months later (September – November 2018). The new rules have moved up the deadline retroactively, and the appeals must be perfected by Monday September 17th (some experts say Friday the 14th). Any NOA filed after will also need to be perfected within six months.

Many firms leverage automatic rules to calculate deadlines. If you used automatic rules to compute these dates please make sure the updates will re-compute previously entered deadlines and your attorneys are properly updated. Any deadlines computed by had should be "adjourned" or re-calendared for the earlier deadline.

Local Practices

Each of the four Appellate Departments have published local rules in addition to the Statewide rules. These rules will take effect on September 17, 2018.

The First Department rescinded (22 NYCRR Part 600) and adopted a new Part 600 (https://www.courtalert.com/newsalert/3229/NewLocalRules600_20180703.pdf)

The Second Department rescinded (22 NYCRR Part 670) and adopted a new Part 670 (https://www.courtalert.com/newsalert/3229/Ad2LocalRules_670_20180703.pdf)

The Third Department rescinded (22 NYCRR Part 800) and adopted a new Part 850 (https://www.courtalert.com/newsalert/3229/Ad3LocalRules_850_20180703.pdf)

The Fourth department adopted a new 22 NYCRR Part 1000
(<https://www.courtalert.com/newsalert/3229/Ad4Part1000LocalPracticeRules.pdf>)

E-Filing Update

Earlier in the spring (April Issue of this newsletter) we have published a primer on electronic filing in the Appellate Divisions which included the electronic procedures that follow the filing of a Notice of Appeal. Those rules (Electronic Filing Rules of the Appellate Division (**22 NYCRR Part 1245**)) are applied in conjunction with the updated Part 1250 rules. To summarize, they set the following procedure: Appellant has 14 days to create the Appellate case and 7 days to serve the Respondent counsel notifying them of the case number. The Respondent has 20 days to enter the case, after which electronic filings are considered served automatically even if they are not appeared.

Since the publication of those rules some of the Appellate Division have expanded the requirements to e-file. For example, as of July 2, 2018, the Second Department has expanded mandatory appellate e-filing to include all matters originating and electronically filed in Supreme and Surrogate's Courts in Suffolk County. Previously only Westchester County had such requirements.

In AD3 filings after July 1 2018, e-filing is required on appeals in those civil proceedings commenced by petition in Supreme Court in which the notice of appeal is filed, transferred proceedings commenced by petition in Supreme Court in which the transfer order was entered and Appeals in civil actions or proceedings commenced in County Court, the Court of Claims and Surrogate's Court in which the notice of appeal is filed. In AD4, as of July 1, for Supreme Court, E-filing continues to be mandatory in all commercial division matters and is now voluntary in all other matters e-filed in the lower court. For Surrogates Court, all matters are required. For those looking ahead, in AD4, e-filing appeals on e-filed NYS Supreme cases will become Mandatory in October, and all other civil cases will be voluntary starting January 2019.

In the First Department, which covers New York County and Bronx County, the requirements have not changed since March 1. E-filing is required commercial matters.

Please do not hesitate to contact us with questions and comments.

We are committed to Remain the Best,

Yaniv Schiller

Chief Operating Officer

yschiller@courtalert.com

CourtAlert www.CourtAlert.com

Support@CourtAlert.com

212-227-0391



