CHAPTER 11
Papers - Preparation, Service and Filing

Preparation of Papers

All papers filed or served in an action must conform to the requirements of the statute. The CPLR not only dictates what information is required in those documents, it goes further in that it also has requirements describing what they must look like [CPLR 2101]. This allows for some uniformity of appearance. Having stated that, within the CPLR's requirements there is some room for flexibility.

All documents filed or served:

1. Must be 8.5 by 11 inches. The exceptions to this size requirement are summonses, subpoenas, notices of appearance, notes of issue, orders of protection, temporary orders of protection and exhibits. This does not mean that the exceptions cannot be 8.5" by 11"; they often are.

2. The document must be on a durable quality paper which is white in color.

3. The writing shall be legible and in black ink.

4. The document must be in English. If there is a document in a foreign language, a translation must be provided, with an affidavit by the translator.

5. Whenever a signature is required on a document that name is to be printed beneath.

6. Font size cannot be less than 12 point for summonses and no less than 10 point for other documents. The type is to be easily readable. Note that in some types of actions, the CPLR and other statutes may require larger sized fonts or that portions of the document be in all caps.

7. The document should have a caption. The caption consists of the following:

   - The name of the court.
   - The venue of the court which is the location where the action is being brought. In the case of statewide courts, or New York City Civil Court, it will be a county. Otherwise, it will be the name of the locality–*i.e.* village, city, etc.
   - The title of the action. This is the names of the parties and their designation for the action (e.g. Plaintiff). If there are multiple parties as either plaintiffs or defendants, only the summons, complaint and judgment must contain the names of all of the parties. Otherwise, the document may list the name of one party on both sides with the words, "*et al*" or "and others" or some other indicator that there are other parties not listed.
   - The name of the document (e.g. "Complaint" or "Answer").
   - If there is an index number, it must be on the document and the summons must contain the date the action was filed, if the action has already been filed. If the action has not been commenced by a filing, papers subsequent to the filing must have the index number.

CAPTION

_____COURT OF THE_____OF NEW YORK ☎{name of the court}
COUNTY OF_____ ☎{venue}
----------x
A B ☎{plaintiff(s)' name(s)} INDEX NUMBER: _____
Plaintiff(s),
-against- NAME OF DOCUMENT
C D ☎ {defendant(s)' name(s)}
Defendant(s).
----------x

8. Shall be indorsed with the name, address and telephone number of the attorney for the party serving or filing the paper, or if the party is acting *pro se*, with the name, address and telephone number of the party.

9. If documents are served or filed electronically, they must be able to be retrieved in conformity with the requirements above.

Where personal information is in a document which, if revealed, might compromise the health or safety of a party, that information may be kept confidential. This is done on motion by a party or be on the court's own motion.

Documents are easily prepared on computer, even though commercially available, pre-printed forms may be used. Some courts may provide blank forms which must be used for a particular purpose or for that particular court. Many of these forms may be scanned into the law offices computer for future use. However, the use of copied or scanned forms should be checked with the particular court; some courts may require that only the ones made available though the court may be used.

There is no requirement in the CPLR that "Backs" be used. A court may require them for papers being filed or for papers being served in a particular jurisdiction, they may be used as a courtesy. You may hear them being referred to as "Blue Backs" since, in the past, they were blue in color. Backs are cover sheets for documents being served or filed. They are stapled to the obverse side of the documents they contain, facing backwards. The Back contains the same information contained in the caption, in various types of formats. It may also have an acknowledgment for the person receiving the papers to sign and return, if they so choose. Of course, as with all papers served, the serving party should be sure to have an

Affidavit of Service prepared by whomever serves the documents. There is a current move afoot to do away with attaching Backs to papers being filed. This is because many courts are now scanning the documents into their computer systems. Having a Back is just another piece of paper to take up space on the courts' servers. Check with the clerks in the court in which the action has been commenced to find out their specific policy regarding Backs.

The Office of Court Administration has promulgated additional rules for papers filed or served in the action. This is commonly referred to as a Rule 130-1 Certification, which references the number of the actual rule. The certification means an "attorney or party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1) the presentation of the paper or the contentions therein are not frivolous...and (2) where the paper is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom, and (ii) the matter was not obtained in violation of 22 NYCRR 1200.41-a [DR 7-111]." [Rules of the Chief Administrative Judge Part 130.1.1a]

As stated, attorney or, if the party is acting *pro se*, party certification is required. That is, each document is required to have a certification by the party's attorney who prepared it. The certification is accomplished simply by the attorney signing at the end of the document. There is no requirement that an explanation of that signature be given or a reference be made to the rule. Alternatively, the attorney may prepare an additional document, certifying and listing all the papers that attorney has served or filed in the action.

The modern age has brought about significant change. The law is trying to catch up and keep up. The legislature and the courts have responded to these changes by enacting new statutes by the former and promulgating new rules by the latter. Statutory changes generally are enabling and permissive. This means that, within the statute's stated bounds, the courts may issue rules that provide some uniformity as to how and under what circumstances electronic documents may be used. In fact, there currently exist rules that mandate documents that must be prepared electronically. The courts, through rules, fine tune the processes and procedures to be used. The rules also try to anticipate and address any problems which may arise from the use of electronic documents. This includes the circumstances in which attorneys and *pro se* parties may opt out of using this means or when problems arise with the systems and sites being used. Because this is evolving, it is important to constantly check for new rules in this area.

For most courts, with some exceptions, documents filed with the courts are public records. This presents a whole new set of problems. When everything was on paper, a person would have to go to a clerk's office to view papers. Now many of these documents are or will be available online. As you may have noted, many documents contain information which, in the wrong hands, could be used unlawfully. This is particularly true where it involves possible danger to the health or safety of persons involved in the matter and identity theft. To address this, there exists mandatory redaction of certain information from these documents. That is, information which may cause harm to a person or entity mentioned in the papers. Some information such as taxpayer identification numbers; the date of birth; full name of minors; and financial account numbers are specifically named. The rules also state the extent of the redactions. The court or the parties or their

attorneys may request that certain other information also be redacted if there is a good reason for doing so. [Uniform Civil Rules For The Supreme Court And The County Court 202.5 through 202.5bb.]

Service of Papers

In Chapter 10 we discussed the service of the initiatory papers and how that service must be effected. There are many other papers which may be required for service and filing in the action. These papers, referred to as interlocutory papers, must be served on all other parties, even if these parties are co-plaintiff of co-defendants. If the parties are represented by the same attorney, there is no need to serve more than once. If a party is represented by an attorney, the papers are served on the attorney. If the party is acting *pro se*, the papers are served on the party. The exception to this service requirement is if it is a document which is permitted to be filed *ex parte*. The copies of the documents being served must contain the exact same information as those filed with the court. In this day and age that should not be a problem given the proliferation of all types of scanning devices and the widespread use of photocopy machines.

Service of these interlocutory papers may generally be made by any of the methods used for service of the initiatory papers. One exception is service made under the provisions of CPLR §312-a "mail and receipt" service. In addition, service of these interlocutory papers may also be made by regular first class mail. If mailed in New York, service is complete when the documents are placed in a Postal Service depository. If mailed from outside of New York, service is not completed until the documents are actually received. Interlocutory papers mailed from within New York State have an additional time period of five days tacked on to the relevant response time. Papers mailed

from outside of New York State, but within the territorial jurisdiction of the United States, have an additional six days. There are provisions for service on attorneys if difficulty arises in locating the attorney's office.

These interlocutory documents are also served by electronic means, where mandatory or permissible. This includes facsimile, scanning or other method. However, there are some restrictions. Counsel may not wish to receive documents by these methods and, in fact, may have explicitly indicated this. However, the case file and relevant statutes should be consulted before proceeding with any type of electronic service. Where a statute mandates time frames which cannot be extended, and the documents cannot be served or filed by electronic means, the parties and their attorneys must remain diligent in being able to revert to use of documents prepared on paper (a/k/a "hard" copies) and their methods of service and filing.

As with any service, an affidavit of service is required, using an appropriate format which recites the method used. [Several examples of Affidavits of Service appear in this appendix.] The affidavit needs to be notarized, unless an attorney or other permitted affirmation is used, and, of course, requires the attorney's certification. Service of these interlocutory papers is usually carried out by the attorney or a staff member.

It is important to note that, even if a party is known to have attorney representation, the initiatory papers are still required to be served on the party unless that attorney meets the requirements of being an agent for process.

An Ethical Note

The affidavit of service cannot be properly completed prior to the actual carrying out of the task. There should not be such a rush to prepare it. The affidavit states that the papers

were already served. Thus, it is impossible to have a properly executed affidavit of service attached to the papers that are being served on opposing counsel. That would certainly cast doubt on the law office's integrity.

Filing of Papers

Interlocutory papers served are filed with the Clerk of the court in which the action was commenced or the Clerk's designee. The papers should be exactly the same, in all respects, to the papers served on the parties and others involved in the action. Note that now some filings are mandatory with some exceptions as to type of case or the attorney's computer abilities or *pro se* parties. The statute and rules of court should be consulted often as this, relatively new to the courts and county clerks, is evolving.

The Clerk of the Court is not permitted to reject papers submitted for filing unless a statute or rule of court permit such rejection. [CPLR 2102(c)] Rules of the court permit the clerk to reject the papers if there is no index number; all parties are not listed on the summons, complaint and/or judgement; if there is no attorney certification or if the parties are in the wrong court. That being said, the clerks are well versed in those papers filed with the court, most having many years of experience. In the past, the clerks were often the reason that counsel did not make an embarrassing or fatal error in their case.

Generally, and unless specifically required by statute or the court, papers served and filed will be copies of the original. Generally, the originals are maintained in the case folder until the matter is ready for trial. Originals will usually end up at the court.

Affidavits of persons who are not a party to the action are sometimes necessary. The general requirement is that

these affidavits must be sworn to in front of a notary public. This requirement is waived, if properly subscribed to, for certain professionals—attorneys, physicians, osteopaths and dentists who are authorised to practice in New York. This waiver has recently been extended to any person physically located outside of the United States its possessions or territories, using a form similar to the one suggested in the statute. [CPLR 2106]

An Ethical Note

Anything that requires an attorney's signature MUST be signed by the attorney. This includes *anything and everything.* It cannot be a signature stamp and this requirement cannot be delegated to another member of the attorney's staff. Attorneys have been disciplined, including suspension and disbarment, for allowing others to sign the attorney's name.

The same is true for attorneys and other office staff who are notaries. Notaries should not and should not be asked to notarize documents unless the executor is present and is properly identified as the person signing. The notary may find that he or she may be civilly liable to a person who has suffered a loss due to improper notarization.

There are provisions for when a signature is required on electronic documents. It can be an actual signature on scanned documents. Otherwise, it may be through use of a password or code or implicit from the source of the document.

Did You Get It?

1. What are the contents of a caption?

2. Does the party's attorney's name go on the affidavit prepared by the plaintiff? Defendant?

3. May a person, acting *pro se*, hand print the summons and complaint?

4. May the attorney's signature be in baby blue ink?

5. If a contract, which is evidence in an action, is on 8.5" x 14" paper, should that document be reduced and copied on 8.5" x 11" white paper before being filed?

6. When such filing is required, must *pro se* parties file papers electronically?

7. When such filings are required, are attorneys ever exempt from filing electronically.

8. Is any and all information contained in court papers always available for non-parties to view?