NY CLS CPLR R 2101

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Consolidated Laws Service **>**

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

Article 21 Papers (§§ 2101 — 2106)

R 2101. Form of papers

(a) Quality, size and legibility. Each paper served or filed shall be durable, white and, except for summonses, subpoenas, notices of appearance, notes of issue, orders of protection, temporary orders of protection and exhibits, shall be eleven by eight and one-half inches in size. The writing shall be legible and in black ink. Beneath each signature shall be printed the name signed. The letters in the summons shall be in clear type of no less than twelve-point in size. Each other printed or typed paper served or filed, except an exhibit, shall be in clear type of no less than ten-point in size.

(b) Language. Each paper served or filed shall be in the English language which, where practicable, shall be of ordinary usage. Where an affidavit or exhibit annexed to a paper served or filed is in a foreign language, it shall be accompanied by an English translation and an affidavit by the translator stating his qualifications and that the translation is accurate.

(c) Caption. Each paper served or filed shall begin with a caption setting forth the name of the court, the venue, the title of the action, the nature of the paper and the index number of the action if one has been assigned. In a summons, a complaint or a judgment the title shall include the names of all parties, but in all other papers it shall be sufficient to state the name of the first named party on each side with an appropriate indication of any omissions.

(d) Indorsement by attorney. Each paper served or filed shall be indorsed with the name, address and telephone number of the attorney for the party serving or filing the paper, or if the party does not appear by attorney, with the name, address and telephone number of the party.

(e) Copies. Except where otherwise specifically prescribed, copies, rather than originals, of all papers, including orders, affidavits and exhibits may be served or filed. Where it is required that the original be served or filed and the original is lost or withheld, the court may authorize a copy to be served or filed.

(f) Defects in form; waiver. A defect in the form of a paper, if a substantial right of a party is not prejudiced, shall be disregarded by the court, and leave to correct shall be freely given. The party on whom a paper is served shall be deemed to have waived objection to any defect in form unless, within fifteen days after the receipt thereof, the party on whom the paper is served returns the paper to the party serving it with a statement of particular objections.

(g) Service by electronic means. Each paper served or filed by electronic means, as defined in subdivision (f) of rule twenty-one hundred three, shall be capable of being reproduced by the receiver so as to comply with the provisions of subdivisions (a) through (d) of this rule.

History

Add, L 1962, ch 308, § 1, eff Sept 1, 1963; amd, L 1964, ch 388, § 6, eff Sept 1, 1964; L 1965, ch 773, § 6, eff Sept 1, 1965; L 1994, ch 100, § 2; L 1996, ch 131, § 1, eff June 11, 1996; L 1999, ch 367, § 2, eff July 27, 1999; L 2011, ch 473, § 2, eff Jan 1, 2012.

Annotations

Notes

Derivation Notes:

Earlier statutes and rules: CPA §§ 105, 255, 359, 775; RCP 10–12, 14, 45; CCP §§ 22, 24, 417, 418, 481, 520, 723–726, 768, 796, 844, 1317; Code Proc §§ 128, 129, 142, 156, 408, 422; Gen Rules Pr 2, 19.

2011 Recommendations of the Advisory Committee on Civil Practice

The Committee recommends an amendment to rule 2101(f) of the CPLR to increase the time for raising objections to defects in form. Currently, the time in which objection to a defect in form must be raised is only two days from receipt of the paper objected to. The Committee believes that two days is an unreasonably short period of time for counsel to review a paper served and raise objections to it where necessary. Instead, the Committee recommends that the period of time be amended from “two” to “fifteen” days. The effect of the change will be that the focus of any debate over the form of a paper will concern solely the proper form and the underlying facts, not the number of days allowed for objection. The Committee extends its gratitude to the Nassau County Bar Association Appellate Practice Committee for the opportunity to review this procedural practice issue, which it raised in the context of a notice of appeal.

1999 Recommendations of the Advisory Committee on Civil Practice:

Many members of both Bench and Bar have suggested that greater use be made of new technologies in the filing and service of legal papers in civil proceedings. If properly regulated, such technologies can expedite litigation and reduce its administrative costs to the parties.

This measure is offered in response to these suggestions. It would authorize conduct of two experiments in the filing and exchange of legal documents by means other than the traditional mailing or personal delivery of paper. One experiment would make use of telefax machines and another would make use of electronic mail (or any other available medium for the electronic transmission of documents). The telefax experiment would be conducted in no more than six counties (at least one in each of the four Judicial Departments), as selected by the Chief Administrative Judge with the approval of the Administrative Board of the Courts. The electronic transmission experiment would be conducted in one of New York City’s five counties and in no

more than two counties outside the City, likewise selected by the Chief Administrative Judge with the approval of the Administrative Board of the Courts. Both experiments would extend through July 1, 2003, with the Chief Administrative Judge being required, at least three months in advance of that sunset, to report to the Governor, the Legislature and the Chief Judge of the Senate his evaluation of them. Both experiments would apply to the filing of a summons and complaint with a court to commence an action and, as well, to the exchange of legal papers between counsel for the parties in civil litigation.

1996 Recommendations of Family Court Advisory and Rules Committee:

The Family Court Advisory and Rules Committee seeks an amendment to the Civil Practice Law and Rules to provide needed flexibility in the size of paper permitted to be utilized in the uniform forms promulgated for the statewide automated registry of orders of protection and warrants.

One of the greatest challenges presented by the “Family Protection and Domestic Violence Intervention Act of 1994” [Laws of 1994, ch. 222, 224] is its requirement that the court system, the Division of State Police and other criminal justice agencies collaborate to create a statewide automated registry of orders of protection and related warrants. Executive Law § 221-a. The registry is designed to assure that the courts and law enforcement officials have available a system that will provide timely and accurate information relating to pending orders of protection and warrants, as well as critical historical information regarding prior orders pertaining to the family. In accordance with chapter 356 of the Laws of 1995, the registry became operational on October 1, 1995.

Implementation of the registry is a daunting task, in part because the system must include orders issued not only by judges of the Unified Court System, numbering over 1000, but also those issued by the approximately 2300 town and village justice courts. In 1995, the Legislature authorized the establishment of a central facility, operated by the Unified Court System, to perform data entry and inquiry functions for all of the courts, including the town and village justice courts. The central facility must enter detailed information, including various forms of

identifying information regarding the parties, specified court action information, an indication of the date the offender was served, the date of expiration of the order and the terms and conditions of the order. Executive Law § 221-a. The sheer volume of paper required to be transmitted to the data entry center for the estimated 350,000 orders of protection issued annually is staggering.

A fully automated system is in the process of installation in the high-volume courts, which will eventually permit electronic generation and transmission of orders to the data entry center. However, pending that installation, these courts, and for the foreseeable future, all of the town and village courts, are required to transmit the orders to the center by facsimile or courier for entry onto the system. Copies of the orders must be filed with law enforcement and given to the parties as well.

Newly-revised uniform forms for orders of protection and temporary orders of protection in criminal, matrimonial and Family Court cases were promulgated by the Chief Administrative Judge on November 1, 1996. These forms include the extensive data required for the registry, as well as notices regarding the “full faith and credit” mandate of the federal “Violence Against Women Act.” See Public Law 103-322. All but the criminal form, which has been produced on 8 ½ by 14-inch paper, are two pages in length, because of the requirement in the Civil Practice Law and Rules that all documents, with specified exceptions, be produced by 8 ½ by 11-inch paper.

Use of multi-page forms has proven cumbersome, not only for the data entry and court staff, but also for law enforcement agencies and the parties who must receive copies of the orders. The Family Court Advisory and Rules Committee, with the support of the Civil Practice Advisory Committee, is, therefore, recommending legislation to exempt orders of protection and temporary orders of protection from the 8 ½ by 11-inch rule in subdivision (a) of rule 2101 of the Civil Practice Law and Rules.

1994 Recommendations of Advisory Committee on Civil Practice:

The Committee recommends that CPLR 2101(a) be amended to provide that a printed or typed summons shall be in clear type of no less than twelve-point size, and that each other printed or typed paper served or filed in an action, except an exhibit, shall be in clear type of no less than ten-point size.

The Committee has become aware that some smmonses and complaints and other pleadings served in actions contain language typed or printed in such small or obscure type as to be barely legible. Great harm is possible, especially where a summons is served on a person who is unable to read the small print or type. The provisions of CPLR 4544, precluding the admission into evidence of printed contracts or agreements involving consumer credit transactions or residential leases that are printed in small print, and the provisions of CPLR 8019(e), relating to the size of printed type on papers filed with the county clerk for recording and indexing, are instructive in setting type-size limits. However, neither resolves the problem of excessively small type used in legal papers served by one party on another, especially a summons commencing an action.

The Committee has examined carefully various sizes and styles of type and print, and concludes that the type used in printed or typed summonses should be at least twelve-point in size, and in other papers served in the action, at least ten-point in size.

No attempt is made to regulate the size of hand-written letters, which the courts may scrutinize for legibility, nor the size of print or type in exhibits, which, necessarily, may be of any size.

In addition, the Committee proposes the elimination from the subdivision of the archaic reference, now unnecessary, to the change in the size of most legal papers from 8- ½ by 14 inches (legal size) to 8- ½ by 11 inches (letter size), effected on September 1, 1974.

In order to provide the Bar with sufficient time to make any necessary preparation to implement this provision, it would not take effect until January 1, 1996.

Revision Notes:

[1973] This change is prompted by the unprecedented and increasing cost of preparing papers for appeal and review. The mandatory requirement will insure uniform size of papers throughout the entire course of a case, so that reproduction can be effected without stenographic recopying of papers. Certain papers, such as printed forms, and exhibits, will be excepted, as at present, because of the practical difficulties which would be encountered in mandating a change in their size.

The change is in response to a formal resolution of the Committee on State Administrative Law of the New York State Bar Association in respect to papers in Article 78 proceedings, as well as growing complaints of attorneys in all areas of the law. Furthermore, it is in keeping with a general trend throughout the United States.

[1974] Under this rule, effective September 1, 1974, most papers served or filed in actions or proceedings commenced thereafter, must be “letter” size (11 by 8 ½ inches). Information has recently been presented from many sources indicating that some courts and other governmental units have on hand substantial supplies of “legal” size forms. In order to permit the use of these supplies, and in the interests of conservation and economy this extension is recommended.

Amendment Notes:

2011. Chapter 473, § 2 amended:

Sub (f) by deleting at fig 1 “two”, at fig 2 “he” and adding the matter in italics.

Advisory Committee Notes:

(See also Advisory Committee Notes preceding this section, under subheading “Form of papers.”) **Subd (a)** is derived from RCP 10. The term “writing” includes all means for the inscription of words on paper, such as handwriting, typewriting, or the various methods of mechanical duplicating or printing. The last sentence is derived from NJ R Civ P 4:5–9. “Printed” is used to denote all types of writing other than cursive handwriting.

The first sentence of this subd (b) is derived from RCP 10. In lieu of the specific material on names of process, technical words, abbreviations and numbers, a general requirement of ordinary English usage is made. Presumably, under former law, an affidavit or exhibit annexed to a paper need not itself be indorsed by the attorney, if the paper is so indorsed, despite the wording of rule 11 of the rules of civil practice. The similar requirement of subdivision (d), as well as that of a caption in subdivision (c), would apply only to the paper to which the affidavit or exhibit is annexed. This subdivision, however, requires the annexed affidavit or exhibit to be translated if it is in a foreign language. Although this requirement is new, it achieves the same result reached under the English language requirement of RCP 10. Hurwitz v Hurwitz, 214 App Div 823, 210 NY Supp 865 (2d Dep't 1925); Friedman v Prescetti, 199 App Div 385, 192 NY Supp 55 (1st Dept 1922). The requirement that oral and written evidence submitted at a trial be in English is a well-established principle of the common law followed in this state. See 3 Wigmore, Evidence § 811 (3d ed 1940); 5 id. § 1393. In the event that a witness at a trial does not adequately understand and speak English, the questions to him and his answers must be translated by a sworn interpreter. The rules on evidence of some jurisdictions contain an express provision to this effect. See, e. g., Cal Code Civ Proc § 1884. The New York statutes provide for the appointment of permanent official interpreters to be attached to the courts and for the appointment of temporary interpreters where needed. NY Const art VI, § 15; NY County Law § 218; NY Judiciary Law §§ 106, 172, 199, 380–386; NYC Ct Act § 8; NYC Crim Cts Act §§ 87, 162; NYC Dom Rel Ct Act § 23; NYC Munic Ct Code § 7-a; NY Code Crim Proc § 55; NY Surr Ct Act § 24. In the case of papers served or filed, however, the only provision for translation was found in CPA § 359, which was added in 1944. This section is limited in application to oaths or affidavits taken without the state or by a person serving with the armed forces. It requires such oaths or affidavits, in order to be filed or used in a court, to be accompanied by an English translation made by a person designated by a Supreme Court justice, county judge or surrogate, and signed, acknowledged and certified by such person under oath before the judge to be a true and accurate translation. The actual practice in instances not covered by CPA § 359 is that the party filing or serving the paper provides his own

translator. The English translation then accompanies the foreign language original together with an affidavit by the translator stating his qualifications and certifying the accuracy of the translation. Since the adverse party has access to the foreign language original, he has the opportunity to object to the accuracy of the translation. The court can decide any dispute and, if necessary, appoint a translator for this purpose. Such a procedure is much less cumbersome and time-consuming than the procedure provided for in CPA § 359 and at the same time includes adequate safeguards against an inaccurate translation.

Subd (c) requires captions on all papers served or filed as distinguished from the former law which provided for a caption on the complaint only. Civ Prac Act § 255(1). The specification by the plaintiff in a Supreme Court action of the county where trial is desired has been eliminated in favor of a simple statement of the venue. It is unnecessary to recite both, since they are identical. The requirement that a paper be labeled is a convenience to the parties and the court; with respect to pleadings, it is needed as a basis for such provisions as that of new CPLR § 3011 requiring a reply to a counterclaim “denominated as such.” The provision that the caption include a file number is the practice in most courts by local rule with respect to papers to be filed. It has been extended to papers to be served. The final sentence is a rewording of part of Federal rule 10(a) and merely ratifies the practice which has developed in New York, in the absence of any statute or rule, relating to captions in papers other than complaints. It becomes necessary as a result of the inclusion of the first sentence, requiring a caption on all papers.

Subd (d) is based upon rule 11 and part of rule 13 of the RCP. Indorsement is required rather than subscription. Under present law, the latter need not be a handwritten signature, but may be typed or printed (Smith v Kerr, 49 Hun 29, 1 NY Supp 454 (Sup Ct, Gen’l T 1888)) and its functions seem entirely fulfilled by the former. Former rule 16, authorizing special rules for the indorsement to be placed on papers and for filing in each department, has been omitted. Although trial courts have adopted local rules with respect to indorsements and filing of papers (see, e. g., Bronx Co. Sup Ct Rule XIV; Nassau Co. Sup Ct Rule 25; NY Co Sup Ct Rule VIII; Richmond Co Sup Ct Rule 11; Bronx Co. Surr Ct Rule I; Kings Co. Surr Ct Rule II; NY Co Surr

Ct Rule I; Queens Co. Surr Ct Rule III; Richmond Co Surr Ct Rule III; Westchester Co Surr Ct Rule I; NY C Ct Rule XIX; NYC Munic Ct Rule II), most of the provisions of these local rules are similar to the new subdivision. There is no strong reason why indorsements on papers should not be uniform throughout the state. Filing systems, on the other hand, present some administrative problems that may differ with the volume of business and the facilities and staff available in each county. Although this is recognized, specific authorization for flat-filing does not appear to be necessary. The rule is designed to achieve a uniformity among courts, counties and departments in details of form of papers, thus correcting a constant annoyance and unnecessarily complicated office procedure for the lawyer who practices in more than one court.

The first sentence of subd (e) is derived from part of Rule 10 of the RCP; the second sentence is based upon Rule 14. No substantive change in the law is intended, but these sources appear inconsistent. The opening phrases of each sentence have therefore been added to clarify the provision. Copies, of course, must conform to the other requirements of this rule, so that the specific requirement of legibility for copies has been omitted. This subdivision makes it possible to eliminate references to copies in many provisions of the CPLR. See, for example, the many provisions of article 3, referring to service “of a summons.”

The first sentence of this subd (b) represents the former law as to mistakes, irregularities and defects in general. NY CPA § 105. Since this rule is cast in mandatory language, the provision of the last sentence of Rule 10 of the RCP has been omitted. Thus, while the court should disregard a non-prejudicial defect, it would allow the defect to be corrected in order that it may be efficiently filed and dealt with. No change from former practice is intended in this respect. This subdivision places upon the party served the burden of objecting to defective papers which would result in prejudice. In such event, it would be incumbent upon the party making the error in form to serve a new or amended paper. This waiver provision is derived from RCP 12, which provides for objection within 24 hours—a period that appears unreasonably short and has been extended to two days. The waiver by a party does not affect the eligibility of a paper for filing or

submission to court; it merely prohibits such party from asserting prejudice to himself. Thus, the final sentence of RCP 12 seems unnecessary and has been omitted.

Notes to Decisions

I.Under CPLR

1.Generally

2.Defects

3.—Correction

4.—Waiver of objection

II.Under Former Civil Practice Laws

A.In General

5.Generally

B.Legibility and Size of Papers

6.Generally

7.Language requirement

8.Legibility of paper

9.Type and quality of paper

C.Indorsement By Attorney

10.Generally

11.Name of attorney or law firm

12.Address of attorney

29.Specification of county where trial desired

30.—Effect of failure to specify

31.—Error in specifying county

32.Specification of county of plaintiff’s residence

33.Attorney’s name and address

34.—Effect of error

35.Subscription by plaintiff

36.Time for answer

I. Under CPLR

1. Generally

In an action to recover damages for wrongful death and pain and suffering prior to death, the plaintiff is not required to give particulars in “proper medical terminology”. Afrecan v Caledonian Hospital of New York, 29 A.D.2d 544, 285 N.Y.S.2d 912, 1967 N.Y. App. Div. LEXIS 2795 (N.Y. App. Div. 2d Dep't 1967).

Order denying plaintiff’s motion to compel translation of a document disclosed by defendant pursuant to court order is affirmed, since CPLR § 2101, is not generally applicable to documents produced during the discovery process, and was not designed to apply to those documents filed or introduced into evidence in an action; through disclosure a party may be required to produce only those items which are in the possession, custody or control of the party served pursuant to CPLR § 3120, and a party cannot be compelled to create new documents or other tangible items in order to comply with particular discovery applications. Rosado v Mercedes-Benz of

North America, Inc., 103 A.D.2d 395, 480 N.Y.S.2d 124, 1984 N.Y. App. Div. LEXIS 19763 (N.Y. App. Div. 2d Dep't 1984).

For purposes of calculating statute of limitations, actions were commenced on later date when correctly captioned complaints were served on defendants, not at earlier date of service of summons and complaint which failed to name court in which action was being brought. Scott v Uljanov, 140 A.D.2d 830, 528 N.Y.S.2d 435, 1988 N.Y. App. Div. LEXIS 5010 (N.Y. App. Div. 3d Dep't 1988), rev'd in part, dismissed, 74 N.Y.2d 673, 543 N.Y.S.2d 369, 541 N.E.2d 398, 1989 N.Y. LEXIS 651 (N.Y. 1989).

Plaintiff’s motion for protective order against oral depositions of 2 witnesses was properly denied in absence of affidavit of translator of documents purporting to show that those witnesses were too frail to travel to New York, where plaintiff had represented, in opposing prior defense motion to dismiss action on ground of forum non conveniens, that it would make those witnesses available for depositions in New York at its own expense. Yoshida Printing Co. v Aiba, 240 A.D.2d 233, 659 N.Y.S.2d 7, 1997 N.Y. App. Div. LEXIS 6480 (N.Y. App. Div. 1st Dep't 1997).

Filing of copy of sworn deposition of victim, rather than original deposition, did not render juvenile delinquency petition jurisdictionally defective where document had been signed and thus was not hearsay; CLS CPLR § 2101(e), which applied in absence of any specific relevant provision in Family Court Act, expressly permits service and filing of copies of affidavits. In re Samuel E., 240 A.D.2d 251, 658 N.Y.S.2d 306, 1997 N.Y. App. Div. LEXIS 6523 (N.Y. App. Div. 1st Dep't), app. denied, 90 N.Y.2d 812, 666 N.Y.S.2d 100, 688 N.E.2d 1383, 1997 N.Y. LEXIS 3670 (N.Y. 1997).

Where a patient failed to object to the caption within two days as required by N.Y. C.P.L.R. § 2101(f) and the complaint was sufficient to appraise the patient which hospital was the plaintiff and where the specific medical treatment provided under N.Y. C.P.L.R. 2221(e) was first placed at issue in the patient’s affidavit in opposition to the initial summary judgment motion, the trial court did not err in granting the hospital’s motion to renew. Mem'l Hosp. v Kligerman, 309 A.D.2d 1128, 766 N.Y.S.2d 451, 2003 N.Y. App. Div. LEXIS 11232 (N.Y. App. Div. 3d Dep't 2003).

Summary judgment for defendants in a personal injury case was improper because, among other things, a translated affidavit, submitted in support of a motion and a cross motion for summary judgment, that lacked the translator’s attestation, did not constitute admissible evidence. Martinez v 123-16 Liberty Ave. Realty Corp, 47 A.D.3d 901, 850 N.Y.S.2d 201, 2008 N.Y. App. Div. LEXIS 655 (N.Y. App. Div. 2d Dep't 2008).

Affidavit filed in support of a second English translation of an arbitration agreement written in Hebrew that did not include the name and qualifications of the actual translator of the document could not be considered by a trial court on plaintiffs' motion to renew with regard to an order that had dismissed plaintiffs breach of fiduciary duty action and had remanded the matter back to a Beth Din for further arbitration proceedings. Rosenberg v Piller, 116 A.D.3d 1023, 985 N.Y.S.2d 250, 2014 N.Y. App. Div. LEXIS 2857 (N.Y. App. Div. 2d Dep't 2014).

Trial court erred in denying an insurer's motion for leave to enter a default judgment against a doctor in the insurer's action for a de novo adjudication of an insurance dispute concerning the denial of no-fault claims because the insurer submitted proof of service of the summons and complaint upon the doctor, that the doctor had not answered or appeared in the action, and the insurer's affirmed peer review demonstrated facts constituting the cause of action asserted against the doctor. Global Liberty Ins. Co. v W. Joseph Gorum, M.D., P.C., 143 A.D.3d 768, 39 N.Y.S.3d 193, 2016 N.Y. App. Div. LEXIS 6579 (N.Y. App. Div. 2d Dep't 2016).

The defendant was entitled to tax as reasonable and necessary disbursement incurred in the translation of the records of an Argentine Court into English, where such documents were necessary in the trial of the instant action. Moore-McCormack Lines, Inc. v Aetna Ins. Co., 49 Misc. 2d 747, 268 N.Y.S.2d 599, 1966 N.Y. Misc. LEXIS 2064 (N.Y. Sup. Ct.), aff'd, 26 A.D.2d 908, 275 N.Y.S.2d 363, 1966 N.Y. App. Div. LEXIS 6340 (N.Y. App. Div. 1st Dep't 1966).

Under statute providing that when paper served or filed is in foreign language, it shall be accompanied by an English translation and an affidavit by the translator setting forth his qualifications and that the translation is accurate, it is very important that translation be accompanied by statement, made under oath or by affirmation under pain of perjury, by

translator before authorized officer. In re Estate of Giannopoulos, 89 Misc. 2d 961, 392 N.Y.S.2d 828, 1977 N.Y. Misc. LEXIS 2733 (N.Y. Sur. Ct. 1977).

Instrument which law firm alleged was power of attorney executed by decedent's widow who resided in Albania and who allegedly executed instrument there failed to comply with section of Civil Practice Law and Rules relating to translations, in view of facts, that translation of main body of power of attorney from Albanian to English was allegedly made by lawyer residing in Albania, country with which United States did not maintain diplomatic relations and that statement of translator as to his qualifications and accuracy of translation was not given under oath or an affirmation under pain of perjury. In re Estate of Giannopoulos, 89 Misc. 2d 961, 392 N.Y.S.2d 828, 1977 N.Y. Misc. LEXIS 2733 (N.Y. Sur. Ct. 1977).

CPLR 2101 (subd [b]) provides that where an affidavit or exhibit annexed to a paper served or filed is in a foreign language, it must be accompanied by an English translation and an affidavit by the translator stating his qualifications and that the translation is accurate; accordingly, English translations of a power of attorney and a marriage certificate were not in proper form since there was no statement as to the qualifications of the translator; additionally, the marriage certificate was not authenticated pursuant to CPLR 4542 (proof of foreign documents). In re Estate of Panagiotou, 96 Misc. 2d 278, 408 N.Y.S.2d 1012, 1978 N.Y. Misc. LEXIS 2593 (N.Y. Sur. Ct. 1978).

Endorsement by attorney, in accordance with CPLR § 2101, of notice of petition to commence summary proceeding based upon alleged failure to pay rent which has been signed by petitioner personally is sufficient to comply with requirement that notice of petition be issued by attorney, not by party. Parker v Paton Associates, Inc., 128 Misc. 2d 871, 491 N.Y.S.2d 550, 1985 N.Y. Misc. LEXIS 3015 (N.Y. City Ct. 1985).

Although CLS CPLR 2101(d) provides that each court paper served shall be endorsed with name, address and telephone number of attorney appearing in action, New York City Civil Court Act § 401(b) requires that summons list residence address of plaintiff or office address of plaintiff's attorney, such that in civil court action, where law firm of record only specified post

office box as its address on summons, action is dismissed. Citibank, N. A. v Gillaizeau, 132 Misc. 2d 928, 505 N.Y.S.2d 993, 1986 N.Y. Misc. LEXIS 2806 (N.Y. Civ. Ct. 1986).

On motion by defendants' fourth law firm to withdraw, law firm would be permitted to withdraw on basis of nonpayment of legal fees; however, proceedings would not be stayed pending defendants' retention of new counsel in light of defendants' misconduct in improperly seeking 3 reargruments of jurisdictional issue in attempt to harass plaintiff and delay action, and defendants would be required to provide their own names, accurate addresses, and telephone numbers on papers filed or served in future. Charney v North Jersey Trading Corp., 150 Misc. 2d 849, 578 N.Y.S.2d 100, 1991 N.Y. Misc. LEXIS 692 (N.Y. Sup. Ct. 1991).

"Faxed" copies of accusatory instrument and supporting depositions may confer jurisdiction over person so as to permit arraignment, since use of fax machines is inevitable step in process of improving speed and efficiency of court process, and court would allow use of faxed copy of supporting deposition, providing that original document was kept by district attorney and made available for inspection on proper request. People v Guzman, 151 Misc. 2d 289, 581 N.Y.S.2d 117, 1992 N.Y. Misc. LEXIS 24 (N.Y. City Crim. Ct. 1992).

Plaintiff was entitled to order allowing her to prosecute action against hospital under pseudonym where (1) she alleged that hospital wrongfully disclosed confidential information regarding care and treatment of her mental illness, (2) she desired to use pseudonym to maintain her privacy and to protect her interest in avoiding stigma, discrimination and other adverse consequences that could result in absence of privacy, and (3) plaintiff, through counsel, had divulged her identity to hospital. E.K. v New York Hospital-Cornell Medical Ctr., 158 Misc. 2d 334, 600 N.Y.S.2d 993, 1992 N.Y. Misc. LEXIS 668 (N.Y. Sup. Ct. 1992).

Convicted sex offenders were denied permission to use anonymous case caption in their action challenging constitutionality of specific provisions of Sex Offender Registration Act (CLS Correc §§ 168 et seq.) as they had no privacy rights with respect to their cases, which were matter of public record, and court's discretion to limit public nature of judicial proceeding should be

exercised sparingly. People v Cropper, 170 Misc. 2d 631, 651 N.Y.S.2d 1019, 1996 N.Y. Misc. LEXIS 469 (N.Y. County Ct. 1996).

Title or caption of the proceeding, in Surrogate's Court, is satisfactory if it describes the type of proceeding and includes the name of the estate and the petitioner, so that where a petition does not clearly describe the nature of the proceeding in the caption, it can be dismissed, but, in contrast to N.Y. C.P.L.R. 2101(c), pursuant to which a summons, a complaint, or a judgment caption or title must include the names of all parties, N.Y. Surr. Ct. Proc. Act Law § 304 does not require the naming of each respondent in the title or caption, and where each necessary party or person interested is named in the contents of the petition, § 304 has been complied with. In re Estate of Pavese, 195 Misc. 2d 1, 752 N.Y.S.2d 198, 2002 N.Y. Misc. LEXIS 1540 (N.Y. Sur. Ct. 2002).

Attorney who filed a defamation suit and sought a preliminary injunction against a former client who posted unfavorable reviews could not use a pseudonymous caption because the case did not involve sensitive and highly personal claims. P.D. & Assoc. v Richardson, 64 Misc. 3d 763, 104 N.Y.S.3d 876, 2019 N.Y. Misc. LEXIS 3449 (N.Y. Sup. Ct. 2019).

Plaintiff's application to proceed as Jane Doe in a suit against a school district alleging child sexual abuse was granted because the court found that allowing plaintiff to proceed under a pseudonym was appropriate with the tipping point being the potential impact to plaintiff's children, both of whom attend school in the school district. Doe v Macfarland, 66 Misc. 3d 604, 117 N.Y.S.3d 476, 2019 N.Y. Misc. LEXIS 6524 (N.Y. Sup. Ct. 2019).

2. Defects

The trial court improperly dismissed plaintiffs' complaint for failure to specify the court in which the action was to be heard in the caption of the summons and complaint where plaintiffs notified the court and all defendants that their papers were amended to read the "Supreme Court," and defendant showed no prejudice from the defect in the captions. Tobia v Rockland, 106 A.D.2d 827, 484 N.Y.S.2d 226, 1984 N.Y. App. Div. LEXIS 21737 (N.Y. App. Div. 3d Dep't 1984).

In proceedings to confirm award of arbitration against Office of Employee Relations, in which first petition for confirmation was directed to improper parties, Special Term erroneously dismissed as time barred second petition directed at correct parties where second petition was not labeled amended petition and did not make reference to earlier proceeding; such errors of pleading were mere defects in form and, absent prejudice to respondents, should have been disregarded by Special Term. Public Employees Federation v Governor's Office of Employee Relations, 111 A.D.2d 451, 488 N.Y.S.2d 510, 1985 N.Y. App. Div. LEXIS 51538 (N.Y. App. Div. 3d Dep't 1985).

Complaint should not have been dismissed on ground that summons with notice was not endorsed with name, address and telephone number of plaintiff’s attorney as required by CLS CPLR § 2101(d) where such information appeared on “back side” of summons. Wiley v Lipset, 140 A.D.2d 336, 527 N.Y.S.2d 829, 1988 N.Y. App. Div. LEXIS 4576 (N.Y. App. Div. 2d Dep't 1988).

Misstatement of defendant’s name in summons and complaint as Welbut instead of Welbilt was mere irregularity which in no way affected jurisdiction. Marine Midland Realty Credit Corp. v Welbilt Corp., 145 A.D.2d 84, 537 N.Y.S.2d 669, 1989 N.Y. App. Div. LEXIS 1249 (N.Y. App. Div. 3d Dep't 1989).

Court erred in denying defendant’s motion for leave to vacate default judgment on ground that he submitted photocopies and not original affidavits in support of motion. Campbell v Johnson, 264 A.D.2d 461, 694 N.Y.S.2d 151, 1999 N.Y. App. Div. LEXIS 8829 (N.Y. App. Div. 2d Dep't 1999).

Trial court should have disregarded a landscaping employee’s affidavit that was submitted in opposition to a summary judgment motion in the employee’s personal injury action, as the affidavit was in English but it was not accompanied by an affidavit of a qualified translator attesting to the accuracy of the English-language affidavit, as required by N.Y. C.P.L.R. 2101(b). Reyes v Arco Wentworth Mgt. Corp., 83 A.D.3d 47, 919 N.Y.S.2d 44, 2011 N.Y. App. Div. LEXIS 1966 (N.Y. App. Div. 2d Dep't 2011).

Trial court erred in denying a first assignee's third motion for summary judgment in its foreclosure action because the flaws in the notarization of an affidavit were not fatal to the first assignee's summary judgment motion, the affiant, a representative of the second assignee, satisfied the applicable standards and sufficed to establish the borrower's default and the basis of the affiant's knowledge, the affiant indicated that he was personally familiar with the recordkeeping systems of the first and second assignees and the loan servicer, that the records he relied on were made in the regular course of business, and that he had personally reviewed them. Bank of Am., N.A. v Brannon, 156 A.D.3d 1, 63 N.Y.S.3d 352, 2017 N.Y. App. Div. LEXIS 7635 (N.Y. App. Div. 1st Dep't 2017).

In a summary proceeding, omission from caption of name of person bringing action was a triviality at most, de minimus in law, and amendable in course, where body of petition indicated that proceeding was brought by actual owner/corporation under Real Property Actions and Proceedings Law § 721, subd 1, rather than by a legal representative thereof pursuant to Real Property Actions and Proceedings Law § 721, subd 8. 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).

By virtue of statutes which govern petitions and captions, captions should be liberally construed and defects in form should be disregarded unless demonstratively prejudicial or timely objection made. Presidential Management Co. v Farley, 78 Misc. 2d 610, 359 N.Y.S.2d 424, 1974 N.Y. Misc. LEXIS 1457 (N.Y. App. Term 1974).

Defect in caption in petition by landlord in summary nonpayment proceedings was not necessarily fatal to court’s jurisdiction of subject matter, especially where parties and their relationships were clearly defined in petition so that no prejudice could accrue by reason of the inaccurate caption. Presidential Management Co. v Farley, 78 Misc. 2d 610, 359 N.Y.S.2d 424, 1974 N.Y. Misc. LEXIS 1457 (N.Y. App. Term 1974).

A failure to name the court in which an action is brought is a jurisdictional defect, not a mere defect in form, which renders a summons void and which cannot be cured by amendment.

Wager v Tread Mill, Inc., 95 Misc. 2d 490, 407 N.Y.S.2d 820, 1978 N.Y. Misc. LEXIS 2453 (N.Y. Sup. Ct. 1978).

In a holdover proceeding brought by a landlord, the petition is dismissed since the summons fails to designate the name of the court and the county where the proceeding is to be heard; each paper served or filed shall begin with a caption setting forth the name of the court and the venue (CPLR 2101, subd [c]), and a summons which fails to name the court in which the action is brought is void. Remanco, Inc. v Wexler, 98 Misc. 2d 955, 415 N.Y.S.2d 179, 1979 N.Y. Misc. LEXIS 2177 (N.Y. City Ct. 1979).

A public utility failed to satisfy the requirement that a corporation appear in court through an attorney and the directive of CPLR § 2101(d) that the name, address, and telephone number of the attorney of record must appear on all papers served or filed, notwithstanding that a letter providing notice of the utility's application for an order to seize a meter was signed by the utility's general attorney, since the required information was not included, and since there is no authority allowing a court to infer that a document by house counsel in a group of papers satisfies either the appearance requirement or CPLR § 2101(d). Consolidated Edison Co. v Church of St. Cecilia, 125 Misc. 2d 744, 480 N.Y.S.2d 284, 1984 N.Y. Misc. LEXIS 3478 (N.Y. Civ. Ct. 1984).

Plaintiff's failure to include basis of venue on summons was mere irregularity susceptible to amendment, and not jurisdictional defect, since complaint was served with summons, informing defendant about nature of action and jurisdictional basis. Archer v Astra Pharmaceutical Products, Inc., 133 Misc. 2d 804, 508 N.Y.S.2d 362, 1986 N.Y. Misc. LEXIS 2953 (N.Y. Sup. Ct. 1986).

Where entity has been properly served with pleading, so that, even though omitted from its caption, recipient reasonably should have been put on notice that it was target of lawsuit, jurisdiction is acquired and error of caption may be treated as mere irregularity. Ibekweh v State, 157 Misc. 2d 710, 598 N.Y.S.2d 664, 1993 N.Y. Misc. LEXIS 186 (N.Y. Ct. Cl. 1993).

Court would disregard technical defect in answer, which had improper line spacing, since no substantial right of plaintiff was prejudiced. Neighborhood Supermarket Chain v Epic Sec. Corp., 162 Misc. 2d 218, 616 N.Y.S.2d 567, 1994 N.Y. Misc. LEXIS 370 (N.Y. Civ. Ct. 1994).

In action commenced in New York City Civil Court, plaintiff's attorney improperly relied on CLS Unif Tr Ct Rls § 202.5 as to required format for answer since rule applies only in Supreme Court and County Court. Neighborhood Supermarket Chain v Epic Sec. Corp., 162 Misc. 2d 218, 616 N.Y.S.2d 567, 1994 N.Y. Misc. LEXIS 370 (N.Y. Civ. Ct. 1994).

In action where plaintiffs mistakenly served note of issue instead of notice of trial and certificate of readiness under CLS NYC Civil Ct Act § 1301 and CLS UR NYC Civil Ct § 208.17 (22 NYCRR § 208.17), court would disregard defect where all specifics required for notice of trial and certificate of readiness were included in note of issue, defendants were not prejudiced, and there was no showing that defendants rejected improper form within 2 days after its receipt. Perlson v Titone, 167 Misc. 2d 593, 638 N.Y.S.2d 1000, 1995 N.Y. Misc. LEXIS 675 (N.Y. Civ. Ct. 1995).

Notice of petition in summary holdover proceeding was not fatally defective because it omitted street address of court, where there was no showing of prejudice to respondent, as shown by fact that he appeared timely in court. 1700 York Assocs. v Kaskel, 182 Misc. 2d 586, 701 N.Y.S.2d 233, 1999 N.Y. Misc. LEXIS 522 (N.Y. Civ. Ct. 1999).

Petitioner's counsel was ordered to submit, inter alia, an English language translation and an affidavit by a translator for the same that complied with the Civil Practice Law and Rules because the current statement that the translator was "proficient in both English and Spanish" was ambiguous, self-serving and insufficient where she failed to state her professional qualifications, her level of proficiency, or how her alleged proficiency was earned, and the certificate did not contain any reference to venue and did not state that the statement was sworn to and made under the penalty of perjury. Matter of S.A.B.G., 47 Misc. 3d 812, 5 N.Y.S.3d 813, 2015 N.Y. Misc. LEXIS 565 (N.Y. Fam. Ct. 2015).

Affidavits were contrary to the requirements of this statute because none of them contained a caption or an index number, and each bore a date of signature that was prior to the date of the subject accident. Matter of Liberty Mut. Ins. Co. (Louis), 55 Misc. 3d 1215(A), 58 N.Y.S.3d 874, 2017 N.Y. Misc. LEXIS 1590 (N.Y. Sup. Ct. 2017).

3. —Correction

In an action for dental malpractice, plaintiffs' motion to amend the caption of both the summons and complaint, alleging a typographical error in the name of the county of venue, involved a correction of an obvious mistake and no change in venue was necessary and was properly granted. Russo v Besidine, 93 A.D.2d 790, 461 N.Y.S.2d 827, 1983 N.Y. App. Div. LEXIS 17638 (N.Y. App. Div. 1st Dep't 1983).

Special Term inappropriately transferred personal injury action from Surrogate's Court to Supreme Court where plaintiffs intended to commence action in Supreme Court but erroneously captioned summons "Surrogate's Court," since action was not pending in Surrogate's Court and, consequently, there was nothing to transfer; however, plaintiffs would be allowed to amend summons to reflect Supreme Court as court of record since leave to correct defect in form is to be freely given and defendants were afforded adequate notice of forum in which action was actually pending by correct designation on both "litigation-back" in which summons was placed, and on complaint. Anderson v Monticup, 124 A.D.2d 320, 508 N.Y.S.2d 102, 1986 N.Y. App. Div. LEXIS 61351 (N.Y. App. Div. 3d Dep't 1986).

Court abused its discretion in denying insurer leave to amend caption of petition to permanently stay uninsured motorist arbitration, nunc pro tunc, to name husband of named insured as respondent, where husband was referred to as "respondent" throughout petition, although insured wife was denominated as respondent in caption, since mislabeling of petition was mere irregularity which did not prejudice husband, who was fully apprised of fact that he was duly served with petition which laid out facts of occurrence and named him as respondent on 6 different occasions. United Community Ins. Co. v Ciraco, 195 A.D.2d 333, 600 N.Y.S.2d 20,

1993 N.Y. App. Div. LEXIS 7128 (N.Y. App. Div. 1st Dep't), app. denied, 82 N.Y.2d 661, 606 N.Y.S.2d 596, 627 N.E.2d 518, 1993 N.Y. LEXIS 4282 (N.Y. 1993).

That summons was endorsed with name of plaintiff's prior attorney, thereafter disbarred, is an irregularity that can be amended, or if no substantial right of defendant is prejudiced, may be disregarded. Micera v Ciccotta, 40 Misc. 2d 622, 243 N.Y.S.2d 366, 1963 N.Y. Misc. LEXIS 1596 (N.Y. Sup. Ct. 1963).

Rape victims were not entitled to amend their civil complaint and summons in which they had identified themselves by fictitious names of "Coe" and "Doe," and defendants were entitled to dismissal of action, since proper identification of plaintiffs is not only statutory requirement, but basic requirement of due process; since summons and complaint were defective, there was no jurisdiction over defendants and thus nothing to amend. Coe v La Guardia Airport Hotel Associates, Inc., 134 Misc. 2d 579, 511 N.Y.S.2d 1004, 1987 N.Y. Misc. LEXIS 2067 (N.Y. Sup. Ct. 1987).

In breach of contract action against unlicensed home improvement company and its unlicensed president, fact that plaintiffs failed to seek judicial leave before amending caption and substituting company president as defendant did not warrant dismissal of complaint on jurisdictional grounds, where complaint arose after 1996 amendment to CLS CPLR § 1003, and plaintiff served amended complaint within 20 days of service of answer to their original complaint. Powell v Jaysons Constr. & Interiors, Inc., 185 Misc. 2d 794, 713 N.Y.S.2d 802, 2000 N.Y. Misc. LEXIS 401 (N.Y. Dist. Ct. 2000).

While N.Y. C.P.L.R. 2101 provides the proper form as to what the papers must contain, it also provides a remedy for defects found in the papers. Pursuant to N.Y. C.P.L.R. 2101(f), any defect in the mere form of a paper must be disregarded by the court, if a "substantial" right of a party is not prejudiced by it, and leave to correct the defect must be freely given. Matter of Edward Shapiro P.C., 801 N.Y.S.2d 694, 9 Misc. 3d 369, 234 N.Y.L.J. 4, 2005 N.Y. Misc. LEXIS 2508 (N.Y. Civ. Ct. 2005).

In accordance with N.Y. C.P.L.R. 2101 (f), the court granted a lawyer leave to correct all papers submitted without his signature. Matter of Edward Shapiro P.C., 801 N.Y.S.2d 694, 9 Misc. 3d 369, 234 N.Y.L.J. 4, 2005 N.Y. Misc. LEXIS 2508 (N.Y. Civ. Ct. 2005).

Bank's petition to confirm an arbitration award under N.Y. C.P.L.R. §§ 7510, 7514 was improperly denied because the defect due to the fact that the bank's supporting affidavit was notarized by a Maryland notary public and not accompanied by a certificate of conformity under N.Y. C.P.L.R. § 2309(c) and N.Y. Real Prop. Law § 299-a(1) was merely a defect in form that could be corrected nunc pro tunc and did not prejudice a substantial right of respondent under N.Y. C.P.L.R. §§ 2001, 2101(f). MBNA Am. Bank, N.A., Matter of v MBNA Am. Bank, N.A., Matter of v Stehly, 855 N.Y.S.2d 814, 19 Misc. 3d 12, 2008 N.Y. Misc. LEXIS 104 (N.Y. App. Term 2008).

4. —Waiver of objection

Notice of entry served on appellant's counsel was sufficient to commence 30-day period in which to appeal from judgment, even though plaintiff failed to include index number of case, since appellant waived its objection to any defect in form of notice of entry by failing to return it within 2 days after receiving it. Deygoo v Eastern Abstract Corp., 204 A.D.2d 596, 612 N.Y.S.2d 415, 1994 N.Y. App. Div. LEXIS 5538 (N.Y. App. Div. 2d Dep't), app. dismissed in part, app. denied, 84 N.Y.2d 920, 621 N.Y.S.2d 509, 645 N.E.2d 1208, 1994 N.Y. LEXIS 3867 (N.Y. 1994).

Petition alleging that the subject children were neglected by the father and the mother was not jurisdictionally defective as the father waived any objection to the form of the caption in the petition and he did not demonstrate any prejudice. Matter of Jaylynn WW. (Justin WW.--Roxanne WW.), 202 A.D.3d 1394, 162 N.Y.S.3d 580, 2022 N.Y. App. Div. LEXIS 1196 (N.Y. App. Div. 3d Dep't), app. denied, 38 N.Y.3d 907, 188 N.E.3d 605, 168 N.Y.S.3d 413, 2022 N.Y. LEXIS 958 (N.Y. 2022).

Where it was clear that plaintiff's attorney had made a clerical error involving a discrepancy in the venue stated in a summons and complaint in a personal injury action, and the defendant raised no objections within two days after receipt of the papers, the defendant waived any objection to the form of the summons, and the summons could be amended to conform to the complaint. Barron v Hadcox, 47 Misc. 2d 435, 262 N.Y.S.2d 758, 1965 N.Y. Misc. LEXIS 1800 (N.Y. Sup. Ct. 1965).

Even though a summons contains a jurisdictional defect which voids personal jurisdiction, this defect is waived by failure to object by way of motion or in the answer (CPLR 320, subd [b]; 3211, subd [e]), and therefore, the Statute of Limitations did not run on a plaintiff's action where the defendants not only answered without preserving their objection to the jurisdictional defect but delayed for some six months in bringing a motion to dismiss under CPLR 3211 (subd [a], par 8). Wager v Tread Mill, Inc., 95 Misc. 2d 490, 407 N.Y.S.2d 820, 1978 N.Y. Misc. LEXIS 2453 (N.Y. Sup. Ct. 1978).

In holdover summary proceeding, landlord's motion to substitute successor in title would not be denied simply because he provided copy of his assignment to successor of rights to prosecute as supporting document of motion rather than supporting affidavit, since tenant was afforded opportunity to cross-examine individuals who executed assignment and was in no way prejudiced by defect; in any event, tenant waived her right to object to such defect since she did not return paper with objection within 2 days after receipt. 6-8 W. 107 Ass'n v Nuey, 135 Misc. 2d 104, 515 N.Y.S.2d 185, 1987 N.Y. Misc. LEXIS 2185 (N.Y. Civ. Ct. 1987).

II. Under Former Civil Practice Laws

A. In General

5. Generally

A subpoena in proceedings supplementary to execution cannot be signed by the attorney for a party. Lowther v Lowther, 115 A.D. 307, 100 N.Y.S. 965, 19 N.Y. Ann. Cas. 165, 1906 N.Y. App. Div. LEXIS 3681 (N.Y. App. Div. 1906).

RCP 10 did not apply in proceeding for sale of property under direction of surrogate's court, under Surrogate's Court Act § 215, where service of citation must be made in accordance with §§ 55 and 56 of that act. In re Smart's Estate, 157 N.Y.S. 143, 93 Misc. 402, 1916 N.Y. Misc. LEXIS 1104 (N.Y. Sur. Ct. 1916).

Admissibility of copy of chattel mortgage despite absence of signature of mortgagee on such copy. Schwartz v Forty-Fifth Street Garage, Inc., 233 N.Y.S. 339, 133 Misc. 703, 1929 N.Y. Misc. LEXIS 698 (N.Y. App. Term 1929).

An execution not signed as required by RCP 13 was not absolutely void, but at most voidable, and could have been amended. Bareither v Brosche, 13 N.Y.S. 561, 1890 N.Y. Misc. LEXIS 3239 (N.Y.C.P. 1890).

B. Legibility and Size of Papers

6. Generally

RCP 10 was adopted by the trial judges; not made by the appellate division. Crown Bldg. Material Co. v Rossano, 224 A.D. 751, 230 N.Y.S. 823, 1928 N.Y. App. Div. LEXIS 10990 (N.Y. App. Div. 1928).

7. Language requirement

As to whether a deposition taken under letters rogatory in a foreign country, on interrogatories settled in English, may be taken and returned in the language of the country where taken. Union Square Bank v Reichmann, 9 A.D. 596, 41 N.Y.S. 602, 1896 N.Y. App. Div. LEXIS 2613 (N.Y. App. Div. 1896).

An untranslated letter in the French language may not be used to support an application for a warrant of attachment and an order of publication. Friedman v Prescetti, 199 A.D. 385, 192 N.Y.S. 55, 1922 N.Y. App. Div. LEXIS 8026 (N.Y. App. Div. 1922).

For refusal to consider contract set out in record in the original Hebrew, see Hurwitz v Hurwitz, 214 A.D. 823, 210 N.Y.S. 865, 1925 N.Y. App. Div. LEXIS 8097 (N.Y. App. Div. 1925). See also Hurwitz v Hurwitz, 216 A.D. 362, 215 N.Y.S. 184, 1926 N.Y. App. Div. LEXIS 9228 (N.Y. App. Div. 1926).

Complaint in slander must be in English, notwithstanding the alleged defamatory words were in Bohemian tongue. Cherwat v Vopelak, 44 N.Y.S. 26, 19 Misc. 500, 1897 N.Y. Misc. LEXIS 110 (N.Y. App. Term 1897).

Publication of summons and notice in Italian newspaper in Italian was ineffectual, though both parties were Italian. Alfonso v Alfonso, 165 N.Y.S. 1037, 99 Misc. 550, 1917 N.Y. Misc. LEXIS 792 (N.Y. Sup. Ct. 1917).

8. Legibility of paper

For instance of papers condemned as illegible under RCP 10. In re Williams, 27 N.Y.S. 433, 6 Misc. 512, 1894 N.Y. Misc. LEXIS 37 (N.Y. Sur. Ct. 1894).

9. Type and quality of paper

Where a notice of appeal was returned on the sole ground that the quality and weight of the paper on which it was written did not comply with RCP 10, the court, in the discretion conferred by CPA § 107 (§ 5520(a) herein), might permit the defect to be corrected and a second notice served nunc pro tunc. People ex rel. Collins v Ahearn, 136 A.D. 452, 120 N.Y.S. 980, 1910 N.Y. App. Div. LEXIS 53 (N.Y. App. Div. 1910).

C. Indorsement By Attorney

10. Generally

Validity and effect of irregularly indorsed and subscribed notice of entry of judgment. See Kelly v Sheehan, 76 N.Y. 325, 76 N.Y. (N.Y.S.) 325, 1879 N.Y. LEXIS 501 (N.Y. 1879).

In an action in the municipal court of Buffalo, signing the affidavit of verification is a sufficient subscription of the complaint within the meaning of a requirement that the complaint be subscribed by the party, etc. Barrett v Joslynn, 29 N.Y.S. 1070, 9 Misc. 407, 1894 N.Y. Misc. LEXIS 729 (N.Y. Super. Ct. 1894).

Where complaint was signed by party and not by attorney, such defect did not warrant dismissal. County Transp. Co. v Maltbie, 73 N.Y.S.2d 906, 189 Misc. 743, 1947 N.Y. Misc. LEXIS 3163 (N.Y. Sup. Ct. 1947), modified, 273 A.D. 437, 77 N.Y.S.2d 748, 1948 N.Y. App. Div. LEXIS 4611 (N.Y. App. Div. 1948).

Verification of bill of particulars by attorney is not within RCP 11. Emspak v Conroy, 81 N.Y.S.2d 555, 192 Misc. 637, 1948 N.Y. Misc. LEXIS 2865 (N.Y. Sup. Ct. 1948).

Where notices of intention to proceed to arbitration were subscribed by attorney for all parties, individually and collectively, seeking arbitration, they invited counter-service upon him as their attorney. In re Application of Katz, 1 Misc. 2d 67, 146 N.Y.S.2d 332, 1955 N.Y. Misc. LEXIS 2236 (N.Y. Sup. Ct. 1955).

But the subscription of an attorney of an infant who sues or defends by a guardian ad litem is sufficient, Hill v Thacter, 3 How Pr 407. See Anable v Anable, 24 How Pr 92. And the subscription of a verification by a defendant is sufficient, Hubbell v Livingston, 1 NY Code R 63. And the only subscription being that of one plaintiff to the affidavit verifying the complaint has been held sufficient, the failure to subscribe the complaint being a mere irregularity. Harrison v Wright, 1 N.Y. St. 736.

Subscription by an agent with power of attorney is not sufficient. Weir v Slocum, 3 How. Pr. 397, 1849 N.Y. Misc. LEXIS 106 (N.Y. Sup. Ct. 1849).

11. Name of attorney or law firm

As to necessity of signature of defendant's attorney, with post-office address, where notice of appearance has been served, see Littauer v Stern, 177 N.Y. 233, 69 N.E. 538, 177 N.Y. (N.Y.S.) 233, 1904 N.Y. LEXIS 924 (N.Y. 1904).

A notice of demand for a jury trial is not the notice of the party, and the other party is entitled to return it, where it does not have upon it the name of the attorney who appeared in the action but has the name of another attorney who had not served or filed a written consent to substitution as attorney of record. Greenberg v Moylan Realty Co., 283 N.Y.S. 507, 157 Misc. 350, 1935 N.Y. Misc. LEXIS 1563 (N.Y. Sup. Ct.), aff'd, 246 A.D. 693, 284 N.Y.S. 978, 1935 N.Y. App. Div. LEXIS 9734 (N.Y. App. Div. 1935).

Where answer is subscribed by "A & G" as attorneys for defendant was duly served and filed, such answer cannot be vacated as invalid because neither "A" nor "G" is alive; legal papers issued by attorney need not be subscribed with his name as entered in official register of attorneys. Mendelsohn v Equitable Life Assurance Soc., 33 N.Y.S.2d 733, 178 Misc. 152, 1942 N.Y. Misc. LEXIS 1421 (N.Y. App. Term), app. denied, 264 A.D. 731, 35 N.Y.S.2d 162, 1942 N.Y. App. Div. LEXIS 4408 (N.Y. App. Div. 1942).

Notice of motion should be subscribed by attorney of record for party and not by "counsel". Pearlstein v Priest, 132 N.Y.S.2d 541, 1954 N.Y. Misc. LEXIS 2637 (N.Y. Sup. Ct. 1954).

Where the answer was not subscribed by the attorney, held, defective and properly returned. 21 Abb. N. Cas. 214, 13 N.Y. St. 752.

12. Address of attorney

Notice of judgment lacking address of attorney was insufficient to limit time for appeal. Kilmer v Hathorn, 78 N.Y. 228, 78 N.Y. (N.Y.S.) 228, 1879 N.Y. LEXIS 899 (N.Y. 1879).

An answer from which the subscription of the attorney's address is omitted is invalid, and will not permit the entry of judgment by the plaintiff as soon as the time to answer has expired notwithstanding such answer has not been returned at the time of entry of judgment, but is returned subsequently, and within twenty-four hours after its service. Drucker v McCallum, 21 Abb NC 209.

An objection to an answer served that it is not subscribed and indorsed with the office address of the attorney, is not obviated by the fact that it was on a notice of appearance previously served. .

13. Sufficiency of indorsement

Where attorney, opposing application for approval of incorporation certificate, left blank space appearing upon indorsement of his papers for indicating party or other person for whom he appears, his affidavit was considered despite court's criticism of such ommission. In re Warren County Soc. for Prevention of Cruelty to Animals, Inc., 123 N.Y.S.2d 419, 1953 N.Y. Misc. LEXIS 1981 (N.Y. Sup. Ct. 1953).

Where an answer was subscribed by the defendant's attorney, and there was indorsed on the back of it, after it was folded, the title of the action, the name and address of the defendant's attorney, and immediately thereunder a notice of appearance, which was also subscribed by the defendant's attorney, but to which his address was not added, held, that the answer and notice of appearance fully complied with the requirements. .

14. —Papers in set

One complete subscription and indorsement sufficient on papers in set. Falker v New York, W. S. & B. R. Co., 100 N.Y. 86, 2 N.E. 628, 100 N.Y. (N.Y.S.) 86, 1885 N.Y. LEXIS 946 (N.Y. 1885).

15. —Judicial notice

The courts take judicial notice of the signature of attorneys, but not of the parties litigant who have not appeared in person. .

16. Effect of failure to indorse

Omission to indorse upon a paper served the post-office address or place of business of the attorney as required by the rule of practice is a mere irregularity and does not necessarily vitiate the paper or the service. Evans v Backer, 101 N.Y. 289, 4 N.E. 516, 101 N.Y. (N.Y.S.) 289, 3 How. Pr. (n.s.) 504, 1886 N.Y. LEXIS 629 (N.Y. 1886).

The mere fact that RCP 11 prescribed a certain form in which the defendant's attorney must add his signature did not make a paper void when varied somewhat in that regard. Krause v Averill, 66 How. Pr. 97, 1883 N.Y. Misc. LEXIS 231 (N.Y. City Ct. Nov. 1, 1883).

17. Waiver of irregularity

The failure to indorse the post office address or place of business of the attorney may be waived. Evans v Backer, 101 N.Y. 289, 4 N.E. 516, 101 N.Y. (N.Y.S.) 289, 3 How. Pr. (n.s.) 504, 1886 N.Y. LEXIS 629 (N.Y. 1886).

The defect under RCP 91 (§§ 105, 3020, Rule 2101 herein) of want of subscription was waived unless the pleading was returned with notice of the defect. EHLE v HULLER, 10 Abb. Pr. 287, 1860 N.Y. Misc. LEXIS 60 (N.Y. Sup. Ct. 1860); Anderson v Gurlay, 4 Month L Bull 18.

18. Correction by amendment

The failure to indorse the post office address or place of business of the attorney may be corrected by amendment. Hull v Canandaigua E. L. & R. Co., 55 A.D. 419, 66 N.Y.S. 865, 1900 N.Y. App. Div. LEXIS 2630 (N.Y. App. Div. 1900), app. dismissed, 166 N.Y. 598, 59 N.E. 1124, 166 N.Y. (N.Y.S.) 598, 1901 N.Y. LEXIS 1323 (N.Y. 1901).

D. Waiver of Objection to Requirements

19. Generally

As to failure to comply with RCP 12, see Rutstein v United States Fire Ins. Co., 224 A.D. 740, 229 N.Y.S. 911, 1928 N.Y. App. Div. LEXIS 10892 (N.Y. App. Div. 1928).

Where judgment and stipulation substituting attorney were served upon defendant's attorney but were not returned, irregularities therein were waived. Evans v Cannon, 279 A.D. 667, 108 N.Y.S.2d 93, 1951 N.Y. App. Div. LEXIS 3408 (N.Y. App. Div. 1951).

Verification of bill of particulars by attorney is not within RCP 12. Emspak v Conroy, 81 N.Y.S.2d 555, 192 Misc. 637, 1948 N.Y. Misc. LEXIS 2865 (N.Y. Sup. Ct. 1948).

There is no authority to compel the practice of rejecting a pleading proper in form and served within time upon the ground of claimed inadequacy in substance and of thus imposing upon the adversary the onus of moving to compel acceptance. Anello v Kuss, 4 Misc. 2d 151, 157 N.Y.S.2d 195, 1956 N.Y. Misc. LEXIS 1439 (N.Y. Sup. Ct. 1956).

RCP 12 did not apply in cases involving late service of complaint. De Jose v Hempstead, 25 Misc. 2d 780, 208 N.Y.S.2d 6, 1960 N.Y. Misc. LEXIS 2323 (N.Y. Sup. Ct. 1960).

Objection that motion papers served were not conformed copies of affidavits and proposed claim was waived where papers so served were not returned within 24 hours after receipt with statement of objections to receipt. Tinkler v Board of Education, 106 N.Y.S.2d 262, 1951 N.Y. Misc. LEXIS 2042 (N.Y. Sup. Ct. 1951).

20. Waiver of objection to nonconforming paper

Under RCP 12 a party upon whom a paper was served waived noncompliance with RCP 10 unless he returned the paper within twenty-four hours with a statement of his objections, so failure to so return unconformed copies waived any objection to them under RCP 10. Tinkler v Board of Education, 106 N.Y.S.2d 262, 1951 N.Y. Misc. LEXIS 2042 (N.Y. Sup. Ct. 1951).

21. Default resulting from noncompliance with requirements

Where defendant was placed in default, by the return of his answer under this rule for noncompliance with the requirements of former General Rule of Practice 19, it was within the discretion of the court to require payment of costs and giving of security as a condition for compelling acceptance of the answer. Silleck v Dahut, 71 N.Y.S. 316, 35 Misc. 134, 1901 N.Y. Misc. LEXIS 313 (N.Y. City Ct. 1901).

E. Lost or Withheld Papers

22. Generally

When copy may be filed to supply paper lost or mislaid discussed. Renouil v Harris, 2 NY Code R 71.

F. Requisites of Summons

23. Generally

Where a proceeding to foreclose a mechanic’s lien was commenced by a notice setting forth the filing of the lien, a description of the property covered thereby and the judgment sought, and also containing all that the act requires to be contained in a summons, held, that this notice could be regarded as a summons; that it was not invalidated by the unnecessary matter

contained therein, and such matter could be disregarded as surplusage; that the court acquired jurisdiction by the service thereof. 40 Hun 636.

24. Form

A summons in the form provided by § 418, Code of Civil Procedure, was a substantial compliance with the provisions of RCP 45. Jarvis v Lavine, 200 A.D. 552, 193 N.Y.S. 331, 1922 N.Y. App. Div. LEXIS 8221 (N.Y. App. Div. 1922).

Service set aside where the summons omits the words “or, if the complaint is not served with this summons, to serve a notice of appearance”. Kenngott v Kenngott, 190 N.Y.S. 282, 116 Misc. 569, 1921 N.Y. Misc. LEXIS 1694 (N.Y. Sup. Ct. 1921).

RCP 54 (§ 1007, Rule 305(a) herein) was simply amplification of RCP 45, which applied to all courts, though form of summons required answer within 20 days, whereas lower courts require less number of days. Thomas J. Nolan, Inc. v Martin & William Smith, Inc., 85 N.Y.S.2d 380, 193 Misc. 877, 1949 N.Y. Misc. LEXIS 1666 (N.Y. Mun. Ct.), aff'd, 85 N.Y.S.2d 387, 1949 N.Y. Misc. LEXIS 1667 (N.Y. App. Term 1949).

Under New York City Municipal Court Code, section 78, a summary statement of the nature of the cause of action endorsed on the summons is sufficient. Kimma v Leonard Chazen, Inc., 8 Misc. 2d 589, 169 N.Y.S.2d 942, 1957 N.Y. Misc. LEXIS 3502 (N.Y. App. Term 1957).

G. Contents of Summons

25. Generally

A stipulation as to the commencement of an action in a certain county does not affect the jurisdiction of the court; it only affects the venue, and if the action is brought in a county contrary to such stipulation, the remedy of the defendant is to move to change the place of trial. Benson v

Eastern Bldg. & Loan Ass'n, 174 N.Y. 83, 66 N.E. 627, 174 N.Y. (N.Y.S.) 83, 1903 N.Y. LEXIS 1306 (N.Y. 1903).

Where the original summons was entitled in the “N. Y. Superior Court” and the copy served in the “N. Y. Common Pleas” the superior court has no jurisdiction of the action. Bailey v Sargent Granite Co., 29 N.Y.S. 1105 (N.Y. Super. Ct. 1893).

26. Names and addresses of parties

Where a summons indicated only the street addresses of the plaintiff and the office of the clerk of the courts and failed to indicate the town or village in which such street addresses were located, such summons was defective and the court did not secure jurisdiction of the matter. David Fox & Sons v Steele, 8 Misc. 2d 530, 171 N.Y.S.2d 148, 1957 N.Y. Misc. LEXIS 2029 (N.Y. Dist. Ct. 1957).

An action is properly brought in the name by which a person has been habitually known, even if it is not the name of his ancestor. Cooper v Burr, 45 Barb. 9, 1865 N.Y. App. Div. LEXIS 140 (N.Y. Sup. Ct. Sept. 19, 1865).

A summons in foreclosure is defective and irregular, where it does not state the name of the wife of one of the defendants, or so much of it as is known, but refers to her as the wife of a defendant named. In such case the word “Mrs.” prefixed to the name of the husband, followed by the description, “his wife” is sufficient. Weil v Martin, 24 Hun 645 (N.Y.).

Where a party is sued by a fictitious name it must so appear in the summons served upon him. Aaron v Lee, 11 NY Week Dig 527.

27. —Effect of error

A summons cannot be set aside for misnomer therein. Bank of Havana v Magee, 20 N.Y. 355, 20 N.Y. (N.Y.S.) 355, 1859 N.Y. LEXIS 203 (N.Y. 1859).

Where face of summons is left blank but its reverse is filled in to read “Henry Heind” Defendant, summons was not amendable, although defendant “Henry F. Hein” was person intended and he appeared specially to vacate summons. Rockefeller v Hein, 28 N.Y.S.2d 266, 176 Misc. 659, 1941 N.Y. Misc. LEXIS 1883 (N.Y. Sup. Ct. 1941).

When summons was issued against Edward Catalano, the name “Edward” being stated as fictitious, and upon the trial amended to read “Eugenio” and so entered in the judgment, and it appeared that Eugenio Catalano was not served and did not appear, but service was had upon one Salvatore Catalano, the judgment was reversed for want of sufficient proof of service. Breger v Catalano, 158 N.Y.S. 671 (N.Y. App. Term 1916).

Effect of service of summons on person not named as defendant, and of his appearance. Smith v Jackson, 12 Civ Proc 428, 20 Abb NC 422, affd 1 N.Y.S. 13.

That the Christian name of plaintiff and defendant are only given by their initials in the summons and complaint is not a jurisdictional defect but only an irregularity not affecting a substantial right. Grant v Birdsall (1882) 48 Super Ct (16 Jones & S) 427.

A judgment against an individual by a name which in law is not his cannot be enforced against him; and if process is served upon him in the wrong name, and judgment is entered up in the right name, it is without jurisdiction. Moulton v De Ma Carty, 29 Super Ct (6 Robt) 470.

28. —Waiver of objection

An objection to a summons and complaint that no specific persons are named as plaintiffs or defendants is waived by delay in moving to set the same aside, or by answering. Amsinck v Northrup, 12 NY Week Dig 573.

29. Specification of county where trial desired

County named in summons for place of trial held sufficient. Sears, Roebuck & Co. v Podgorny, 109 N.Y.S.2d 329, 200 Misc. 934, 1952 N.Y. Misc. LEXIS 2346 (N.Y. Sup. Ct. 1952).

30. —Effect of failure to specify

A failure to name in the summons, the county in which the plaintiff desires the trial to be held, is not such a defect as requires the court to set aside its service absolutely; the motion may be denied on condition that a proper summons be served within a time limited. Wallace v Dimmick, 24 Hun 635 (N.Y.).

The directions in RCP 45, respecting the contents of the summons, were mandatory; if the summons failed to specify the county wherein the plaintiff desires a trial, it would be set aside on motion. Osborn v McCloskey, 55 How. Pr. 345.

31. —Error in specifying county

Where the place of trial named in the summons is different from that named in the complaint, the county named in the complaint determines the venue, and the mere error of an attorney in naming a different place of trial in the complaint from that in the summons will not effect a change in the place of trial, provided such attorney moves promptly to correct the error and does not permit his adversary to act upon the assumption that the change was intentional. Goldstein v Marx, 73 A.D. 545, 77 N.Y.S. 956, 11 N.Y. Ann. Cas. 313, 1902 N.Y. App. Div. LEXIS 1604 (N.Y. App. Div. 1902).

Where both summons and complaint were headed “Supreme Court, Westchester County” but summons also contained words “Plaintiff designates New York County as place of trial,” action was treated as pending in New York county. Fidelity & Casualty Co. v Pryzgoda, 39 N.Y.S.2d 560, 179 Misc. 550, 1943 N.Y. Misc. LEXIS 1545 (N.Y. Sup. Ct. 1943).

32. Specification of county of plaintiff’s residence

A summons signed by different attorneys representing different plaintiffs did not comply with the requirements of RCP 45. Jones v Conlon, 95 N.Y.S. 255, 48 Misc. 172, 1905 N.Y. Misc. LEXIS 380 (N.Y. Sup. Ct. 1905).

Objection to the omission of county where plaintiff resides is waived by coupling it with motions which go to the merits of the action. Kerekes v Greenwood Properties, Inc., 16 Misc. 2d 232, 184 N.Y.S.2d 137, 1958 N.Y. Misc. LEXIS 2288 (N.Y. Sup. Ct. 1958).

Omission of county where plaintiff resides, does not render summons jurisdictionally defective. D'Alessandra v Manufacturers Cas. Ins. Co., 106 N.Y.S.2d 561, 1951 N.Y. Misc. LEXIS 2120 (N.Y. Sup. Ct. 1951).

Under CPA § 182 (§ 503 herein) recital in summons that plaintiff's residence is in certain county entitled plaintiff to have action tried in such county. Malagese v H. G. Munger & Co., 107 N.Y.S.2d 455, 1951 N.Y. Misc. LEXIS 2374 (N.Y. Sup. Ct. 1951).

See Castanos v Public Service Coordinated Transport, 140 N.Y.S.2d 609, 1954 N.Y. Misc. LEXIS 3287 (N.Y. Sup. Ct. 1954), app. dismissed, 285 A.D. 854, 138 N.Y.S.2d 351, 1955 N.Y. App. Div. LEXIS 5816 (N.Y. App. Div. 1955).

33. Attorney's name and address

It is not necessary that a summons be subscribed in the handwriting of the attorney. A printed signature issued by him is just as effectual. New York v Eisler, 2 Civ Proc (Browne) 125; Barnard v Heydrick, 49 Barb. 62, 32 How. Pr. 97, 2 Abb. Pr. (n.s.) 47.

A person who has not been admitted as an attorney cannot sign as such, or act as such under the name of agent. Weir v Slocum, 3 How Pr 396, 1 NY Code R 105.

34. —Effect of error

The omission of the street number from the address of plaintiff's attorney subscribed to a summons is not a jurisdictional defect, but is a mere irregularity; and where defendant, having actual knowledge of such office address, retains the summons, a motion to set aside service thereof and vacate the judgment entered in the action is properly denied. Sullivan v Harney, 103 N.Y.S. 177, 53 Misc. 249, 1907 N.Y. Misc. LEXIS 199 (N.Y. App. Term 1907).

35. Subscription by plaintiff

A summons subscribed by the plaintiff in person, though he is not an attorney at law, is a valid summons. O'Brien v Lashar, 236 N.Y. 602, 142 N.E. 301, 236 N.Y. (N.Y.S.) 602, 1923 N.Y. LEXIS 1036 (N.Y. 1923).

A summons subscribed by plaintiff alone is void, he not being an attorney; but such defect may be waived, as by appearance and counterclaim. Jaworower v Rovere, 162 N.Y.S. 1075, 98 Misc. 377, 1917 N.Y. Misc. LEXIS 718 (N.Y. Sup. Ct.), aff'd, 177 A.D. 740, 164 N.Y.S. 515, 1917 N.Y. App. Div. LEXIS 5763 (N.Y. App. Div. 1917).

A motion to set aside service of summons, upon the ground that the summons was subscribed by plaintiff and not by his attorney, will be granted where no notice of appearance has been filed, although defendant has entered into a stipulation to secure an extension of time in which to answer, being then in default. Jaworower v Rovere, 162 N.Y.S. 1075, 98 Misc. 377, 1917 N.Y. Misc. LEXIS 718 (N.Y. Sup. Ct.), aff'd, 177 A.D. 740, 164 N.Y.S. 515, 1917 N.Y. App. Div. LEXIS 5763 (N.Y. App. Div. 1917).

RCP 45, providing that a summons must be signed by the plaintiff's attorney, had to be construed to conform to CPA § 236 (§ 321 herein), providing that a party who was of full age might prosecute or defend a civil action in person. A. B. C. Steel Equipment Co. v A. H. Schreiber Co., 268 N.Y.S. 828, 150 Misc. 124, 1934 N.Y. Misc. LEXIS 1054 (N.Y. App. Term 1934).

36. Time for answer

An answer to a complaint may be compelled within the twenty days only by serving the complaint with the summons, or by serving it within twenty days after the notice of appearance; in the latter case personal service of the complaint is not required. Gluckselig v H. Michaelyan, Inc., 230 N.Y.S. 593, 132 Misc. 783, 1928 N.Y. Misc. LEXIS 1036 (N.Y. Sup. Ct.), aff'd, 225 A.D. 666, 231 N.Y.S. 757, 1928 N.Y. App. Div. LEXIS 8923 (N.Y. App. Div. 1928).

Where summons in city court of city of New York required 20 instead of 6 days for answer, such error was harmless and entry of default judgment on 28th day after service must be disregarded. Barth v Owens, 35 N.Y.S.2d 632, 178 Misc. 628, 1942 N.Y. Misc. LEXIS 1686 (N.Y. City Ct. 1942).

Opinion Notes

Agency Opinions

I. Under CPLR

1. Generally

A county clerk other than the county clerk who is the clerk of the court in which an action is pending may not assign an index number to such action, and is not entitled to a fee for assigning an index number for such action. 1977 NY Ops Atty Gen Feb 8 (Informal), 1977 N.Y. AG LEXIS 243.

Research References & Practice Aids

Cross References:

Form of briefs and appendices, Rule 5529.

Summons and the service thereof, §§ 303., 307.– 309., 311.– 315., 320., 2103., 3031.

Amendment of summons, § 305.

Effect of mistakes, omissions, defects and irregularities generally, § 2001.

Subscription of notice of attachment, levy on personal property, §§ 6214., 6215.

Seizure to reply chattel, § 7102.

Service on Sunday or holy day, CLS Gen Bus §§ 11., 13.

Service of process, CLS SCPA § 307.

Papers filed in court; docket number; prefix; forms, CLS Family Ct R § 205.7.

Papers filed in court, CLS Unif Tr Ctr Rls § 202.5.

Filing by Facsimile Transmission, CLS Unif Tr Ctr Rls § 202.5-a.

Filing by Electronic Means, CLS Unif Tr Ctr Rls § 202.5-b.

Use of Recycled Paper, CLS Unif Tr Ctr Rls §§ 215.1 et seq.

Sealing of court records, CLS Unif Tr Ctr Rls § 216.1.

Codes, Rules and Regulations:

Filing of notice of appeal, request for Appellate Division intervention, order of transfer. 22 NYCRR § 670.3.

Parties and Pleadings. 8 NYCRR Part 275.

Federal Aspects:

Form of summons in United States District Courts, Rule 4(a) of Federal Rules of Civil Procedure, USCS Court Rules.

Application of signature to motions and other papers in United States District Courts, Rule 7(b) of Federal Rules of Civil Procedure, USCS Court Rules.

Signature on statements in United States District Courts, Rule 8(e) of Federal Rules of Civil Procedure, USCS Court Rules.

Form of pleadings in United States District Courts, Rule 10 of Federal Rules of Civil Procedure, USCS Court Rules.

Signing of pleadings in United States District Courts, Rule 11 of Federal Rules of Civil Procedure, USCS Court Rules.

Service of supplemental pleading granted even though defect in statement of claim, United States District Courts, Rule 15(d) of Federal Rules of Civil Procedure, USCS Court Rules.

Form of subpoena in United States District Court, Rule 45(a) of Federal Rules of Civil Procedure, USCS Court Rules.

Form of judgment in United States District Courts, Rule 54(a) of Federal Rules of Civil Procedure, USCS Court Rules.

Form of affidavits relating to summary judgment in United States courts, Rule 56(e) of Federal Rules of Civil Procedure, USCS Court Rules.

Forms for use in United States District Courts, Rule 84 of Federal Rules of Civil Procedure, USCS Court Rules.

Jurisprudences:

1 NY Jur 2d Acknowledgements, Affidavits, Oaths, Notaries, and Commissioners §§ 44., 46., 52., 54., 56., 57. .

1 NY Jur 2d Actions § 80. .

4 NY Jur 2d Appellate Review §§ 249., 250., 340. .

7 NY Jur 2d Attorneys at Law § 106. .

11 NY Jur 2d Bonds § 26. .

19A NY Jur 2d Compromise, Accord, and Release §§ 33., 49. .

22A NY Jur 2d Contracts § 437. .

24 NY Jur 2d Costs in Civil Actions § 246. .

24 NY Jur 2d Cotenancy and Partition § 194. .

30 NY Jur 2d Creditors' Rights and Remedies §§ 57., 88. .

47 NY Jur 2d Domestic Relations § 1179. .

54 NY Jur 2d Enforcement and Execution of Judgments § 74. .

57 NY Jur 2d Evidence and Witnesses § 26. .

58 NY Jur 2d Evidence and Witnesses § 530. .

58A NY Jur 2d Evidence and Witnesses § 785. .

62A NY Jur 2d Government Tort Liability § 266. .

73 NY Jur 2d Judgments §§ 12., 15., 65. .

82 NY Jur 2d Parties § 18. .

84 NY Jur 2d Pleading §§ 25., 26., 30., 94., 119., 121. .

86 NY Jur 2d Process and Papers §§ 19.– 24., 26., 31., 41., 43., 151. .

89 NY Jur 2d Real Property–Possessory and Related Actions § 156. .

105 NY Jur 2d Trial § 464. .

61A Am Jur 2d, Pleading §§ 843., 844.

62B Am Jur 2d, Process §§ 66., 79., 81.– 86.

13B Am Jur Legal Forms 2d, Notice, Forms 186:11 et seq.

5A Am Jur Pl & Pr Forms (Rev), Captions, Prayers, and Formal Parts, Forms 602– 604.

20A Am Jur Pl & Pr Forms (Rev), Process, Forms 16.– 22.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2101, Form of Papers.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 33.01; 3 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 44.02; 4 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 66.04, 66.05.

1 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 105.02, 305.01, 306.09.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 1.01. Sources of procedural law in New York.

CPLR Manual § 3.11. Form and content of the summons.

CPLR Manual § 3.12. Amended and supplemental summons.

CPLR Manual § 5.02. Designation by plaintiff.

CPLR Manual § 7.07. Class actions.

CPLR Manual § 13.01. Mistakes, omissions, defects and irregularities.

CPLR Manual § 14.01. Introduction.

CPLR Manual § 14.02. Form of papers.

CPLR Manual § 14.03. Defects in form.

CPLR Manual § 15.03. Motion procedure.

CPLR Manual § 16.04. Form of subpoena.

CPLR Manual § 19.05. Service of pleadings and demand for complaint; sanctions for delay.

CPLR Manual § 19.07. Rules governing drafting of pleadings.

CPLR Manual § 20.10. Disclosure devices — the deposition.

CPLR Manual § 26.10. Taking the appeal.

CPLR Manual § 27.09. Disclosure.

Matthew Bender's New York Practice Guides:

1 New York Practice Guide: Probate and Estate Administration § 14.08.

Warren's Weed New York Real Property:

Warren's Weed: New York Real Property §§ 50.03, 50.06.

Annotations:

"English only" requirement for conduct of public affairs. 94 A.L.R.5th 537.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 2101:1 et seq.

LexisNexis Forms FORM 75-CPLR 2101:1.—General Form of Papers.

LexisNexis Forms FORM 75-CPLR 2101:10.—Acknowledgment; Corporation Without Seal.

LexisNexis Forms FORM 75-CPLR 2101:11.—Acknowledgment; Subscribing Witness.

LexisNexis Forms FORM 75-CPLR 2101:2.—Affidavit by Translator.

LexisNexis Forms FORM 75-CPLR 2101:3.—Order Authorizing Service or Filing of a Copy of Paper Where Original Is Lost or Withheld.

LexisNexis Forms FORM 75-CPLR 2101:4.—Statement of Objections Form of Papers.

LexisNexis Forms FORM 75-CPLR 2101:5.—Notice of Motion to Compel Acceptance of Paper Returned by Adversary.

LexisNexis Forms FORM 75-CPLR 2101:6.—Affirmation in Support of Motion to Compel Acceptance of Paper Returned.

LexisNexis Forms FORM 75-CPLR 2101:7.—Order Compelling Acceptance of Paper Returned.

LexisNexis Forms FORM 75-CPLR 2101:8.—Acknowledgment; Individual.

LexisNexis Forms FORM 75-CPLR 2101:9.—Acknowledgment; Corporation Possessing Seal.

LexisNexis Forms FORM 380-10:102.—Order Authorizing Service or Filing of a Copy of Paper Where Original Is Lost.

LexisNexis Forms FORM 380-10:103.—Statement of Objections Form of Papers.

LexisNexis Forms FORM 380-10:106.—Demand for List of Parties Appearing.

LexisNexis Forms FORM 380-10:107.—General Form of Affirmation.

LexisNexis Forms FORM 380-10:113.—Acknowledgment by Individual.

LexisNexis Forms FORM 380-10:114.—Acknowledgment by Corporation With Seal.

LexisNexis Forms FORM 380-10:115.—Acknowledgment by Corporation Without Seal.

LexisNexis Forms FORM 380-10:116.—Sole Practitioner Signature Block.

LexisNexis Forms FORM 380-10:117.—Sole Practitioner Signature Block Alternate Form.

LexisNexis Forms FORM 380-10:118.—Form of Signature Block for Orders.

LexisNexis Forms FORM 380-79:101.—General Form of Affidavit on Motion.

LexisNexis Forms FORM 380-79:102.—General Form of Answering Affidavit on Motion.

LexisNexis Forms FORM 380-79:103.—General Form of Reply Affidavit on Motion.

LexisNexis Forms FORM 380-79:104.—General Form of Affidavit in Support of Order to Show Cause.

LexisNexis Forms FORM 380-79:105.—Affidavit on Motion to Resettle Order.

LexisNexis Forms FORM 380-79:106.—Affidavit in Support of Motion for Reargument.

LexisNexis Forms FORM 380-79:107.—General Form of Affirmation of Attorney in Support of Motion.

LexisNexis Forms FORM 521-11-4.—General Form of Papers.

LexisNexis Forms FORM 1434-19368.—CPLR 2101: Statement of Objections re Form of Papers.

LexisNexis Forms FORM 70-BC1218:1—Complaint in Action for Appointment of Receiver to Preserve Local Assets of Foreign Corporation.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 10:101 et seq .(papers; stipulations).

Texts:

2 Bergman on New York Mortgage Foreclosures (Matthew Bender) § 16.04.

5 Frumer & Biskind, Bender's New York Evidence—CPLR § 20.02.

Hierarchy Notes:

NY CLS CPLR, Art. 21

Forms

Forms

Form 1

Indorsement of Name and Address of Attorney

Richard A. Jones

Attorney for Plaintiff [or “Defendant”, or as the case may be]

Office and Post Office Address

No. 5 Broadway

Albany, New York

Form 2

Notice of Rejection of Paper Served

[Caption]

PLEASE TAKE NOTICE that the defendant [or “plaintiff” or as the case may be] herein rejects and returns the enclosed _____ [name of paper] on the ground that it contains defects in form in that substantial parts thereof are not written in the English language [or as the case may be].

Dated, _____, 20_____.

_____

Attorney for Defendant

Office and P. O. Address

Telephone No.

To:_____

Attorney for Plaintiff

Form 3

Notice of Motion to Compel Acceptance of Rejected Paper

[Caption]

PLEASE TAKE NOTICE that upon the annexed affidavit of _____, sworn to the _____ day of _____, 20_____, and upon the _____ dated the _____ day of _____, 20_____ and the notice of rejection thereof dated the _____ day of _____, 20_____ the plaintiff will move this court at a motion term [Part _____], to be held in and for the County of _____ at the County Court House in the City of _____ on the _____ day of _____, 20_____, at the opening of court on that day or as soon thereafter as counsel can be heard, for an order compelling the defendant to accept the _____ heretofore rejected, on the ground that the same contained defects in form and for such other and further relief as may be proper together with the costs of this motion.

Dated _____, 20_____.

_____

Attorney for Plaintiff

Office and P. O. Address

Telephone No.

To:_____

Attorney for Defendant

Form 4

Affidavit in Support of Motion to Compel Acceptance of Rejected Paper

{Caption and introductory paragraph]

1. He is the attorney for the plaintiff [or as the case may be] herein and is personally familiar with all the proceedings had herein.

2. Heretofore and on the _____ day of _____, 20_____, deponent served upon the attorney for the defendant [or as the case may be], a verified _____ a copy of which is hereto annexed and made a part hereof.

3. Thereafter and on the _____ day of _____, 20_____, said verified _____ was returned to deponent's office with a notice of rejection thereto annexed, a copy of which notice of rejection is also annexed hereto.

4. The reason for said rejection is set forth in said notice to be that a substantial part of the said _____ is in the French language. There are annexed to said _____ several letters between the parties to this action, all in French, the said language being the language in which the originals were written. However, incorporated in the body of the said _____ are translations of the said letters.

5. An examination of the said _____ shows that such part thereof as is in English is a complete compliance with the statutes and rules governing the said _____.

6. The defendant's rejection of the said _____ was not warranted and was not made in good faith.

WHEREFORE, deponent respectfully requests that an order be entered compelling the defendant to accept the said _____ and for such other and further relief as may be proper in the premises.

[Jurat]

_____

[Print signer's name below signature]

Form 5

Order Compelling Acceptance of Rejected Paper

[Caption]

Now, on reading and filing the notice of motion dated the _____ day of _____, 20_____, and the affidavit of _____, sworn to the _____ day of _____, 20_____, with due proof of service thereof, and the _____ [paper rejected] and the notice of rejection thereof dated the _____ day of _____, 20_____ in support of said motion, and the affidavit of _____, sworn to the _____ day of _____, 20_____, in opposition thereto, and after hearing _____, attorney for plaintiff in support of said motion and _____, attorney for defendant in opposition thereto, and due deliberation having been had.

Now, on motion of _____, attorney for plaintiff, and on the decision of the court filed herein it is

ORDERED that said motion be and it hereby is granted, and the defendant is hereby required to accept and retain the _____ heretofore served and rejected.

Signed this _____ day of _____, 20_____ at _____, New York.

Enter

_____

[Print signer's name below signature]

Justice, Supreme Court

_____ County

New York Consolidated Laws Service

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