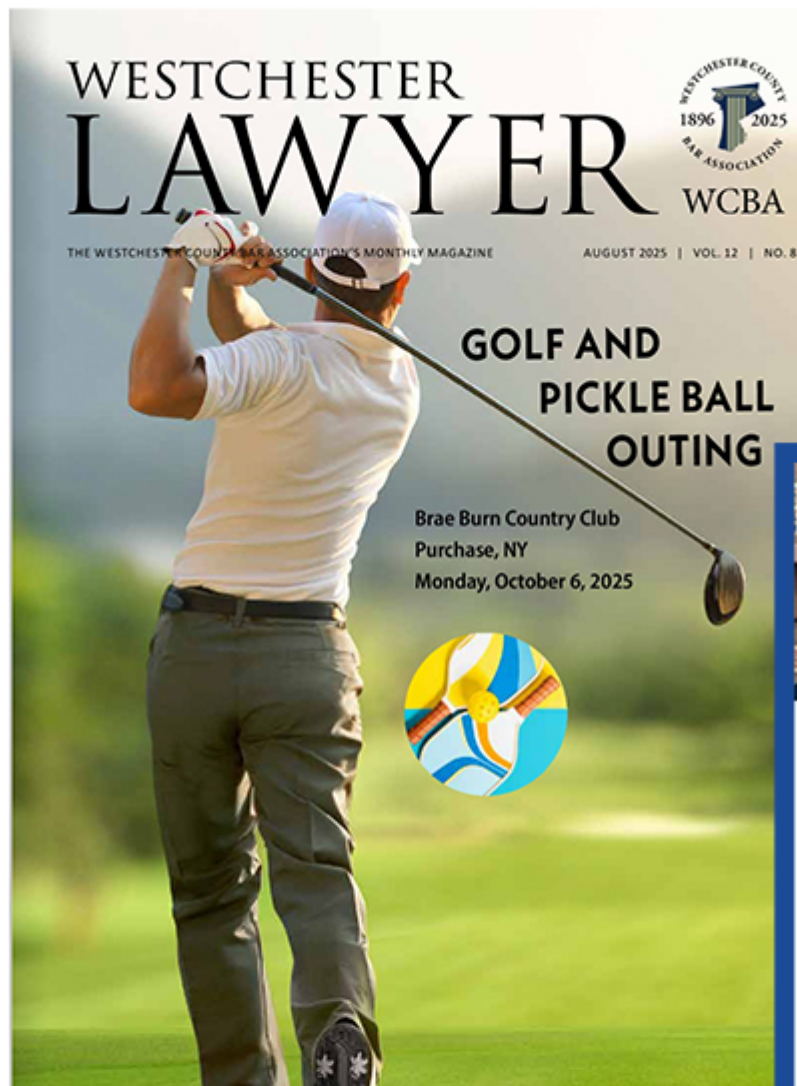

Avoiding Pitfalls in Appellate Records: Lisa Colosi Florio Featured in Westchester Lawyer

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ABOUT
OUTSIDE

By Lisa C

For Westchester litigators and appellate practitioners, recent decisions from the Appellate Division, Second Department involving the record on appeal command attention. In each case, the Court either dismissed a civil appeal¹ or based issues from review² due to defects in the record that rendered it incomplete, improper or insufficient to permit informed review. "Your appeal was dismissed" is not the news anyone wants to deliver to a client. Because these orders are arriving at a fast clip—and often late—some a date night with the statute governing records on appeal, Rule 5526 of New York Civil Practice Law and Rules ("CPLR"), and cases citing it, will be time well spent.

This sounds straightforward, but what is going wrong?

What belongs in the record on appeal?

Rule 5526 of the CPLR ("CPLR 5526") teaches that the record on appeal from a final judgment must include "the notice of appeal, the judgment-roll,³ the corrected transcript of the proceedings... any relevant exhibits... any other reviewable order and any opinions in the case." When the appeal is from an interlocutory judgment or order, the record "shall consist of the notice of appeal, the judgment

or order appealed from, the transcript if any, the papers and other evidence upon which the judgment or order was founded and any opinions in the case."⁴ The point is that the appellate court must have all the documents the trial court reviewed in issuing its judgment or order on appeal—no more and nothing less.

Documents required by Rule 5526 to be included in the record on appeal must be included with the record filed on the Appellate Division's NYSCEF docket. It is not safe to simply refer in your appellate brief to the trial court's NYSCEF docket or physically including them in the appellate record. On the other hand, the record on appeal cannot include documents outside those considered reviewable—those considered "law"—the Court will bar consideration of new materials and any discussion of them as dehors the record.⁵ A request to strike extra material from the record may be advisable if the trial significantly infects the appellate argument but, for minor infractions, a request is a footnote that the disorganized the improper materials any references may be sufficient.

We're proud to share that [Lisa Colosi Florio](#), Partner in our [White Plains office](#) and Co-Chair of the WCBA Appellate Practice Committee, is featured in the [August issue of *Westchester Lawyer*](#).

Her article, "[About, In, On and Outside the Record](#)," addresses a critical issue in appellate litigation: the increasing number of dismissed appeals due to incomplete or improperly prepared records. Lisa highlights common oversights, such as missing NYSCEF document references—and offers practical strategies to help attorneys avoid costly mistakes.

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