

NY CLS CPLR R 2102

Current through 2025 released Chapters 1-207

New York

Consolidated Laws Service >
Civil Practice Law And Rules (Arts. 1 — 100) >
Article 21 Papers (§§ 2101 — 2106)

R 2102. Filing of papers.

(a) Except where otherwise prescribed by law or order of court, papers required to be filed shall be filed with the clerk of the court in which the action is triable. In an action or proceeding in supreme or county court and in a proceeding not brought in a court, papers required to be filed shall be filed with the clerk of the county in which the proceeding is brought.

(b) A paper filed in accordance with the rules of the chief administrator or any local rule or practice established by the court shall be deemed filed. Where such rules or practice allow for the filing of a paper other than at the office of the clerk of the court, such paper shall be transmitted to the clerk of the court.

(c) A clerk shall not refuse to accept for filing any paper presented for that purpose except where specifically directed to do so by statute or rules promulgated by the chief administrator of the courts, or order of the court.

History

Add, L 1962, ch 308, § 1, eff Sept 1, 1963; amd, L 2007, ch 125, § 4, eff Jan 1, 2008.

Annotations

Notes

Editor's Notes

Laws 2007, ch 125, §§ 5 and 6, eff Jan 1, 2008, provide:

§ 5. Notwithstanding any inconsistent provision of this act, nothing contained in this act shall be deemed to prevent any court of this state from making a determination as to the legal sufficiency of any legal filings under the applicable sections of the civil practice law and rules.

§ 6. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to any actions or proceedings commenced on or after such effective date, provided, however, that the amendments to section 304 of the civil practice law and rules made by section two of this act shall not affect the expiration of such section and shall be deemed to expire therewith.

Derivation Notes

Earlier statutes and rules: CPA § 101; RCP 15; CCP § 825; Gen Rules Pr 2.

Amendment Notes

2007. Chapter 125, § 4 amended:

By redesignating entire section as sub (a).

Sub (a) by adding the matter in italics.

By adding sub (b).

By adding sub (c).

Commentary

PRACTICE INSIGHTS:

RULES GOVERNING SERVICE OF MOTIONS AND CROSS MOTIONS

By David L. Ferstendig, Law Offices of David L. Ferstendig, LLC

General Editor, David L. Ferstendig, Esq.

INSIGHT

Prior to 2007, CPLR 2215 provided that cross-motions could be served at least three days before the original motion was noticed to be heard. This presented certain logistical and timing problems, which affected whether the original moving party had sufficient time to respond. A 2007 amendment attempted to cure those problems by permitting the original moving party to demand that cross-motions be served at least 7 days before the return date. While the new amendment served a laudatory purpose, it created a separate set of rules for the service of cross-motions (as opposed to the original motions), by mail or overnight delivery, which created unnecessary confusion among practitioners. Moreover, it failed to address the problems associated with the service of opposing and reply papers by mail. **Of course, many of these problems have been alleviated in electronically filed cases.**

ANALYSIS

Significant changes to timing in motion practice.

The 2007 amendment makes several significant changes in the timing of motion practice:

1. 12-7-1 motions are now 16-7-1; that is, the original movant has the option of serving the motion by hand at least 16 days in advance of the return date instead of the prior 12-day requirement under CPLR 2214(b). If served by overnight delivery, one business day is added. If service is by regular mail within New York State 5 days is added, 6 days if the mailing is made from outside the State but within the geographic boundaries of the United States. See CPLR 2103(b) (2), (6).
2. A movant who serves a “16 day” motion, can demand not only that answering papers be served at least 7 days before the return date (in accordance with prior practice), but may also make the demand applicable to any cross-motion. See CPLR 2214(b) as amended.

3. To clear up a conflict in the law, the amendment required that if the cross-motion is served by regular or overnight mail, additional time must be provided. Compare *Perez v. Perez*, 131 A.D.2d 451, 451, 516 N.Y.S.2d 236, 237 (2d Dep't 1987) and concurring opinion in *Guzetti v. City of New York*, 32 A.D.3d 234, 820 N.Y.S.2d 29 (1st Dep't 2006). However, the amendment created its own set of timing: three extra days if served by regular mail and one day (not one business day), if served by overnight mail. CPLR 2215(b).

The 3-day cross motion remains alive and well.

Thus, the additional time required to serve a cross-motion (that is, seven days) is occasioned only if (i) the original motion is served at least 16 days before the return date and (ii) the notice of motion expressly demands service of cross-motions at least 7 days before the return date. Thus, if a demand is not made, or the motion is served less than 16 days and more than 8 days before the return date, the cross-motion can be served by hand up to three days before the return date; the “new” additional time for mailing (3-1) discussed above applies.

Amendment left no doubt that additional time must be added if cross-motion is served by mail.

Prior to the amendment, the generally accepted (better) practice was to serve cross motions by mail at least 8 days before the return date. See *Perez v. Perez*, 131 A.D.2d 451, 516 N.Y.S.2d 236 (2d Dep't 1987) (5 days added). However, a concurring opinion in a First Department case cast doubt on that position. See *Guzetti v. City of New York*, 32 A.D.3d 234, 237, 820 N.Y.S.2d 29, 32 (1st Dep't 2006) (no additional time). The amendment left no doubt that additional time must be added.

The timing of papers served by mail or overnight mail should have remained consistent.

The better avenue, however, may have been to make the 5/6 day — one business day requirements in CPLR 2103(b)(2) and (6) applicable to the service of cross-motions. This would have eliminated some of the confusion that arises by having two sets of timing rules applicable to service of motions and cross-motions by mail.

The legislation leaves the other timing problems for another day.

The amendment did not deal with the timing problems associated with the service of opposition and reply papers by mail. In such a circumstance, the additional time is not added under CPLR 2103. Thus, for example, if a briefing schedule is not agreed to by counsel, reply papers served one day before the return date may not be received until after the motion is submitted. As discussed below, this problem is no longer an issue in electronically filed cases.

When should the opposition to the cross-motion be served?

Although not entirely free of ambiguity, it appears that the amendment provided that on a 16-7-1 motion the original movant should serve his opposition to the cross-motion together with his reply on the original motion (that is, up to one day before the return date). The issue as to a response to a “three day” cross motion was not addressed.

Many service issues have been ameliorated by electronic filing.

22 NYCRR § 202.5-b provides that: “Where parties to an action have consented to e-filing, a party causes service of an interlocutory document to be made upon another party participating in e-filing by filing the document electronically.” Thus, as electronic filing spreads throughout the state, many service issues will be avoided or rendered academic. However, one must still consult the local court or judge’s rules to determine whether the judge requires courtesy hard copies and there remain courts in New York where e-filing has not been implemented.

Summary Chart

A. 16-7-1 motion

1. If original motion served by hand: at least 16 days before return date. If original motion served by regular mail in New York:, add 5 days, that is, at least 21 days before return date,; if the mailing is outside of New York but within the U.S., add 6 days, that is, at least 22 days before return date. If original motion served by overnight mail: add one business day, that is, at least 16 days plus one business day.

2. If original motion demands that cross-motion be served at least 7 days before return date of original motion, cross-motion papers must be served:

If by hand, at least 7 days before return date.

If by regular mail, at least 10 days before return date.

If by overnight mail, at least 8 days before return date.

B. 8-2 motion

1. If original motion served by hand: at least 8 days before return date. If original motion served by regular mail in New York, at least 13 days before return date; if the mailing is outside of New York, but within the U.S., at least 14 days before return date.

If original motion served by overnight mail: at least 8 days plus one business day before return date.

2. If cross-motion served by hand: at least 3 days before return date.

If by regular mail: at least 6 days before return date.

If by overnight mail: at least 4 days before return date.

Counsel should also be aware of Uniform Rules governing motion practice.

Counsel also need to be aware generally of the Uniform Rules that impact practice, particularly with respect to the significant amendments effective February 1, 2021 (some of which were further amended effective July 1, 2022). See, e.g., 22 NYCRR § 202.8-a (motions in general), Commercial Division Rule 16, 22 NYCRR 202.70 (g), Rule 16; § 202.8-c (no sur-reply), Commercial Division Rule 18; § 202.8-d (using orders to show cause only where it is a “genuine urgency,” a stay is required or a statute requires it), Commercial Division Rule 19; § 202.8-f (oral argument), Commercial Division Rule 22; § 202.8-g (statement of material facts on summary judgment motion), Commercial Division Rule 19-a; § 202.23 (staggered court appearances), Commercial Division Rule 34. See also David L. Ferstendig, *Significant Amendments to*

Uniform Rules, 723 N.Y.S.L.D. 1-3 (2021); David L. Ferstendig, *Amendments to Uniform Rules*, 724 N.Y.S.L.D. 1-4 (2021); David L. Ferstendig, *Significant Amendments to Uniform Rules*, 741 N.Y.S.L.D. 1-2 (2022).

AMENDMENT CLARIFYING RULES REGARDING FILING OF PAPERS TO COMMENCE ACTION

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INSIGHT

Concerned with the effects of the decision in *Mendon Ponds Neighborhood Ass'n v. Dehm*, 98 N.Y.2d 745, 751 N.Y.S.2d 819, 781 N.E.2d 883 (2002), legislation was enacted in 2007 to try and clear up the ambiguities of the present filing statutes and to avoid traps for the unwary practitioner. The result is a more understandable set of rules which should reduce the possibility that initiating pleadings are not properly filed and of the consequent commencement problems.

ANALYSIS

The *Mendon Ponds* decision.

In *Mendon Ponds*, the New York State Court of Appeals dismissed an Article 78 proceeding because it was filed with the “Chief Clerk of the Monroe Supreme and County Courts”, instead of with the Monroe county clerk. See Ferstendig, Practice Insight, “*Filing with County Clerk to Commence Action*,” New York Consolidated Laws Service, CPLR 203, 304, 306-a, 306-b (Lexis Nexis 2006). Such a dismissal can be more than an inconvenience if the statute of limitations has run. It can result in the loss of potential claims and can be problematic for counsel!

The amendment clarifies the filing requirements.

The amendment attempted to clarify the applicable statutes so as to leave no ambiguity. Thus, for example,

1. It amended CPLR 105(e) clearly to define who the “clerk” is in the supreme and county court, that is, “the clerk of the county”.
2. CPLR 306-a, which talks about the assignment of an index number, makes it clear that the initiating pleadings are to be filed “with the clerk of the county”.
3. CPLR 2102 was amended to reinforce the need to file with the county clerk.

Significantly, CPLR 2102 now provides that:

(b) A paper filed in accordance with the rules of the chief administrator or any local rule or practice established by the court shall be deemed filed. Where such rules or practice allow for the filing of a paper other than at the office of the clerk of the court, such paper shall be transmitted to the clerk of the court

(c) A clerk shall not refuse to accept for filing any paper presented for that purpose except where specifically directed to do so by statute or rules promulgated by the chief administrator of the courts, or order of the court.

New York Court of Appeals Decision May Have Complicated Analysis.

The New York State Court of Appeals' decision in *Goldenberg v. Westchester County Health Care Corporation*, 16 N.Y.3d 323, 921 N.Y.S.2d 619, 946 N.E.2d 717 (2011), complicated the analysis as to how courts will deal with filing, commencement type defects. In *Goldenberg*, the plaintiff did not file a summons and complaint with the County Clerk before serving it. Nevertheless, the Court discussed whether the defendant had waived its objection, leaving the impression that perhaps even a failure to file may be a waivable defect. However, prudent practitioners should avoid any filing errors! See *Weinstein, Korn & Miller*, New York Civil Practice: CPLR ¶ 304.04 (David L. Ferstendig, 2d Ed. 2024); David L. Ferstendig, *Weinstein*,

Korn & Miller CPLR Manual § 3.10-a (3d ed. LexisNexis Matthew Bender) and Ferstendig, *Lexis Nexis AnswerGuide New York Civil Litigation* § 1.03 (2024 Ed. Matthew Bender).

Note impact of Uniform Rules.

Practitioners need to consult the Uniform Rules for the New York State Trial Courts, 22 NYCRR Part 202. Recently, significant amendments were made to the rules applicable to the general trial courts, effective February 1, 2021 (some of which were further amended effective July 1, 2022). Relevant here is the amendment to § 202.5-a, Filing by Electronic Transmission, and which applies to papers and communications filed and submitted via fax and email. See *Weinstein, Korn & Miller, New York Civil Practice: CPLR ¶¶ 304.02, 2102.09* (David L. Ferstendig, 2d Ed. 2024); David L. Ferstendig, *Weinstein, Korn & Miller CPLR Manual* §3.10-a (3d ed. LexisNexis Matthew Bender); Ferstendig, *Lexis Nexis Answer Guide New York Civil Litigation* §1.03 (2024 Ed. Matthew Bender); David L. Ferstendig, *Significant Amendments to Uniform Rules*, 723 N.Y.S.L.D. 1-3 (2021); David L. Ferstendig, *Amendments to Uniform Rules*, 724 N.Y.S.L.D. 1-4 (2021); David L. Ferstendig, *Significant Amendments to Uniform Rules*, 741 N.Y.S.L.D. 1-2 (2022).

Advisory Committee Notes

(See also Advisory Committee notes preceding § 2101, under subheading “Filing of papers.”) This rule is concerned solely with the place of filing. As noted in the introduction to this article, a general filing requirement has not been made and no filing is necessary unless specifically required by law or court order. The requirement of CPA § 100 that a party file his summons and pleadings upon notice from his adversary has been eliminated; very little purpose is served by it. Filing of papers where necessary may always be ordered by the court. The rule is a simplification of CPA § 101 and of RCP 15. The rule as to filing in the event of change of venue is contained in § 101 new CPLR § 511(d). The rule applies to both actions and proceedings. The distinction between the place of filing papers in an action and in a proceeding contained in

the former law seems useless. If there is any reason that papers in an action or a proceeding be filed in a different office, the court may so order.

Notes to Decisions

Owner was not entitled to summary judgment in tenants' suit seeking, among other things, a judgment for alleged rent overcharges because, inter alia, under N.Y. C.P.L.R. 304(a), 2102, an action was commenced on the date the summons and complaint were filed with the clerk of the court, not the date of service, and the owner did not establish as a matter of law that the base date rent should have been \$3,095. *Gordon v 305 Riverside Corp.*, 93 A.D.3d 590, 941 N.Y.S.2d 93, 2012 N.Y. App. Div. LEXIS 2306 (N.Y. App. Div. 1st Dep't 2012).

Deputy chief administrative judge had the authority to issue a directive requiring that applications for a warrant of eviction based on a tenant's failure to respond to a landlord's notice of petition for non-payment of rent had to be accompanied by an "affidavit of merit" because (1) the judge's position as deputy chief administrative judge gave the judge plenary power to issue directives such as the one at issue under N.Y. Const. art. VI, § 28(b) and N.Y. Comp. Codes R. & Regs. tit. 22, § 81.1(b)(1), (4), (6), and (8), (2) the requirement that a clerk employed by the unified court system, including the civil court, acquiesce to such a directive flowed from N.Y. C.P.L.R. 2102(c), (3) an appellate court had determined that summary proceedings to recover possession of real property were the type of summary determinations that could not rely solely on an affidavit of counsel who lacked personal knowledge of the facts, and, (4) while an attorney verified petition satisfied N.Y. Real Prop. Acts. Law § 741, entry of a default judgment required a petition or affidavit sworn to by one with personal knowledge of the facts. *Matter of 367 E. 201st St. LLC v Velez*, 917 N.Y.S.2d 814, 31 Misc. 3d 281, 2011 N.Y. Misc. LEXIS 31 (N.Y. Sup. Ct. 2011).

Where the decedent's children requested an examination of the will drafter and witnesses pursuant to N.Y. Surr. Ct. Proc. Act § 1404 but the clerk of court, pursuant to N.Y. C.P.L.R. 2102, did not receive their objections to probate within 10 days pursuant to N.Y. Surr. Ct. Proc.

Act § 1410, the trial court properly rejected the objections as untimely under N.Y. Comp. Codes R. & Regs. tit. 22, § 207.36. *Matter of Esteves*, 31 A.D.3d 1028, 819 N.Y.S.2d 181, 2006 N.Y. App. Div. LEXIS 9446 (N.Y. App. Div. 3d Dep't 2006).

Suit against a village and its employee was dismissed because no filing of the summons and complaint occurred, and thus the action never was “commenced” within one year and 90 days under the N.Y. Gen. Mun. Law § 50-i limitations period; the court was not allowed to grant any nunc pro tunc relief under N.Y. C.P.L.R. 2001 because this would impermissibly have extended the statute of limitations. *Reyes-Peralta v Ngernak*, 909 N.Y.S.2d 901, 30 Misc. 3d 168, 244 N.Y.L.J. 89, 2010 N.Y. Misc. LEXIS 5131 (N.Y. Sup. Ct. 2010).

Research References & Practice Aids

Cross References:

Furnishing of papers at hearing, § 409(a).

Filing order, Rule 2220.

Filing of referee’s report, § 4320.

Demand for papers under order of attachment, Rule 6212(d).

Conveyance, CLS RPAPL § 1353.

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

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

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

Codes, Rules and Regulations:

Parties and Pleadings. 8 NYCRR Part 275.

Federal Aspects:

Filing of complaint to commence civil action in United States District Courts, Rule 3 of Federal Rules of Civil Procedure, USCS Court Rules.

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

Filing of deposition in United States District Courts, Rules 30(f)., 31(b) of Federal Rules of Civil Procedure, USCS Court Rules.

Condemnation of property proceedings in United States District Courts, Rule 71A of Federal Rules of Civil Procedure, USCS Court Rules.

Filing of copy with petition for removal of cases in United States District Courts, 28 USCS § 1446.

Commencement of civil action in Court of International Trade by filing of summons, 28 USCS § 2632.

Jurisprudences:

28 NY Jur 2d Courts and Judges § 479.

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

73 NY Jur 2d Judgments § 57.

86 NY Jur 2d Process and Papers §§ 16., 116.

105 NY Jur 2d Trial § 40.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2102, Filing of Papers.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 33.01, 36.01.

Matthew Bender's New York CPLR Manual:

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

Matthew Bender's New York Practice Guides:

1 New York Practice Guide: Domestic Relations § 5.05.

Warren's Weed New York Real Property:

Warren's Weed: New York Real Property Ch. 13. (Summons, Complaint and Commencement of Actions and Proceedings).

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 2102:1 et seq.

LexisNexis Forms FORM 75-CPLR 2102:1.— Request for Judicial Intervention.

LexisNexis Forms FORM 75-CPLR 2102:2.— Cover Page for Facsimile Transmission
Authorized by N.Y.C.R.R. 202.5 a.

LexisNexis Forms FORM 1434-21954.— RJI (Request for Judicial Intervention).

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

Hierarchy Notes:

NY CLS CPLR, Art. 21

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