

## NY CLS CPLR § 2105

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)***

### **§ 2105. Certification by attorney.**

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Where a certified copy of a paper is required by law, an attorney admitted to practice in the courts of the state may certify that it has been compared by him with the original and found to be a true and complete copy. Such a certificate, when subscribed by such attorney, has the same effect as if made by a clerk.

### **History**

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Add, L 1962, ch 308, § 1; amd, L 1962, ch 318, § 6; L 1964, ch 349, § 1; L 1970, ch 307, § 1, eff Sept 1, 1970.

Annotations

### **Notes**

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#### **Prior Law**

Earlier statutes: CPA §§ 170, 170-a; CCP § 3301; Code Proc § 312.

#### **Advisory Committee Notes**

(See also Advisory Committee notes preceding § 2101, under subheading “Certification.”) This section is based upon CPA §§ 170 and 170-a.

Section 170, deriving from § 3301 of the Throop Code, allows a written stipulation by the attorneys for all interested parties to take the place of a certificate. Section 170-a, added to the CPA in 1944 upon recommendation of the Judicial Council (NY Laws 1944, c 91; see 10 NY Jud Council Rep 357-65 (1944)), provides a simpler procedure to take the place of a certificate; it requires only an affidavit of the attorney furnishing the copy, thus dispensing with the need for consent by the opposing attorney. Under the CPA provisions, however, the affidavit procedure of § 170-a may be used only if the opposing attorney refuses or fails to stipulate under § 170. No reason is perceived for requiring resort first to the stipulation procedure, and only the simpler affidavit method of § 170-a has been retained in this section. In place of an affidavit, a statement by the attorney is provided.

The draft of CPA § 170-a, as proposed by the Judicial Council, was specifically limited to papers on appeal. See 10 NY Jud Council Rep 359 (1944). As enacted, however, its text in terms covers any “paper of which a certified copy is required by law,” although the section heading still contains the reference to papers on appeal. The CPLR provision follows the language of the text of the CPA section and is applicable to all papers, in accordance with the general rule of construction that the text of a statute governs over an inconsistent caption or heading. See 2 Sutherland, Statutory Construction § 4903 (3d ed 1943); Cf. *People v O’Neil*, 280 App Div 145, 146, 112 NYS2d 756, 757 (3d Dept 1952); 1 McKinney, Consolidated Laws of New York, Statutes §§ 123, 130 (1942).

## **Notes To Decisions**

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### **I. Under CPLR**

#### **1. Generally**

### **II. Under Former Civil Practice Laws**

#### **2. Generally**

#### **3. Case for court of appeals**

#### **4.Settlement of case**

#### **5.Certification of certified return**

### **I. Under CPLR**

#### **1. Generally**

In holdover summary proceeding involving premises purchased at foreclosure sale, landlord's notice to quit was deficient where annexed copy of referee's deed contained copy, not original, or attorney's signature certifying deed; proceeding was dismissed without prejudice because proper termination notice was necessary to court's subject matter jurisdiction and was incurable retroactively. *Security Pac. Nat'l Trust Co. v Cuevas*, 176 Misc. 2d 846, 675 N.Y.S.2d 500, 1998 N.Y. Misc. LEXIS 191 (N.Y. Civ. Ct. 1998).

Where appellant's counsel (1) unilaterally amended an appellate caption to substitute one party for another for the express purpose of pressing an appellate argument that the motion court was statutorily disqualified from presiding over the case due to its undisclosed ownership of stock in the added party; (2) supplemented the appellate record with portions of the motion court's personal financial disclosure statements, which were not part of the record before the motion court; and (3) filed an inaccurate certification that the record on appeal was a true and complete copy of the record before the motion court, they were sanctioned for violating N.Y. Comp. Codes R. & Regs. tit. 22, § 130-1.1(c). *DeRosa v Chase Manhattan Mortg. Corp.*, 15 A.D.3d 249, 793 N.Y.S.2d 1, 2005 N.Y. App. Div. LEXIS 1982 (N.Y. App. Div. 1st Dep't 2005).

CPLR 2105, which authorizes copies of papers to be certified by an attorney, does not apply to court orders submitted to a county treasurer under CPLR 2607 for the payment out of monies paid into court. CPLR 2607 requires a copy of the court order to be certified by the clerk of court. 1990 Op St Compt No. 90-12, 1990 N.Y. Comp. LEXIS 14.

Civil court erred in granting the occupants' motion to dismiss and in denying, as moot, a foreclosure-sale purchaser's cross-motion for summary judgment in his summary proceeding because the two attempts at service of process satisfied the reasonable application standard for purposes of obtaining a final judgment of possession, a copy of the referee's deed was not only shown to one of the occupants, but placed in her hand, and while the photocopies of the referee's deed that were served on occupants did not bear an original seal, the signature of the purchaser's attorney on the original certification comported with the statutory requirements. *Plotch v Dellis*, 60 Misc. 3d 1, 75 N.Y.S.3d 779, 2018 N.Y. Misc. LEXIS 1375 (N.Y. App. Term 2018).

Trustee's failure to file an original certification and to serve a certified copy of the certification of a referee's deed by an attorney admitted to practice in New York was not a jurisdictional defect requiring dismissal because the trustee could correct the error by filing the original certification, similarly, the trustee's failure to file timely the certified-mailing envelope bearing the "unclaimed" notation and the certificate of mailing evidencing that it sent by ordinary mail did not constitute a jurisdictional defect. *US Bank N.A. v Thi Van Tran*, 65 Misc. 3d 965, 110 N.Y.S.3d 532, 2019 N.Y. Misc. LEXIS 5268 (N.Y. Dist. Ct. 2019).

## **II. Under Former Civil Practice Laws**

### **2. Generally**

Stipulation of parties is only alternative contemplated by statute in lieu of certification of record. *Sidman v Sidman*, 265 A.D. 855, 37 N.Y.S.2d 1020, 1942 N.Y. App. Div. LEXIS 6186 (N.Y. App. Div. 1942).

### **3. Case for court of appeals**

Parties cannot make up a case for the court of appeals by stipulation. The amendment of 1882 does not alter the requirement that the return shall be certified by the clerk of the court from

which the appeal is taken, and that the appeal must be heard on such certified return. *Dow v Darragh*, 92 N.Y. 537, 92 N.Y. (N.Y.S.) 537, 1883 N.Y. LEXIS 462 (N.Y. 1883).

#### **4. Settlement of case**

Unless a case is settled and signed by the judge before whom the action was tried, a question of fact cannot be reviewed upon an appeal from a judgment in an action, and even when a stipulation is made, it is necessary to make a case as above specified. *Gregory v Clark*, 53 A.D. 74, 65 N.Y.S. 687, 1990 N.Y. App. Div. LEXIS 16859 (N.Y. App. Div. 1990).

A case on appeal will be set by for settlement and certification, unless there is something to show that the case and exceptions were settled by the judge or referee who heard the case, or there was no stipulation of the certificate of the clerk. *Bonneford v De Russy*, 26 N.Y.S. 193, 73 Hun 377 (1893).

#### **5. Certification of certified return**

Clerk is not bound to certify a return to the court of appeals agreed to by the attorneys on payment merely of his fees for a certificate. If he chooses to certify papers prepared by the attorneys, he can charge only such fee. But he may make the return himself, in which case he is entitled to full fees. *Townsend v Nebenzahl*.

### **Opinion Notes**

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#### **Agency Opinions**

##### **I. Under CPLR**

##### **1. Generally**

CPLR 2105 has no applicability to an order of a court of competent jurisdiction requiring the release of a prisoner pursuant to error coram nobis or habeas corpus. The warden must require

that an order for such release be certified by the clerk of the court releasing the prisoner. 1964, NY Ops Atty Gen May 12.

A County Clerk may not accept for recording a copy of a will certified by an attorney, since this section is applied during the pendency of civil judicial proceedings only. 1964, NY Ops Atty Gen Aug 20 (informal).

## **Research References & Practice Aids**

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### **Codes, Rules and Regulations:**

Filing and service of appellant's papers on appeal. 22 NYCRR § 500.5.

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

Parties and Pleadings. 8 NYCRR Part 275.

### **Federal Aspects:**

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

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

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

### **Jurisprudences:**

4 NY Jur 2d Appellate Review § 341. .

28 NY Jur 2d Courts and Judges § 153. .

84 NY Jur 2d Pleading § 32. .

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84 NY Jur 2d Pleading § 31. .

5B Am Jur PI & Pr Forms (Rev), Clerks of Court, Forms 13.– 17., 19., 23.

## **Treatises**

### **Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2105, Certification by Attorney.

### **Matthew Bender's New York CPLR Manual:**

CPLR Manual § 14.01. Introduction.

CPLR Manual § 14.07. Certification by attorney.

### **Matthew Bender's New York Practice Guides:**

1 New York Practice Guide: Domestic Relations § 5.03.

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.09 .Authenticating Various Types of ESI.

## **Forms:**

Bender's Forms for the Civil Practice Form No. CPLR 2105:1 et seq.

LexisNexis Forms FORM 75-CPLR 2105:1.—Certification by Attorney.

LexisNexis Forms FORM 75-CPLR 2105:2.—Certification by Attorney, Form 2.

LexisNexis Forms FORM 75-CPLR 5525:10.—Certification on Transcript as to Its Correctness.

LexisNexis Forms FORM 75-CPLR 5525:11.—Certification Pursuant to CPLR 2105.

LexisNexis Forms FORM 75-CPLR 5525:12.—Certification Pursuant to CPLR 2105; Another Form.

LexisNexis Forms FORM 380-10:108.—Certification.

LexisNexis Forms FORM 380-10:109.—Certification of Record on Appeal First, Second and Third Department.

LexisNexis Forms FORM 380-10:110.—Certification of Record on Appeal Pursuant to CPLR 2105.

LexisNexis Forms FORM 380-10:112.—Certification of Papers as Not Frivolous.

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

### **Hierarchy Notes:**

NY CLS CPLR, Art. 21

## **Forms**

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### **Forms**

#### **Attorney's Certification of Documents Pursuant to CPLR 2105**

PURSUANT TO CPLR 2105

\_\_\_\_\_, an attorney licensed to practice law before the Courts of the State of New York, attorney for the Appellant in this action, does hereby certify, pursuant to CPLR 2105, that I have compared the foregoing documents with the originals and the whole thereof now on file in the office of the \_\_\_\_\_ County Clerk and have found that the Record on Appeal is a true and complete copy thereof.

Dated: \_\_\_\_\_, 20\_\_\_\_\_



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