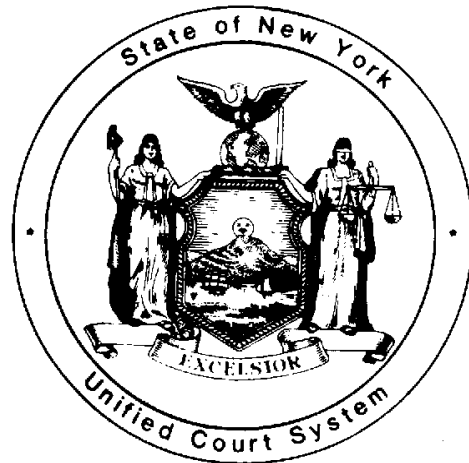


**REPORT BY THE  
UCS CIVIL MOTION PRACTICE  
COMMITTEE**



**May 1999**

**SUPREME COURT CIVIL  
MOTION PRACTICE SURVEY**

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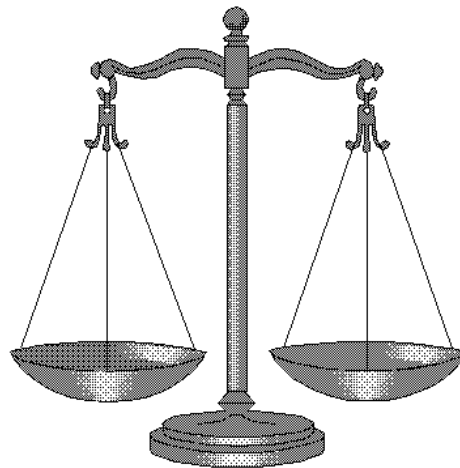
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## **EXECUTIVE SUMMARY**

The mission of the UCS Civil Motion Practice Committee is to comprehensively examine civil motion practice in Supreme Court throughout New York State and, in doing so, to respond to a legislative proposal advanced by the New York State Bar Association (NYSBA) to extend civil motion practice time periods.

A survey, which was sent to the 62 Chief Clerks of Supreme Court and County Court, yielded a wealth of information to assist UCS in an ongoing effort to improve and enhance all facets of case management in our courts, including civil motion practice. The survey results reveal that most courts count cross-motions separately, maintain a central location for filing motions, have a minimum time period prior to the return date by which motion papers must be delivered and, upon receipt of papers, review papers for compliance with various requirements of the CPLR and Uniform Rules for Motion Procedure (22 NYCRR §202.8). The minimum time period prior to the return date by which moving papers must be delivered and the scope of review of those papers vary among the courts.

Courts use one of two main motion tracking systems (either a mainframe or microcomputer application) and, in most counties, Clerk's Office staff enter motion data into the court's tracking system. Most courts use motion calendars generated by the Clerk's Office and most do not have a specialized/centralized motion calendar call. Most courts also entertain applications for motion adjournments prior to scheduled return dates, with varying procedures as to whom the applications are made and procedures for processing such applications.

Chief Clerks were asked in the survey to review a certain number of motions to ascertain the notice provided by attorneys for the moving parties to their adversaries. Results showed that, in the majority of motions, attorneys provided more than the 8-day minimum period for personal service

and more than the 13-day period for service by mail. In addition, in more than 30% of all motions reviewed, more than 30 days notice was provided. The survey also shows a considerable range in the number of motions per county brought on by order to show cause, with some counties indicating that 25-30% of the motions reviewed were brought on by orders to show cause.

With respect to compliance with requirements of the Uniform Rules, a majority of courts indicate that they adhere to the limitations of adjournments and requirements for preliminary conferences, and most promote use of self-executing orders. Approximately one-third of the courts indicate that their motion procedures vary from justice to justice and one-half of the courts report that efforts are made by their justices to limit unnecessary motion practice.

Approximately one-half of the courts indicate that staff deliver orders and motion papers to the County Clerk for filing. Fourteen Chief Clerks in counties in which staff do not deliver orders and motion papers to the County Clerk indicate that justices in their courts direct attorneys to deliver orders and motion papers to the County Clerk for filing.

These findings reveal that, while motion practice has evolved to address varying local needs, there is considerable uniformity in motion practice in the respective counties. The Committee believes that such uniformity is important and efforts should be undertaken to further increase standardization of motion practice. Such efforts will assist practitioners, particularly those who practice in more than one jurisdiction, benefit the courts by promoting efficiencies and adoption of the best practices Statewide, and provide a more accurate means of comparison among the courts. The Committee recommends that all counties (1) work jointly to develop a civil motion practice manual for use Statewide; (2) count cross-motions separately; (3) identify central filing locations for delivery of motion papers; (4) consider use of new computer applications to assist in recording and tracking

motion data; (5) harmonize procedures for review of moving papers for compliance with the CPLR and Uniform Rules; (6) adopt a uniform minimum time period for delivery of papers prior to the return date; (7) adopt appropriate practices relating to acceptance of late filings of papers timely served; (8) review use of orders to show cause to determine whether they can be utilized less frequently in view of the additional burdens placed on the court; (9) examine ways to promote greater use of self-executing orders; (10) examine ways to improve the effectiveness of preliminary conferences in reducing unnecessary motion practice; (11) improve compliance with requirements for preliminary conferences and limitations on adjournments; (12) review efforts undertaken effectively in some counties to reduce unnecessary motion practice to determine whether they can be replicated in other counties; (13) improve court procedures relating to filings with the County Clerk's office; (14) provide programs on effective motion practice at Judges' and Clerks' seminars; (15) encourage counties that have not done so to develop local guides to motion practice; and (16) continue to study the motion survey results to improve motion practice Statewide.

With respect to lengthening civil motion service periods, as proposed by the NYSBA, the survey results do not support such an extension. Results show that, in the vast preponderance of the motions reviewed, attorneys provide more, and in many cases far more, than the minimum notice required by statute. Many Chief Clerks believe that too many motions already are being brought on by orders to show cause and that an extension of motion notice periods would only increase the number of motions brought on by orders to show cause, thereby generating more work for the courts. Moreover, 42 of the 62 Chief Clerks responded that attorneys have never indicated that it would be helpful to extend motion periods. Thus, the survey results reveal that the NYSBA proposal is not justified by need and would create additional burdens for the court. With the adoption of pre-note

standards and goals in 1997 and the resulting emphasis on pre-note court management, an extension of motion service periods would be counterproductive to overall UCS efforts to achieve trial readiness more expeditiously.

# **INTRODUCTION**

## INTRODUCTION

The UCS Civil Motion Practice Committee (Committee) was established to review and assess civil motion practice in the respective counties throughout New York State, and also to gather information to assist in responding to a legislative proposal by the New York State Bar Association (NYSBA) to extend the motion service periods set forth in CPLR 2214(b). The members of the Committee are: Patricia K. Bucklin (OCA Director of Public Affairs), Charles E. Diamond (Chief Clerk, Supreme and County Courts, Albany County), John A. Giordano (OCA Coordinator of Trial Court Operations and formerly Chief Clerk, Supreme and County Courts, Rockland County), James E. Makowiec (Deputy Chief Clerk, Supreme and County Courts, Onondaga County), Nancy Mangold (OCA Assistant Deputy Chief Administrator of Court Operations and formerly Chief Clerk, Supreme and County Courts, Westchester County), John T. Pauer (Deputy Chief Clerk, Supreme and County Courts, Monroe County), Michael J. Providence (Chief Clerk, Supreme and County Courts, Monroe County), and John F. Werner (Chief Clerk, Supreme Court, New York County).

Initially, the Committee informally canvassed five counties in New York City and several counties outside New York City regarding their civil motion practice. Subsequently, the Committee broadened the scope of its inquiry by circulating a uniform civil motion practice survey to each of the 62 New York State Supreme and County Chief Clerks (see Appendix A). The survey is designed to collect information about critical aspects of civil motion practice in Supreme Court throughout the State, including information as to how practice is affected by local needs and customs. The survey includes questions about filing and tracking motions, motion calendar calls, notice afforded adversaries by a moving party, compliance with the Uniform Rules for Motion Procedure (22 NYCRR §202.8), entry of orders, and special proceedings.



## PART ONE: SUMMARY OF FINDINGS

### I. Respondents

The survey was sent to all 62 of the Chief Clerks of New York State Supreme and County Courts.<sup>1</sup> All of the recipients returned a survey and responded to some or all of the questions posed.

### II. Background Information

The number of Supreme Court Justices presiding in the respective counties varies greatly.<sup>2</sup> New York County Supreme Court has the highest number of justices (50.6), while Hamilton County has no justice assigned to that county.<sup>3</sup> The number of actions pending in the respective counties ranges from a high of 54,009 in Kings County to a low of 1 in Hamilton County. Similarly, Kings County (counting cross-motions as separate motions filed) records the highest number of motions filed annually - approximately 41,547 in 1998 (New York County is one of the few counties which does not count cross-motions as separately filed motions and, with 29,732 recorded in 1998, may have a total number of motions and cross-motions comparable to Kings County) - while Hamilton County records the lowest number of filed motions annually - approximately 31 in 1998. The Statewide average number of actions pending per justice in 1998 was 484, while the Statewide average number of motions filed annually per justice in that year was 612. An overwhelming majority of the Supreme Courts (52) count cross-motions separately from initial motions when compiling statistics.

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<sup>1</sup>Outside New York City, the Chief Clerks of County Court also serve as Chief Clerk of Supreme Court.

<sup>2</sup>To assure uniformity and completeness in counting time spent by visiting judges, etc., the Committee used an OCA analysis to count the number of justices in each county. This formula is based on the number of "judge days" served annually in each county divided by the OCA standard per judge of 221 days annually.

<sup>3</sup>Supreme Court sessions for Hamilton County are held in Fulton County.

### **III. Filing Motions**

Each Chief Clerk was asked to describe the procedures for filing motions in their court, including time for and place of filing, acceptance of late filings and the degree of initial review of motion papers. All courts require parties to file moving papers prior to the return date of a motion. The majority of courts (approximately 75%) maintain a central location for filing moving papers. And, of the courts that do not maintain a central location for filing moving papers, more than half are in counties that have only one Supreme Court, Civil Part. Although moving papers are not filed in the Clerk's Offices of these courts with only one part, only one central location in fact exists for filing motion papers.

The majority of courts also maintain a central location for filing answers to motions (approximately 69%). And, of the courts that do not maintain a central location for filing answers, more than half are in counties that have only one Supreme Court, Civil Part. These courts with only one part, therefore, have only one central location for filing answering papers.

In the majority of the courts, moving papers and answering and reply papers are forwarded to the justices' chambers as received and prior to the return date. A small number of courts forward these papers to chambers on or after the return date or according to some other schedule, for example, after data entry is completed.

Fifty-eight courts have a minimum time period prior to the return date by which moving papers must be filed. The time for filing moving papers varies from a high of 13 days prior to the return date of the motion to a low of 1 day prior to the return date of the motion. On average, moving papers must be filed 4 days prior to the return date of the motion. Thirty-nine Chief Clerks indicate

that late filings are accepted. In 16 courts, whether a late filing will be accepted is determined on a case-by-case basis. Only 7 courts do not permit late filings.

The responses to questions about the review of filed motion papers presented for filing for compliance with the CPLR and the Uniform Rules for Motion Procedure (22 NYCRR §§ 202.7, 202.8) indicate that the scope of review and parameters for rejection vary among the courts. Often, review procedures reflect the preferences of individual chambers and the number of motions filed in a particular court. Fifty-one courts indicate that all filings are reviewed for compliance with the CPLR and the Uniform Rules upon delivery to the court. Although the remaining courts indicate that filings are not so reviewed upon delivery to the court, it is apparent from additional comments provided that these courts do review the filed papers subsequent to “acceptance.” With respect to the elements reviewed, more than half of the counties review timeliness of service, appropriate return date and location, and compliance with New York Rules of Court §§130, 202.7 and 202.8. In one-third of the counties, papers found to be defective upon review are rejected. In the remaining counties, papers are either “accepted” despite noted defects or any noted defect is handled in some other manner, for example, as directed by the justice presiding. In general, the survey responses indicate that the courts have procedures in place to assist parties in resolving defects in their motion papers and other documents presented for filing.

#### **IV. Tracking Motions**

Each Chief Clerk was asked to identify the means and extent to which motion activity is recorded by his or her office. The information requested included tracking system used, staff responsible for data entry, and specific data maintained.

Two standardized computer programs are used by the Clerks' Offices for case management purposes: the Civil Case Information System (CCIS) and Advanced DB Master (ADBM). CCIS, which is a mainframe application, is used by 13 counties - those comprising the First and Second Judicial Departments and Erie County. ADBM, which is a microcomputer application, is used by the remaining 49 counties. Since 1997, all ADBM counties have used a uniform civil file format. Prior to 1997, these counties used different versions of an ADBM file which had been developed on a local or district-wide level. Both CCIS and ADBM allow courts to track a significant number of motion elements. The information maintained, therefore, can be used to conduct a detailed and reliable comparative analysis of civil motion activities.

In an overwhelming majority of courts (approximately 93%), Clerk's Office staff (*i.e.*, back office staff and/or part clerks) are utilized to enter data into the court's motion tracking system. Chambers' staff perform data entry in the remaining courts. With few exceptions, all data is entered into a court's motion tracking system upon receipt of the moving papers by the Clerk's Office and prior to the return date of the motion. While the specific motion information entered into a court's motion tracking database varies from court to court, the following key elements are routinely entered in almost all counties: (1) names and addresses of attorneys or *pro se* litigants, (2) motion submission, return and adjourned dates, (3) nature of relief sought, and (4) decision and decision dates. Approximately 50% of the courts track oral argument dates while only about 10% of the courts record receipt of answering/reply papers and the date of entry of an order with the County Clerk's Office.

## V. Motion Calendars and Motion Calendar Calls

Each Chief Clerk was asked whether motion calendars are prepared in advance of motion return dates, about the procedures followed on motion return dates and whether the court accepts pre-return date applications for adjournments.

Approximately 82% of the Chief Clerk's Offices generate motion calendars. Chambers staff generate motion calendars in the remaining courts. The vast majority of Chief Clerks (52) indicate that motion calendars are prepared in advance of motion return dates. With the exception of Nassau County, the counties that do not prepare motion calendars in advance of return dates appear to have limited motion practice. These counties, therefore, may not need to produce a formal calendar to manage and track motions. It is interesting to note, however, that of the 10 counties that do not prepare motion calendars in advance of motion return dates, 5 are located in the Third Judicial District. This may, therefore, be an indication of a "local custom" rather than an indication that motion calendars are not needed as a management tool.

Fifty-one Chief Clerks indicate that their courts have no specialized/centralized motion submission calendar call. Nine Chief Clerks indicate that their courts do conduct specialized/centralized motion submission calendar calls. Of these 9, it is likely that only Bronx County and New York County have true centralized/specialized motion parts. The remaining 7 appear to have interpreted the term "centralized/specialized motion parts" to include a specific day or time of day designated by the justice presiding to hear motions.

In 44 of the courts, the justices presiding hold their own motion calendar calls. Few courts require an appearance for submission of papers and even fewer entertain oral argument during calendar call unless a request to do so has been made in the moving papers and has been granted by

the court. Some courts indicate that oral argument may be requested during calendar call and then will be scheduled for a future date. The survey responses indicate that the procedures governing motion practice are determined by individual judges and their style of case management.

Most Chief Clerks indicate that their courts will entertain applications for adjournments prior to the scheduled return date. Of the 5 courts that do not entertain such applications, 3 are larger New York City courts that use a centralized/specialized motion support part and, due to the large volume of cases, cannot track pre-calendar call adjournments. These New York City courts entertain applications for adjournments on the return date of the motion.

There is little uniformity with respect to the place for making an application for adjournment prior to the scheduled return date, the person to whom such an application is made, the person who decides such an application and the procedure for processing such applications. It appears that these procedures are established at the direction of the justice presiding. The survey results do indicate, however, that in most cases justices' and chambers' staff decide applications for adjournments. Back office or part clerks may be permitted to grant adjournments within certain well-defined guidelines. Applications for adjournments prior to the scheduled return date do generate additional work for the court as they necessitate additional data entry and the handling of more paper.

## **VI. Notices, Subject Matter, and Orders to Show Cause**

Each Chief Clerk was asked to review the lesser of 100 motions filed in his or her court (whether served personally or by mail) or the number of motions filed "during the last 60 days," and to provide a summary of the periods of notice provided by attorneys for moving parties to their adversaries. A total of 2,799 motions, representing an average of 69.97 motions per court, were reviewed by the 40 Chief Clerks who responded to these inquiries regarding motion service periods.

In the vast preponderance of these motions, attorneys for moving parties provided more than the 8-day minimum notice for personal service and more than the 13-day minimum notice for service by mail (8 days pursuant to CPLR 2214(b) plus 5 additional days pursuant to CPLR 2103(b)(2)). Of the total number of motions reviewed (both those personally served and those served by mail), only 2.63% were personally served 8 - 9 days prior to the return date, and only 17.82% were served by mail 13-19 days prior to the return date. In almost 30% of all motions reviewed (both those personally served and those served by mail), more than 30 days notice was provided.

Each Chief Clerk was asked whether greater efficiency of court operations would be achieved if CPLR 2214(b) was amended to extend the motion service periods. Five Clerks respond that extending those periods would be very helpful or helpful, 6 respond that it would be very unhelpful or unhelpful, and 46 respond that it would be neither helpful nor unhelpful. In response to an inquiry as to whether extending motion service periods would provide greater fairness to litigants, 7 Clerks respond that such an extension would provide greater fairness, 20 respond that the result would provide about the same level of fairness as presently exists, 1 responds that there would be less fairness, and 29 do not know whether greater fairness would result from extending motion service periods.

Each Chief Clerk also was asked to indicate the number of motions reviewed that concerned discovery issues and the number of motions reviewed that were substantive/dispositive motions. Of the 69.97 average total motions reviewed in each county, the average number of disclosure motions was 18.95 and the average number of substantive/dispositive motions was 41.70.

Each Chief Clerk also was asked to estimate the percentage of motions in their respective counties brought on by order to show cause. The percentage of motions brought on by order to show

cause ranges from a low of 3% in Columbia County to a high of 45% in Suffolk County. In many counties, between 20% and 35% of the motions reviewed were brought on by orders to show cause. Of the Chief Clerks who responded to the inquiry of whether too many motions in their county are brought on by orders to show cause when a notice of motion would have sufficed, 19 respond that they strongly agreed or agreed; 17 respond that they strongly disagreed or disagreed; and 25 respond that they neither agreed nor disagreed.

The Chief Clerks also were asked whether parties are provided prior notice of scheduled appearances (*e.g.*, adjournment dates, argument dates, preliminary conference dates) and how such prior notice is communicated. Fifty Chief Clerks indicate that parties are provided prior notice of scheduled appearances by various means including mail, telephone, fax, computer and law journal publication.

## **VII. Uniform Rules for Motion Procedure**

Each Chief Clerk was asked whether his or her court generally adheres to the limitations for adjournments set forth in Uniform Rule §202.8(e)(1) and the frequency with which attorneys request adjournments that require express permission from the court; whether the court routinely schedules preliminary conferences pursuant to Uniform Rule §202.8(f) and, if yes, whether the court makes available to the parties in advance of scheduled preliminary conferences a preliminary conference stipulation and order form; and, whether the court promotes the use of self-executing orders. If the court does promote the use of self-executing orders, the Chief Clerks were asked to indicate whether the court uses any materials or manuals that describe instances in which self-executing orders are feasible and instances in which settlement of an order is necessary.



Thirty-nine Chief Clerks indicate that their courts adhere to the limitations on adjournments of motions imposed by Uniform Rule §202.8(e)(1). Only 9 Chief Clerks indicate that attorneys seek adjournments beyond the limits provided in Uniform Rule §202.8(e)(1) and thus require express permission from the court. Forty-one Chief Clerks indicate that their courts adhere to Uniform Rule §202.8(f) with respect to scheduling preliminary conferences, while 39 indicate that preliminary conferences are scheduled to be held within 45 days from the return date of motions relating to disclosure or to a bill of particulars. Thirty-nine Chief Clerks indicate that their courts make preliminary conference stipulation and order forms available to the parties in advance of scheduled preliminary conferences.

Forty-four Chief Clerks indicate that their courts promote the use of self-executing orders, while 3 indicate that their courts use materials or manuals that describe when such orders are feasible and instances in which settlement of an order is necessary.

### **VIII. Special Proceedings**

Each Chief Clerk was asked to estimate, if possible, the number of special proceedings filed in his or her court and to indicate whether motions and special proceedings are commingled on the same calendar.

Forty-three Chief Clerks estimate the number of special proceedings filed in their courts. In these 43 counties, the respective annual average number of special proceedings given is 470. Courts located in counties in which correctional and/or mental health facilities are maintained or which are subject to special venue provisions handle significantly more special proceedings than counties without such facilities or provisions. Fifty-five Chief Clerks indicate that motions and special proceedings are commingled on the same calendar.

## **IX. Other Questions and Recommendations**

Twenty Chief Clerks indicate that motion procedures in their courts vary from justice to justice. Seven Chief Clerks agree that such differing procedures cause difficulties for the bar practicing in their courts while 15 disagree and 11 are neutral. Seven Chief Clerks indicate that such differences in motion procedures cause problems for their back office staff, while 15 respond that such was not the case and 11 are neutral. As to whether such differences in motion procedures cause problems for Clerks' Offices, 6 Chief Clerks agree, 14 disagree and 11 neither agree nor disagree.

Thirty-one Chief Clerks indicate that justices in their courts make efforts to limit unnecessary motion practice. Eighteen Chief Clerks indicate that preliminary conferences are a useful mechanism for reducing unnecessary motions. Forty-one of the Chief Clerks responding to the motion survey do not identify any problems in their respective courts related to civil motion practice.

Seven Chief Clerks believe that more education, greater communication and wider dissemination of information regarding motion procedures is needed to improve motion practice in their courts. Eight Chief Clerks recommend centralizing motion filing, employing automatic rejection of late submissions and use of sanctions, when appropriate, to improve motion practice in their courts. Six Chief Clerks suggest changes in submission and deadline procedures, and stricter adherence to rules to improve motion practice in their courts.

Three Chief Clerks agree that members of the bar in their county have expressed dissatisfaction with their court's motion procedures, while 18 neither agree nor disagree, and 38 disagree.

**X. Filing Motion Papers and Entering Orders in the County Clerk 's Office**

Each Chief Clerk was asked whether staff deliver orders to be entered and motion papers to be filed to the County Clerk's Office. If staff do not deliver such orders and motion papers, then each Chief Clerk was asked whether his or her court takes any steps to confirm that orders and/or moving papers are otherwise delivered to the County Clerk's Office for entry and/or filing. Each Chief Clerk was asked to estimate the percentage of such orders and/or moving papers that are, in fact, delivered to the County Clerk's Office by someone other than staff for entry and filing. Each Chief Clerk also was asked whether justices in counties in which staff do not deliver orders and motion files to the County Clerk include an express direction in their orders that the moving papers and order be filed and entered in the County Clerk's Office. Each Chief Clerk also was asked whether any justices effectuate "entry" or "filing," either through an endorsement to that effect on the decision or order, or by incorporation in the order of a provision that signature shall be deemed "entry" or "filing." Each Chief Clerk also was asked whether the County Clerk has deputized court personnel to affix "County Clerk" entry stamps on orders. Each Chief Clerk also was asked the amount of time it takes for an order to be entered by the County Clerk and made available to the public once delivered to the County Clerk's Office. Each Chief Clerk also was asked whether, pursuant to CPLR 2220, his or her respective justices vacate orders as irregular if a party fails to file any paper as required by CPLR 2220; and whether and to what extent justices exercise the discretion granted by CPLR 2220 to dispense with the filing of motion papers and opinions. Finally, each Chief Clerk was asked about the location of the County Clerk's Office in relation to his or her court office.

Thirty-two Chief Clerks indicate that staff deliver orders to the County Clerk's Office for entry and 34 indicate that staff deliver motion papers to the County Clerk's Office for filing. Three

Chief Clerks indicate that their court does take steps to confirm that orders and/or moving papers are otherwise delivered to the County Clerk's Office for entry and/or filing. Eleven Chief Clerks estimate that, in those cases when other than staff are responsible for delivering orders and motion papers to the County Clerk's Office, 95% of orders and 97% of motions ultimately are entered and filed. Fourteen Chief Clerks indicate that justices in their courts expressly direct attorneys to deliver orders and motion papers to the County Clerk's Office for entry and filing. Nine Chief Clerks indicate that justices in their courts effectuate "entry" or "filing" either through an endorsement on the order, or incorporation therein of a provision that signature shall be deemed "entry" or "filing." One Chief Clerk indicates that the County Clerk has deputized court personnel to affix "County Clerk" entry stamps on orders. Thirty-six Chief Clerks indicate that orders delivered to the County Clerk are entered and made available to the public within 1 day after delivery; 17 Chief Clerks indicate that such orders are entered and made available to the public within 2 - 3 days after delivery; 4 Chief Clerks indicate that such orders are entered and made available to the public within 4 - 5 days after delivery; and 2 Chief Clerks indicate that such orders are entered and made available more than 5 days after delivery.

Seven Chief Clerks indicate that justices in their courts from time to time vacate orders as irregular pursuant to CPLR 2220 if a party fails to file a paper as required and 10 Chief Clerks indicate that justices in their courts never vacate an order as irregular under such circumstances. Ten Chief Clerks have no information concerning such practice by justices in their courts. Three Chief Clerks indicate that justices in their courts often exercise the discretion granted by CPLR 2220 to dispense with the filing of motion papers and the entry of orders, while 39 indicate that justices in their courts never do so. Twelve Chief Clerks have no information concerning this practice.

Forty-seven County Clerk's Offices are in the same building as the court or in a separate building on the same block. The remaining County Clerk's Offices are located various distances from the courthouse, ranging from 34 miles to 1 block away.

## PART TWO: RECOMMENDATIONS

The survey results generated an enormous amount of information about civil motion practice in the 62 counties of the State that was not known previously. While the number and complexity of motions vary from county to county, and court procedures often have evolved to address these varying local needs, the Committee was pleased to find that a substantial number of counties have similar procedures. This assists the courts in addressing and improving motion practice and also benefits attorneys and litigants who practice in various jurisdictions. The Committee strongly encourages continued efforts to standardize procedures to the extent feasible to assure maximum consistency and use of the best practices. To facilitate this effort, the Committee makes the following recommendations:

- (1) **Civil motion practice manual** - The Committee recommends that a civil motion practice manual be developed and made available for Statewide use by the courts and the bar.
- (2) **Cross-motions** - The Committee recommends that all counties count cross-motions separately, as is now done in 52 counties, to assure uniformity and accurate statistical comparisons.
- (3) **Central filing location** - Forty-seven courts now have one central filing location for filing motions. Many of those counties which do not have a central location are counties with only one part of court, so in fact there may be only one filing location. The Committee recommends further examination of these remaining counties to determine whether one central motion filing location is feasible.
- (4) **Data entry** - The Committee recommends examination of whether increased use of computer technology and bar coding might assist in recording and tracking motion data.

- (5) **Motion review procedures** - Harmonize to the extent possible, the review procedures which are undertaken by the respective Chief Clerks' Offices to ensure moving papers are in fundamental compliance with the CPLR and the Uniform Rules.
- (6) **Minimum time periods for filing** - Almost all courts require moving papers to be filed a minimum number of days before the return date. The minimum time period varies greatly. Approximately one-half of the counties require papers to be filed less than 5 days before the return date. Other counties range from 5-8 days, with the remaining 3 counties at 10-13 days. The Committee recommends that consideration be given to a uniform filing period for all counties of 4 or 5 days.
- (7) **Acceptance of late filings of motions which are timely served** - The courts have been very accommodating in exercising judicial discretion in accepting late filings. The Committee recommends that there be further examination of local practices to ascertain whether further improvements in this area are feasible.
- (8) **Orders to show cause** - When orders to show cause rather than motions are used, it creates additional burdens for courts and litigants, often requiring determination of stay requests, immediate review, shorter service periods, requests for additional time, etc. In view of these additional burdens, it would be desirable to examine ways to discourage use of orders to show cause, where possible.
- (9) **Self-executing orders** - Including decretal paragraphs in decisions so that they become self-executing orders saves time for judges and litigants. There are excellent guides to the proper form of orders and judgments that have been prepared (*i.e.*, New York County), which set forth when such orders are feasible and instances in which settlement of an order is

necessary. The Committee recommends that these manuals be disseminated and made available to all courts.

- (10) **Preliminary conferences** - Study preliminary conference scheduling practices and means to make preliminary conferences a more effective device for enhancing case management and reducing and hopefully, ultimately eliminating unnecessary motion practice.
- (11) **Compliance with Uniform Rules** - While a majority of courts comply with requirements for limitations on adjournments and preliminary conferences, the survey results indicate that some counties need to improve their compliance efforts. The Committee recommends that, where necessary, procedures be implemented to promote greater compliance.
- (12) **Limiting unnecessary motion practice** - Numerous courts indicate that their justices take steps to limit unnecessary motion practice, particularly unnecessary disclosure motion practice. The Committee encourages review of these various efforts and identification of initiatives that can be replicated in counties throughout the State.
- (13) **Filing with the County Clerk** - Procedures vary greatly with respect to entry of orders by and filing of papers with County Clerk's Offices. The Committee recommends that further consideration be given to examining court practices for the entry of orders by and filing of motion papers with the County Clerk's Offices. This should be done in conjunction with an assessment of the feasibility of greater integration of data collection systems used by the courts and the County Clerk's Offices.
- (14) **Continuing Legal Education** - Statewide Judges' and Clerks' seminars should include programs which focus on efficient and effective motion practice.



- (15) **Local Guides to Motion Practice** - Encourage respective counties which have not already done so, to prepare summary descriptions of motion practice in their counties. These guides would be available to the bar and the public and would be designed to promote a better understanding of local motion practice.
- (16) **Motion Survey Results** - The Committee encourages further study of the motion survey results in a continuing effort to improve Statewide motion practice.

Finally, as noted in more detail in Part Three of this Report, the Committee has serious concerns about the NYSBA's proposal to extend motion notice periods. The survey results indicate that ample notice is now provided and lengthening of the motion notice periods is likely to generate increased use of orders to show cause, with additional burdens for courts and litigants, and hamper UCS efforts to improve case management and earlier trial readiness.

**PART THREE: RESPONSE TO NEW YORK STATE BAR  
ASSOCIATION'S LEGISLATIVE PROPOSAL**

The New York State Bar Association proposes an amendment to CPLR 2214, 2215, and 2103(b) to extend motion service periods.\* Currently, all motions must be served at least 8 days before the return date (answering papers: 2 days, unless moving papers are served at least 12 days before the return date and an answer is requested at least 7 days before the return date). Pursuant to the NYSBA's proposal, the time for service of motion papers would be measured in "business" days as defined by section 24 of the General Obligations Law. In addition, the NYSBA proposes to require that motions brought pursuant to CPLR Articles 30 and 31 be served at least 15 business days (answering papers: 7 days; reply papers: 2 days) prior to the return date. All other motions for which specific time periods are not otherwise provided would be served at least 20 business days (answering papers: 9 days; reply papers: 2 days) prior to the return date, and cross-motions would be served 9 business days (answering papers: 2 days) prior to the return date. All motion papers would be furnished to the court at least 2 business days prior to the return date.

The NYSBA has concluded that the current time periods for service of motion papers are too short to allow parties to adequately review and respond to the issues raised in the motion papers and, as a result, disputes over adjournments occur and judicial resources are wasted on scheduling matters. The NYSBA believes its proposed changes, therefore, would result in better motion papers, reduce disputes over timing and requests for adjournments, and improve motion practice in New York's courts.

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\*This proposal was introduced during the 1997-98 legislative session as S.2211 (Skelos) and A.2620 (Weprin). During the 1999 session, it has been introduced as A.3119 (Weprin).

The UCS Civil Motion Practice Committee's survey suggests that the NYSBA's proposed extension of CPLR 2214 (b) service periods is ill advised. The responses concerning notice periods given indicate that attorneys, in the vast preponderance of the motions reviewed, provided more, and in many cases, far more, than the minimum notice required by CPLR 2214(b). Thus, for example, of the total number of motions reviewed (both those personally served and those served by mail) by the 40 counties, only 2.63% were personally served 8 - 9 days prior to the return date. CPLR 2214(b) provides that motions personally served must afford a minimum of 8 days notice, and it appears, at least from this sample, that very few attorneys who personally serve motions are giving only the minimum notice. 17.82% of all of the motions reviewed (both those personally served and those served by mail) were served by mail within 13 - 19 days prior to the return date. Inasmuch as all motions served by mail must, pursuant to CPLR 2103(b)(2) afford a minimum of 13 days notice (8 days pursuant to CPLR 2214(b) plus 5 additional days pursuant to CPLR 2103(b)(2)), it appears, at least from this sample, that attorneys serving motion papers by mail are, in most instances, affording adversaries significantly more than the minimum notice required. Indeed, in almost 305 of all motions reviewed (both those personally served and those served by mail), more than 30 days notice was provided.

Each Chief Clerk was asked to estimate the percentage of motions in his or her respective county brought on by order to show cause. The percentage of motions brought on by order to show cause ranges from a low of 3% in Columbia County to a high of 45% in Suffolk County. In many counties, between 20% and 35% of the motions reviewed were brought on by orders to show cause. Of the Chief Clerks who answered the inquiry as to whether they agree that too many motions in their county are brought on by orders to show cause when a notice of motion would have

sufficed, 19 strongly agree or agree, 17 strongly disagree or disagree, and 25 neither agree nor disagree. Extending the 2214(b) motion notice periods, in all likelihood, would result in a significant increase in the already high number of motions brought on by orders to show cause. The fact that 19 of the Chief Clerks responding to the survey indicate that, in their opinions, too many motions are presented in their counties by orders to show cause, strongly militates against extending the 2214(b) motion notice periods.

Each Chief Clerk was asked whether greater efficiency in court operations would be achieved if the CPLR 2214(b) was amended to extend the motion service periods. Five Chief Clerks indicate that extending those periods would be very helpful or helpful, 6 indicate that it would be very unhelpful or unhelpful, and 46 indicate that it would be neither helpful nor unhelpful. In response to an inquiry as to whether expanding those notice motion periods would provide greater fairness to litigants, 7 Chief Clerks indicate that such an extension would provide greater fairness, 20 indicate that the result would provide about the same level of fairness as presently exists, 1 suggests that there would be less fairness and 29 indicate they do not know whether there would be greater fairness.

When asked whether members of the bar have indicated to them that it would be helpful to extend the 2214(b) motion periods, 42 state that attorneys have never so indicated, 4 note that attorneys, to a small extent, have indicated it would be helpful, and 4 note that attorneys, to a moderate extent, have indicated that it would be helpful.

Since the introduction in 1997 of pre-note standards and goals (12 months for standard cases and 15 months for complex cases) (Uniform Rule §202.12), courts have undertaken more aggressive pre-note case management. The Comprehensive Civil Justice Program promulgated by the UCS on March 24, 1999, puts even greater emphasis on aggressive pre-note case management. Motions, other

than those which result in dispositions, typically result in delay in achieving trial readiness. At a time when the Unified Court System is promoting greater expedition in litigation, it seems counter-intuitive to extend the 2214(b) motion service periods.

The Committee appreciates the opportunity afforded to examine civil motion practice in Supreme Court and recommends that its report be shared with Supreme Court Justices and interested members of the bar for their consideration and participation in the important, ongoing work of improving motion practice throughout New York State.\*

Respectfully Submitted,

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\* The Committee is grateful for the assistance of Philip Ferrara in drafting the survey, MaryKate Owens, Connie Cutler and Sandy Mathes in compiling the survey results, and Maryrita Dobiell in drafting this report.

# **APPENDICES**