From: Connors, Patrick <pconn@albanylaw.edu>
Sent: Wednesday, July 3, 2024 7:51 PM
To: Center for Judicial Accountability, Inc. (CJA)

Subject: **Re: Mystified by the meaning of your e-mail -- New York Practice -- Is there a statutory basis for Appellate Division decisions stating that no appeal lies from denial of reargument? Etc.**

Yes.

Sent from my iPhone

> On Jul 3, 2024, at 7:39 PM, Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> wrote:
>
> Dear Professor,
>
> Thank you for your prompt response, but I am mystified by its meaning.
>
> Are you saying that your New York Practice contains the answers to the questions I have asked, or not?
>
> Kindly give me some guidance as to what I believe to be straightforward, basic questions.
>
> Thank you.
>
> Elena Sassower

From: Connors, Patrick <pconn@albanylaw.edu>
Sent: Wednesday, July 3, 2024 4:29 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Subject: Re: New York Practice -- Is there a statutory basis for Appellate Division decisions stating that no appeal lies from denial of reargument? Etc.

Dear Ms. Sassower,

I cannot add to what is in the book on these matters.

Patrick Connors

Patrick M. Connors
Albert and Angela Farone Distinguished Professor in New York Civil Practice

Albany Law School
80 New Scotland Ave.
Albany, NY 12208
(518) 445-2322

Author: Siegel & Connors, New York Civil Practice (6th ed. 2018)
https://store.legal.thomsonreuters.com/law-products/Practice-Materials/New-York-Practice-6th-Practitioner-Treatise-Series/p/106154332

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, July 3, 2024 12:59 PM
To: Connors, Patrick <pconn@albanylaw.edu>

Subject: New York Practice -- Is there a statutory basis for Appellate Division decisions stating that no appeal lies from denial of reargument? Etc.

Dear Professor Connors,

Following up the voice mail message I left for you a short time ago (518-445-2322), I would greatly appreciate your answers to the following, as I did not find them in your New York Practice (sixth edition).

Most importantly, is there a statutory basis for the assertion in Appellate Division decisions that no appeal lies from denial of a reargument motion, for which they cite only to other Appellate Division decisions which do not cite to CPLR 2221, CPLR 5517, or to any other statute. As illustrative, *Matter of Walker v Fernandez*, 225 AD3d 1015, 1016 (3rd Dept 2024), stating:

> "No appeal lies from the denial of a motion seeking reargument (*see Matter of Platt v Russo*, 163 AD3d 1379, 1380 [3d Dept 2018]; *Roman v Shabaka*, 80 AD3d 1112, 1113 [3d Dept 2011])."

Also, what are the Appellate Divisions' standards for reviewing denial of motions to vacate pursuant to CPLR 5015(a)(4) ("lack of jurisdiction to render the judgment or order") and pursuant to CPLR 5015 (a)(5) ("fraud, misrepresentation, or other misconduct of an adverse party")? Are they the same as CPLR 5015(a)(1) ("excusable default"), stated in *Luderowski v. Sexton*, 152 AD3d 918, 920 (3rd Dept 2017) to be "clear abuse of [] discretion"?

Finally, am I correct in assuming that the Appellate Divisions' standard for reviewing dismissal motions and summary judgment motions is *de novo* – the same as in federal court, as reflected by *Galvin v. U.S. Bank, N.A.*, 852 F3d, 146, 159 (1st Cir 2017), stating: "We review the motion to dismiss and for summary judgment rulings *de novo*…and the grant of the preliminary injunction for abuse of discretion". Is the

Appellate Divisions' standard for reviewing denial of a preliminary injunction motion (and TRO) "abuse of discretion", but might it also be *de novo*?

Perhaps you are already off celebrating the 4th of July, but if you are able to respond by tomorrow night, either before or after the fireworks, whether by e-mail or by a phone call to me, that would be so greatly appreciated.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org