

The “failure to file” defect has been interpreted to include both the failure to file initiating pleadings at all, and the failure to file with the proper (county) clerk. *See, e.g. Goldenberg v. Westchester County Health Care Corp.*, 16 N.Y.3d 323 (2011) (absence of a summons was “a complete failure to file within the statute of limitations”); *Matter of Peterkin v. Marcy Houses*, 87 A.D.3d 649 (2d Dept 2011) (failure to file a petition constituted non-waivable jurisdictional defect, rendering the proceeding a “nullity”); *Matter of Miller v. Waters*, 51 A.D.3d 113 (3d Dept 2008) (finding failure to file with the proper clerk to be a defect impacting the court’s subject matter jurisdiction).

Failure to include a return date in notice of petition is not fatal. *Matter of Oneida Pub. Lib. Dist. V. Town Bd. Of the Town of Verona*, 153 A.D.3d 127 (3d Dept 2017); *Matter of Kennedy v. New York State Off. For People With Developmental Disabilities*, 154 A.D.3d 1346 (4<sup>th</sup> Dept. 2017).