



**NEW YORK STATE**  
**Unified Court System**

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS  
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL  
COUNSEL

**MEMORANDUM**

January 22, 2016

To: All Interested Persons

From: John W. McConnell

Re: Proposed Abolition of Appendix of Official CPLR Forms

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The Administrative Board of the Courts is seeking public comment on a recommendation, by the Advisory Committee on Civil Practice to the Chief Administrative Judge, that the Unified Court System abolish the Appendix of Official Forms for the Civil Practice Law and Rules in New York (Exh. A). As described in supporting correspondence by the Advisory Committee (Exh. B), the Appendix of Official Forms, issued in 1968 to provide guidance for application of the recently-enacted CPLR, has fulfilled its principal purpose and – as it has not been updated since issuance almost fifty years ago – may no longer reliably reflect current civil practice in many respects. The Committee notes further that the Appendix of Forms under the Federal Rules of Civil Procedure, from which the CPLR Appendix was adopted, was abrogated as superfluous in December 2015.

Persons wishing to comment on this proposal should e-mail their submissions to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov) or write to John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than March 22, 2016.**

**All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.**

**EXHIBIT A**

**DRAFT**

**ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

As regards the Appendix of Official Forms for the CPLR (Civil Practice Law and Rules) [hereinafter "CPLR Appendix"], adopted by the Judicial Conference effective September 1, 1968, I make note that:

- (1) Said CPLR Appendix has fulfilled its purpose of illustrating the simplicity and brevity of statement contemplated by the CPLR during the transition in practice under the Civil Practice Act to practice under the CPLR and is no longer necessary;
- (2) The Judicial Conference observed, at the time the CPLR Appendix was proposed, that practice forms adopted in Great Britain in 1883 to illustrate the then-recent reform of British court procedure were rescinded in 1964, having fulfilled their purpose;
- (3) The Appendix of Forms under the Federal Rules of Civil Procedure, adopted in 1938, from which the CPLR Appendix was adapted, is scheduled to be abrogated on December 1, 2015, having fulfilled its purpose; and
- (4) Commercially prepared forms for practice under the CPLR are widely available;

And accordingly I hereby order, pursuant to the authority vested in me by section 107 of the CPLR, that the CPLR Appendix is rescinded, effective immediately

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Chief Administrative Judge of the Courts

Dated: \_\_\_\_\_, 2015

AO/\_\_\_/15

**EXHIBIT B**

October 23, 2015

Hon. Lawrence K. Marks  
Chief Administrative Judge  
NYS Unified Court System  
25 Beaver Street  
New York, NY 10004

Re: Order to Abolish Official CPLR Forms  
Advisory Committee on Civil Practice to the  
Chief Administrative Judge

Dear Judge Marks:

Your Advisory Committee on Civil Practice offers the enclosed draft order and memorandum in support of abolishing the Appendix of Official Forms for the CPLR (“CPLR Appendix”) in New York. Also enclosed is a compendium of the legislative history referred to in the memorandum.

Recently, the Committee was contacted by staff from the Appellate Division, First Department, regarding their inability to locate a published, current version of the Official CPLR forms. The First Department was considering an appeal involving a CPLR form issue, and, in fact, issued its decision shortly thereafter in *Scholastic Inc. v. Pace Plumbing Corp.*, 2015 NY Slip Op 03489 (April 28, 2015) (in part ruling on the appropriate manner to frame an Answer which pleads the statute of limitations defense as an affirmative defense). Despite a diligent search, the Committee discovered that there is no current, official compendium of the CPLR Appendix.

Upon a review of the forms and their history, the Committee concluded that compliance with such “official” forms should not be a safe harbor for satisfying the legal standards necessary under requirements for pleadings, for notice to an adversary or considerations of prejudice to a party. The Committee conducted an exhaustive study of the legislative history of the CPLR Appendix and current practice and procedures statewide through its Subcommittee on Forms, chaired by Prof. Vincent Alexander. It is readily apparent that civil practitioners have abandoned over time use of such forms. Most importantly, the Committee concluded that practitioners cannot assume currently that the “official” forms correctly meet current legal standards and such forms in themselves present a trap for the unwary. In addition, the Committee’s review of federal practice revealed that the Appendix of Forms under the Federal Rules of Civil Procedure, from which the CPLR Appendix was adapted, have been fully abrogated effective December 1, 2015.

October 23, 2015  
Hon. Lawrence K. Marks  
Page 2 of 2

Therefore, the Committee strongly recommends that you issue an order abolishing the Official CPLR forms. We remain available to answer any further questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "George F. Carpinello". The signature is written in a cursive style with a large initial "G".

George F. Carpinello

cc: John W. McConnell, Esq.  
Holly Nelson Lütz, Esq.

**ADVISORY COMMITTEE ON CIVIL PRACTICE  
TO THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS  
PROPOSAL TO RESCIND THE APPENDIX OF OFFICIAL FORMS FOR THE CPLR**

September 18, 2015

The Advisory Committee on Civil Practice (the Committee) recommends that the Chief Administrative Judge of the Courts issue an administrative order rescinding the Appendix of Official Forms for the CPLR [hereinafter the Forms]. A suggested Order is attached hereto.

In 1967, a few short years after the 1963 effective date of the CPLR, the Judicial Conference was authorized by the then-newly enacted CPLR 107 to “adopt, amend and rescind an appendix of forms,” which “shall be sufficient” under the CPLR and “shall illustrate the simplicity and brevity of statement which the civil practice law and rules contemplate.” (A 1974 amendment to CPLR 107 transferred the authority of the Judicial Conference to “the state administrator.”)

The 1967 Judicial Conference Report to the Legislature indicated that the Forms, then in draft stage, were to focus on the new type of simplified pleading that the CPLR contemplated. (See “Legislative History” attachment.) The emphasis was on “those areas of practice where material changes from prior law are made.” The Judicial Conference acknowledged that it intended to borrow heavily from the appendix of forms promulgated for federal practice when the Federal Rules of Civil Procedure were adopted in 1938: “For the most part, the proposed forms are adaptations of the federal forms. . . .” Although the Judicial Conference included no sunset provision for the Forms, it observed that practice forms adopted in Great Britain in 1883 to illustrate the then-recent reform of British court procedure were rescinded in 1964, because “they had achieved their purpose of ‘inculcating brevity’ and were no longer necessary.”

The Judicial Conference adopted 29 forms that became effective September 1, 1968. (See 1969 Sixth Report to the Judicial Conference by Committee to Advise and Consult on the CPLR, "Legislative History" attachment.) They were accompanied by unofficial comments, which are "not deemed part of the Official Forms." Three of the forms deal with summonses, thirteen are forms of complaints in simple personal injury and contract cases, three are devoted to answers, two to verification, one to third-party complaints and answers, two to notices of motion, three to forms of orders, one to papers for CPLR 3031 and another to CPLR 3213. Surprisingly, no official government publication of the Forms has been located, although the Forms have often appeared in commercial publications (e.g., in the Weinstein Korn & Miller treatise on *New York Civil Practice* and in West's (McKinney's) CPLR Forms), and Professor David D. Siegel's treatise *New York Practice* contains a few of the Forms.

The Forms have never been amended since their adoption. As a result, they fail to take account of many subsequent developments in caselaw, rules and statutes, such as the summons with notice required by CPLR 305(b), the pleading of serious injury in automobile accident cases (CPLR 3016(g)), the licensure pleading required by CPLR 3015(e), the defense of culpable conduct in negligence cases (CPLR 1412), and the pleading issues connected to CPLR Article 16 (CPLR 1603). See also § 130-1.1-a of the Rules of the Chief Administrator (signing of all papers by attorney). A 1979 decision of the Court of Appeals approved a pleading of the statute of limitations defense that contained less detail than that called for by one of the Forms covering the same subject matter. (See *Immediate v. St. John's Queens Hosp.*, 48 N.Y.2d 671 (1979); *Scholastic Inc. v. Pace Plumbing Corp.*, 129 A.D.3d 75 (1st Dep't 2015).) Furthermore, the notice of motion forms have been completely superseded by Rule 202.7 of the Uniform Civil Rules for the Supreme and County Courts. Some efforts were made by the Advisory Committee

between 1979 and 1980 to promulgate a revised Appendix, but no action was ever taken. (See annual Judicial Conference Reports and Reports of the CPLR Advisory Committee on Civil Practice during the period 1979-1988.)

With the passage of 52 years since the adoption of the CPLR, it is the opinion of the Committee that the Forms have fulfilled their purpose of providing guidance for the drafting of simple pleadings and other litigation papers during the transition from the Civil Practice Act to the CPLR and are no longer needed. The Forms are outdated as a result of statutory, judicial and rules developments, and there is no compelling reason to undertake the task of amendment or expansion. Their illustrative content has been absorbed and updated in numerous reputable commercial publications. Indeed, the Forms are not published in any extant official government document. It is also questionable whether the Official Forms have actually been used to any great extent by practitioners. The lack of interest by the bench and bar in the Forms probably explains why no action was taken on the revised forms that were drafted and circulated in the early 1980s. The Committee also notes that the Appendix of Forms under the Federal Rules of Civil Procedure, from which the CPLR Appendix was adapted, is scheduled to be abrogated on December 1, 2015, because “[t]he purpose of providing illustrations for the rules, although useful when the rules were adopted, has been fulfilled.” (2015 Advisory Committee Note, Federal Rule of Civil Procedure 84.) The CPLR Appendix of Forms has likewise outlived its usefulness.

For all of the foregoing reasons, the Committee recommends that the Chief Administrative Judge of the Courts exercise the authority granted by CPLR 107 to rescind the Appendix of Official Forms for the CPLR.

From McKinney's  
1967 Session Laws  
of New York

CIVIL PRACTICE LAW AND RULES

JUDICIAL CONFERENCE REPORT

on the

CIVIL PRACTICE LAW AND RULES

On February 1, 1967, the State Judicial Conference submitted to the Legislature its annual report on the CPLR, which includes proposed changes therein which the Conference has recommended to the 1967 Legislature. The text of the report follows:

LETTER OF TRANSMITTAL

TO:

*The Legislature of the State of New York*

Pursuant to Section 229 of the Judiciary Law, enacted by Chapter 309 of the Laws of 1962, the Judicial Conference of the State of New York respectfully submits to the 1967 Legislature its Report in Relation to the Civil Practice Law and Rules.

February 1, 1967

Stanley H. Fuld, Chairman  
Bernard Botwin  
George J. Beldock  
James Gibson  
Alger A. Williams  
Owen McGivern  
William B. Groat  
Michael E. Sweeney  
Arthur Ervin Blauvelt  
Gerald Saperstein  
Archibald C. Wemple  
Fred A. Young  
Florence M. Kelley  
Vincent A. Massi  
Rocco A. Parella

Thomas F. McCoy  
State Administrator  
and Secretary

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## CIVIL PRACTICE LAW AND RULES

necessary. However, the Judicial Conference feels, for reasons set forth in Section I, subdivision C of this Report, that a great deal of further consideration should be given to this area before remedial legislation is proposed.

During the course of its deliberations the Judicial Conference intensively re-examined two bills which it had sponsored, one in 1965, and one last year, which did not become law. The Judicial Conference recommends the re-introduction and the enactment into law of both bills, one unchanged and one modified. The first bill relates to a revision of the income execution provisions based upon a study by Dean Samuel Hesson of the Albany Law School (see Section II, subdivision A of this Report); the second relates to the exchange of appraisals in condemnation, and tax certiorari cases, and is based upon a study by Professor David D. Siegel of St. John's University Law School (see Section II, subdivision B of this Report).

The Judicial Conference also recommends several other amendments to the CPLR, not based upon commissioned studies, but upon the consideration of suggestions received from judges, lawyers or members of the Committee to Advise and Consult with the Judicial Conference on the CPLR. These recommendations are discussed in Section III of this Report; one involving policy considerations in subdivision A, and three involving the clarification of CPLR provisions in subdivision B.

Section IV of the Report contains a brief discussion of two commissioned studies which have been commenced but are not yet completed, one relating to infants' compromise proceedings, and the other relating to the area of short statutes of limitations contained in various statutes, local laws and administrative rules.

In Section V, there are reviewed other problem areas of the CPLR which the Judicial Conference feels to be worthy of intensive study in the near future.

Partly because the topics which are under consideration this year are more substantial than mechanical in nature, and partly out of the continued desire of the Judicial Conference that its "rule-making" powers be used circumspectly and with caution, all of the recommendations this year are for statutory enactment and none involve the promulgation of rules under section 229(3) of the Judiciary Law.

### I. DISCUSSION OF STUDIES COMPLETED THIS YEAR

#### A. The Adoption of An Appendix of Official Forms Under the CPLR

This important topic was the subject of an exhaustive study undertaken by Helmut F. Furth, Esq. On the basis of a most careful consideration of this Study and its appendix of sample forms, it is proposed that legislation be enacted expressly authorizing the Judicial Conference to devise and promulgate a set of official CPLR forms.

Specifically, to accomplish this end, it is proposed that a new section, to be section 107, captioned *Appendix of Official Forms*, be inserted into the CPLR to read as follows:

*"The judicial conference of the state of New York shall have the power to adopt, amend and rescind an appendix of forms. Forms adopted pursuant to this section shall be sufficient under the civil practice law and rules and shall illustrate the simplicity and brevity of statement which the civil practice law and rules contemplate."*

It is further proposed that, in accordance with that section, once operative, the Judicial Conference promulgate an appendix of forms and thereafter add to this appendix from time to time.

The important role of official forms in any thoroughgoing reform of civil procedure has been repeatedly recognized in jurisdictions that have adopted modern practice codes. In Great Britain practice forms were

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adopted in 1893 following a general reform of British court procedure; these forms were retained until 1964 when it was deemed that they had achieved their purpose of "inculcating brevity" and were no longer necessary. 1 *Annual Practice* xv (1961). In the United States official forms for pleadings and other court papers were adopted, effective as of 1938, for use in the Federal Courts under the new Federal Rules of Civil Procedure.

In New York the adoption of an official appendix of civil practice forms was regarded by the drafters of the CPLR as one of the main objectives of procedural reform. In its report to the Legislature the Advisory Committee on Practice and Procedure proposed the adoption of an appendix of pleading forms and forms of summons and subpoenas. *First Preliminary Report of the Advisory Committee on Practice and Procedure*, pp. 63, 162 (Leg. Doc. No. 6(b) (1957)) (the reports of the Advisory Committee on Practice and Procedure are hereinafter referred to as *Preliminary Reports*); *Fifth Preliminary Report*, p. 262 (Leg. Doc. No. 15 (1961)). Although the references to an appendix of official forms in the preliminary drafts of the CPLR were omitted from the final bill, this omission appears to have been based not on any legislative opposition to official forms, but on the view that it would be premature to provide for official forms pending their preparation by the Judicial Conference of the State of New York. *Sixth Report to the Legislature by the Senate Finance Committee*, p. 972 (Leg. Doc. No. 8 (1962)). More recently, the Judicial Conference has confirmed that the preparation of an appendix of forms is one of the essential projects under continuing study. *Ninth Annual Report*, p. 262 (1964); *Eleventh Annual Report*, p. 363 (1966).

The greatest need for the adoption of official forms exists in the area of pleadings. The principal argument for the adoption of official forms illustrative of modern pleading standards is the difficulty of ascertaining from the abstract provisions of law the degree of specificity of factual allegations required by the CPLR. CPLR 3013 provides that "statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences or series of transactions, or occurrences intended to be proved and the material elements of each cause of action or defense." Characterized by its drafters as the "heart" of the pleading requirements, CPLR 3012 replaces the former requirements of the Civil Practice Act § 241 that pleadings shall contain "a plain and concise statement of the material facts . . . but not the evidence by which they are to be proved."

While the difference in the wording of the old and the new law is plain, the meaning of the new phraseology and its effect on pleading standards is by no means clear. It is certain that CPLR 3013 was intended by the drafters to give the parties greater latitude in framing acceptable pleadings than the former law. We also know that the standard of particularity to be observed under the CPLR is whether the pleadings are sufficiently definite to enable the court to control the case and the opponent to prepare (see *First Preliminary Report*, p. 57); that technical distinctions under former pleading practice between "fact", "evidence" and "conclusions" (see *First Preliminary Report*, p. 57) have been abolished; that "pleadings shall be construed liberally" (CPLR 3026); and that "defects shall be ignored if a substantial right of a party is not prejudiced" (CPLR 3026). Beyond that, however, the pleader looks in vain to the statutory language, case law or legislative history for guidance. He wonders whether the new law, for all practical purposes, switched to federal notice standards (Federal Rule 8(a) requires "a short and plain statement of the claim showing that the pleader is entitled to relief"), or whether the CPLR steers a middle course between the notice pleading of the Federal Rules and the fact pleading of former CPA § 241. Moreover, he is not certain whether the pleading of evidentiary details and of legal theories is merely permitted or perhaps in

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some instances required; for there are several recent decisions of the Appellate Divisions which suggest that the courts require the pleading of particulars for claims arising in unsettled areas of substantive law. Indeed it is arguable that the new law intended no sharp break with past practice, but merely thought to codify results reached under more recent pre-CPLR decisions, without a clear departure from former pleading standards.

No wonder then that in his predicament, the pleader, uncertain of the effects of the new law, clings to old formulations often at the expense of brevity and simplicity, and that commercial form books which must avoid the risk of exposing the pleader to a dismissal prefer to "play it safe" and show little inclination to deviate from old established and time-proven forms. Thus, without official pleading forms to illustrate the conciseness of pleadings contemplated under the CPLR, practitioners may increasingly resort to pleadings containing much evidentiary detail and elaborate statements of legal theory. This tendency is encouraged by the abolition of the former corrective motions to strike unnecessary, irrelevant and repetitious matter from the pleadings, rendering pleadings largely immune from attack against needlessly discursive or non-essential evidentiary details. Another factor that may induce pleaders to prepare unduly elaborate pleadings is that the court in granting a motion to strike under CPLR 3211 is empowered to disallow the pleadings to be amended so as to correct their insufficiency.

In drafting sample forms of pleading the Furth Study relies heavily on the Appendix of Forms adopted for the United States District Courts under Rule 84 of the Federal Rules of Civil Procedure. For the most part the proposed forms are adaptations of the federal forms, omitting the jurisdictional allegations required by Federal Rule 8(a). To take the federal forms as a starting point appears to be not only permissible, but highly desirable. The federal forms have been adopted in many jurisdictions that have practice codes modelled on the Federal Rules, including Alaska, Colorado, Delaware, Idaho, Kansas, Kentucky, Maine, Minnesota, Nevada, Rhode Island, Utah, West Virginia and Wyoming.<sup>1</sup> Significantly, similar basic pleading forms are also in effect in several states that have retained the traditional "fact" pleadings standards or common-law pleas, as distinguished from federal notice standards. These include Alabama, Connecticut, Maryland, Massachusetts and New Jersey.<sup>2</sup> The federal forms serve as useful precedents since they are generally simple, concise and non-technical in language. They are intended for use in ordinary cases, within settled areas of substantive law, which involve no unusual features or complex fact situations. Court decisions under the CPLR support the view that at least in this type of simple claim falling into well-established legal categories no clear distinction is observable between the degree of specificity required by the New York courts and by courts of those jurisdictions which have adopted pleading standards modelled upon the Federal Rules. Uniformity of pleading practice in the Federal and State court systems operating side by side in New York will be a boon to the bench and bar. The federal forms are particularly appropriate in a jurisdiction such as New York which has adequate pre-trial devices to examine the opposing party with a view to ascertaining the facts and circumstances concerning a claim or defense summarily stated in the pleadings and for the prompt determination of such a claim or defense without trial where it appears that there are no bona fide disputes concerning the material facts.

However, it may be appropriate to address a caveat to practitioners who in the future may rely on these forms: As mentioned before, there is an emerging line of authority in the State which seems to establish a

1. See discussion in Study by Helmut F. Furth, Esq. (Twelfth Annual Re-

port of Judicial Conference, 1967).  
2. *Id.*

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more rigorous standard of specificity in pleading unusual or complex cases as well as cases falling within unsettled areas of substantive law. Under those circumstances independent examination of special CPLR pleading requirements may well be required. In general practitioners should not follow slavishly a suggested form in situations where a departure is obviously justified.

Official forms for court papers other than pleadings would likewise serve a useful purpose. The CPLR substantially changes and simplifies many areas of civil procedure. For example, the provisions of the CPLR dealing with the forms of summonses, motion papers, special proceedings, the enforcement of judgments and provisional remedies, differ significantly from former law. In preparing court papers, particularly in the case of injunctive proceedings, attachments and executions, practitioners often lack the time to analyze carefully changed requirements under the CPLR. They would be greatly aided by the existence of official forms. The adoption of official models would also be desirable to illustrate the simplicity and brevity of style contemplated by the CPLR, within as well as without the area of pleadings, to promote uniformity of usage and to avoid disputes between attorneys and court clerks concerning the form of papers to be filed. Finally, forms illustrating common types of court papers may enable judges and court clerks to devote less time than required now to reviewing submitted papers as to form and regularity.

In sum, an appendix of official forms would materially further the stated objective of the CPLR to secure "the just, speedy and inexpensive determination of every judicial proceeding" (CPLR 104) and fill a major gap in the procedural reforms contemplated by the Legislature in enacting the CPLR; by the same token it would materially aid practitioners in preparing adequate pleadings under the CPLR.

Turning next to the scope of the appendix of official forms, two general approaches are possible. One would aim at comprehensiveness by providing models for all common types of pleadings and for every procedural step in a lawsuit. This is the approach taken in Connecticut—the Connecticut Practice Book contains hundreds of forms for pleadings alone and many additional forms to cover other stages of a civil proceeding. The other approach is to confine the appendix to a few samples, selectively chosen to illustrate the general style of pleadings and other court papers without attempting to cover the field exhaustively. This is the approach taken under the Federal Rules and in most other jurisdictions where official forms have been adopted.

Of the two alternatives, the second seems clearly preferable. The proper function of official forms is to illustrate in concrete form the meaning of general provisions of the CPLR, not to provide ready-made pleadings and other forms for every likely contingency. Multiplying the number of forms increases the danger that practitioners will force their case into the mold of a prescribed form in the fear that the absence of a pertinent form may indicate the lack of a legal remedy; moreover, future changes in substantive law or in the text of the CPLR may be overlooked and thereby a particular form rendered obsolete or misleading.

It is recommended, therefore, that the appendix of official forms be selective rather than inclusive, containing a few examples designed to illustrate in typical setting the simplicity and brevity contemplated by the CPLR for pleadings and other court papers and to illustrate the formal requirements of the CPLR with emphasis upon those areas of practice where material changes from prior law are made.

With respect to pleading forms, it is recommended that the appendix contain common types of complaints and affirmative defenses. Forms of complaints might appropriately be provided for actions on instruments for the payment of money, to recover for goods sold and delivered and services rendered, money lent, money paid by mistake, money had and received and the conversion of property, to recover for injuries caused

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by negligence and to obtain specific performance of a contract to convey land. Official forms for these pleadings are provided in the appendices of forms enacted under the Federal Rules and in many other jurisdictions. In addition, it is recommended that forms be provided to illustrate the basic pleading requirements in actions seeking a declaratory judgment (CPLR 3001), interpleader actions (CPLR 1006), third party practice (CPLR 1007), counterclaims and cross-claims (CPLR 3019), and for statements in an action without pleadings (CPLR 3031, 3032, 3034). With respect to interpleader, third-party practice and actions without pleadings the CPLR did not make substantial changes from prior practice; official forms would nevertheless serve a useful function since the pertinent provisions of the CPA, carried over into the CPLR, were in effect for only a few years before the CPLR was enacted. Forms illustrating each of the foregoing are set out in the appendix attached to the Study of Helmut F. Furth, which is found in the *Twelfth Annual Report of the Judicial Conference* (1967).

With respect to other court papers the adoption of official forms is recommended to cover the following areas of the CPLR:

**Summons; Proof of Service.** Summons (CPLR 305(a)); notice of judgment to be taken in the event of default (CPLR 305(b)); proof of service (CPLR 306); order directing service by publication (CPLR 316).

**Special Proceedings.** Petition and answer (CPLR 402, 7804(c) and (d)); notice of petition (CPLR 403(a)); answer showing the raising of objections on points of law (CPLR 404(a), 7804(f)).

**Subpoenas; Undertakings.** Subpoenas requiring the attendance of a person to give testimony and subpoenas duces tecum (CPLR 2301); undertakings (CPLR 2502); affidavit of surety (CPLR 2503(b)); notice of exception to surety (CPLR 2506(a)); notice of motion for justification of surety, and court endorsement on the undertaking (CPLR 2507(a)).

**Motions.** Order directing the trial of a motion (CPLR 2218); notice of motion and order to correct pleadings under CPLR 3024; notice of motion and order under new "omnibus" motion to dismiss (CPLR 3211); order on a motion for summary judgment illustrating the various types of relief afforded under CPLR 3212, including the assessment of damages (CPLR 3212(c)), severance and partial summary judgment (CPLR 3212(e)) and limiting the issues of fact for trial (CPLR 3212(g)); summons and notice of motion for summary judgment in lieu of complaint (CPLR 3213); court papers used on a motion for default judgment, including the affidavit of default (CPLR 3215(e)); post-trial motion for a judgment and for a new trial (CPLR 4404); post-trial motion under CPLR 4406.

**Disclosure.** Order designating a judge or a referee to supervise disclosure proceedings (CPLR 3104(a)); application to review rulings or orders of a referee (CPLR 3104(d)); notices of the taking of depositions on oral and written questions (CPLR 3107-09); commissions and letters rogatory (CPLR 3108); notice for discovery and production of documents and things (CPLR 3120); notice to admit (CPLR 3123(a)); interrogatories (CPLR 3130).

**Enforcement of Judgments.** Restraining notice (CPLR 5222); subpoena requiring attendance for the taking of a deposition, and information subpoena (CPLR 5223, 5224); court papers for use in connection with motions or special proceedings for the payment or delivery of property of the judgment debtor (CPLR 5225); installment payment order (CPLR 5226); order for the payment of debts owed to a judgment debtor (CPLR 5227); order for the appointment of a receiver (CPLR 5228); execution to enforce the award of real property or a chattel (CPLR 5102); personal property execution (CPLR 5230); income execution (CPLR 5231); special proceeding for the determination of adverse claims (CPLR 5239).

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**Provisional Remedies.** Order of arrest (CPLR 6111); notice to initiate proceedings for review of propriety of further detention (CPLR 2308(e), 6119(3)); motion papers, undertaking, demand and order of attachment (CPLR 6211, 6212); garnishee's statement (CPLR 6219); disclosure order (CPLR 6220); notice of petition and motion papers to determine adverse claims (CPLR 6221); papers on a motion for discharge of an attachment (CPLR 6222); papers on a motion to vacate or modify an attachment (CPLR 6223); motion papers to cancel the notice of attachment and for return of the attached property (CPLR 6225); form of preliminary injunction (CPLR 6311) and preliminary restraining order (CPLR 6313).

**Miscellaneous.** Attorney's certification (CPLR 2105); affirmation of truth of statements by an attorney (CPLR 2106); demand that plaintiff serve and file a note of issue (CPLR 3216); note of issue with demand for jury trial, including specification of issues and specification of the number of jurors (CPLR 4102, 4104); notice of a party's intention to request the court to take judicial notices under CPLR 4511(b); court papers for use in a proceeding for recovery of a chattel (CPLR 7102); form of judgment (CPLR 5011) and notice of appeal (CPLR 5515).

In view of the volume of court papers represented in the foregoing listing, no attempt was made in the appendix to Helmut F. Furth's Study to provide models for all of the suggested forms. Instead, illustrative models are included. The preparation of the additional forms for such court papers should await the receipt of the views and comments of bench and bar on these illustrative models. By way of example of the type of forms recommended for inclusion in the appendix of forms, the appendix to Helmut Furth's Study sets out proposed forms of summonses, complaints, verification of pleadings, notices of motions and court orders on motions addressed to the pleadings (CPLR 3024 and 3211) and motion papers and statements in actions commenced under CPLR 3031 and 3213. The adoption of such forms by the Judicial Conference is contemplated if and when the enabling provision of proposed new CPLR section 107 has been enacted into law.

### B. Study of The Feasibility of Formulating A Code of Evidence For The State of New York

#### a. Introduction and Recommendations.

Since 1963 there has been a tremendous influx of suggestions in the area of evidence—not only in respect to the provisions of Article 45 of the CPLR specifically, but also in respect to rules of evidence found in other statutes and in court decisions—in which the thought was expressed that clarification of evidence rules is desirable. In fact, some of the most extensive and pointed recommendations in this area came from the ranks of the judiciary. It became clear that attention should be given to the possibility of codifying the entire law of evidence since the volume of specific suggestions was so great that the only other alternative appeared to be an *ad hoc* scattering of legislative proposals. In response to these pressures for legislative relief Professor Edith L. Fisch was commissioned to undertake a study of the possibility of formulating a Code of Evidence for the State of New York. The Judicial Conference concurs with the conclusion reached by the author that the time has come for the compilation of a Code of Evidence which modernizes, brings into harmony and assembles in one place New York's law of evidence. To this end it is contemplated that the Judicial Conference will establish a committee to be known as the Temporary Committee to Advise and Consult with the Judicial Conference on a Code of Evidence, hereafter referred to as the Evidence Codification Committee. That Committee, to be composed of persons with expertise both in the criminal and civil areas of the law, would be charged with drafting the proposed new Code of Evidence for consideration by the Judicial Conference and eventual sub-

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## CIVIL PRACTICE LAW AND RULES

### SIXTH REPORT TO THE JUDICIAL CONFERENCE

by

Committee to Advise and Consult on the CPLR

January 16, 1969

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#### INTRODUCTION

The 1969 Report here submitted is the Sixth Annual Report to the Judicial Conference of the Committee To Advise and Consult with the Judicial Conference on the CPLR.

During the past year the Committee, meeting approximately once a month, devoted its efforts to the three principal tasks entrusted to it by the Judicial Conference. One of them relates to recommendations of statutory and rule changes designed to cure defects brought to light by the work of the law as reflected in the day-to-day experience of the courts and the bar. Another major function of the Committee was the screening of all CPLR bills reaching the legislature, so that the Committee could express its views on their merit or demerit to the legislature and the governor. Finally, the Committee continued to engage in in-depth studies of various areas of procedure in need of change involving fundamental policy.

The study of possible major revision of some sections or whole segments of the CPLR is gradually forming the main task of the Committee

## LEGISLATIVE REPORTS

both in terms of time expended and the volume of legislation recommended. This trend has long been foreseen by the Committee, as past Committee reports clearly indicate, and is reflective of the fact that the CPLR is no longer a "new" statute, but has now become a settled and well-interpreted code. For the most part, ambiguities and defects found in the CPLR as originally enacted have been resolved by the courts, as well as by numerous legislative amendments recommended by the Judicial Conference since 1963. Thus, it is no longer the mechanics or the details of procedure that preoccupy judges, lawyers, commentators and students of the CPLR, but rather the underlying policy considerations which tend to be controversial as well as complex. This preoccupation of bench, bar and the academic community is, of course, reflected in the discussions and studies of the Committee as well as in its recommendations. For this reason, as will be noted, the main recommendations made in this report involve rather broad areas of the law, perhaps somewhat more so than in previous years. Of course, some of the recommendations are not of this nature, but rather involve the curing of particularized errors of defects heretofore not generally recognized. In this connection, the Committee expresses its gratitude for the continued flow of communications received from the judiciary, members of the bar, law professors, court clerks and others. The Committee will continue to consider and evaluate at its meetings each and every suggestion for amendment of any portion of the CPLR received from any source. This will always remain an integral and necessary part of the work of the Committee.

One other facet of this 1969 report of the Committee deserves mention. In past years, one-year studies of troublesome areas of the CPLR were the rule. Most studies were commissioned, completed, published and acted upon by the Committee in the course of a year. This is not true this year nor will it be true as a general proposition in future years. The reason was alluded to prospectively in last year's report. As more complex areas of study receives the attention of the Committee, both Committee studies and commissioned studies will tend more and more to be "two-year" studies and some will be longer. Thus, important policy questions will receive treatment in the reports over a series of years as the Committee recommends progressive implementation or reconsideration of major long-range studies. Accordingly, in this report a marked continuity in subject matter from the last report will be noted as various matters under study last year are more developed this year and have matured to a recommendation stage. This will undoubtedly be a trend in the format of most future reports. As the Committee noted last year, "The studies commissioned by the Judicial Conference are intended to serve as a matrix from which to derive integrated packages of legislation aimed at problem areas which require pervasive study of policy and carefully planned legislation".

One of the 1967 long-term projects which was commissioned by the Judicial Conference was the study of the possible adoption of an Appendix of Official Forms for the CPLR undertaken by Helmut Furth, Esq. of New York City, with the cooperation of the Committee and the staff of the Judicial Conference. As a result of this study, and upon recommendation of the Committee and the Judicial Conference, the Legislature passed enabling legislation (Ch. 646, Laws of 1967) effective September 1, 1967, which permitted the Judicial Conference to promulgate an Appendix of Official Forms for the CPLR. A proposed Appendix was then circulated throughout the state for comment by bench and bar. The numerous comments received resulted in modification of many of the proposed forms prior to promulgation. The Appendix of Official Forms for the CPLR was adopted by the Judicial Conference on May 24, 1968 pursuant to section 107 of the Civil Practice Law and Rules, and became effective on September 1, 1968.

## CIVIL PRACTICE LAW AND RULES

The "Comments on the Appendix of Official Forms" which were attached to the Appendix were prepared as an aid to bench and bar by Helmut Furth in collaboration with the Committee. These Comments are not deemed part of the Appendix of Official Forms. The Committee believes that the Appendix, limited though it is to pleading and other selected forms, will prove progressively useful for day to day practice. Indeed, it has already come to be recognized as a boon to the practicing bar of this state. No additions to the Appendix are planned at this time. However, all suggestions for such additions received by the Committee are carefully studied and it is intended that the Appendix will be periodically expanded. The original study of Helmut Furth appears in the *Twelfth Annual Report of the Judicial Conference* (1967).

Also appearing in the *Twelfth Annual Report* was another study commissioned by the Judicial Conference at the suggestion of the Committee. This study by Edith L. Fisch, Professor of Law, New York Law School, was entitled *Study of the Feasibility of Formulating a Code of Evidence for the State of New York*. For the past two years the Committee has recommended that this study be implemented by the appointment of a Special Evidence Codification Committee to be appointed by the Judicial Conference to codify and propose revisions in the law of evidence. It remains the strong recommendation of this Committee that a Code of Evidence be prepared for the State of New York as suggested by Professor Fisch.

Another study which appeared in the *Twelfth Annual Report* and which was commissioned by the Judicial Conference at the suggestion of the Committee was the study made by Professor Delmar Karlen of New York University Law School on the topic of *Exemptions From Execution*, concerning the possible revising and updating of the archaic provisions of sections 5205 and 5206 of the CPLR. The Committee has since engaged in correspondence and discussions with experts in the field and has become aware of several difficult and controversial issues in this area. Most of the readers of Professor Karlen's study who commented to the Committee agreed with his basic view that the present scheme of itemized exemptions should be abolished but they expressed grave reservations as to the author's recommended fundamental solution, namely that all assets of the judgment debtor to the extent of \$3600 be exempted from levy with no specification as to particular items. The Committee, in collaboration with the Staff of the Judicial Conference, is continuing its exploration of this problem and hopes to develop an acceptable solution.

A study on *Income Executions* prepared by Dean Samuel M. Hesson of the Albany Law School appears in the *Eleventh Annual Report of the Judicial Conference* (1966). The committee and the Judicial Conference, on the basis of Dean Hesson's Study, recommended legislation in 1966, which was introduced once again in 1967, to revise section 5231 of the CPLR. This legislation was not enacted. Since 1967 the Committee has given further consideration to the question of whether a new approach is needed toward the improvement of this provision. Several possibilities are currently being explored and it is the present intent of the Committee, if enactment of the preferred revision initially recommended by Dean Hesson continues to appear impossible or improbable, to suggest an alternate proposal.

### A. Summary of 1968 Changes

The following are the bills sponsored by the Judicial Conference on the advice of the Committee which were enacted into law in 1968:

(a) Chapter 355, L.1968 amended Article 71 of the Civil Practice Law and Rules by the insertion therein of a new section, CPLR 7112,

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1979 Session Laws  
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SEVENTEENTH ANNUAL REPORT OF THE  
JUDICIAL CONFERENCE AND THE CHIEF  
ADMINISTRATOR OF THE COURTS

To

THE LEGISLATURE

On

THE CIVIL PRACTICE LAW AND RULES

January 25, 1979

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## JUDICIAL CONFERENCE REPORT ON CPLR

Section  
8011-a  
(renumber)

### Recommended Change

It is recommended that CPLR 8011-a, relating to the fixed fees of the sheriff of Rockland County, be renumbered CPLR 8011-b.

### Comment

This measure would renumber CPLR 8011-a, entitled "Fixed fees of the sheriff of Rockland County," to be CPLR 8011-b.

At present there are two sections in the CPLR, each numbered CPLR 8011-a. The first section relates to the fixed fees of sheriffs in counties in New York City, the second to the fixed fees of the Rockland County sheriff. Both were enacted in 1976 by different chapters of law, and by oversight both sections were assigned identical section numbers. This duplication is confusing for reference purposes, and would be corrected by this bill by the renumbering of the second section as CPLR 8011-b.

## PART II—RECOMMENDATIONS FOR REVISIONS IN THE APPENDIX OF OFFICIAL FORMS OF THE CPLR

CPLR 107 reads as follows:

### § 107. Appendix of official forms

The state administrator shall have the power to adopt, amend and rescind an appendix of forms. Forms adopted pursuant to this section shall be sufficient under the civil practice law and rules and shall illustrate the simplicity and brevity of statement which the civil practice law and rules contemplate.

Chapter 615 of the Laws of 1974 amended this section to vest in the "state administrator" this should be amended to read "chief administrator of the courts" the power to adopt official CPLR forms previously vested by this section in the Judicial Conference.

Pursuant to a study that appeared in *The Twelfth Annual Report of the Judicial Conference*, p. 128 (1987), and pursuant to CPLR 107, added by Chapter 646 of the Laws of 1987, the Judicial Conference promulgated an Appendix of Official Forms, effective September 1, 1988. During the past decade many recommendations were received for adding to and amending the Appendix of illustrative forms. With new developments in statutory and decisional law over this ten-year span, inevitably many of the forms require updating.

In 1977, the Office of Court Administration, on recommendation of the Advisory Committee, commissioned Professor Sheila L. Birnbaum, then of the Fordham University School of Law and now of the New York University School of Law, to undertake the task of revising the forms now contained in the Appendix of Official Forms.

Professor Birnbaum, in conjunction with the Advisory Committee, has prepared a proposed revised Appendix of Official Forms, with commentaries relating to each form, to replace the present Appendix. The Advisory Committee thanks Professor Birnbaum for her superb work and for her painstaking cooperation with the Committee in reviewing each form and commentary.

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Many persons were consulted about the proposed forms and gave valuable suggestions to the Advisory Committee and Professor Birnbaum. While it is not possible to give credit to all these persons, the Committee especially wishes to express its appreciation to Miriam R. Adelman, Jacob M. Dinnes and Herbert Spector.

Although much thought and discussion preceded the development of the proposed forms, the Advisory Committee submits them to the Chief Administrator of the Courts and the Judicial Conference at this time with a recommendation that the forms be distributed widely to judges and to the bar for review. The Committee also hopes that members of the Legislature and their staffs will comment upon the forms. The Committee proposes that when this review is completed and revisions made, these forms be adopted by the Chief Administrator of the Courts pursuant to the provisions of CPLR 107, to supersede the present forms, and suggests that a suitable effective date might be January 1, 1980.

The revised Appendix of Official Forms recommended by the CPLR Advisory Committee for adoption by the Chief Administrator of the Courts is contained in a separate booklet which includes the full text of the forms together with a commentary on each form.

### PART III—MATTERS UNDER CONSIDERATION AND TOPICS FOR FUTURE STUDY AND REVIEW

1. The Advisory Committee has undertaken a study of the discovery provisions of the CPLR (Article 31), with a view to formulating specific proposed amendments. The Committee will consider the submission of proposed legislation to the Judicial Conference and the Chief Administrator of the Courts in time for inclusion in a Report to the Legislature in early 1980.

2. Other areas which will be considered for future study by the Advisory Committee include:

(a) Completion of the revision of provisions concerning provisional remedies and other similar proceedings such as receivership and lis pendens;

(b) Providing for more adequate and realistic costs to be awarded to prevailing parties in litigation, including attorneys' fees, and providing for a system of sanctions at various stages of civil litigation;

(c) Providing that service of process by mail be the primary means of serving process;

(d) Modernizing the statutory provisions governing orders to show cause;

(e) Revision of compulsory joinder provisions;

(f) Revision of intervention provisions;

(g) Revision of poor person provisions;

(h) Revision of venue provisions;

(i) Revision of article 78 provisions;

(j) Revision of remedies for failure to serve hills of particulars.

(k) Revision of archaic statutory provisions in the CPLR governing exemptions from execution, especially in light of the new Uniform Exemptions Act, and new exemption provisions in the Federal Bankruptcy statutes.

These areas of civil practice all have been the subject of recommendations received by the Advisory Committee suggesting that modernization and revision may be in order. The Committee intends to review these recommendations, but has made no determination as to what changes, if any, are required.

From McKinney's  
1980 Session Laws  
of New York

## THE JUDICIARY

### EIGHTEENTH ANNUAL REPORT OF THE JUDICIAL CONFERENCE AND THE CHIEF ADMINISTRATOR OF THE COURTS

To

THE LEGISLATURE

On

THE CIVIL PRACTICE LAW AND RULES

January 24, 1980

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#### INTRODUCTION

#### 1980 Report of Advisory Committee on Civil Practice

The name of the Committee was changed and simplified in 1979. It had been officially named the "Committee to Advise and Consult with the Judicial Conference and the Chief Administrator of the Courts on the CPLR". The reference to only the CPLR was somewhat misleading because the Committee had also been called upon periodically to address procedural changes in other laws, and continues to be. Early in 1979,

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deemed to be too radical a step in the context of the history of costs in New York.

Motion costs are presently a maximum of \$40 under CPLR 8202. The proposal would raise the maximum to \$100. Considering that this provision governs every category of motion, and that ordinarily even the most insignificant motion will entail time and effort ultimately costing each litigant well in excess of the \$100 maximum proposed, the figure was deemed an appropriate one.

It should be pointed out in connection with motion costs that CPLR 8202 governs only the amount of motion costs, should they be awarded. *Whether* to award them is the mission of CPLR 8106, which leaves the matter to the court's discretion. That discretion could of course be exercised to award costs, but in a sum less than the \$100 maximum. Several members of the Committee expressed the view that a more liberal application of the costs sanction on motions might have a salutary effect on discouraging at least the more frivolous motions.

The sum of \$75 is the maximum award applicable at present on an appeal to the Appellate Division under CPLR 8203(a). The proposal raises this to \$250 and eliminates the two-stage award (one before and one after argument) now used.

The sum of \$125 is the present maximum for costs upon an appeal to the Court of Appeals under CPLR 8204. The proposal raises this to \$500, still far from any realistic appraisal of the appeal's actual cost but nonetheless a step forward. Again, the two-stage standard presently applicable is abandoned.

The labors which went into a formulation of the costs proposals were largely those of one of the Committee's own members, William D. Eggers of Rochester, and the Committee wishes to acknowledge those efforts with thanks.

### PART III—PENDING AND FUTURE MATTERS

The Committee has a number of irons in the fire. The more prominent of these are the following:

1. A study of the disclosure article continues, undertaken jointly by Robert T. Greig, Esq., of our Committee, and Justice William P. McCooe of the Supreme Court, New York County. It is hoped that this study will in due course improve and update the disclosure article substantially.

2. Last year the proposed amendments of the official forms were circulated for study and comment, and this produced a number of constructive suggestions, all of which have been channeled to Professor Sheila L. Birnbaum of New York University School of Law. Professor Birnbaum drafted the proposed form amendments and has graciously undertaken to review all of the suggestions that their circulation produced and to furnish the Committee with a final product.

3. Further study of costs changes, especially in respect of the extra allowances provided by Article 83 of the CPLR<sup>2</sup> and the costs applicable to smaller actions in Article 19 of the lower court acts, is under way, a further aspect of the costs proposals contained in the Committee's 1980 proposals (Item 12 in Part II of this Report).

<sup>2</sup> CPLR 8301 et seq.

4. The Committee will consider the Court of Appeals *Matter of Gordon* decision, — N.Y.2d —, — N.Y.S.2d —, handed down late in 1979, invalidating the residency requirements for bar admission. Legislative implementation of that decision will require

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