

NY CLS CPLR R 4012

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New York

Consolidated Laws Service >
Civil Practice Law And Rules (Arts. 1 — 100) >
Article 40 Trial Generally (§§ 4001 — 4019)

R 4012. Marked pleadings furnished

The party who has filed the note of issue shall furnish the judge who is to preside at the trial with copies of each pleading, where they have not been superseded by the pre-trial order, plainly marked to indicate which statements are admitted and which controverted by the responsive pleading.

History

Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

Notes

Prior Law:

Earlier statutes and rules: RCP 160; CCP § 981; Code Proc 259; Gen Rules Pr 19.

Advisory Committee Notes:

This rule is based upon RCP 160. The requirement of RCP 160 that the summons be furnished has been omitted since it provided no essential information not available from the pleading. The former rule required furnishing the court with any “offer of judgment.” There is no need for the judge to have this document which may be prejudicial and the requirement is omitted.

Notes to Decisions

I.Under CPLR

1.Generally

II.Under Former Civil Practice Laws

2.Generally

I. Under CPLR

1. Generally

Defendant who served answers on opposing attorney rather than with court clerk was not in default. *Ryan v Rocky Graziano Foods, Inc.*, 75 Misc. 2d 415, 347 N.Y.S.2d 984, 1973 N.Y. Misc. LEXIS 1610 (N.Y. Dist. Ct. 1973).

II. Under Former Civil Practice Laws

2. Generally

Where the copy of the pleadings, furnished to the court upon the trial, contains a reply to a counterclaim set up in the answer, it is in the discretion of the court to receive proof that no reply was in fact served, or to leave the defendant to his remedy by motion after trial; and the determination thereupon is not reviewable by the court of appeals. *Miller v Barber*, 66 N.Y. 558, 66 N.Y. (N.Y.S.) 558, 1876 N.Y. LEXIS 265 (N.Y. 1876).

In view of the requirement of RCP 160 that the attorney for the plaintiff shall indicate on the copy of the pleading which he was required to furnish for the use of the trial court what allegations are admitted and what are controverted, it was important that denials should be so plain as to leave

no uncertainty with respect to what is intended to be put in issue. Pullen v Seaboard Trading Co., 165 A.D. 117, 150 N.Y.S. 719, 1914 N.Y. App. Div. LEXIS 9353 (N.Y. App. Div. 1914).

Research References & Practice Aids

Cross References:

Submission of papers for trial, CLS Unif Tr Ctr Rls § 202.35.

Jurisprudences:

105 NY Jur 2d Trial §§ 324., 325. .

Law Reviews:

The CPLR and the trial lawyer. 9 N.Y.L. Sch. L. Rev. 269.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4012, Marked Pleadings Furnished.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 23.02. Trials; general rules.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 9.05. Submitting Marked Pleadings and Other Papers to Court.

LexisNexis AnswerGuide New York Negligence § 2.33[1]. Engaging in Pre-Trial Conferences, and Other Pre-Trial Activities.

LexisNexis AnswerGuide New York Negligence § 2.34. Preparing for Trial.

Annotations:

What constitutes bringing an action to trial or other activity in case sufficient to avoid dismissal under state statute or court rule requiring such activity within stated time. 32 ALR4th 840.

Matthew Bender's New York Checklists:

Checklist for Submitting Pre-Trial Memorandum of Law, Marked Pleadings, and Other Papers to Court LexisNexis AnswerGuide New York Civil Litigation § 9.02.

Forms:

2 Medina's Bostwick Practice Manual (Matthew Bender), Forms 18:101 et seq .(trial generally).

Hierarchy Notes:

NY CLS CPLR, Art. 40

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