

Trial Lawyers Section Digest

A publication of the Trial Lawyers Section
of the New York State Bar Association

A Message from the Chair

At the outset of my term as Chair, I wish to extend my thanks and appreciation to my immediate predecessor, Peggy Lynch, who has done a superlative job during her tenure. Moreover, she has graciously extended to me help and support during my initiation period.



It is difficult to conceive that six months have elapsed since the horrific events of 9/11. The 9/11 events have affected our psyche like no other event in our history. There is hardly anyone who doesn't know someone or know of someone who has been personally affected by the World Trade Center and Pentagon terrorist attacks.

I strongly recommend that our Trial Lawyers Section join in forming an alliance with the Trusts and Estates Law Section, the TICL Section and any other Section of the NYSBA wishing to participate in providing legal assistance to the bereaved families of the victims of this horrible disaster who face immediate and long-range problems.

The recently completed Region II National Trial Competition marked the 23rd year of involvement and sponsorship of that event by the Trial Lawyers Section of the NYSBA. The event was an outstanding success for all of the participants.

I, together with our Executive members, Dick O'Keeffe, Joe Farrell and Gunther Kilsch, sat as Judges, who scored the participants during the final trial competition. I wish to express our thanks and appreciation to Supreme Court Justice Philip G. Minardo, who sat as the Judge who governed the trial. It was truly a memorable occasion.

Our Section owes a debt of gratitude to Gunther, who was the originator of the sponsorship, and, the principal motivator to induce, in 1980, our beloved "Tony" DeMarco, Jr., to provide the leadership. Tony has been extraordinary during these many years in devoting his time, talent, energy and funds in providing the necessary leadership for this yearly successful program, of which the Trial Lawyers Section and the countless law student participants have been the beneficiaries.

I also extend our thanks and appreciation to the Honorable Raymond J. Dearie, our distinguished Federal Judge, who arranged for the use of the United States District Court, Eastern District facilities, where the trials were conducted. Moreover, I wish to express our thanks and appreciation to Professor Travis H.D. Lewin (Acting Director, 2002 Regent II Competition), who rendered great assistance in carrying through the program during Tony's illness.

On behalf of the Section, I wish to express our thanks and appreciation to all Judges and attorneys who gave of their time and commitment, to serve as Judges and evaluators during the competition. Without their voluntary participation, the competition could not have succeeded.

Finally, the Annual Joint Dinner meeting with TICL on January 23rd aboard the Intrepid, and the Annual Joint Program on January 24th, were both stupendous successes for which our Section can be truly proud.

Seymour Boyers

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Timetable for New York Civil Practice¹

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
LIMITATION— INTERPOSITION OF CLAIM			
Action for which there is no prescribed limitation	Six years	CPLR 213(1)	
Action on contractual obligation or liability	Six years	CPLR 213(2)	Exceptions: <i>See</i> CPLR 213-a; UCC Art. 2 sales; <i>see</i> § 2-725 (normally four years), <i>infra</i> ; actions based on breach of home sale warranty (<i>see</i> General Business Law Article 36-B), generally within one year after the warranty period, or within four years of the warranty date, whichever is later.
Action based on mistake	Six years	CPLR 213(6)	
Action based on fraud	Six years	CPLR 213(8)	Computed from discovery by plaintiff or time plaintiff should have discovered fraud with due diligence.
Action for breach of contract for sale	Four years after cause of action has accrued	UCC 2-725	By original agreement, the parties may reduce the period to not less than one year but may not extend it. <i>See also</i> CPLR 203(f).
Replevin action	Three years	CPLR 214(3)	
Property damage action	Three years	CPLR 214(4)	<i>Exception: See</i> CPLR 214-c.
Personal injury action	Three years	CPLR 214(5)	<i>Exceptions: See</i> CPLR 214-b ("Agent Orange," two years), 214-c, and 215 (assault, battery, false imprisonment, one year).

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<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Malpractice other than medical, dental or podiatric malpractice	Three years	CPLR 214(6)	
Annulment on ground of fraud	Three years	CPLR 214(7)	Computed from discovery by spouse whose consent was obtained by fraud.
Action to recover for exposure to latent toxic substances	Three years	CPLR 214-c	Computed from date of discovery or date discovery should have occurred, with reasonable diligence. <i>See</i> CPLR 214-c(4) re applicable period when discovery of cause of injury is alleged to have occurred less than five years after discovery of injury; <i>see also</i> uncodified revival provisions in sections 4 and 5 of L. 1986, ch. 682. <i>See</i> CPLR 214-c(6) re dates of acts or omissions to which the statute applies.
Medical, dental or podiatric malpractice	Two and one-half years	CPLR 214-a	Computed from act or omission or from last treatment if continuous treatment. <i>Exception:</i> Foreign object in body, one year from discovery of facts which would reasonably lead to discovery, whichever is earlier.
Action to recover for "Agent Orange" (phenoxy herbicides) injury	Two years; no later than 6/16/02	CPLR 214-b	Computed from date of discovery or date discovery should have occurred, with reasonable diligence. Restricted to member of armed forces serving in Indo-China from 12/22/61--5/7/75.
Action against licensed engineers and architects	Ten years	CPLR 214-d	Notice must be given 90 days before commencement of any action based upon professional performance, conduct or omission occurring more than ten years prior to the date of the claim.

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Action for damages for personal injury caused by the infusion of blood products which result in the contraction of HIV and/or AIDS	Within two years of the effective date, <i>i.e.</i> 12/1/97	CPLR 214-e	The provisions of this section shall be inapplicable to any civil action governed by the statute of limitations of another jurisdiction.
Wrongful death action	Two years, or at least one year from termination of criminal action vs. same defendant with respect to same event or occurrence.	EPTL 5-4.1	
Tort action against municipality	Notice of claim; within 90 days Actions must be commenced within one year and 90 days of accrual	GML § 50-e GML § 50-i	<i>Exception:</i> Wrongful death, two years to commence action.
Action for intentional tort	One year	CPLR 215(3)	
Action against sheriff, coroner, constable for official act or omission	One year	CPLR 215(1)	
Action on arbitration award	One year	CPLR 215(5)	
Action against officer for escape of civil prisoner	One year	CPLR 215(2)	
Injunction			
Application for preliminary injunction or temporary restraining order	No time constraints	CPLR 6301, 6313	T.R.O. may be granted pending hearing for preliminary injunction, where immediate and irreparable injury would otherwise result.
Service of notice of motion for preliminary injunction	With summons or at any time thereafter and prior to judgment.	CPLR 6311(1)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Posting of undertaking by plaintiff seeking preliminary injunction	Required prior to granting of preliminary injunction	CPLR 6312(b)	<i>Exceptions:</i> Does not apply to State, municipal corporation, village or certain public officers. <i>See</i> CPLR 2512, 4110-a, 2505.
SPECIAL PROCEEDINGS			
Service of notice of petition, petition and affidavits Filing of notice of petition and petition and securing an index pursuant to CPLR 203(c), effective July 1, 1992, followed by service of notice of petition or order to show cause and petition as required by CPLR 306-b	At least eight days before notice to be heard	CPLR 403(b)	Court may grant order to show cause to be served in lieu of notice of petition at a time and in a manner specified therein. CPLR 403(d).
Service of answer and any supporting affidavits	At least two days before petition is noticed to be heard; but if notice of petition is served at least 12 days before return date so demands, answer must be served at least seven days before return date	CPLR 403(b)	Add five days if service is by mail. CPLR 2103(b)(2).
Service of reply and any supporting affidavits	At or before hearing date; but if answer was served at least seven days before return date in compliance with demand in notice of petition served at least 12 days before return date, reply must be served at least one day before hearing date	CPLR 403(b)	
Respondent's raising objection in point of law	In answer or by motion to dismiss petition, upon notice within the time allowed for answer	CPLR 404(a)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Respondent's time to serve and file answer if motion to dismiss petition is denied	Unless otherwise specified by order, within five days after service of order with notice of entry	CPLR 404(a)	
Re-notice, by petitioner, for hearing	Two days' notice	CPLR 404(a)	Petitioner may object in point of law to new matter, in reply or by motion to strike on hearing day. CPLR 404(b).
Re-notice, by respondent, for hearing	Upon service of the answer upon seven days' notice	CPLR 404(a)	
Motion to correct defects	Within time allowed for responsive pleading	CPLR 405(b)	By serving notice of motion or order to show cause.
Service of responsive pleading after service of amended pleading	Within five days	CPLR 405(b)	Where party cannot serve responsive pleading until papers are corrected, and court so orders.
Service of responsive pleading if motion to correct is denied	Within two days after service of order denying motion with notice of entry, unless order specifies otherwise	CPLR 405(b)	Where time to serve responsive pleading has been extended.
Re-notice for hearing after motion to correct	Two days' notice	CPLR 405(b)	
Petitioner's motion to correct	In reply or by motion on hearing or re-hearing date	CPLR 405(c)	
Notice of motion in special proceeding, made before return date	Shall be noticed to be heard at return date of petition	CPLR 406	
Severance of claim or party	At any time, by court	CPLR 407	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Service of notice to admit	Not later than three days before return date of petitioner	CPLR 408	Does not apply to Surrogate's Court proceedings or to proceedings relating to express trusts (CPLR Art. 77); <i>see</i> CPLR Art. 31.
Service of statement denying or setting forth reasons for failing to admit or deny	Not later than one day before return date of petition, unless otherwise ordered by court on <i>ex parte</i> motion	CPLR 408	Does not apply to Surrogate's Court proceedings or to proceedings relating to express trusts (CPLR Art. 77); <i>see</i> CPLR Art. 31.
Furnishing of papers	At hearing	CPLR 409(a)	
Article 78 Proceeding			
Service of notice of petition and answer	At least 20 days before time when petitioner is noticed to be heard	CPLR 7804(c)	Unless court grants order to show cause in lieu of notice of petition.
Service of reply and any supporting affidavits	At least one day before return date	CPLR 7804(c)	
Service and filing of respondent's answer following denial of motion to dismiss petition	Within five days after service of order with notice of entry	CPLR 7804(f)	<i>See</i> CPLR 7804(f) re objections in point of law.
Re-notice, by petitioner, for hearing	Two days' notice	CPLR 7804(f)	Petitioner may object in point of law to new matter, in reply or on day of hearing.
Re-notice, by respondent, for hearing	Upon service of the answer upon seven days' notice	CPLR 7804(f)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Arbitration			
Arbitration of damages in medical, dental or podiatric malpractice actions	Upon a concession of liability by defendant, defendant may demand that plaintiff elect whether to consent to arbitration of damages. Demand may be made at any time after service of bill of particulars but no later than 60 days after filing of notice of medical, podiatric or dental malpractice	CPLR 3045	Within 20 days after receipt of demand, plaintiff shall elect whether to arbitrate damages; if defendant serves a concession of liability within 20 days of such election, issue of damages shall be subject to arbitration under CPLR Article 75-A.
Application to stay arbitration	Within 20 days after service of demand for arbitration or notice of intention to arbitrate	CPLR 7503(c)	As to compulsory arbitration in civil actions for sum of money, <i>see</i> 22 NYCRR § 28.2. As to grievance arbitration involving public employers and recognized or certified employee organizations, <i>see</i> 4 NYCRR § 207.4 and Civ. Serv. L. Art. 14.
Notice of arbitration hearing	At least eight days' notice	CPLR 7506(b)	
Making of award by confession	At any time within three months after statement verified	CPLR 7508(b)	
Written application for modification of award by arbitrator	Within 20 days after delivery of award to applicant	CPLR 7509	
Service of written objection to modification of arbitrator's award	Within 10 days of receipt of notice of application for modification	CPLR 7509	
Disposition, by arbitrators, of application	Within 30 days	CPLR 7509	
Application for confirmation of award	Within one year after delivery of award to applicant	CPLR 7510	Unless award is vacated or modified; <i>see</i> CPLR 7510, 7511.

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Application to vacate or modify arbitration award	Within 90 days after delivery of award	CPLR 7511(a)	
SERVICE OF SUMMONS AND COMPLAINT			
Filing proof of service by delivery to person of suitable age and discretion and mailing to last known residence or to actual place of business (as provided in CPLR 308(2)), within 20 days of each other	Within 20 days of delivery or mailing, whichever occurs later	CPLR 308(2)	Service is complete 10 days after such filing, except in matrimonial actions where such service is made pursuant to order in accordance with DRL § 232(a).
Filing proof of service by “nail and mail” within 20 days of each other (mailing requirement may be satisfied by either mailing to last known residence or actual place of business as provided in CPLR 308(4))	Within 20 days of affixing or mailing, whichever occurs later	CPLR 308(4)	Service is complete 10 days after such filing, except in matrimonial actions where such service is made pursuant to order in accordance with DRL § 232(a).
Notice by mailing copy of summons prior to entry of default judgment in nonpayment action	At least 20 days prior to entry	CPLR 3215(g)(3)	
Service of summons by publication	At least once in each of four successive weeks	CPLR 316(a)	<p><i>Exception:</i> In matrimonial action, at least once in each of 3 successive weeks. Consult CPLR 316(a).</p> <p>Pleading, order and papers to be filed on or before first day of publication. <i>See</i> CPLR 316(a). In matrimonial actions, copy of summons to be mailed on or before first day of publication. <i>See</i> CPLR 316(b).</p>

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Time of publication	First publication required within 30 days after order	CPLR 316(c)	Service is complete on 28th day after first publication, except in matrimonial action, complete on 21st day. Service is complete earlier if defendant appears during period of publication of summons against him. <i>See also</i> CPLR 2402.
Service of complaint where summons served without complaint	<p>(1) Defendant may serve written demand for complaint within 20 days after service if served personally or within 30 days if service of summons was other than personal.</p> <p>(2) If defendant does not make demand for complaint, complaint is to be served within 20 days after defendant's notice of appearance.</p> <p>(3) Complaint shall be served within 20 days after defendant makes demand for same.</p>	CPLR 3012(b)	Service of demand extends time for defendant to appear to within 20 days after service of complaint.

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Service when summons is delivered to sheriff (outside NYC) or county clerk (in NYC)	<p>For actions in the supreme court or the county courts, CPLR 203(c), 306-a, and 306-b, obviate the need to deliver the summons to a sheriff or clerk for service; actions in those courts are commenced for statute of limitations and other purposes by filing of the summons and complaint with the clerk and securing an index number, with the service generally within 120 days thereafter. <i>See</i> CPLR 203(c), 306-a and 306-b. The time limitations in CPLR 203(b)(5) continue to apply to actions in the lower courts.</p> <p>Service must be made personally on defendant within 60 days after period of limitation would have expired but for this provision <i>or</i></p> <p>First publication must be made within 60 days after period of limitation would have expired but for this provision, and publication is completed subsequently <i>or</i></p> <p>If defendant dies within 60-day period, and before service or publication completed, service must be made upon executor or administrator within 60 days after letters are issued.</p>	CPLR 203(b)(5)	Required to timely interpose claim in complaint.

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Addition of parties to action	At any stage of the action by leave of court or by stipulation of all parties who have appeared. Without leave of court, once as of right, within 20 days after service of the original summons or before the time to respond to the summons has expired, or within 20 days after service of a pleading responding to it	CPLR 1003	
Amendment of complaint to assert claim against third-party defendant	Within 20 days after service of the answer to the third-party complaint on plaintiff's attorney	CPLR 1009	
Extension of time where paper is served by mail	Five days	CPLR 2103(b)(2)	
SECURITY FOR COSTS			
Plaintiff's giving security for costs by undertaking	Within 30 days from date of court order	CPLR 8502	If not timely given, court may dismiss complaint upon motion and may award costs to defendant. <i>See</i> CPLR 8503.
PLEADINGS			
Service of amended pleading if motion to correct is granted	Within 10 days after service of notice of entry of order	CPLR 3024(c)	
Amendment of pleadings without leave of court	Within 20 days after service, or at any time before period for responding to it expires, or within 20 days after service of responsive pleading	CPLR 3025(a)	
Amendments and supplemental pleadings by leave	At any time by leave of court or by stipulation of all parties	CPLR 3025(b)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Service of answer or reply to amended or supplemental pleadings	Within 20 days after service	CPLR 3025(d)	
DEFENSE OF ACTION			
Defense of action by person served other than by personal delivery or personal delivery to agent	Within one year after obtaining knowledge of entry of judgment but not more than five years after entry	CPLR 317	Court must make finding defendant did not receive summons in time to defend and that he had a meritorious defense.
Answer or Appearance			
Defendant's appearance by answer, notice of appearance or motion having effect of extending time to answer	<p>Within 20 days after service if service of summons was made on defendant personally</p> <p>Within 30 days after service complete, if service of summons was other than personal</p>	<p>CPLR 320(a), 3012(a)</p> <p>CPLR 320(a), 3012(c)</p>	<p>If summons served without complaint, time to appear is extended until 20 days after service of complaint pursuant to defendant's demand. <i>See</i> CPLR 3012(b).</p> <p>Includes service on attorney as agent, delivery to person of suitable age and discretion and mailing, service pursuant to court order. <i>See</i> CPLR 303, 308(2)-(5), 313, 314, 315.</p> <p>If summons served without complaint, time to appear is extended until 20 days after service of complaint pursuant to defendant's demand. <i>See</i> CPLR 3012(b).</p>
Service of copy of written authority by attorney for non-resident defendant or service of notice of filing same.	Within 20 days after appearing or making a motion	CPLR 322(b)	
Service of answer or reply, generally	Within 20 days after service of pleading to which it responds	CPLR 3012(a)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
PRE-TRIAL MOTIONS OR DEMANDS			
Service of defendant's demand for change of place of trial on ground of improper venue	With answer or before answer served	CPLR 511(a)	
Defendant's motion to change place of trial	Within 15 days after service of demand, unless within five days plaintiff serves written consent	CPLR 511(b)	
Motion for change of place of trial on other ground	Within a "reasonable time after commencement of the action"	CPLR 511(a)	
Motion for order to determine whether action will be maintained as class action	Within 60 days after time to serve a responsive pleading has expired for all named defendants	CPLR 902	
Service of notice of motion and supporting affidavits	At least eight days before return date	CPLR 2214(b)	Add five days for service by mail. CPLR 2103(b)(2).
Service of answering affidavits	At least two days before return date; but at least seven days before return date if notice of motion served at least 12 days before return date so demands	CPLR 2214(b)	Add five days for service by mail. CPLR 2103(b)(2).
Service of reply affidavits	At least one day before return date if answering affidavit was served at least seven days before return date where notice of motion was served at least 12 days before return date and so demanded	CPLR 2214(b)	Add five days for service by mail. CPLR 2103(b)(2).
Service of notice of cross-motion	At least three days before return date	CPLR 2215	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Furnishing papers to court and adverse party	At hearing	CPLR 2214(c)	
Service of a subpoena <i>duces tecum</i> upon a hospital or a department or bureau of a municipal corporation or of the state re records relating to condition or treatment of a patient	At least three days before the return date	CPLR 2306(a)	
Motion for subpoena <i>duces tecum</i> upon library, a department or bureau of a municipal corporation or of the state re producing documents	At least one day's notice	CPLR 2307	
Time for taking procedural steps where parties will be substituted	Extended until 15 days after substitution	CPLR 1022	Includes time for making motion for new trial, taking appeal, or making motion for permission to appeal. <i>See also</i> CPLR 1021.
Service of notice of motion to correct pleadings	Within 20 days after service of challenged pleading	CPLR 3024(c)	<p>If motion is denied, responsive pleading must be served within 10 days after service of notice of entry of the order.</p> <p>If motion is granted, amended pleading complying with order must be served within 10 days after service of notice of entry of the order.</p>
Service of notice of motion for order directing settlement of statement terms and determination of controversy under New York Simplified Procedure for Court Determination of Disputes	Eight days' notice or as court deems appropriate	CPLR 3034(1)-(2)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Order determining a motion relating to a provisional remedy	Within 20 days after submission of motion	CPLR 2219	
Order determining any other motion	Within 60 days after submission of motion	CPLR 2219	
BILL OF PARTICULARS			
Service of bill of particulars	Within 30 days after demand	CPLR 3042(a)	
Amendment of bill of particulars as of course, in an action in which a note of issue is required to be filed	Once, before trial, prior to filing note of issue	CPLR 3042(b)	
Service of supplemental bill of particulars without leave	Not less than 30 days prior to trial	CPLR 3043(b)	In personal injury actions.
DISCLOSURE			
Objection to disclosure, inspection, or examination	Within 20 days of service of a notice under rule 3120 or section 3121	CPLR 3122	Party to whom notice is directed must state the reasons for the objection with "reasonable particularity."
Service of subpoena <i>duces tecum</i> upon hospital, department, or bureau of a municipal corporation or of the state	At least three days before time fixed for production of records unless court otherwise orders	CPLR 2306(a)	Where subpoena requires production of patient records, transcript certified by head of hospital, department, bureau (or by assistant), or officer.
Service of subpoena on non-party witness, or employee or officer of a party	At least 20 days before examination	CPLR 3106(b)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Notification that a different deponent will be produced	At least 10 days prior to scheduled deposition	CPLR 3106(d)	
Review of proceeding where witness fails to comply with subpoena and has been committed to jail	Within 90 days	CPLR 2308(c)	Periodic review after not more than 90 days.
Service of notice of taking oral deposition	On 20 days' notice, unless court directs otherwise	CPLR 3107	A party to be examined may serve notice of at least 10 days for examination of another party, his agent or employee, at same time and place.
Service of written cross-questions	Within 15 days after service of written questions and notice	CPLR 3109(a)	
Service of written redirect questions	Within seven days after service of written cross-questions	CPLR 3109(a)	
Service of written recross-questions	Within five days after being served with written redirect questions	CPLR 3109(a)	
Service of written objection to errors in notice for taking deposition	At least three days before time for taking deposition	CPLR 3112	Otherwise, errors and irregularities are waived.
Service of written objection to form of written questions	Within time allowed for serving succeeding questions or within three days after service	CPLR 3115(e)	Otherwise, objections are waived.
Compliance with demand for address of party	Within 10 days of service of demand	CPLR 3118	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Exchange of medical information in personal injury and wrongful death actions			<i>See</i> Uniform Rules for NYS Trial Courts § 202.17 (Supreme and County Courts).
Service of written request for admission as to matters of fact, papers, documents and photographs	At any time after service of answer or after expiration of 20 days from service of summons, whichever is sooner, but not later than 20 days before trial	CPLR 3123(a)	Deemed admitted unless within 20 days after service or as court allows, adverse party serves sworn statement of denial or explanation. <i>See</i> CPLR 3123(a).
Service of written interrogatories	After commencement of the action but not before the defendant's time to serve a responsive pleading has expired, except by leave of court	CPLR 3132	
Service of answers or objections to interrogatories	Within 20 days after service of interrogatories	CPLR 3133	A party who objects to answering an interrogatory need not move for an order to strike, but may instead set forth the objection in the response.
Motion for review of order of referee supervising disclosure	Within five days after order is made	CPLR 3104(d)	
Amendment or supplementation of responses	Whenever the responding party subsequently learns that a response was incorrect or incomplete when given, or when the responding party learns that a response "though correct and complete when made, no longer is correct and complete."	CPLR 3101(h)	The duty to amend or supplement a previous response arises only when the failure to act would be materially misleading.
Signature and return of deposition; changes made to deposition	Within 60 days after receipt of the deposition by the witness for examination	CPLR 3116(a)	If the witness fails to return the deposition, it may be used as fully as though signed. No changes may be made to the deposition more than 60 days after transmission to the witness for examination.

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
ACCELERATED JUDGMENT			
Motion to dismiss for improper service where objecting party raises the objection in the answer	Within 60 days after service of the answer	CPLR 3211(e)	Failure to move for dismissal will result in waiver of the objection. The court may extend the time on the ground of “undue hardship.”
Extension of time to serve pleading where notice of motion to dismiss cause of action (CPLR 3211[a]) or to dismiss defense (CPLR 3211[b]) is made before service of pleading responsive to cause of action or defense	Until 10 days after service of notice of entry of order	CPLR 3211(f)	
Motion for summary judgment	Any time after issue has been joined but no later than 120 days after filing the note of issue	CPLR 3212(a)	However, the court may set a date by which any such motion shall be made, which must be no earlier than 30 days after filing the note of issue. The court may extend either date upon a showing of good cause.
Notice of motion for summary judgment in lieu of complaint	Minimum of 20 days after service of summons if personal service or 30 days if other than personal service	CPLR 3213, 320(a)	If hearing date is later than minimum time, plaintiff may require defendant to serve copy of answering papers within extended period of time, not exceeding 10 days prior to hearing date. CPLR 3213.
Default Judgment			
Plaintiff’s application for default judgment (claim for sum certain)	Within one year after default	CPLR 3215(a)	If plaintiff fails to comply, court shall dismiss complaint. <i>See</i> CPLR 3215(c). <i>See also</i> CPLR 1203.
Notice of default motion to be provided to defendant who has appeared	At least five days	CPLR 3215(g)(1)	If application is made to court, unless otherwise provided in specific action.

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Notice of default motion to be provided to defendant who has not appeared	If more than one year has elapsed since default, at least five days' notice	CPLR 3215(g)(1)	Unless court orders otherwise.
Notice, to be given to defendant, of reference or assessment by jury	At least five days	CPLR 3215(g)(2)	If defendant who has not appeared serves demand for notice, before motion for judgment is heard.
Motion to dismiss for want of prosecution	At least one year must have elapsed since joinder of issue	CPLR 3216(b)	See CPLR 3216 for other requirements, including written demand for service and filing of note of issue within 90 days after receipt.
Voluntary Discontinuance			
Service of notice of discontinuance	At any time before a responsive pleading is served or within 20 days after service of pleading asserting the claim, whichever is earlier	CPLR 3217(a)(1)	See CPLR 3217 for other methods of discontinuance. See also Uniform Rules for NYS Trial Courts § 202.28 (Supreme and County Courts), re filing stipulation to discontinue action within 20 days of discontinuance.
Judgment by Confession			
Filing of defendant's affidavit by confession	Within three years after execution	CPLR 3218(b)	May not be entered after defendant's death.
Tender			
Deposit of payment with court clerk and service upon claimant of written tender of payment	Not later than 10 days before trial	CPLR 3219	In contract action, by party against whom a separate judgment may be taken. Claimant may withdraw amount within 10 days.
Offer to Liquidate Damages Conditionally	Not later than 10 days before trial	CPLR 3220	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Offer to Compromise	Not later than 10 days before trial	CPLR 3221	<i>Exception:</i> Matrimonial action.
CALENDAR PRACTICE			
Placing case on calendar —filing note of issue and certificate of readiness	At any time after issue is joined, or at least 40 days after completion of service of summons	CPLR 3402(a)	File within 10 days after service of note of issue. <i>See also</i> Uniform Rules for NYS Trial Courts § 202.21 (Supreme and County Courts).
Service of note of issue upon new party	Within five days	CPLR 3402(b)	
Filing statement with clerk on bringing in new party	Within five days	CPLR 3402(b)	
Service of notice of motion for preference	With note of issue, by party serving note of issue, <i>or</i> 10 days after such service by any other party (<i>or</i> thereafter during pendency of action by party who reaches age 70 <i>or</i> who is terminally ill)	CPLR 3403(b)	
Abandonment of case in Supreme Court or County Court marked “Off” or struck from calendar or unanswered on calendar roll	If not restored within one year	CPLR 3404	Case shall be dismissed without necessity for order.
Notice of dental, medical or podiatric malpractice actions	Within 60 days after issue is joined	CPLR 3406, Uniform Rules for NYS Trial Courts § 202.56 (Supreme and County Courts)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Filing of demand for trial by jury	Within 15 days after service of note of issue	CPLR 4102(a)	File with proof of service upon each party. If trial by jury has been demanded of only some of the issues, any other party within 10 days after service of demand may serve and file demand for trial by jury of any other issues triable by jury. CPLR 4102(b). <i>See also</i> Uniform Rules for Trial Courts § 202.21(c) (Supreme and County Courts).
Motion for trial by referee or advisory jury	Within 20 days after note of issue is filed	CPLR 4015	<i>Exceptions:</i> Where issue to be tried arises on a motion or pursuant to a judgment.
Motion to strike case from calendar	Within 20 days after service of note of issue and certificate of readiness (does not apply to tax assessment review proceedings)	Uniform Rule for NYS Trial Courts § 202.21 (Supreme and County Courts)	After the 20-day period, no motion shall be allowed except for good cause shown.
TRIAL			
Decision of court	Within 60 days after final submission of cause or matter or within 60 days after motion for new trial or to confirm or reject (CPLR 4403), whichever is later	CPLR 4213(c)	
First hearing by referee	Within 20 days after date of order of reference	CPLR 4313	
Filing of referee's decision	Within 30 days after final submission of cause or matter	CPLR 4319	If not timely filed, court may grant new trial.
Filing of referee's report, findings of fact and conclusions of law	Within 30 days after final submission of cause or matter	CPLR 4320(b)	Transcript to be filed with report, unless otherwise stipulated.

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Motion to confirm or reject judicial hearing officer's or referee's report	Plaintiff shall move on notice within 15 days of notice of filing was given. If plaintiff fails to make motion, defendant shall make motion within 30 days after notice of filing.	Uniform Rules for NYS Trial Court § 202.44 (Supreme and County Courts)	
SUBMISSION OF ORDERS, JUDGMENTS AND DECREES— SUPREME AND COUNTY COURTS			
Submission of proposed order or judgment for signature (with proof of service) where order is directed to be settled or submitted for signature	Within 60 days after signing and filing of decision directing that order be settled or submitted	Uniform Rules for NYS Trial Courts § 202.48	
Service of copy of proposed order of judgment with notice of settlement where settlement is directed by court	If by personal service, not less than 5 days before date of settlement. If by mail, not less than 10 days before date of settlement	Uniform Rules for NYS Trial Courts § 202.48	
Service of proposed counter-order or judgment	If by personal service, not less than 2 days before date of settlement. If by mail, not less than 7 days before date of settlement	Uniform Rules for NYS Trial Courts § 202.48	
POST-TRIAL MOTIONS			
Motion for new trial or to confirm or reject verdict of advisory jury or report of referee to report	Within 15 days after verdict or filing of referee's report and prior to further trial	CPLR 4403	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Post-trial motion for judgment and new trial	Within 15 days after decision, verdict or discharge of jury	CPLR 4405	
Motion to relieve party from judgment or order, on ground of excusable default	Within one year after service of copy of judgment or order with written notice of entry, upon moving party, or if entered by moving party, within one year after such entry	CPLR 5015(a)(1)	<i>See also</i> CPLR 2006, 3012(d) concerning delay or default resulting from law office failure.
TAXATION OF COSTS			
Taxation on notice	Five days' notice	CPLR 8402	
Notice of retaxation	Five days' notice	CPLR 8403	Service within five days after service of bill of costs without notice.
ENFORCEMENT OF JUDGMENTS			
Mailing of copy of satisfaction-piece to judgment debtor	Within 10 days after date of filing	CPLR 5020(a)	
Execution of satisfaction-piece by attorney for judgment creditor	Within 10 years after entry of judgment	CPLR 5020(b)	
Civil penalty for failure of judgment creditor to execute and file satisfaction-piece	On failure to comply with CPLR 5020(a) or (d) within 20 days after receiving full satisfaction	CPLR 5020(c)	If the City of New York is the judgment creditor, written demand is first required.

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Service of restraining notice	If “notice of judgment debtor or obligor” (CPLR 5222[e]) has not been given to judgment debtor or obligor within one year before service of restraining notice, copy of restraining notice and notice to judgment debtor or obligor shall be mailed by first class or personally delivered to each judgment debtor obligor within four days of service of restraining notice.	CPLR 5222(d)	
Foreign judgments			
Filing of foreign judgment	Within 90 days of date of authentication	CPLR 5402(a)	
Mailing of notice of filing	Within 30 days after filing of judgment	CPLR 5403	Proceeds shall not be distributed earlier than 30 days after filing of proof of service.
APPEALS			
In general			
Taking of appeal as of right, or moving for permission to appeal	Within 30 days after service of copy of judgment or order and notice of entry	CPLR 5513(a), (b)	If attorney dies within 30-day period, extended to 60 days from date of death. CPLR 5514(b).
Taking of cross-appeal	Same as above, <i>or</i> within 10 days after service of notice of appeal or motion for permission to appeal, whichever is longer	CPLR 5513(c)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Court of appeals			
Filing and service of appellant's jurisdictional statement	Within 10 days from time appeal is taken	22 NYCRR § 500.2(a), (d)	Statement may include request that appeal be considered for expedited resolution. <i>See</i> § 500.4(d). If party will assert that a statute is unconstitutional, written notice to attorney general must be given at time of filing jurisdictional statement. <i>See</i> § 500.2(d).
<i>Sua sponte</i> examination of merits—			
—Appellant's service and submission to Court of written comments and arguments	Within 20 days of clerk's inquiry	§ 500.4(f)	If either party objects to summary consideration, written comments and arguments justifying that position should accompany the submission. § 500.4(f).
—Respondent's service and filing of submission	15 days after receipt of appellant's submission	§ 500.4(f)	If either party objects to summary consideration, written comments and arguments justifying that position should accompany the submission. § 500.4(f).

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Filing and service of appellant's record materials and brief	Within 60 days from taking the appeal unless another due date has been set by the court	§§ 500.5(d), (f), 500.9(a)	<p>Appeal will be dismissed for failure of appellant to proceed or file papers if Court had no notice of pending appeal and 80 days pass from date of taking appeal without compliance with filing provisions. § 500.9(a). If Court had notice of appeal and appellant does not comply, dismissal after 20-day notice by clerk, subject to extension. <i>See</i> § 500.9(b).</p> <p>Liberal extension of time, with reasonable grounds, permit filing of papers if Court had no notice of pending appeal and 80 days pass from date of taking appeal without compliance with filing provisions. § 500.9(d). If Court had notice of appeal and appellant does not comply, dismissal after 20-day notice by clerk, subject to extension. <i>See</i> § 500.9(b).</p> <p>Liberal extension of time permitted. § 500.9(d).</p>
Filing and service of respondent's brief and appendix	Within 45 days of service of appellant's papers unless another due date has been set by the Court	§ 500.7(a)	<p>If noncompliance, preclusion after 20-day notice by clerk, subject to extension. <i>See</i> § 500.9(c).</p> <p>Liberal extension of time permitted. § 500.9(d).</p>
Filing and service of reply brief	Within 10 days of receipt of respondent's brief	§ 500.5(f)	Where cross-appeals are filed, cross-appellant may serve reply brief to main appellant's responsive brief, § 500.5(f).
Motions to Court of Appeals	On eight days' notice (13 if service by mail)	§ 500.11(a)	
Service of notice of motion for reargument	Within 30 days after appeal or motion decided, unless otherwise permitted by Court	§ 500.11(g)(3)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Withdrawal of appeal or motion	At any time prior to argument or submission	§ 500.16	By stipulation signed by all parties (and in criminal appeals, by defendant personally). § 500.16.
Other provisions relating to appeals		See §§ 500.10, 500.11(d), (e)	
Appellate Divisions			
Filing of record (appendix system)	<p><i>1st Dep't:</i> Within 30 days after settlement of transcript or statement in lieu of transcript.</p> <p><i>2d Dep't:</i> Appellant shall subpoena from the clerk of the court from which the appeal is taken all papers constituting the record on appeal and cause them to be filed with the clerk of this court prior to the filing of the appendix</p> <p><i>3d Dep't:</i> See §§ 800.4(b), 800.7(b) and consult court clerk</p> <p><i>4th Dep't:</i> Party shall file and serve at the same time that party serves and files brief.</p>	<p>§ 600.5(a)(1)</p> <p>§ 670.9(b)</p> <p>§ 1000.2(g)</p>	<p>See CPLR 5525, 5526, 5528(a)(5).</p> <p>See CPLR 5525, 5528(a)(5), 5532.</p>
Filing of original record, stipulated and settled	<i>4th Dep't:</i> Within 60 days of serving notice of appeal.	§§ 1000.2(b), 1000.3(b).	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Filing of agreed statement in lieu of record	<p><i>1st Dep't:</i> Within 30 days after approval</p> <p><i>2d Dep't:</i> See § 670.10 and CPLR 5531.</p> <p><i>3d Dep't:</i> See § 670.10 and CPLR 5531</p> <p><i>4th Dep't:</i> Within 20 days after notice of appeal has been filed and served</p>	<p>§ 600.5(b)(2)</p> <p>§ 670.9(c)</p> <p>§ 800.4(d)</p> <p>§ 1000.4(c)</p>	<p>See CPLR 5527.</p> <p>See CPLR 5527, 5531.</p>
Filing of optional full record	<p><i>1st Dep't:</i> Within 30 days after settlement of transcript of proceeding</p> <p><i>2d Dep't:</i> See § 670.10 and CPLR 5528(a)(5)</p>	<p>§ 600.5(c)</p> <p>§ 670.9(a)</p>	See CPLR 5526, 5528(a)(5).
Filing of records in case where record does not involve settlement or approval	<p><i>1st Dep't:</i> Within 30 days after taking of notice of appeal</p> <p><i>2d Dep't:</i> Together with the brief</p>	<p>§ 600.5(d)</p> <p>§ 670.9(b)(3)</p>	Where transcript or statement not involved.
Placing appeal on calendar			
<i>1st Dep't:</i> By filing note of issue with proof of service	Within 20 days after filing record on appeal, statement in lieu of record or papers in transferred Art. 78 proceeding at least 57 days before the first day of term.	§ 600.11(a)(1), (b); see § 600.4	<i>Exception:</i> Submission of controversy is placed on calendar at time of filing agreed statement of facts. Papers and briefs must be filed within nine months of date of notice of appeal (in Art. 78 proceeding, from date of order of transfer to App. Div.) see § 600.11(a)(3).
<i>3d Dep't</i>	Not specified by Rule or CPLR		Similarly, see § 800.12.

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
<i>4th Dep't: See § 1000.10. See also §§ 1000.8, 1000.9</i>	Not specified by Rule or CPLR		After appellant has perfected the appeal.
Appellant's filing main brief	<i>2d Dep't: See § 670.9</i> <i>3d Dep't: Generally, within 60 days after service of notice of appeal</i>	§ 670.8(a) § 800.9(a)	File with record.
Filing of answering (respondent's) brief	<i>1st Dep't: At least 27 days before first day of term</i> <i>2d Dep't: Within 30 days after service of appellant's brief</i> <i>3d Dep't: Within 45 days from filing of appellant's brief</i> <i>4th Dep't: Within 30 days of service of appellant's brief</i>	§ 600.11(c) § 670.8(b) § 800.9(b) § 1000.2(d)	
Filing of reply brief	<i>1st Dep't: Within nine days after service of answering brief</i> <i>2d Dep't: Within 10 days after service of respondent's brief</i> <i>3d Dep't: Within 10 days after service of respondent's brief</i> <i>4th Dep't: Within 10 days of service of respondent's brief</i>	§ 600.11(c) § 670.8(b) § 800.9(c) § 1000.2(e)	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Cross appeals			
Filing by respondent/cross appellant	<p><i>1st Dep't:</i> Within 30 days after perfection of appellant's appeal</p> <p><i>2d Dep't:</i> 30 days after service of appellant's main brief</p> <p><i>3d Dep't:</i> Within 30 days after service of first brief</p> <p><i>4th Dep't:</i> Within 30 days after service of main brief</p>	<p>§ 600.11(d)</p> <p>§ 670.8(c)(3)</p> <p>§ 800.9(e)</p> <p>§ 1000.2(d)</p>	<p>Filing and service of adverse party's answering brief.</p> <p>Filing and service of answering brief and appendix.</p> <p>Filing and service of answering brief (or brief and appendix).</p>
Filing of reply by first appellant	<p><i>2d Dep't:</i> Within 30 days after service of answering brief</p> <p><i>3d Dep't:</i> Within 10 days after service of answering brief</p> <p><i>4th Dep't:</i> Within nine days of service of answering brief</p>	<p>§ 670.8(c)(3)</p> <p>§ 800.9(e)</p> <p>§ 1000.2(e), (f)</p>	
Filing of reply brief to cross-appeal	<p><i>1st Dep't:</i> Within nine days after reply to the answering brief filed</p> <p><i>2d Dep't:</i> Within 10 days after service of reply to answering brief</p> <p><i>3d Dep't:</i> Within 10 days after service of appellant's reply brief</p> <p><i>4th Dep't:</i> Within four days of service of reply to answering brief</p>	<p>§ 600.11(d)</p> <p>§ 670.8(c)(3)</p> <p>§ 800.9(e)</p> <p>§ 1000.2(f)</p>	

<u>Act To Be Performed</u>	<u>Time Period Available</u>	<u>Statute or Rule</u>	<u>Comments</u>
Written notification to clerk of time desired for argument	<i>1st Dep't:</i> On or before the court's scheduled date in that particular term	§ 600.11(f)(1)	
Request for change of date of argument	<i>3d Dep't:</i> At least 14 days prior to commencement of term	§ 800.11	
Filing of stipulation of adjournment	<i>1st Dep't:</i> Not later than 26 days before first day of term for which appeal has been noticed	§ 600.11(g)	
Motion for reargument	<i>1st Dep't:</i> Within 30 days after appeal has been decided	§ 600.14(a)	
Other provisions relating to appeals		CPLR 5530(a), 5519(c), 5525(c)(1), (d), 5527	<p><i>2d Dep't:</i> See §§ 670.9(b), 670.10(c), 670.12-670.14, 670.18.</p> <p><i>3d Dep't:</i> See §§ 800.8(c), 800.13, 800.18-800.22.</p> <p><i>4th Dep't:</i> See §§ 1000.2-1000.5, 1000.7.</p>

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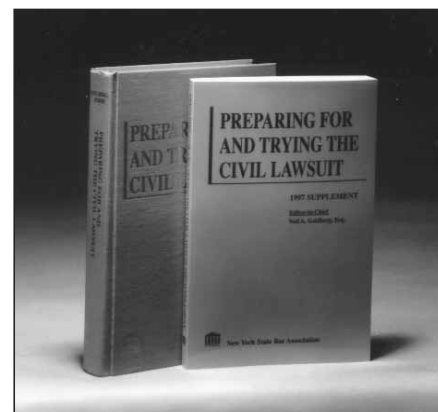
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NYS Office of the Attorney General

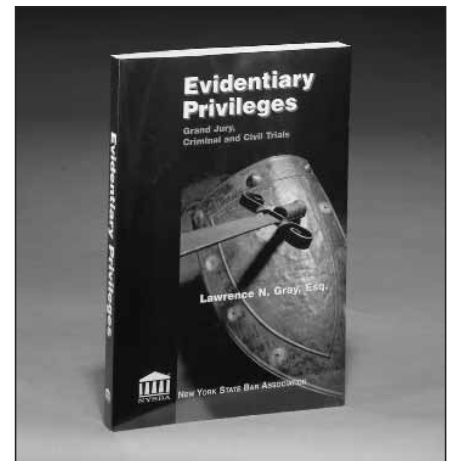
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