

NY CLS CPLR, Art. 21

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

Article 21 Papers (§§ 2101 — 2106)

Article 21 Papers

History

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

Annotations

Notes

Advisory Committee Notes:

Form of papers. The provisions as to form apply to all papers which are served as well as to those which are filed. Most of the former requirements of form have been retained. In addition, a caption is required on all papers instead of only on the complaint, and a provision, representing the former practice, has been added as to translations.

Filing of papers. The former rule that no paper in an action need be filed unless specifically required by law or court order has been retained and extended to special proceedings. Although the Federal courts and many other jurisdictions require the immediate filing of all papers in an action, the advisory committee decided to retain our present “hip pocket” filing system. A great number of suits are commenced which never progress far enough to render a file useful and the administrative burden of a general filing system seems to outweigh its advantages.

Under CPA § 101, all papers in a proceeding are required to be filed. Such a distinction between actions and proceedings seems to serve no real purpose. The same reasons for the absence of a general filing requirement in an action apply to a proceeding. If, in a particular proceeding, filing is deemed desirable, the court may so order or the particular rules may so provide. See, e.g., NY Civ Prac Act § 1291; cf. NY R Civ P 71.

Service of papers. With respect to service, this article applies to all papers in an action or proceeding unless specific provision for their service in another manner is made by law or court order. For example, service of a summons is dealt with in new article 3 and service of a subpoena in new article 23; provisions in this article, such as rule 2103(a), not inconsistent with the specific rules, would still be applicable.

The new provisions as to service in most respects is in conformity with the former law and actual practice. A few changes have been made to insure more adequate notice; for example, service by filing with the clerk is allowed only after all other methods have failed.

RCP 303 has been omitted. It is a particularized provision, authorizing a direction by the court that clerks and other court officers refuse inspection of any papers in an action involving property in which any of the parties interested is in a country at war with the United States or occupied by such country. The court possesses inherent power to take such action and no specific authorization is necessary. See Jud Law § 2-a; cf. *Stevenson v News Syndicate Co.* 276 App Div 614, 96 NYS2d 751 (2d Dept 1950).

The article also brings together provisions from the RCP and the CPA covering stipulations and certification.

Certification. Two significant changes have been made by new CPLR § 2105. First, it eliminates the former requirement of a refusal or failure to stipulate by the opposing attorney before an attorney required to furnish a certified copy of a paper may employ an affidavit in lieu of certification. Second, it removes an ambiguity appearing in CPA § 170-a: while the text of the section covers any copy required to be certified, the section heading refers only to papers on

appeal. The new rule is of general application and thus conforms with the text of the CPA section.

Research References & Practice Aids

Cross References:

Service on a foreign bank, trust or investment company, CLS Bank § 34.

Insolvency proceedings, service of order, CLS Dr & Cr § 66.

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

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