

NY CLS CPLR § 3020

Current through 2025 released Chapters 1-207

New York

Consolidated Laws Service >
Civil Practice Law And Rules (Arts. 1 — 100) >
Article 30 Remedies and Pleading (§§ 3001 — 3045)

§ 3020. Verification.

(a) Generally. A verification is a statement, subscribed and affirmed to be true under the penalties of perjury in accordance with rule twenty-one hundred six of this chapter, that the pleading is true to the knowledge of the deponent, except as to matters alleged on information and belief, and that as to those matters such deponent believes it to be true. Unless otherwise specified by law, where a pleading is verified, each subsequent pleading shall also be verified, except the answer of an infant and except as to matter in the pleading concerning which the party would be privileged from testifying as a witness. Where the complaint is not verified, a counterclaim, crossclaim or third-party claim in the answer may be separately verified in the same manner and with the same effect as if it were a separate pleading.

(b) An answer shall be verified:

1. when the complaint charges the defendant with having confessed or suffered a judgment, executed a conveyance, assignment or other instrument, or transferred or delivered money or personal property with intent to hinder, delay or defraud his creditors, or with being a party or privy to such a transaction by another person with like intent towards the creditors of that person, or with any fraud whatever affecting a right or the property of another; or

2. in an action against a corporation to recover damages for the non-payment of a promissory note or other evidence of debt for the absolute payment of money upon demand or at a particular time.

(c) A defense which does not involve the merits of the action shall be verified.

(d) The verification of a pleading shall be made by the affidavit of the party, or, if two or more parties united in interest are pleading together, by at least one of them who is acquainted with the facts, except:

1. if the party is a domestic corporation, the verification shall be made by an officer thereof and shall be deemed a verification by the party;
2. if the party is the state, a governmental subdivision, board, commission, or agency, or a public officer in behalf of any of them, the verification may be made by any person acquainted with the facts; and
3. if the party is a foreign corporation, or is not in the county where the attorney has his office, or if there are two or more parties united in interest and pleading together and none of them acquainted with the facts is within that county, or if the action or defense is founded upon a written instrument for the payment of money only which is in the possession of an agent or the attorney, or if all the material allegations of the pleading are within the personal knowledge of an agent or the attorney, the verification may be made by such agent or attorney.

History

Add, L 1962, ch 308; amd, L 1964, ch 388, § 11, eff Sept 1, 1964; L 1973, ch 88, § 1, eff Sept 1, 1973; L 2024, ch 665, § 2, effective December 21, 2024.

Annotations

Notes

Derivation Notes

Earlier statutes and rules: CPA §§ 248–252; RCP 99; CCP §§ 513, 523 (part), 525, 527, 529, 1778; Code Proc § 157; 2 RS 174, § 41; 2 RS 352, § 7; 2 RS 458, 459, §§ 8–10.

Amendment Notes

The 2024 amendment by ch 665, § 2, in (a), substituted “subscribed and affirmed to be true under the penalties of perjury in accordance with rule twenty-one hundred six of this chapter” for “under oath” and “such deponent” for “he.”

Commentary

PRACTICE INSIGHTS:

VERIFICATION BY PERSONS UNITED IN INTEREST

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INSIGHT

The Uniform Rule (22 NYCRR § 130-1.1a) requiring attorneys to sign all filed papers, thereby certifying that the claims therein are not frivolous, has not obviated the need for verification of pleadings. CPLR 3020(d) defines verification and sets forth the circumstances under which it is required and by whom it must be made. As to the latter, CPLR 3020(d) requires verification by a party and, for two or more united in interest, by at least one with knowledge of the facts, with certain exceptions for domestic and foreign corporations and the State and its subdivisions. CPLR 3020(d) also provides the circumstances which permit an attorney to verify for a party.

ANALYSIS

Vicarious liability unites principle and agent for this purpose.

The Fourth Department affirmed the trial court's refusal to strike the answer of a town snowplow driver who was sued, along with his employer, after a collision between the plow and plaintiff's vehicle. The appellate court agreed that, because the complaint had been verified, subsequent pleadings had to be verified as well (citing CPLR 3020(a)), but held that the town attorney's verification on behalf of his client sufficed for the driver as well because the plaintiff alleged the town to be vicariously liable for his acts, uniting them in interest. *Primeau v. Town of Amherst*, 303 A.D.2d 1035, 757 N.Y.S.2d 201 (4th Dep't 2003).

Verifying party must be at least “acquainted” with facts.

The Third Department reversed the Court of Claims denial of a dismissal motion by the state, which was sued by former and current employees seeking overtime compensation under the Fair Labor Standards Act. The court held that the two verifying employee claimants could hardly be acquainted “with the facts and circumstances of the other 765 co-employees’ overtime claims”. *Lepkowski v. State*, 302 A.D.2d 765, 767, 754 N.Y.S.2d 2d 772, 775 (3d Dep't 2003).

Nevertheless, the Court of Appeals, mooted the verification issue by dismissing the complaint on substantive pleading grounds, cleared up inconsistent appellate interpretations of CPLR 3022 as it related to the Court of Claims and the State’s right to ignore an improperly verified pleading without giving notice to claimant’s counsel or permitting a cure. *Lepkowski v. State*, 1 N.Y.3d 201, 770 N.Y.S.2d 696, 802 N.E.2d 1094 (2003). (Ct. Cl. Act § 11 (b) embraces CPLR 3022’s remedy for lapses in verification). Subsequently, a 2005 amendment to Ct. Cl Act § 11 (c) provided that an objection or defense based upon a failure to comply with the verification requirements is waived unless raised with particularity by a motion to dismiss or in a responsive pleading.

Note that the Court of Appeals distinguished *Lepkowski*, holding that Ct. Cl. Act § 8-b renders jurisdictionally defective a claim verified other than by the claimant, unlike the general verification provision of Ct. Cl. Act § 11(b), which permits verification in the same manner as a complaint. *Long v. State of New York*, 7 N.Y.3d 269, 276, 819 N.Y.S.2d 679, 683, 852 N.E.2d 1150, 1155 (2006). (Ct Cl. Act § 8-b verification requirements specific to unjust

conviction and imprisonment claims makes no reference to the rules governing supreme court practice. “Hence, CPLR 3020(d)(3) and 3022 have no application in this case.”).

A verified pleading can be used as an affidavit.

Pursuant to CPLR 105(u), a verified pleading “may be utilized as an affidavit whenever the latter is required.” This is particularly significant when seeking a default judgment, because a verified complaint can be used as an affidavit of the facts constituting the claim and the amount due. See CPLR 3215(f). However, for a verified complaint to be used on an application for a default judgment, generally it must be verified by the party, as opposed to party’s counsel. See *Knudsen v. Green Mach. Landscaping, Inc.*, 223 A.D.3d 792, 203 N.Y.S.3d 396 (2d Dep’t 2024) (“Here, the Supreme Court properly denied the plaintiff’s motion for leave to enter a default judgment against Murphy, as the plaintiff failed to satisfy his initial burden of submitting ‘proof of the facts constituting the claim’ (CPLR 3215[f]). Although a verified complaint ‘may be used as the affidavit of the facts constituting the claim,’ the plaintiff could not rely on the contents of the complaint since it was verified only by the plaintiff’s attorney and not by the plaintiff himself (citations omitted). Further, the plaintiff’s affidavit submitted in support of his motion failed to set forth facts sufficient to satisfy his burden of establishing a viable cause of action against Murphy (citations omitted).”); *First Franklin Fin. Corp. v. Alfau*, 157 A.D.3d 863, 70 N.Y.S.3d 518 (2d Dep’t 2018) (“Nevertheless, the plaintiff failed to submit the requisite proof of the facts constituting the claim (citation omitted). ‘While a verified complaint may be used as the affidavit of the facts constituting the claim, it must contain evidentiary facts from one with personal knowledge’ (citations omitted). ‘[A] pleading verified by an attorney pursuant to CPLR 3020 (d) (3), and not by someone with personal knowledge of the facts, is insufficient to establish its merits’ (citations omitted). On its motion, the plaintiff submitted the complaint, verified only by counsel, and an affirmation of counsel, with counsel having no personal knowledge of the facts. The plaintiff also submitted an affidavit of a representative of the loan servicer attesting to a default, but failing to address the relevant questions relating to the fact that the mortgagor did

not own the subject property, whether the relevant documents should be reformed, or whether an equitable lien or mortgage should be imposed.”).

Advisory Committee Notes

The former practice as to verification of pleadings has been continued.

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I. Under CPLR

1. In general; sufficiency

Petition for review of findings of State Human Rights Appeal Board was properly verified by petitioner's attorney where all facts were stated to be within attorney's knowledge and no prejudice was shown to justify dismissal. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v State Div. of Human Rights*, 48 A.D.2d 391, 370 N.Y.S.2d 96, 1975 N.Y. App. Div. LEXIS 9900 (N.Y. App. Div. 1st Dep't 1975).

In action in which recovery was sought for work, labor and services and in which defendant corporation's attorney verified the answer and based his knowledge on information received from corporation's comptroller, Special Term could not rule as matter of law that comptroller lacked knowledge and dismiss answer on such ground. *Two Clinton Square Corp. v Gorin Stores, Inc.*, 51 A.D.2d 643, 377 N.Y.S.2d 845, 1976 N.Y. App. Div. LEXIS 10986 (N.Y. App. Div. 4th Dep't 1976).

Juvenile delinquency petition was not jurisdictionally defective on ground that hearsay complaint and non-hearsay supporting deposition were unsworn because they bore only "form notice" under CLS CPL § 100.30(1)(d), or because documents should have been verified pursuant to CLS CPLR § 3020 as required by CLS Family Ct Act § 311.1(4). *In re Celeste S.*, 187 A.D.2d 274, 589 N.Y.S.2d 432, 589 N.Y.S.2d 433, 1992 N.Y. App. Div. LEXIS 12639 (N.Y. App. Div. 1st Dep't 1992).

Proposed amended answers were properly rejected where not verified, and there was no merit to contention that plaintiff waived lack of verification by failing to return proposed amended answers where plaintiff had never been served with them. *Key Bank v Zahn*, 241 A.D.2d 922, 661 N.Y.S.2d 372, 1997 N.Y. App. Div. LEXIS 7856 (N.Y. App. Div. 4th Dep't 1997).

In action alleging that board of education breached certain provisions of collective bargaining agreement negotiated by teachers' union, court should have dismissed complaint with respect to individual plaintiffs who failed to verify notice of claim served under CLS Educ § 3813. *Buffalo*

Retired Teachers 91-94 Alliance v Board of Educ., 261 A.D.2d 824, 689 N.Y.S.2d 562, 1999 N.Y. App. Div. LEXIS 4855 (N.Y. App. Div. 4th Dep't 1999).

Deficient verification of pleading is not jurisdictional defect rendering pleading nullity, and such deficiency may be disregarded, where there is no showing of prejudice. City of Rennselaer v Duncan, 266 A.D.2d 657, 698 N.Y.S.2d 113, 1999 N.Y. App. Div. LEXIS 11412 (N.Y. App. Div. 3d Dep't 1999).

Verification of a complaint is a matter of choice on the part of the plaintiff, the only exception in the CPLR being the complaint in a subsequent action brought by a judgment creditor against co-obligor who was not summoned in the original action. The petition in an action by one alleging an interest in property levied upon by a judgment creditor does not need to be verified, and a defectively verified pleading should be treated as an unverified pleading. Joseph Durst Corp. v Leader, 51 Misc. 2d 72, 272 N.Y.S.2d 448, 1966 N.Y. Misc. LEXIS 2322 (N.Y. Sup. Ct. 1966).

The verification of an answer in the form of an affirmation by an attorney associated with the attorney of record for defendant was a sufficient compliance with CPLR 3020. Teichman v Ker, 60 Misc. 2d 789, 303 N.Y.S.2d 985, 1969 N.Y. Misc. LEXIS 1197 (N.Y. Sup. Ct. 1969).

Verification of summary proceeding by business agent of corporate landlord was valid under CPLR § 3020, subd d (3) where statement in verification that said agent had read petition and that he knew the contents thereof, etc. was tantamount to an allegation that all of the material facts therein were within agent's personal knowledge. Verification of summary proceeding pursuant to Real Property Actions and Proceedings Law § 741 must be accomplished by such persons as are delineated by a joint reading of CPLR § 402 and § 3020. Teachers College v Wolterding, 75 Misc. 2d 465, 348 N.Y.S.2d 286, 1973 N.Y. Misc. LEXIS 1628 (N.Y. Civ. Ct. 1973), rev'd, 77 Misc. 2d 81, 351 N.Y.S.2d 587, 1974 N.Y. Misc. LEXIS 1089 (N.Y. App. Term 1974).

Where papers filed by surviving spouse, in connection with her application to compel executors of husband's estate to turn over certain assets and policy on life of husband, adequately

apprised court and opposing party of relief requested, contents of application were sworn to with nothing in papers alleged as being upon information or belief, and no prejudice was shown by executors, defective verification of petition would, in the interests of justice, be treated as irregularity that could be disregarded, and thus surrogate's court had jurisdiction of matter on papers filed. *In re Estate of Johnson*, 88 Misc. 2d 364, 388 N.Y.S.2d 252, 1976 N.Y. Misc. LEXIS 2616 (N.Y. Sur. Ct. 1976).

Where jurat on complaint disclosed that it was executed in New York but was sworn to before a New Jersey notary, the verification was defective and defendant was justified in treating the complaint as unverified and, hence, defendant's unverified answer could not be treated as a nullity. *Bambergers Div. of R. H. Macy Co. v Smith*, 91 Misc. 2d 856, 398 N.Y.S.2d 945, 1977 N.Y. Misc. LEXIS 2431 (N.Y. County Ct. 1977).

Verification of petition in nonpayment summary proceeding was not defective due to absence of statement as to why it was not made by petitioner in accordance with CLS CPLR § 3021, for although verification should incorporate reference to CLS RPAPL § 741 authorizing verification by attorney, absence of such reference was at most amendable irregularity which could be disregarded. *Cucinotta v Saljon Enterprises, Ltd.*, 140 Misc. 2d 681, 532 N.Y.S.2d 39, 1988 N.Y. Misc. LEXIS 508 (N.Y. Civ. Ct. 1988).

State's motion to dismiss an inmate's negligence suit was denied because, although the inmate's counsel failed to provide information required in order to permit her to make the verification instead of the inmate, and the notice of claim was thus improperly verified and defective, the State's rejection letter, which stated only that the claim did not contain the required verification language, did not specify the defect with sufficient specificity, and thus the claim was not properly rejected; since the rejection was insufficient, it had no effect. It was as if the claim had not been returned, and as the claim was otherwise timely, the State's purported rejection was of no effect. *Matter of Steele v State of New York*, 855 N.Y.S.2d 329, 19 Misc. 3d 766, 2008 N.Y. Misc. LEXIS 1727 (N.Y. Ct. Cl. 2008).

Verification by just one claimant on behalf of hundreds of purported claimants for unpaid overtime compensation was not adequate to satisfy jurisdictional requirements where there was no reason to suppose that the verifying claimants were familiar with the factual premises underlying the non-verifying claimants' claims. *Lepkowski v State*, 302 A.D.2d 765, 754 N.Y.S.2d 772, 2003 N.Y. App. Div. LEXIS 1502 (N.Y. App. Div. 3d Dep't), *aff'd*, 1 N.Y.3d 201, 770 N.Y.S.2d 696, 802 N.E.2d 1094, 2003 N.Y. LEXIS 4061 (N.Y. 2003).

Where a complaint is verified, all subsequent pleadings also must be verified pursuant to N.Y. C.P.L.R. 3020(a), but, where there are two or more parties in interest, and they are pleading together, only one of the parties who is acquainted with the facts must verify the pleading pursuant to N.Y. C.P.L.R. 3020(d); thus, in an action by plaintiff motorist against defendants, a town and its employee, seeking damages for personal injuries which the motorist suffered when the motorist's vehicle was struck by a snowplow operated by the employee, the trial court properly denied those parts of the motorist's motion which sought to strike the employee's answer for lack of verification by the employee and to compel the employee to provide proper verification to defendants' answer and bill of particulars, as the town's attorney, who was an officer of the town, properly verified the pleading for the town, and that verification also sufficed for the employee because the motorist effectively united the two defendants in interest by alleging that the town was vicariously liable for its employee's actions. *Primeau v Town of Amherst*, 303 A.D.2d 1035, 757 N.Y.S.2d 201, 2003 N.Y. App. Div. LEXIS 2960 (N.Y. App. Div. 4th Dep't 2003).

Clear language in N.Y. Fam. Ct. Act §§ 360.2 and 311.2(3) requires that nonhearsay allegations of the factual part of a petition or of any supporting depositions establish, if true, every element of each crime charged against a juvenile's commission thereof; in a petition for a juvenile's violation of probation, the petition must be verified and subscribed by the probation service or the appropriate presentment agency under N.Y. Fam. Ct. Act § 360.2(2). Under N.Y. Fam. Ct. Act § 311.1(4), a petition shall be verified in accordance with the New York Civil Practice Laws and Rules and shall conform to the provisions of N.Y. Fam. Ct. Act § 311.2; N.Y. C.P.L.R. 3020

defines verification as a statement under oath that the pleading is true to the knowledge of the deponent, except as to matters alleged on information and belief, and that as to those matters he believes it to be true. *Matter of C.S.*, 813 N.Y.S.2d 639, 12 Misc. 3d 302, 2006 N.Y. Misc. LEXIS 519 (N.Y. Fam. Ct. 2006).

Because the apparent lack of a factual basis for a credit card assignee's claim, as required by N.Y. C.P.L.R. 3020, rendered its conduct frivolous within the meaning of N.Y. Comp. Codes R. & Regs. tit. 22, § 130-1.1(c)(3), it was required to pay the credit card debtor's attorneys fees as a sanction. *Worldwide Asset Purch., LLC v Akrofi*, 884 N.Y.S.2d 631, 25 Misc. 3d 768, 2009 N.Y. Misc. LEXIS 2166 (N.Y. City Ct. 2009).

Allegations in a wife's complaint, seeking a divorce on the ground of irretrievable breakdown of the marriage pursuant to N.Y. Dom. Rel. Law § 170(7), were sufficiently specific for purposes of the husband's dismissal motion under N.Y. C.P.L.R. 3016(c); as the complaint was verified by the wife, pursuant to N.Y. C.P.L.R. 3020, the "stated under oath" pleading requirement was met pursuant to N.Y. C.P.L.R. 105(u), which allowed the verified complaint to be used as an affidavit. *Strack v Strack*, 916 N.Y.S.2d 759, 31 Misc. 3d 258, 2011 N.Y. Misc. LEXIS 169 (N.Y. Sup. Ct. 2011).

Verification requirement in N.Y. Ct. Cl. Act § 8-b(4) is specific to claims for unjust conviction and imprisonment and makes no reference to the rules governing supreme court practice; hence, N.Y. C.P.L.R. 3020(d)(3) and 3022 have no application. *Long v State of New York*, 7 N.Y.3d 269, 819 N.Y.S.2d 679, 852 N.E.2d 1150, 2006 N.Y. LEXIS 1829 (N.Y. 2006).

2. When answer must be verified

With respect to a complaint by a decedent's nephews, alleging that he had named them as beneficiaries of a life insurance policy and then changed the beneficiary to the estate executrix (EE) due to her fraud, although the EE failed to verify her answer, that defect was waived by the beneficiaries' failure to act with "due diligence." *Larke v Moore*, 150 A.D.3d 1620, 54 N.Y.S.3d 239, 2017 N.Y. App. Div. LEXIS 3578 (N.Y. App. Div. 4th Dep't 2017).

Where complaint in negligence action arising out of an automobile collision is verified and alleges that defendant was operating his car while drunk and in violation of the law, defendant, whose appeal from a conviction for driving while intoxicated is pending, can serve an unverified answer only as to those matters alleged in complaint concerning which he would be privileged from testifying as a witness, but not as to other matters alleged. *Knight v Maybee*, 44 Misc. 2d 152, 253 N.Y.S.2d 59, 1964 N.Y. Misc. LEXIS 1382 (N.Y. Sup. Ct. 1964).

In civil plenary action by State to recover unrecouped balance due on two state lottery tickets which had been forged, defendant, who claimed to exercise privilege to refuse, by verification, to expose himself to penalties, forfeiture or crimes, was not required to verify answer despite contention that such privilege should not be extended to give defendant right not to verify answer since defendant had entered guilty plea to forging one ticket and was no longer subject to criminal prosecution. *State v McMahon*, 78 Misc. 2d 388, 356 N.Y.S.2d 933, 1974 N.Y. Misc. LEXIS 1411 (N.Y. Sup. Ct. 1974).

3. By whom verification made

Personal injury plaintiffs were not entitled to amend their complaint to enlarge period of defendants' alleged negligence where proposed amended complaint was not verified by party, plaintiffs submitted only affidavits of their attorneys, who lacked personal knowledge of underlying facts of tort action, plaintiffs failed to proffer any adequate explanation for their delay in seeking amendment, they failed to set forth any new or additional fact to support amendment, and amendment potentially would prejudice defendants' case. *Morgan v Prospect Park Assocs. Holdings, L.P.*, 251 A.D.2d 306, 674 N.Y.S.2d 62, 1998 N.Y. App. Div. LEXIS 6324 (N.Y. App. Div. 2d Dep't 1998).

Petition to validate designating petitions for election candidates was properly verified by one individual, as he was "united in interest" with the other petitioners. *Matter of Notholt v Nassau County Bd. of Elections*, 131 A.D.3d 641, 16 N.Y.S.3d 68, 2015 N.Y. App. Div. LEXIS 6502 (N.Y. App. Div. 2d Dep't 2015).

§ 3020. Verification.

Infant nineteen years of age, competent to testify at trial, is competent to verify a pleading. *Serani v Rowe*, 43 Misc. 2d 307, 250 N.Y.S.2d 918, 1964 N.Y. Misc. LEXIS 1726 (N.Y. Sup. Ct. 1964).

The purpose of CPLR § 3020, subd d (1) is to require an individual to answer under oath, subject to the penalties of perjury, the allegations made by the verified complaint. Under CPLR § 3020, subd d(1), corporate officer who was never present during conversations involving alleged misrepresentations by employee of corporation could not verify corporation's general denial. *Kopanski v Hawk Sales Co.*, 76 Misc. 2d 348, 350 N.Y.S.2d 533, 1973 N.Y. Misc. LEXIS 1482 (N.Y. Sup. Ct. 1973).

Since "unity in interest" was present with respect to 51 petitioners in an Article 78 proceeding, it was not necessary that their petition be verified by all parties. In any event, where respondents noted the lack of complete verification only some two months after the petition was served any failure by all petitioners to verify the pleading was waived. *Betzler v Carey*, 109 Misc. 2d 881, 441 N.Y.S.2d 206, 1981 N.Y. Misc. LEXIS 2489 (N.Y. Sup. Ct. 1981), *aff'd*, 91 A.D.2d 1116, 458 N.Y.S.2d 338, 1983 N.Y. App. Div. LEXIS 16455 (N.Y. App. Div. 3d Dep't 1983).

In tort action against state, it is not required that bill of particulars in state's verified answer be sworn to by person with actual knowledge of facts, since CLS CPLR § 3020 requires only that verification be made by person acquainted with facts when party is state, and requirement may be met by particular Assistant Attorney General assigned to claim when he deposes, on information and belief, that contents of verified answer are true, and that his sources are "records and statements of officers, agents and employees" of state; pleader may become "acquainted" with facts through secondary sources, provided he identifies them. *Blake v State*, 134 Misc. 2d 892, 513 N.Y.S.2d 337, 1987 N.Y. Misc. LEXIS 2125 (N.Y. Ct. Cl. 1987), *aff'd*, 150 A.D.2d 992, 543 N.Y.S.2d 602, 1989 N.Y. App. Div. LEXIS 7835 (N.Y. App. Div. 1st Dep't 1989).

State's motion to dismiss an administratrix's claim for her deceased son was denied because the claim was procedurally compliant with the applicable statutes where it was impossible for the son to personally verify and the claim and the mother was issued letters of administration

for his estate. *Austin v State of New York*, 49 Misc. 3d 282, 11 N.Y.S.3d 806, 2015 N.Y. Misc. LEXIS 2284 (N.Y. Ct. Cl. 2015).

4. —Attorney

A validation proceeding was properly dismissed since Elec Law § 16-116 provides that a special proceeding brought under Article 16 shall be heard upon a verified petition and in the case of proceedings instituted by the State Board of Elections the petition must be verified by a person specified in accordance with rules promulgated by the State Board of Elections but the Legislature has not otherwise required that the verification be made by any particular person, and therefore the question of who could verify the petition would be governed by CPLR§ 3020, which permitted the attorney to verify when, as here, he had an office in the county other than the one in which the petitioners were. *Tenneriello v Board of Elections*, 63 N.Y.2d 700, 479 N.Y.S.2d 978, 468 N.E.2d 1115, 1984 N.Y. LEXIS 4548 (N.Y. 1984).

Where defendant corporation was not in county in which action was brought, its attorney could properly verify the answer. Defendant's attorney's verification of answer and affidavit in response to plaintiff's motion for summary judgment could not be considered, in ruling on such motion, where attorney lacked personal knowledge of the facts. *Two Clinton Square Corp. v Gorin Stores, Inc.*, 51 A.D.2d 643, 377 N.Y.S.2d 845, 1976 N.Y. App. Div. LEXIS 10986 (N.Y. App. Div. 4th Dep't 1976).

Where plaintiff was in Israel, counsel who in his affirmation indicated that he had obtained knowledge of purported conspiracy by reason of his presence at pretrial examination of defendant and his search of mortgage records in register's office could furnish sufficient affidavit for purposes of motion for leave to serve verified second amended complaint containing amplified third cause. On motion for leave to amend pleading, attorney's affidavit cannot be accepted in lieu of party's affidavit unless attorney has personal knowledge of facts upon which motion is based. *Davidowitz v Dixie Associates*, 59 A.D.2d 659, 398 N.Y.S.2d 284, 1977 N.Y. App. Div. LEXIS 13572 (N.Y. App. Div. 1st Dep't 1977).

Board of condominium managers' motion for summary judgment in its action seeking injunctive relief for violation of condominium bylaws, which was supported solely by attorney's affirmation, was improper where attorney was also member of board; however, defect was merely technical procedural irregularity which did not prejudice defendant, and thus could be disregarded. *Board of Managers of Ocean Terrace Towne House Condominium v Lent*, 148 A.D.2d 408, 538 N.Y.S.2d 824, 1989 N.Y. App. Div. LEXIS 2445 (N.Y. App. Div. 2d Dep't), app. denied, 75 N.Y.2d 702, 551 N.Y.S.2d 906, 551 N.E.2d 107, 1989 N.Y. LEXIS 4441 (N.Y. 1989).

Lack of judicial determination as to 5-year-old victim's competency to take oath did not warrant dismissal of petition in juvenile delinquency proceeding where petition was verified by assistant district attorney who swore that he had read statements in petition and knew contents to be true to his knowledge, except as to matters stated to be on information and belief. *In re Henry M.*, 194 A.D.2d 606, 599 N.Y.S.2d 291, 1993 N.Y. App. Div. LEXIS 5594 (N.Y. App. Div. 2d Dep't 1993).

Provision of CLS CPLR § 3020(d)(3) pertaining to attorney verification did not apply where it was uncontroverted that both plaintiff's residence and plaintiff's attorney's office were located within same county. *Berger v Feinerman*, 203 A.D.2d 407, 610 N.Y.S.2d 556, 1994 N.Y. App. Div. LEXIS 3971 (N.Y. App. Div. 2d Dep't 1994).

Verification of petition by petitioner's counsel in proceeding under CLS Elec § 16-102 satisfied requirements imposed by CLS Elec § 16-116; CLS CPLR § 3020(d)(3) permits verification to be made by attorney where party in question does not reside in county where attorney has office. *Page v Ceresia*, 265 A.D.2d 730, 697 N.Y.S.2d 373, 1999 N.Y. App. Div. LEXIS 11228 (N.Y. App. Div. 3d Dep't 1999).

Candidate did not waive a claim that a petition verified by an election objector's attorney was defective by failing to exercise his right to treat the petition as a nullity because the candidate could not have objected to the alleged improper verification by returning the petition to the attorney with due diligence inasmuch as the petition served on the candidate was verified by the objector himself; the candidate failed to show he was prejudiced by the alleged defect.

Matter of Angletti v Morreale, 131 A.D.3d 808, 15 N.Y.S.3d 532, 2015 N.Y. App. Div. LEXIS 6527 (N.Y. App. Div. 4th Dep't), aff'd, 25 N.Y.3d 794, 37 N.E.3d 1144, 16 N.Y.S.3d 502, 2015 N.Y. LEXIS 2139 (N.Y. 2015).

In an action by automobile occupants (AOs) against an insurer, seeking recovery of an unsatisfied judgment against its insured, the trial court erred in denying the AOs' motion for leave to enter a default judgment against the insurer, as they satisfied all the requirements for a default judgment, and their attorney's firsthand knowledge of the facts supported his affirmation and verification of the complaint. Clarke v Liberty Mut. Fire Ins. Co., 150 A.D.3d 1192, 55 N.Y.S.3d 400, 2017 N.Y. App. Div. LEXIS 4188 (N.Y. App. Div. 2d Dep't 2017).

In a foreclosure action, the trial court properly denied plaintiff's motion to enter a default judgment, to appoint a referee, and to reform the mortgage because the complaint was verified only by counsel, who had no personal knowledge of the facts, and its motion papers failed to address the fact that defendant mortgagor did not own the property, whether documents should be reformed, or whether an equitable lien or mortgage should be imposed. First Franklin Fin. Corp. v Alfau, 157 A.D.3d 863, 70 N.Y.S.3d 518, 2018 N.Y. App. Div. LEXIS 445 (N.Y. App. Div. 2d Dep't 2018).

Where bill of particulars was signed by plaintiff's attorney and not by plaintiff, excuse that plaintiff was a traveling salesman and not within the county at the time of the verification did not meet requirement laid down in CPLR 3020. Baldwin v Tinker, 48 Misc. 2d 362, 264 N.Y.S.2d 855, 1965 N.Y. Misc. LEXIS 1358 (N.Y. Sup. Ct. 1965).

Since subdivision (d) 3 of this section specifically permits an attorney to verify an answer in certain situations, an answer need not be verified by a corporate officer to the exclusion of all others. It was of slight, if any, consequence that defendant's attorney affirmed rather than verified the answer, where the affirmance was based on conversations had with defendant's officers and on personal knowledge. Kreiling v Jayne Estates, Inc., 51 Misc. 2d 895, 274 N.Y.S.2d 291, 1966 N.Y. Misc. LEXIS 1420 (N.Y. Sup. Ct. 1966).

A petition in a summary proceeding may be verified by the petitioner's attorney rather than by the petitioner where the petitioner was out of the State when the petition was made and the attorney himself had full personal knowledge of its allegations, since either of these facts is sufficient to permit verification by the attorney. *Gamliali v Tower of David*, 94 Misc. 2d 763, 405 N.Y.S.2d 570, 1978 N.Y. Misc. LEXIS 2359 (N.Y. Civ. Ct. 1978).

In a summary proceeding for the nonpayment of rent, the verification of the petition by the petitioner's attorney based only on indirect knowledge of the facts does not fulfill the requirements of section 741 of the Real Property Actions and Proceedings Law in that the requisite factual showing must be made by a person with direct knowledge of the facts, and this may not be circumvented by the attorney's verification pursuant to CPLR 3020 (subd [d], par 3), since such a verification cannot present reliable factual information upon which the proceeding must be based. *Fisch v Chason*, 99 Misc. 2d 1089, 418 N.Y.S.2d 495, 1979 N.Y. Misc. LEXIS 2397 (N.Y. Civ. Ct. 1979).

Election Law § 16-116 petition was procedurally defective as: (1) it was not verified or notarized; (2) it was not signed by petitioner; (3) the attorney signed the petition without explaining why the statements in the petition were made by him, rather than petitioner, and his attempt to justify his signature in his reply failed as the verification requirement was jurisdictional and could not be cured by amendment; and (4) without the initial verification signed by the petitioner, or at least a valid attorney verification, the floodgates were wide open for shortcuts, fraud, and chicanery in an area of the law that needed to assure that such possibilities were limited. *Rodriguez v Westchester County Bd. of Elections*, 47 Misc. 3d 956, 5 N.Y.S.3d 826, 2015 N.Y. Misc. LEXIS 552 (N.Y. Sup. Ct. 2015).

Affirmative defenses and other contentions raised in a political candidate's answer—in a special proceeding which was brought by a verified invalidating petition—were unverified because, although the candidate was an admitted attorney and the candidate's answer included a verification affirmed under penalties of perjury, an attorney was permitted to use an affirmation only when the attorney was not a party to the proceeding. Thus, the candidate's use of an

affirmation was improper, thereby leaving the candidate's answer unverified. *Matter of Ellman v Grace*, 75 Misc. 3d 776, 171 N.Y.S.3d 306, 2022 N.Y. Misc. LEXIS 2028 (N.Y. Sup. Ct. 2022).

Whether or not a nunc pro tunc amendment to a notice of intention to file a claim might have been available to correct a defective verification by an attorney, it was denied as futile because causes of action premised upon intentional tort were untimely served and other tort claims lacked particularity. An application, in the alternative, for late claim relief was unavailing because negligence-based claims and intentional tort claims were outside their respective statutes of limitations. *Valverde v State of New York*, 83 Misc. 3d 283, 206 N.Y.S.3d 860, 2023 N.Y. Misc. LEXIS 24347 (N.Y. Ct. Cl. 2023).

5. —Agent or attorney of landlord

While it is true that a summary proceeding may be brought by an agent of the landlord, if it is, the petition must then be that of the agent, subscribed and verified by him. Where the title of the proceeding states that the landlord is a petitioner and petitioner asserts that it is the petition of the landlord, the petition must be subscribed or verified by the landlord, and in such a case the petition is defective where it is subscribed and verified by one who alleges that he is the agent for the landlord. *Goldman Bros. v Forester*, 62 Misc. 2d 812, 309 N.Y.S.2d 694, 1970 N.Y. Misc. LEXIS 1797 (N.Y. Civ. Ct. 1970).

In a proceeding under Article 7 of the Real Property Actions and Proceedings Law, where the proceeding was brought by the landlord and the petition was verified by his attorney, such verification was bad where the attorney was not named as the petitioner, and no facts were alleged which showed that the case was one under CPLR 3020(d)(3), where a representative's verification was proper. *Hirent Realty Corp. v Mosley*, 64 Misc. 2d 1011, 317 N.Y.S.2d 592, 1970 N.Y. Misc. LEXIS 1103 (N.Y. Civ. Ct. 1970).

Since an attorney for the landlord is a proper party petitioner in a nonpayment summary proceeding, the attorney is the proper person to verify the petition. *Fitzgerald v Washington*, 80 Misc. 2d 861, 365 N.Y.S.2d 598, 1975 N.Y. Misc. LEXIS 2277 (N.Y. Civ. Ct. 1975).

Where proceeding to recover possession of real property for alleged nonpayment of rent was commenced in name of attorney of landlord, the proceeding was jurisdictionally defective in view of statute in effect barring attorney of landlord from maintaining such proceeding. Where landlord was domestic corporation with office in county in which its attorney had his office, verification by attorney, in proceeding to recover possession of realty for alleged nonpayment of rent, was not authorized, requiring dismissal of petition, even though officers of corporation were out of town at time of verification. *Zisser v Bronx Cigar Corp.*, 91 Misc. 2d 1025, 399 N.Y.S.2d 109, 1977 N.Y. Misc. LEXIS 2472 (N.Y. Civ. Ct. 1977).

In a landlord-tenant summary proceeding the petition would be dismissed with leave to the landlord to serve a duly verified amended petition in order to permit the landlord to cure a defect and yet avoid undue delay that would result from a termination of the proceeding, where the landlord's attorney failed to comply with the requirements of CPLR §§ 3020(d), 3021 by failing to set forth in his affidavit the "grounds of his belief as to all matters not stated upon his knowledge" and the reason why the party had not made the affidavit. *Lefrak v Robinson*, 115 Misc. 2d 256, 454 N.Y.S.2d 571, 1982 N.Y. Misc. LEXIS 3669 (N.Y. City Ct. 1982).

II. Under Former Civil Practice Laws

A. In General

6. Generally

Where, in an action for goods obtained by false representation, the facts were set forth in the complaint and were also established by affidavits used on a motion to obtain the arrest of the defendant, such order of arrest would not be vacated, although the verification of the complaint was defective because taken by a notary in New Jersey, whereas the venue was laid in New York; such complaint was good as an unverified complaint, and CPA §§ 816 (Rule 6112(a) herein), 833 (Rule 6112(a) herein) allowed the facts necessary to an arrest in such action to be

shown by affidavit. *Vorhees Rubber Mfg. Co. v McEwen*, 111 A.D. 541, 97 N.Y.S. 942, 1906 N.Y. App. Div. LEXIS 215 (N.Y. App. Div. 1906).

Where endorsement on summons was indefinite and conclusory, without stating terms of contract or what breach consisted of, proper exercise of discretion required granting of motion to compel service of verified complaint. *Grasson v Mottola*, 122 N.Y.S.2d 827, 1953 N.Y. Misc. LEXIS 1889 (N.Y. App. Term 1953).

7. Courts

Summary judgment may be granted in the municipal court even though the pleadings are not verified. *Mosca v J. H. Parker-Aeolus, Inc.*, 223 N.Y.S. 684, 130 Misc. 186, 1927 N.Y. Misc. LEXIS 1014 (N.Y. Mun. Ct. 1927).

8. Verification as part of pleading

A verification is no part of a complaint. Therefore a new complaint served after answer, which was in all respects like the original except that it was verified, is not an amended complaint. *George v McAvoy*, 6 How Pr 200, NY Code R NS 318.

9. Statements as evidence

Where the verification is made by the party, the statements contained therein are evidence against him on the trial. *Morell v Cawley*, 17 Abb Pr 76. Not so if the verification is by a person not a party. *Bowen v Powell*, 1869 N.Y. App. Div. LEXIS 157 (N.Y. Sup. Ct. Feb. 1, 1869).

B. Necessity

10. Generally

Where defendant in an action by his wife to recover for necessities while they were living apart set up a defense that prior to the alleged expenditures the wife committed acts of adultery in France and had been convicted of adultery on proof of such acts, and that defendant had been granted a divorce by the courts of that country on the ground of adultery, neither CPA § 248 nor CPA § 355 (§ 4051 herein), entitled her to be excused from making a verified reply. *Gould v Gould*, 201 A.D. 674, 194 N.Y.S. 742, 1922 N.Y. App. Div. LEXIS 6387 (N.Y. App. Div. 1922).

Mental Hygiene Law § 74, as am L 1955 ch 794, deleting requirement of notarization of signature of petitioner and examining physicians, held unconstitutional. *Application of Allen*, 142 N.Y.S.2d 547, 207 Misc. 1036, 1955 N.Y. Misc. LEXIS 2827 (N.Y. County Ct. 1955).

In proceeding to commit allegedly insane person, examining physicians are required to certify under oath their findings and petitioner is required to verify his petition before duly constituted officer competent to administer oaths before any further proceeding may be taken. In re *Application of Kenny*, 154 N.Y.S.2d 55 (N.Y. County Ct. 1956).

Where an answer to an unverified complaint, itself unverified, is served, the plaintiff cannot subsequently verify his complaint and move to set aside the answer. *White v Bennett*, 7 How. Pr. 59, 1852 N.Y. Misc. LEXIS 80 (N.Y. Sup. Ct. June 1, 1852).

11. Privilege not to verify

If any part of the pleading would excuse a party from testifying, or if there is more than one party, and any one would be privileged, verification may be omitted. The criterion is whether if called as a witness the party would be excused from answering. *Henry v Bank of Salina*, 1 N.Y. 83, 1 N.Y. (N.Y.S.) 83, How. A. Cas. 173, 1847 N.Y. LEXIS 7 (N.Y. 1847).

Accusatory matter contained in the pleading will only excuse verifying answer; new matter showing that plaintiff's claim is founded on or connected with an offense of defendants will not. *Fredericks v Taylor*, 52 N.Y. 596, 52 N.Y. (N.Y.S.) 596, 1873 N.Y. LEXIS 303 (N.Y. 1873).

The question should be decided by a motion to strike it out or to compel its acceptance. *Fredericks v Taylor*, 52 N.Y. 596, 52 N.Y. (N.Y.S.) 596, 1873 N.Y. LEXIS 303 (N.Y. 1873).

Irrespective of CPA § 248 a party had a constitutional privilege against being compelled to verify a pleading which might have incriminated him. *People v Lorch*, 13 N.Y.S.2d 155, 171 Misc. 469, 1939 N.Y. Misc. LEXIS 2004 (N.Y. Gen. Sess. 1939).

To entitle a party to serve an unverified pleading, the complaint must set forth facts concerning which the defendant would be privileged from testifying as a witness; and when such facts do not appear upon the face of the complaint, defendant must in some way make it appear that there are allegations in the complaint in respect of the truth of which he could not be interrogated if under examination as a witness. *Dehn v Mandeville*, 22 N.Y.S. 984, 68 Hun 335 (1893).

The pleader may deny the allegation and omit the verification, but if he omits to answer at all the allegation is admitted for the purposes of the action. *Scovill v New*, 12 How. Pr. 319, 1855 N.Y. Misc. LEXIS 256 (N.Y. Sup. Ct. Aug. 1, 1855); .

12. Incrimination generally

Where a complaint alleges a cause of action for negligence for wrongfully and immoderately driving upon the public highway while the defendant was intoxicated, the answer need not be verified. *Rutherford v Krause*, 29 N.Y.S. 787, 8 Misc. 547, 1894 N.Y. Misc. LEXIS 527 (N.Y. Sup. Ct. 1894).

To a complaint in an action alleging that the defendant kept a bawdy house, which was a public nuisance, in the vicinity of the houses belonging to the plaintiff, and praying that the continuance thereof might be enjoined, the defendant is entitled to serve an unverified answer. *Anderson v Doty*, 33 Hun 238 (N.Y.).

13. —Defendant to judge of incrimination

Defendant himself is to judge whether a verified answer would tend to incriminate him. *Travelers' Ins. Co. v Mulligan*, 231 A.D. 222, 247 N.Y.S. 85, 1931 N.Y. App. Div. LEXIS 16019 (N.Y. App. Div. 1931).

14. Charge of specific crime

Where complaint contains allegation that defendants unlawfully conspired and confederated together for the purpose of defrauding plaintiff in the sale to her of corporate stock, defendant could serve an unverified answer. *Kellogg v Match Supply Co.*, 165 A.D. 885, 151 N.Y.S. 361, 1915 N.Y. App. Div. LEXIS 6523 (N.Y. App. Div. 1915).

CPA § 250, provided that defendant was not excused from verifying his answer to a complaint charging him with fraud, was invalid if it applied to an answer to a charge of a criminal offense, and an answer in such case did not need to be verified. *Kellogg v Match Supply Co.*, 165 A.D. 885, 151 N.Y.S. 361, 1915 N.Y. App. Div. LEXIS 6523 (N.Y. App. Div. 1915).

In actions for damages resulting from collision between two automobiles, in which defendant is charged with operating his automobile in a careless and negligent manner, and with violating Vehicle and Traffic Law, §§ 15, 56 and 58, he was not required to verify his answers. *King v Terwilliger*, 259 A.D. 437, 19 N.Y.S.2d 657, 1940 N.Y. App. Div. LEXIS 6167 (N.Y. App. Div. 1940).

Verified complaint charging defendants with criminal conspiracy to swindle plaintiff and with larceny and embezzlement required no verified answer. *Sunley v Badler*, 33 N.Y.S.2d 642, 1942 N.Y. Misc. LEXIS 1409 (N.Y. Sup. Ct. 1942).

Allegations in a complaint cannot be stricken out on the ground that answering them would subject the party against whom they are made to a criminal prosecution, for the reason that the verification may be omitted. *Davenport Glucose Mfg. Co. v Taussig*, 31 Hun 563 (N.Y.).

15. Libel

An answer need not be verified in order to constitute a proper pleading, although the complaint in an action for malicious libel and for using plaintiff's name and portrait in violation of section 50 of the Civil Rights Law was verified. *Brewster v New York Evening Journal, Inc.*, 267 N.Y. 612, 196 N.E. 605, 267 N.Y. (N.Y.S.) 612, 1935 N.Y. LEXIS 1333 (N.Y. 1935).

An answer to a verified complaint in a libel action, containing a general denial, need not be verified, even where the defendant is a corporation so that verification would be by an officer. *Batterman v Journal Co.*, 59 N.Y.S. 965, 28 Misc. 375, 1899 N.Y. Misc. LEXIS 517 (N.Y. Sup. Ct. 1899).

Complaint charging that plaintiff was communist thereby charging criminal libel, under PL § 1341, required no verified answer. *Oppenheim v Gunther*, 85 N.Y.S.2d 210, 193 Misc. 914, 1948 N.Y. Misc. LEXIS 3742 (N.Y. Sup. Ct. 1948).

The general rule is that an answer in a libel action need not be verified because publication of a libel is a crime. *Curran v Pegler*, 17 Misc. 2d 345, 186 N.Y.S.2d 899, 1959 N.Y. Misc. LEXIS 4122 (N.Y. Sup. Ct. 1959).

16. Corporate directors

In an action against a trustee of a manufacturing company to charge him with a debt of the corporation by reason of a failure to file an annual report, the defendant is not obliged to serve a verified answer to a verified complaint. *Gadsden v Woodward*, 103 N.Y. 242, 103 N.Y. 638, 8 N.E. 653, 103 N.Y. (N.Y.S.) 242, 1886 N.Y. LEXIS 1053 (N.Y. 1886).

An action to enforce the liability of the trustee of a social club incorporated under Laws 1865, ch 368, which declares trustees of such incorporation liable for certain debts contracted while they were trustees, is not penal in its nature; and where the complaint in such an action is verified, the answer must be verified. *Rogers v Decker*, 131 N.Y. 490, 30 N.E. 571, 131 N.Y. (N.Y.S.) 490, 1892 N.Y. LEXIS 1045 (N.Y. 1892).

Even though the complaint in an action against directors by one who became a stockholder because of false reports issued by said directors is verified, the answer need not be verified. *Thompson v McLaughlin*, 138 A.D. 711, 123 N.Y.S. 762, 1910 N.Y. App. Div. LEXIS 1619 (N.Y. App. Div. 1910).

17. Verification of subsequent pleadings

Any pleading verified by oath requires all subsequent pleadings to be likewise verified, whether the complaint is verified or not. *Levi v Jakeways*, 4 How Pr 126, 2 NY Code R 69.

18. —What are subsequent pleadings

Where defendants served an amended answer to the original complaint and later are served with an amended unverified complaint, said defendants may not only serve an unverified answer, but an unverified amended answer. *Brooks Bros. v Tiffany*, 117 A.D. 470, 102 N.Y.S. 626, 1907 N.Y. App. Div. LEXIS 280 (N.Y. App. Div. 1907).

Second amended complaint is new pleading, and plaintiff is not required to verify it, although original complaint was verified. *Doyle v Haven*, 24 N.Y.S.2d 224, 1941 N.Y. Misc. LEXIS 1370 (N.Y. Sup. Ct. 1941).

An amended complaint, after a verified answer, may be put in verified or unverified, as the pleader elects. 21 Abb. N. Cas. 214, 13 N.Y. St. 752.

The term means subsequent in order, or those in answer to those verified. *Hempstead v Hempstead*, 7 How. Pr. 8, 1852 N.Y. Misc. LEXIS 62 (N.Y. Sup. Ct. July 1, 1852).

19. —Bill of Particulars

Under CPA § 248 which provided that “Where a pleading is verified, each subsequent pleading . . . must also be verified,” a bill of particulars was not in itself a pleading. It was merely an amplification of a pleading and forms part of the pleading which it supplemented. *Buckley v*

Franklin Sav. Bank, 258 A.D. 53, 15 N.Y.S.2d 477, 1939 N.Y. App. Div. LEXIS 6356 (N.Y. App. Div. 1939).

The plaintiff, in an action for personal injuries, is not required to serve a verified bill of particulars where the complaint is unverified, although the answer is verified. *Buckley v Franklin Sav. Bank*, 258 A.D. 53, 15 N.Y.S.2d 477, 1939 N.Y. App. Div. LEXIS 6356 (N.Y. App. Div. 1939).

Defendant is not entitled to an order of preclusion, on the ground that plaintiffs failed to serve a verified bill of particulars, where it appears that the complaint was unverified. The fact that defendant served a verified answer does not require plaintiffs to serve a verified bill of particulars of their unverified complaint. *Loprieno v Rudich*, 14 N.Y.S.2d 587, 172 Misc. 116, 1939 N.Y. Misc. LEXIS 2273 (N.Y. City Ct. 1939).

C. Requisites and Sufficiency of Verification

20. Generally

A person called upon to verify the complaint in an action in which an attorney, without her consent, had assumed to commence in her behalf, and who, upon being told by the attorney that he could verify the complaint if she did not refuse to allow him to do so, replies, "I do not refuse anything, you can do as you please, but I will sign no papers except what come to me through Mr. Smith" (her duly authorized attorney), does not thereby authorize the attorney to commence the action in her name and to verify the complaint as her attorney. *Timpson v Mock*, 105 A.D. 299, 94 N.Y.S. 664, 1905 N.Y. App. Div. LEXIS 2060 (N.Y. App. Div. 1905).

Where the defendant in an action admitted due service of a complaint which was duly verified upon the delivery to him of a copy thereof in which the verification was defective, and thereafter served an unverified answer which was returned to him on that ground, whereupon he notified the plaintiff's attorneys that the copy complaint served upon him was not verified, but refused to permit them to correct such copy, held, that a motion by the plaintiffs for judgment as in case of

failure to answer should be granted unless the defendant served a verified answer. *Hamilton v Gibbs*, 10 N.Y.S. 521, 1890 N.Y. Misc. LEXIS 828 (N.Y. City Ct.), *aff'd*, 11 N.Y.S. 954, 1890 N.Y. Misc. LEXIS 2557 (N.Y.C.P. 1890).

Service of a copy of the answer and verification must both be made; if there is any omission, it may be assumed that the original is in all respects like the copy; it will be a fatal defect to omit the name of the officer before whom the answer was sworn. *Littlejohn v Munn*, 3 Paige 280; *Graham v McCoun*, 5 How Pr 353, 1 NY Code R NS 43; *Hughes v Wood*, 12 Super Ct (5 Duer) 603 note; *Trowbridge v Didier*, 11 Super Ct (4 Duer) 448; *Williams v Riel*, 11 How Pr 374; 5 Duer 601. So also if venue and residence are omitted. *Lane v Studley*, 6 How. Pr. 394, 1852 N.Y. Misc. LEXIS 51 (N.Y. Sup. Ct. Feb. 1, 1852).

21. Information and belief

Where all the allegations of a complaint are stated to be on information and belief, it is a sufficient verification that the complaint is true as the affiant is informed and believes. *ORVIS v GOLDSCHMIDT*, 64 How. Pr. 71, 1882 N.Y. Misc. LEXIS 251 (N.Y. Sup. Ct. Oct. 1, 1882).

22. Joint answer

Where a copy of the summons and a verified complaint were served upon two of three defendants, and an unverified complaint on the third, held, that as the defendants' interests were several, they could not serve an unverified joint answer, but the two defendants on whom verified complaints were served must serve verified answers. *Wendt v Peyser*, 14 Hun 114 (N.Y.).

23. Verification by one of several partners

An answer admitting the depositing of the moneys sued for, denying receiving moneys to the use of plaintiff, denying knowledge sufficient to form a belief as to a demand for the moneys

deposited, but not stating a knowledge of the facts, verified by one of two partners, was returned and judgment entered against both partners. The judgment should be vacated as to the defendant who made the verification only. *Lacy v Wilkinson*, 99 N.Y. 683, 99 N.Y. (N.Y.S.) 683, 1885 N.Y. LEXIS 931 (N.Y. 1885).

24. Affidavit of merits

Where the defendant serves an unverified answer it was formerly held that the plaintiff may take an inquest, unless an affidavit of merits was filed and served; but, in view of the rare enforcement of the right and the consequent unfamiliarity of counsel with the procedure upon such application, the defendant was permitted to file and serve his affidavit of merits forthwith, whereupon the application would be denied without costs to either party. *Beglin v People's Trust Co.*, 95 N.Y.S. 910, 48 Misc. 494, 17 N.Y. Ann. Cas. 314, 1905 N.Y. Misc. LEXIS 452 (N.Y. County Ct. 1905).

D. Verification of Answer Where Fraud Is Charged

25. Generally

CPA § 250, providing that defendant was not excused from verifying his answer to a complaint charging him with fraud, was invalid if it applied to an answer to a charge of a criminal offense, and an answer in such case did not need to be verified. *Kellogg v Match Supply Co.*, 165 A.D. 885, 151 N.Y.S. 361, 1915 N.Y. App. Div. LEXIS 6523 (N.Y. App. Div. 1915).

That portion of CPA § 250 providing that a verification shall not be excused in an answer to a complaint charging the defendant “with any fraud, etc.,” was not connected with part of the section which precedes it. *Beckley v Chamberlin*, 19 N.Y.S. 745, 65 Hun 37 (1892).

CPA § 250 was aimed solely at fraudulent transfers and the like, and in other actions in which defendant was charged with crimes or misdemeanors he could have served his answer

unverified. *First v Climm*, 67 How. Pr. 214, 1884 N.Y. Misc. LEXIS 72 (N.Y. City Ct. July 1, 1884).

Where a complaint set out a sale of goods by plaintiff to defendant induced by the alleged fraudulent representations of the defendant and asked judgment for the contract price, held, that the defendant had a right to serve an unverified answer. *First v Climm*, 67 How. Pr. 214, 1884 N.Y. Misc. LEXIS 72 (N.Y. City Ct. July 1, 1884).

26. Incriminating answer

Where, from the facts alleging fraud in the complaint, it appeared a verified answer might aid in forming a chain of convicting testimony, verification was excused. *Travelers' Ins. Co. v Mulligan*, 231 A.D. 222, 247 N.Y.S. 85, 1931 N.Y. App. Div. LEXIS 16019 (N.Y. App. Div. 1931).

27. False reports by directors

Even though the complaint in an action against directors by one who became a stockholder because of false reports issued by said directors is verified, the answer need not be verified. *Thompson v McLaughlin*, 138 A.D. 711, 123 N.Y.S. 762, 1910 N.Y. App. Div. LEXIS 1619 (N.Y. App. Div. 1910).

E. Verification in Action Against Corporation to Recover on Note or Other Evidence of Debt

28. Generally

Former CCP § 1778, was held to be plainly in derogation of the common law, and therefore to be strictly construed. *Shorer v Times Print. & Pub. Co.*, 119 N.Y. 483, 23 N.E. 979, 119 N.Y. (N.Y.S.) 483, 1890 N.Y. LEXIS 1110 (N.Y. 1890).

29. Courts

Former CCP § 1778 was held to apply to cases brought in the municipal court of the city of New York. *Duke v Mt. Morris Const. Co.*, 127 A.D. 39, 111 N.Y.S. 313, 1908 N.Y. App. Div. LEXIS 1876 (N.Y. App. Div. 1908).

Former CCP § 1778 did not apply to an action against a domestic corporation upon a note brought in justice's court. *Center v Hoosick River Pulp Co.*, 88 N.Y.S. 548, 43 Misc. 247, 1904 N.Y. Misc. LEXIS 134 (N.Y. County Ct. 1904).

For application to city court of New York, see *Hein v Standard Die & Tool Works, Inc.*, 184 N.Y.S. 78, 113 Misc. 137, 1920 N.Y. Misc. LEXIS 1673 (N.Y. City Ct. 1920).

30. Municipal corporations

Former CCP § 1778 held to apply to a municipal corporation, and to be constitutional. *Moran v Long Island City*, 101 N.Y. 439, 5 N.E. 80, 101 N.Y. (N.Y.S.) 439, 1886 N.Y. LEXIS 652 (N.Y. 1886).

Former CCP § 1778 was a part of art. 1, of title 11, of ch. 15, of the Code of Civil Procedure, and as Code § 1804 expressly exempted municipal corporations from the operation of articles second, third and fourth of that title, the court found that it was "plainly to be inferred that the provisions of article first of that title are intended to be applied." *Rosenstock v New York*, 101 A.D. 9, 91 N.Y.S. 737, 1905 N.Y. App. Div. LEXIS 292 (N.Y. App. Div.), *aff'd*, 181 N.Y. 550, 74 N.E. 1125, 181 N.Y. (N.Y.S.) 550, 1905 N.Y. LEXIS 855 (N.Y. 1905).

Under CPA § 252, "foreign or domestic corporation," was construed as embracing municipal corporations. *Harman v Ft. Lauderdale*, 234 N.Y.S. 196, 134 Misc. 133, 1929 N.Y. Misc. LEXIS 757 (N.Y. Sup. Ct. 1929).

31. Instruments to which applicable

The instruments referred to in CPA § 252 were absolute and not conditional contracts. An action on a life insurance policy was not within the section. *New York Life Ins. Co. v Universal Life Ins. Co.*, 88 N.Y. 424, 88 N.Y. (N.Y.S.) 424, 1882 N.Y. LEXIS 120 (N.Y. 1882).

It did not apply to an action to charge a corporation as indorser of a promissory note, being strictly confined to actions upon instruments admitting on their face an existing debt payable absolutely. *Shorer v Times Print. & Pub. Co.*, 119 N.Y. 483, 23 N.E. 979, 119 N.Y. (N.Y.S.) 483, 1890 N.Y. LEXIS 1110 (N.Y. 1890).

In an action on a note given by a corporation, former CCP § 1778 was held to apply only where the instrument showed on its face that the plaintiff was entitled to the amount sought to be recovered. *Tautphoeus v Harbor & Suburban Bldg. & Sav. Ass'n*, 96 A.D. 23, 88 N.Y.S. 709, 1904 N.Y. App. Div. LEXIS 2203 (N.Y. App. Div. 1904).

It seems that an action against a corporation upon a guaranty was not within the scope of former CCP § 1778. *Canavello v Michael & Co.*, 63 N.Y.S. 967, 31 Misc. 170, 1900 N.Y. Misc. LEXIS 291 (N.Y. City Ct. 1900).

The provisions of former CCP § 1778 were held not to apply to a case where the note was admitted, but the defendant set up a counterclaim. *Pennypacker v Thomas R. Levis & Co.*, 116 N.Y.S. 771, 63 Misc. 384, 1909 N.Y. Misc. LEXIS 142 (N.Y. Sup. Ct. 1909).

CCP § 1778 was held to have no application to an action upon a corporate note against another corporation alleged to have assumed all of the debts and liabilities of the maker corporation in consideration of the transfer of all of the assets of the latter corporation to the former. *Fifth-Third Nat'l Bank v Hudson Refrigerator Co.*, 153 N.Y.S. 168 (N.Y. App. Term 1915).

CPA § 252 applied to an action against a corporation upon its protested notes, brought by an indorser who was compelled to take them up. *Ford v Binghamton Hydraulic Power Co.*, 7 N.Y.S. 714, 54 Hun 451, 1889 N.Y. Misc. LEXIS 1263 (N.Y. Sup. Ct. 1889), *aff'd*, 121 N.Y. 664, 24 N.E. 1093, 121 N.Y. (N.Y.S.) 664, 1890 N.Y. LEXIS 1478 (N.Y. 1890).

32. Effect of extension of time to answer

CPA § 252 applied to all cases whether the defendant corporation asked for and obtained an extension of time to answer or demur or not. *Hutson v Morrisania S.B. Co.* 12 Abb NC 278, affd *HUTSON v MORRISANIA STEAMBOAT CO.*, 64 How. Pr. 268, 1882 N.Y. Misc. LEXIS 301 (N.Y.C.P. Nov. 1, 1882).

33. Waiver

In an action in the municipal court of the city of New York against a domestic corporation, to recover damages for the nonpayment of a promissory note or other evidence of debt for the absolute payment of money upon demand or at a particular time, the plaintiff was held to have waived the provisions of former § 1778, unless he gave notice of his intention to enforce its provisions. *Blenderman v J. R. Bellis Co.*, 117 N.Y.S. 897, 64 Misc. 65, 1909 N.Y. Misc. LEXIS 224 (N.Y. App. Term 1909).

Where plaintiff in an action against a corporation upon its promissory note retained an answer served by the defendant although it had failed to comply with the requirements of Code § 1778, it was held that plaintiff thereby waived his right to treat the answer as a nullity. *Smith v Consumers' Fertilizer Co.*, 172 N.Y.S. 598 (N.Y. City Ct. 1910).

Where a corporation, sued upon the interest coupons of its negotiable promissory note, was also made defendant in another action by the same plaintiff based upon moneys alleged to have been paid out to the use of the defendant, it was improper, in view of the rights of plaintiff under CCP § 1778 (CPA § 252) as respects the first cause of action, to grant defendant's motion to consolidate the actions, such motion having been made and granted before answer in either action. *Boyle v Staten Island & S. B. Land Co.*, 33 N.Y.S. 836, 87 Hun 233 (1895).

34. —Uniting causes of action

CPA § 252 had no application to an action wherein the complaint sought recovery both on a note and for goods sold and delivered. *McGovern v Bulman-Warner Paint Co.*, 55 N.Y.S. 767 (N.Y. Sup. Ct. 1898).

And plaintiff waived the benefit of CPA 252 by uniting a cause of action for goods sold with one on a promissory note. *Bradley v Albermarle Fertilizing Co.* 2 Civ Proc (Browne) 50.

F. By Whom Verification Made

35. Generally

Infant who reached majority after appointment of guardian, but before service of complaint, must verify complaint, omitting reference to appointment of guardian. *Marcus v Levin*, 273 A.D. 771, 75 N.Y.S.2d 537, 1947 N.Y. App. Div. LEXIS 3079 (N.Y. App. Div. 1947).

A petition under Election Law § 330 was sufficient where it was verified by one of two petitioners who were candidates for office in the same county and whose legal rights and interests were identical. *Maniscalco v Power*, 4 A.D.2d 479, 167 N.Y.S.2d 147, 1957 N.Y. App. Div. LEXIS 4195 (N.Y. App. Div. 1st Dep't), aff'd, 3 N.Y.2d 918, 167 N.Y.S.2d 932, 145 N.E.2d 875, 1957 N.Y. LEXIS 767 (N.Y. 1957).

It was the intent of RCP 99 that the complaint might be verified by the person subscribing it; if subscribed by the plaintiff, that it might be verified by him; if subscribed by his agent, that it might be verified by such agent. *Syracuse Molding Co. v Squires*, 15 N.Y.S. 321, 61 Hun 48, 1891 N.Y. Misc. LEXIS 3210 (N.Y. Sup. Ct. 1891).

The pleading must be verified by the party in interest, though he is not a party to the record. *Taber v Gardner*, 6 Abb. Pr. (n.s.) 147, 1869 N.Y. Misc. LEXIS 14 (N.Y. Super. Ct. Mar. 1, 1869), dismissed, *Tabor v Gardner*, 41 N.Y. 232, 41 N.Y. (N.Y.S.) 232, 39 How. Pr. 383, 1869 N.Y. LEXIS 262, 1869 N.Y. Misc. LEXIS 209 (N.Y. 1869).

36. Claim against city or town

Under this, the following rule, and the established practice, the verification of a claim against a city must be subscribed by the claimant. *Ponsrok v Yonkers*, 254 N.Y. 91, 171 N.E. 917, 254 N.Y. (N.Y.S.) 91, 1930 N.Y. LEXIS 1009 (N.Y. 1930).

Notice of claim against town for damages from change of grade in town highway need not be verified in form prescribed for pleadings, but is sufficient if in form of affidavit sworn to before notary public. *In re Levine*, 287 N.Y. 243, 39 N.E.2d 223, 287 N.Y. (N.Y.S.) 243, 1942 N.Y. LEXIS 1102 (N.Y. 1942).

37. Parties united in interest

Although RCP 99 required that, when a verification was made by one of two or more parties in interest, he had to be acquainted with the facts, that express allegation was not necessary when the pleadings themselves showed that the several parties were united in interest and that presumptively the verifying party was acquainted with the facts. *Conolly v Schroeder*, 121 A.D. 634, 106 N.Y.S. 303, 1907 N.Y. App. Div. LEXIS 1865 (N.Y. App. Div. 1907).

Petition, filed with board of elections of City of New York, designating petitioners as candidates for Democratic party positions of county committeemen and committeewomen, was properly verified by respondent acting on behalf of himself and others named as petitioners therein. *McKenna v Power*, 1 A.D.2d 1040, 152 N.Y.S.2d 498, 1956 N.Y. App. Div. LEXIS 5167 (N.Y. App. Div. 2d Dep't 1956).

In an action against two defendants as copartners an answer was filed for both, but verified by only one of the defendants. The verifying defendant thereafter withdrew the answer interposed by him, but did not in so doing pretend to be acting as agent for his copartner. It was held that the answer remained as to the nonverifying defendant and was sufficient to prevent entry of judgment by default. *Reeder v Lockwood*, 62 N.Y.S. 713, 30 Misc. 531, 1900 N.Y. Misc. LEXIS 104 (N.Y. Sup. Ct. 1900).

Defendants were united in interest, within the meaning of RCP 99, where they were sued, for goods sold, as partners, and admitted their liability as such for a part of the goods but denied that certain other of the goods were delivered to them as partners or at all. *Paddock v Palmer*, 66 N.Y.S. 743, 32 Misc. 426, 1900 N.Y. Misc. LEXIS 733 (N.Y. Sup. Ct. 1900).

It is not essential that a defendant, verifying on behalf of himself and codefendants, should have actual personal knowledge of all the allegations and denials in the answer. *People ex rel. Keeseville, A. C. & L. C. R. Co. v Powers*, 130 N.Y.S. 865, 73 Misc. 269, 1911 N.Y. Misc. LEXIS 508 (N.Y. Sup. Ct. 1911).

A petition for an order to show cause was not fatally defective because verified by only one of two allegedly aggrieved petitioners where such petitioners being united in interest could plead together. *Maniscalco v Power*, 8 Misc. 2d 677, 168 N.Y.S.2d 281, 1957 N.Y. Misc. LEXIS 2311 (N.Y. Sup. Ct.), *aff'd*, 4 A.D.2d 479, 167 N.Y.S.2d 147, 1957 N.Y. App. Div. LEXIS 4195 (N.Y. App. Div. 1st Dep't 1957).

In stockholders' derivative action, all stockholders need not verify complaint. *Auerbach v Feder*, 115 N.Y.S.2d 67, 1952 N.Y. Misc. LEXIS 1609 (N.Y. Sup. Ct. 1952).

In an action against husband and wife, the wife should join with her husband in all cases where she has a separate estate. 12 How. Pr. 395; 9 Abb. Pr. 400, 1859 N.Y. Misc. LEXIS 14; .

Where, in an action to recover damages for personal injuries to plaintiff's wife, alleged to have been caused by the negligence of defendants' servants, two of the defendants, who were alleged to be partners, united in an answer denying certain allegations in the complaint, and denying any knowledge or information sufficient to form a belief as to the other allegations thereof, it was held that a verification of the answer by only one of the defendants was sufficient.

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All parties should unite in verification if their interests are several. *Gray v Kendall*, 18 Super Ct (5 Bosw) 666.

But where parties plead together and are united in interest, one can verify without stating that he is acquainted with the facts, if the verification is positive and absolute. *Zoellner v Newberger*, 1 Month L Bull 29.

One defendant cannot swear to the want of sufficient information to form a belief on the part of a codefendant. *Kinkaid v Kipp*, 8 Super Ct (1 Duer) 692.

The maker and indorser of a promissory note are not so united in interest that one can make verification for both. *Andrews v Storms*, 7 Super Ct (5 Sandf) 609; *Hull v Ball*, 14 How Pr 305; *Alfred v Watkins*, NY Code R NS 343.

But where the wife is jointly liable, a verification by the husband alone is sufficient. *Hartley v James*, 18 Abb. Pr. 299, 1864 N.Y. Misc. LEXIS 47 (N.Y. Sup. Ct. Dec. 1, 1864).

38. Domestic corporations or associations

One who was the duly authorized agent of the company to acquire real estate was an officer of the company within the meaning of RCP 99 relating to verifications. *In re St. Lawrence & A. R. Co.*, 133 N.Y. 270, 31 N.E. 218, 133 N.Y. (N.Y.S.) 270, 1892 N.Y. LEXIS 1311 (N.Y. 1892).

Complaint in an action by a domestic corporation, held to have been verified by an officer thereof as required by RCP 99. *Ernest Ochs v Frey*, 47 A.D. 390, 62 N.Y.S. 67, 1900 N.Y. App. Div. LEXIS 116 (N.Y. App. Div. 1900).

A director of a domestic corporation is an officer thereof within the terms of this rule and may verify a pleading of the corporation in an action in which it is a party. *Eastham v State Tel. Co.*, 86 A.D. 562, 83 N.Y.S. 1019, 1903 N.Y. App. Div. LEXIS 2418 (N.Y. App. Div. 1903).

The liquidating committee of a corporation, authorized to take all legal proceedings necessary to carry the liquidation into effect, were officers of the corporation within the meaning of subd 1 of RCP 99, and might defend an action. *Wills v James Rowland & Co.*, 117 A.D. 122, 102 N.Y.S.

386, 1907 N.Y. App. Div. LEXIS 204 (N.Y. App. Div.), aff'd, 119 A.D. 866, 103 N.Y.S. 1151, 1907 N.Y. App. Div. LEXIS 3312 (N.Y. App. Div. 1907).

Liquidating committee of national bank did not supersede board of directors, and liquidating committee could not maintain action except by approval or acquiescence of the board of directors. *Planten v National Nassau Bank*, 174 A.D. 254, 160 N.Y.S. 297, 1916 N.Y. App. Div. LEXIS 7638 (N.Y. App. Div. 1916), aff'd, 220 N.Y. 677, 116 N.E. 1070, 220 N.Y. (N.Y.S.) 677, 1917 N.Y. LEXIS 1137 (N.Y. 1917).

An agent of a domestic corporation may and an officer thereof need not verify its petition to initiate summary proceedings to dispossess its tenant. *Stuyvesant Real Estate Co. v Sherman*, 81 N.Y.S. 642, 40 Misc. 205, 1903 N.Y. Misc. LEXIS 126 (N.Y. App. Term 1903).

Verification by an officer is the act of the corporation, and verification by president in the form usually employed by a party is sufficient, though reason why verification was not made by plaintiff domestic corporation, and grounds of affiant's belief as to matters alleged upon information, were not stated. *Treen Motors Corp. v Van Pelt*, 174 N.Y.S. 500, 106 Misc. 357, 1919 N.Y. Misc. LEXIS 900 (N.Y. Sup. Ct. 1919).

Affidavit of one making verification for corporation that his sources of information were books and records of the corporation was sufficient. *Davidson v Penn-Virginia Coal & Coke Corp.*, 178 N.Y.S. 205, 109 Misc. 130, 1919 N.Y. Misc. LEXIS 1146 (N.Y. Sup. Ct. 1919).

The answer of a voluntary association sued by its treasurer must be verified by him, or, if by some other officer, it must be as agent or attorney. *Tallmadge v Lounsbury*, 10 N.Y.S. 129, 1889 N.Y. Misc. LEXIS 2459 (N.Y. Super. Ct. 1889).

A general land agent of a railroad company having general charge of the subject of purchasing lands for all the purposes of the corporation must be regarded as an officer of the corporation having the right to verify petitions in proceedings to acquire title to lands. *In re New York, L. & W. R. Co.*, 33 Hun 148 (N.Y.), aff'd, 98 N.Y. 664, 98 N.Y. (N.Y.S.) 664, 1885 N.Y. LEXIS 734 (N.Y. 1885).

The verification of a pleading of a domestic corporation by an officer of the corporation was, under RCP 99 and 100 (3020 and 3021 herein), a verification by the party, and such officer did not need to set forth therein the grounds of his belief as to matters not stated upon his knowledge. *American Insulator CXo. v Bankers & Merchants' Tel. Co.*, 2 How. Pr. (n.s.) 120 (N.Y.C.P. June 1, 1885).

A director of a domestic corporation may verify its answer. *Bigelow v Whitehall Mfg. Co.* 1 NY City Ct 138.

39. Public officer

The superintendent of banks or one of his special deputies may verify and interpose a reply to a verified counterclaim in an action brought by him in pursuance of his duties in liquidating the affairs of a bank. *Union Bank of Brooklyn v Kanturk Realty Corp.*, 129 N.Y.S. 635, 72 Misc. 96, 1911 N.Y. Misc. LEXIS 337 (N.Y. Sup. Ct. 1911).

40. Agent or attorney

Verification by an agent to effect that all material allegations were within his personal knowledge was defective where several paragraphs of complaint were alleged upon information and belief. *Bowery Sav. Bank v Ward*, 188 A.D. 593, 177 N.Y.S. 219, 1919 N.Y. App. Div. LEXIS 7788 (N.Y. App. Div. 1919).

Although a complaint be verified by an attorney, yet where the action is brought for slander, the denials of the answer cannot be on information and belief as the defendant should know whether he heard the words or not. *Pardi v Conde*, 58 N.Y.S. 410, 27 Misc. 496, 1899 N.Y. Misc. LEXIS 217 (N.Y. App. Term 1899).

Where all the denials in the answer are “upon information and belief,” allegation in verification that attorney making verification has personal knowledge is of no avail. *Treen Motors Corp. v Van Pelt*, 174 N.Y.S. 500, 106 Misc. 357, 1919 N.Y. Misc. LEXIS 900 (N.Y. Sup. Ct. 1919).

Under CPA § 1414, an application to dispossess for nonpayment of rent in summary proceedings might be made by the landlord's agent; and the meaning of CPA § 1415, which required that the petition be verified as a verified complaint in an action, referred only to the form of the verification. *Reserve Finance Corp. v Rosen*, 216 N.Y.S. 153, 127 Misc. 591, 1926 N.Y. Misc. LEXIS 990 (N.Y. Sup. Ct.), *aff'd*, 218 A.D. 811, 218 N.Y.S. 879, 1926 N.Y. App. Div. LEXIS 7145 (N.Y. App. Div. 1926).

On an application for limited letters of administration, the verification of the petition by counsel for the petitioner, who was given a power of attorney, although not to be encouraged in the Surrogate's Court, is permitted by statute. *In re Ray's Estate*, 270 N.Y.S. 333, 150 Misc. 728, 1934 N.Y. Misc. LEXIS 1159 (N.Y. Sur. Ct. 1934).

Where it was not alleged in petition that attorney appears or was authorized to appear for petitioner, such attorney may not verify petition as attorney for party. *Becker v Power*, 134 N.Y.S.2d 76, 207 Misc. 53, 207 Misc. 55, 1954 N.Y. Misc. LEXIS 2480 (N.Y. Sup. Ct. 1954).

Attorney, personally knowing all material allegations of pleading, may verify it. *Seff v Williamsburgh Maternity, Inc.*, 81 N.Y.S.2d 584, 1948 N.Y. Misc. LEXIS 2887 (N.Y. Sup. Ct. 1948).

Reply to demand to admit facts under CPA § 322 (§ 3123, herein) was analogous to pleading, and might be verified by attorney for petitioner upon whom it is binding. *Seidenberg v Rosen*, 114 N.Y.S.2d 279, 1952 N.Y. Misc. LEXIS 2882 (N.Y. Sup. Ct. 1952).

The guardian ad litem was not an agent or attorney within the meaning of RCP 99; for the purposes thereof he was deemed a party. *Clay v Baker*, 41 Hun 58, 2 N.Y. St. 275 (N.Y.).

In view of subdivision 3 of RCP 99 a verification of an answer by one describing himself as the agent of the defendant, who stated that he read the answer and knows the contents of and that the same were true, was sufficient where nothing was stated in the answer as upon information and belief although it is probable that the agent swore that to be true of his own knowledge which he could not possibly have known to be true; the certificate being in the form permitted,

the court was not at liberty to set it aside because it failed to command confidence. *Beyer v Wilson*, 46 Hun 397, 12 N.Y. St. 415 (N.Y.).

Subdivision 3 of RCP 99 applied only to pleading and not to affidavit made to procure a bill of particulars. *Cohn v Baldwin*, 26 N.Y.S. 457, 74 Hun 346 (1893), app. dismissed, 141 N.Y. 563, 35 N.E. 1087, 141 N.Y. (N.Y.S.) 563, 1894 N.Y. LEXIS 1189 (N.Y. 1894).

Where an agent could verify the complaint, as where the action was on a written instrument and the answer set up breach of warranty, he can verify or reply. *Kirkland v Aiken*, 66 Barb. 211, 1870 N.Y. App. Div. LEXIS 220 (N.Y. Sup. Ct. Nov. 1, 1870).

Where an answer verified by the attorney contains an allegation inconsistent with an allegation in the affidavit of verification, the court will direct the defendant to serve an answer verified by himself. *Jaillard v Tomes*, 3 Abb NC 24.

41. —Party not within county

A verification by the plaintiff's attorney is not sufficient for the entry of judgment on default when it does not show that the plaintiff was not within the county when the verification was made; a mere allegation that the plaintiff resides in another county is not sufficient. *Boyce v Dumars*, 114 A.D. 284, 99 N.Y.S. 769, 1906 N.Y. App. Div. LEXIS 2081 (N.Y. App. Div. 1906).

Under subdivision 3 of RCP 99 a complaint by a domestic corporation might be verified by its attorney where the action was instituted in a county other than that of the corporation's residence, providing the verification was made in the form required by RCP 100 (R 3021, herein). *High Rock Knitting Co. v Bronner*, 43 N.Y.S. 725, 18 Misc. 627, 1896 N.Y. Misc. LEXIS 724 (N.Y. Sup. Ct. 1896), aff'd, 29 A.D. 627, 52 N.Y.S. 1143, 1898 N.Y. App. Div. LEXIS 1153 (N.Y. App. Div. 1898).

An attorney of a domestic corporation may verify a complaint where all the officers are absent from the county where the attorney resides. *Climax Specialty Co. v Smith*, 64 N.Y.S. 42, 31 Misc. 275, 7 N.Y. Ann. Cas. 373, 1900 N.Y. Misc. LEXIS 324 (N.Y. App. Term 1900).

To justify attorney verifying on ground that client is absent, it must be shown that the client is not within the county where the attorney resides or, if the latter is not a resident of the county, the county where he has his office. *Treen Motors Corp. v Van Pelt*, 174 N.Y.S. 500, 106 Misc. 357, 1919 N.Y. Misc. LEXIS 900 (N.Y. Sup. Ct. 1919).

A verification of a complaint by an attorney on a claim for goods sold and delivered is not on a written instrument for the payment of money only, and, the verification failing to state that plaintiff was not present in the county, the defendant was entitled to treat it as improperly verified and to serve an unverified answer without incurring risk of default being entered against him. *Geo. H. Storm & Co. v G. Migliore & Sons, Inc.*, 224 N.Y.S. 271, 130 Misc. 654, 1927 N.Y. Misc. LEXIS 1090 (N.Y. City Ct. 1927).

Where plaintiff is in military service outside state, his attorney may verify complaint for divorce. *Glover v Glover*, 51 N.Y.S.2d 662, 183 Misc. 549, 1944 N.Y. Misc. LEXIS 2590 (N.Y. Sup. Ct. 1944).

Mere statement in verification that it is made by attorney because party is not within county is insufficient; it must be supplemented by narration of basis of his knowledge and grounds of belief. *Emspak v Conroy*, 81 N.Y.S.2d 555, 192 Misc. 637, 1948 N.Y. Misc. LEXIS 2865 (N.Y. Sup. Ct. 1948).

Verification by attorney who swore that the reason the verification was made by him was that defendant was absent from the city and county, and that sources of his information were personal interviews had with the defendant, was sufficient. *McConnell v Fried*, 176 N.Y.S. 521 (N.Y. App. Term 1919).

Answer in proceeding under Surr Ct A § 206-a was properly verified by attorney for respondent, where latter was not within county. *In re Monplaisir's Estate*, 62 N.Y.S.2d 320, 1946 N.Y. Misc. LEXIS 2228 (N.Y. Sur. Ct. 1946).

Where attorney verifies bill of particulars, as he may in case his client is not within county where attorney has his office, verification must state grounds of his belief as to all matters not stated

upon his knowledge. *Lipsky v Commerce-Pacific, Inc.*, 134 N.Y.S.2d 147, 1954 N.Y. Misc. LEXIS 2495 (N.Y. Sup. Ct. 1954).

Verification need not be made by the agent who knows the most about the matter, but may be made by the attorney of a nonresident client. *Drevert v Appsert*, 2 Abb. Pr. 165, 1855 N.Y. Misc. LEXIS 62 (N.Y. Sup. Ct. Oct. 1, 1855).

42. Foreign corporations

An answer denying “knowledge or information sufficient to form a belief” as to paragraphs of the complaint and verified by the attorney for a nonresident corporate defendant, held sufficient and that it was not necessary for the attorney to state in the verification the grounds of his belief. *American Audit Co. v Industrial Federation of America*, 84 A.D. 304, 82 N.Y.S. 642, 1903 N.Y. App. Div. LEXIS 1763 (N.Y. App. Div. 1903).

An officer of a foreign corporation was an agent for a party within RCP 99 and might verify a pleading of the corporation, but had to comply with the requirements of RCP 100 (R 3021, herein). *Robinson v Ecuador Development Co.*, 65 N.Y.S. 427, 32 Misc. 106, 1900 N.Y. Misc. LEXIS 633 (N.Y. Sup. Ct. 1900).

Verification to a pleading by a foreign corporation must state grounds of belief, but need not allege why verification is not made by the party instead of an officer. *Treen Motors Corp. v Van Pelt*, 174 N.Y.S. 500, 106 Misc. 357, 1919 N.Y. Misc. LEXIS 900 (N.Y. Sup. Ct. 1919).

Verification of answer of a foreign corporation may be made by an officer of defendant within the state, or by an agent or attorney having personal knowledge of the material facts. *Williamson Law Book Co. v Midland Nat'l Holding Corp.*, 240 N.Y.S. 731, 136 Misc. 288, 1930 N.Y. Misc. LEXIS 1130 (N.Y. Sup. Ct. 1930).

43. Written instrument for payment of money

A verification of a complaint in justice's court in an action upon a promissory note, made by the attorney and agent of the plaintiff, which gives as a reason why the verification is not made by the plaintiff, that he is within another county and not within the county where the action is brought, is sufficient, although it contains no positive statement that the affiant resides in the county where the action is brought or that he has possession of the note. *Johnson v Freeman*, 99 N.Y.S. 225, 49 Misc. 304, 1906 N.Y. Misc. LEXIS 554 (N.Y. County Ct. 1906).

See also *Geo. H. Storm & Co. v G. Migliore & Sons, Inc.*, 224 N.Y.S. 271, 130 Misc. 654, 1927 N.Y. Misc. LEXIS 1090 (N.Y. City Ct. 1927).

Written instruments for the payment of money only do not include mortgages. *Peyser v McCormack*, 7 Hun 300, 51 How. Pr. 205, 1876 N.Y. Misc. LEXIS 174 (N.Y. App. Term May 1, 1876).

In an action founded upon a written instrument for the payment of money only which is in the possession of the plaintiff's agent, verification held sufficient where it alleged that the instrument sued on was the source of deponent's information and belief. Further allegation showing why verification was by attorney instead of by party was unnecessary. *Hyde v Salg*, 27 Hun 369 (N.Y.).

44. Defective verification

An affidavit of verification to an answer taken by defendants' attorney is not a nullity and an answer so verified cannot be disregarded, nor can a judgment in such a case be entered for plaintiff as upon defendants' default. *Zichermann v Wohlstadter*, 113 N.Y.S. 403, 60 Misc. 362, 1908 N.Y. Misc. LEXIS 702 (N.Y. Sup. Ct. 1908).

When answer is returned because verification is defective, notice should specify the particulars wherein it is defective; and where it fails in this, the return of the answer is of no effect. *Treen Motors Corp. v Van Pelt*, 174 N.Y.S. 500, 106 Misc. 357, 1919 N.Y. Misc. LEXIS 900 (N.Y. Sup. Ct. 1919).

Motion to strike out answer of contestants to probate of a will, granted, because not verified as required by RCP 99 and Surrogate's Court Act, §§ 49, 50. *In re Schlemmer's Will*, 238 N.Y.S. 117, 135 Misc. 296, 1929 N.Y. Misc. LEXIS 999 (N.Y. Sur. Ct. 1929).

Where the verification by the plaintiff's attorney to a complaint containing many material allegations which it is apparent must have been made on information and belief (although not specifically stated in the complaint to be so made), sets forth as the only ground of belief and the only source of the information of the affiant, "plaintiff's statements to him" will not without further proof of the allegations of the complaint furnish ground for granting a provisional remedy. *Kuh v Barnett*, 6 N.Y.S. 881, 57 N.Y. Super. Ct. 234, 1889 N.Y. Misc. LEXIS 826 (N.Y. Super. Ct. 1889).

Verification of corporation's petition by attorney, rather than by an officer, did not make petition "duly verified" within meaning of Real Property Tax Law § 706, but it was treated as an irregularity since attorney was more familiar with facts than the officers, and petition was ordered amended nunc pro tunc to substitute verification by corporation's president. *Cross Properties, Inc. v Lennox*, 197 N.Y.S.2d 860, 1959 N.Y. Misc. LEXIS 4621 (N.Y. Sup. Ct. 1959), *aff'd*, 11 A.D.2d 770, 205 N.Y.S.2d 966, 1960 N.Y. App. Div. LEXIS 8687 (N.Y. App. Div. 2d Dep't 1960).

If the name of the county of the notary anywhere appears, it is sufficient. .

Research References & Practice Aids

Cross References:

This section referred to in CLS RPAPL § 741.; CLS SCPA § 303.

Form of affidavit or verification, CLS CPLR Rule 3021.

Verified answer in acquisition of property action, CLS EDPL § 402.

Federal Aspects:

Signing of pleadings, USCS Court Rules, Federal Rules of Civil Procedure, Rule 11.

Administration of oaths and acknowledgements, 28 USCS § 459.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3020, Verification.

3 Rohan, New York Civil Practice: EPTL ¶5-4.1.

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LexisNexis Forms FORM 75-CPLR 3020:11.—Verification by Attorney Where Party Is Foreign Corporation.

LexisNexis Forms FORM 75-CPLR 3020:12.—Verification by a Party's Attorney; Official Form 21.

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Hierarchy Notes:

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