

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, July 3, 2024 1:00 PM
To: '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no appeal lies from denial of a reargument motion, for which they cite only to other Appellate Division decisions which do not cite to [CPLR 2221](#), [CPLR 5517](#), or to any other statute.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.

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