

NY CLS CPLR R 2220

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New York

Consolidated Laws Service >

Civil Practice Law And Rules (Arts. 1 — 100) >

Article 22 Stay, Motions, Orders and Mandates (§§ 2201 — 2223)

R 2220. Entry and filing of order; service

(a) Entry and filing. An order determining a motion shall be entered and filed in the office of the clerk of the court where the action is triable, and all papers used on the motion and any opinion or memorandum in writing shall be filed with that clerk unless the order dispenses with such filing. When a statute or civil practice rule requires such filing and entry in a county other than that in which the order was made, the party prevailing on the motion shall file the order and the papers used on the motion with the proper clerk after receiving them. If a party fails to file any papers required to be filed under this subdivision, the order may be vacated as irregular, with costs.

(b) Service. Service of an order shall be made by serving a copy of the order.

History

Add, L 1962, ch 308, § 1; amd by Judicial Conference (1964).

Annotations

Notes

Prior Law:

Earlier statutes and rules: CPA § 101; RCP 71–73; CCP § 827; L 1847 ch 470 § 20; Gen Rules Pr 3.

Advisory Committee Notes:

The first two sentences of subd (a) are derived from RCP 71, 72 and 73. All orders, whether made by court or judge, are required to be entered and filed with the supporting papers. RCP 71 does not explicitly require the entry of orders but only states that the papers must be filed when an order is entered. However, the rule in practice is that court orders must be entered while judge orders generally need not be. There is no reason for such a distinction. CPA § 101 seems to require the entry and filing of all orders made in a special proceeding, and does not distinguish between court and judge orders or intermediate and final orders. The clerk who should file the order is the clerk of the court where the action or special proceeding is triable. See CPA § 7; NY R Civ P 15; new CPLR rule 2102. The second sentence of rule 71, forbidding entry unless the motion papers are filed and the order signed, is omitted as unnecessary, since such defects permit the order to be vacated under the last sentence of the new provision. This sentence replaces the similar phrase in both rules 71 and 72. Rules 72 and 73 have been considerably shortened in their transposition to this subdivision but no change in substance is intended. The provision in the second sentence of rule 72 that an opinion is part of the record on which the order was made is unnecessary, since it is covered by new rule 5526, governing the contents of a record on appeal. Entry and filing in a different county will be required when a motion is made under new §§ 2212 and 2213 in a county other than the one where the case is triable. See NY Civ Prac Act § 130; NY R Civ P 63.

The former rules said nothing as to the service of orders generally; the matter was regulated by practice provisions relating to the service of particular kinds of orders and by case law. See 1 Carmody-Wait, *Cyclopedia of New York Practice*, 707–09 (1952). If the order is a court order under former law, it will have been filed, and a copy must be served; if it is a judge order, the original is exhibited and a copy delivered. Since under the new rules all orders will be entered, a copy is authorized to be served in all cases. Certification by an attorney is allowed to cover

those cases where an order is obtained from the judge out of court, and it is desirable that service be made before it can be entered by the clerk. In such a case the service must of necessity be made without a notice of entry. Subsequent service of a notice of entry would be necessary to start the time to appeal running. If the losing party desires to appeal and the order has not been entered, he can have it entered himself. See CPA §§ 612, 624, 632; new CPLR § 5513.

Revision Notes:

[1964]The 1964 amendment was proposed because the requirement of certification was unduly burdensome and served no useful purpose.

Notes To Decisions

I.UNDER CPLR

1.Generally

II.UNDER FORMER CIVIL PRACTICE LAWS

2.Generally

3.Opinion

4.Ex parte orders

5.Entry by opposing party

6.Time for filing

7.Effect of failure to file

8.—Appeal

I. UNDER CPLR

1. Generally

The trial court erred in vacating a conditional order of preclusion, made after the time to appeal therefrom had expired, upon motion by the plaintiff to resettle and amend since the plaintiff did not appeal within 30 days after the order was filed, and since the plaintiff did not demonstrate that its default in responding to the order was excusable, but rather asserted only that the order was irregular, improperly filed and therefore prejudicial to the plaintiff because of the failure of the defendant to comply with CPLR 2220 in that it did not file the plaintiff's bill of particulars along with the preclusion order. *Albion Grain Co. v Howard Farms, Inc.*, 79 A.D.2d 881, 434 N.Y.S.2d 535, 1980 N.Y. App. Div. LEXIS 14304 (N.Y. App. Div. 4th Dep't 1980).

Where a parties' rights will be affected by an order, the successful party must serve a copy of the order on the adverse party in order to give it validity. *Cultural Center Com. v Kokoritsis*, 103 A.D.2d 1018, 478 N.Y.S.2d 199, 1984 N.Y. App. Div. LEXIS 19713 (N.Y. App. Div. 4th Dep't 1984).

People's appeal of trial court's oral ruling to set aside verdict in burglary case could be properly brought and would not be "procedurally flawed" under CLS CPLR § 2220 (which requires party to file and serve written orders) since CPLR has no application to criminal actions and proceedings; People are not required to serve written order as prerequisite to appeal where order has been entered on record. *People v Silva*, 122 A.D.2d 750, 506 N.Y.S.2d 55, 1986 N.Y. App. Div. LEXIS 59277 (N.Y. App. Div. 1st Dep't 1986).

Judicial hearing officer properly barred wife's challenge to court's jurisdiction over enforcement of parties' visitation agreement in divorce proceeding, although previous order denying wife's cross motion to compel arbitration was never signed, entered or served on her as required, since she had actual notice of proposed order, was aware of court's repeated assertions of jurisdiction, and nevertheless waited 2 years until eve of hearing on visitation to challenge court's jurisdiction. *Lowinger v Lowinger*, 125 A.D.2d 370, 509 N.Y.S.2d 96, 1986 N.Y. App. Div.

LEXIS 62655 (N.Y. App. Div. 2d Dep't 1986), app. denied, 69 N.Y.2d 608, 516 N.Y.S.2d 1023, 509 N.E.2d 358, 1987 N.Y. LEXIS 16388 (N.Y. 1987).

Petitioner was entitled to relief in nature of mandamus to compel Justice to issue written order regarding his imposition of monetary sanction against petitioner so as to enable petitioner to ascertain proper procedure for seeking review thereof. *Giampa v Leahy*, 149 A.D.2d 595, 540 N.Y.S.2d 680, 1989 N.Y. App. Div. LEXIS 4919 (N.Y. App. Div. 2d Dep't 1989).

Court properly imposed sanctions on defendants for failure to have settled, signed and entered written order based on oral order, which resulted in need for additional motion practice on part of plaintiff. *Lehifa Trading Co. v Russo Sec.*, 205 A.D.2d 738, 614 N.Y.S.2d 906, 1994 N.Y. App. Div. LEXIS 6621 (N.Y. App. Div. 2d Dep't 1994).

Fact that orders were not promptly entered was mere irregularity which did not affect their validity. *Sassower v Blaustein*, 208 A.D.2d 820, 618 N.Y.S.2d 47, 1994 N.Y. App. Div. LEXIS 10074 (N.Y. App. Div. 2d Dep't 1994).

Where notice of entry of order set forth incorrect date of entry, its service was nullity. *Baranello v Westchester Square Med. Ctr.*, 282 A.D.2d 259, 722 N.Y.S.2d 863, 2001 N.Y. App. Div. LEXIS 3588 (N.Y. App. Div. 1st Dep't 2001).

Trial court erred in conditionally granting a landlord's prior motion to strike a tenant's answer unless it provided the landlord with outstanding discovery responses on or before a certain date, struck the tenant's answer, and granted the landlord's motion for summary judgment on its breach of the lease complaint because the tenant's failure to respond was not willful where it did not have notice of the order, and the law of the case applied where the court had determined that the tenant raised a triable issue of fact as to whether it was actually or constructively evicted from the subject premises due to the manner in which the prior tenant left the premises the prior tenant occupied the premises in contravention of the lease provisions. *Wolf Props. Assoc., L.P. v Castle Restoration, LLC*, 174 A.D.3d 838, 106 N.Y.S.3d 313, 2019 N.Y. App. Div. LEXIS 5775 (N.Y. App. Div. 2d Dep't 2019).

The ultimate act of perfecting an order is its entry. *Harvey v Hammer*, 42 Misc. 2d 1096, 249 N.Y.S.2d 1012, 1964 N.Y. Misc. LEXIS 1734 (N.Y. Sup. Ct. 1964).

There was no enforceable Family Court order of support which could have been continued in divorce decree, where order was not reduced to writing nor signed by judge who made it and was not entered for more than two years after date of divorce decree which purported to continue it. *Parsons v Parsons*, 82 Misc. 2d 454, 368 N.Y.S.2d 988, 1975 N.Y. Misc. LEXIS 2699 (N.Y. Fam. Ct. 1975).

Because entry of an order pursuant to N.Y. C.P.L.R. 2220 did not occur until the order was filed and “entered” by a county clerk, notice of entry of an order denying a limited liability company’s motion to dismiss contained an improper entry date as the date listed was the date the motion was decided, not the date the county clerk filed the order. *Crystal Cove Seafood Corp. v Chelsea Harbor LLC*, 237 N.Y.L.J. 100, 2007 N.Y. Misc. LEXIS 3972 (N.Y. Sup. Ct. Apr. 24, 2007).

II. UNDER FORMER CIVIL PRACTICE LAWS

2. Generally

The requirements of RCP 71 did not apply to the stenographic notes of a trial treated as the minutes of a judge for the purposes of a motion for new trial on the merits. *Schlotterer v Brooklyn & N. Y. Ferry Co.*, 102 A.D. 363, 92 N.Y.S. 674, 1905 N.Y. App. Div. LEXIS 638 (N.Y. App. Div. 1905).

Proceedings supplementary to execution were special proceedings within CPA § 101 (R 2220 herein), and depositions taken therein had to be filed with the county clerk, though not used in procuring the order and though taken by a stenographer paid by plaintiff’s attorney. *Falkenberg v Frank*, 46 N.Y.S. 675, 20 Misc. 692, 1897 N.Y. Misc. LEXIS 445 (N.Y. City Ct. 1897).

Resettlement by successor judge of predecessor judge's order to correct misrecital in order that motion was "granted" instead of "denied" to express real content of latter judge's opinion, was not barred by RCP 71. *Carilli v Bianco & Pepe, Inc.*, 1 Misc. 2d 835, 153 N.Y.S.2d 327, 1955 N.Y. Misc. LEXIS 2275 (N.Y. County Ct. 1955), *aff'd*, 1 A.D.2d 898, 150 N.Y.S.2d 537, 1956 N.Y. App. Div. LEXIS 6037 (N.Y. App. Div. 2d Dep't 1956).

The examination of a judgment debtor in supplementary proceedings is a record of the court, in which the judgment debtor has sufficient interest to require the judgment creditor to file it for future use or reference. *Renner v Meyer*, 6 N.Y.S. 535, 1889 N.Y. Misc. LEXIS 670 (N.Y. City Ct. 1889).

3. Opinion

The appellate division is authorized to look at the opinion of the court below to find the grounds upon which its order was made, in the absence of a statement of such grounds in the order itself. *In re Candidate of Democratic Party*, 150 A.D. 14, 134 N.Y.S. 374, 1912 N.Y. App. Div. LEXIS 7046 (N.Y. App. Div.), *app. dismissed*, 206 N.Y. 632, 99 N.E. 1103, 206 N.Y. (N.Y.S.) 632, 1912 N.Y. LEXIS 1028 (N.Y. 1912).

An order cannot be qualified in its operation and effect by reference to the opinion. *People ex rel. Follett v Waterworks Co.*, 207 N.Y.S. 215, 124 Misc. 23, 1924 N.Y. Misc. LEXIS 1054 (N.Y. Sup. Ct. 1924).

The court's opinion or memorandum is part of the record on which the order is made and the opinion or memorandum need not be quoted from in the order unless absolutely necessary. *White v White*, 22 N.Y.S.2d 776, 175 Misc. 66, 1940 N.Y. Misc. LEXIS 2223 (N.Y. Sup. Ct. 1940).

Opinion is part only of record on which order is made, and cannot be considered as order so that opinion, filed in office of clerk, is insufficient as final order. *Gable v Raftery*, 65 N.Y.S.2d 520, 1946 N.Y. Misc. LEXIS 2869 (N.Y. Sup. Ct. 1946).

4. Ex parte orders

As a rule an ex parte order of a judge need not be entered although the papers should be filed. *Albrecht v Canfield*, 36 N.Y.S. 940, 92 Hun 240 (1895).

Ex parte orders made by a judge in chambers need not be entered with the clerk. 3 How. Pr. 276.

5. Entry by opposing party

If a party who is entitled to have an order entered fails to do so within twenty-four hours after the decision has been made, any party interested may have it drawn up and entered. It is the duty of the clerk to enter orders without any directions from the court. This duty, however, is merely clerical and in no case will omission of it be allowed to prejudice substantial rights of the parties. *People v Cent. City Bank*, 53 Barb. 412, 1867 N.Y. App. Div. LEXIS 236 (N.Y. Sup. Ct. Mar. 4, 1867), limited, *BENNETT v COOPER*, 57 Barb. 642, 1870 N.Y. App. Div. LEXIS 62 (N.Y. Sup. Ct. Nov. 21, 1870); *Peet v Cowenhoven*, 14 Abb. Pr. 56, 1861 N.Y. Misc. LEXIS 66 (N.Y. Sup. Ct. Dec. 1, 1861); *In re Rhinebeck & C. R. Co.*, 8 Hun 34 (N.Y.), *aff'd*, 67 N.Y. 242, 67 N.Y. (N.Y.S.) 242, 1876 N.Y. LEXIS 378 (N.Y. 1876).

Failure of a party procuring an order to have it filed does not give the right to the opposing party to agitate the question by a fresh motion. The defeated party can enter the order if he desires to appeal, and the prevailing party omits to have it filed. *Peet v Cowenhoven*, 14 Abb. Pr. 56, 1861 N.Y. Misc. LEXIS 66 (N.Y. Sup. Ct. Dec. 1, 1861).

6. Time for filing

Under RCP 71 a party lost the benefit of an order unless within ten days after the making thereof he filed in the office of the clerk the papers used upon the motion. *Curtis v Greene*, 28 Hun 294 (N.Y.).

7. Effect of failure to file

Under RCP 71 the court was not compelled to set aside an order of contempt for failure to file the supporting papers on which such order was granted when order was entered. *Commercial Credit Corp. v Colegrove*, 31 Misc. 2d 781, 219 N.Y.S.2d 971, 1961 N.Y. Misc. LEXIS 3465 (N.Y. Sup. Ct. 1961) (moving party having since filed the papers, order was not set aside).

Where a prevailing party fails to have filed within the prescribed time papers directed to be filed in a county other than that in which the order was granted it is the right of the other party to move to set aside the order as irregular in the county where the papers should be filed. *Curtis v Greene*, 28 Hun 294 (N.Y.).

8. —Appeal

An appeal will not lie from an order until it is entered. *Smith v Dodd*, 3 ED Smith, 215.

Research References & Practice Aids

Federal Aspects:

Protective orders governing discovery and depositions generally in United States District Courts, Rule 26(c) of Federal Rules of Civil Procedure, USCS Court Rules.

Order relating to depositions before action or pending appeal in United States District Courts, Rule 27(a)(3), (b) of Federal Rules of Civil Procedure, USCS Court Rules.

Order for physical and mental examination of persons in United States District Courts, Rule 35 of Federal Rules of Civil Procedure, USCS Court Rules.

Notice of orders or judgments entered in office of Clerk of Court in United States District Courts, Rule 77(d) of Federal Rules of Civil Procedure, USCS Court Rules.

Jurisprudences:

4 NY Jur 2d Appellate Review § 15. .

30 NY Jur 2d Creditors' Rights and Remedies § 49. .

67A NY Jur 2d Injunctions §§ 168., 169. .

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2220, Entry and Filing of Order; Service.

5 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 2220.07; 6 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶2701.04.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 15.01. Motions and orders — in general.

CPLR Manual § 15.06. Conversion of motions and applications.

CPLR Manual § 15.07. Determination of motion; form of order, filing and entry; resettlement.

Matthew Bender's New York Practice Guides:

4 New York Practice Guide: Domestic Relations § 48.10.

Annotations:

Dismissal of action for failure or refusal of plaintiff to obey court order. 4 ALR2d 348.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 2220:1.

LexisNexis Forms FORM 75-CPLR 2220:1.—Notice of Entry of Order.

LexisNexis Forms FORM 380-11:405.—Notice of Entry.

LexisNexis Forms FORM 1434-19343.—CPLR 2220: Notice of Entry of Order.

LexisNexis Forms FORM 1434-22880.—Notice of Entry.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 11:101 et seq .(stays, motions, orders and mandates).

Hierarchy Notes:

NY CLS CPLR, Art. 22

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