

CIVIL COURT OF THE CITY OF NEW YORK

Legal/Statutory Memorandum

Subject: Service of Process by Mail

Class: LSM-102
Category: GP-10
Eff. Date: Jan. 2, 1990

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Chapter 274 of the Laws of 1989, effective January 1, 1990, (and expiring on January 1, 1992) implements an alternative method of service of process. The changes affect the CPLR, Sections 306 and 312-a, and the Civil Court Act, Sections 403 and 1908-a. A copy of the statute is enclosed for your information.

MAILING - The new service provisions allow service of the Summons and Complaint by regular mail. The mailing is to be made by the plaintiff, the plaintiff's attorney or an employee of the attorney. The envelope must also contain two copies of the Acknowledgment of Receipt form as outlined in CPLR 312-a.

ACKNOWLEDGMENT - It is the duty of the defendant/respondent to acknowledge service within 30 days of the day of receipt. If service is acknowledged, defendant/respondent will not be charged with expenses for service. If the defendant/respondent does not acknowledge receipt and the plaintiff/petitioner must resort to another manner of service, the defendant/respondent may be charged with the reasonable cost of service of the summons/petition.

FILING OF SUMMONS - CPLR Section 312-a defines service as completed on the day that the defendant/respondent mails the acknowledgment of receipt (AOR) to the plaintiff/petitioner. CCA Section 409 requires that the summons be filed in Civil Court within 14 days of the date of service. The summons, therefore, must be filed with the Court within 14 days of the mailing of the AOR to the plaintiff.

FILING OF ANSWER - Although CCA Section 402(b) provides for time to answer to run for 30 days from time of the filing of the summons in Civil Court for anything other than personal delivery, CPLR Section 312-a provides for a more limited procedure. The answer is to be filed in Court within 20 days of the time of mailing of the AOR.

FILING OF AOR - For the above outlined purposes, a plaintiff/petitioner will have to file, along with his/her summons, the original or a copy of the envelope received from the defendant/respondent or some other document showing when the AOR was mailed or delivered. Absent such document, the clerk will be unable to count off these periods.

DEFAULT JUDGMENT - Under certain circumstances the clerk may enter a default judgment. For this purpose the clerk will require either the original envelope and/or document showing receipt of the AOR or a copy and an affidavit showing the reason for not having an original for the file.

NON-MILITARY - Please notice that the form as provided in CPLR Section 312-a includes a question as to the military status of the defendant/respondent.

NOTES - Service of the Petition and Notice in Summary Proceedings follows RPAPL Section 735. Service in Small Claims follows CCA Section 1803(a). Service on the Secretary of State follows BCL 306. None of these is affected by CPLR 312-a.

Jacqueline Silbermann
Administrative Judge