

**CIVIL COURT, CITY OF NEW YORK**

LEGAL/STATUTORY MEMORANDUM

Subject: Pre-Service Filing  
Chapter 452 of the Laws of 2005

Class: LSM-157  
Category: GP-10  
Eff. Date: September 8, 2005

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Chapter 452 of the Laws of 2005 amends the Civil, City and District Court’s filing procedure effective September 8, 2005. The sections amended require that a summons and complaint, a notice of petition and petition, or an order to show cause and petition be filed with the clerk prior to service on the defendant or respondent. See attached.

We have made some procedural decisions based on our understanding of these changes. They are the following:

1. A summons and complaint, notice of petition or OSC and petition where the service is made before September 8, 2005, is to be treated as under the old law. Where service is made by ‘in-hand’ delivery prior to September 8, 2005, there is no confusion. For substituted or conspicuous delivery, the delivery or posting and mailing of the summons and complaint must both be done before September 8, 2005. In either of the above instances, the summons and complaint and proof of service must be filed within 14 days. If the mailing and posting or delivery are not done before September 8, 2005, the original papers must be brought to the court for filing and issuance of the index number on or after September 8, 2005.
2. The plaintiff or petitioner must provide two copies to the clerk: one for stamping and filing and the other for conforming and returning to the party who brought the filing in. The serving copies must be conformed by the server from the copy returned to him/her and not by the clerk.
3. The rule requiring that proof of service be filed within 14 days has been repealed and is not applicable to cases filed under the new law. The amended section 409 says that proof of service “...shall be filed in the county in which the action is triable,” and may be filed at any time. Answering time is counted following CCA § 402. If the papers were delivered in-hand within the City of New York, the answering time begins to count from the delivery date and the answer must be filed within 20 days of service. If the service was by any other means or outside the city, following subsection (b), the time to answer does not begin to run until the proof of service is filed in the court. Therefore, no default can occur until 30 days after the proof of service is filed.
4. A third-party summons has to be filed in the court prior to being served on the third party defendant. There are no specific procedures outlined in the new section 411. The clerk is to accept the original and a copy of the third-party summons, date stamp and file the original, and return a ‘clocked in’ copy to the defendant for service. The original and copy should already have the index number on its face. There will be no charge for this service. This section also requires that the summons and complaint, notice of petition and petition or the OSC and petition

be served within 120 days from the date of filing. These days have to be considered carefully by a petitioner, as the service of papers must comply with Article 4 of the CPLR. However, it is not the clerk's responsibility to police either the 120 day limit on service, Article 4 time frames, or the order of the Court in an OSC.

5. The section on interest does not affect our procedure. Apart from the fact that there are very few instances in which interest is calculated from the filing date, the issue must be raised before a judge.

6. For statute of limitation purposes, the action is considered to be commenced and the statute tolled when it is filed in the court. The process used until now to toll the statute, that is, the purchase of an index number in Supreme Court, is no longer necessary. See CPLR Section 203 (b) (5) and (c).

7. The amendment to the Insurance Law, subsection (b) of section 5106 has no relevance to our procedure.

7. This act is effective September 8, 2005.

Date September 6, 2005

/S/ Fern A. Fisher  
Fern A. Fisher, Administrative Judge