Rule 3219. Tender. At any time not later than ten days before trial, any party against whom a cause of action based upon contract, expressed or implied, is asserted, and against whom a separate judgment may be taken, may, without court order, deposit with the clerk of the court for safekeeping, an amount deemed by him to be sufficient to satisfy the claim asserted against him, and serve upon the claimant a written tender of payment to satisfy such claim. A copy of the written tender shall be filed with the clerk when the money is so deposited. The clerk shall place money so received in the safe or vault of the court to be provided for the safekeeping thereof, there to be kept by him until withdrawal by claimant or return to the depositor or payment thereof to the county treasurer or commissioner of finance of the city of New York, as hereinafter provided. Within ten days after such deposit the claimant may withdraw the amount deposited upon filing a duly acknowledged statement that the withdrawal is in satisfaction of the claim. The clerk shall thereupon enter judgment dismissing the pleading setting forth the claim, without costs.

Where there is no withdrawal within such ten-day period, the amount deposited shall, upon request be repaid to the party who deposited it. If the tender is not accepted and the claimant fails to obtain a more favorable judgment, he shall not recover interest or costs from the time of the offer, but shall pay costs for defending against the claim from that time. A tender shall not be made known to the jury.

Money received by the clerk of the court for safekeeping as hereinabove provided and later withdrawn by claimant or repaid to the depositor pursuant to the provisions hereof shall not be deemed paid into court. If the deposit is neither withdrawn by claimant nor returned to the depositor upon his request at the expiration of the ten-day period, the amount of such deposit shall be deemed paid into court as of the day following the expiration of the ten-day period and the clerk shall pay the amount of the deposit to the county treasurer or commissioner of finance of the city of New York, in accordance with section twenty-six hundred one of the civil practice law and rules. Withdrawal of such amount thereafter shall be in accordance with the provisions of rule twenty-six hundred seven. Fees for services rendered

therein by a county treasurer or the commissioner of finance of the city of New York are set forth in section eight thousand ten.