NY CLS CPLR R 2103

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New York

Consolidated Laws Service **>**

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

Article 21 Papers (§§ 2101 — 2106)

R 2103. Service of papers.

(a) Who can serve. Except where otherwise prescribed by law or order of court, papers may be served by any person not a party of the age of eighteen years or over.

(b) Upon an attorney. Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served upon the party's attorney. Where the same attorney appears for two or more parties, only one copy need be served upon the attorney. Such service upon an attorney shall be made:

1. by delivering the paper to the attorney personally; or

2. by mailing the paper to the attorney at the address designated by that attorney for that purpose or, if none is designated, at the attorney's last known address; service by mail shall be complete upon mailing; where a period of time prescribed by law is measured from the service of a paper and service is by mail, five days shall be added to the prescribed period if the mailing is made within the state and six days if the mailing is made from outside the state but within the geographic boundaries of the United States; or

3. If the attorney's office is open, by leaving the paper with a person in charge, or if no person is in charge, by leaving it in a conspicuous place; or if the attorney's office is not open, by depositing the paper, enclosed in a sealed wrapper directed to the attorney, in the attorney's office letter drop or box; or

4. by leaving it at the attorney's residence within the state with a person of suitable age and discretion. Service upon an attorney shall not be made at the attorney's residence unless service at the attorney's office cannot be made; or

5. by transmitting the paper to the attorney by facsimile transmission, provided that a facsimile telephone number is designated by the attorney for that purpose. Service by facsimile transmission shall be complete upon the receipt by the sender of a signal from the equipment of the attorney served indicating that the transmission was received, and the mailing of a copy of the paper to that attorney. The designation of a facsimile telephone number in the address block subscribed on a paper served or filed in the course of an action or proceeding shall constitute consent to service by facsimile transmission in accordance with this subdivision. An attorney may change or rescind a facsimile telephone number by serving a notice on the other parties; or

6. by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose or, if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by law is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address in the state; or

7. by transmitting the paper to the attorney by electronic means where and in the manner authorized by the chief administrator of the courts by rule and, unless such rule shall otherwise provide, such transmission shall be upon the party's written consent. The subject matter heading for each paper sent by electronic means must

indicate that the matter being transmitted electronically is related to a court proceeding.

(c) Upon a party. If a party has not appeared by an attorney or the party's attorney cannot be served, service shall be upon the party by a method specified in paragraph one, two, four, five or six of subdivision (b) of this rule.

(d) Filing. If a paper cannot be served by any of the methods specified in subdivisions (b) and (c), service may be made by filing the paper as if it were a paper required to be filed.

(e) Parties to be served. Each paper served on any party shall be served on every other party who has appeared, except as otherwise may be provided by court order or as provided in section 3012 or in subdivision (f) of section 3215. Upon demand by a party, the plaintiff shall supply that party with a list of those who have appeared and the names and addresses of their attorneys.

(f) Definitions. For the purposes of this rule:

1. "Mailing" means the deposit of a paper enclosed in a first class postpaid wrapper, addressed to the address designated by a person for that purpose or, if none is designated, at that person's last known address, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the United States;

2. "Electronic means" means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression;

3. "Facsimile transmission" means any method of transmission of documents to a facsimile machine at a remote location which can automatically produce a tangible copy of such documents.

History

Add, L 1962, ch 308, § 1; amd, L, 1963, ch 539, § 1, by Judicial Conference (1971); L 1982, ch 20, § 1; L 1989, ch 461, § 1, eff Jan 1, 1990; L 1989, ch 478, §§ 1, 2, eff Jan 1, 1990; L 1990, ch 244, §§ 1–3; L 1999, ch 367, §§ 3–5, eff July 27, 1999; L 2009, ch 416, § 1, eff Sept 1, 2009; L 2015, ch 572, §§ 1, 2, effective January 1, 2016.

Annotations

Notes

Derivation Notes

Earlier statutes and rules: CPA §§ 163, 163-a, 164, 220, 275; RCP 20, 53; CCP §§ 60, 425, 453, 519, 796– 802; Code Proc §§ 159, 408– 412, 414, 415, 417, 418; Gen R Pr 18.

Editor's Notes

Laws 2011, ch 543, § 1, eff Sept 23, 2011, provides:

Section 1. The legislature finds and declares that use of electronic means to commence judicial proceedings and to file and serve papers in pending proceedings (“e-filing”) can be highly beneficial to the state, local governments and the public. Accordingly, it is the purpose of this measure to enable a further controlled.

Amendment Notes

The 2015 amendment by ch 572, §§ 1, 2, added “if the mailing is made within the state and six days if the mailing is made from outside the state but within the geographic boundaries of the United States” in (b)2 and made a stylistic change.

Commentary

PRACTICE INSIGHTS:

DETERMINING DATE OF SERVICE OF PAPERS BY MAILING

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INSIGHT

When there is a dispute as to whether papers, such as an answer or responding papers to a motion, have been timely served by mailing, the party who has been served typically relies on the postmark to establish the date of mailing. The postmark, however, is not conclusive. When the affidavit of service indicates that the papers were served the day before the postmark, in the absence of additional evidence, the affidavit of service controls. Unless the person who actually mailed the paper makes the affidavit of service, however, and specifically recites the circumstances of such personal mailing, the affidavit still may be insufficient to overcome a default judgment. Accordingly, the careful practitioner should make sure that the affidavit of service complies with these terms.

ANALYSIS

Affidavit of service governs date of service unless affidavit is infirm.

CPLR 2103 provides that service may be made “upon mailing” to the opposing party’s attorney, or on the opposing party when no attorney has appeared on the party’s behalf or the party’s attorney cannot be served. CPLR 2103(f) defines “mailing’’ to mean “the deposit of a paper enclosed in a first class postpaid wrapper … in a post office or official depository under the exclusive care and custody of the United States Postal Service within the United States.” Some practitioners may wonder how one proves that service was made in a timely manner and question whether a postmark is controlling evidence of the mailing date. New York courts have made it clear that, absent some additional rebuttal evidence, the serving party’s affidavit of service controls. *Kings Park Classroom Teachers Ass’n v. Kings Park Cent. Sch. Dist.*, 63

N.Y.2d 742, 480 N.Y.S.2d 201 (1984); Harris v. City of New York, 192 N.Y.3d 457, 143 N.Y.S.3d 353 (1st Dep't 2021); *Kresch v. Saul*, 29 A.D.3d 863, 816 N.Y.S.2d 147 (2d Dep't 2006); *Jenny Oil Corp. v. Petro Products Distributors, Inc.*, 121 A.D.2d 687, 503 N.Y.S.2d 886 (2d Dep't 1986). *See also Haygood v. Rochester Gen. Hosp.*, 249 A.D.2d 943, 672 N.Y.S.2d 182 (4th Dep't 1998).

Statutory change that mailed service outside the state is allowed, but adds a sixth day.

CPLR 2103(b)(2) was amended in 2015 to provide that "if the mailing is made from outside the state but within the geographic boundaries of the United States," such service is authorized, but six days shall be added to the prescribed period instead of five. Prior to the amendment, CPLR 2103(b)(2) required that the mailing had to be made within the state, resulting in service mailed outside the state not being treated as served when mailed. The addition of a sixth day for service deposited in the mail outside New York does not appear to be founded on empirical evidence, but is a practical solution for the possibility that out-of-state mailings take longer to receive.

Affidavit of mailing, made on personal knowledge, may be key to avoiding challenge based on late service.

The typical circumstance where this issue may arise is when a practitioner deposits papers in a mailbox on the last day for timely service, but after the final mail pickup for that day. In that situation, the postmark most likely will be dated the next day, thus making the papers appear to be untimely. The CPLR does not set forth what time the papers must be mailed, however, and therefore no basis exists on which to hold that papers deposited in the custody of the Postal Service any time during the day (through until 11:59 PM of that day) are not timely, regardless of the postmark being placed the next day. *See Ortega v. Trefz*, 44 A.D.3d 916, 845 N.Y.S.2d 73 (2d Dep't 2007). In that situation, however, the affidavit of mailing, made on personal knowledge, is the key piece of evidence needed to avoid a challenge based on late service. *Id*.

Person who completes affidavit should personally deposit papers in post office box, and so state in affidavit.

The affidavit of service may be insufficient evidence to establish the date of mailing if it provides that the affiant "caused the paper to be mailed" instead of stating that the affiant deposited the papers in question, since the affiant in that situation cannot swear to the specific circumstances of mailing, and does not state on personal knowledge that the affiant placed the papers in the custody of the Postal Service, as required by CPLR 2103(f)(1). In United States *Metzger v. Esseks*, 168 A.D.2d 287, 562 N.Y.S.2d 625 (1st Dep't 1990), the First Department affirmed a decision to vacate a default judgment on the ground that the plaintiffs' counsel never received the moving papers that sought the default. The court held that the affidavit of service for the motion papers was insufficient because it did not state that the affiant mailed the letter enclosing the default motion papers. *See also Peter-MacIntyre v. Lynch Intl., Inc.*, 52 A.D.3d 424, 862 N.Y.S.2d 351 (1st Dep't 2008). The better practice is for the person who completes the affidavit to be the one who personally deposited the papers in the post office box, and so state in the affidavit.

SERVICE BY MAIL COMPLETE UPON MAILING ANYWHERE IN THE UNITED STATES

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INSIGHT

By statutory amendment of CPLR § 2103, effective January 1, 2016, the Legislature removed a trap for the unwary. Now, service of a document upon opposing counsel by mail is effective upon mailing anywhere in the United States.

ANALYSIS

Old Rule: Paper served by mail from outside New York was deemed served when received, not when mailed.

CPLR § 2103 (f)(1) requires that the paper being served be enclosed in a "first class post paid wrapper," addressed to the person to be served at his or her designated or last-known address. Most attorneys know not to short-frank the envelope, and most will confirm that important documents are sent to the correct address. Prior to the recent amendment, however, the defined term "mailing" further required that the document be placed into a post office or an "official depository" of the United States Postal Service "within the state" (emphasis supplied). This latter provision had become increasingly significant in an era marked by multi-state firms and the use of printers located throughout the country. Simply put, a paper served by mail from outside New York was not deemed served when mailed, but rather only when it was received. *Cipriani v. Green*, 96 N.Y.2d 821, 729 N.Y.S.2d 431, 754 N.E.2d 191 (2001); *National Organization for Women, Inc. v. Metropolitan Life Ins. Co.*, 70 N.Y.2d 939, 524 N.Y.S.2d 672, 519 N.E.2d 618 (1988).

The impact of violating this requirement ranged from mild annoyance, such as the need to adjourn a motion where out-of-state mailing resulted in a failure to comply with CPLR § 2214(b), *see* *Jade Manufacturers Outlet, Inc. v. Transamerica Ins. Co.*, 237 A.D.2d 104, 655 N.Y.S.2d 342 (1st Dep't), appeal denied, 90 N.Y.2d 803, 661 N.Y.S.2d 179, 683 N.E.2d 1053 (1997), to the truly devastating. CPLR 5513 (a) and (b), which govern the time within which to appeal or move for leave to appeal, allow no leeway for extensions (*see* CPLR § 5514 [c]). In the *Cipriani* and *NOW* cases, for example, the Court of Appeals dismissed motions for leave to appeal outright, without regard to merit, because the motions had been mailed from Nevada and Washington, D.C., respectively, apparently on the last day for service, and were not timely filed. (Timely filing would have saved the motions - *see* *M. Entertainment, Inc. v. Leydier*, 13 N.Y.3d 827, 891 N.Y.S.2d 6, 919 N.E.2d 177 (2009); *see generally* CPLR 5520(a).)

Under CPLR § 2103 (b) (2) and (f) (1) as amended, however, service is complete upon mailing, now defined as placing the envelop in a mailbox "within the United States," although if mailed from outside New York (but within the geographic boundaries of the United States), six, not five, days must be added to the prescribed time of any action measured from service.

Advisory Committee Notes

(See also Advisory Committee notes preceding § 210, under subheading “Service of papers.”) **Subd (a).** There was no provision under former law as to who can serve papers in general. The age limitation of subd (a) is based upon CPA § 220 which deals with persons who can serve a summons; it has been adopted for all papers. Cf. NY CPA § 1243 (service of writ of habeas corpus to be made by person over 21). The prohibition against service of a summons by a party has also been made applicable to papers in general.

Subd (b) is derived from CPA §§ 163, 163-a and 164 and of RCP 20. The specific exceptions contained in the CPA sections and RCP rule as to service of a summons and a contempt paper are included under the general exception in this subdivision concerning service otherwise specifically provided for by law. Subparagraph 1 is derived from the opening sentence of RCP 20. The first sentence of subparagraph 2 is derived from subparagraph 1 of RCP 20. The requirement that mailing be from the city, village, or town of the server has been eliminated; mailing under the proposed rule may be from anywhere within the state. With the speed of our modern mail service, mailing anywhere within the state gives sufficient assurance of prompt delivery. The phrase “last known address” is intended to include the last phrase of RCP 20, subparagraph 1. The second sentence of subparagraph 2 of the subdivision is partially derived from § 163-a of the CPA. “Post office” and “official depository” are used as generic terms to include all the depositories listed in § 163-a. The provision that service by mail is complete upon deposit, derived from Federal rule 5(b), represents the law in New York. Jackson & Perkins Co. v Rose Fair, Inc. 278 App Div 890, 104 NYS2d 892 (4th Dept 1951). The third sentence of subparagraph 2 is derived from § 164 of the CPA. No change in substance is intended except for the elimination of a separate provision for notes of issue. Since a note of issue must be served at least twelve days before a term begins (NY R Civ P 150), the application of the general three-day extension for mailing does not differ sufficiently from the provision of CPA § 164 for mail service of a note of issue fourteen days before trial, to merit special treatment. The general rule that three days shall be added to a prescribed period measured from service is

intended to apply to both the situation in which there must be a minimum period of notice before an act is to be done and to the situation in which an act is to be done within a maximum period after service. The first part of subparagraph 3 of this subdivision is derived from subparagraph 2 of RCP 20. The limitation on the time of the day during which service can be made by leaving in a conspicuous place is eliminated in favor of the general requirement, existing under former law, that the office be open. If the office is open, no hardship will result from service at another time of the day. If the office is not open, service cannot be made as designated. “Person in charge” is intended to include the partner or clerk specified in the former provision. The second part of subparagraph 3 is derived from subparagraph 3 of RCP 20. The phrase “accessible from without the office” is omitted as unnecessary. It is implied from the fact that the office is closed. Subparagraph 4 is derived from the last phrase of subparagraph 3 of RCP 20. The provision in the second sentence that this method cannot be used unless service cannot be effected at the attorney’s office is similar to the present provision allowing home service only if the attorney’s office is not open; because it is explicitly limited to attorneys, this provision is inapplicable to service on a party pursuant to this subparagraph when incorporated in subdivision (c). The provision of subparagraph 4 of RCP 20, that where service may be made at an attorney’s residence, it may be made on an attorney living out of the state by mailing it to his office within the state from the city, village or town where his office is located, has been eliminated. Since inability to serve the attorney at his office, which may be by mail from anywhere within the state, would be a prerequisite to service at his residence, this provision seems useless. Provision has been added for service of only one copy where an attorney appears for more than one party. This is based upon the third sentence of CPA § 275.

Subd (c) is derived from RCP 20. The requirement of service upon the party when he has not appeared by an attorney is implicit in the former law. The requirement of service upon the party when his attorney cannot be served is added in preference to service by filing under subd (d) of this rule. Service by filing provides the least adequate notice and should be allowed only as a last resort. The mode of service on a party is derived from the opening sentence and subparagraphs 1 and 5 of RCP 20. The limitation on the time of the day during which service

can be made at a party's residence, contained in subdivision 5 of rule 20, is eliminated. This is in accordance with the former law as to service at an attorney's residence and service of a summons. There seems no reason to make a distinction.

Subd (d) is derived from parts of subparagraphs 4 and 5 of RCP 20. This method of service is permitted only after all others have failed. The term "filing" is used instead of "leaving it with the clerk" to make clear that it is intended that the clerk keep the paper on file for the inspection of the other party and also to make applicable the filing requirements of new CPLR rule 2102.

Subd (e) is derived from CPA § 163. The requirement that a party in jail for want of bail must be served although he has failed to appear, has been eliminated. There seems no reason to treat a party so confined differently in this respect from a party who fails to appear for another reason. In all cases of excusable neglect, of course, relief may be had from a default judgment. NY Civ Prac Act § 108.

1982 Recommendations of the Advisory Committee on Civil Practice:

The traditional three days by (which a responding period is extended when the paper to be responded to is served by mail has proved too short in recent years, as the mails (have been increasingly delayed. The Committee has been asked on a number of occasions in recent years to make a change in CPLR 2103(b) (2), where the three-day period is provided, and has decided to recommend the modest step of increasing it to five days. There have of course been reported instances in which even five days did not do the job, but these have not been frequent. The relatively rare case in which it takes more than five days for first-class mail to reach its goal should not, in the Committee's view, be made the criterion for amendment. The Committee settled on the five-day suggestion after being apprised of the results of a survey conducted by a large law firm in New York City. Some 90% of mailed papers were received within three days, but 99% were received within five.

If mail service grows worse, further amendment can be made of CPLR 2103(b) (2) at a later time to stretch the extension period further.

1989 Recommendations of Advisory Committee on Civil Practice:

The Committee recommends that CPLR 2103 be amended to provide authorization to serve interlocutory papers upon an attorney or pro se party by overnight courier service. This will expedite the service of interlocutory papers and reflects a form of delivery papers that is used frequently by all businesses and professions.

The Committee recommends that service by express courier (overnight delivery service) should be deemed complete upon delivery of the paper to the express courier service, provided that the express courier service is one approved for this purpose by rule of the Chief Administrator of the Courts, a necessary safeguard against the use of undependable courier services, which might occasion new instances of “sewer service.”

The major advantage of utilizing the express courier method of service would be a proposed shortening of the length of time in which the party in receipt of the document is deemed to have received the document, thereby shortening the period in which the party would be required to respond. In this respect, the Committee recommends that the five-day addition to respond contained in CPLR 2103(2) be reduced to one business day where express courier service is used.

The Committee also recommends that the new requirements for overnight delivery service eliminate the feature of mail service that the depository must be “in the state.” There is no reason why an attorney should not be able to entrust an overnight delivery envelope to a delivery service in New Jersey or another state.

1990 Recommendations of Advisory Committee on Civil Practice:

The Committee recommends that the inconsistent numbering of paragraphs and other technical inconsistencies in CPLR 2103 (Service of papers) there were occasioned by the separate enactment in 1989 of Chapters 461 and 478 of the Laws of 1989 be eliminated and the provisions amended by those acts be harmonized. Chapter 461 of the Laws of 1989 amended CPLR 2103 to provide for service of interlocutory papers upon attorneys by electronic

transmission (including “fax”), and Chapter 478 amended the same provisions to authorize service of interlocutory papers upon attorneys by overnight courier services, both acts effective on January 1, 1990. Since these enactments were made without reference to one another, they resulted in some structural inconsistencies in the section, including the two different paragraphs both numbered paragraph 5. Clarification is desirable to avoid confusion; no substantive change is intended or made.

1999 Recommendations of 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.

2014 Recommendations of the Advisory Committee on Civil Practice.

This measure would repeal the language in CPLR 2103(f)(1) that requires papers served by mail be mailed within the State of New York. Subdivision (f) of rule 2103 defines “mailing” for purposes of service of papers in a pending action upon the party’s attorney. This proposal also extends by one day to six days the prescribed period of time for response to a paper when service under this section by mail is made by depositing papers with the Postal Service from outside the state.

The Committee takes particular note of a recent decision by the Appellate Division, First Department, holding insufficient service by mail made outside the State but in every other aspect made correctly with the United States Postal Service (*M. Entertainment, Inc. v. Leydier* (2009 NY Slip Op 04169)(May 28, 2009)reversed on other grounds, 2009 NY Slip Op 07671 (October 27, 2009)). Notably, the dissent points out that the relevant notice of appeal was served by mail by depositing it with the Postal Service in New Jersey, instead of New York.

The Committee notes that CPLR 2103(b)(6), the rule regarding service upon an attorney via dispatch by overnight delivery service (CPLR 2103(b)), does not require such dispatch to be made within the State, only that the service regularly accept items for overnight delivery within the State, as follows:

“(b) Upon an attorney. Except where otherwise prescribed by law or by order of court, papers to be served upon a party in a pending action shall be served upon the party’s attorney. Where the same attorney appears for two or more parties, only one copy need be served upon the attorney. Such service upon an attorney shall be made:***

“6. by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose or, if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by law is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed

period. **“Overnight delivery service” means any delivery service which regularly accepts items for overnight delivery to any address in the state;** or...”(emphasis added).

The Committee believes the rule for mailing should correspond with that for a delivery service. The Committee also believes that allowing service by mail from outside the State will remove an artificial barrier to service and encourage litigation to be brought in New York. Finally, the act of removing this requirement recognizes the current realities of multi-state practice and the increased mobility of litigants and litigation.

2015 Recommendations of the Advisory Committee on Civil Practice.

The Committee recommends this measure which would repeal the language in CPLR 2103(f)(l) that requires that papers served by mail upon an attorney in a pending action be mailed within the State of New York. This measure also extends by one day, to six days, the prescribed period of time for response to such papers when they are served by mail from outside the State but within the geographic boundaries of the United States.

We take particular note of a recent decision by the Appellate Division, First Department, holding service by mail made outside the State insufficient (*M Entertainment, Inc. v. Leydier* (2009 NY Slip Op 04169) (May 28, 2009) reversed on other grounds, 2009 NY Slip Op 07671 (October 27, 2009)). In response, our Advisory Committee points out that CPLR 2103(b)(6), the rule regarding service upon an attorney via dispatch by overnight delivery service, does not require such dispatch to be made within the State, only that the service regularly accept items for overnight delivery within the State, as follows:

“(b) Upon an attorney. Except where otherwise prescribed by law or by order of court, papers to be served upon a party in a pending action shall be served upon the party’s attorney. Where the same attorney appears for two or more parties, only one copy need be served upon the attorney. Such service upon an attorney shall be made:***

“6. by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose or, if none is designated, at the attorney's last known

address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by law is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. *"Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address in the state; or*…"(emphasis added).

The Committee's view is that the rule for mailing should correspond with that for a delivery service. The Committee also believes that allowing service by mail from outside the State will remove an artificial barrier to service and encourage litigation to be brought in New York. The act of removing this requirement recognizes the current realities of multi-state practice and the increased mobility of litigants and litigation. Finally, the measure has been amended to be limited in scope and application to the geographic boundaries of the United States.

This measure would have no fiscal impact on the State. It would take effect on the first day of January next succeeding the date on which it shall have become law.

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I. Under CPLR

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Process is served to subject a person to jurisdiction in an action pending in a particular court and to give notice of the proceeding. Patrician Plastic Corp. v Bernadel Realty Corp., 25 N.Y.2d 599, 307 N.Y.S.2d 868, 256 N.E.2d 180, 1970 N.Y. LEXIS 1619 (N.Y. 1970).

In an action in which plaintiffs never complied with the defendant's conditional order of preclusion and in which plaintiffs' papers averred that it appeared that the order was mailed but never received and surmised that the document was lost in the mail, plaintiff raised no question or fact and therefore defendant's motion for summary judgment, made 14 months after the mailing, was properly granted since a properly executed affidavit of service raises a presumption that a proper mailing occurred and, by statute, services completed upon mailing (CPLR § 2103(b)(2)). Engel v Lichterman, 62 N.Y.2d 943, 479 N.Y.S.2d 188, 468 N.E.2d 26, 1984 N.Y. LEXIS 4464 (N.Y. 1984).

Service of cover letter together with Appellate Division order constituted service of order with notice of entry so as to commence running of appellant's time to move for leave to appeal, and thus motion for leave to appeal made more than 35 days later was untimely, although cover letter stated only that Appellate Division order was attached and did not specify that it was entered, since attached Appellate Division order was stamped entered with date of entry and name of clerk of court where order was entered. Norstar Bank v Office Control Sys., 78 N.Y.2d 1110, 578 N.Y.S.2d 868, 586 N.E.2d 51, 1991 N.Y. LEXIS 4986 (N.Y. 1991).

Where insurance company received notice of intention to arbitrate on a certain date, the 10 days within which to apply for a stay of arbitration started to run from that date. Monarch Ins. Co. v Pollack, 32 A.D.2d 819, 302 N.Y.S.2d 432, 1969 N.Y. App. Div. LEXIS 3704 (N.Y. App. Div. 2d Dep't 1969).

CPLR 2103 applies to notice of the entry of judgment. Kalman v Welsh, 32 A.D.2d 1044, 303 N.Y.S.2d 702, 1969 N.Y. App. Div. LEXIS 3297 (N.Y. App. Div. 3d Dep't 1969).

A motion having been made in a pending action, service pursuant to CPLR 2103 and 2214 was proper since the court already had acquired jurisdiction over the parties. Olsen & Chapman Constr. Co. v Cazenovia, 33 A.D.2d 929, 306 N.Y.S.2d 560, 1970 N.Y. App. Div. LEXIS 5830 (N.Y. App. Div. 3d Dep't 1970).

Supreme Court, Appellate Division, did not have jurisdiction of special proceeding to review an order of the State Division and Appeal Board dismissing complaint of discrimination where petition and notice were not filed until several days after statutory period of 30 days, plus three days allowed because of service by mail, had elapsed. Denson v Buffalo Evening News, Inc., 45 A.D.2d 931, 357 N.Y.S.2d 328, 1974 N.Y. App. Div. LEXIS 4502 (N.Y. App. Div. 4th Dep't 1974).

Service of process was sustained under rule that apartment doorman came within statutory contemplation as a person of suitable age and discretion to receive process. F. I. Du Pont, Glore Forgan & Co. v Chen, 58 A.D.2d 789, 396 N.Y.S.2d 660, 1977 N.Y. App. Div. LEXIS 12948 (N.Y. App. Div. 1st Dep't 1977).

The trial court erred in granting the defendants' motion for change of venue since the plaintiff timely served an affidavit alleging that the county selected by the plaintiff was the proper county, which required the defendants to make their motion for change of venue in the county designated by the plaintiff or in an adjoining county. Tri-City Furniture Dist., Inc. v Reubens, 79 A.D.2d 886, 434 N.Y.S.2d 532, 1980 N.Y. App. Div. LEXIS 14327 (N.Y. App. Div. 4th Dep't 1980).

Property owner's assessment complaint, which was mailed before board of assessment review's hearing date, but received after such date, could not be rendered timely by resort to provisions of CLS CPLR § 2103, since CLS CPLR § 101 provides that CPLR does not govern proceedings "regulated by inconsistent statute," and CLS Real P Tax § 524 is inconsistent with CPLR in that it envisions receipt of complaint at or before hearing. Willig v Ballston, 126 A.D.2d 856, 511 N.Y.S.2d 156, 1987 N.Y. App. Div. LEXIS 41983 (N.Y. App. Div. 3d Dep't 1987).

Court had jurisdiction over motion to disqualify plaintiff's attorney, despite defendant's error in giving only 13 days' notice and in demanding that answering affidavits be served 7 days prior to return date of motion, since plaintiff's notice of motion was not less than minimum time period authorized by CLS CPLR §§ 2103(b)(2) and 2214(b), and thus defect was not jurisdictional. Capoccia v Brognano, 132 A.D.2d 833, 517 N.Y.S.2d 622, 517 N.Y.S.2d 837, 1987 N.Y. App. Div. LEXIS 49322 (N.Y. App. Div. 3d Dep't 1987), app. dismissed, 70 N.Y.2d 952, 525 N.Y.S.2d 835, 520 N.E.2d 553, 1988 N.Y. LEXIS 285 (N.Y. 1988).

On defendants' motion for summary judgment in medical malpractice action, court lacked jurisdiction to entertain plaintiff's cross motion to vacate conditional order of preclusion (for failure to serve bill of particulars) where plaintiff failed to comply with notice provisions of CLS CPLR §§ 2215 and 2103. Vanek v Mercy Hospital, 135 A.D.2d 707, 522 N.Y.S.2d 607, 1987 N.Y. App. Div. LEXIS 52645 (N.Y. App. Div. 2d Dep't 1987).

Time prescriptions of CLS CPLR § 2103(b)(2) did not provide justifiable excuse for plaintiff's late filing of note of issue, and thus plaintiff could not defeat motion to dismiss under CLS CPLR § 3216, since § 2103 concerns only time limitations involving service, § 3216 specifically requires timely service and filing of note of issue, and mailing of note of issue to county clerk and defendants did not constitute filing. Juracka v Ferrara, 137 A.D.2d 921, 524 N.Y.S.2d 885, 1988 N.Y. App. Div. LEXIS 1643 (N.Y. App. Div. 3d Dep't 1988), app. dismissed, 72 N.Y.2d 840, 530 N.Y.S.2d 555, 526 N.E.2d 47, 1988 N.Y. LEXIS 1043 (N.Y. 1988), app. denied, 74 N.Y.2d 642, 541 N.Y.S.2d 982, 539 N.E.2d 1110, 1989 N.Y. LEXIS 601 (N.Y. 1989).

Service of petition in violation of CLS CPLR § 2103(a) in litigation to challenge approval of construction of food distribution facility did not require dismissal since violation was mere irregularity which did not vitiate service. Schodack Concerned Citizens v Town Bd. of Schodack, 148 A.D.2d 130, 544 N.Y.S.2d 49, 1989 N.Y. App. Div. LEXIS 9405 (N.Y. App. Div. 3d Dep't), app. denied, 75 N.Y.2d 701, 551 N.Y.S.2d 905, 551 N.E.2d 106, 1989 N.Y. LEXIS 4034 (N.Y. 1989).

Court should have granted party’s motion to set aside foreclosure sale where neither he nor his attorney had been served with referee’s report, judgment of foreclosure and sale, or notice of sale; even if party knew that sale of property was imminent because he had been served with order dismissing his answer in foreclosure action, he was entitled to rely on requirement of CLS CPLR § 2013 that all papers in action must be served on every party who has appeared and not waived service. Pol-Tek Indus. v Panzarella, 227 A.D.2d 992, 643 N.Y.S.2d 289, 1996 N.Y. App. Div. LEXIS 7021 (N.Y. App. Div. 4th Dep't 1996).

Defendants’ default did not result in forfeiture of their right to contest plaintiffs’ damages, but they should have been precluded from using records that they obtained by way of subpoena they served on plaintiffs’ no-fault carrier without notice to plaintiffs. Porter v SPD Trucking, 284 A.D.2d 181, 727 N.Y.S.2d 70, 2001 N.Y. App. Div. LEXIS 6213 (N.Y. App. Div. 1st Dep't 2001), overruled in part, Reid v Brown, 308 A.D.2d 331, 764 N.Y.S.2d 260, 2003 N.Y. App. Div. LEXIS 9333 (N.Y. App. Div. 1st Dep't 2003).

Because the first company failed to object to jurisdiction pursuant to N.Y. C.P.L.R. 1009, 2103(b) in the second company’s third-party action, the plaintiff was not obligated to serve a supplemental summons with the amended verified complaint; therefore, the trial court erred in dismissing the plaintiff’s wrongful death action. Ruiz v Griffin, 50 A.D.3d 1007, 856 N.Y.S.2d 214, 2008 N.Y. App. Div. LEXIS 3512 (N.Y. App. Div. 2d Dep't 2008).

Trial court properly considered plaintiffs’ cross motion to compel production of records; although plaintiffs served their cross motion via media mail, as opposed to first class mail, since the elevator company opposed the cross motion on the merits, the defect in service was a mere

irregularity that did not result in substantial prejudice to the elevator company. Jones v LeFrance Leasing Ltd. Partnership, 81 A.D.3d 900, 917 N.Y.S.2d 261, 2011 N.Y. App. Div. LEXIS 1457 (N.Y. App. Div. 2d Dep't 2011).

Trial court erred in denying a driver's motion to dismiss a passenger's personal injury action and in granting the passenger's cross-motion to extend the time to serve the complaint because the passenger failed to serve her complaint upon the driver after the driver served her with a notice of appearance and demand for a complaint, the passenger failed to demonstrate either a reasonable excuse for the delay in serving the complaint or that her causes of action were meritorious, and the uncertified police accident report constituted inadmissible hearsay and did not contain any admission by the driver against her interest bearing on how the accident occurred. Ganchrow v Kremer, 157 A.D.3d 771, 69 N.Y.S.3d 352, 2018 N.Y. App. Div. LEXIS 285 (N.Y. App. Div. 2d Dep't 2018), overruled in part, Yassin v Blackman, 188 A.D.3d 62, 131 N.Y.S.3d 53, 2020 N.Y. App. Div. LEXIS 5171 (N.Y. App. Div. 2d Dep't 2020).

Judgment lien holder was entitled to foreclose on property owned by the judgment debtor (a corporation) and the trial court erred in vacating the judgment of foreclosure because the judgment debtor and its mortgagee did not demonstrate that the lienholder failed to comply with notice requirements of CPLR 2003. Further, CPLR 3215(g) did not apply to a corporation in an action affecting title to real property. There were no grounds to set aside the foreclosure sale based on lack of proper service on the mortgagee under CPLR 2103 because the mortgagee had defaulted in appearing in the action, and the judgment of foreclosure and sale contained no provision directing service on the mortgagee. NYCTL 1998-2 Trust v Chinese Am. Trading Co., Inc., 189 A.D.3d 1437, 140 N.Y.S.3d 39, 2020 N.Y. App. Div. LEXIS 8015 (N.Y. App. Div. 2d Dep't 2020).

N.Y. Correct. Law § 112 (3) did not authorize a subpoena of petitioner’s personal cell phone data as the search did not concern his conduct at a correctional facility or during performance of community supervision; however, respondent had authority to issue the subpoena pursuant to N.Y. Pub. Off. Law § 61, and as the subpoena was issued during respondent’s investigation and

there were no pending charges or judicial proceedings against petitioner, the notice provisions in N.Y. C.P.L.R. 2303 (a) and 2103 (b) did not apply. Matter of Brooks v New York State Dept. of Corr. & Community Supervision, 218 A.D.3d 1096, 193 N.Y.S.3d 411, 2023 N.Y. App. Div. LEXIS 3973 (N.Y. App. Div. 3d Dep't 2023).

Plaintiff's application for the issuance of a subpoena duces tecum was admissible, since the defendants had not been given timely notice of the motion. Blaikie v Borden Co., 47 Misc. 2d 180, 262 N.Y.S.2d 8, 1965 N.Y. Misc. LEXIS 2127 (N.Y. Sup. Ct. 1965).

CPLR 2103(b) has no application to the service of a subpoena, and attempted service of a subpoena on the attorney for a foreign corporation was invalid. Beach v Lost Mountain Manor, Inc., 53 Misc. 2d 563, 279 N.Y.S.2d 93, 1967 N.Y. Misc. LEXIS 1894 (N.Y. Sup. Ct. 1967).

There is a distinction between the service of a summons and the service of an order. In the former, an attempt is being made to invoke the jurisdiction of a court and no equivalent for procedure mandated by statute should be countenanced. When, however, a body is acting under a statutory grant of jurisdiction, the purpose of service of an order is to give notice and when that objective is achieved a departure from express statutory terms, in the absence of prejudice, is tolerable. People v Penn Cent. Co., 60 Misc. 2d 919, 304 N.Y.S.2d 149, 1969 N.Y. Misc. LEXIS 1168 (N.Y. Sup. Ct. 1969), aff'd, 34 A.D.2d 278, 311 N.Y.S.2d 150, 1970 N.Y. App. Div. LEXIS 4614 (N.Y. App. Div. 3d Dep't 1970).

Utility company failed to adhere to legal and constitutional prerequisites to replevin in seeking orders of seizure to replevy utility meters at premises of customers who were in arrears in utility payments where company's supporting affidavits were merely form affidavits with blanks filled in that did not "instill great confidence" as to quality of underlying investigation and certitude of facts alleged therein, and notice to customers consisted only of company forms that failed to state date and time company's application would be presented to court, and that failed to allow proper time for customers to respond as required by CLS CPLR §§ 2103 and 2214. Consolidated Edison Co. v Haymer, 139 Misc. 2d 95, 527 N.Y.S.2d 941, 1988 N.Y. Misc. LEXIS 212 (N.Y. App. Term 1988).

Once jurisdiction has been obtained over state, and state has appeared in action in Court of Claims, amended claim may be served in accordance with CLS CPLR § 2103, and personal delivery to Attorney General, or assistant attorney general, or by certified mail, return receipt requested, in accordance with CLS Ct C Act § 11, is not required. Rohany v State, 144 Misc. 2d 940, 545 N.Y.S.2d 513, 1989 N.Y. Misc. LEXIS 522 (N.Y. Ct. Cl. 1989).

Defects in service under CLS CPLR § 2103 are mere irregularities which may be disregarded in absence of prejudice; thus, where interlocutory papers were actually received by other party in timely manner and no prejudice was alleged, service was proper. Rohany v State, 144 Misc. 2d 940, 545 N.Y.S.2d 513, 1989 N.Y. Misc. LEXIS 522 (N.Y. Ct. Cl. 1989).

Court would not dismiss defendant’s cross-motion for dismissal of plaintiff’s motion for summary judgment in lieu of complaint, on ground that cross-motion was served “short” under CLS CPLR § 2103(b)(2) because papers were mailed one day late, where plaintiff was not prejudiced by late receipt in that it obtained 2-week consent adjournment and responded; short service does not necessarily require denial of interlocutory motion as court must exercise its discretion according to circumstances. Plaza 400 Owners Corp. v Resnicoff, 168 Misc. 2d 837, 640 N.Y.S.2d 984, 1996 N.Y. Misc. LEXIS 81 (N.Y. Civ. Ct. 1996).

In child protective proceeding, where law guardian served notice of discovery and inspection requesting copy of entire case record of social services department but did not serve copy of notice on respondent’s counsel as required by CLS CPLR § 2103(e), department was not required to produce copy of its records to respondent’s counsel automatically, and dismissal was not warranted where respondent’s counsel was provided with copy of all records before adjourned hearing and there was no inordinate delay. In re M.J., 176 Misc. 2d 446, 673 N.Y.S.2d 554, 1998 N.Y. Misc. LEXIS 121 (N.Y. Fam. Ct. 1998).

Only after a plaintiff gains personal jurisdiction over a defendant is the service of interlocutory papers applicable. Peterkin v City of New York, 293 A.D.2d 244, 745 N.Y.S.2d 178, 2002 N.Y. App. Div. LEXIS 6948 (N.Y. App. Div. 2d Dep't 2002).

Where an inmate’s misinterpretation of N.Y. C.P.L.R. 2103 and an unsubstantiated assertion that the inmate was denied access to a notary public did not provide a basis for the requested relief, the Court of Claims properly denied the inmate’s N.Y. Ct. Cl. Act § 10(6) application to file a late claim. Lynch v State, 2 A.D.3d 1002, 768 N.Y.S.2d 403, 2003 N.Y. App. Div. LEXIS 13145 (N.Y. App. Div. 3d Dep't 2003).

Since a motion is deemed made when the motion papers are served, defendant’s motion for summary judgment was untimely, in that defendant’s order to show cause was not filed until more than 120 days after the second note of issue was filed. The motion was deemed made when the order to show cause was served and not when it was first presented to the court for signing. Slane v Kalache, 794 N.Y.S.2d 835, 7 Misc. 3d 717, 2005 N.Y. Misc. LEXIS 373 (N.Y. Sup. Ct. 2005).

Affirmation of defendant’s attorney was insufficient to establish the date that the answer was served, as it did not specifically state that the affiant himself served the answer, nor did it describe the method used to effectuate service in a manner specified by N.Y. C.P.L.R. 2103(b); the denial of defendant’s motion to strike the amended summons and complaint for failure to comply with N.Y. C.P.L.R. 3025 was proper. Gigante v Arbucci, 34 A.D.3d 425, 823 N.Y.S.2d 539, 2006 N.Y. App. Div. LEXIS 13397 (N.Y. App. Div. 2d Dep't 2006).

N.Y. C.P.L.R. 2103 (b) (2) may be useful as a guide to help determine the presumptive reasonable date of receipt; however, a properly-mailed item should not automatically be presumed to be received exactly five or six days thereafter. Rather, receipt can, based on the particular facts presented, be presumed to be less than five or six days or greater than five or six days after mailing, depending on certain factors, and in this case, the court could not presume that plaintiff received the denial of claim form two days after it was mailed. New Millennium Med. Imaging, P.C. v GEICO, 76 Misc. 3d 31, 175 N.Y.S.3d 421, 2022 N.Y. Misc. LEXIS 5016 (N.Y. App. Term 2022).

2. Who can serve papers

Personal service of summons by petitioner in filiation proceeding upon alleged father in violation of statute providing that papers may be served by any person not a party 18 years or over and failure of summons to indicate return date constituted lack of due process. Beverly E. v William H., 53 A.D.2d 891, 385 N.Y.S.2d 748, 1976 N.Y. App. Div. LEXIS 13727 (N.Y. App. Div. 2d Dep't 1976).

Court properly dismissed action for violation of CLS CPLR § 2103(a) where service of summons and complaint had been made by attorney who was plaintiff pro se and attorney for other plaintiffs. Miller v Bank of New York, 226 A.D.2d 507, 650 N.Y.S.2d 737, 1996 N.Y. App. Div. LEXIS 4304 (N.Y. App. Div. 2d Dep't 1996).

Service of summons by a party is invalid. Kjeldsen v Ballard, 52 Misc. 2d 952, 277 N.Y.S.2d 324, 1967 N.Y. Misc. LEXIS 1780 (N.Y. Sup. Ct. 1967).

Service by an unlicensed process server in violation of the applicable administrative code does not warrant dismissal in absence of specific provision that service accomplished by unlicensed process servers was void; securing of strict compliance with licensing law requirements is more appropriately achieved by way of vigorous employment of available administrative enforcement powers rather than through the invalidation of otherwise valid service of process. Feierstein v Mullan, 120 Misc. 2d 574, 467 N.Y.S.2d 478, 1983 N.Y. Misc. LEXIS 3763 (N.Y. App. Term 1983).

In custody proceeding under CLS Family Ct Act Art 6, where manner of out-of-state service of petition on respondent wife, who fled with children to location close to her parents home in Florida, was sufficient to confer jurisdiction under Uniform Child Custody Jurisdiction Act (CLS Dom Rel Art 5-A), fact that petitioner husband rather than nonparty mailed papers constituted mere irregularity rather than jurisdictional defect in view of fact that wife received actual notice of proceedings. Dunne v Dunne, 148 Misc. 2d 136, 560 N.Y.S.2d 77, 1990 N.Y. Misc. LEXIS 436 (N.Y. Fam. Ct. 1990).

Holdover summary proceeding would be dismissed due to landlord's personal service of 30-day termination notice on tenants in contravention of CLS CPLR § 2103(a); service of termination notice can be subject of traverse hearing, and requirements of § 2103(a) help assure that traverse hearings are properly and correctly decided. Zamar v Fair, 153 Misc. 2d 913, 583 N.Y.S.2d 731, 1991 N.Y. Misc. LEXIS 805 (N.Y. Civ. Ct. 1991).

Person who signed nonpayment summary petition and notice of petition as owner's "agent" did not thereby make himself "party" who was not authorized to serve process. Eisenhauer v Sarrabia, 178 Misc. 2d 95, 677 N.Y.S.2d 756, 1998 N.Y. Misc. LEXIS 417 (N.Y. Dist. Ct. 1998).

While it was correct that under N.Y. C.P.L.R. 2103(a), a party to an action could not serve papers, the plaintiff, a church, was a corporate entity, and the fact that pastor was personally served by a member of the church's board of deacons, did not vitiate service because the deacon was an agent of the corporation, and could properly serve the pastor. Baptist Temple Church, Inc. v Mann, 194 Misc. 2d 498, 755 N.Y.S.2d 780, 2002 N.Y. Misc. LEXIS 1704 (N.Y. Civ. Ct. 2002).

A county sheriff may not hire or engage a private process serving agency for the purpose of serving all civil process and mandates. 1966 Op St Compt No. 66–532.

3. Service upon attorneys

Once a party chooses to be represented by counsel in an action or proceeding, whether administrative or judicial, the attorney is deemed to act as his agent in all respects relevant to the proceeding. Thus any documents, particularly those purporting to have legal effect on the proceeding, should be served on the attorney the party has chosen to handle the matter on his behalf. Bianca v Frank, 43 N.Y.2d 168, 401 N.Y.S.2d 29, 371 N.E.2d 792, 1977 N.Y. LEXIS 2449 (N.Y. 1977).

Unless a legislative enactment specifically excludes the necessity of serving counsel and the intention to so depart from standard practice is clearly established and stated in unmistakable

terms, any general requirement that notice must be served upon a party must be read in the accepted sense to require, at least, that notice be served upon the attorney the party has chosen to represent him. Bianca v Frank, 43 N.Y.2d 168, 401 N.Y.S.2d 29, 371 N.E.2d 792, 1977 N.Y. LEXIS 2449 (N.Y. 1977).

The legislative purpose of CPLR 2103(b) and (c) is to insure that a party in a pending action is afforded a fair opportunity to be notified so that he may protect his interests. Service which is not made in accordance with the requirements of the statute is ineffectual. Michaud v Loblaws, Inc., 36 A.D.2d 1013, 321 N.Y.S.2d 626, 1971 N.Y. App. Div. LEXIS 4013 (N.Y. App. Div. 4th Dep't 1971).

Request by a junior judgment creditor on a mortgage to vacate a foreclosure sale should be granted, where the senior lienor failed to serve a notice of sale upon the bank or its attorney, since RPAPL § 231, though allowing notice by publication in some instances, does not do away with the requirement of additional service on the bank’s attorney, and since CPLR § 2103 requires that any papers served upon a party also be served upon the party’s attorney. Shaw v Russell, 95 A.D.2d 977, 464 N.Y.S.2d 299, 1983 N.Y. App. Div. LEXIS 18944 (N.Y. App. Div. 3d Dep't), aff'd, 60 N.Y.2d 922, 471 N.Y.S.2d 40, 459 N.E.2d 149, 1983 N.Y. LEXIS 3561 (N.Y. 1983).

Family Court had personal jurisdiction over parties since petitioner impliedly empowered her attorney to accept service of process by her appearance in prior related proceedings commenced by her in Family Court. Zahran v Zahran, 154 A.D.2d 886, 545 N.Y.S.2d 857, 1989 N.Y. App. Div. LEXIS 12818 (N.Y. App. Div. 4th Dep't 1989).

Appeal by town was not untimely, notwithstanding that appeal was filed more than 30 days after copy of judgment and notice of entry were served on town attorney, since town was represented in matter by special counsel, and he had not been served. Wright v Board of Assessors, 177 A.D.2d 741, 575 N.Y.S.2d 979, 1991 N.Y. App. Div. LEXIS 14359 (N.Y. App. Div. 3d Dep't 1991).

Court properly denied defendant's motion to dismiss complaint under CLS CPLR § 3012(b), even though plaintiff did not serve complaint within 20 days of defendant's demand, where plaintiff showed that copy of complaint was mailed to defendant's attorney under CLS CPLR § 2103(b)(2) and that defendant did not move to dismiss complaint until 30 days later. Haygood v Rochester Gen. Hosp., 249 A.D.2d 943, 672 N.Y.S.2d 182, 1998 N.Y. App. Div. LEXIS 5044 (N.Y. App. Div. 4th Dep't 1998).

Because an electric company's initial motion for summary judgment was timely under N.Y. C.P.L.R. 2103(b)(2) when it was served on all opposing counsel by mail, the company's subsequent service of an amended notice of motion under N.Y. C.P.L.R. 2211, in order to schedule the return of the motion on a date permitted by the trial court's rules of practice, did not render the motion untimely. Kitkas v Windsor Place Corp., 49 A.D.3d 607, 852 N.Y.S.2d 809, 2008 N.Y. App. Div. LEXIS 2120 (N.Y. App. Div. 2d Dep't 2008).

Mortgagee was entitled to judgment in a foreclosure action because (1) a mortgagor showed no grounds for excusing the mortgagor's default in failing to oppose the mortgagee's motions for summary judgment or to appoint a referee to determine damages, based on the mortgagee's motion papers being mailed to the mortgagor's attorney, as nothing showed the mortgagee's notice of a change in the attorney's address, and (2) the mortgagor showed no potentially meritorious opposition to the motions. Wachovia Mtge., FSB v Coleman, 170 A.D.3d 1244, 97 N.Y.S.3d 130, 2019 N.Y. App. Div. LEXIS 2340 (N.Y. App. Div. 2d Dep't 2019).

Petitioners' technical objection to the service of motion papers upon them for the reason that they were not included in a "sealed wrapper," as provided by ¶ 3 of subd (b) of this rule, was overruled when petitioners' attorney received the papers intact, and even if the objection was sustained the court would permit the papers to be served again thereby defeating the purpose of CPLR § 104. Bedford Lake Park Corp. v Board of Assessors, 45 Misc. 2d 485, 257 N.Y.S.2d 218, 1965 N.Y. Misc. LEXIS 2337 (N.Y. Sup. Ct. 1965).

CPLR 5239, by providing that an adverse claimant to property levied upon by the sheriff may assert his right by serving a notice of petition upon the sheriff and upon the judgment creditor "in

the same manner as a notice of motion" constitutes an exception to the general rule of CPLR 403(c), and service upon the judgment creditor's attorney, including service by mail, will serve to expedite the matter and yet provide due process notice; and there is no requirement that the judgment creditor be personally served. Joseph Durst Corp. v Leader, 51 Misc. 2d 72, 272 N.Y.S.2d 448, 1966 N.Y. Misc. LEXIS 2322 (N.Y. Sup. Ct. 1966).

When a party appears by counsel, all communications must be addressed to counsel rather than to the party directly. 1134 East Corp. v New York State Liquor Authority, 58 Misc. 2d 217, 295 N.Y.S.2d 27, 1968 N.Y. Misc. LEXIS 1088 (N.Y. Sup. Ct. 1968).

Court did not have jurisdiction over state's counterclaim, and was powerless to enter judgment on counterclaim, where state mistakenly served its amended answer and counterclaim on its own former attorney rather than attorney for claimants, and service was never made on attorney for claim ants; judgment for state on counterclaim would be vacated despite state's contentions that, since its counsel referred to counterclaim during trial, claimants were not taken by surprise and suffered no prejudice from failure to serve counterclaim. Gildea v State, 133 Misc. 2d 269, 507 N.Y.S.2d 127, 1986 N.Y. Misc. LEXIS 2862 (N.Y. Ct. Cl. 1986).

Landlord was not denied due process in proceeding to determine lawful stabilized rent by failure of Division of Housing and Community Renewal to serve copy of complaint on landlord's attorney and on overtenant; under CLS CPLR § 2103, there was no requirement for service on attorney where landlord did not dispute receiving notice of proceedings, and although failure to afford notice to overtenant might have violated her due process rights, landlord had no standing to raise that issue. Sun v Division of Housing & Community Renewal, 137 Misc. 2d 434, 521 N.Y.S.2d 612, 1987 N.Y. Misc. LEXIS 2646 (N.Y. Sup. Ct. 1987).

Conditional order striking defendant's answer unless interrogatories were responded to within 20 days of service of copy of order was validly served where plaintiff's counsel used facsimile machine to transmit copy of order to defendant's counsel's office. Calabrese v Springer Personnel of New York, Inc., 141 Misc. 2d 566, 534 N.Y.S.2d 83, 1988 N.Y. Misc. LEXIS 649 (N.Y. Civ. Ct. 1988).

In child protective proceeding, court would deny motion by respondent husband for examination before trial and psychological evaluation of wife, children's nonrespondent mother who was added to proceeding and assigned counsel, where notice of motion was not served on assigned counsel. In re Kaitlyn S., 148 Misc. 2d 276, 560 N.Y.S.2d 88, 1990 N.Y. Misc. LEXIS 432 (N.Y. Fam. Ct. 1990).

Where petitioners sought appointment of guardian for alleged incapacitated person (AIP), and court appointed counsel pursuant to CLS Men Hyg § 81.10, AIP's husband was entitled to serve cross petition, also seeking appointment of guardian, on court-appointed counsel instead of AIP; once jurisdiction has been obtained, service of all papers is governed by CLS CPLR § 2103, which authorizes service by mail on party's attorney. In re Guardianship of Staiano, 160 Misc. 2d 494, 609 N.Y.S.2d 1021, 1994 N.Y. Misc. LEXIS 81 (N.Y. Sup. Ct. 1994).

N.Y. C.P.L.R. 2103(b) applied to orders entered under N.Y. Fam. Ct. Act § 439(e), so that a child support order entered under § 439(e) had to be mailed to a represented obligor's counsel before the time within which objections to that order were to be filed would begin to run. Matter of Oneida County Dep't of Soc. Servs. ex rel. Hurd v Hurd, 295 A.D.2d 70, 743 N.Y.S.2d 758, 2002 N.Y. App. Div. LEXIS 6224 (N.Y. App. Div. 4th Dep't 2002).

When an attorney indicated affirmatively that he represented two mortgage obligors in a mortgage foreclosure proceeding, a receiver was not required to serve papers related to her application for an order of discharge on the obligors individually; it was proper for the receiver to serve the papers on the attorney under N.Y. C.P.L.R. 2103(b). ALBANK, FSB v Dashnaw, 37 A.D.3d 932, 830 N.Y.S.2d 792, 2007 N.Y. App. Div. LEXIS 1428 (N.Y. App. Div. 3d Dep't 2007).

4. —Party to proceedings

In a dispute between two law firms, lawyers, and clients, although N.Y. C.P.L.R. 2103(a) requires service to be made by a person who is not a party to the action, the violation of that provision did not result in prejudice because the trial court correctly dismissed the complaint since none of the causes of action alleging fraud upon the court met the requirement that a

cause of action based on fraud must be supported by detailed factual allegations. Neroni v Follender, 137 A.D.3d 1336, 26 N.Y.S.3d 621, 2016 N.Y. App. Div. LEXIS 1516 (N.Y. App. Div. 3d Dep't), app. dismissed, 27 N.Y.3d 1147, 57 N.E.3d 1099, 37 N.Y.S.3d 61, 2016 N.Y. LEXIS 1793 (N.Y. 2016).

Where law firm which represented executrix was already a party to proceeding to settle account of deceased executrix and had appeared as its own counsel in proceeding, service by mail of cross petition against firm seeking indemnification for surcharge imposed upon executrix because of alleged legal malpractice of firm was proper. Estate of Zalaznick, 84 Misc. 2d 715, 375 N.Y.S.2d 522, 1975 N.Y. Misc. LEXIS 3204 (N.Y. Sur. Ct. 1975).

Citation served upon attorney as a legatee in response to which he took no action and which did not refer to issue presented in cross petition which was filed against attorney in proceeding to settle acocunt of deceased executrix and which sought indemnification from attorney for surcharge imposed upon executrix due to legal malpractice did not make attorney a party appearing in proceeding so that he could be properly served by mail with cross petition. Estate of Zalaznick, 84 Misc. 2d 715, 375 N.Y.S.2d 522, 1975 N.Y. Misc. LEXIS 3204 (N.Y. Sur. Ct. 1975).

Where attorney never appeared in proceeding to settle account of deceased executrix, service by mail on attorney of cross petition seeking indemnification for any surcharge imposed upon executrix due to legal malpractice did not give Surrogate’s Court jurisdiction over person of attorney. Estate of Zalaznick, 84 Misc. 2d 715, 375 N.Y.S.2d 522, 1975 N.Y. Misc. LEXIS 3204 (N.Y. Sur. Ct. 1975).

Attorney’s presence at settlement conferences did not amount to an appearance in proceeding to settle account of deceased executrix so that cross petition against attorney seeking indemnification for surcharge imposed against executrix due to malpractice of attorney could not be served on attorney by mail. Estate of Zalaznick, 84 Misc. 2d 715, 375 N.Y.S.2d 522, 1975 N.Y. Misc. LEXIS 3204 (N.Y. Sur. Ct. 1975).

Default judgment in favor of plaintiff and against defendants should have been vacated; defendants' answer was never rejected by plaintiff's counsel under N.Y. C.P.L.R. 2103(b), and the papers seeking leave to enter a default judgment, therefore, should have been served on defendants' counsel pursuant to N.Y. C.P.L.R. 2103(b) but were not. Cole v Young, 28 A.D.3d 702, 814 N.Y.S.2d 224, 2006 N.Y. App. Div. LEXIS 4771 (N.Y. App. Div. 2d Dep't 2006).

Because the attorney for the other defendant in the case did not appear on the lessee's behalf until after the default was entered, service of the summons and complaint and the summary judgment motion on the attorney did not constitute a service on the lessee under N.Y. C.P.L.R. 2103(d). Lease Corp. of Am. v EBH Martinez Gallery, Inc., 808 N.Y.S.2d 918, 9 Misc. 3d 1114A (Sup 2005).

5. —Arbitration proceedings

Subdivision (b) 2 of this section does not extend the ten day caveat clause of CPLR § 7503(c), applicable to the forwarding of a written demand for arbitration, since this section applies only to the service of intermediary papers on an attorney once an action or proceeding has been commenced, and the service of a notice of intention to arbitrate is not the commencement of an action or special proceeding in view of the specific provision in CPLR § 7502(a) that a special proceeding comes into being when the notice and petition for stay of arbitration is served. Application of Finest Restaurant Corp., 52 Misc. 2d 87, 275 N.Y.S.2d 1, 1966 N.Y. Misc. LEXIS 1321 (N.Y. Sup. Ct. 1966).

Subsection b paragraph 2 is not applicable to the service of a notice of intention to arbitrate, since such a notice is not the commencement of an action or special proceedings. Bauer v Motor Vehicle Accident Indemnification Corp., 55 Misc. 2d 991, 287 N.Y.S.2d 206, 1968 N.Y. Misc. LEXIS 1741 (N.Y. Sup. Ct. 1968), rev'd, 31 A.D.2d 239, 296 N.Y.S.2d 675, 1969 N.Y. App. Div. LEXIS 4753 (N.Y. App. Div. 4th Dep't 1969).

6. —Pending action or proceeding

Attorneys for landowners could not be required to accept service of amended petitions in condemnation proceeding where original condemnation petition was not on file at time of attempted service of such amended petitions or at time of entry of order requiring acceptance thereof as there was no “pending proceeding” at time of attempted service of amended petition. Iroquois Gas Corp. v Jurek, 30 A.D.2d 83, 290 N.Y.S.2d 140, 1968 N.Y. App. Div. LEXIS 4052 (N.Y. App. Div. 4th Dep't 1968).

The statute has no application where there was no action or proceeding pending until the insurance company served its petition to stay arbitration. Monarch Ins. Co. v Pollack, 32 A.D.2d 819, 302 N.Y.S.2d 432, 1969 N.Y. App. Div. LEXIS 3704 (N.Y. App. Div. 2d Dep't 1969).

No action was pending between parties, and thus preliminary injunction to stay termination of lease was not available, where (1) jurisdiction over defendants had not been obtained pursuant to CLS CPLR § 2103 by service of summons and complaint on law firm which had represented defendants in underlying lease dispute, since § 2103 presupposes existence of pending action in which attorney has appeared, and (2) order to show cause for preliminary injunction, providing for service of accompanying papers on attorneys, could not be construed as authorization for expedient service of process under CLS CPLR § 308(5), since plaintiff had made no showing or request for such service. Happy Age Shops, Inc. v Matyas, 128 A.D.2d 754, 513 N.Y.S.2d 710, 1987 N.Y. App. Div. LEXIS 44439 (N.Y. App. Div. 2d Dep't 1987).

Service of copy of bill of costs on attorney for adverse party is proper, since the action is still pending notwithstanding the entry of the judgment roll. O'Neill v Ridner, 42 Misc. 2d 312, 248 N.Y.S.2d 167, 1964 N.Y. Misc. LEXIS 1924 (N.Y. Sup. Ct. 1964).

Where a third party defendant had been brought into the proceeding, and long thereafter the plaintiff moved for leave to serve a supplemental summons and amended complaint on the third party defendant, the mailing of the supplemental summons and amended complaint to counsel was proper, inasmuch as the third party defendant was not a “new party,” but was a “party in a pending action.” Harlem River Consumers Cooperative, Inc. v Manufacturers Hanover Trust Co., 68 Misc. 2d 608, 327 N.Y.S.2d 903, 1972 N.Y. Misc. LEXIS 2324 (N.Y. Civ. Ct. 1972).

Service of supplemental summons and amended complaint in pending action upon party rather than party's attorney as required by CPLR 2103 and 3012 does not divest court of personal jurisdiction where jurisdiction has previously been properly obtained over that party. Cooky's Island Steak Pub, Inc. v Yorkville Electric Co., 130 Misc. 2d 869, 497 N.Y.S.2d 1005, 1986 N.Y. Misc. LEXIS 2441 (N.Y. Sup. Ct. 1986).

Provision for service on attorney under CLS CPLR § 2103 does not apply to administrative proceeding governed by specific notice provisions of CLS ECL § 24-0301. Ellis v Marsh, 164 Misc. 2d 135, 623 N.Y.S.2d 482, 1995 N.Y. Misc. LEXIS 57 (N.Y. Sup. Ct. 1995).

7. —Sufficiency in particular circumstances

Trial court properly refused to vacate a foreclosure sale where publication of the notice of sale and service of the notice by mail upon the parties' attorney met the statutory requirements, despite the fact that the party was not personally notified. White v Magee, 85 A.D.2d 858, 446 N.Y.S.2d 453, 1981 N.Y. App. Div. LEXIS 16688 (N.Y. App. Div. 3d Dep't 1981).

Where requirement of personal service contained in order and judgment relates solely to enforceability of judgment, service by mail upon appellant's attorney is adequate for purposes of giving notice under CLS CPLR § 5513 and, in any event, appellant corporation was personally served by reason of personal service on chairman of board of directors, despite fact that he resigned as officer, where record does not show that he resigned as chairman of board. Siegel v Obes, 112 A.D.2d 930, 492 N.Y.S.2d 447, 1985 N.Y. App. Div. LEXIS 52143 (N.Y. App. Div. 2d Dep't 1985).

Mere consolidation of third party's property damage action against defendant with plaintiff's personal injury action against defendant which arose from same accident did not thereby confer jurisdiction over defendant who had not been served with process in personal injury action, nor was jurisdiction obtained by service of process on defendant's attorneys pursuant to CLS CPLR § 2103 since § 2103 relates to service of intermediary papers after commencement of action and anticipates that jurisdiction over defendant has already been established. Adirondack

Transit Lines, Inc. v Lapaglia, 128 A.D.2d 228, 515 N.Y.S.2d 668, 1987 N.Y. App. Div. LEXIS 43543 (N.Y. App. Div. 3d Dep't 1987).

In foreclosure action, court had jurisdiction to hear motion for writ of assistance under CLS RPAPL § 221 where motion papers were served on respondents' attorney of record since (1) motion under § 221 may be brought under caption of foreclosure action, and (2) claim of respondent's attorney that he was not attorney of record, but was appearing only to contest court's jurisdiction, was contradicted by his affidavit previously submitted to presiding judge concerning same case. In re Foreclosure of Tax Liens by City of Buffalo, 142 A.D.2d 1004, 530 N.Y.S.2d 718, 1988 N.Y. App. Div. LEXIS 15064 (N.Y. App. Div. 4th Dep't 1988).

There was no jurisdictional defect warranting vacatur of deficiency judgment against guarantors of defaulted second mortgage where judgment of foreclosure and sale provided for recovery of mortgage debt against guarantors, service of motion seeking deficiency judgment was properly made on guarantors' counsel in foreclosure action, and initial motion for deficiency judgment was timely. Citytrust v Slattery, 245 A.D.2d 187, 666 N.Y.S.2d 169, 1997 N.Y. App. Div. LEXIS 13132 (N.Y. App. Div. 1st Dep't 1997), app. dismissed, 92 N.Y.2d 919, 680 N.Y.S.2d 459, 703 N.E.2d 271, 1998 N.Y. LEXIS 2768 (N.Y. 1998).

In action commenced by order to show cause seeking, inter alia, temporary restraining order to prevent sale of certain property by defendants and declaration that contract for sale was null and void, plaintiffs failed to acquire personal jurisdiction over defendants by service of order to show cause on their attorney, there being no underlying action and no evidence that service by any other method available under CPLR was impracticable. Foster v Piasecki, 259 A.D.2d 804, 686 N.Y.S.2d 184, 1999 N.Y. App. Div. LEXIS 2105 (N.Y. App. Div. 3d Dep't 1999).

Action by a landlord seeking to compel the tenants in his building to grant access to their apartments so that he could convert the electrical system of the building from master to individual metering is dismissed for lack of personal jurisdiction, even though many tenants were members of a loosely organized tenants' association and the association's attorney had agreed to accept service of process on behalf of individual members, where no evidence existed that

the attorney had that authority, where the association did not stand in lieu of the tenant with respect to the landlord-tenant relationship, and where non-member tenants were not served and other tenants were not named as party defendants. Charles H. Greenthal & Co. v 301 East 21st St. Tenants' Ass'n, 91 A.D.2d 934, 457 N.Y.S.2d 826, 1983 N.Y. App. Div. LEXIS 16217 (N.Y. App. Div. 1st Dep't 1983).

With respect to the statements of income and expenses which were served and filed in an owner’s challenges to tax assessments, N.Y. Comp. Codes R. & Regs. tit. 22, § 205.59(d)(1) does not define the term “filing” as filing with the county clerk, and under § 205.59(g)(1(i), there is no requirement that a statement of income and expenses be filed with the county clerk; further, there is no requirement that the statement of income and expenses be served upon the town directly. Service upon the attorney for the town was sufficient under N.Y. C.P.L.R. 2103(b). Matter of Al Turi Landfill, Inc. v Town of Goshen, 93 A.D.3d 786, 941 N.Y.S.2d 177, 2012 N.Y. App. Div. LEXIS 2097 (N.Y. App. Div. 2d Dep't), app. denied, 19 N.Y.3d 815, 955 N.Y.S.2d 553, 979 N.E.2d 814, 2012 N.Y. LEXIS 3230 (N.Y. 2012).

Notice of motion to continue action against deceased defendant’s representative must be served on such representative, and not on the attorney for the deceased defendant, his attorney to act as such attorney having terminated with the death. Lewis v Lewis, 43 Misc. 2d 349, 250 N.Y.S.2d 984, 1964 N.Y. Misc. LEXIS 1805 (N.Y. Sup. Ct. 1964).

Where the complaint was not served upon the attorney appearing for the defendant initially, but on its present attorney, who had not then been substituted, an issue was raised relating to the efficacy of the service of the complaint. Kreiling v Jayne Estates, Inc., 51 Misc. 2d 895, 274 N.Y.S.2d 291, 1966 N.Y. Misc. LEXIS 1420 (N.Y. Sup. Ct. 1966).

CPLR 2103(b) has no application to the service of a subpoena, and attempted service of a subpoena on the attorney for a foreign corporation was invalid. Beach v Lost Mountain Manor, Inc., 53 Misc. 2d 563, 279 N.Y.S.2d 93, 1967 N.Y. Misc. LEXIS 1894 (N.Y. Sup. Ct. 1967).

Where contempt orders were served on the respondents' attorneys in accord with the requirements of CPLR 2103(b) and the respondents were aware of the contents of such orders, respondents could be held in contempt for disobeying court orders despite the lack of personal service of such orders as required by CPLR 5104. Puro v Puro, 70 Misc. 2d 125, 332 N.Y.S.2d 658, 1972 N.Y. Misc. LEXIS 2222 (N.Y. Sup. Ct.), modified, 39 A.D.2d 873, 333 N.Y.S.2d 560, 1972 N.Y. App. Div. LEXIS 4251 (N.Y. App. Div. 1st Dep't 1972).

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

For purposes of motion for leave to enter deficiency judgment pursuant to provision of Real Property Actions and Proceedings Law, service, of motion papers on defendants' attorneys' offices was not good and sufficient service. Lincoln First Bank v Healy, 86 Misc. 2d 373, 382 N.Y.S.2d 453, 1976 N.Y. Misc. LEXIS 2450 (N.Y. Sup. Ct. 1976), aff'd, 55 A.D.2d 1021, 391 N.Y.S.2d 849, 1977 N.Y. App. Div. LEXIS 10368 (N.Y. App. Div. 4th Dep't 1977).

Defendant may be punished for contemptuous defiance of a preliminary injunction (Judiciary Law, § 750, subd A, par 3) prohibiting him from continuing to sell materials designed and tailored for student cheating in undergraduate and graduate courses (Education Law, § 213-b) even though he was not personally served with a certified copy of the preliminary injunction (CPLR 5104) since the service of a copy of the order to show cause on defendant's attorney as permitted by statute in civil contempt proceedings (Judiciary Law, § 761; CPLR 2103, subd [b]) is a sufficient foundation for a finding of willful contempt where defendant, by his active involvement in contesting the issuance of the preliminary injunction, had actual notice of the court order, a party having actual knowledge of the mandate of a court being subject to punishment for contempt even though not personally served with a certified copy of the order allegedly disobeyed; in light of the scope of defendant's interstate business and the manner in which he advertised and purveyed his wares, there is "no room for reasonable doubt or dispute" as to the extent of the contempt and, therefore, no hearing is required on the question of his

willfulness in violating the temporary injunction. People v Magee, 102 Misc. 2d 345, 423 N.Y.S.2d 417, 1979 N.Y. Misc. LEXIS 2869 (N.Y. Sup. Ct. 1979).

Service of papers on attorney through use of facsimile machine satisfies requirements of CLS CPLR § 2103(b)(3). Calabrese v Springer Personnel of New York, Inc., 141 Misc. 2d 566, 534 N.Y.S.2d 83, 1988 N.Y. Misc. LEXIS 649 (N.Y. Civ. Ct. 1988).

Delivery of amended claim against state by Federal Express courier to mail room of assistant attorney general was sufficient under CLS CPLR § 2103(b). Rohany v State, 144 Misc. 2d 940, 545 N.Y.S.2d 513, 1989 N.Y. Misc. LEXIS 522 (N.Y. Ct. Cl. 1989).

Counsel for plaintiff did not consent to service by facsimile, even though order to show cause permitted service to be accomplished pursuant to CLS CPLR § 2103(b)(5) or 2103(b)(6), plaintiff's counsel had served affidavits in past by this method, and plaintiff's counsel's stationery prominently displayed facsimile number; while CLS CPLR § 2103 provides that designation of telephone number or other station for service by electronic means in address block subscribed on paper served or filed in course of action or proceeding constitutes consent to service by electronic means, correspondence and transmittal fax sheet are not papers served or filed in course of action. Levin v Levin, 160 Misc. 2d 388, 609 N.Y.S.2d 547, 1994 N.Y. Misc. LEXIS 66 (N.Y. Sup. Ct. 1994).

Where defense counsel electronically mailed the People a notice that defendant wished to testify at the grand jury proceedings against defendant but failed to follow up with a written notice, the statutory requirements for notice set forth in N.Y. Crim. Proc. Law § 190.50(5)(a) and the requirements for service set forth in N.Y. C.P.L.R. 2103(b)(5) were not satisfied. People v Welch, 190 Misc. 2d 195, 738 N.Y.S.2d 510, 2002 N.Y. Misc. LEXIS 27 (N.Y. County Ct. 2002).

Facsimile transmission of a statement of readiness does not constitute proper service to satisfy requirements of N.Y. Crim. Proc. Law § 30.30 and N.Y. C.P.L.R. § 2103(5) where prosecution fails to demonstrate that the fax number provided by defense counsel is for the purpose of service of process and where prosecution does not follow up with mailing a copy of the

statement of readiness to defense counsel. People v Waters, 196 Misc. 2d 421, 762 N.Y.S.2d 241, 2003 N.Y. Misc. LEXIS 799 (N.Y. City Ct. 2003).

In proceedings to determine what constituted appropriate service of a contempt order for failure to pay child support, because the father had already been properly served with the initial service of process, N.Y. C.P.L.R. § 308 did not apply; although personal service had been ordered, N.Y. C.P.L.R. § 2103, regarding the service of interlocutory papers, governed the service of the contempt order, and, thus, service on the father's counsel was appropriate, particularly in light of the circumstances that the address given by the father in Florida was a UPS store and he refused to verify his address. L.S. v S.S., 239 N.Y.L.J. 96, 2008 N.Y. Misc. LEXIS 3032 (N.Y. Sup. Ct. Apr. 23, 2008).

8. Service by mail

Service by mailing in Washington, D. C. did not comply with requirements of CLS CPLR § 2103 since statute provides for mailing "within the state." NOW v Metropolitan Life Ins. Co., 70 N.Y.2d 939, 524 N.Y.S.2d 672, 519 N.E.2d 618, 1988 N.Y. LEXIS 266 (N.Y. 1988).

Service of preliminary injunction by mail after the predicate action had been commenced constituted proper service. City School Dist. v Schenectady Federation of Teachers, 49 A.D.2d 395, 375 N.Y.S.2d 179, 1975 N.Y. App. Div. LEXIS 10921 (N.Y. App. Div. 3d Dep't), app. denied, 38 N.Y.2d 820, 382 N.Y.S.2d 43, 345 N.E.2d 586, 1975 N.Y. LEXIS 2407 (N.Y. 1975).

Service of determination of the Division of Human Rights on complainant in employment discrimination case was complete when it was deposited for mailing, and complainant had 18 days from the date of mailing in which to appeal. State Div. of Human Rights v Xerox Corp., 57 A.D.2d 1069, 395 N.Y.S.2d 828, 1977 N.Y. App. Div. LEXIS 12383 (N.Y. App. Div. 4th Dep't 1977).

A personal injury action against a city that was commenced through service of a summons only would be dismissed on the ground that plaintiffs had failed to timely serve a copy of their

complaint on the city following the city's service of its notice of appearance and demand for a complaint where, though a duly executed and notarized affidavit of service by mail is generally sufficient to create a presumption that a document has been mailed and delivered, plaintiffs' original affidavit of service was subsequently discredited in an affidavit by the individual who had prepared it, and who had been responsible for mailing the complaint, in which the affiant acknowledged that, contrary to her original affidavit of service, she had not mailed the complaint to the city's codefendant, which served to negate, rather than to establish, the existence of a regular office practice that would naturally have resulted in the mailing of the complaint, where a hearing on the issue of whether the complaint had been mailed would be of no value in that the only witness with personal knowledge of the mailing of the complaint was the same individual who later had contradicted the original affidavit of service by mail that she had prepared, and where plaintiffs' inordinate delay in later forwarding a copy of their original complaint after the original complaint had allegedly been mailed to the city signified inexcusable neglect in prosecuting the action in that plaintiffs' only justification for such delay was their misplacing of their file, which fell into the disfavored category of "law office failure" and so did not provide an adequate basis for the exercise of discretion in relieving them of their default. Watt v New York City Transit Authority, 97 A.D.2d 466, 467 N.Y.S.2d 655, 1983 N.Y. App. Div. LEXIS 20063 (N.Y. App. Div. 2d Dep't 1983).

Defendants' notice, pursuant to CLS CPLR § 3216, requiring plaintiff to serve and file note of issue within 90 days, was served in accordance with CLS CPLR § 2103 where it was sent by certified mail to plaintiff's attorney of record at his designated or last known address, and it was undisputed that plaintiff had failed to notify defendants of change in name of law firm representing him and change in its address. Ellis v Urs, 121 A.D.2d 361, 503 N.Y.S.2d 79, 1986 N.Y. App. Div. LEXIS 58301 (N.Y. App. Div. 2d Dep't 1986).

There was no default in service of answer where time for answer had been extended until June 21 and affidavit of service indicated that answer was mailed on June 21; it was of no consequence that envelope was post marked June 22, since service is complete as of date of

actual mailing under CLS CPLR § 2103. Jenny Oil Corp. v Petro Products Distributors, Inc., 121 A.D.2d 687, 503 N.Y.S.2d 886, 503 N.Y.S.2d 888, 1986 N.Y. App. Div. LEXIS 58675 (N.Y. App. Div. 2d Dep't 1986).

Husband, who transferred real property to his girlfriend one day before his attorney received wife's counterclaim for unpaid child support in prior unrelated action, was not entitled to dismissal of wife's action for constructive fraud under CLS Dr & Cr § 273-a on ground that he was not "defendant in an action for money damages" at time of conveyance, since service of counterclaim was complete on mailing, not on receipt by husband's attorney, and thus conveyance occurred during pendency of action for unpaid support, which constituted action for money damages. Furlong v Storch, 132 A.D.2d 866, 518 N.Y.S.2d 216, 1987 N.Y. App. Div. LEXIS 49346 (N.Y. App. Div. 3d Dep't 1987).

Appeal would not be dismissed as untimely, but would be held in abeyance, and matter would be remitted to Supreme Court for hearing as to whether judgment appealed from was properly served on appellant, where affidavit of service by mail was not sworn by person who personally mailed judgment or had personal knowledge of office procedure used in mailing it; where party denies receipt of judgment purportedly served by mail and there is insufficient evidence of proper service, hearing is required to resolve issue. Heffernan v Munsey Park, 133 A.D.2d 139, 518 N.Y.S.2d 813, 1987 N.Y. App. Div. LEXIS 49658 (N.Y. App. Div. 2d Dep't 1987).

In action in Court of Claims, regular mail service on Attorney General of motion to file late claim was not authorized under CLS CPLR § 2103(b) on ground that action was already pending, since service of claim itself was concededly not in accordance with CLS Ct C Act § 11, and thus did not confer personal jurisdiction over state; since action was not validly commenced, no action was "pending." Sciarabba v State, 152 A.D.2d 229, 549 N.Y.S.2d 224, 1989 N.Y. App. Div. LEXIS 15489 (N.Y. App. Div. 3d Dep't 1989).

Affidavit of service of motion papers by employee of defendant's attorney was insufficient in that it did not specifically state that employee herself mailed letter enclosing motion papers and did not recite that letter was mailed to plaintiff's attorneys at their designated address in manner

specified by CLS CPLR § 2103(b)(2). Metzger v Esseks, 168 A.D.2d 287, 562 N.Y.S.2d 625, 1990 N.Y. App. Div. LEXIS 15091 (N.Y. App. Div. 1st Dep't 1990).

In proceeding under CLS Family Ct Act Art 4 to direct respondents to pay child support arrears, Family Court properly found that 1990 support order had been served on respondents by mail, despite their claim that there was no evidence that actual service was effectuated, where they had appeared at hearing on violation and modification petitions without mentioning that they had not been served with support order, and Family Court's finding was supported by its own documentation and testimony of its chief clerk; also, under CLS CPLR § 2103(b)(2), service is complete on mailing of papers in pending action, regardless of receipt by addressee. St. Lawrence County Dep't of Social Servs. ex rel. Edward P. v Edward O., 240 A.D.2d 882, 658 N.Y.S.2d 729, 1997 N.Y. App. Div. LEXIS 6689 (N.Y. App. Div. 3d Dep't 1997).

Third-party defendant's appeal of court's default order was untimely where he was served with order on December 4, 1997 when copy of entered order was served at his place of residence to his wife, with copy also being sent to him by mail to same address, and his notice of appeal was not filed until January 13, 1998; even though court had directed that third-party defendant be served under CLS CPLR § 308, service of order with notice of entry was complete when it was placed in mail, and his time to file notice of appeal was not altered. Loeber v Teresi, 256 A.D.2d 747, 681 N.Y.S.2d 416, 1998 N.Y. App. Div. LEXIS 13292 (N.Y. App. Div. 3d Dep't 1998).

Appeal would be dismissed as untimely under CLS CPLR § 5513(a) where plaintiff mailed copy of judgment with notice of entry to appellant's counsel on July 30, notice of appeal was dated September 28, and appellant's conclusory statement in reply brief that his counsel did not receive judgment with notice of entry until September 25 was insufficient to defeat presumption of proper mailing under CLS CPLR § 2103(b)(2). Strober King Bldg. Supply Ctrs, Inc. v Merkley, 266 A.D.2d 203, 697 N.Y.S.2d 319, 1999 N.Y. App. Div. LEXIS 11093 (N.Y. App. Div. 2d Dep't 1999).

Appellate court had jurisdiction to entertain an appeal notwithstanding mail service of the notice of appeal on respondent's attorneys in contravention of N.Y. C.P.L.R. 2103(f)(1), by depositing

said notice in an official depository under the exclusive care and custody of the United States Postal Service outside of New York; respondent did not dispute that appellants filed the notice with the county clerk or that their counsel received the notice well within the 30-day statutory time period set forth in N.Y. C.P.L.R. 5513(a). Therefore, respondents were not prejudiced as a result of the mailing from without the state, and the appellate court exercised its discretion to disregard the irregularity under N.Y. C.P.L.R. 2001, 5520(a). M Entertainment, Inc. v Leydier, 71 A.D.3d 517, 897 N.Y.S.2d 402, 2010 N.Y. App. Div. LEXIS 1974 (N.Y. App. Div. 1st Dep't 2010).

Family court should have granted a mother's motion for an order making special findings so as to enable her child to apply for special immigrant juvenile status because the mother was not required to personally serve the father with the motion papers since she appropriately served the papers by mailing them to the father's last known address; since no substantial right of any party was prejudiced by the mistake in the mother's notice of motion, it should have been disregarded. Matter of Ramirez v Palacios, 136 A.D.3d 666, 25 N.Y.S.3d 242, 2016 N.Y. App. Div. LEXIS 680 (N.Y. App. Div. 2d Dep't 2016).

In an action to recover damages for trespass and conversion, the trial court erroneously granted defendant’s motion to dismiss the complaint because, by using an overnight delivery service, defendant’s motion did not comply with the rule where it was not service by mail and the motion was therefore not timely served. Moran v BAC Field Servs. Corp., 164 A.D.3d 494, 83 N.Y.S.3d 111, 2018 N.Y. App. Div. LEXIS 5513 (N.Y. App. Div. 2d Dep't 2018).

Mother’s motion to compel discovery was properly denied because demands were not served within adequate time to allow both father and grandmother to timely respond within 20 days of fact-finding hearing, as required by Family Court’s preliminary conference order. Matter of Karen Q. v Christina R., 184 A.D.3d 987, 126 N.Y.S.3d 214, 2020 N.Y. App. Div. LEXIS 3527 (N.Y. App. Div. 3d Dep't 2020).

Service of motion papers by mail is complete regardless of the date of receipt if made the required number of days before the return date. Koppelman v Schuckman, 39 Misc. 2d 344, 240 N.Y.S.2d 678, 1963 N.Y. Misc. LEXIS 2418 (N.Y. Sup. Ct. 1963).

Service is measured from time of mailing, not of receipt. Tappis v National Van Lines, Inc., 43 Misc. 2d 157, 250 N.Y.S.2d 466, 1964 N.Y. Misc. LEXIS 1847 (N.Y. App. Term 1964).

Where a notice of motion is served within less time prior to its return date than is prescribed for service by mail, the court has, upon the objection of the respondent, no jurisdiction to entertain it. Thrasher v United States Liability Ins. Co., 45 Misc. 2d 681, 257 N.Y.S.2d 360, 1965 N.Y. Misc. LEXIS 2255 (N.Y. Sup. Ct. 1965).

Where service of a notice of a motion for an order consolidating two actions and the supporting affidavits was made by mail but only ten days' notice was given rather than the 11 days' notice required under subd (b) of CPLR Rule 2214 and ¶ 2 of subd (b) of CPLR Rule 2103, the notice was inadequate. Thrasher v United States Liability Ins. Co., 45 Misc. 2d 681, 257 N.Y.S.2d 360, 1965 N.Y. Misc. LEXIS 2255 (N.Y. Sup. Ct. 1965).

Where an application for a protective order vacating plaintiff's notice for discovery was not made within the time limited by CPLR 3122 and CPLR 2103(b)(2) and no special circumstances excusing the delay were shown, all objections to production of the document in issue were deemed waived, except objections based upon provisions of CPLR 3101(b) and (c). The court was also precluded from any inquiry as to whether or not the document was "material prepared for litigation" within the meaning of CPLR 3101(d). Aldrich v Catel Service Co., 51 Misc. 2d 16, 272 N.Y.S.2d 582, 1966 N.Y. Misc. LEXIS 2346 (N.Y. Civ. Ct. 1966).

Notice of a demand for enlarged or different relief, which, in effect, makes a new demand, must be served on a judgment debtor who has never appeared, in the same fashion as a summons whether or not his time to appear or answer has expired and absent an appearance, there is no statutory authority permitting service by mail, and therefore service by mail of such notice is jurisdictionally defective. First Nat'l City Bank v Elsky, 62 Misc. 2d 880, 312 N.Y.S.2d 325, 1970 N.Y. Misc. LEXIS 1703 (N.Y. Civ. Ct. 1970).

Once a party has appeared by counsel in a proceeding, subsequent pleadings may be served upon his counsel by mail. Estate of Zalaznick, 84 Misc. 2d 715, 375 N.Y.S.2d 522, 1975 N.Y. Misc. LEXIS 3204 (N.Y. Sur. Ct. 1975).

Traditional state motion practice is applicable to requests made on notice for orders of seizure, and under such standards, the notice must contain the date and time the application is to be presented to the court, and allow a proper time to respond calculated under CPLR §§ 2214, 2103; therefore, a notice sent by a public utility company concerning the seizure of a meter was defective, where the requisite warning to the consumer was not at the top of the notice, was not contained in a box, and was less than 12 bold upper case type, where said notice was in the form of a letter on the utility's letterhead, suggesting that notice was given as a matter of courtesy, not as a matter of right, and where the notice stated only that the addressee would have to respond to the clerk "within ten (10) days from the date of [mailing] of this notice," which satisfied neither statute. 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).

In a proceeding in which one party contended that he never received notice of the matter, the assertion of the other party that notice was mailed and that it was the general custom of the office to mail all letters, was insufficient to determine the question of notice, since there must be proof of a regular office practice of correct preparation of letters and their deposit in a certain depository, and if a particular employee has the duty to deposit the mail, it must be shown either that he actually deposited that mail or that it was his invariable custom to deposit every letter left for mailing in the usual depository. Hutchins v Conciliation & Appeals Bd., 125 Misc. 2d 809, 480 N.Y.S.2d 684, 1984 N.Y. Misc. LEXIS 3486 (N.Y. Sup. Ct. 1984).

Notice of date of administrative hearing, concerning parking garage's violations of city regulations, which was sent by regular and certified mail to licensed premises and not to business address of licensee, which was listed in city's files, was not reasonably calculated to apprise licensee of pendency of action, which amounted to denial of procedural due process.

Amy Realty Co. v Aponte, 132 Misc. 2d 932, 505 N.Y.S.2d 979, 1986 N.Y. Misc. LEXIS 2808 (N.Y. Sup. Ct. 1986).

All of the conditions were met for service of a letter directing a guardian to resume prosecution of her claim and to serve and file a note of issue and certificate of readiness to have been deemed complete in accordance with N.Y. C.P.L.R. 2103; the guardian received the demand by certified mail, return receipt requested. Moreover, it was mailed to his last-known address and the letter sent by regular mail was not returned. Lopez v State of New York, 864 N.Y.S.2d 282, 21 Misc. 3d 563, 2008 N.Y. Misc. LEXIS 5465 (N.Y. Ct. Cl. 2008).

When the revocation of a physician's license was annulled and that annulment was appealed to the Court of Appeals, which reversed the annulment, service of notice of the effective date of the revocation of the physician's license, pursuant to the Court of Appeals' opinion, was properly effected by mailing such notice to his attorney. People v Mayer, 1 A.D.3d 461, 768 N.Y.S.2d 222, 2003 N.Y. App. Div. LEXIS 11833 (N.Y. App. Div. 2d Dep't 2003).

Plaintiffs' motion pursuant to N.Y. C.P.L.R. 4404 to set aside a jury verdict in favor of defendants, made on December 9, 2004, was within 30 days from November 10, 2004, and was timely. A postmark dated December 11, 2004, on the envelope in which the motion was received did not establish that service was not completed on December 9, 2004. Kresch v Saul, 29 A.D.3d 863, 816 N.Y.S.2d 147, 2006 N.Y. App. Div. LEXIS 6830 (N.Y. App. Div. 2d Dep't 2006).

Trial court erred in granting the assignee's cross-motion for summary judgment and in denying the insurance company's summary judgment motion in a case where the assignee sought reimbursement on three bills for medical supplies provided to the assignor; the insurance company's denial as to two of those three bills was proper since the assignee did not timely file its opposition papers and cross-motion for summary judgment prior to the relevant hearing, as the assignee mailed those papers three days before that time but cross-motions served by mail had to be served an additional five days beyond the three days where mail was used to serve and the insurance company was prejudiced because it was not allowed to respond. I & B

Surgical Supply v NY Cent. Mut. Fire Ins. Co., 838 N.Y.S.2d 849, 16 Misc. 3d 4, 2007 N.Y. Misc. LEXIS 2803 (N.Y. App. Term 2007).

Trial court erred in denying, as untimely, owners' motion for summary judgment dismissing a customer's personal injury complaint under circumstances in which the owners submitted a notarized affidavit of service from an employee of the owners' counsel attesting that she mailed the motion papers on May 9, 2006, by depositing them in an official depository under the exclusive care and custody of the United States Postal Service, thus raising a presumption of proper mailing; the postmark date of May 10, 2006, on the envelope in which the customer received the motion did not establish that service was not completed on May 9, 2006. Ortega v Trefz, 44 A.D.3d 916, 845 N.Y.S.2d 73, 2007 N.Y. App. Div. LEXIS 11346 (N.Y. App. Div. 2d Dep't 2007).

9. —Extension of three days

In view of the explicit provisions of the statute regulating appeals to the Unemployment Insurance Appeal Board under Labor Law § 621, subd 1, the three-day mailing rule under CPLR 2103 has no application. Moses v Bullard Orchards, Inc., 31 A.D.2d 772, 296 N.Y.S.2d 274, 1969 N.Y. App. Div. LEXIS 4814 (N.Y. App. Div. 3d Dep't 1969).

CPLR 2103, which provides for an additional three days for the service of papers, applies only when an action or special proceeding is pending, and does not extend the 1-day limitation contained in CPLR 7503(c). Cosmopolitan Mut. Ins. Co. v Moliere, 31 A.D.2d 924, 298 N.Y.S.2d 561, 1969 N.Y. App. Div. LEXIS 4310 (N.Y. App. Div. 1st Dep't 1969).

In a proceeding by a county employee, who was injured in a fall from a salt-spreader that was attached to a county truck seeking to confirm the award of an expedited arbitration proceeding, which determined that the injury arose out of the use and operation of a motor vehicle and which awarded attorney's fees, the master arbitrator properly determined that the county failed to make a timely application for review, since it did not request review within 15 days from the date of the mailing of the award in the expedited arbitration and since the 3-day extension for service

of papers by mail provided for in CPLR § 2103 does not apply to arbitration proceedings. However, Special Term erred in determining that the county had waived any possible defenses to employee's claim and in deciding the amount of benefits to which he was entitled, since those matters were not in issue in either the expedited arbitration or on review by the master arbitrator, and employee, having opted for arbitration to resolve his claim, could not, at an intermediate stage of the arbitration process, seek a judicial determination of substantive matters not raised in, but properly subject to, arbitration. Berent v County of Erie, 86 A.D.2d 764, 448 N.Y.S.2d 282, 1982 N.Y. App. Div. LEXIS 15341 (N.Y. App. Div. 4th Dep't 1982).

Plaintiff's bill of particulars was timely served on March 25, 1981, in compliance with the terms of a 20-day conditional order of preclusion, which was expressly authorized by CPLR § 3042(e), and which was served upon plaintiff by mail on March 2, 1981, since CPLR § 2013(b)(2) applies to a time limit set by statute and by the court, and since the extension provided in that section constitutes legislative recognition of and compensation for delays inherent in mail delivery, which occur regardless of how the number of days for responding is fixed. Corradetti v Dales Used Cars, 102 A.D.2d 272, 477 N.Y.S.2d 779, 1984 N.Y. App. Div. LEXIS 18337 (N.Y. App. Div. 3d Dep't 1984).

Service by mail of order dismissing a complaint and granting leave to plaintiff to serve an amended complaint extends plaintiff's time so to comply by three days. Smith v Helbraun, 39 Misc. 2d 341, 240 N.Y.S.2d 492, 1963 N.Y. Misc. LEXIS 2032 (N.Y. Sup. Ct. 1963).

Where complaint was mailed June 5, motion to dismiss mailed June 26 was timely made. Janklow v Williams, 43 Misc. 2d 1053, 252 N.Y.S.2d 785, 1964 N.Y. Misc. LEXIS 1519 (N.Y. Sup. Ct. 1964).

Where the date of service of a notice of intention to arbitrate was served by mail on April 1, 1966, the petitioner had ten days plus three in which to move to stay the proposed arbitration, and notice of motion to stay the arbitration served on April 13, 1966 was timely. Manitt Constr. Corp. v J. S. Plumbing & Heating Corp., 50 Misc. 2d 502, 270 N.Y.S.2d 716, 1966 N.Y. Misc. LEXIS 1839 (N.Y. Sup. Ct. 1966).

CPLR 2214(b) requires service of a notice of motion and the supporting affidavits at least eight days before the time at which the motion of notice is to be heard, and CPLR 2103(b)(2) requires an additional three days be added where the service is by mail. Coonradt v Walco, 55 Misc. 2d 557, 285 N.Y.S.2d 421, 1967 N.Y. Misc. LEXIS 1059 (N.Y. Sup. Ct. 1967).

Rule permitting addition of three days to prescribe time when service is by mail applies only to service of intermediary papers on adverse parties or attorneys once a legal action has been duly commenced by service of process. Trustees of Columbia University v Bruncati, 77 Misc. 2d 547, 356 N.Y.S.2d 158, 1974 N.Y. Misc. LEXIS 1188 (N.Y. App. Term), aff'd, 46 A.D.2d 743, 360 N.Y.S.2d 1002, 1974 N.Y. App. Div. LEXIS 6406 (N.Y. App. Div. 1st Dep't 1974).

Service by mail of 10 days' notice to cure tenant's default did not carry with it an additional three days to comply therewith because of service by mail; hence service of termination notice twelve days after mail service of notice to cure was not premature. Trustees of Columbia University v Bruncati, 77 Misc. 2d 547, 356 N.Y.S.2d 158, 1974 N.Y. Misc. LEXIS 1188 (N.Y. App. Term), aff'd, 46 A.D.2d 743, 360 N.Y.S.2d 1002, 1974 N.Y. App. Div. LEXIS 6406 (N.Y. App. Div. 1st Dep't 1974).

CPLR § 2103(b)(2), providing for an additional period of three days to be added to a period of time prescribed by law for service of papers where service is by mail refers only to statutory provisions, thus court order allowing attorney "30 days after service of order upon its attorneys to serve a verified bill of particulars" did not trigger the three-day extension, and service of the bill of particulars after the 30-day period was untimely. Frans Pets, Inc. v Aggen, 111 Misc. 2d 112, 443 N.Y.S.2d 607, 1981 N.Y. Misc. LEXIS 3234 (N.Y. County Ct. 1981).

The amendment of CPLR § 2103(b)(2), which increased from three to five the number of days by which a period of time prescribed by law is augmented when such period is measured from the service of a paper by mail, applies to all papers served after the amendment's effective date of January 1, 1983. White v Secrest, 121 Misc. 2d 495, 467 N.Y.S.2d 954, 1983 N.Y. Misc. LEXIS 3946 (N.Y. County Ct. 1983).

10. —Extension of five days

Service of judgment by mail on defendant in divorce action entitles defendant to 5 days in addition to period otherwise prescribed for service of notice of appeal upon plaintiff. Cappiello v Cappiello, 66 N.Y.2d 107, 495 N.Y.S.2d 318, 485 N.E.2d 983, 1985 N.Y. LEXIS 17161 (N.Y. 1985).

Pen register (which identifies numbers dialed on telephone) should be treated as eavesdropping device under Criminal Procedure Law, thus requiring warrant based on probable cause, where it has been modified to include capacity to monitor conversations; moreover, fact that audio function is “disabled” and no conversations are actually overheard is irrelevant, since potential for abuse is focus of warrant requirement. People v Bialostok, 80 N.Y.2d 738, 594 N.Y.S.2d 701, 610 N.E.2d 374, 1993 N.Y. LEXIS 99 (N.Y. 1993).

Filing of notice of appeal by state agency from order of special term directing agency to conduct administrative hearing within 30 days automatically stays order; upon dismissal of appeal, mandate of special term is restored and hearing must be held within 30 days of service of order of dismissal; if service of order of dismissal is by mail, time within which hearing must be conducted is extended by additional 5 days from date of service by mail. Willoughby Nursing Home v Axelrod, 113 A.D.2d 617, 498 N.Y.S.2d 497, 1986 N.Y. App. Div. LEXIS 49758 (N.Y. App. Div. 3d Dep't 1986).

On town’s motion for summary judgment in wrongful death action, town’s reply papers were timely served where they were mailed 2 days prior to adjourned return date since (1) CLS CPLR § 2214 only requires reply affidavits to be served at least one day before motion is noticed to be heard when moving papers are served 12 days before return date and there is demand for answering papers to be served 7 days prior to return date, and (2) additional 5-day provision of CLS CPLR § 2103 is inapplicable to service of reply papers; appellate court therefore would reject contention that lateness of town’s reply prevented plaintiff from showing sufficient facts to defeat summary judgment motion, especially since plaintiff never sought leave to submit

response to town’s reply. Ryan v Cortlandt, 134 A.D.2d 420, 521 N.Y.S.2d 43, 1987 N.Y. App. Div. LEXIS 50606 (N.Y. App. Div. 2d Dep't 1987).

Motion to dismiss appeal would be denied, although appellant served notice of appeal 34 days after he served order by mail on appellee, since CLS CPLR 2103(b)(2) adds 5 days to prescribed 30-day period where service of paper is made by mail, and although apparent purpose of statute is to give additional time to person to whom paper is mailed, it does not by its clear language preclude appellant who has mailed order to appellee from taking advantage of its provisions. Oliver v Alcog, 155 A.D.2d 1001, 548 N.Y.S.2d 132, 1989 N.Y. App. Div. LEXIS 14992 (N.Y. App. Div. 4th Dep't 1989).

Appellant’s appeal from amended judgment would be dismissed as untimely where he served his notice of appeal more than 30 days (plus 5 days for mailing) after date of service of copy of amended judgment and notice of its entry. Stancage v Stancage, 173 A.D.2d 1081, 570 N.Y.S.2d 418, 1991 N.Y. App. Div. LEXIS 7578 (N.Y. App. Div. 3d Dep't), app. dismissed, app. denied, 78 N.Y.2d 1062, 576 N.Y.S.2d 215, 582 N.E.2d 598, 1991 N.Y. LEXIS 4757 (N.Y. 1991).

Order dismissing petition seeking child support was properly served by clerk of Family Court, with notice of entry dated June 23, by ordinary mail to parties and their attorneys on such date, and thus petitioner’s specific written objections to underlying findings and order, served by mail and received by Family Court on July 27, were untimely as outside 30-day period specified for return of objections under CLS Family Ct Act § 439(e); 5-day period of CLS CPLR § 2103(b) did not apply since critical period under § 439(e) commences not with service of order but with entry of order. Krieger v Krieger, 205 A.D.2d 975, 613 N.Y.S.2d 781, 1994 N.Y. App. Div. LEXIS 6522 (N.Y. App. Div. 3d Dep't 1994).

Time prescribed for motion to dismiss in CLS CPLR Article 78 proceeding coincides with time to answer; thus, add-five-days-for-mail provision of CLS CPLR § 2103(b)(2) does not apply to such motion. Harvey v New York State Dep't of Envtl. Conservation, 235 A.D.2d 625, 651 N.Y.S.2d 720, 1997 N.Y. App. Div. LEXIS 5 (N.Y. App. Div. 3d Dep't 1997).

Court improperly charged People with several 5-day periods, under CLS CPLR § 2103(b)(2), following their service of statements of readiness by mail since such statutory provision has no application to determination of effective date of statement of readiness; when such statements are made in absence of defense counsel, they are deemed effective at time of filing, so long as defense counsel is promptly notify. People v Anderson, 252 A.D.2d 399, 676 N.Y.S.2d 549, 1998 N.Y. App. Div. LEXIS 8230 (N.Y. App. Div. 1st Dep't), app. denied, 92 N.Y.2d 1027, 684 N.Y.S.2d 492, 707 N.E.2d 447, 1998 N.Y. LEXIS 4522 (N.Y. 1998).

Court improperly found that plaintiffs could not amend their verified complaint “as of right” where defendants’ motion to dismiss complaint under CLS CPLR § 3211(a)(7) extended defendants’ time to answer (CLS CPLR § 3211(f)) and thus extended time in which plaintiffs could amend their complaint as of right (CLS CPLR § 3025(a)), plaintiffs were also entitled to additional 5 days since defendants served answer by mail (CLS CPLR § 2103(b)(2)), and plaintiffs amended complaint within 25 days after answer was served. STS Mgmt. Dev. v New York State Dep't of Taxation & Fin., 254 A.D.2d 409, 678 N.Y.S.2d 772, 1998 N.Y. App. Div. LEXIS 11105 (N.Y. App. Div. 2d Dep't 1998).

Defendant’s summary judgment motion brought on October 30, 1998 should not have been denied as untimely where court order fixed deadline to move for summary judgment “within 60 days of note of issue,” and plaintiff on August 28, 1998 filed corrected note of issue, which was served that same day by mail; since plaintiff chose to serve notice by mail, defendants, under CLS CPLR § 2103(b)(2), were entitled to additional 5 days to bring motion, and thus had until November 1, 1998 to move. Szabo v XYZ, Two Way Radio Taxi Ass'n, 267 A.D.2d 134, 700 N.Y.S.2d 179, 1999 N.Y. App. Div. LEXIS 13256 (N.Y. App. Div. 1st Dep't 1999), overruled in part, Group IX, Inc. v Next Print. & Design Inc., 77 A.D.3d 530, 909 N.Y.S.2d 434, 2010 N.Y. App. Div. LEXIS 7573 (N.Y. App. Div. 1st Dep't 2010).

Where substantially all required material was mailed by plaintiffs’ counsel 2 days before deadline imposed by conditional preclusion order, but mailing was not received by defendant’s counsel until 4 days beyond deadline, plaintiffs were not entitled to 5-day extension of CLS

CPLR § 2103(b)(2) given court's express provision for "receipt" as opposed to service of material within 30-day period. Martin v Brooks, 270 A.D.2d 538, 703 N.Y.S.2d 823, 2000 N.Y. App. Div. LEXIS 2359 (N.Y. App. Div. 3d Dep't 2000).

Father's petition to stay enforcement of child support order entered in North Carolina and registered in New York was timely where (1) CLS Family Ct Act §§ 580-605(b)(2) and 580-606(a) do not state how notice of registration of order is to be provided to nonregistering party or how to calculate 20-day period for requesting hearing after notice of registration, (2) thus, in accordance with CLS Family Ct Act § 165(a), applicable procedure was that contained in CLS CPLR § 2103(b)(2), which provides that "where a period of time prescribed by law is measured from the service of a paper and service is by mail, five days shall be add to the prescribed period," and (3) with addition of 5 days to date of mailing, father's petition was filed on last day of 20-day period in which to request hearing. Masse v Masse, 273 A.D.2d 928, 709 N.Y.S.2d 778, 2000 N.Y. App. Div. LEXIS 7000 (N.Y. App. Div. 4th Dep't 2000).

Five-day extension in CLS CPLR § 2103(b)(2) for time periods measured from service by mail does not, absent specific provision to contrary, benefit party making service by mail and thus, absent showing of undue hardship, motion to dismiss affirmative defense, conclusorily alleging lack of service, was properly denied where it was made (i.e., mailed to plaintiffs' attorney) 61 days after service of answer in noncompliance with CLS CPLR § 3211(e), limiting time for making such motion to 60 days. Thompson v Cuadrado, 277 A.D.2d 151, 717 N.Y.S.2d 109, 2000 N.Y. App. Div. LEXIS 12461 (N.Y. App. Div. 1st Dep't 2000).

Parents and a minor were entitled to interest and costs under N.Y. C.P.L.R. § 5003-a(f) after medical providers failed to pay the up-front moneys portion of a settlement within 21 days of the demand on October 24, 2006; the date of the receipt of the mailing, October 25, was the date the 21-day period began running, and payment on November 17 or 21 was untimely. The time of payment could not be extended by five days under N.Y. C.P.L.R. § 2103(b)(2) as tender under N.Y. C.P.L.R. § 5003-a expressly included mailing. Leipold v Arnot Ogden Med. Ctr., 46 A.D.3d 1299, 849 N.Y.S.2d 313, 2007 N.Y. App. Div. LEXIS 13259 (N.Y. App. Div. 3d Dep't 2007).

While a former wife’s summary judgment motion was untimely because it was not filed within 90 days of the filing of the note of issue and because N.Y. C.P.L.R. 2103(b)(2) could not act to extend the time limitation by five days, the wife’s reliance on the holding of two appellate division cases, which provided that § 2103(b)(2) extended the time in which a motion for summary judgment could be made when a copy of the note of issue was served by mail, provided good cause for her delay. Mohen v Stepanov, 59 A.D.3d 502, 873 N.Y.S.2d 687, 2009 N.Y. App. Div. LEXIS 1124 (N.Y. App. Div. 2d Dep't 2009).

Trial court properly granted a lender’s motion for leave to reargue its opposition to a borrower’s motion to dismiss the complaint insofar as asserted against her and, upon reargument, vacated the order and denied her motion because it was untimely, inasmuch as she moved to dismiss the complaint 65 days after she served her answer, which was five days beyond the 60-day time limit for moving, and the statute for service of process by mail did not give her the option to extend that period by another five days. HSBC Bank USA, N.A.. v Maniatopoulos, 175 A.D.3d 575, 108 N.Y.S.3d 17, 2019 N.Y. App. Div. LEXIS 6225 (N.Y. App. Div. 2d Dep't 2019).

Appellant filed his notice of intention to file a claim one day after the 90-day limitations period and thus the court lacked subject matter jurisdiction and properly dismissed the claim as untimely; the record did not substantiate his claim that the deficiencies in serving the claim were the fault of prison officials and there was no merit to his claim that he was entitled to a five-day extension. Singh v State of New York, 2025 N.Y. App. Div. LEXIS 4199 (N.Y. App. Div. 3d Dep't 2025).

Article 78 proceeding commenced by landlord to challenge initial legal regulated rent determination was timely commenced 64 days after issuance of order determining petition for administrative review, notwithstanding provision of 9 NYCRR § 2530.1 that judicial review of such petition be brought within 60 days after issuance of order, since (1) statutory period did not commence to run until notice of determination and there was no indication of date that notice was given, and (2) even if notice had been mailed to landlord contemporaneously with issuance of determination, CLS CPLR § 2103(b)(2) provides for addition of 5 days to statutory period

when service is by mail. Guirdanella v New York State Div. of Housing & Community Renewal, 141 Misc. 2d 714, 534 N.Y.S.2d 329, 1988 N.Y. Misc. LEXIS 684 (N.Y. Sup. Ct. 1988), aff'd, 165 A.D.2d 667, 564 N.Y.S.2d 13, 1990 N.Y. App. Div. LEXIS 11029 (N.Y. App. Div. 1st Dep't 1990).

People's appeal from Village Court order dismissing criminal action was not untimely on ground that People did not take appeal within 30 days as measured from date of service of order (CLS CPL § 460.10(1)(a), (c)), for inasmuch as service of papers is not defined concept under Criminal Procedure Law, it is reasonable to refer to Civil Practice Law and Rules, under which mail service is measured from date when mailing is complete and 5 days are added to that period (CLS CPLR § 2103(b)(2)), and while judge issued decision on July 23, 1991 and 30-day period expired on August 22, 1991, time within which to timely take appeal would be extended under § 2103 until August 27, 1991, date on which People in fact served notice of appeal. People v Duquette, 152 Misc. 2d 239, 575 N.Y.S.2d 649, 1991 N.Y. Misc. LEXIS 594 (N.Y. County Ct. 1991).

Employee on workers' compensation leave was not timely notified of his termination from employment pursuant to CLS Civ S § 71 and 4 NYCRR § 5.0(c)(2) where employer allegedly sent him correspondence dated February 12 informing him that he would terminated by March 13; even assuming that letter was posted on day it was dated, CLS CPLR § 2103(b)(2) required 5 days to be added to prescribed 30-day period, and thus employer could not legally terminate employee until March 18. Wickwire v State Univ. of N.Y. Health Science Ctr., 169 Misc. 2d 1058, 648 N.Y.S.2d 263, 1996 N.Y. Misc. LEXIS 364 (N.Y. Sup. Ct. 1996).

In husband's action for annulment of parties' marriage, court denied wife's oral application for default judgment on her counterclaim for divorce, where husband's application to dismiss counterclaim, as not having been properly interposed, was served by mail on wife's attorney before expiration of time to reply. Carinha v Carinha, 178 Misc. 2d 635, 679 N.Y.S.2d 901, 1998 N.Y. Misc. LEXIS 510 (N.Y. Sup. Ct. 1998).

Lawyer's action seeking de novo review of a client's request for a fee dispute resolution was untimely because it was not commenced within the 30-day time period required by N.Y. Comp.

Codes R. & Regs. tit. 22, § 137.8(a); the five days added for mailing was not added when a period was measured from when a paper was “mailed,” and the N.Y. Comp. Codes R. & Regs. tit. 22, § 137.8(a) 30-day period was absolute. Pruzan v Levine, 852 N.Y.S.2d 584, 18 Misc. 3d 70, 2007 N.Y. Misc. LEXIS 8476 (N.Y. App. Term 2007).

Cross-motions for summary judgment dismissal of a personal injury action were deemed untimely where they were served by mail on August 8th and 9th, and set a return date of August 14th, because there was not a reasonable period of time to respond and also, it did not provide for the time periods as required by N.Y. C.P.L.R. 2103(b)(2) and 2215. D'Aniello v T.E.H. Slopes, Inc., 301 A.D.2d 556, 756 N.Y.S.2d 54, 2003 N.Y. App. Div. LEXIS 461 (N.Y. App. Div. 2d Dep't 2003).

Trial court should have denied a motion for class certification by former employees of a company with prejudice, because the employees failed to file the motion for certification within the 60-day time limit provided by N.Y. C.P.L.R. 902, and the trial court erred in applying the 5-day bonus period provided by N.Y. C.P.L.R. 2103(b)(2), as that statute did not apply to motions for class certification. Shah v Wilco Sys., Inc., 27 A.D.3d 169, 806 N.Y.S.2d 553, 2005 N.Y. App. Div. LEXIS 14844 (N.Y. App. Div. 1st Dep't 2005), app. denied, 2006 N.Y. App. Div. LEXIS 6487 (N.Y. App. Div. 1st Dep't May 9, 2006), app. dismissed, app. denied, 7 N.Y.3d 859, 824 N.Y.S.2d 597, 857 N.E.2d 1129, 2006 N.Y. LEXIS 3268 (N.Y. 2006), limited, Hoffman v Parade Publs, 65 A.D.3d 48, 878 N.Y.S.2d 320, 2009 N.Y. App. Div. LEXIS 3559 (N.Y. App. Div. 1st Dep't 2009).

Defendant client, having served the motion for leave to reargue on September 12, 2005, satisfied the time requirements of CPLR 2221(d)(3), because a motion was made when it was served (service of papers in a pending action by mail was deemed complete upon mailing), and CPLR 2103(b)(2) permitted an additional five days from service by mail of the notice of entry of the underlying order. Schaeffer & Krongold LLP v Richter, 836 N.Y.S.2d 489, 14 Misc. 3d 1217A, 234 N.Y.L.J. 108 (Sup 2005).

Unpublished decision: Under N.Y. C.P.L.R. 5513(a), a motion to reargue had to be made within the time allowed for taking an appeal from the determination in question, and a notice of appeal had to be filed within 30 days of the service of the order with notice of entry. Under N.Y. C.P.L.R. 2211, the motion to reargue was made on the date upon which the motion papers were mailed to the principal's attorney, N.Y. C.P.L.R. 2103(b)(2), and since the motion to reargue was not made within the time for taking an appeal, it was denied as untimely. Armstrong v Forgione, 237 N.Y.L.J. 5, 2006 N.Y. Misc. LEXIS 4128 (N.Y. Sup. Ct. Dec. 5, 2006).

Taxpayer was not entitled to additional 5 days under CLS CPLR § 2103(b)(2) to file its petition seeking administrative hearing with Division of Tax Appeals; statute does not apply to administrative proceedings. NY Tax Appeals Tribunal TSB-D-97(40) S.

Civil court erred in denying a defendant's motion to compel discovery because the plaintiffs did not respond to his interrogatories before a stay could arise, their time to answer or object had elapsed, and they refused to set forth the alleged defamatory words. Messina v Lippman, 55 Misc. 3d 1, 49 N.Y.S.3d 218, 2016 N.Y. Misc. LEXIS 4631 (N.Y. App. Term 2016).

11. —Holiday

Where copy of order appealed from, with notice of entry, was served by mail on June 1, appellant had 33 days, by reason of fact that service was made by mail, to serve notice of appeal. Since 33rd day fell on July 4, a legal holiday, plaintiff was permitted to serve notice of appeal on next business day, and service of notice of appeal on July 5 was timely and late filing of notice would be excused by court (notice mailed on last day of period and filed on following day). Messner v Messner, 42 A.D.2d 889, 347 N.Y.S.2d 589, 1973 N.Y. App. Div. LEXIS 3585 (N.Y. App. Div. 1st Dep't 1973).

12. —Presumption of receipt

Court did not abuse its discretion in striking personal injury complaint based on plaintiff's failure to respond to defendant's interrogatories within court-ordered time frames, where plaintiff asserted that conditional order of dismissal was never actually served, but affidavit of service indicated that order was served on her attorneys by mail, raising presumption of proper mailing which was not rebutted by her mere denial of receipt. Kihl v Pfeffer, 94 N.Y.2d 118, 700 N.Y.S.2d 87, 722 N.E.2d 55, 1999 N.Y. LEXIS 3741 (N.Y. 1999).

Service, by mail, of copy of judgment and notice of its entry is complete regardless of delivery. A. & B. Service Station v State, 50 A.D.2d 973, 376 N.Y.S.2d 656, 1975 N.Y. App. Div. LEXIS 11933 (N.Y. App. Div. 3d Dep't 1975), app. denied, 39 N.Y.2d 709, 1976 N.Y. LEXIS 3403 (N.Y. 1976).

Where testimony of State's witnesses to course of business and office practice according to which a copy of judgment and notice of its entry naturally would have been mailed gave rise to presumption that letter had in fact been mailed, mere denial of receipt was not alone sufficient to rebut presumption, and Court of Claims did not abuse discretion in finding that service of judgment and notice was completed by proper mailing. A. & B. Service Station v State, 50 A.D.2d 973, 376 N.Y.S.2d 656, 1975 N.Y. App. Div. LEXIS 11933 (N.Y. App. Div. 3d Dep't 1975), app. denied, 39 N.Y.2d 709, 1976 N.Y. LEXIS 3403 (N.Y. 1976).

Production of an affidavit of service by mail gives rise to a presumption of proper mailing to the plaintiff pursuant to CPLR § 2103(b)(2); an affidavit from plaintiff's counsel's secretary, in which she described her usual practice of making notations on office filings when pleadings or notices of motion were received, and in which she noted the absence of any such notations concerning the subject notice of appearance and demand for complaint in either the case file or in the office diary, was sufficient to overcome the presumption and to create a question of fact, the resolution of which would require a hearing. Vita v Heller, 97 A.D.2d 464, 467 N.Y.S.2d 652, 1983 N.Y. App. Div. LEXIS 20062 (N.Y. App. Div. 2d Dep't 1983).

In two medical malpractice actions in which, as a result of various pretrial motions, plaintiffs' receipt of a copy of hospital records from defendant was to be a condition precedent to their

obligation to serve a verified bill of particulars upon the hospital, plaintiffs' motion for a preclusion order would be denied where the only proof relied upon to establish the receipt of the records was the presumption of delivery that attaches to a properly mailed letter, so that the trial court should have conducted a hearing in order to determine whether the records in question had, in fact, been sent, especially given that the affidavit of mailing was itself based upon a review of documents and of the normal course of practice as opposed to a personal knowledge. Smith v Palmieri, 103 A.D.2d 739, 477 N.Y.S.2d 206, 1984 N.Y. App. Div. LEXIS 19343 (N.Y. App. Div. 2d Dep't 1984).

Properly executed affidavit of service raises presumption that proper mailing occurred, and mere denial of receipt does not suffice to overcome presumption of delivery and trigger need for hearing where there is no indication in affidavit that address to which papers were mailed was incomplete or incorrect. Flushing Nat'l Bank v Rich-Haven Motor Sales, Inc., 123 A.D.2d 663, 507 N.Y.S.2d 34, 1986 N.Y. App. Div. LEXIS 60812 (N.Y. App. Div. 2d Dep't 1986).

Denial of motion to vacate and set aside foreclosure sale was proper where plaintiff's attorney testified and introduced documentary evidence to support claim that he served both notice of hearing to compute and notice of sale upon defendants' attorneys, whose own testimony was insufficient to rebut presumption of proper mailing. Morgan v Long Beach Entertainment Complex, Inc., 125 A.D.2d 378, 509 N.Y.S.2d 105, 1986 N.Y. App. Div. LEXIS 62661 (N.Y. App. Div. 2d Dep't 1986).

Court erred in summarily denying defendant's motion to vacate default, since attorney's affirmation that defendant never received plaintiff's notice of motion to strike answer overcame presumption of service created by plaintiff's affidavit of service by mail; default judgment procured in absence of valid service of motion to strike would be nullity. Adames v New York City Transit Authority, 126 A.D.2d 462, 510 N.Y.S.2d 610, 1987 N.Y. App. Div. LEXIS 41606 (N.Y. App. Div. 1st Dep't 1987).

Presumption that papers were received, flowing from facially proper affidavits of service on attorneys by mail, was not overcome by one attorney's affirmation of nonreceipt without

supporting proof of attorneys' office procedures; presumption also could not be successfully attacked on basis of conclusory allegations of past neglect by serving attorney in his handling of case. Jeraci v Froehlich, 129 A.D.2d 557, 514 N.Y.S.2d 53, 1987 N.Y. App. Div. LEXIS 45229 (N.Y. App. Div. 2d Dep't 1987).

It was abuse of discretion to grant plaintiffs' motion to vacate preclusion order on basis of plaintiffs' assertion that they had not been served with copy of order where defendant, in opposition, had submitted affidavit of service, thereby raising presumption of proper mailing under CLS CPLR § 2103, and plaintiffs merely denied receiving copy of order without challenging affidavit, thus failing to overcome presumption. Colucci v Zeolla, 138 A.D.2d 286, 526 N.Y.S.2d 3, 1988 N.Y. App. Div. LEXIS 3070 (N.Y. App. Div. 1st Dep't 1988).

Bill of particulars was timely served where plaintiff's counsel submitted affidavit of legal assistant swearing that she placed bill of particulars in mail on particular date, notwithstanding assertion of defendant's counsel that bill of particulars was not received until many months later, since affidavit of legal assistant raised presumption that proper mailing occurred, and defendant's counsel did not claim that address to which bill of particulars was mailed was incorrect in any respect; mere denial of receipt was insufficient to overcome presumption and trigger need for hearing. Andersen v Mazza, 193 A.D.2d 898, 597 N.Y.S.2d 769, 1993 N.Y. App. Div. LEXIS 4805 (N.Y. App. Div. 3d Dep't 1993).

Where county judge established that pistol permit suspension order and letter were duly mailed to petitioner at his home address, petitioner's contention that he did not receive documents was insufficient to rebut presumption that proper mailing occurred. Fowler v Marks, 241 A.D.2d 928, 661 N.Y.S.2d 363, 1997 N.Y. App. Div. LEXIS 7864 (N.Y. App. Div. 4th Dep't), app. denied, 91 N.Y.2d 801, 666 N.Y.S.2d 563, 669 N.E.2d 533, 1997 N.Y. LEXIS 4132 (N.Y. 1997).

Bare denial of service was insufficient to rebut the presumption of proper service because the proofs of mailing of agency determinations gave rise to a rebuttable presumption that each determination was received five days after mailing. Matter of Hepco Plumbing & Heating v New

York City Dept. of Bldgs., 227 A.D.3d 903, 212 N.Y.S.3d 149, 2024 N.Y. App. Div. LEXIS 2746 (N.Y. App. Div. 2d Dep't 2024).

General denial in form of affirmation of nonreceipt by tenants' attorney, by itself, was insufficient to rebut presumption of proper mailing of papers under CLS CPLR § 2103 which arose by submission of affidavit of service sworn by employee of landlord's attorney. Farchester Gardens, Inc. v Elwell, 138 Misc. 2d 562, 525 N.Y.S.2d 111, 1987 N.Y. Misc. LEXIS 2806 (N.Y. City Ct. 1987).

In action against state, affirmative defense of lack of personal jurisdiction was timely asserted under 22 NYCRR 206.7(a), notwithstanding that state's answers were received by claimants on 40th day after service of claims, since service of answers was complete under CLS CPLR § 2103(b)(2) when they were mailed to claimants' counsel on 38th day after service of claims. Charbonneau v State, 148 Misc. 2d 891, 561 N.Y.S.2d 876, 1990 N.Y. Misc. LEXIS 552 (N.Y. Ct. Cl. 1990), aff'd, 178 A.D.2d 815, 577 N.Y.S.2d 534, 1991 N.Y. App. Div. LEXIS 16600 (N.Y. App. Div. 3d Dep't 1991).

Because an insurer's evidence failed to rebut the presumption of mailing of an assignee's notice to admit on the date stated, the court declined to hold an evidentiary hearing on the issue and ruled that the insurer's reply to the notice to admit was not timely within the 20-day reply requirement of N.Y. C.P.L.R. § 3123 and the five-day mailing requirement of N.Y. C.P.L.R. § 2103(b)(2). Seaside Med., P.C. v General Assur. Co., 842 N.Y.S.2d 234, 16 Misc. 3d 758, 237 N.Y.L.J. 109, 2007 N.Y. Misc. LEXIS 4424 (N.Y. Dist. Ct. 2007).

13. Service upon parties

The service of a single copy of the summons and complaint upon an individual defendant, who was also officer and manager, respectively, of the defendant corporation was sufficient service on the corporation and on himself as an individual defendant. Lac Leasing Corp. v Dutchess Aero, Inc., 32 A.D.2d 949, 303 N.Y.S.2d 723, 1969 N.Y. App. Div. LEXIS 3432 (N.Y. App. Div. 2d Dep't 1969).

The legislative purpose of CPLR 2103(b) and (c) is to insure that a party in a pending action is afforded a fair opportunity to be notified so that he may protect his interests. Service which is not made in accordance with the requirements of the statute is ineffectual. Michaud v Loblaws, Inc., 36 A.D.2d 1013, 321 N.Y.S.2d 626, 1971 N.Y. App. Div. LEXIS 4013 (N.Y. App. Div. 4th Dep't 1971).

The surrogate court erred in signing an order removing a guardian ad litem of an infant and appointing a successor before the petitions for removal had been received by the original guardian or by the second wife of the infant's deceased father who was seeking the probate of the decedent's will in which the infant had not been mentioned. In re Estate of Ford, 79 A.D.2d 403, 436 N.Y.S.2d 882, 1981 N.Y. App. Div. LEXIS 9720 (N.Y. App. Div. 1st Dep't 1981).

In a medical malpractice action service of the summons was valid where the process server, in attempting to serve the defendant doctor, gave the summons to another doctor who was sitting with defendant, and where the other doctor handed the summons to defendant. Daniels v Eastman, 87 A.D.2d 882, 449 N.Y.S.2d 538, 1982 N.Y. App. Div. LEXIS 16382 (N.Y. App. Div. 2d Dep't 1982).

In a medical malpractice action the trial court incorrectly confirmed a referee's determination that one physician-defendant was never properly served, where the only evidence in the record before the referee tending to support a finding of lack of service was the defendant's self-serving diary containing an unexplained alteration of an entry purporting to show an operation appointment, and discrepancies between the process server's description of the doctor in the affidavits and the doctor's description of his age and weight on the date of service, where the description of the doctor in the affidavits of service varied in detail as to age and weight in a manner consistent with the description given at the hearing by the process server while face to face with the doctor. Garber v Smith, 95 A.D.2d 732, 464 N.Y.S.2d 143, 1983 N.Y. App. Div. LEXIS 18629 (N.Y. App. Div. 1st Dep't 1983).

In an action to recover damages for breach of a construction contract, plaintiff's motion to substitute a deceased defendant's widow, who was the administratrix of its estate, as party

defendant, was properly denied, even though the case was a proper one for substitution, where the personal representative was not yet a party to the action, so that service of the motion for substitution (or the order to show cause) were required to be made in the manner prescribed for service of summons under CPLR Art 3. Therefore, service of the papers in the manner prescribed for motion papers generally (CPLR §§ 2103, 2214) did not suffice, in that the personal representative had to be accorded the procedural safeguards required by due process for the court to obtain jurisdiction over her. Topal v BFG Corp., 108 A.D.2d 849, 485 N.Y.S.2d 352, 1985 N.Y. App. Div. LEXIS 43175 (N.Y. App. Div. 2d Dep't 1985).

Where requirement of personal service contained in order and judgment relates solely to enforceability of judgment, service by mail upon appellant’s attorney is adequate for purposes of giving notice under CLS CPLR § 5513 and, in any event, appellant corporation was personally served by reason of personal service on chairman of board of directors, despite fact that he resigned as officer, where record does not show that he resigned as chairman of board. Siegel v Obes, 112 A.D.2d 930, 492 N.Y.S.2d 447, 1985 N.Y. App. Div. LEXIS 52143 (N.Y. App. Div. 2d Dep't 1985).

Plaintiff who settled with one defendant was required to serve that defendant with motion for partial summary judgment against remaining defendant where settling defendant technically remained party to action by reason of other defendant’s cross-claim against it, but such failure of service would be regarded as mere irregularity rather than jurisdictional defect because of absence of prejudice to remaining defendant. Forte v Cities Serv. Oil Co., 195 A.D.2d 805, 600 N.Y.S.2d 367, 1993 N.Y. App. Div. LEXIS 7256 (N.Y. App. Div. 3d Dep't 1993).

Action on promissory notes, in which plaintiff had been granted summary judgment in lieu of complaint under CLS CPLR § 3213 without hearing on propriety of service, would be remitted for hearing and new determination as to whether service was properly effectuated on defendants where they averred that they were not properly served with motion papers by which action was commenced. Papadopoulos v Park Cafe East, Inc., 251 A.D.2d 388, 673 N.Y.S.2d 327, 1998 N.Y. App. Div. LEXIS 6578 (N.Y. App. Div. 2d Dep't 1998).

Court erred in denying defendants' summary judgment motion as untimely under CLS CPLR § 3212(a), even though return date of defendants' motion was more than 120 days after filing of note of issue, since notice of motion was properly served on plaintiff under CLS CPLR § 2103(b) within 120-day period. Russo v Eveco Dev. Corp., 256 A.D.2d 566, 683 N.Y.S.2d 566, 1998 N.Y. App. Div. LEXIS 14027 (N.Y. App. Div. 2d Dep't 1998).

In action against state by pro se plaintiff, state's service of its motion for summary judgment by certified rather than first class mail did not comply with statutory requirements and deprived Court of Claims of jurisdiction to entertain motion. Welch v State, 261 A.D.2d 537, 690 N.Y.S.2d 631, 1999 N.Y. App. Div. LEXIS 5407 (N.Y. App. Div. 2d Dep't 1999).

Service of court's decision on landlord did not constitute receipt of decision by tenant. Orange County Deputy Sheriffs' Police Benevolent Ass'n v Orange County, 281 A.D.2d 422, 721 N.Y.S.2d 263, 2001 N.Y. App. Div. LEXIS 2096 (N.Y. App. Div. 2d Dep't 2001).

Court properly vacated judgment entered on arbitration award, which was issued based on stipulation whereby defendant agreed to pay law firm for services rendered in pending matrimonial action, since application to confirm arbitration award was made within matrimonial action, and law firm failed to serve application for confirmation of award on plaintiff; although 22 NYCRR part 136 contains no requirement that any person other than attorney and client receive notice of dispute arbitration proceeding, plaintiff was entitled to notice of application to confirm arbitration award under CLS CPLR § 2103(e), regulations governing conduct of attorneys in domestic relations matters (22 NYCRR §§ 202.16(c)(2), 1400.2) require notice to adverse party when attorney seeks to obtain security interest in, or lien on, property of represented spouse, and disciplinary rules of Code of Professional Responsibility prohibit attorney from entering into arrangement for charging or collecting fee in domestic relations matters through, inter alia, lien without prior notice to adversary (22 NYCRR § 1200.11(c)(2)(iii)). Nosonowitz v Nosonowitz, 284 A.D.2d 586, 726 N.Y.S.2d 486, 2001 N.Y. App. Div. LEXIS 6029 (N.Y. App. Div. 3d Dep't 2001).

In a mortgage foreclosure action, while mortgagors' redemption did not terminate their right to appeal from an order denying their motion to vacate a default, the motion to vacate was properly denied because the summary judgment motion papers were properly served at their last known address under N.Y. C.P.L.R. § 2103(b)(2) as they were self-represented; thus, the mortgagors had no reasonable excuse for their default and no meritorious defense as they admitted to not making the payments claimed. Mortgage Elec. Registration Sys., Inc. v Schuh, 48 A.D.3d 838, 852 N.Y.S.2d 403, 2008 N.Y. App. Div. LEXIS 997 (N.Y. App. Div. 3d Dep't), app. dismissed, 10 N.Y.3d 951, 862 N.Y.S.2d 464, 892 N.E.2d 857, 2008 N.Y. LEXIS 2149 (N.Y. 2008).

In a child neglect proceeding, a trial court properly denied a father's motion to dismiss the proceeding and to vacate the neglect finding as he was properly served under N.Y. C.P.L.R. 306(a) with the petition by his wife, who was not a party, and he had defaulted in the action and, therefore, could not challenge the neglect finding since he never had appealed it after the dispositional order was entered. In re Carolyn Z., 53 A.D.3d 875, 862 N.Y.S.2d 620, 2008 N.Y. App. Div. LEXIS 6176 (N.Y. App. Div. 3d Dep't), app. dismissed, 11 N.Y.3d 807, 868 N.Y.S.2d 585, 897 N.E.2d 1067, 2008 N.Y. LEXIS 3271 (N.Y. 2008).

Denial of a former inmate's motion for reargument of the denial of his application for permission to file a late notice of claim was proper because it was not disputed that the State served upon the former inmate the original order of the Court of Claims denying permission to serve a late notice of claim, together with notice of entry, and the former inmate did not move for what was properly determined to have been reargument until long after the time in which he had to make such a motion had expired pursuant to CPLR 2221(d)(3), 2103(b)(2). Bramble v State of New York, 54 A.D.3d 1138, 864 N.Y.S.2d 223, 2008 N.Y. App. Div. LEXIS 6901 (N.Y. App. Div. 3d Dep't 2008).

Trial court properly granted the healthcare providers' motion to enforce a self-executing conditional order of dismissal of a patient's personal injury action because, while the court should have considered her opposition to the motion inasmuch as the patient's service of answering papers two days in advance was timely where the providers failed to invoke the

provision requiring service at least seven days in advance, the record was clear that the patient failed to comply with the terms of the conditional order, failed to provide a reasonable excuse for her failure, and made no effort to demonstrate that she had a potentially meritorious cause of action. Williams v Davita Healthcare Partners, Inc., 172 A.D.3d 791, 99 N.Y.S.3d 356, 2019 N.Y. App. Div. LEXIS 3347 (N.Y. App. Div. 2d Dep't 2019).

CPLR 3215(g)(1) merely applies to an application for a default judgment which must be made to determine the amount of damages due pursuant to CPLR 3215(a) or (b); once notice of such an application is provided, CPLR 3215(g)(1) is satisfied, and, without more, the general notice provisions of CPLR 2103(e) revert back into operation to govern any future requests for relief. 21st Mtge. Corp. v Raghu, 197 A.D.3d 1212, 154 N.Y.S.3d 84, 2021 N.Y. App. Div. LEXIS 5148 (N.Y. App. Div. 2d Dep't 2021).

Supreme court properly denied a company’s motion to vacate an order of foreclosure and sale because it failed to demonstrate it was entitled to notice of the mortgagee’s motion for foreclosure and sale; the motion was not an “application” for a default judgment but sought entry of a judgment of foreclosure and sale, and thus, the notice specified in CPLR 3215(g)(1) was inapplicable and notice of that motion was instead governed by the general notice provisions applicable to all motions. 21st Mtge. Corp. v Raghu, 197 A.D.3d 1212, 154 N.Y.S.3d 84, 2021 N.Y. App. Div. LEXIS 5148 (N.Y. App. Div. 2d Dep't 2021).

Notice of motion to continue action against deceased defendant’s representative must be served on such representative, and not on the attorney for the deceased defendant, his authority to act as such attorney having terminated with the death. Lewis v Lewis, 43 Misc. 2d 349, 250 N.Y.S.2d 984, 1964 N.Y. Misc. LEXIS 1805 (N.Y. Sup. Ct. 1964).

Plaintiff’s motion to dismiss defendant’s affirmative defense of improper service of summons and complaint was granted, where evidence revealed that a janitor found the papers in an empty apartment and had personally delivered them to the defendant. Erale v Edwards, 47 Misc. 2d 213, 262 N.Y.S.2d 44, 1965 N.Y. Misc. LEXIS 1698 (N.Y. Sup. Ct. 1965).

In a products liability action, the plaintiff effected valid service of process on a Japanese corporation by serving a summons with notice upon the defendant in Japan pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, where there was no requirement in the convention, or in New York law, that a plaintiff serve a complaint with the notice and summons, and where service in accordance with the provisions of the convention obviates the necessity of serving the Secretary of State with notice to the unauthorized foreign corporation. Re v Breezy Point Lumber Co., 118 Misc. 2d 206, 460 N.Y.S.2d 264, 1983 N.Y. Misc. LEXIS 3292 (N.Y. Sup. Ct. 1983).

Court will deny defendant's motion to dismiss simplified traffic information on grounds that district attorney failed to serve supporting deposition after defendant demanded same, since defendant pleaded not guilty, and demanded supporting deposition within letter addressed only to clerk of traffic court; mere fact that CLS CPL § 100.25 requires that demand for service of supporting deposition be made upon clerk does not exclude necessity of service of copy upon one's adversary, i.e. district attorney. People v Schlosser, 129 Misc. 2d 690, 493 N.Y.S.2d 750, 1985 N.Y. Misc. LEXIS 2672 (N.Y. Dist. Ct. 1985), disapproved, People v Thumser, 148 Misc. 2d 472, 567 N.Y.S.2d 571, 1990 N.Y. Misc. LEXIS 701 (N.Y. App. Term 1990).

Minor child's attorneys sufficiently complied with N.Y. C.P.L.R. 2103(e), 1207, requirements by obtaining a stipulation from defendants, in which they stated that they did not object to the attorneys' application for an ex parte order settling the child's negligence claims, they waived their right to appear at the infant compromise hearing, and they consented to the issuance of the requested ex parte order. Because a settlement was reached after the suit was filed, the N.Y. C.P.L.R. 1207 allowed the attorneys to file a motion seeking settlement of the child's claims, and the attorneys sufficiently complied with their duties under N.Y. C.P.L.R. 2103(e) by obtaining the stipulation from defendants, acknowledging the motion, waiving their right to be served and to appear, and consenting to the requested order. Dominguez v Reardon, 828 N.Y.S.2d 791, 14 Misc. 3d 882, 2007 N.Y. Misc. LEXIS 50 (N.Y. Sup. Ct. 2007).

Mortgagor, who was not represented by counsel, was not properly served with a mortgagee's summary judgment motion and supporting documents since the affidavit of service stated that the documents were personally delivered at the mortgagor's residence to a person authorized to receive service, rather than a person of suitable age and discretion, and the affidavit did not identify the person. Oparaji v Citibank, N.A., 989 N.Y.S.2d 773, 44 Misc. 3d 25, 2014 N.Y. Misc. LEXIS 1861 (N.Y. App. Term 2014), app. dismissed in part, 55 Misc. 3d 146(A), 58 N.Y.S.3d 875, 2017 N.Y. Misc. LEXIS 2017 (N.Y. App. Term 2017), app. dismissed in part, 55 Misc. 3d 146(A), 58 N.Y.S.3d 875, 2017 N.Y. Misc. LEXIS 2012 (N.Y. App. Term 2017).

Recipient’s motion to quash the subpoena duces tecum due to improper service was without merit because the communications throughout the pendency of the matter had been almost exclusively via e-mail, thus establishing a pattern of service. Thus, service of the subpoena via email was proper. Matter of Grand Jury Investigation No. 422781-2023, 81 Misc. 3d 717, 198 N.Y.S.3d 905, 2023 N.Y. Misc. LEXIS 7783 (N.Y. Sup. Ct. 2023), app. dismissed, 226 A.D.3d 477, 206 N.Y.S.3d 608, 2024 N.Y. App. Div. LEXIS 2003 (N.Y. App. Div. 1st Dep't 2024).

14. Parties entitled to be served

A party to a foreclosure proceeding who appears and waives service of the papers but who reserves the right to receive notice of sale is entitled to service of such notice in the ordinary manner in which papers are to be served upon a party in the pending action under CPLR § 2103, and notice by publication pursuant to RPAPL § 231 is insufficient to comply with that requirement. Shaw v Russell, 60 N.Y.2d 922, 471 N.Y.S.2d 40, 459 N.E.2d 149, 1983 N.Y. LEXIS 3561 (N.Y. 1983).

For the purpose of serving a copy of a default judgment with notice of entry upon an insured defendant who had disappeared and whose whereabouts were unknown, the action was still pending at the time of service, and consequently service in conformity with subds (b) and (d) of this section was sufficient to meet the requirements of § 167 subd 1(b) of the Insurance Law and to bind the defendant’s insurer. Fortis v Glens Falls Ins. Co., 23 A.D.2d 88, 258 N.Y.S.2d 753,

1965 N.Y. App. Div. LEXIS 4384 (N.Y. App. Div. 1st Dep't 1965), aff'd, 18 N.Y.2d 779, 275 N.Y.S.2d 265, 221 N.E.2d 807, 1966 N.Y. LEXIS 1084 (N.Y. 1966).

Vacatur of a foreclosure sale would be ordered, where, although a notice of sale was posted and published in compliance with Real P Actions & Pr Law § 231, defendants' attorney was not furnished a notice of sale, despite the fact that they were entitled to such notice pursuant to CPLR § 2103(b) in that defendants had appeared and had not waived service of the notice of sale. Aetna Life Ins. Co. v Avalon Orchards, Inc., 103 A.D.2d 948, 479 N.Y.S.2d 564, 1984 N.Y. App. Div. LEXIS 19614 (N.Y. App. Div. 3d Dep't 1984).

Owner of vehicle involved in automobile accident in Quebec was entitled to dismissal of complaint against him, on ground of lack of personal jurisdiction, even though he failed to serve cross motion papers for dismissal on attorney for co-defendant owners of other vehicle as required by CLS CPLR § 2103 so that co-defendants did not appear on motion, since error was "merely an irregularity" inasmuch as owner was Quebec resident, he was not driver of vehicle at time of accident, no cross claims had been interposed against him prior to motion to dismiss, action against co-defendants was still pending in New York, and dismissal was otherwise properly granted on ground of forum non conveniens. Oakes v Barnes, 124 A.D.2d 439, 507 N.Y.S.2d 539, 1986 N.Y. App. Div. LEXIS 61427 (N.Y. App. Div. 3d Dep't 1986).

Court erred in dismissing, for want of proof, plaintiff's causes of action to recover damages for tortious interference with contract where no party moved for summary judgment, plaintiff was not put on notice that it was required to lay bare its proof, and no cross motion was made complying with notice provisions of CLS CPLR §§ 2215 and 2103. Stanley Tulchin Assoc., Inc. v Vignola, 186 A.D.2d 183, 587 N.Y.S.2d 761, 1992 N.Y. App. Div. LEXIS 10734 (N.Y. App. Div. 2d Dep't 1992).

In action by bank to foreclose mortgage on real property, second mortgagee was entitled to have referee's deed made subject to his second mortgage, on ground that bank failed to serve papers or provide notice of proceedings, where second mortgagee did not interpose answer but his attorney served notice of appearance, specifically requesting that all subsequent papers and

notice of all proceedings be served on him; even though defendant defaults in pleading, his appearance entitles him to service of all papers and notice of all proceedings through and subsequent to judgment. Home Sav. Bank v Chiola, 203 A.D.2d 525, 611 N.Y.S.2d 235, 1994 N.Y. App. Div. LEXIS 4307 (N.Y. App. Div. 2d Dep't 1994), app. denied, 84 N.Y.2d 813, 623 N.Y.S.2d 181, 647 N.E.2d 453, 1995 N.Y. LEXIS 83 (N.Y. 1995).

Although lack of notice of application for default judgment and foreclosure sale did not warrant vacatur of that judgment, lack of notice of foreclosure sale deprived defendants of opportunity to protect their interest in property; thus, court erred in granting plaintiff's motion for writ of assistance and in denying defendants' motion seeking to set aside foreclosure sale of property. Leader Fed. Bank for Sav. v Van Tienhoven, 262 A.D.2d 1078, 692 N.Y.S.2d 258, 1999 N.Y. App. Div. LEXIS 7344 (N.Y. App. Div. 4th Dep't 1999).

In action under CLS Labor § 240(1), court improperly denied third-party defendants' motion and defendant's cross-motion for renewal of plaintiff's previously granted summary judgment motion where it was undisputed that plaintiff failed to complete service of all motion papers on third-party defendant but that, despite such procedural infirmity, court nonetheless proceeded to grant plaintiff partial summary judgment on liability; third-party defendant was party entitled to service of all motion papers. Russo v Herbert Constr. Co., 272 A.D.2d 193, 708 N.Y.S.2d 291, 2000 N.Y. App. Div. LEXIS 5675 (N.Y. App. Div. 1st Dep't 2000).

Notice of motion to continue action against deceased defendant's representative must be served on such representative, and not on the attorney for the deceased defendant, his attorney to act as such attorney having terminated with the death. Lewis v Lewis, 43 Misc. 2d 349, 250 N.Y.S.2d 984, 1964 N.Y. Misc. LEXIS 1805 (N.Y. Sup. Ct. 1964).

CPLR 5239 by providing that an adverse claimant to property levied upon by the sheriff may assert his right by serving a notice of petition upon the sheriff and upon the judgment creditor "in the same manner as a notice of motion" constitutes an exception to the general rule of CPLR 403(c), and service upon the judgment creditor's attorney, including service by mail, will serve to expedite the matter and yet provide due process notice; and there is no requirement that the

judgment creditor be personally served. Joseph Durst Corp. v Leader, 51 Misc. 2d 72, 272 N.Y.S.2d 448, 1966 N.Y. Misc. LEXIS 2322 (N.Y. Sup. Ct. 1966).

Where in a mortgage foreclosure action plaintiff prepared an amended complaint to meet statutory requirements necessary to include the United States as a party defendant by reason of federal tax liens recorded against other defendants, and that amended complaint contained no new or additional claim for relief against the defaulting defendant, service of a copy of the amended pleading upon defaulting defendant was not required, since liability remained unchanged. Brandenberg v Tirino, 59 Misc. 2d 630, 300 N.Y.S.2d 142, 1969 N.Y. Misc. LEXIS 1558 (N.Y. Sup. Ct. 1969), aff'd, 34 A.D.2d 737, 311 N.Y.S.2d 965, 1970 N.Y. App. Div. LEXIS 6569 (N.Y. App. Div. 2d Dep't 1970).

Pre-trial examination should not proceed in the absence of notice to all parties to the action who are not in default. Lake Minnewaska Mountain Houses, Inc. v Smiley, 62 Misc. 2d 311, 307 N.Y.S.2d 739, 1970 N.Y. Misc. LEXIS 1968 (N.Y. Sup. Ct. 1970).

Notice of a demand for enlarged or different relief, which, in effect, makes a new demand, must be served on a judgment debtor who has never appeared, in the same fashion as a summons whether or not his time to appear or answer has expired and absent an appearance, there is no statutory authority permitting service by mail, and therefore service by mail of such notice is jurisdictionally defective. First Nat'l City Bank v Elsky, 62 Misc. 2d 880, 312 N.Y.S.2d 325, 1970 N.Y. Misc. LEXIS 1703 (N.Y. Civ. Ct. 1970).

Law guardian, when he served notice of discovery and inspection under CLS CPLR §§ 3101 and 3120 on county attorney’s office in child protective proceeding, should have served copy of notice on respondent’s counsel pursuant to CLS CPLR § 2103(e). In re M.J., 176 Misc. 2d 446, 673 N.Y.S.2d 554, 1998 N.Y. Misc. LEXIS 121 (N.Y. Fam. Ct. 1998).

II. Under Former Civil Practice Laws

A. In General

15. Generally

RCP 20, requiring written notice to produce papers, had reference to the preliminary preparations for trial, and did not apply to a notice given in the presence of the court while the trial was in progress from day to day. Kerr v McGuire, 28 N.Y. 446, 28 N.Y. (N.Y.S.) 446, 1863 N.Y. LEXIS 88 (N.Y. 1863).

RCP 20 applied to Court of Claims. Stevens v State, 277 A.D. 418, 100 N.Y.S.2d 826, 1950 N.Y. App. Div. LEXIS 3075 (N.Y. App. Div. 1950), app. dismissed, 303 N.Y. 613, 101 N.E.2d 486, 303 N.Y. (N.Y.S.) 613, 1951 N.Y. LEXIS 1047 (N.Y. 1951), app. dismissed, 303 N.Y. 801, 104 N.E.2d 360, 303 N.Y. (N.Y.S.) 801, 1952 N.Y. LEXIS 1290 (N.Y. 1952).

RCP 20 made no reference to the service of summons, but to papers only. Dealers' Lumber Corp. v Stauffer, 218 N.Y.S. 464, 128 Misc. 358, 1926 N.Y. Misc. LEXIS 779 (N.Y. Sup. Ct. 1926).

CPA § 220 did not apply to service of subpoena to attend examination before trial before referee. Everdyke v Adler, 27 N.Y.S.2d 159, 176 Misc. 283, 1941 N.Y. Misc. LEXIS 1706 (N.Y. Sup. Ct. 1941).

Application to notice under NYC Municipal Court Code § 22 subd 4, see University Soc. v Barsky, 46 N.Y.S.2d 727, 182 Misc. 4, 1944 N.Y. Misc. LEXIS 1675 (N.Y. Mun. Ct. 1944).

CPA § 164 applied to Court of Claims Act § 19, relating to notification by attorney general of suspension of interest. Sowma v State, 121 N.Y.S.2d 465, 203 Misc. 1118, 1953 N.Y. Misc. LEXIS 1751 (N.Y. Ct. Cl. 1953).

Where summons served in accord with provision of contract, and under contract, only New York courts have jurisdiction. Motion to vacate service of summons denied. Elkin v Austral American

Trading Corp., 10 Misc. 2d 879, 170 N.Y.S.2d 131, 1957 N.Y. Misc. LEXIS 1990 (N.Y. Sup. Ct. 1957).

Permissible manner of serving motion papers in an already-existing action or proceeding was upon the attorney for the opposing party, and therefore service upon union's attorney of notice of motion for a stay of arbitration within ten-day period under CPA § 1458 (§§ 7503, 7510, 7511, herein) was good and timely service. In re Application of Ward Leonard Electric Co., 12 Misc. 2d 304, 173 N.Y.S.2d 531, 1958 N.Y. Misc. LEXIS 3621 (N.Y. Sup. Ct. 1958).

The time of commencement of an action runs from delivery of the summons to the sheriff for service and where the delivery timely made, service thereafter timely effected. Ferraro v New York University Bellevue Medical Center, 13 Misc. 2d 131, 177 N.Y.S.2d 788, 1958 N.Y. Misc. LEXIS 3145 (N.Y. Sup. Ct. 1958).

Provisions of CPA § 220 applied to service in proceeding for writ of prohibition since CPA § 1289 (§§ 312, 402, 403 herein) required service to be made as in an action. Schildhaus v Justices of Court of Special Sessions, 16 Misc. 2d 675, 184 N.Y.S.2d 366, 1959 N.Y. Misc. LEXIS 4299 (N.Y. Sup. Ct. 1959).

16. Service on holiday

The service of a warrant of attachment is not invalid because made on a New York bank during the existence of a legal holiday. Doty v Baltimore Trust Co., 265 N.Y.S. 66, 147 Misc. 868, 1933 N.Y. Misc. LEXIS 1586 (N.Y. Sup. Ct. 1933).

It was not the intention of the act providing for the Saturday half-holiday to prevent the service of process or papers on Saturday after twelve o'clock noon. People ex rel. Fulton v Board of Supervisors, 3 N.Y.S. 751, 50 Hun 105, 1888 N.Y. Misc. LEXIS 950 (N.Y. Sup. Ct. 1888).

17. Waiver of irregularity in service

Defective service of summons is waived by active participation in the trial on the merits and setting up counterclaim. Reichel v Standard Rice Co., 225 A.D. 628, 234 N.Y.S. 137, 1929 N.Y. App. Div. LEXIS 11715 (N.Y. App. Div. 1929), aff'd, 254 N.Y. 86, 171 N.E. 916, 254 N.Y. (N.Y.S.) 86, 1930 N.Y. LEXIS 1008 (N.Y. 1930).

Objection to the manner in which a defendant is brought before the court must be in due time. Daley v Dennis, 242 N.Y.S. 408, 137 Misc. 1, 1930 N.Y. Misc. LEXIS 1311 (N.Y. County Ct. 1930).

A defendant may waive irregularities in the mode by which his person is subjected to the jurisdiction of the court and may dispense with service of process. Daley v Dennis, 242 N.Y.S. 408, 137 Misc. 1, 1930 N.Y. Misc. LEXIS 1311 (N.Y. County Ct. 1930).

An order vacating and setting aside service of summons and complaint and judgment thereon on the ground that the defendant had not been served with process, was reversed, where it appeared that several months had elapsed during which proceedings supplementary to execution were actively pursued before the defendant raised the question following imprisonment pursuant to a body execution, and that the defendant’s testimony was uncorroborated. Biala v Abramow, 277 N.Y.S. 416, 154 Misc. 536, 1935 N.Y. Misc. LEXIS 962 (N.Y. App. Term 1935).

Although service of a complaint upon an attorney by thrusting it under the locked door of his office is not an effectual service thereof, the irregularity of the service is waived by the retention of the complaint and the service of an answer thereto. Rogers v Rockwood, 13 N.Y.S. 939, 59 Hun 628, 1891 N.Y. Misc. LEXIS 1745 (N.Y. Sup. Ct. 1891).

Retaining and acting upon a paper waives irregularity of service. McGown v Leavenworth, 2 E.D. Smith 24 (N.Y.C.P.).

If service is not to be accepted, the paper should be returned within a reasonable time, which is never limited to less than the same day, and the grounds for the return should be given. McGown v Leavenworth, 2 E.D. Smith 24 (N.Y.C.P.).

18. Necessity for service

In an action not founded on contract, a person named as defendant but not served with process is no longer a party. Hathorne v Hodges, 28 N.Y. 486, 28 N.Y. (N.Y.S.) 486, 1864 N.Y. LEXIS 4 (N.Y. 1864).

Where an action for specific performance was brought against several defendants all must be served. See Potter v Ellice, 48 N.Y. 321, 48 N.Y. (N.Y.S.) 321, 1872 N.Y. LEXIS 292 (N.Y. 1872).

When there has been no personal service of the summons or an appearance by the defendant in the action, a judgment of the municipal court for the plaintiff will be reversed with costs and the complaint dismissed; an appeal from the judgment is the proper remedy. Mears v North American Brewing Co., 113 A.D. 41, 98 N.Y.S. 1042, 1906 N.Y. App. Div. LEXIS 1364 (N.Y. App. Div. 1906).

19. Foreign process

The courts of this state possess no power to order the service of a summons and complaint issuing from a foreign court upon a resident of this state. In re Romero, 107 N.Y.S. 621, 56 Misc. 319, 1907 N.Y. Misc. LEXIS 756 (N.Y. Sup. Ct. 1907).

20. Nonresident motorist

CPA § 220 did not limit or modify the method of service of a summons on a defendant in an action specified in § 52 of the Vehicle and Traffic law. Hart v Wiener, 258 A.D. 371, 17 N.Y.S.2d 87, 1940 N.Y. App. Div. LEXIS 8196 (N.Y. App. Div. 1940).

Absence for 30 days from state, subjects absentee to service under Veh. and Traf. L § 52-a, despite service in army and navy. McNally v Howard, 45 N.Y.S.2d 7, 1943 N.Y. Misc. LEXIS 2548 (N.Y. Sup. Ct. 1943).

21. Parties entitled to notice

After a party has appeared and pleaded he is entitled to notice; he cannot be deprived of this right by an order affixing as a penalty for the violation of its mandate the striking out of his pleading. Rice v Ehele, 55 N.Y. 518, 55 N.Y. (N.Y.S.) 518, 1874 N.Y. LEXIS 43 (N.Y. 1874).

22. —Defaulting parties

A defendant who is not interested enough in an action to appear cannot object if judgment in his favor is reviewed without notice to him. McLear v Balmat, 194 A.D. 827, 186 N.Y.S. 180, 1921 N.Y. App. Div. LEXIS 9365 (N.Y. App. Div.), aff'd, 231 N.Y. 548, 132 N.E. 883, 231 N.Y. (N.Y.S.) 548, 1921 N.Y. LEXIS 706 (N.Y. 1921).

B. Service on Party

23. Generally

Service is properly made by delivery of a copy to the person upon whom the service is to be made. The original need not be shown. Gross v Clark, 24 Hun 343 (N.Y. 1881).

24. Personal service; where required

Notice of application to punish husband for nonpayment of alimony must be given to him; service upon his attorney is insufficient. Goldie v Goldie, 77 A.D. 12, 79 N.Y.S. 268, 12 N.Y. Ann. Cas. 175, 1902 N.Y. App. Div. LEXIS 2793 (N.Y. App. Div. 1902).

An order to show cause why one should not be punished for contempt must be served personally; service upon counsel is not sufficient. Weeks v Coe, 111 A.D. 337, 97 N.Y.S. 704, 1906 N.Y. App. Div. LEXIS 160 (N.Y. App. Div.), app. denied, 112 A.D. 908, 98 N.Y.S. 1117, 1906 N.Y. App. Div. LEXIS 1136 (N.Y. App. Div. 1906).

RCP 20 did not apply to the service of the notice of justification of sureties upon an undertaking to discharge a mechanic's lien. Such notice had to be served personally. Boland v Sokolski, 106 N.Y.S. 766, 56 Misc. 333, 1907 N.Y. Misc. LEXIS 761 (N.Y. Sup. Ct. 1907).

25. Residence of party

An order to show cause why judgment debtor should not be punished for contempt for failure to appear for examination was properly served by leaving a copy at his residence between 5 and 6 o'clock in the afternoon. Barrie v Friedman, 139 N.Y.S. 337, 79 Misc. 86, 1913 N.Y. Misc. LEXIS 771 (N.Y. App. Term 1913).

"Place of residence" relates to the post office and not to any particular locality in a town or city, and this where the place was a large city. 10 How. Pr. 460, 1855 N.Y. Misc. LEXIS 151.

26. Service at office of party

Attempted service of the complaint by leaving it at the office of defendant nine days after the service of summons, and before the service of the notice of appearance, was a nullity. 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).

Service by leaving papers in a sealed envelope addressed to the defendant, at his employer's office, which was closed at the time, is insufficient. Kloeppel v Kloeppel, 15 N.Y.S.2d 932, 172 Misc. 630, 1939 N.Y. Misc. LEXIS 2468 (N.Y. Sup. Ct. 1939).

C. Service on Attorney

27. Generally; propriety of service on attorney

Service upon a firm of attorneys who gave an admission of service in behalf of the attorney of record was held sufficient. Chase v Bibbins, 71 N.Y. 592, 1877 N.Y. LEXIS 541 (N.Y. 1877).

Usual and permissible manner of serving counter motion papers in action or proceeding is upon attorney for moving party. 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).

Service of notice of motion on attorney of record for adverse party, and not on attorney appearing as “of counsel”, is sufficient in the absence of stipulation consenting that service be made on counsel, or notice of change of address of attorney. Quinn v New York, 25 Misc. 2d 116, 206 N.Y.S.2d 145, 1960 N.Y. Misc. LEXIS 3623 (N.Y. Sup. Ct. 1960).

Service of notice of motion on attorney of record for adverse party, and not on attorney appearing as “of counsel”, is sufficient in the absence of stipulation consenting that service be made on counsel, or notice of change of address of attorney. Quinn v New York, 25 Misc. 2d 116, 206 N.Y.S.2d 145, 1960 N.Y. Misc. LEXIS 3623 (N.Y. Sup. Ct. 1960).

Where party is represented by attorney in action, service of copy of order imposing costs must be made upon attorney in same manner as any other paper in action, and personal service on party is not required. De Ruvo v Paglia, 135 N.Y.S.2d 666, 1954 N.Y. Misc. LEXIS 3043 (N.Y. Sup. Ct. 1954).

Where party is represented by attorney in action, service of copy of order granting costs must be made upon attorney in same manner as any other paper in action, and personal service on party is not required. De Ruvo v Paglia, 135 N.Y.S.2d 666, 1954 N.Y. Misc. LEXIS 3043 (N.Y. Sup. Ct. 1954).

On application by ancillary administrator to remove restrictions forbidding him to compromise claims without court approval and for approval of proposed compromise, service of notice on attorneys of parties was proper. In re Patenotre's Estate, 138 N.Y.S.2d 899, 1955 N.Y. Misc. LEXIS 3407 (N.Y. Sur. Ct. 1955).

An order to show cause which provides that service of a copy on the plaintiff's attorney two days before the return day thereof, requires personal service on the attorney. Marcele v Saltzman, 66 How. Pr. 205, 1884 N.Y. Misc. LEXIS 33 (N.Y. Sup. Ct. 1884).

The attorney of record may be served with notice of motion after judgment, although he had long before settled with his client. Drury v Russell, 27 How. Pr. 130, 1864 N.Y. Misc. LEXIS 154 (N.Y. Sup. Ct. Mar. 1, 1864); MILLER v MART, 37 How. Pr. 1, 1867 N.Y. Misc. LEXIS 332 (N.Y. Sup. Ct. Nov. 1, 1867).

The attorney mentioned in RCP 20, meant "an attorney at law," and not an agent or attorney in fact. Weir v Slocum, 3 How. Pr. 397, 1849 N.Y. Misc. LEXIS 106 (N.Y. Sup. Ct. 1849).

28. —Arbitration

Where notices of intention to conduct arbitration were subscribed by one attorney for all parties, service of motion to stay arbitration was properly served upon such 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).

29. —Attachment

Mail service of notice of application by third-party claimant of attached automobile on attaching plaintiff's attorney was sufficient. Lapides v Finkel, 99 N.Y.S.2d 287, 199 Misc. 253, 1950 N.Y. Misc. LEXIS 1925 (N.Y. Sup. Ct. 1950).

30. —Contempt proceedings

A third person ordered to testify as a witness in supplementary proceedings, who is not personally served with the order and tendered his legal fees, cannot be punished for contempt in failing to obey it. In re Depue, 185 N.Y. 60, 77 N.E. 798, 185 N.Y. (N.Y.S.) 60, 1906 N.Y. LEXIS 874 (N.Y. 1906).

Notice of application to punish husband for nonpayment of alimony must be given to him, as service upon his attorney is insufficient. Goldie v Goldie, 77 A.D. 12, 79 N.Y.S. 268, 12 N.Y. Ann. Cas. 175, 1902 N.Y. App. Div. LEXIS 2793 (N.Y. App. Div. 1902).

An order to show cause why one should not be punished for contempt must be served personally, and service upon counsel is not sufficient. Weeks v Coe, 111 A.D. 337, 97 N.Y.S. 704, 1906 N.Y. App. Div. LEXIS 160 (N.Y. App. Div.), app. denied, 112 A.D. 908, 98 N.Y.S. 1117, 1906 N.Y. App. Div. LEXIS 1136 (N.Y. App. Div. 1906).

Where the order which has been disobeyed has been duly personally served upon a party to an action, any subsequent order in the action to continue the effect thereof or to punish the party for violating the same may be served upon his attorney, this section notwithstanding. Grant v Greene, 121 A.D. 756, 106 N.Y.S. 532, 1907 N.Y. App. Div. LEXIS 1899 (N.Y. App. Div. 1907).

An order must be served upon a party personally in order that he may be punished for civil contempt in failing to comply therewith; this is so although the party appear by attorney and contest the motion for the order. Curtis v Powers, 146 A.D. 246, 130 N.Y.S. 914, 1911 N.Y. App. Div. LEXIS 1861 (N.Y. App. Div. 1911).

Paper to bring a party into contempt cannot be served upon his attorney. Johnson v Ackerman, 192 A.D. 890, 181 N.Y.S. 772, 1920 N.Y. App. Div. LEXIS 7649 (N.Y. App. Div. 1920).

An order to show cause in proceedings to punish a contempt of court may be served on the attorney for the defendant charged with the offense. Lederer v Lederer, 95 N.Y.S. 934, 47 Misc. 471, 1905 N.Y. Misc. LEXIS 281 (N.Y. Sup. Ct.), rev'd, 108 A.D. 228, 95 N.Y.S. 623, 1905 N.Y. App. Div. LEXIS 3151 (N.Y. App. Div. 1905).

An order to show cause why a party to a special proceeding should not be punished for contempt for disobedience of an order made in such proceeding does not institute a new proceeding, but is an order in such special proceeding, and it is properly served upon the attorneys therein of the party proceeded against. In re Shapiro, 118 N.Y.S. 578, 64 Misc. 476, 1909 N.Y. Misc. LEXIS 308 (N.Y. Sup. Ct. 1909).

Order to show cause why judgment debtor should not be punished for contempt for failure to appear for examination was properly served by leaving a copy at his residence between 5 and 6 o'clock in the afternoon. Barrie v Friedman, 139 N.Y.S. 337, 79 Misc. 86, 1913 N.Y. Misc. LEXIS 771 (N.Y. App. Term 1913).

Service of certified copy of alimony order on defendant's attorney and service of copy on defendant suffice as basis for contempt. Shusterman v Shusterman, 56 N.Y.S.2d 380, 184 Misc. 1060, 1945 N.Y. Misc. LEXIS 2033 (N.Y. Sup. Ct.), aff'd, 269 A.D. 788, 56 N.Y.S.2d 397, 1945 N.Y. App. Div. LEXIS 3855 (N.Y. App. Div. 1945).

A party cannot be punished for contempt in disobeying order unless it was personally served on him. McCaulay v Palmer, 40 Hun 38, 2 N.Y. St. 600 (N.Y.).

31. —Foreclosure

Voluntary discontinuance of action to foreclose mortgage as against people could not be effected by plaintiff without giving notice of discontinuance in manner provided by RCP 20. Budget Funding Corp. v Hillside Five Corp., 150 N.Y.S.2d 734, 1956 N.Y. Misc. LEXIS 2546 (N.Y. Sup. Ct. 1956).

32. —Habeas corpus proceedings

An order made in habeas corpus proceedings, holding that the rendition warrant of the governor is invalid and discharging the defendant, is appealable, and such appeal is properly taken by the attorney general by service of the notice of appeal on the clerk and the attorneys for the defendant. In re Scrofford, 12 N.Y.S. 943, 59 Hun 320, 1891 N.Y. Misc. LEXIS 911 (N.Y. Sup. Ct. 1891).

33. —Separation

Where husband appeared generally in wife's action for separation, her notice of motion seeking order restraining prosecution of any foreign divorce may be served upon attorney who appeared for him in separation action, despite attorney's contention that he no longer represented defendant, such motion is part of and incidental to separation action. McCloskey v McCloskey, 128 N.Y.S.2d 24, 204 Misc. 898, 1953 N.Y. Misc. LEXIS 2617 (N.Y. Sup. Ct. 1953).

Where attorney appeared for defendant wife in husband's action for separation, she remained bound by such representation of record so that husband could serve motion papers upon her attorney, though she had discharged him prior to such service. Immerman v Immerman, 134 N.Y.S.2d 296, 1954 N.Y. Misc. LEXIS 2518 (N.Y. Sup. Ct. 1954).

34. —Striking party

Where in an action for the foreclosure of a mortgage, one H was named as a defendant, and he, after a motion to strike his name from the papers on the ground that he was not a necessary party, had been noticed, served notice of appearance; notice of the motion then pending, to strike his name out of the papers, should have been served upon his attorney, and that not having been done an application made by him to vacate an order granting the motion to strike his name from the complaint, etc., should be granted. STEPHENS v HALL, 10 N.Y.S. 753, 57 Hun 587, 25 Abb. N. Cas. 300, 1890 N.Y. Misc. LEXIS 3645 (N.Y. App. Term 1890).

35. Personal delivery to attorney

Delivery to the attorney for the adverse party of a copy of the offer of judgment and affidavit required by former CPA § 179, was sufficient service. Smith v Kerr, 1 N.Y.S. 454, 49 Hun 29, 1888 N.Y. Misc. LEXIS 1392 (N.Y. Sup. Ct. 1888).

36. Leaving paper in attorney's office

Where the office is closed he cannot have it unlocked and serve the paper by leaving it in a conspicuous place in the office. Vail v Lane, 67 Barb. 281, 4 Hun 653, 1875 N.Y. App. Div. LEXIS 30 (N.Y. App. Term May 3, 1875).

Where the door is unlocked during business hours, service may be made by entering the office and leaving the paper in a conspicuous place, although there was no one present. Haight v Moore (1873) 36 Super Ct (4 Jones & S) 294.

37. —Service on clerk

Service on an attorney's clerk. See PADDOCK v BEEBEE, 1800 N.Y. LEXIS 163 (N.Y. Sup. Ct. Oct. 1, 1800).

38. —Service on person in charge

A delivery to a person found in charge of the office is sufficient service. Gross v Clark, 24 Hun 343 (N.Y. 1881).

39. Leaving paper in letterbox, transom, opening in office door, or under office door

Date of mailing notice of appeal is date of service, and not date of receipt of mailed notice. Stevens v State, 94 N.Y.S.2d 355, 197 Misc. 315, 1950 N.Y. Misc. LEXIS 1341 (N.Y. Ct. Cl.), aff'd, 277 A.D. 418, 100 N.Y.S.2d 826, 1950 N.Y. App. Div. LEXIS 3075 (N.Y. App. Div. 1950).

Service may not be made by dropping the paper in a letter box outside the office in the building in which the attorney has his office. 21 Abb. N. Cas. 214, 13 N.Y. St. 752.

Proper service is not effected by throwing the paper through a fanlight or transom, or by pushing it under the door. Haight v Moore (1873) 36 Super Ct (4 Jones & S) 294; .

Where service of a notice of appeal was attempted to be made upon an attorney by sliding it through a slot in his office door which was surmounted with a brass plate with the words,

“letters” upon it, attempted service was insufficient; it was not a service of a paper by leaving it in a conspicuous place in the attorney’s office; such a service could only be made when the office door was unlocked. Livingstn v New York E. R. Co., 11 N.Y.S. 359, 58 Hun 131, 1890 N.Y. Misc. LEXIS 746 (N.Y. Sup. Ct.), aff'd, 125 N.Y. 695, 26 N.E. 751, 125 N.Y. (N.Y.S.) 695, 1890 N.Y. LEXIS 1866 (N.Y. 1890).

40. —Necessity for enclosure and address

The attempted service of an answer and a demand for a bill of particulars upon the plaintiff’s attorney, by depositing them in his letter box, without inclosing them in an envelope or sealed wrapper, and without addressing them to anyone, is not a valid service. Fitzgerald v Dakin, 101 A.D. 261, 91 N.Y.S. 1003, 1905 N.Y. App. Div. LEXIS 349 (N.Y. App. Div. 1905).

Service may be properly made by dropping the paper, though not enclosed in an envelope and addressed, through a slit or opening for letters in the closed door of the attorney’s office into a box or receptacle attached to the door on the inside for receiving letters during the attorney’s absence. 21 Abb. N. Cas. 214, 13 N.Y. St. 752.

41. Effect of attorney's failure to find papers

That the attorney did not find the papers furnishes no answer to positive proof of their services. Corn Exch. Bank v Blye, 106 N.Y. 673, 13 N.E. 937, 106 N.Y. (N.Y.S.) 673, 1887 N.Y. LEXIS 961 (N.Y. 1887).

42. Effect of attorney's absence

Where the attorney of the plaintiff removed from the state, notwithstanding defendant had notified plaintiff to appoint another attorney, and he had not complied therewith, defendant could not move to dismiss writ of error unless he first notified plaintiff. Jewell v Schouten, 1 N.Y. 241, 1 N.Y. (N.Y.S.) 241, 1818 N.Y. LEXIS 1 (N.Y. 1848).

Where an attorney absents himself so as to prevent service, a service made at the earliest day thereafter is sufficient. Lord v Vandenburgh, 15 How. Pr. 363, 1858 N.Y. Misc. LEXIS 362 (N.Y. Super. Ct. Mar. 20, 1858).

D. Service by Mail

43. Generally

Where a party was entitled to eight and had only five days' notice served by mail the special term did not acquire jurisdiction. Palmer v Rotary Realty Co., 233 A.D. 764, 250 N.Y.S. 187, 1931 N.Y. App. Div. LEXIS 12481 (N.Y. App. Div. 1931).

Service by mail had to strictly follow RCP 20 to insure delivery. Anthony v Schofield (1943) 265 App Div 423, 39 NYS2d 225 tating that proof of service failing to designate building in which attorney had office was insufficient.

Under Residential Rent Law, where notice of denial of protest of rent regulation is given by mail, 30-day period for review of such denial begins to run from date of mailing or administrator's order to aggrieved party. R. E. Associates Inc. v McGoldrick, 278 A.D. 347, 105 N.Y.S.2d 152, 1951 N.Y. App. Div. LEXIS 3808 (N.Y. App. Div. 1951).

Service of summons by depositing in mail box in business building was not good. B. Berman, Inc. v American Fruit Distributing Co., 186 N.Y.S. 376, 114 Misc. 345, 1921 N.Y. Misc. LEXIS 1086 (N.Y. Sup. Ct. 1921).

Where motion papers to consolidate actions were served by mail on March 26 and motion was returnable April 7, service was timely, and limitation contained in notice of motion in reference to serving answering affidavits merely became ineffective. Sodus Fruit Farm, Inc. v Williams, 41 N.Y.S.2d 49, 181 Misc. 397, 1943 N.Y. Misc. LEXIS 1779 (N.Y. Sup. Ct. 1943).

Seven days' notice of motion by mail for summary judgment is required. Rabinowitz v Automem, Inc., 71 N.Y.S.2d 8, 188 Misc. 652, 1947 N.Y. Misc. LEXIS 2493 (N.Y. City Ct. 1947).

Where service was made by mail in an action against defendant for support by serving the defendant or his attorney in their respective places of business in New York as prescribed by RCP 20 such service was sufficient service of the order to show cause to advise the defendant of relief sought against him and gave him an opportunity to be heard. Burstein v Burstein, 12 Misc. 2d 521, 155 N.Y.S.2d 288, 1956 N.Y. Misc. LEXIS 1771 (N.Y. Sup. Ct.), aff'd, 2 A.D.2d 879, 156 N.Y.S.2d 996, 1956 N.Y. App. Div. LEXIS 4017 (N.Y. App. Div. 1st Dep't 1956).

Service of an answer by mail is regular where the person making the service and the person to be served both reside in the same place. 7 N.Y. St. 764.

To make service by mail under RCP 20 regular the order had to provide for it. Marcele v Saltzman, 66 How. Pr. 205, 1884 N.Y. Misc. LEXIS 33 (N.Y. Sup. Ct. 1884).

44. Subject matter of service by mail

Certified copy of judgment may be served by mail. Stevens v State, 277 A.D. 418, 100 N.Y.S.2d 826, 1950 N.Y. App. Div. LEXIS 3075 (N.Y. App. Div. 1950), app. dismissed, 303 N.Y. 613, 101 N.E.2d 486, 303 N.Y. (N.Y.S.) 613, 1951 N.Y. LEXIS 1047 (N.Y. 1951), app. dismissed, 303 N.Y. 801, 104 N.E.2d 360, 303 N.Y. (N.Y.S.) 801, 1952 N.Y. LEXIS 1290 (N.Y. 1952).

Order adjudging a judgment debtor guilty of contempt and imposing a fine may be served by mail. In re Landes, 242 N.Y.S. 710, 136 Misc. 719, 1930 N.Y. Misc. LEXIS 1344 (N.Y. City Ct. 1930).

Notice of motion under CPA § 793 (§§ 5205, 5225, 5241 herein) for order directing that judgment debtor pay judgment in instalments could be served by mail. Adirondack Furniture Corp. v Crannell, 5 N.Y.S.2d 840, 167 Misc. 599, 1938 N.Y. Misc. LEXIS 1747 (N.Y. County Ct. 1938).

Where wife after obtaining separation moved to enjoin nonresident husband from prosecuting Nevada action for divorce by order to show cause directing service by mail on his New York office and on his attorney in separation action, such service was insufficient to initiate such new

proceeding. Long v Long, 94 N.Y.S.2d 83, 196 Misc. 982, 1949 N.Y. Misc. LEXIS 3049 (N.Y. Sup. Ct. 1949), aff'd, 277 A.D. 1033, 100 N.Y.S.2d 713, 1950 N.Y. App. Div. LEXIS 4385 (N.Y. App. Div. 1950).

Mail service of notice of application by third-party claimant of attached automobile on attaching plaintiff’s attorney was proper and sufficient. Lapides v Finkel, 99 N.Y.S.2d 287, 199 Misc. 253, 1950 N.Y. Misc. LEXIS 1925 (N.Y. Sup. Ct. 1950).

Service by mail of order adjudging judgment debtor in contempt for failing to appear for examination in supplementary proceedings constituted “due service” where original motion to punish for contempt had been personally served on judgment debtor and he was fully aware of pending proceeding. Heidgerd v Garlock, 30 Misc. 2d 562, 219 N.Y.S.2d 874, 1961 N.Y. Misc. LEXIS 2406 (N.Y. Sup. Ct. 1961).

Service by mail of petition and notice of motion to stay arbitration did not institute such proceeding, as personal service was required. Sloviko v Dumas, 88 N.Y.S.2d 401, 1949 N.Y. Misc. LEXIS 2111 (N.Y. Sup. Ct. 1949).

45. What constitutes service by mail

The test in determining whether service of legal papers by mail is sufficient, is whether or not the papers come into the hands of the attorney for the adverse party; if by reason of the presence of a return card on the envelope in which the papers are mailed, or if by reason of a shortage of postage the papers do not actually come into the hands of the attorney for the adverse party, there is no service, but if such causes do not in effect operate to prevent the actual receipt of the papers they become immaterial defects and do not invalidate the service. Appeal Printing Co. v Sherman, 99 A.D. 533, 91 N.Y.S. 178, 15 N.Y. Ann. Cas. 387, 1904 N.Y. App. Div. LEXIS 3114 (N.Y. App. Div. 1904).

A notice properly sealed and with proper postage and address, deposited in the regular course of the mail, is sufficiently served even though it never reaches the person to whom addressed.

Saffold v Fellows, 219 A.D. 865, 221 N.Y.S. 197, 1927 N.Y. App. Div. LEXIS 12701 (N.Y. App. Div. 1927).

Service by mail is complete when the paper served is deposited in the post office. People ex rel. Werner v West Side B. L. Cong. & Ben. Soc., 99 N.Y.S. 206, 51 Misc. 82, 1906 N.Y. Misc. LEXIS 236 (N.Y. Sup. Ct. 1906).

46. —Time of service

Where defendant mailed its answer within twenty days under CPA § 263 (§ 3012(a) herein), time of mailing answer and not time of its receipt constituted service. Jackson & Perkins Co. v Rose Fair, Inc., 278 A.D. 890, 104 N.Y.S.2d 892, 1951 N.Y. App. Div. LEXIS 5079 (N.Y. App. Div. 1951).

Order to show cause, mailed on last day but arriving on next day, is too late. Gallagher v Cohen, 46 N.Y.S.2d 333, 180 Misc. 1030, 1943 N.Y. Misc. LEXIS 2771 (N.Y. Sup. Ct. 1943).

Where statute permits service of notice of claim to be made by mail, service is effected on the date of mailing and not on the date of receipt of the notice and mailing before expiration of time for service timely. Desroches v Caron, 11 Misc. 2d 838, 174 N.Y.S.2d 627, 1958 N.Y. Misc. LEXIS 3454 (N.Y. Sup. Ct. 1958).

Service by mail, to be good, must be by deposit in the mail at such an hour on the last day, that it could go by mail on the same day, or by the first mail on the next day. Green v Warren, 14 Hun 434 (N.Y.).

47. Place of mailing

An order of publication directing the deposit thereof in the general post office in New York City, is not complied with by depositing it in a mail chute located in an office building in that city. Korn v Lipman, 201 N.Y. 404, 94 N.E. 861, 201 N.Y. (N.Y.S.) 404, 1911 N.Y. LEXIS 1256 (N.Y.),

reh'g denied, 202 N.Y. 544, 95 N.E. 1132, 202 N.Y. (N.Y.S.) 544, 1911 N.Y. LEXIS 1096 (N.Y. 1911).

A branch post office in the city of New York is a “post office” where summons and complaint and order of publication could be deposited. Von Der Heyde v Ditmars, 174 A.D. 390, 161 N.Y.S. 780, 1916 N.Y. App. Div. LEXIS 8303 (N.Y. App. Div. 1916).

Order for mailing summons and complaint at the post office at New York City was sufficiently complied with by mailing at the Wall Street Station. Tate v Lapen, 213 A.D. 334, 210 N.Y.S. 475, 1925 N.Y. App. Div. LEXIS 8489 (N.Y. App. Div. 1925).

48. Effect of registering mail

There can be no objection to sending a notice by registered mail with a request for a return receipt thereof. Saffold v Fellows, 219 A.D. 865, 221 N.Y.S. 197, 1927 N.Y. App. Div. LEXIS 12701 (N.Y. App. Div. 1927).

The registry of the package containing the plaintiff’s notice of trial, served by mail, does not invalidate such service. Sears v Tenhagen, 100 N.Y.S. 469, 50 Misc. 275, 1906 N.Y. Misc. LEXIS 58 (N.Y. County Ct. 1906).

Garnishee execution, when presented by registered mail with return receipt requested is presented as effectively as by personal service. Triangle Publications, Inc. v Worth Advertising Agency Co., 103 N.Y.S.2d 714, 200 Misc. 671, 1951 N.Y. Misc. LEXIS 1667 (N.Y. Mun. Ct. 1951).

49. Effect of “return” indorsement on envelope

Service by mail is not vitiated by an indorsement on the envelope to return in five days if not called for, unless it appears that in consequence thereof the paper was not received. Appeal Printing Co. v Sherman, 99 A.D. 533, 91 N.Y.S. 178, 15 N.Y. Ann. Cas. 387, 1904 N.Y. App. Div. LEXIS 3114 (N.Y. App. Div. 1904).

50. Effect of failure to prepay postage

When legal papers are served by mail without postage being fully prepaid, the attorney to whom they are addressed is under no obligation to pay the postage due and may refuse to receive the package tendered by the postman. Kuh v Goldman, 119 A.D. 148, 104 N.Y.S. 255, 1907 N.Y. App. Div. LEXIS 3894 (N.Y. App. Div. 1907).

Where plaintiff's attorney served complaint by mail without prepaying postage, defendant's attorney was justified in his refusal to pay the postage due, and there was no service where postman refused to deliver envelope. Byron v La Mura Contracting Co., 187 A.D. 836, 176 N.Y.S. 416, 1919 N.Y. App. Div. LEXIS 7115 (N.Y. App. Div. 1919).

Retention of motion papers, mailed without sufficient postage, waived such defect. Meyers v Jeffe, 108 N.Y.S.2d 606, 1951 N.Y. Misc. LEXIS 2560 (N.Y. Sup. Ct. 1951).

Where a notice of trial is served on the attorney of an adverse party residing in the same city, the correct address, street, number, etc., must be given upon a postpaid wrapper where such address appears upon papers which have been served in the case. Seifert v Caverly, 18 N.Y.S. 327, 63 Hun 604 (1892).

51. Presumptions

No legal presumption exists that because a letter is stamped as received at the post office or a substation on a particular date, that it was deposited in the mailbox on that date or within a few hours of collection as regulated by the ordinary rules or customs of the post office fixing specific times of collection. National City Bank v Horowitz, 267 N.Y.S. 527, 149 Misc. 531, 1933 N.Y. Misc. LEXIS 1692 (N.Y. City Ct. 1933).

Where it does not appear to what place a letter mailed, postage prepaid, was addressed, there is no presumption that it was delivered at any place, or to the person to whom it was addressed. A course of business whereby after letters are signed they are copied in a letter book,

addressed and put in the mail by either a clerk or messenger, will not raise a presumption that a particular letter was addressed to the person to whom it was intended to be sent at a particular place, or that the messenger knew the correct address of such person. Mayor, etc., of New York v Finn, 11 N.Y.S. 580, 58 N.Y. Super. Ct. 360, 1890 N.Y. Misc. LEXIS 2242 (N.Y. Super. Ct. 1890).

A properly addressed and postpaid letter will be presumed to have been received. McCoy v New York, 46 Hun 268, 11 N.Y. St. 504 (N.Y.).

Where a notice of trial is served on the attorney of an adverse party residing in the same city, the correct address, street, number, etc., must be given upon a postpaid wrapper where such address appears upon papers which have been served in the case. Seifert v Caverly, 18 N.Y.S. 327, 63 Hun 604 (1892).

52. Extension of three days

Workmen's Compensation Act, § 23, providing that an appeal may be taken to the Appellate Division "within thirty days after notice of the filing of the award or decision of the Commission has been sent to the parties," and that "otherwise such appeals shall be subject to the law and practice applicable to appeals in civil actions," held to authorize that court to entertain an appeal taken thirty-two days after notice of the award appealed from was mailed to the parties, in view of Code of Civil Procedure § 798 (substantially CPA § 164), the word "sent" implying either personal service or service by mail. Adams v Atlanta Const. Co., 198 A.D. 430, 190 N.Y.S. 681, 1921 N.Y. App. Div. LEXIS 8115 (N.Y. App. Div. 1921).

Where decision of board was served by mail, such service was not complete until three days later, so that notice of appeal by claimant's attorney who received copy of decision on August 1 was timely served on August 21. Matessa v Pennsylvania R. Co., 260 A.D. 975, 23 N.Y.S.2d 358, 1940 N.Y. App. Div. LEXIS 5659 (N.Y. App. Div. 1940).

Where notice of compensation award was mailed to city, city was entitled to have three days added to ten-day period, and so payment on 13th day was timely. Bolton v New York, 264 A.D. 964, 37 N.Y.S.2d 148, 1942 N.Y. App. Div. LEXIS 5561 (N.Y. App. Div. 1942).

Six months period of limitation on action by injured workman against negligent third person dates from giving of notice of award, and where notice is served by mail, three days more are added. Weingarten v Cohen, 275 A.D. 253, 89 N.Y.S.2d 356, 1949 N.Y. App. Div. LEXIS 3754 (N.Y. App. Div.), aff'd, 300 N.Y. 528, 89 N.E.2d 251, 300 N.Y. (N.Y.S.) 528, 1949 N.Y. LEXIS 1409 (N.Y. 1949).

CPA § 164 which extended a party's time three days where an answer was served by mail, did not apply to the Municipal Court of the City of New York where issue was joined under the Municipal Court Code when the answer was filed in the clerk's office and not when it was served on plaintiff by mail. Shottenfeld v Sonia Waist & Dress Co., 287 N.Y.S. 1021, 159 Misc. 777, 1936 N.Y. Misc. LEXIS 1158 (N.Y. Mun. Ct. 1936).

Where notice of motion under CPA §§ 1291 (§ 7804(c) herein) and 1293 (§§ 404, 780(f) herein) was mailed to petitioner, three days had to be added making total of five days' notice required, but two days' notice of motion under CPA § 1294 (§ 405 herein) was sufficient though served by mail. Doch v O'Connell, 107 N.Y.S.2d 348, 201 Misc. 80, 1951 N.Y. Misc. LEXIS 2355 (N.Y. Sup. Ct. 1951).

Where order suspending petitioner's operator's license was served on him by mail, his time to review such proceeding under CPA § 1286 (§ 217 herein) was extended three days. Soffer v MacDuff, 130 N.Y.S.2d 217, 205 Misc. 972, 1954 N.Y. Misc. LEXIS 2011 (N.Y. Sup. Ct. 1954).

Where answer served by mail on September 8, motion under RCP 103 on October 4, twenty-six days thereafter, was held untimely, since the period is measured from date of mailing, and not of receipt. Roberts v Rothstein, 32 Misc. 2d 643, 224 N.Y.S.2d 139, 1961 N.Y. Misc. LEXIS 1960 (N.Y. Sup. Ct. 1961).

Mailing of notice of compensation award to injured person added three days to running of six-month period for commencing claimant's action. Schulze v Park Ave. Estates, Inc., 143 N.Y.S.2d 677, 1955 N.Y. Misc. LEXIS 2879 (N.Y. Sup. Ct. 1955).

Where defendant served his answer by mail plaintiff was entitled to twenty-three days (CPA § 164) within which to move against the answer. Benn v Lucks, 201 N.Y.S.2d 18 (N.Y. Sup. Ct. 1960).

53. —Time to serve complaint

Where notice of appearance is served by mail, demanding service of complaint, time for such service is extended. Moses v Benjamin, 55 N.Y.S.2d 743, 185 Misc. 50, 1945 N.Y. Misc. LEXIS 1918 (N.Y. Sup. Ct. 1945).

54. —Motion to dismiss complaint

Upon the complaint being served by mail, a motion to dismiss it on the ground of another action pending, the objection not appearing on the face of the complaint, had to be made as provided in CPA § 164 and by RCP 107 (Rule 3211 herein) and within 23 days after service of the complaint. Thurman v B. & E. Gordon Co., 215 A.D. 187, 213 N.Y.S. 249, 1926 N.Y. App. Div. LEXIS 10935 (N.Y. App. Div. 1926).

55. —Time to serve answer

The time for reply or answer to an answer containing a counterclaim and served by mail is twenty-three days and the defendant has that time in which to serve an amended answer. New York C. R. Co. v Gugino, 221 N.Y.S. 608, 129 Misc. 196, 1927 N.Y. Misc. LEXIS 764 (N.Y. County Ct. 1927).

Service by mail is deemed effectuated on the mailing date and not the date of receipt and defendant's time to answer complaint served by mail is computed from mailing date. Schraub v Landes, 31 Misc. 2d 817, 220 N.Y.S.2d 251, 1961 N.Y. Misc. LEXIS 2222 (N.Y. Sup. Ct. 1961).

Where answer served by mail on September 8, motion under RCP 103 on October 4, twenty-six days thereafter, was held untimely, since the period is measured from date of mailing, and not of receipt. Roberts v Rothstein, 32 Misc. 2d 643, 224 N.Y.S.2d 139, 1961 N.Y. Misc. LEXIS 1960 (N.Y. Sup. Ct. 1961).

56. —Time to move for change of venue

A defendant's attorney who moves the court for change of venue two days after he receives notice by mail from plaintiff's attorney that he will not consent to the change, does so in time in view of the plaintiff, a foreign corporation, having laid the venue in a county other than that of defendant's residence and the three extra days allowed for notices by mail making defendant's motion within time. Peerless Motor Co. v Hambleton, 219 A.D. 268, 219 N.Y.S. 641, 1927 N.Y. App. Div. LEXIS 10897 (N.Y. App. Div. 1927).

Where defendant served by mail with his answer demand for change of venue pursuant to RCP 146 (Rule 511(a)(b) herein), but plaintiff ignored his request, defendant was entitled to additional three days within which to serve notice of motion to change venue. Crawford Bros., Inc. v Holdridge, 144 N.Y.S.2d 202, 208 Misc. 447, 1955 N.Y. Misc. LEXIS 3704 (N.Y. Sup. Ct. 1955).

Plaintiff's service by mail of answering affidavit to defendant's demand for change of venue extended defendant's time to move for change of three days. Chason v Airways Hotel, Inc., 18 Misc. 2d 96, 184 N.Y.S.2d 125, 1959 N.Y. Misc. LEXIS 4089 (N.Y. Sup. Ct. 1959).

57. —Notice of trial

A notice of trial may be served by mail sixteen days before the day of trial including the day of service, and it is not necessary that twice fourteen days should elapse. Ahern v Ahern, 61 N.Y.S. 931, 29 Misc. 421, 1899 N.Y. Misc. LEXIS 826 (N.Y. Sup. Ct. 1899).

Mailing of a notice of trial only seven days before date fixed for trial did not give municipal court jurisdiction to enter judgment on default, under Municipal Court Code, § 95. Rethy v Orszag, 169 N.Y.S. 235, 102 Misc. 540, 1918 N.Y. Misc. LEXIS 836 (N.Y. App. Term 1918).

Only seven days are required for the service of a notice of trial by mail in the Municipal Court of the City of New York, including the day of service. Haber v Gingold, 11 N.Y.S.2d 187, 170 Misc. 817, 1939 N.Y. Misc. LEXIS 1709 (N.Y. Mun. Ct. 1939).

Service of a notice of trial by mail less than sixteen days before the term is a nullity and void, and it is not necessary to return such notice. Walker v Chilson, 20 N.Y.S. 527, 65 Hun 529 (1892).

58. —Notice of rejection of claim

Service by administrator of rejection of claim by mail did not increase the time in which he might file his consent to submit the same to surrogate so that action brought before increased time would be waiver of costs. Persbacker v Murphy, 153 A.D. 492, 138 N.Y.S. 537, 1912 N.Y. App. Div. LEXIS 11165, 1912 N.Y. App. Div. LEXIS 9304 (N.Y. App. Div. 1912).

59. —Notice of appeal

Where copy of order was personally served on appellant’s attorney, he was not entitled to add three days to 30-day period. Nicholaus v Doe, 261 A.D. 1020, 25 N.Y.S.2d 989, 1941 N.Y. App. Div. LEXIS 8575 (N.Y. App. Div. 1941).

Where judgment was mailed August 24 and notice of appeal was mailed September 24, service of notice of appeal was not timely. Stevens v State, 277 A.D. 418, 100 N.Y.S.2d 826, 1950 N.Y. App. Div. LEXIS 3075 (N.Y. App. Div. 1950), app. dismissed, 303 N.Y. 613, 101 N.E.2d 486,

303 N.Y. (N.Y.S.) 613, 1951 N.Y. LEXIS 1047 (N.Y. 1951), app. dismissed, 303 N.Y. 801, 104 N.E.2d 360, 303 N.Y. (N.Y.S.) 801, 1952 N.Y. LEXIS 1290 (N.Y. 1952).

E. Person by Whom Served

60. Generally

SCA § 59 distinguished as to who may serve process or citation to commence action or proceeding. Everdyke v Adler, 27 N.Y.S.2d 159, 176 Misc. 283, 1941 N.Y. Misc. LEXIS 1706 (N.Y. Sup. Ct. 1941).

61. Service by party

An order for the examination of a third party in proceedings supplementary to execution may not lawfully be served upon the third party by the judgment creditor. In re Dawes, 108 A.D. 174, 96 N.Y.S. 52, 1905 N.Y. App. Div. LEXIS 3138 (N.Y. App. Div. 1905).

As CPA § 220 and Justice Ct Act, § 466, forbade a party in an action to service a summons, a summons served by the plaintiff, in an action in a justice’s court gave the court no jurisdiction. Smith v Burliss, 52 N.Y.S. 841, 23 Misc. 544, 1898 N.Y. Misc. LEXIS 311 (N.Y. County Ct. 1898).

Writ of mandamus could not be served by relator. People ex rel. Toomey v Heath, 189 N.Y.S. 905, 1921 N.Y. Misc. LEXIS 1630 (N.Y. Sup. Ct. 1921).

Service by a party to a special proceeding of the process commencing it is a mere irregularity and does not make the proceeding void. Losey v Stanley, 31 N.Y.S. 950, 83 Hun 420 (1894), rev'd, 147 N.Y. 560, 42 N.E. 8, 147 N.Y. (N.Y.S.) 560, 1895 N.Y. LEXIS 980 (N.Y. 1895).

62. Service by guardian ad litem

Guardian ad litem of infant plaintiff in a separation action is not a party to the action, and can serve the summons therein. Donnelly v Donnelly, 29 Misc. 2d 469, 217 N.Y.S.2d 850, 1961 N.Y. Misc. LEXIS 2869 (N.Y. Sup. Ct. 1961).

63. Service by officer of corporation

Service may be made by an officer or director of a plaintiff corporation. Outdoor Supply Co. v Westhome Sec. Corp., 249 N.Y.S. 571, 140 Misc. 48, 1931 N.Y. Misc. LEXIS 1259 (N.Y. App. Term 1931).

Opinion Notes

Agency Opinions

1. In general

The clerk of a village court may prepare summonses and transmit them to a process server for service on behalf of individual plaintiffs appearing without an attorney, but may not do so for corporate plaintiffs. The clerk may prepare the certificate of service for execution by a court enforcement officer, unless otherwise prohibited by rule of the Administrative Board of the Judicial Conference, but may not prepare the affidavit of service for a process server other than an enforcement officer. 1983 N.Y. Op. Att'y Gen. No. 83-69, 1983 N.Y. AG LEXIS 23.

Claim that agency can refuse to accept request for records under Freedom of Information Law made by fax transmission based on CLS CPLR § 2103 would be misplaced, since that provision deals with service of papers in legal proceeding and does not pertain or refer to request made to governmental entity under Freedom of Information Law. Comm on Open Gov’t FOIL-AO-9232.

Research References & Practice Aids

Cross References:

Summons and the service thereof, CPLR 305.– 318., 3031.

Service of notice of petition, CPLR § 403.

Service of note of issue on new party, CPLR § 3402.

Service of copy of order of attachment, CPLR §§ 6214., 6215.

Service of affidavit, order of seizure of chattel and undertaking, CPLR § 7102(b).

Service in connection with the abandoned property law, CLS Aband Prop § 202.

Service on foreign bank, trust or investment company, CLS Bank §§ 34., 73(3)., 131(3)., 200(3)., 207., 343-a.

Service of summons or notice of petition in certain statutory actions or proceedings, CLS Bus Corp §§ 306., 307., 404., 511., 609., 619., 623., 624., 625., 626., 630., 711., 724.; Civ R § 62.; Correc § 21.; County § 223.; Dr & Cr §§ 125.– 127., 254.; Gen Bus § 189.; High § 30.; Men Hyg §§ 31.35., 81.13.; R R §§ 174., 180.; Real P § 385.; RPAPL §§ 1103., 1443., 1606., 1607., 1641., 1651., 1931., 1943.; Rel Corp §§ 13., 16.– 18.; Transp Corp § 86.; Vill § 6-616.

Service on attorney general in proceeding affecting corporation, CLS Bus Corp § 1304(a)(5).

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

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

Proceeding to obtain new stock certificate, CLS Gen Bus secmk;394.

Service on owner of notice of filing of map of property to be appropriated, CLS PRHPL § 3.19(6).

Action to abate house of prostitution, CLS Pub Health § 2321.

Service of notice of application for order to compel payment of proceeds paid into court, CLS RPAPL § 963.

Duty of tenant to notify landlord of summons, CLS Real P § 225.

Service on nonresident brokers, CLS Real P § 442-g.

Power of policeman to serve certain process, CLS Sec Cl Cities § 143.

Service of process in surrogate's court, CLS SCPA §§ 307.– 314.

Service of New Jersey process in New York waters, CLS State § 7.

Service of process on lands of the United States, CLS State §§ 22.– 35., 53., 59-f.

Service on nonresident motorist, CLS Veh & Tr § 253.

Service on resident motorist removing from state, CLS Veh & Tr § 254.

Codes, Rules and Regulations:

Service of papers. 12 NYCRR Part 255.

Practice Rules of the Appellate Division. 22 NYCRR § 1250.1 et seq.

Parties and Pleadings. 8 NYCRR Part 275.

Federal Aspects:

Service of process in United States District Courts, Rule 4 of Federal Rules of Civil Procedure, USCS Court Rules.

Service of pleadings and other papers in United States District Courts, Rule 5 of Federal Rules of Civil Procedure, USCS Court Rules.

Time for service of process in pleadings in United States District Courts, Rule 6 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.

Service of subpoena in United States District Courts, Rule 45(b) of Federal Rules of Civil Procedure, USCS Court Rules.

Time for serving affidavits for new trials or amendment of judgments in United States District Courts, Rule 59(c) of Federal Rules of Civil Procedure, USCS Court Rules.

Service of summons in Internal Revenue proceedings, 26 USCS § 7603.

Service of summons under Anti-Dumping Act, 28 USCS § 2632.

Law Reviews:

Knight, Civil Practice Law and Rules: Article 21—Papers: extension of time for service by mail does not apply to administrative proceedings. 58 St. John's L. Rev. 184.

Treatises

Matthew Bender’s New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2103, Service of Papers.

2 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 19.06.

1 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 306.09, 309.10, 310.02; 2 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 403-a, 404.09; 6 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶2701.06.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 34.01, 36.01, 36.02.; 3 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 48.07.

Matthew Bender’s New York CPLR Manual:

CPLR Manual § 14.02. Form of papers.

CPLR Manual § 14.04. Filing of papers; index numbers.

CPLR Manual § 14.05. Service of papers.

CPLR Manual § 14.06. Stipulations.

CPLR Manual § 14.07. Certification by attorney.

CPLR Manual § 14.08. Affirmation of truth of statements by attorneys, physicians, osteopaths and dentists.

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

CPLR Manual § 15.03. Motion procedure.

CPLR Manual § 15.04. Cross-motions.

CPLR Manual § 15.06. Conversion of motions and applications.

CPLR Manual § 18.02. Money or securities paid into court.

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

CPLR Manual § 20.10. Disclosure devices — the deposition.

CPLR Manual § 20.14. Disclosure devices — demand for address.

CPLR Manual § 24.01. Definition and content of judgment.

CPLR Manual § 26.10. Taking the appeal.

CPLR Manual § 27.09. Disclosure.

CPLR Manual § 27.22. Proceeding to determine adverse claims.

CPLR Manual § 28.19. Procedure for obtaining preliminary injunction.

CPLR Manual § 30.03. Sheriff’s duties upon service of order.

CPLR Manual § 32.04. Procedure.

CPLR Manual § 33.17. Taxation of costs.

Matthew Bender's New York Practice Guides:

LexisNexis Practice Guide New York e-Discovery and Evidence § 9.11

LexisNexis Practice Guide New York e-Discovery and Evidence § 9.09

1 New York Practice Guide: Real Estate §§ 1.13., 2.29., 2.30.; 3 New York Practice Guide: Real Estate § 26.04; 4 New York Practice Guide: Real Estate § 31.08.

1 New York Practice Guide: Domestic Relations §§ 4.04, 4.06, 4.07, 4.13, 11.18, 11.21, 11.22, 12.04, 12.16, 12.22; 2 New York Practice Guide: Domestic Relations §§ 16.10, 34.25, 34.27; 3 New York Practice Guide: Domestic Relations § 36.05; 4 New York Practice Guide: Domestic Relations § 44.08, 48.09, 48.15.

1 New York Practice Guide: Probate and Estate Administration § 6.07.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 2.14. Effecting Service by Mail.

LexisNexis AnswerGuide New York Civil Litigation § 7.04. Serving Motion Papers.

LexisNexis AnswerGuide New York Civil Litigation § 7.05. Filing Motion Papers.

LexisNexis AnswerGuide New York Negligence § 2.17. Preparing Answer.

LexisNexis AnswerGuide New York Negligence § 3.27. Commencing Action.

LexisNexis AnswerGuide New York Negligence § 4.27. Commencing Action.

LexisNexis Answer Guide New York Negligence § 6.26. Commencing Action.

LexisNexis Answer Guide New York Negligence § 7.28. Responding to Complaint.

Warren's Weed New York Real Property:

Warren's Weed: New York Real Property §§ 3.25, 3.27, 3.59.

Matthew Bender's New York Checklists:

Checklist for Obtaining Jurisdiction LexisNexis AnswerGuide New York Civil Litigation § 2.02.

Checklist for Effecting Service Upon Natural Person LexisNexis AnswerGuide New York Civil Litigation § 2.09.

Checklist for Pretrial Motions Generally LexisNexis AnswerGuide New York Civil Litigation § 7.02.

Checklist for Obtaining, Vacating, or Modifying Temporary Restraining Order (TRO) or Preliminary Injunction LexisNexis AnswerGuide New York Civil Litigation § 14.16.

Forms:

Bender’s Forms for the Civil Practice Form No. CPLR 2103:1 et seq.

LexisNexis Forms FORM 75-CPLR 2103:1.— Affidavit of Personal Service of Paper Upon Attorney in Action.

LexisNexis Forms FORM 75-CPLR 2103:10.— Affidavit of Service Upon A Party by Leaving Papers in an Action at His or Her Residence.

LexisNexis Forms FORM 75-CPLR 2103:11.— Affidavit of Service of Paper in Action by Filing.

LexisNexis Forms FORM 75-CPLR 2103:12.— Affidavit of Service of Papers in an Action by Filing Where Party Has Not Appeared by an Attorney.

LexisNexis Forms FORM 75-CPLR 2103:13.— Demand for List of Parties Appearing.

LexisNexis Forms FORM 75-CPLR 2103:14.— Notice of Motion to Dismiss Appeal on the Grounds That Appeal Was Not Timely Made.

LexisNexis Forms FORM 75-CPLR 2103:15.— Affirmation in Support of Motion to Dismiss Appeal on the Grounds That The Appeal Was Not Timely Made.

LexisNexis Forms FORM 75-CPLR 2103:16.— Notice of Motion to Set Aside Foreclosure Sale on the Grounds That Defendant Did Not Receive Notice of the Sale.

LexisNexis Forms FORM 75-CPLR 2103:17.— Affirmation in Support of Motion to Set Aside Foreclosure Sale on Grounds That Defendant Did Not Receive Notice of Sale.

LexisNexis Forms FORM 75-CPLR 2103:2.— Affidavit of Service by Mail of Paper Upon Attorney in Action.

LexisNexis Forms FORM 75-CPLR 2103:3.— Affidavit of Service Upon Attorney by Leaving Paper in Action at Attorney's Office.

LexisNexis Forms FORM 75-CPLR 2103:4.— Affidavit of Service Upon Attorney by Depositing Paper in Action in Office Letter Drop.

LexisNexis Forms FORM 75-CPLR 2103:5.— Affidavit of Service Upon Attorney by Leaving Paper in Action at His or Her Residence.

LexisNexis Forms FORM 75-CPLR 2103:5A.— Affidavit of Service Service of Interlocutory Papers.

LexisNexis Forms FORM 75-CPLR 2103:5B.— Affirmation of Service Service of Interlocutory Papers.

LexisNexis Forms FORM 75-CPLR 2103:6.— Affidavit of Service via Facsimile Transmission.

LexisNexis Forms FORM 75-CPLR 2103:6A.— Notice Declining Service by Means of Electronic or Facsimile Transmission.

LexisNexis Forms FORM 75-CPLR 2103:7.— Affidavit of Service via Overnight Delivery Service.

LexisNexis Forms FORM 75-CPLR 2103:8.— Affidavit of Service of Paper in Action Upon Party.

LexisNexis Forms FORM 75-CPLR 2103:9.— Affidavit of Service by Mail of Paper in Action Upon Party.

LexisNexis Forms FORM 380-10:104.— Affidavit of Service Service of Interlocutory Papers.

LexisNexis Forms FORM 380-10:105.— Affirmation of Service Service of Interlocutory Papers.

LexisNexis Forms FORM 461-10:55.— Order to Show Cause to Attorn Owner Obtained Judgment for Rent.

LexisNexis Forms FORM 1434-19365.— CPLR 2103: Demand for List of Parties Appearing.

LexisNexis Forms FORM 1434-19366.— CPLR 306, 2103: Affidavit of Service - Service of Interlocutory Papers.

LexisNexis Forms FORM 1434-19367.— CPLR 306, 2103, 2106: Affirmation of Service - Service of Interlocutory Papers.

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

Texts:

New York Insurance Law (Matthew Bender's New York Practice Series) §§ 50.02[5][c]., 50.12[2][a].

1 Bergman on New York Mortgage Foreclosures (Matthew Bender) § 10.12.; 2 Bergman on New York Mortgage Foreclosures (Matthew Bender) § 19.05.; 3 Bergman on New York Mortgage Foreclosures (Matthew Bender) §§ 30.06., 34.04.

4 Frumer & Biskind, Bender's New York Evidence—CPLR § 11.22.

1 New York Trial Guide (Matthew Bender) §§ 7.11., 7.51.

Warren's Negligence in the New York Courts § 9.05 .Affirmative Defenses must be included in answer.

Hierarchy Notes:

NY CLS CPLR, Art. 21

Forms

Forms

Form 1. Affidavit of Service by Mail

[Caption]

_____, being duly sworn, deposes and says that he is over the age of eighteen years and is not a party to the above titled action and that he served the annexed _____ on _____, attorney for the _____ herein, by depositing a copy of the said _____, properly enclosed in a first class postpaid wrapper in the post office regularly maintained by the United States Postal Service in the City of _____, County of _____ and State of New York [or "a post-office box regularly maintained by the United States Postal Service at _____, in the City of _____, County of _____ and State of New York"], addressed to the said _____, at No. _____ _____ Street, City of _____, County of _____, State of New York, that being the address within the state designated by the said _____ upon the last paper served by him in the above-entitled action.

[Or] No address within the state has been designated by the said _____ in the preceding papers in this action at which papers may be served, but said No._____ _____ Street is the last known address of the said _____.

_____

[Print signer's name below signature]

[Jurat]

Form 2. Provision in Show Cause Order for Service on Out-of-Town Attorney by Mail

Sufficient cause therefor having been shown, service on the attorney for plaintiff of a copy of this order and of the papers upon which it was made by depositing them on or before _____, 20_____, enclosed in a first class postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service within the state of New York, properly addressed to said attorney at _____, New York, N.Y., shall be deemed sufficient service thereof.

Form 3. Affidavit of Personal Service on Party or Attorney

[Caption]

_____, being duly sworn, deposes and says that he is over the age of eighteen years, that he is not a party to the above titled action, and that on the _____ day of _____, 20_____, he personally served a copy of the annexed _____ on _____, the attorney for the plaintiff [or "defendant"] herein, at No. _____ _____ Street, in the City of _____, County of _____, State of New York, by delivering to and leaving with said _____, a true copy there of.

_____

[Print signer's name below signature]

[Jurat]

Form 4. Affidavit of Service on Attorney by Leaving Paper With Person in Charge of Office

[Caption]

_____, being duly sworn, deposes and says that he is over the age of eighteen years, that he is not a party to the above titled action, and that on the _____ day of _____, 20_____ he served a copy of the within _____ upon _____, the attorney for the _____ herein by leaving a copy thereof at his office at No. _____ _____ Street, in the City of _____, County of _____ and State of New York, with _____, the person having charge of the said office at the time of service.

_____

[Print signer's name below signature]

[Jurat]

Form 5. Affidavit of Service on Attorney by Leaving Paper in Conspicuous Place

[Caption]

_____, being duly sworn, deposes and says that he is over the age of eighteen years, that he is not a party to the above titled action, and that on the _____ day of _____, 20_____ he served a copy of the within _____ upon _____, the attorney for the _____ herein by leaving a copy thereof in a conspicuous place in the office of the said _____ at No. _____ _____ Street in the City of _____, New York [to wit, on a large table in the said office], said office at the time having been open but there being no person in charge of the office upon whom service could be made.

_____

[Print signer's name below signature]

[Jurat]

Form 6. Affidavit of Service on Attorney by Depositing Paper in Office Letter-Drop

[Caption]

_____, being duly sworn, deposes and says that he is over the age of eighteen years, that he is not a party to the above titled action, and that on the _____ day of _____, 20_____ he served upon _____ the attorney for the _____ herein, a copy of the within _____ by depositing the same enclosed in a sealed wrapper directed to the said _____ in his office letter-drop at No. _____ _____ Street in the City of _____, County of _____ and State of New York; said office not being open at the time said service was made.

_____

[Print signer's name below signature]

[Jurat]

Form 7. Affidavit of Service on Attorney by Leaving Paper at his Residence

[Caption]

_____, being duly sworn, deposes and says that he is over the age of eighteen years, that he is not a party to the above titled action, and that on the _____ day of _____, 20_____ he served upon _____, the attorney for the _____ herein, a copy of the within _____ by leaving a copy of said _____ at the residence of the said attorney at No. _____ _____ Street in the City of _____, County of _____ and State of New York, with one _____, a person of suitable age and discretion; immediately preceding such service deponent had called at the office of the said _____ [attorney] at No. _____ _____ Street in the City of _____, New

York in order to serve said paper and said office was not then open and there was no letter drop at such office in which said copy could be deposited.

_____

[Print signer's name below signature]

[Jurat]

Form 8. Affidavit of Service by Facsimile Transmission

[caption]

_____, being duly sworn, deposes and says that he is over the age of eighteen years and is not a party to the above titled action and that on the _____ day of _____, 20_____ he served the annexed _____ on _____, attorney for the _____ herein, by transmitting the paper to the said _____ by facsimile transmission to a facsimile telephone number designated by the attorney for such purpose; that the affiant thereafter received a signal from the equipment of the attorney served indicating that the transmission was received; and that the affiant on the _____ day of _____, 20_____ mailed a copy of the paper to the attorney in a first class postpaid wrapper.

[Jurat]

Form 9. Affidavit of Service of Paper by Filing

[Caption]

_____, being duly sworn, deposes and says that he is over the age of eighteen years, that he is not a party to the above titled action, and that on the _____ day of _____, 20_____ he served upon _____, the attorney for the _____ herein a copy of the within _____ by filing the said _____ with the clerk of the court in which this action is pending; at the time of the said service the office of the said attorney

at No. _____ _____ Street in the City of _____, County of _____, State of New York, was not open and there was no office letter-drop or letter-box accessible from without the office of the said _____ and there was no person of suitable age and discretion at the residence of the said _____ at No. _____ _____ Street in the City of _____, New York upon whom service could be made and the said _____ had designated no address on any previous paper in this action for the purpose of service and deponent was unable to ascertain a last known address of the said _____ to which the paper could be mailed.

_____

[Print signer's name below signature]

[Jurat]

End of Document