

CIVIL COURT OF THE CITY OF NEW YORK

ADVISORY NOTICE

Subject: Unavailable files in Consumer
Debt cases

Class: AN-17
Category: GP-10
Eff. Date: April 23, 2015

BACKGROUND:

Court files in Consumer Debt cases can be unavailable for many reasons. A Defendant who is seeking to assert lack of personal jurisdiction is at a disadvantage when attempting to raise the issue if the affidavit is unavailable for review to determine how service was alleged to have been made. The Plaintiff's attorney is the only source of the affidavit of service other than the court file. In light of this issue, it is advised that the following steps should be followed.

ADVISORY:

1. If a file is unavailable, the file will be marked by a clerk with such an indication.
2. If the defendant is raising lack of personal jurisdiction, the Order to Show Cause should order that the Plaintiff's attorney shall produce a copy of the affidavit of service on the return date of the motion.
3. The defendant should be offered the opportunity to submit a supplemental affidavit in support of the defense of lack of personal jurisdiction by an adjourned date of the motion. If the defendant does not wish an adjournment, then you may allow the defendant to review the affidavit of service and submit to the court a supplemental affidavit before the end of the call of the calendar. A form supplemental affidavit will be provided in the courtroom which should be provided to the defendant. The Plaintiff should be afforded a reasonable opportunity to respond to any supplemental affidavit.
4. Any temporary relief, such as a stay on the enforcement of the judgment should be continued until the motion is decided.

Date: April 23, 2015

/S/
Hon. Fern A. Fisher
Deputy Chief Administrative Judge
New York City Courts