

CHAPTER 308

AN ACT in relation to civil practice and prescribing rules of civil procedure governing generally the civil procedure in the courts of the state of New York and before the judges thereof, constituting chapter eight of the consolidated laws

Became a law April 4, 1962, with the approval of the Governor. Passed,
by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CIVIL PRACTICE LAW AND RULES

CHAPTER EIGHT OF THE CONSOLIDATED LAWS

- Article 1. Short title, applicability and definitions. (101-107.)
2. Limitations of time. (201-218.)
3. Jurisdiction and service, appearance and choice of court.
 (301-318, 320-322, 325-328.)
- 3-A. Conflict of law in actions related to legally protected
 health activity. (350)
4. Special proceedings. (401-411.)
5. Venue. (501-515.)
6. Joinder of claims, consolidation and severance.
 (601-604.)
9. Class actions. (901-909.)
10. Parties generally. (1001-1004, 1006-1026.)
11. Poor persons. (1101-1103.)
12. Infants, incompetents and conservatees. (1201-1211.)
13. Actions by the state. (1301-1303.)
- 13-A. Proceeds of crime-forfeiture (1310-1352.)
- 13-B. Civil remedies; enterprise corruption. (1353-1355.)
14. Contribution. (1401-1404.)
- 14-A. Damage actions: effect of contributory negligence and
 assumption of risk. (1411-1413.)
15. Actions against persons jointly liable. (1501-1502.)
16. Limited liability of persons jointly liable. (1600-1603.)
20. Mistakes, defects, irregularities and extensions of time.
 (2001-2005.)
21. Papers. (2101-2106.)
- 21-A. Filing of papers in the courts by facsimile transmission

- and by electronic means. (2110-2112)
- 22. Stay, motions, orders and mandates.
(2201, 2211-2215, 2217-2223.)
- 23. Subpoenas, oaths and affirmations. (2301-2309.)
- 24. Publication. (2401-2402.)
- 25. Undertakings. (2501-2513.)
- 26. Property paid into court. (2601-2609.)
- 27. Disposition of property in litigation. (2701-2703.)
- 30. Remedies and pleading.
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- 31. Disclosure. (3101-3118, 3120-3126, 3130-3133, 3140.)
- 32. Accelerated judgment. (3201, 3211-3222.)
- 34. Calendar practice; trial preferences. (3401-3408.)
- 40. Trial generally. (4001, 4011-4019.)
- 41. Trial by a jury. (4101-4113.)
- 42. Trial by the court. (4201, 4211-4213.)
- 43. Trial by a referee. (4301, 4311-4321.)
- 44. Trial motions. (4401-4406.)
- 45. Evidence. (4501-4534, 4536-4551.)
- 50. Judgments generally. (5001-5004, 5011-5021.)
- 50-A. Periodic payment of judgments in medical and dental
malpractice actions. (5031-5034, 5036-5039.)
- 50-B. Periodic payment of judgments in personal injury, injury
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§ 101. Short title; application. This chapter shall be known as the civil practice law and rules, and may be cited as "CPLR". The civil practice law and rules shall govern the procedure in civil judicial proceedings in all courts of the state and before all judges, except where the procedure is regulated by inconsistent statute. The civil practice law and rules shall succeed the civil practice act and rules of civil practice and shall be deemed substituted therefor throughout the

statutes and rules of the state. Reference to a provision in the civil practice law and rules may, except when such provision is being enacted or amended, be made without indicating whether it is a rule or section.

§ 102. Amendment, rescission or adoption of rules. The civil practice rules are herein designated "rule". Any rule in this chapter may be amended, or rescinded, or additional civil practice rules may be adopted, not inconsistent with the constitution, by act of the legislature. No rule so amended, rescinded or adopted shall abridge or enlarge the substantive rights of any party.

§ 103. Form of civil judicial proceedings. (a) One form of action. There is only one form of civil action. The distinctions between actions at law and suits in equity, and the forms of those actions and suits, have been abolished.

(b) Action or special proceeding. All civil judicial proceedings shall be prosecuted in the form of an action, except where prosecution in the form of a special proceeding is authorized. Except where otherwise prescribed by law, procedure in special proceedings shall be the same as in actions, and the provisions of the civil practice law and rules applicable to actions shall be applicable to special proceedings.

(c) Improper form. If a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution. If the court finds it appropriate in the interests of justice, it may convert a motion into a special proceeding, or vice-versa, upon such terms as may be just, including the payment of fees and costs.

§ 104. Construction. The civil practice law and rules shall be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding.

§ 105. Definitions. (a) Applicability. Unless the context requires otherwise, the definitions in this section apply to the civil practice law and rules.

(b) Action and special proceeding. The word "action" includes a special proceeding; the words "plaintiff" and "defendant" include the petitioner and the respondent, respectively, in a special proceeding; and the words "summons" and "complaint" include the notice of petition and the petition, respectively, in a special proceeding.

(c) Attorney. The word "attorney" includes a party prosecuting or defending an action in person.

(d) Civil judicial proceeding. A "civil judicial proceeding" is a prosecution, other than a criminal action, of an independent application to a court for relief.

(e) Clerk. The word "clerk," as used in any provision respecting an action or any proceedings therein, means the clerk of the court in which the action is triable. In supreme and county court, the word "clerk" shall mean the clerk of the county.

(f) Consumer credit transaction. The term "consumer credit transaction" means a transaction wherein credit is extended to an individual and the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.

(g) Court and judge. The word "court," as used in any provision concerning a motion, order or special proceeding, includes a judge thereof authorized to act out of court with respect to such motion, order or special proceeding.

(h) Domestic and foreign corporation. A "domestic corporation" is a corporation created by or under the laws of the state, or a corporation located in the state and created by or under the laws of the United States, or a corporation created by or pursuant to the laws in force in the colony of New York before April nineteenth, seventeen hundred seventy-five. Every other corporation is a "foreign corporation."

(h-1) Finance charge. The term "finance charge" means the cost of consumer credit as a dollar amount, includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit, and does not include any charge of a type payable in a comparable cash transaction.

(i) Garnishee. A "garnishee" is a person who owes a debt to a judgment debtor, or a person other than the judgment debtor who has property in his possession or custody in which a judgment debtor has an interest.

(j) Infant, infancy. The word "infant", as used in this chapter, means a person who has not attained the age of eighteen years. The word "infancy" means the state of being an infant.

(k) Judgment. The word "judgment" means a final or interlocutory judgment.

(l) Judgment creditor. A "judgment creditor" is a person in whose favor a money judgment is entered or a person who becomes entitled to enforce it.

(m) Judgment debtor. A "judgment debtor" is a person, other than a defendant not summoned in the action, against whom a money judgment is entered.

(n) Judicial hearing officer. A "judicial hearing officer" means a person so designated pursuant to provisions of article twenty-two of the judiciary law.

(o) Law. The word "law" means any statute or any civil practice rule.

(p) Matrimonial action. The term "matrimonial action" includes actions for a separation, for an annulment or dissolution of a marriage, for a divorce, for a declaration of the nullity of a void marriage, for a declaration of the validity or nullity of a foreign judgment of divorce and for a declaration of the validity or nullity of a marriage.

(q) Money judgment. A "money judgment" is a judgment, or any part thereof, for a sum of money or directing the payment of a sum of money.

(q-1) Original creditor. The term "original creditor" means the entity that owned a consumer credit account at the date of default giving rise to a cause of action.

(r) Place where action triable. The place where an action is "triable" means the place where the action is pending; or, if no action has been commenced, any proper place of trial or any proper place to commence the action; or, after entry of judgment, the place where the judgment was entered.

(s) Real property. "Real property" includes chattels real.

* (s-1) The sheriff. The term "the sheriff", as used in this chapter, means the county sheriff as defined in subdivision (a) of section thirteen of article thirteen of the constitution and in counties in the

city of New York, the city sheriff as defined in section fifteen hundred twenty-six of chapter fifty-eight of the New York city charter. For the purposes of article fifty-two of this chapter relating to the enforcement of money judgments and for the purposes of any provision of law which in effect applies any such provision of article fifty-two of this chapter, such term shall also mean any "city marshal" as defined in article sixteen of the New York city civil court act, except that city marshals shall have no power to levy upon or sell real property and city marshals shall have no power of arrest.

* NB Repealed June 30, 2028

(t) Type size requirement. Whenever a requirement relating to size of type is stated in point size, the type size requirement shall be deemed met if the x-height of the type is a minimum of forty-five percent of the specified point size. Each point shall be measured as .351 millimeter. The x-height size shall be measured as it appears on the page. The x-height is the height of the lower case letters, exclusive of ascenders or descenders.

(u) Verified pleading. A "verified pleading" may be utilized as an affidavit whenever the latter is required.

§ 106. Civil and criminal prosecutions not merged. Where the violation of a right admits of both a civil and criminal prosecution, the one is not merged in the other.

§ 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.

ARTICLE 2

LIMITATIONS OF TIME

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- 211. Actions to be commenced within twenty years.
 - (a) On a bond.
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- 212. Actions to be commenced within ten or fifteen years.
 - (a) Possession necessary to recover real property.
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- 213. Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder; based on fraud.
 - 213-a. Residential rent overcharge.
 - 213-b. Action by a victim of a criminal offense.
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 - 213-d. Actions to be commenced within three years; medical debt.
- 214. Actions to be commenced within three years: for non-payment of money collected on execution; for penalty

- created by statute; to recover chattel; for injury to property; for personal injury; for malpractice other than medical, dental or podiatric malpractice; to annul a marriage on the ground of fraud.
- 214-a. Action for medical, dental or podiatric malpractice to be commenced within two years and six months; exceptions.
 - 214-b. Action to recover damages for personal injury caused by contact with or exposure to phenoxy herbicides.
 - 214-c. Certain actions to be commenced within three years of discovery.
 - 214-d. Limitations on certain actions against licensed engineers and architects.
 - 214-e. Action to recover damages for personal injury caused by the infusion of such blood products which result in the contraction of the human immunodeficiency virus (HIV) and/or AIDS.
 - 214-f. Action to recover damages for personal injury caused by contact with or exposure to any substance or combination of substances found within an area designated as a superfund site.
 - 214-g. Certain child sexual abuse cases.
 - 214-h. Certain actions by public water suppliers to recover damages for injury to property.
 - 214-i. Certain actions arising out of consumer credit transactions to be commenced within three years.
 - 214-i*2. Action to recover damages for personal injury caused by contact with or exposure to toxic burn pits.
 - 214-j. Certain sexual offense actions.
 - 215. Actions to be commenced within one year: against sheriff, coroner or constable; for escape of prisoner; for assault, battery, false imprisonment, malicious prosecution, libel or slander; for violation of right of privacy; for penalty given to informer; on arbitration award.
 - 216. Abbreviation of period to one year after notice.
 - (a) Action to recover money.

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- 217-a. Actions to be commenced within one year and ninety days.
- 218. Transitional provisions.
 - (a) Actions barred at effective date.
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§ 201. Application of article. An action, including one brought in the name or for the benefit of the state, must be commenced within the time specified in this article unless a different time is prescribed by law or a shorter time is prescribed by written agreement. No court shall extend the time limited by law for the commencement of an action.

§ 202. Cause of action accruing without the state. An action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.

§ 203. Method of computing periods of limitation generally. (a) Accrual of cause of action and interposition of claim. The time within which an action must be commenced, except as otherwise expressly prescribed, shall be computed from the time the cause of action accrued to the time the claim is interposed.

(b) Claim in complaint where action commenced by service. In an action which is commenced by service, a claim asserted in the complaint is interposed against the defendant or a co-defendant united in interest with such defendant when:

1. the summons is served upon the defendant; or

2. first publication of the summons against the defendant is made pursuant to an order, and publication is subsequently completed; or

3. an order for a provisional remedy other than attachment is granted, if, within thirty days thereafter, the summons is served upon the defendant or first publication of the summons against the defendant is made pursuant to an order and publication is subsequently completed, or, where the defendant dies within thirty days after the order is granted and before the summons is served upon the defendant or publication is completed, if the summons is served upon the defendant's executor or administrator within sixty days after letters are issued; for this purpose seizure of a chattel in an action to recover a chattel is a provisional remedy; or

4. an order of attachment is granted, if the summons is served in accordance with the provisions of section 6213; or

5. the summons is delivered to the sheriff of that county outside the city of New York or is filed with the clerk of that county within the city of New York in which the defendant resides, is employed or is doing business, or if none of the foregoing is known to the plaintiff after reasonable inquiry, then of the county in which the defendant is known to have last resided, been employed or been engaged in business, or in which the cause of action arose; or if the defendant is a corporation, of a county in which it may be served or in which the cause of action arose; provided that:

(i) the summons is served upon the defendant within sixty days after the period of limitation would have expired but for this provision; or

(ii) first publication of the summons against the defendant is made pursuant to an order within sixty days after the period of limitation would have expired but for this provision and publication is subsequently completed; or

(iii) the summons is served upon the defendant's executor or administrator within sixty days after letters are issued, where the defendant dies within sixty days after the period of limitation would

have expired but for this provision and before the summons is served upon the defendant or publication is completed.

6. in an action to be commenced in a court not of record, the summons is delivered for service upon the defendant to any officer authorized to serve it in a county, city or town in which the defendant resides, is employed or is doing business, or if none of the foregoing be known to the plaintiff after reasonable inquiry, then in a county, city or town in which defendant is known to have last resided, been employed or been engaged in business, or, where the defendant is a corporation, in a county, city or town in which it may be served, if the summons is served upon the defendant within sixty days after the period of limitation would have expired but for this provision; or, where the defendant dies within sixty days after the period of limitation would have expired but for this provision and before the summons is served upon the defendant, if the summons is served upon his executor or administrator within sixty days after letters are issued.

(c) Claim in complaint where action commenced by filing. In an action which is commenced by filing, a claim asserted in the complaint is interposed against the defendant or a co-defendant united in interest with such defendant when the action is commenced.

(d) Defense or counterclaim. A defense or counterclaim is interposed when a pleading containing it is served. A defense or counterclaim is not barred if it was not barred at the time the claims asserted in the complaint were interposed, except that if the defense or counterclaim arose from the transactions, occurrences, or series of transactions or occurrences, upon which a claim asserted in the complaint depends, it is not barred to the extent of the demand in the complaint notwithstanding that it was barred at the time the claims asserted in the complaint were interposed.

(e) Effect upon defense or counterclaim of termination of action because of death or by dismissal or voluntary discontinuance. Where a defendant has served an answer containing a defense or counterclaim and the action is terminated because of the plaintiff's death or by dismissal or voluntary discontinuance, the time which elapsed between the commencement and termination of the action is not a part of the time within which an action must be commenced to recover upon the claim in

the defense or counterclaim or the time within which the defense or counterclaim may be interposed in another action brought by the plaintiff or his successor in interest.

(f) Claim in amended pleading. A claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.

(g) 1. Time computed from actual or imputed discovery of facts. Except as provided in article two of the uniform commercial code or in section two hundred fourteen-a of this chapter, where the time within which an action must be commenced is computed from the time when facts were discovered or from the time when facts could with reasonable diligence have been discovered, or from either of such times, the action must be commenced within two years after such actual or imputed discovery or within the period otherwise provided, computed from the time the cause of action accrued, whichever is longer.

2. Notwithstanding paragraph one of this subdivision, in an action or claim for medical, dental or podiatric malpractice, where the action or claim is based upon the alleged negligent failure to diagnose cancer or a malignant tumor, whether by act or omission, for the purposes of sections fifty-e and fifty-i of the general municipal law, section ten of the court of claims act, and the provisions of any other law pertaining to the commencement of an action or special proceeding, or to the serving of a notice of claim as a condition precedent to commencement of an action or special proceeding within a specified time period, the time in which to commence an action or special proceeding or to serve a notice of claim shall not begin to run until the later of either (i) when the person knows or reasonably should have known of such alleged negligent act or omission and knows or reasonably should have known that such alleged negligent act or omission has caused injury, provided, that such action shall be commenced no later than seven years from such alleged negligent act or omission, or (ii) the date of the last treatment where there is continuous treatment for such injury, illness or condition.

(h) Claim and action upon certain instruments. Once a cause of action

upon an instrument described in subdivision four of section two hundred thirteen of this article has accrued, no party may, in form or effect, unilaterally waive, postpone, cancel, toll, revive, or reset the accrual thereof, or otherwise purport to effect a unilateral extension of the limitations period prescribed by law to commence an action and to interpose the claim, unless expressly prescribed by statute.

§ 204. Stay of commencement of action; demand for arbitration. (a) Stay. Where the commencement of an action has been stayed by a court or by statutory prohibition, the duration of the stay is not a part of the time within which the action must be commenced.

(b) Arbitration. Where it shall have been determined that a party is not obligated to submit a claim to arbitration, the time which elapsed between the demand for arbitration and the final determination that there is no obligation to arbitrate is not a part of the time within which an action upon such claim must be commenced. The time within which the action must be commenced shall not be extended by this provision beyond one year after such final determination.

§ 205. Termination of action. (a) New action by plaintiff. If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or, if the plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. Where a dismissal is one for neglect to prosecute the action made pursuant to rule thirty-two hundred sixteen of this chapter or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.

(b) Defense or counterclaim. Where the defendant has served an answer and the action is terminated in any manner, and a new action upon the same transaction or occurrence or series of transactions or occurrences is commenced by the plaintiff or his successor in interest, the assertion of any cause of action or defense by the defendant in the new action shall be timely if it was timely asserted in the prior action.

(c) Application. This section also applies to a proceeding brought under the workers' compensation law but shall not apply to any proceeding governed by section two hundred five-a of this article.

§ 205-a. Termination of certain actions related to real property. (a) If an action upon an instrument described under subdivision four of section two hundred thirteen of this article is timely commenced and is terminated in any manner other than a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for any form of neglect, including, but not limited to those specified in subdivision three of section thirty-one hundred twenty-six, section thirty-two hundred fifteen, rule thirty-two hundred sixteen and rule thirty-four hundred four of this chapter, for violation of any court rules or individual part rules, for failure to comply with any court scheduling orders, or by default due to nonappearance for conference or at a calendar call, or by failure to timely submit any order or judgment, or upon a final judgment upon the merits, the original plaintiff, or, if the original plaintiff dies and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of the commencement of the prior action and that service upon the original defendant is completed within such six-month period. For purposes of this subdivision:

1. a successor in interest or an assignee of the original plaintiff shall not be permitted to commence the new action, unless pleading and proving that such assignee is acting on behalf of the original

plaintiff; and

2. in no event shall the original plaintiff receive more than one six-month extension.

(b) Where the defendant has served an answer and the action upon an instrument described under subdivision four of section two hundred thirteen of this article is terminated in any manner, and a new action upon the same transaction or occurrence or series of transactions or occurrences is commenced by the original plaintiff, or a successor in interest or assignee of the original plaintiff, the assertion of any cause of action or defense by the defendant in the new action shall be timely if such cause of action or defense was timely asserted in the prior action.

§ 206. Computing periods of limitation in particular actions. (a) Where demand necessary. Except as provided in article 3 of the uniform commercial code, where a demand is necessary to entitle a person to commence an action, the time within which the action must be commenced shall be computed from the time when the right to make the demand is complete, except that

1. where a right grows out of the receipt or detention of money or property by a trustee, agent, attorney or other person acting in a fiduciary capacity, the time within which the action must be commenced shall be computed from the time when the person having the right to make the demand discovered the facts upon which the right depends; and

2. where there was a deposit of money to be repaid only upon a special demand, or a delivery of personal property not to be returned specifically or in kind at a fixed time or upon a fixed contingency, the time within which the action must be commenced shall be computed from the demand for repayment or return.

(b) Based on misconduct of agent. Where a judgment is entered against a principal in an action based upon an injury resulting from the act or omission of his deputy or agent, the time within which an action by the principal against the deputy or agent to recover damages by reason of

such judgment must be commenced shall be computed, from the time when the action against the principal was finally determined. Where an injury results from the representation by a person that he is an agent with authority to execute a contract in behalf of a principal, the time within which an action to recover damages for breach of warranty of authority must be commenced by the person injured against the purported agent shall be computed from the time the person injured discovered the facts constituting lack of authority.

(c) Based on breach of covenant of seizin or against incumbrances. In an action based upon breach of a covenant of seizin or against incumbrances, the time within which the action must be commenced shall be computed from an eviction.

(d) Based on account. In an action based upon a mutual, open and current account, where there have been reciprocal demands between the parties, the time within which the action must be commenced shall be computed from the time of the last transaction in the account on either side.

§ 207. Defendant's absence from state or residence under false name. If, when a cause of action accrues against a person, he is without the state, the time within which the action must be commenced shall be computed from the time he comes into or returns to the state. If, after a cause of action has accrued against a person, that person departs from the state and remains continuously absent therefrom for four months or more, or that person resides within the state under a false name which is unknown to the person entitled to commence the action, the time of his absence or residence within the state under such a false name is not a part of the time within which the action must be commenced. If an action is commenced against a person described above, the time within which service must be made on such person in accordance with subdivisions (a) and (b) of section three hundred six-b of this chapter shall be computed in accordance with this section. This section does not apply:

1. while there is in force a designation, voluntary or involuntary, made pursuant to law, of a person to whom a summons may be delivered

within the state with the same effect as if served personally within the state; or

2. while a foreign corporation has one or more officers or other persons in the state on whom a summons against such corporation may be served; or

3. while jurisdiction over the person of the defendant can be obtained without personal delivery of the summons to the defendant within the state.

§ 208. Infancy, insanity. (a) If a person entitled to commence an action is under a disability because of infancy or insanity at the time the cause of action accrues, and the time otherwise limited for commencing the action is three years or more and expires no later than three years after the disability ceases, or the person under the disability dies, the time within which the action must be commenced shall be extended to three years after the disability ceases or the person under the disability dies, whichever event first occurs; if the time otherwise limited is less than three years, the time shall be extended by the period of disability. The time within which the action must be commenced shall not be extended by this provision beyond ten years after the cause of action accrues, except, in any action other than for medical, dental or podiatric malpractice, where the person was under a disability due to infancy. This section shall not apply to an action to recover a penalty or forfeiture, or against a sheriff or other officer for an escape.

(b) Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, with respect to all civil claims or causes of action brought by any person for physical, psychological or other injury or condition suffered by such person as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against such person who was less than eighteen

years of age, incest as defined in section 255.27, 255.26 or 255.25 of the penal law committed against such person who was less than eighteen years of age, or the use of such person in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against such person who was less than eighteen years of age, such action may be commenced, against any party whose intentional or negligent acts or omissions are alleged to have resulted in the commission of said conduct, on or before the plaintiff or infant plaintiff reaches the age of fifty-five years. In any such claim or action, in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law, to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such sections of the penal law shall apply.

§ 208-a. In custody at time of cause of action. Notwithstanding any provisions of law that impose a period of limitation to the contrary or any provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, with respect to all civil claims or causes of action brought by any person to recover damages for physical, psychological, or other injury or condition suffered while under the jurisdiction and in the care and custody or supervision of: the state department of corrections and community supervision, except a person under community supervision as defined in subdivision thirty-one of section two of the correction law, a hospital as defined in subdivision two of section four hundred of the correction law, a correctional facility as defined in subdivision three of section forty of the correction law, a local correctional facility as defined in subdivision two of section forty of the correction law, or an alternate correctional facility as defined in subdivision one of section eighty-seven of the correction law, the time in which such action must commence shall have the full benefit of the limitations period provided

in the relevant section of law and, in addition, shall have a two-year window following the date of the person's release from the relevant period of custody within which to commence an action based on such injury or condition. For any claim that would have been time-barred but for the application of this section, no notice of claim or notice of intention to file a claim shall be required as a condition precedent to the commencement of such action or special proceeding. This exemption shall not apply to any claim that was timely under the otherwise applicable statute of limitations.

§ 209. War. (a) Cause of action accruing in foreign country. Where a cause of action, whether originally accrued in favor of a resident or non-resident of the state, accrued in a foreign country with which the United States or any of its allies were then or subsequently at war, or territory then or subsequently occupied by the government of such foreign country, the time which elapsed between the commencement of the war, or of such occupation, and the termination of hostilities with such country, or of such occupation, is not a part of the time within which the action must be commenced. This section shall neither apply to nor in any manner affect an action brought pursuant to section six hundred twenty-five of the banking law against a banking organization or against the superintendent of financial services.

(b) Right of noncitizen. Where a person is unable to commence an action in the courts of the state because any party is a noncitizen subject or citizen of a foreign country at war with the United States or any of its allies, whether the cause of action accrued during or prior to the war, the time which elapsed between the commencement of the war and the termination of hostilities with such country is not a part of the time within which the action must be commenced.

(c) Non-enemy in enemy country or enemy-occupied territory. Where a person entitled to commence an action, other than a person entitled to the benefits of subdivision (b), is a resident of, or a sojourner in, a foreign country with which the United States or any of its allies are at war, or territory occupied by the government of such foreign country, the period of such residence or sojourn during which the war continues or the territory is so occupied is not a part of the time within which

the action must be commenced.

§ 210. Death of claimant or person liable; cause of action accruing after death and before grant of letters. (a) Death of claimant. Where a person entitled to commence an action dies before the expiration of the time within which the action must be commenced and the cause of action survives, an action may be commenced by his representative within one year after his death.

(b) Death of person liable. The period of eighteen months after the death, within or without the state, of a person against whom a cause of action exists is not a part of the time within which the action must be commenced against his executor or administrator.

(c) Cause of action accruing after death and before grant of letters. In an action by an executor or administrator to recover personal property wrongfully taken after the death and before the issuance of letters, or to recover damages for taking, detaining or injuring personal property within that period, the time within which the action must be commenced shall be computed from the time the letters are issued or from three years after the death, whichever event first occurs. Any distributee, next of kin, legatee or creditor who was under a disability prescribed in section 208 at the time the cause of action accrued, may, within two years after the disability ceases, commence an action to recover such damages or the value of such property as he would have received upon a final distribution of the estate if an action had been timely commenced by the executor or administrator.

§ 211. Actions to be commenced within twenty years. (a) On a bond. An action to recover principal or interest upon a written instrument evidencing an indebtedness of the state of New York or of any person, association or public or private corporation, originally sold by the issuer after publication of an advertisement for bids for the issue in electronic or physical form and secured only by a pledge of the faith and credit of the issuer, regardless of whether a sinking fund is or may be established for its redemption, must be commenced within twenty years after the cause of action accrues. This subdivision does not apply to

actions upon written instruments evidencing an indebtedness of any corporation, association or person under the jurisdiction of the public service commission, the commissioner of transportation, the interstate commerce commission, the federal communications commission, the civil aeronautics board, the federal power commission, or any other regulatory commission or board of a state or of the federal government. This subdivision applies to all causes of action, including those barred on April eighteenth, nineteen hundred fifty, by the provisions of the civil practice act then effective.

(b) On a money judgment. A money judgment is presumed to be paid and satisfied after the expiration of twenty years from the time when the party recovering it was first entitled to enforce it. This presumption is conclusive, except as against a person who within the twenty years acknowledges an indebtedness, or makes a payment, of all or part of the amount recovered by the judgment, or his heir or personal representative, or a person whom he otherwise represents. Such an acknowledgment must be in writing and signed by the person to be charged. Property acquired by an enforcement order or by levy upon an execution is a payment, unless the person to be charged shows that it did not include property claimed by him. If such an acknowledgment or payment is made, the judgment is conclusively presumed to be paid and satisfied as against any person after the expiration of twenty years after the last acknowledgment or payment made by him. The presumption created by this subdivision may be availed of under an allegation that the action was not commenced within the time limited.

(c) By state for real property. The state will not sue a person for or with respect to real property, or the rents or profits thereof, by reason of the right or title of the state to the same, unless the cause of action accrued, or the state, or those from whom it claims, have received the rents and profits of the real property or of some part thereof, within twenty years before the commencement of the action.

(d) By grantee of state for real property. An action shall not be commenced for or with respect to real property by a person claiming by virtue of letters patent or a grant from the state, unless it might have been maintained by the state, as prescribed in this section, if the patent or grant had not been issued or made.

(e) For support, alimony or maintenance. An action or proceeding to

enforce any temporary order, permanent order or judgment of any court of competent jurisdiction which awards support, alimony or maintenance, regardless of whether or not arrears have been reduced to a money judgment, must be commenced within twenty years from the date of a default in payment. This section shall only apply to orders which have been entered subsequent to the date upon which this section shall become effective.

§ 212. Actions to be commenced within ten or fifteen years. (a)

Possession necessary to recover real property. An action to recover real property or its possession cannot be commenced unless the plaintiff, or his predecessor in interest, was seized or possessed of the premises within ten years before the commencement of the action.

(b) Annulment of letters patent. Where letters patent or a grant of real property, issued or made by the state, are declared void on the ground of fraudulent suggestion or concealment, forfeiture, mistake or ignorance of a material fact, wrongful detaining or defective title, an action to recover the premises may be commenced by the state or by a subsequent patentee or grantee, or his successor in interest, within ten years after the determination is made.

(c) To redeem from a mortgage. An action to redeem real property from a mortgage with or without an account of rents and profits may be commenced by the mortgagor or his successors in interest, against the mortgagee in possession, or against the purchaser of the mortgaged premises at a foreclosure sale in an action in which the mortgagor or his successors in interest were not excluded from their interest in the mortgaged premises, or against a successor in interest of either, unless the mortgagee, purchaser or successor was continuously possessed of the premises for ten years after the breach or non-fulfillment of a condition or covenant of the mortgage, or the date of recording of the deed of the premises to the purchaser.

(d) To recover under an affidavit of support of a noncitizen. An action under section one hundred twenty-two of the social services law to recover amounts paid to or on behalf of a noncitizen for whom an affidavit of support pursuant to section 213A of the immigration and naturalization act has been signed.

(e) By a victim of sex trafficking, compelling prostitution, or labor trafficking. An action by a victim of sex trafficking, compelling prostitution, labor trafficking or aggravated labor trafficking, brought pursuant to subdivision (c) of section four hundred eighty-three-bb of the social services law, may be commenced within fifteen years after such victimization occurs provided, however, that such fifteen year period shall not begin to run and shall be tolled during any period in which the victim is or remains subject to such conduct.

§ 213. Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder; based on fraud. The following actions must be commenced within six years:

1. an action for which no limitation is specifically prescribed by law;

2. an action upon a contractual obligation or liability, express or implied, except as provided in section two hundred thirteen-a or two hundred fourteen-i of this article or article 2 of the uniform commercial code or article 36-B of the general business law;

3. an action upon a sealed instrument;

4. an action upon a bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of real property, or any interest therein;

(a) In any action on an instrument described under this subdivision, if the statute of limitations is raised as a defense, and if that defense is based on a claim that the instrument at issue was accelerated prior to, or by way of commencement of a prior action, a plaintiff shall be estopped from asserting that the instrument was not validly accelerated, unless the prior action was dismissed based on an expressed judicial determination, made upon a timely interposed defense, that the

instrument was not validly accelerated.

(b) In any action seeking cancellation and discharge of record of an instrument described under subdivision four of section fifteen hundred one of the real property actions and proceedings law, a defendant shall be estopped from asserting that the period allowed by the applicable statute of limitation for the commencement of an action upon the instrument has not expired because the instrument was not validly accelerated prior to, or by way of commencement of a prior action, unless the prior action was dismissed based on an expressed judicial determination, made upon a timely interposed defense, that the instrument was not validly accelerated.

5. an action by the state based upon the spoliation or other misappropriation of public property; the time within which the action must be commenced shall be computed from discovery by the state of the facts relied upon;

6. an action based upon mistake;

7. an action by or on behalf of a corporation against a present or former director, officer or stockholder for an accounting, or to procure a judgment on the ground of fraud, or to enforce a liability, penalty or forfeiture, or to recover damages for waste or for an injury to property or for an accounting in conjunction therewith.

8. an action based upon fraud; the time within which the action must be commenced shall be the greater of six years from the date the cause of action accrued or two years from the time the plaintiff or the person under whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it.

9. an action by the attorney general pursuant to article twenty-three-A of the general business law or subdivision twelve of section sixty-three of the executive law.

§ 213-a. Residential rent overcharge. No overcharge penalties or

damages may be awarded for a period more than six years before the action is commenced or complaint is filed, however, an overcharge claim may be filed at any time, and the calculation and determination of the legal rent and the amount of the overcharge shall be made in accordance with the provisions of law governing the determination and calculation of overcharges.

§ 213-b. Action by a victim of a criminal offense. Notwithstanding any other limitation set forth in this article or in article five of the estates, powers and trusts law, an action by a crime victim, or the representative of a crime victim, as defined in subdivision six of section six hundred twenty-one of the executive law, may be commenced to recover damages from a defendant: (1) convicted of a crime which is the subject of such action, for any injury or loss resulting therefrom within seven years of the date of the crime or (2) convicted of a specified crime as defined in paragraph (e) of subdivision one of section six hundred thirty-two-a of the executive law which is the subject of such action for any injury or loss resulting therefrom within ten years of the date the defendant was convicted of such specified crime.

§ 213-c. Action by victim of conduct constituting certain sexual offenses. Notwithstanding any other limitation set forth in this article, except as provided in subdivision (b) of section two hundred eight of this article, all civil claims or causes of action brought by any person for physical, psychological or other injury or condition suffered by such person as a result of conduct which would constitute rape in the first degree as defined in section 130.35 of the penal law, or rape in the second degree as defined in subdivision four, five or six of section 130.30 of the penal law, or rape in the second degree as defined in former subdivision two of section 130.30 of the penal law, or rape in the third degree as defined in subdivision one, two, three, seven, eight or nine of section 130.25 of the penal law, or a crime formerly defined in section 130.50 of the penal law, or a crime formerly defined in subdivision two of section 130.45 of the penal law, or a

crime formerly defined in subdivision one or three of section 130.40 of the penal law, or incest in the first degree as defined in section 255.27 of the penal law, or incest in the second degree as defined in section 255.26 of the penal law (where the crime committed is rape in the second degree as defined in subdivision four, five or six of section 130.30 of the penal law, or rape in the second degree as formerly defined in subdivision two of section 130.30 of the penal law, or a crime formerly defined in subdivision two of section 130.45 of the penal law), or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law may be brought against any party whose intentional or negligent acts or omissions are alleged to have resulted in the commission of the said conduct, within twenty years. Nothing in this section shall be construed to require that a criminal charge be brought or a criminal conviction be obtained as a condition of bringing a civil cause of action or receiving a civil judgment pursuant to this section or be construed to require that any of the rules governing a criminal proceeding be applicable to any such civil action.

§ 213-d. Actions to be commenced within three years; medical debt. An action on a medical debt by a hospital licensed under article twenty-eight of the public health law or a health care professional authorized under title eight of the education law shall be commenced within three years of treatment.

§ 214. Actions to be commenced within three years: for non-payment of money collected on execution; for penalty created by statute; to recover chattel; for injury to property; for personal injury; for malpractice other than medical, dental or podiatric malpractice; to annul a marriage on the ground of fraud. The following actions must be commenced within three years:

1. an action against a sheriff, constable or other officer for the non-payment of money collected upon an execution;

2. an action to recover upon a liability, penalty or forfeiture created or imposed by statute except as provided in sections 213 and 215;

3. an action to recover a chattel or damages for the taking or detaining of a chattel;

4. an action to recover damages for an injury to property except as provided in section 214-c;

5. an action to recover damages for a personal injury except as provided in sections 214-b, 214-c, 214-i and 215;

6. an action to recover damages for malpractice, other than medical, dental or podiatric malpractice, regardless of whether the underlying theory is based in contract or tort; and

7. an action to annul a marriage on the ground of fraud; the time within which the action must be commenced shall be computed from the time the plaintiff discovered the facts constituting the fraud, but if the plaintiff is a person other than the spouse whose consent was obtained by fraud, the time within which the action must be commenced shall be computed from the time, if earlier, that that spouse discovered the facts constituting the fraud.

§ 214-a. Action for medical, dental or podiatric malpractice to be commenced within two years and six months; exceptions. An action for medical, dental or podiatric malpractice must be commenced within two years and six months of the act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure; provided, however, that: (a) where the action is based upon the discovery of a foreign object in the body of the patient, the action may be commenced within one year of the date of such discovery or of the date of discovery of facts which would reasonably lead to such

discovery, whichever is earlier; and (b) where the action is based upon the alleged negligent failure to diagnose cancer or a malignant tumor, whether by act or omission, the action may be commenced within two years and six months of the later of either (i) when the person knows or reasonably should have known of such alleged negligent act or omission and knows or reasonably should have known that such alleged negligent act or omission has caused injury, provided, that such action shall be commenced no later than seven years from such alleged negligent act or omission, or (ii) the date of the last treatment where there is continuous treatment for such injury, illness or condition. For the purpose of this section the term "continuous treatment" shall not include examinations undertaken at the request of the patient for the sole purpose of ascertaining the state of the patient's condition. For the purpose of this section the term "foreign object" shall not include a chemical compound, fixation device or prosthetic aid or device.

§ 214-b. Action to recover damages for personal injury caused by contact with or exposure to phenoxy herbicides. Notwithstanding any provision of law to the contrary, an action to recover damages for personal injury caused by contact with or exposure to phenoxy herbicides while serving as a member of the armed forces of the United States in Indo-China from January first, nineteen hundred sixty-two through May seventh, nineteen hundred seventy-five, may be commenced within two years from the date of the discovery of such injury, or within two years from the date when through the exercise of reasonable diligence the cause of such injury should have been discovered, whichever is later.

§ 214-c. Certain actions to be commenced within three years of discovery. 1. In this section: "exposure" means direct or indirect exposure by absorption, contact, ingestion, inhalation, implantation or injection.

2. Notwithstanding the provisions of section 214, the three year period within which an action to recover damages for personal injury or injury to property caused by the latent effects of exposure to any

substance or combination of substances, in any form, upon or within the body or upon or within property must be commenced shall be computed from the date of discovery of the injury by the plaintiff or from the date when through the exercise of reasonable diligence such injury should have been discovered by the plaintiff, whichever is earlier.

3. For the purposes of sections fifty-e and fifty-i of the general municipal law, section thirty-eight hundred thirteen of the education law and the provisions of any general, special or local law or charter requiring as a condition precedent to commencement of an action or special proceeding that a notice of claim be filed or presented within a specified period of time after the claim or action accrued, a claim or action for personal injury or injury to property caused by the latent effects of exposure to any substance or combination of substances, in any form, upon or within the body or upon or within property shall be deemed to have accrued on the date of discovery of the injury by the plaintiff or on the date when through the exercise of reasonable diligence the injury should have been discovered, whichever is earlier.

4. Notwithstanding the provisions of subdivisions two and three of this section, where the discovery of the cause of the injury is alleged to have occurred less than five years after discovery of the injury or when with reasonable diligence such injury should have been discovered, whichever is earlier, an action may be commenced or a claim filed within one year of such discovery of the cause of the injury; provided, however, if any such action is commenced or claim filed after the period in which it would otherwise have been authorized pursuant to subdivision two or three of this section the plaintiff or claimant shall be required to allege and prove that technical, scientific or medical knowledge and information sufficient to ascertain the cause of his injury had not been discovered, identified or determined prior to the expiration of the period within which the action or claim would have been authorized and that he has otherwise satisfied the requirements of subdivisions two and three of this section.

5. This section shall not be applicable to any action for medical or dental malpractice.

6. This section shall be applicable to acts, omissions or failures occurring prior to, on or after July first, nineteen hundred eighty-six, except that this section shall not be applicable to any act, omission or failure:

(a) which occurred prior to July first, nineteen hundred eighty-six, and

(b) which caused or contributed to an injury that either was discovered or through the exercise of reasonable diligence should have been discovered prior to such date, and

(c) an action for which was or would have been barred because the applicable period of limitation had expired prior to such date.

§ 214-d. Limitations on certain actions against licensed engineers and architects. 1. Any person asserting a claim for personal injury, wrongful death or property damage, or a cross or third-party claim for contribution or indemnification arising out of an action for personal injury, wrongful death or property damage, against a licensed architect, engineer, land surveyor or landscape architect or against a partnership, professional corporation or limited liability company lawfully practicing architecture, engineering, land surveying or landscape architecture which is based upon the professional performance, conduct or omission by such licensed architect, engineer, land surveyor or landscape architect or such firm occurring more than ten years prior to the date of such claim, shall give written notice of such claim to each such architect, engineer, land surveyor or landscape architect or such firm at least ninety days before the commencement of any action or proceeding against such licensed architect, engineer, land surveyor or landscape architect or such firm including any cross or third-party action or claim. The notice of claim shall identify the performance, conduct or omissions complained of, on information and belief, and shall include a request for general and special damages. Service of such written notice of claim may be made by any of the methods permitted for personal service of a summons upon a natural person, partnership or professional corporation. A notice of claim served in accordance with this section shall be filed, together with proof of service thereof, in

any court of this state in which an action, proceeding or cross or third-party claim arising out of such conduct may be commenced or interposed, within thirty days of the service of the notice of claim. Upon the filing of any such notice of claim, a county clerk shall collect an index number fee in accordance with section eight thousand eighteen of this chapter and an index number shall be assigned.

2. In such pleadings as are subsequently filed in any court, each party shall represent that it has fully complied with the provisions of this section.

3. Service of a notice as provided in this section shall toll the applicable statute of limitations to and including a period of one hundred twenty days following such service.

4. From and after the date of service of the notice provided for in subdivision one of this section, the claimant shall have the right to serve a demand for discovery and production of documents and things for inspection, testing, copying or photographing in accordance with rule three thousand one hundred twenty of this chapter. Such demand shall be governed by the procedures of article thirty-one of this chapter. In addition, the claimant shall have the right to the examination before trial of such licensed architect, engineer, land surveyor or landscape architect or such firm or to serve written interrogatories upon such licensed architect, engineer, land surveyor or landscape architect or such firm after service of and compliance with a demand for production and inspection in accordance with this section. The court may, at any time at its own initiative or on motion of such licensed architect, engineer, land surveyor or landscape architect or such firm deny, limit, condition or restrict such examination before trial or written interrogatories upon a showing that such claimant has failed to establish reasonable necessity for the information sought or failed to establish that the information sought by such examination or interrogatories cannot reasonably be determined from the documents or things provided in response to a demand for production and inspection served in accordance with this section. Such examination before trial or interrogatories shall otherwise be governed by article thirty-one of

this chapter.

5. After the expiration of ninety days from service of the notice provided in subdivision one of this section, the claimant may commence or interpose an action, proceeding or cross or third-party claim against such licensed architect, engineer, land surveyor or landscape architect or such firm. The action shall proceed in every respect as if the action were one brought on account of conduct occurring less than ten years prior to the claim described in said action, unless the defendant architect, engineer, land surveyor or landscape architect or such firm shall have made a motion under rule three thousand two hundred eleven or three thousand two hundred twelve of this chapter, in which event the action shall be stayed pending determination of the motion. Such motion shall be granted upon a showing that such claimant has failed to comply with the notice of claim requirements of this section or for the reasons set forth in subdivision (h) of rule three thousand two hundred eleven or subdivision (i) of rule three thousand two hundred twelve of this chapter; provided, however, such motion shall not be granted if the moving party is in default of any disclosure obligation as set forth in subdivision four of this section.

6. No claim for personal injury, or wrongful death or property damage, or a cross or third-party claim for contribution or indemnification arising out of an action for personal injury, wrongful death or property damage may be asserted against a licensed architect, engineer, land surveyor or landscape architect or such firm arising out of conduct by such licensed architect, engineer, land surveyor or landscape architect or such firm occurring more than ten years prior to the accrual of such claim shall be commenced or interposed against any such licensed architect, engineer, land surveyor or landscape architect or such firm unless it shall appear by and as an allegation in the complaint or necessary moving papers that the claimant has complied with the requirements of this section. Upon the commencement of such a proceeding or action or interposition of such cross or third-party claim, a county clerk shall not be entitled to collect an index number fee and such action, proceeding or cross or third-party claim shall retain the previously assigned index number. Such action, proceeding or cross or

third-party claim shall otherwise be governed by the provisions of this chapter.

7. The provisions of this section shall apply only to a licensed architect, engineer, land surveyor or landscape architect or such firm practicing architecture, engineering, land surveying or landscape architecture in the state of New York at the time the conduct complained of occurred and shall not apply to any person or entity, including but not limited to corporations, which was not licensed as an architect, engineer, land surveyor or landscape architect or such firm in this state or to a firm not lawfully practicing architecture, engineering, land surveying or landscape architecture at the time the conduct complained of occurred.

8. The provisions of this section shall not be construed to in any way alter or extend any applicable statutes of limitations except as expressly provided herein.

§ 214-e. Action to recover damages for personal injury caused by the infusion of such blood products which result in the contraction of the human immunodeficiency virus (HIV) and/or AIDS. Notwithstanding any provision of law to the contrary, any cause of action for an injury or death against a proprietary manufacturer of blood products for damages involving the infusion of such blood products which resulted in the contraction of the human immunodeficiency virus (HIV) and/or AIDS which is barred as of the effective date of this section because the applicable period of limitation has expired is hereby revived, and an action thereon may be commenced and prosecuted provided such action is commenced within two years of the effective date of this section. The provisions of this section shall be inapplicable to any civil action governed by the statute of limitations of another jurisdiction.

§ 214-f. Action to recover damages for personal injury caused by contact with or exposure to any substance or combination of substances found within an area designated as a superfund site. Notwithstanding any

provision of law to the contrary, an action to recover personal damages for injury caused by contact with or exposure to any substance or combination of substances contained within an area designated as a superfund site pursuant to either Chapter 103 of Section 42 of the United States Code and/or section 27-1303 of the environmental conservation law, may be commenced by the plaintiff within the period allowed pursuant to section two hundred fourteen-c of this article or within three years of such designation of such an area as a superfund site, whichever is latest.

§ 214-g. Certain child sexual abuse cases. Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.27, 255.26 or 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against a child less than eighteen years of age, which is barred as of the effective date of this section because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim, is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than two years and six months after the effective date of this section. In any such claim or action: (a) in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law, to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of

section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such sections of the penal law shall apply; and (b) dismissal of a previous action, ordered before the effective date of this section, on grounds that such previous action was time barred, and/or for failure of a party to file a notice of claim or a notice of intention to file a claim, shall not be grounds for dismissal of a revival action pursuant to this section.

§ 214-h. Certain actions by public water suppliers to recover damages for injury to property. 1. In this section:

(a) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water and includes but is not limited to an emerging contaminant listed pursuant to section eleven hundred twelve of the public health law.

(b) "Person" means an individual, corporation, public corporation, company, association, partnership, or entity of the state or federal government.

(c) "Public water supplier" means a person that owns, manages or operates a community, noncommunity or nontransient noncommunity water system that provides water to the public for human consumption through pipes or other constructed conveyances, if such system has at least five service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year.

(d) "Wholesale water supplier" means a person that owns, manages or operates a public water system that treats a source of water supply as necessary to produce finished water and then delivers some or all of that finished water to a public water supplier.

(e) "Source of water supply" means any groundwater aquifer or other source from which water is taken either periodically or continuously for drinking, kitchen, cooking or food-processing purposes, or which has been designated for present or future use as a source of water supply for domestic or municipal purposes.

(f) "Plant intake" means the works or structures at the head of a conduit through which water is diverted from a source of water supply into the treatment plant by a public water supplier.

(g) "Well" means any excavation used for obtaining water by a public

water supplier.

(h) "Raw water" means water immediately before the first or only point of disinfection or other treatment.

(i) "Emerging contaminant" shall mean any physical, chemical, microbiological or radiological substance that has ever been or ever will be identified or listed pursuant to paragraph a or b of subdivision three of section eleven hundred twelve of the public health law or that has ever been or ever will be required to be identified or listed as an emerging contaminant pursuant to paragraph c of subdivision three of section eleven hundred twelve of the public health law or that is identified or listed as an emerging contaminant pursuant to any other law.

2. Notwithstanding any other law that provides for a shorter limitations period, any civil claim or cause of action brought by a public water supplier or wholesale water supplier against any person to recover damages for injury to property owned, managed or operated by a public water supplier or a wholesale water supplier resulting from the presence of a contaminant in a source of water supply shall be commenced within three years of the latest of any of the following:

(a) the detection of a contaminant in the raw water of each well or plant intake sampling point in excess of any notification level, action level, maximum contaminant level, or maximum contaminant level goal established by the commissioner of health, the department of health or the United States Environmental Protection Agency for that contaminant;

(b) the last wrongful act by any person whose conduct contributed to the presence of a contaminant in a source of water supply or the raw water of each well or plant intake sampling point; or

(c) the date the contaminant is last detected in the raw water of each well or plant intake sampling point in excess of any notification level, action level, maximum contaminant level, or maximum contaminant level goal established by the commissioner of health, the department of health or the United States Environmental Protection Agency for that contaminant.

3. This three-year period shall apply to each well and each plant intake for each contaminant separately, and the expiration of the

three-year period at one well or plant intake shall not affect the three-year period for another well or plant intake.

4. Nothing in this section shall abridge or limit a public water supplier's or a wholesale water supplier's right to bring an action to abate an imminent threat of contamination of any well or plant intake or to recover as damages the costs of such abatement.

5. Any action, civil claim, or cause of action involving an emerging contaminant that is barred as of the effective date of this subdivision because the applicable period of limitation has expired is hereby revived, and such action, civil claim, or cause of action thereon may be commenced and prosecuted provided such action, civil claim, or cause of action is commenced either before or within one year and six months following the effective date of this subdivision.

*** § 214-i. Certain actions arising out of consumer credit transactions to be commenced within three years.** An action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant must be commenced within three years, except as provided in section two hundred thirteen-a of this article or article 2 of the uniform commercial code or article 36-B of the general business law. Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period.

* NB There are 2 § 214-i's

*** § 214-i. Action to recover damages for personal injury caused by contact with or exposure to toxic burn pits.** 1. Notwithstanding any provision of law to the contrary, an action to recover damages for personal injury caused by exposure to toxic burn pits while serving as a member of the armed forces of the United States in Afghanistan, Bahrain, Burkina Faso, Cameroon, Chad, Diego Garcia, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Iraq, Jordan, Kenya, Kuwait, Kyrgyzstan, Libya, Mali,

Niger, Nigeria, Oman, Pakistan, Philippines, Saudi Arabia, Somalia, South Sudan, Sudan, Syria, Tajikistan, Tunisia, Turkey, United Arab Emirates, Uzbekistan, and Yemen on or after August second, nineteen hundred ninety, may be commenced within three years from the date of the discovery of such injury, or within three years from the date when through the exercise of reasonable diligence the cause of such injury should have been discovered, whichever is later.

2. For the purposes of this section, a personal injury includes, but shall not be limited to the following diseases: asthma that was diagnosed after service in a country or territory listed, cancer of any type, chronic bronchitis, chronic obstructive pulmonary disease, constrictive bronchiolitis or obliterative bronchiolitis, emphysema, granulomatous disease, interstitial lung disease, lymphoma, pleuritis, pulmonary fibrosis, and sarcoidosis.

* NB There are 2 § 214-i's

§ 214-j. Certain sexual offense actions. Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against such person who was eighteen years of age or older, or incest as defined in section 255.26 or 255.27 of the penal law committed against such person who was eighteen years of age or older, which is barred as of the effective date of this section because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim, is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than one year and six months after the effective date of this section. In any such claim or action, dismissal of a previous action, ordered before the effective

date of this section, on grounds that such previous action was time barred, and/or for failure of a party to file a notice of claim or a notice of intention to file a claim, shall not be grounds for dismissal of a revival action pursuant to this section.

§ 215. Actions to be commenced within one year: against sheriff, coroner or constable; for escape of prisoner; for assault, battery, false imprisonment, malicious prosecution, libel or slander; for violation of right of privacy; for penalty given to informer; on arbitration award. The following actions shall be commenced within one year:

1. an action against a sheriff, coroner or constable, upon a liability incurred by him by doing an act in his official capacity or by omission of an official duty, except the non-payment of money collected upon an execution;

2. an action against an officer for the escape of a prisoner arrested or imprisoned by virtue of a civil mandate;

3. an action to recover damages for assault, battery, false imprisonment, malicious prosecution, libel, slander, false words causing special damages, or a violation of the right of privacy under section fifty-one of the civil rights law;

4. an action to enforce a penalty or forfeiture created by statute and given wholly or partly to any person who will prosecute; if the action is not commenced within the year by a private person, it may be commenced on behalf of the state, within three years after the commission of the offense, by the attorney-general or the district attorney of the county where the offense was committed; and

5. an action upon an arbitration award.

6. An action to recover any overcharge of interest or to enforce a penalty for such overcharge.

7. an action by a tenant pursuant to subdivision three of section two hundred twenty-three-b of the real property law.

8. (a) Whenever it is shown that a criminal action against the same defendant has been commenced with respect to the event or occurrence from which a claim governed by this section arises, the plaintiff shall have at least one year from the termination of the criminal action as defined in section 1.20 of the criminal procedure law in which to commence the civil action, notwithstanding that the time in which to commence such action has already expired or has less than a year remaining.

(b) Whenever it is shown that a criminal action against the same defendant has been commenced with respect to the event or occurrence from which a claim governed by this section arises, and such criminal action is for rape in the first degree as defined in section 130.35 of the penal law, or a crime formerly defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law, the plaintiff shall have at least five years from the termination of the criminal action as defined in section 1.20 of the criminal procedure law in which to commence the civil action, notwithstanding that the time in which to commence such action has already expired or has less than a year remaining.

9. Notwithstanding the opening paragraph of this section, an action that may be brought to recover damages for injury arising from domestic violence, as defined in section four hundred fifty-nine-a of the social services law, shall be commenced within two years. Nothing in this subdivision shall be construed to modify any time limitation contained in section two hundred fourteen of this article or subdivision eight of this section.

§ 216. Abbreviation of period to one year after notice. (a) Action to recover money. 1. No action for the recovery of any sum of money due and

payable under or on account of a contract, or for any part thereof, shall be commenced by any person who has made claim to the sum, after the expiration of one year from the giving of notice, as hereinafter provided, to the claimant that an action commenced by another person is pending to recover the sum, or any part thereof, exceeding fifty dollars in amount. This limitation shall not be construed to enlarge the time within which the cause of action of the claimant would otherwise be barred.

2. If any person shall make claim for the recovery of any sum of money due and payable under or on account of a contract, and an action has theretofore been, or shall thereafter be, commenced by another person to recover the sum, or any part thereof, exceeding fifty dollars in amount, the defendant in such action may, within twenty days from the date of service upon him of the complaint or from the date of receipt by him of the claim, whichever occurs later, make a motion before the court in which the action is pending for an order permitting the defendant to give notice to the claimant that the action is pending. The court in which the action is pending shall grant the order where it appears that a person not a party to the action has made claim against the defendant for the sum of money, or any part thereof, exceeding fifty dollars in amount; that the action was brought without collusion between the defendant and the plaintiff; and that the claimant cannot, with due diligence, be served with process in such a manner as to obtain jurisdiction over his person. The order shall provide, among such other terms and conditions as justice may require, that notice shall be given to the claimant by sending by registered mail a copy of the summons and complaint in the action and the order and a notice addressed to the claimant at his last known address. In the event that registration of mail directed to any country or part thereof shall be discontinued or suspended, notice to a claimant whose last known address is within such country or part thereof shall be given by ordinary mail, under such terms and conditions as the court may direct. Proof that the notice has been mailed shall be filed within ten days from the date of the order; otherwise the order becomes inoperative. Upon such filing, notice shall be deemed to have been given on the tenth day after the date of such order.

3. Upon proof by affidavit or otherwise, to the satisfaction of the court, that the conditions of this subdivision have been satisfied and that there is no collusion between the claimant and the defendant, the court shall make an order staying further prosecution of the action for a period not to exceed one year from the date when the notice shall have been given to the claimant. At the time of the granting of such order or at any time thereafter, the court, upon the motion of any party, shall, as a condition of the granting of the order or its continuation, impose upon the defendant such terms as justice may require as to the furnishing of an undertaking in an amount to be fixed by the court. The stay shall be vacated and the undertaking, if any has been given, may be discharged or modified, as justice may require, upon proof to the court by any party to the action that the claimant has intervened or has instituted another action in any court of this state to recover the said sum of money, or any part thereof, exceeding fifty dollars.

4. A motion for any relief as prescribed in this subdivision shall be made on notice to all other parties to the action.

5. Whenever claims are made by two or more persons, each claiming to be, to the exclusion of the other, the duly authorized deputy, officer or agent to demand, receive, collect, sue for or recover the same sum of money due and payable under or on account of a contract, or any part thereof, exceeding fifty dollars in amount, for and on behalf of the same person, each person making such a claim shall be deemed an adverse claimant. Notwithstanding that an action has been commenced in the name of or on behalf of the person for whom he claims to be the duly authorized deputy, officer or agent, any such adverse claimant may be notified of the pendency of an action as provided in this subdivision and may intervene in the action and be designated as claiming to be or as the alleged deputy, officer or agent.

6. Whenever an action has been commenced for the recovery of any sum of money exceeding fifty dollars due and payable under or on account of a contract and the records of the defendant show that a person other than the plaintiff has the right, exclusive of other deputies, officers

or agents of the plaintiff, to demand, sue for and recover the same sum of money, or any part thereof, exceeding fifty dollars in amount, either in his own name, on his own behalf, or as the authorized deputy, officer or agent for the plaintiff, and the defendant has received no notice of transfer, revocation, or other change in right or authority acceptable to it, the person so appearing on the records shall be deemed to have made an adverse claim to the sum of money and may be treated as an adverse claimant.

(b) Action to recover property. When an action has been commenced to recover specific personal property, including certificates of stocks, bonds, notes or other securities or obligations, exceeding fifty dollars in value, held by the defendant within the state, or to enforce a vested or contingent interest or lien upon such property, and a person not a party to the action asserts a claim to the whole or any part of the same property or to a right, interest or lien upon it which is adverse to the plaintiff's claim, and the court in which the action is pending has no jurisdiction over the adverse claimant to direct the issuance of process or if the same be issued it would be without effect notwithstanding that the action seeks to have declared, enforced, regulated, defined or limited, rights, interests or liens upon specific personal property within the state, the defendant in the action may within twenty days from the date of service upon him of the complaint or within twenty days of the date of the receipt by him of the adverse claim, whichever shall occur later, make a motion before the court for leave to give notice to the adverse claimant of the pending action in the same manner as provided in subdivision (a). Upon the granting of such an order, the provisions of subdivision (a) shall apply insofar as they are compatible with the subject matter of the action.

§ 217. Proceeding against body or officer; actions complaining about conduct that would constitute a union's breach of its duty of fair representation; four months. 1. Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact, or after the respondent's refusal,

upon the demand of the petitioner or the person whom he represents, to perform its duty; or with leave of the court where the petitioner or the person whom he represents, at the time such determination became final and binding upon him or at the time of such refusal, was under a disability specified in section 208, within two years after such time.

2. (a) Any action or proceeding against an employee organization subject to article fourteen of the civil service law or article twenty of the labor law which complains that such employee organization has breached its duty of fair representation regarding someone to whom such employee organization has a duty shall be commenced within four months of the date the employee or former employee knew or should have known that the breach has occurred, or within four months of the date the employee or former employee suffers actual harm, whichever is later.

(b) Any action or proceeding by an employee or former employee against an employer subject to article fourteen of the civil service law or article twenty of the labor law, an essential element of which is that an employee organization breached its duty of fair representation to the person making the complaint, shall be commenced within four months of the date the employee or former employee knew or should have known that the breach has occurred, or within four months of the date the employee or former employee suffers actual harm, whichever is later.

§ 217-a. Actions to be commenced within one year and ninety days.

Notwithstanding any other provision of law to the contrary, and irrespective of whether the relevant statute is expressly amended by the uniform notice of claim act, every action for damages or injuries to real or personal property, or for the destruction thereof, or for personal injuries or wrongful death, against any political subdivision of the state, or any instrumentality or agency of the state or a political subdivision, any public authority or any public benefit corporation that is entitled to receive a notice of claim as a condition precedent to commencement of an action, shall not be commenced unless a notice of claim shall have been served on such governmental entity within the time limit established by section fifty-e of the general municipal law, and such action must be commenced in compliance with all

the requirements of section fifty-e and subdivision one of section fifty-i of the general municipal law. Except in an action for wrongful death against such an entity, an action for damages or for injuries to real or personal property, or for the destruction thereof, or for personal injuries, alleged to have been sustained, shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued or within the time period otherwise prescribed by any special provision of law, whichever is longer. Nothing herein is intended to amend the court of claims act or any provision thereof.

§ 218. Transitional provisions. (a) Actions barred at effective date. Nothing in this article shall authorize any action to be commenced which is barred when this article becomes effective, except insofar as the right to commence the action may be revived by an acknowledgment or payment.

(b) Cause of action accrued and not barred at effective date. Where a cause of action accrued before, and is not barred when this article becomes effective, the time within which an action must be commenced shall be the time which would have been applicable apart from the provisions of this article, or the time which would have been applicable if the provisions of this article had been in effect when the cause of action accrued, whichever is longer.

ARTICLE 3

JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

301. Jurisdiction over persons, property or status.

302. Personal jurisdiction by acts of non-domiciliaries.

(a) Acts which are the basis of jurisdiction.

(b) Personal jurisdiction over non-resident defendant in matrimonial actions or family court proceedings.

(c) Effect of appearance.

303. Designation of attorney as agent for service.

304. Method of commencing action or special proceeding.

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 - (b) Summons and notice.
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- 316. Service by publication.
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 - (a) Authority of plaintiff's attorney.
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- 327. Inconvenient forum.
- 328. Assistance to tribunals and litigants outside the state.
 - (a) Pursuant to court order.
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§ 301. Jurisdiction over persons, property or status. A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.

§ 302. Personal jurisdiction by acts of non-domiciliaries. (a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or

2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods

used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

4. owns, uses or possesses any real property situated within the state.

(b) Personal jurisdiction over non-resident defendant in matrimonial actions or family court proceedings. A court in any matrimonial action or family court proceeding involving a demand for support, alimony, maintenance, distributive awards or special relief in matrimonial actions may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the claim for support, alimony, maintenance, distributive awards or special relief in matrimonial actions accrued under the laws of this state or under an agreement executed in this state. The family court may exercise personal jurisdiction over a non-resident respondent to the extent provided in sections one hundred fifty-four and one thousand thirty-six and article five-B of the family court act and article five-A of the domestic relations law.

(c) Effect of appearance. Where personal jurisdiction is based solely upon this section, an appearance does not confer such jurisdiction with respect to causes of action not arising from an act enumerated in this section.

(d) Foreign defamation judgment. The courts of this state shall have personal jurisdiction over any person who obtains a judgment in a defamation proceeding outside the United States against any person who is a resident of New York or is a person or entity amenable to jurisdiction in New York who has assets in New York or may have to take actions in New York to comply with the judgment, for the purposes of rendering declaratory relief with respect to that person's liability for the judgment, and/or for the purpose of determining whether said

judgment should be deemed non-recognizable pursuant to section fifty-three hundred four of this chapter, to the fullest extent permitted by the United States constitution, provided:

1. the publication at issue was published in New York, and

2. that resident or person amenable to jurisdiction in New York (i) has assets in New York which might be used to satisfy the foreign defamation judgment, or (ii) may have to take actions in New York to comply with the foreign defamation judgment. The provisions of this subdivision shall apply to persons who obtained judgments in defamation proceedings outside the United States prior to and/or after the effective date of this subdivision.

§ 303. Designation of attorney as agent for service. The commencement of an action in the state by a person not subject to personal jurisdiction is a designation by him of his attorney appearing in the action or of the clerk of the court if no attorney appears, as agent, during the pendency of the action, for service of a summons pursuant to section 308, in any separate action in which such a person is a defendant and another party to the action is a plaintiff if such separate action would have been permitted as a counterclaim had the action been brought in the supreme court.

§ 304. Method of commencing action or special proceeding. (a) An action is commenced by filing a summons and complaint or summons with notice in accordance with rule twenty-one hundred two of this chapter. A special proceeding is commenced by filing a petition in accordance with rule twenty-one hundred two of this chapter. Where a court finds that circumstances prevent immediate filing, the signing of an order requiring the subsequent filing at a specific time and date not later than five days thereafter shall commence the action.

(b) Notwithstanding any other provision of law, such filing may be accomplished by facsimile transmission or electronic means, as defined in subdivision (f) of rule twenty-one hundred three of this chapter,

where and in the manner authorized by the chief administrator of the courts by rule.

(c) For purposes of this section, and for purposes of section two hundred three of this chapter and section three hundred six-a of this article, filing shall mean the delivery of the summons with notice, summons and complaint or petition to the clerk of the court in the county in which the action or special proceeding is brought or any other person designated by the clerk of the court for that purpose. At the time of filing, the filed papers shall be date stamped by the clerk of the court who shall file them and maintain a record of the date of the filing and who shall return forthwith a date stamped copy, together with an index number, to the filing party, except where filing is by electronic means. Such filing shall not be accepted unless any fee required as specified in section eight thousand eighteen of this chapter has been paid. Where filing is by electronic means, any fee required shall be paid in the time and manner authorized by the chief administrator of the court by rule.

(d) Where filing is by facsimile transmission, the clerk of the court need only return a date stamped copy of the first page of the papers initiating the lawsuit, together with the index number.

(e) Where filing is by electronic means, the clerk shall, in accordance with rules promulgated by the chief administrator, forthwith notify the filing party of the index number and the date and time of filing.

(f) A confirmation record produced by the filing party's facsimile machine or computer and an affidavit of filing by the filing party, shall be prima facie evidence that the filing party transmitted documents consistent with the date, time and place appearing on the confirmation record.

Rule 305. Summons; supplemental summons, amendment. (a) Summons; supplemental summons. A summons shall specify the basis of the venue designated and if based upon the residence of the plaintiff it shall specify the plaintiff's address, and also shall bear the index number assigned and the date of filing with the clerk of the court. A third-party summons shall also specify the date of filing of the

third-party summons with the clerk of the court. The summons in an action arising out of a consumer credit transaction shall prominently display at the top of the summons the words "consumer credit transaction" and, where a purchaser, borrower or debtor is a defendant, shall specify the county of residence of a defendant, if one resides within the state, and the county where the consumer credit transaction took place, if it is within the state. Where, upon order of the court or by stipulation of all parties or as of right pursuant to section 1003, a new party is joined in the action and the joinder is not made upon the new party's motion, a supplemental summons specifying the pleading which the new party must answer shall be filed with the clerk of the court and served upon such party.

(b) Summons and notice. If the complaint is not served with the summons, the summons shall contain or have attached thereto a notice stating the nature of the action and the relief sought, and, except in an action for medical malpractice, the sum of money for which judgment may be taken in case of default.

(c) Amendment. At any time, in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service of a summons to be amended, if a substantial right of a party against whom the summons issued is not prejudiced.

Rule 306. Proof of service. (a) Generally. Proof of service shall specify the papers served, the person who was served and the date, time, address, or, in the event there is no address, place and manner of service, and set forth facts showing that the service was made by an authorized person and in an authorized manner.

(b) Personal service. Whenever service is made pursuant to this article by delivery of the summons to an individual, proof of service shall also include, in addition to any other requirement, a description of the person to whom it was so delivered, including, but not limited to, the process server's perception of the person's: gender, race, hair color, approximate age, approximate weight and height, and other identifying features.

(c) Other service. Where service is made pursuant to subdivision four of section three hundred eight of this chapter, proof of service shall

also specify the dates, addresses and the times of attempted service pursuant to subdivisions one, two or three of such section.

(d) Form. Proof of service shall be in the form of a certificate if the service is made by a sheriff or other authorized public officer, in the form of an affidavit if made by any other person, or in the form of a signed acknowledgement of receipt of a summons and complaint, or summons and notice or notice of petition as provided for in section 312-a of this article.

(e) Admission of service. A writing admitting service by the person to be served is adequate proof of service.

§ 306-a. Index number in an action or proceeding commenced in supreme or county court. (a) Upon filing the summons and complaint, summons with notice or petition in an action or proceeding commenced in supreme or county court with the clerk of the county, an index number shall be assigned and the fee required by subdivision (a) of section eight thousand eighteen of this chapter shall be paid. Upon the filing of a summons and complaint against a person not already a party, as permitted under section one thousand seven or rule one thousand eleven of this chapter, the fee required by subdivision (a) of section eight thousand eighteen of this chapter shall be paid, but a separate index number shall not be assigned.

(b) If a person other than the plaintiff or third-party plaintiff who served the summons or third-party summons obtains the index number and pays the fee therefor, the clerk shall issue an order directing the plaintiff or the third-party plaintiff to pay such person the amount of the fee paid. If such fee is not paid within thirty days of service of the order with notice of entry, the person who paid the fee, in addition to any other remedies available at law, may apply to the clerk for an order dismissing the action without prejudice.

§ 306-b. Service of the summons and complaint, summons with notice, or petition with a notice of petition or order to show cause. Service of the summons and complaint, summons with notice, or petition with a notice of petition or order to show cause shall be made within one

hundred twenty days after the commencement of the action or proceeding, provided that in an action or proceeding, except a proceeding commenced under the election law, where the applicable statute of limitations is four months or less, service shall be made not later than fifteen days after the date on which the applicable statute of limitations expires. If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service.

§ 306-c. Notice of commencement of action for personal injuries by recipient of medical assistance. In the case of an individual who has suffered personal injuries and has received medical assistance pursuant to titles eleven and eleven-D of article five of the social services law on or after the date of such injury, notice of the commencement of an action by or on behalf of such individual for such personal injuries shall be sent to the social services district in the county in which such recipient resides, or to the department of health, by certified mail, return receipt requested, or electronically in accord with regulations promulgated by the commissioner of the department of health, within sixty days of the completion of service upon all parties to such action. Proof of sending such notice shall be filed with the court in accordance with rule three hundred six of this article. Sending such notice shall not be a jurisdictional requirement to commencing an action.

§ 306-d. Additional mailing of notice in an action arising out of a consumer credit transaction. (a) At the time of filing with the clerk of the proof of service of the summons and complaint in an action arising out of a consumer credit transaction, the plaintiff shall submit to the clerk a stamped, unsealed envelope addressed to the defendant together with a written notice in clear type of no less than twelve-point in size, in both English and Spanish, and containing the following language:

ADDITIONAL NOTICE OF LAWSUIT

(NAME OF COURT)

(COUNTY)

(STREET ADDRESS, ROOM NUMBER)

(CITY, STATE, ZIP CODE)

(NAME OF DEFENDANT)

(ADDRESS OF DEFENDANT)

Plaintiff:

Defendant:

Name of original creditor, unless same:

Index number:

Attention: a lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt.

You may wish to contact an attorney.

You should respond to the lawsuit as soon as possible by filing an "answer" which may be done at the court clerk's office listed above.

If you do not respond to the lawsuit, the court may enter a money judgment against you. Once entered, a judgment is good and can be used against you for twenty years, and your personal property and money, including a portion of your paycheck and/or bank account, may be taken from you. Also, a judgment may affect your credit score and can affect your ability to rent a home, find a job, or take out a loan.

You CANNOT be arrested or sent to jail for owing a debt.

Additional information can be found at the New York state court system website.

Sources of information and assistance:

The court encourages you to inform yourself about your options as a defendant in this lawsuit. In addition to seeking assistance from a private attorney or legal aid office, there are free legal assistance computer programs that you can use online to help you represent yourself in this lawsuit.

For further information, or to locate a legal aid program near you, you may visit the LawHelpNY website or the New York state court system website, which has information for representing yourself and links to other resources at: _____.

(b) The face of the envelope shall be addressed to the defendant at

the address at which process was served, and shall contain the defendant's name, address (including apartment number) and zip code. The face of the envelope also shall state the appropriate clerk's office as its return address.

(c) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in subdivision (a) of this section. No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk. No default judgment based on the defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable. Receipt of the additional notice by the defendant does not confer jurisdiction on the court in the absence of proper service of process.

(d) The chief administrative judge shall issue a Spanish translation of the notice in subdivision (a) of this section and shall maintain and publish the URL address for the web page containing consumer resources for unrepresented litigants.

§ 307. Personal service upon the state. 1. Personal service upon the state shall be made by delivering the summons to an assistant attorney-general at an office of the attorney-general or to the attorney-general within the state.

2. Personal service on a state officer sued solely in an official capacity or state agency, which shall be required to obtain personal jurisdiction over such an officer or agency, shall be made by (1) delivering the summons to such officer or to the chief executive officer of such agency or to a person designated by such chief executive officer to receive service, or (2) by mailing the summons by certified mail, return receipt requested, to such officer or to the chief executive officer of such agency, and by personal service upon the state in the manner provided by subdivision one of this section. Service by certified mail shall not be complete until the summons is received in a principal office of the agency and until personal service upon the state in the manner provided by subdivision one of this section is completed. For

purposes of this subdivision, the term "principal office of the agency" shall mean the location at which the office of the chief executive officer of the agency is generally located. Service by certified mail shall not be effective unless the front of the envelope bears the legend "URGENT LEGAL MAIL" in capital letters. The chief executive officer of every such agency shall designate at least one person, in addition to himself or herself, to accept personal service on behalf of the agency. For purposes of this subdivision the term state agency shall be deemed to refer to any agency, board, bureau, commission, division, tribunal or other entity which constitutes the state for purposes of service under subdivision one of this section.

§ 308. Personal service upon a natural person. Personal service upon a natural person shall be made by any of the following methods:

1. by delivering the summons within the state to the person to be served; or

2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic

relations law; or

3. by delivering the summons within the state to the agent for service of the person to be served as designated under rule 318, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law;

4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law;

5. in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.

6. For purposes of this section, "actual place of business" shall include any location that the defendant, through regular solicitation or advertisement, has held out as its place of business.

§ 309. Personal service upon an infant, incompetent or conservatee.

(a) Upon an infant. Personal service upon an infant shall be made by personally serving the summons within the state upon a parent or any guardian or any person having legal custody or, if the infant is married, upon an adult spouse with whom the infant resides, or, if none are within the state, upon any other person with whom he resides, or by whom he is employed. If the infant is of the age of fourteen years or over, the summons shall also be personally served upon him within the state.

(b) Upon a person judicially declared to be incompetent. Personal service upon a person judicially declared to be incompetent to manage his affairs and for whom a committee has been appointed shall be made by personally serving the summons within the state upon the committee and upon the incompetent, but the court may dispense with service upon the incompetent.

(c) Upon a conservatee. Personal service on a person for whom a conservator has been appointed shall be made by personally serving the summons within the state upon the conservator and upon the conservatee, but the court may dispense with service upon the conservatee.

§ 310. Personal service upon a partnership. (a) Personal service upon persons conducting a business as a partnership may be made by personally serving the summons upon any one of them.

(b) Personal service upon said partnership may also be made within the state by delivering the summons to the managing or general agent of the partnership or the person in charge of the office of the partnership within the state at such office and by either mailing the summons to the partner thereof intended to be served by first class mail to his last known residence or to the place of business of the partnership. Proof of such service shall be filed within twenty days with the clerk of the court designated in the summons; service shall be complete ten days after such filing; proof of service shall identify the person to whom the summons was so delivered and state the date, time of day and place of service.

(c) Where service under subdivisions (a) and (b) of this section cannot be made with due diligence, it may be made by affixing a copy of the summons to the door of the actual place of business of the

partnership within the state and by either mailing the summons by first class mail to the partner intended to be so served to such person to his last known residence or to said person at the office of said partnership within the state. Proof of such service shall be filed within twenty days thereafter with the clerk of the court designated in the summons; service shall be complete ten days after filing.

(d) Personal service on such partnership may also be made by delivering the summons to any other agent or employee of the partnership authorized by appointment to receive service; or to any other person designated by the partnership to receive process in writing, filed in the office of the clerk of the county wherein such partnership is located.

(e) If service is impracticable under subdivisions (a), (b) and (c) of this section, it may be made in such manner as the court, upon motion without notice directs.

§ 310-a. Personal service upon a limited partnership. (a) Personal service upon any domestic or foreign limited partnership shall be made by delivering a copy personally to any managing or general agent or general partner of the limited partnership in this state, to any other agent or employee of the limited partnership authorized by appointment to receive service or to any other person designated by the limited partnership to receive process, in the manner provided by law for service of summons, as if such person was the defendant. Personal service upon a limited partnership subject to the provisions of article eight-A of the partnership law may also be made pursuant to section 121-109 of such law.

(b) If service is impracticable under subdivision (a) of this section, it may be made in such manner as the court, upon motion without notice, directs.

(c) A limited liability partnership may also be served pursuant to section 121-1505 of the partnership law.

§ 311. Personal service upon a corporation or governmental subdivision. (a) Personal service upon a corporation or governmental

subdivision shall be made by delivering the summons as follows:

1. upon any domestic or foreign corporation, to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service. A business corporation may also be served pursuant to section three hundred six or three hundred seven of the business corporation law. A not-for-profit corporation may also be served pursuant to section three hundred six or three hundred seven of the not-for-profit corporation law;

2. upon the city of New York, to the corporation counsel or to any person designated to receive process in a writing filed in the office of the clerk of New York county;

3. upon any other city, to the mayor, comptroller, treasurer, counsel or clerk; or, if the city lacks such officers, to an officer performing a corresponding function under another name;

4. upon a county, to the chair or clerk of the board of supervisors, clerk, attorney or treasurer;

5. upon a town, to the supervisor or the clerk;

6. upon a village, to the mayor, clerk, or any trustee;

7. upon a school district, to a school officer, as defined in the education law; and

8. upon a park, sewage or other district, to the clerk, any trustee or any member of the board.

(b) If service upon a domestic or foreign corporation within the one hundred twenty days allowed by section three hundred six-b of this article is impracticable under paragraph one of subdivision (a) of this section or any other law, service upon the corporation may be made in such manner, and proof of service may take such form, as the court, upon motion without notice, directs.

§ 311-a. Personal service on limited liability companies. (a) Service of process on any domestic or foreign limited liability company shall be made by delivering a copy personally to (i) any member of the limited liability company in this state, if the management of the limited liability company is vested in its members, (ii) any manager of the limited liability company in this state, if the management of the limited liability company is vested in one or more managers, (iii) to any other agent authorized by appointment to receive process, or (iv) to any other person designated by the limited liability company to receive process, in the manner provided by law for service of a summons as if such person was a defendant. Service of process upon a limited liability company may also be made pursuant to article three of the limited liability company law.

(b) If service is impracticable under subdivision (a) of this section, it may be made in such manner as the court, upon motion without notice, directs.

§ 312. Personal service upon a court, board or commission. Personal service upon a court consisting of three or more judges may be made by delivering the summons to any one of them. Personal service upon a board or commission having a chairman or other presiding officer, secretary or clerk, by whatever official title he is called, may be made by delivering the summons to him. Personal service upon a board or commission of a town or village may also be made by delivering the summons to the clerk of the town or village. Personal service upon any other board or commission shall be made by delivering the summons to any one of the members.

§ 312-a. Personal service by mail. (a) Service. As an alternative to the methods of personal service authorized by section 307, 308, 310, 311 or 312 of this article, a summons and complaint, or summons and notice, or notice of petition and petition may be served by the plaintiff or any other person by mailing to the person or entity to be served, by first

class mail, postage prepaid, a copy of the summons and complaint, or summons and notice or notice of petition and petition, together with two copies of a statement of service by mail and acknowledgement of receipt in the form set forth in subdivision (d) of this section, with a return envelope, postage prepaid, addressed to the sender.

(b) Completion of service and time to answer. 1. The defendant, an authorized employee of the defendant, defendant's attorney or an employee of the attorney must complete the acknowledgement of receipt and mail or deliver one copy of it within thirty (30) days from the date of receipt. Service is complete on the date the signed acknowledgement of receipt is mailed or delivered to the sender. The signed acknowledgement of receipt shall constitute proof of service.

2. Where a complaint or petition is served with the summons or notice of petition, the defendant shall serve an answer within twenty (20) days after the date the signed acknowledgement of receipt is mailed or delivered to the sender.

(c) Affirmation. The acknowledgement of receipt of service shall be subscribed and affirmed as true under penalties of perjury and shall have the same force and effect as an affidavit.

(d) Form. The statement of service by mail and the acknowledgement of receipt of such service shall be in substantially the following form:

Statement of Service by Mail and
Acknowledgement of Receipt by Mail of
Summons and Complaint or Summons and Notice
or Notice of Petition and Petition

A. STATEMENT OF SERVICE

BY MAIL

To: (Insert the name and address of the person or entity to be served.)
The enclosed summons and complaint, or summons and notice, or notice of petition and petition (strike out inapplicable terms) are served pursuant to section 312-a of the Civil Practice Law and Rules.

To avoid being charged with the expense of service upon you, you must sign, date and complete the acknowledgement part of this form and mail or deliver one copy of the completed form to the sender within thirty (30) days from the date you receive it. You should keep a copy for your

records or your attorney. If you wish to consult an attorney, you should do so as soon as possible before the thirty (30) days expire.

If you do not complete and return the form to the sender within thirty (30) days, you (or the party on whose behalf you are being served) will be required to pay expenses incurred in serving the summons and complaint, or summons and notice, or notice of petition and petition in any other manner permitted by law, and the cost of such service as permitted by law will be entered as a judgment against you.

If you have received a complaint or petition with this statement, the return of this statement and acknowledgement does not relieve you of the necessity to answer the complaint or petition. The time to answer expires twenty (20) days after the day you mail or deliver this form to the sender. If you wish to consult with an attorney, you should do so as soon as possible before the twenty (20) days expire.

If you are served on behalf of a corporation, unincorporated association, partnership or other entity, you must indicate under your signature your relationship to the entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

It is a crime to forge a signature or to make a false entry on this statement or on the acknowledgement.

B. ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS AND COMPLAINT
OR SUMMONS AND NOTICE OR NOTICE OF PETITION AND PETITION

I received a summons and complaint, or summons and notice, or notice of petition and petition (strike out inapplicable terms) in the above-captioned matter at (insert address).

PLEASE CHECK ONE OF THE FOLLOWING;

IF 2 IS CHECKED, COMPLETE AS INDICATED:

1. / / I am not in military service.
2. / / I am in military service, and my rank and branch of service

are as follows:

Rank:_____

Branch of Service:_____

TO BE COMPLETED REGARDLESS OF MILITARY STATUS:

Date:_____

(Date this Acknowledgement is executed)

I affirm the above as true under penalty of perjury.

Signature

Print name

Name of Defendant for which acting

Position with Defendant for which
acting (i.e., officer, attorney,
etc.)

PLEASE COMPLETE ALL BLANKS INCLUDING DATES

(e) Subsequent service. Where a duly executed acknowledgement is not returned, upon the subsequent service of process in another manner permitted by law, the summons or notice of petition or paper served with the summons or notice of petition shall indicate that an attempt previously was made to effect service pursuant to this section.

(f) Disbursements. Where the signed acknowledgement of receipt is not returned within thirty (30) days after receipt of the documents mailed pursuant to subdivision (a) of this section, the reasonable expense of serving process by an alternative method shall be taxed by the court on notice pursuant to section 8402 of this chapter as a disbursement to the party serving process, and the court shall direct immediate judgment in that amount.

§ 313. Service without the state giving personal jurisdiction. A person domiciled in the state or subject to the jurisdiction of the courts of the state under section 301 or 302, or his executor or

administrator, may be served with the summons without the state, in the same manner as service is made within the state, by any person authorized to make service within the state who is a resident of the state or by any person authorized to make service by the laws of the state, territory, possession or country in which service is made or by any duly qualified attorney, solicitor, barrister, or equivalent in such jurisdiction.

§ 314. Service without the state not giving personal jurisdiction in certain actions. Service may be made without the state by any person authorized by section 313 in the same manner as service is made within the state:

1. in a matrimonial action; or
2. where a judgment is demanded that the person to be served be excluded from a vested or contingent interest in or lien upon specific real or personal property within the state; or that such an interest or lien in favor of either party be enforced, regulated, defined or limited; or otherwise affecting the title to such property, including an action of interpleader or defensive interpleader; or
3. where a levy upon property of the person to be served has been made within the state pursuant to an order of attachment or a chattel of such person has been seized in an action to recover a chattel.

§ 315. Service by publication authorized. The court, upon motion without notice, shall order service of a summons by publication in an action described in section 314 if service cannot be made by another prescribed method with due diligence.

Rule 316. Service by publication. (a) Contents of order; form of publication; filing. An order for service of a summons by publication shall direct that the summons be published together with the notice to

the defendant, a brief statement of the nature of the action and the relief sought, and, except in an action for medical malpractice, the sum of money for which judgment may be taken in case of default and, if the action is brought to recover a judgment affecting the title to, or the possession, use or enjoyment of, real property, a brief description of the property, in two newspapers, at least one in the English language, designated in the order as most likely to give notice to the person to be served, for a specified time, at least once in each of four successive weeks, except that in the matrimonial action publication in one newspaper in the English language, designated in the order as most likely to give notice to the person to be served, at least once in each of three successive weeks shall be sufficient. The summons, complaint, or summons and notice in an action for divorce or separation, order and papers on which the order was based shall be filed on or before the first day of publication.

(b) Mailing to accompany publication in matrimonial actions. An order for service of a summons by publication in a matrimonial action shall also direct that on or before the first day of publication a copy of the summons be mailed to the person to be served unless a place where such person probably would receive mail cannot with due diligence be ascertained and the court dispenses with such mailing. A notice of publication shall be enclosed.

(c) Time of publication; when service complete. The first publication of the summons shall be made within thirty days after the order is granted. Service by publication is complete on the twenty-eighth day after the day of first publication, except that in a matrimonial action it is complete on the twenty-first day after the day of first publication.

§ 317. Defense by person to whom summons not personally delivered. A person served with a summons other than by personal delivery to him or to his agent for service designated under rule 318, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment, but in no event more than five years after such entry, upon a finding of the court that he did not personally receive notice of the summons in time

to defend and has a meritorious defense. If the defense is successful, the court may direct and enforce restitution in the same manner and subject to the same conditions as where a judgment is reversed or modified on appeal. This section does not apply to an action for divorce, annulment or partition.

Rule 318. Designation of agent for service. A person may be designated by a natural person, corporation or partnership as an agent for service in a writing, executed and acknowledged in the same manner as a deed, with the consent of the agent endorsed thereon. The writing shall be filed in the office of the clerk of the county in which the principal to be served resides or has its principal office. The designation shall remain in effect for three years from such filing unless it has been revoked by the filing of a revocation, or by the death, judicial declaration of incompetency or legal termination of the agent or principal.

Rule 320. Defendant's appearance. (a) Requirement of appearance. The defendant appears by serving an answer or a notice of appearance, or by making a motion which has the effect of extending the time to answer. An appearance shall be made within twenty days after service of the summons, except that if the summons was served on the defendant by delivering it to an official of the state authorized to receive service in his behalf or if it was served pursuant to section 303, subdivision two, three, four or five of section 308, or sections 313, 314 or 315, the appearance shall be made within thirty days after service is complete. If the complaint is not served with the summons, the time to appear may be extended as provided in subdivision (b) of section 3012.

(b) When appearance confers personal jurisdiction, generally. Subject to the provisions of subdivision (c), an appearance of the defendant is equivalent to personal service of the summons upon him, unless an objection to jurisdiction under paragraph eight of subdivision (a) of rule 3211 is asserted by motion or in the answer as provided in rule 3211.

(c) When appearance confers personal jurisdiction, in certain actions;

limited appearance. When the court's jurisdiction is not based upon personal service on the defendant, an appearance is not equivalent to personal service upon the defendant:

1. in a case specified in subdivision (3) of section 314, if jurisdiction is based solely upon a levy on defendant's property within the state pursuant to an order of attachment; or

2. in any other case specified in section 314, if an objection to jurisdiction under paragraphs eight or nine of subdivision (a) of rule 3211, or both, is asserted by motion or in the answer as provided in rule 3211, unless the defendant proceeds with the defense after asserting the objection to jurisdiction and the objection is not ultimately sustained.

(d) Appearance after first publication. Where the defendant appears during the period of publication of a summons against him, the service by publication shall be deemed completed by the appearance.

§ 321. Attorneys. (a) Appearance in person or by attorney. A party, other than one specified in section 1201 of this chapter, may prosecute or defend a civil action in person or by attorney, except that a corporation or voluntary association shall appear by attorney, except as otherwise provided in sections 1809 and 1809-A of the New York city civil court act, sections 1809 and 1809-A of the uniform district court act and sections 1809 and 1809-A of the uniform city court act, and except as otherwise provided in section 501 and section 1809 of the uniform justice court act. If a party appears by attorney such party may not act in person in the action except by consent of the court.

(b) Change or withdrawal of attorney. 1. Unless the party is a person specified in section 1201, an attorney of record may be changed by filing with the clerk a consent to the change signed by the retiring attorney and signed and acknowledged by the party. Notice of such change of attorney shall be given to the attorneys for all parties in the action or, if a party appears without an attorney, to the party.

2. An attorney of record may withdraw or be changed by order of the

court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.

(c) Death, removal or disability of attorney. If an attorney dies, becomes physically or mentally incapacitated, or is removed, suspended or otherwise becomes disabled at any time before judgment, no further proceeding shall be taken in the action against the party for whom he appeared, without leave of the court, until thirty days after notice to appoint another attorney has been served upon that party either personally or in such manner as the court directs.

(d) Limited scope appearance. 1. An attorney may appear on behalf of a party in a civil action or proceeding for limited purposes. Whenever an attorney appears for limited purposes, a notice of limited scope appearance shall be filed in addition to any self-represented appearance that the party may have already filed with the court. The notice of limited scope appearance shall be signed by the attorney entering the limited scope appearance and shall define the purposes for which the attorney is appearing. Upon such filing, and unless otherwise directed by the court, the attorney shall be entitled to appear for the defined purposes.

2. Unless otherwise directed by the court upon a finding of extraordinary circumstances and for good cause shown, upon completion of the purposes for which the attorney has filed a limited scope appearance, the attorney shall file a notice of completion of limited scope appearance which shall constitute the attorney's withdrawal from the action or proceeding.

Rule 322. Authority for appearance of attorney in real property action. (a) Authority of plaintiff's attorney. Where the defendant in an action affecting real property has not been served with evidence of the authority of the plaintiff's attorney to begin the action, he may move at any time before answering for an order directing the production of such evidence. Any writing by the plaintiff or his agent requesting the attorney to begin the action or ratifying his conduct of the action

on behalf of the plaintiff is prima facie evidence of the attorney's authority.

(b) Authority of non-resident defendant's attorney. The attorney for a non-resident defendant in an action affecting real property shall file with the clerk written authority for his appearance, executed and acknowledged in the form required to entitle a deed to be recorded, and shall serve either a copy of such authority or notice of such filing on the plaintiff's attorney within twenty days after appearing or making a motion.

(c) Agencies or wholly-owned corporations of the United States. This rule does not apply to an attorney representing an official, agency or instrumentality of, or corporation wholly owned by, the United States.

§ 325. Grounds for removal. (a) By supreme court for mistake in choice of court. Where a mistake was made in the choice of the court in which an action is commenced, the supreme court, upon motion, may remove the action to the proper court, upon such terms as may be just.

(b) From court of limited jurisdiction. Where it appears that the court in which an action is pending does not have jurisdiction to grant the relief to which the parties are entitled, a court having such jurisdiction may remove the action to itself upon motion. A waiver of jury trial in the first court is inoperative after the removal.

(c) On consent to court of limited jurisdiction. Where it appears that the amount of damages sustained are less than demanded, and a lower court would have had jurisdiction of the action but for the amount of damages demanded, the court in which an action is pending may remove it to the lower court upon reduction of the amount of damages demanded to a sum within the jurisdictional limits of the lower court and upon consent of all parties to the action other than a defendant who has interposed no counterclaim and over whom the lower court would have had jurisdiction if the action had originally been commenced there. A waiver of jury trial in the first court is inoperative after the removal.

(d) Without consent to court of limited jurisdiction. The appellate division, if it determines that the calendar conditions in a lower court so permit, may by rule provide that a court in which an action is pending may, in its discretion, remove such action without consent to

such lower court where it appears that the amount of damages sustained may be less than demanded, and the lower court would have had jurisdiction but for the amount of damages demanded. If the action is so removed, then the verdict or judgment shall be subject to the limitation of monetary jurisdiction of the court in which the action was originally commenced and shall be lawful to the extent of the amount demanded within such limitation. A waiver of jury trial in the first court is inoperative after the removal.

(e) From supreme court to surrogate's court where decedent's estate affected. Where an action pending in the supreme court affects the administration of a decedent's estate which is within the jurisdiction of the surrogate's court, the supreme court, upon motion, may remove the action to such surrogate's court upon the prior order of the surrogate's court. The right of jury trial shall be preserved in the subsequent proceedings.

(f) To supreme court where county judge incapacitated. Where a county judge is incapable of acting in an action pending in the county court, the supreme court may remove the action to itself. An objection to jurisdiction that might have been taken in the county court may be taken in the supreme court after the removal.

(g) From one local court to another. Where it is unlikely that an action or proceeding pending in a district court, town court, village court or city court will be disposed of within a reasonable period of time because of (i) death, disability or other incapacity or disqualification of all the judges of such court, or (ii) inability of such court to form a jury in such action or proceeding, a judge of the county court of the county in which such lower court is located, may, upon motion of any party to such action or proceeding, order that it be transferred for disposition by the lower court to any other district court, town court, village court or city court in the same or an adjoining county, provided that such other court has jurisdiction of the subject matter of the action or proceeding and jurisdiction over the classes of persons named as parties.

Rule 326. Procedure on removal. (a) Stay of proceedings. An order to stay proceedings for the purpose of moving for removal may be made by

the court in which the action is pending or the court to which removal is sought.

(b) Order and subsequent proceedings. Where an order of removal is made by a court other than the court in which the action is pending, a certified copy of the order shall be filed with the clerk of the court in which the action is pending. Upon such filing or upon entry of an order of removal by him, the clerk of the court in which an action is pending shall forthwith deliver to the clerk of the court to which it has been ordered removed all papers and records in the action and certified copies of all minutes and entries which shall be filed, entered or recorded, as the case requires, in the office of the latter clerk. Subsequent proceedings shall be had in the court to which it has been ordered removed as if the action had been originally commenced there and no process, provisional remedy or other proceeding taken in the court from which the action was removed shall be invalid as the result of the removal.

(c) Fees and disbursements. If at the time the order of removal is entered any filing, trial or jury demand fees have been paid, such fees shall be credited against the fees which, for the same purpose, shall be required in the court to which the action has been ordered removed. A party entitled to tax disbursements after the removal may include fees paid by him prior to the time the order of removal is entered.

Rule 327. Inconvenient forum. (a) When the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any party, may stay or dismiss the action in whole or in part on any conditions that may be just. The domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action.

(b) Notwithstanding the provisions of subdivision (a) of this rule, the court shall not stay or dismiss any action on the ground of inconvenient forum, where the action arises out of or relates to a contract, agreement or undertaking to which section 5-1402 of the general obligations law applies, and the parties to the contract have agreed that the law of this state shall govern their rights or duties in whole or in part.

Rule 328. Assistance to tribunals and litigants outside the state.

(a) Pursuant to court order. Upon application by any interested person or in response to letters rogatory issued by a tribunal outside the state, the supreme court or a county court of the state may order service upon any person who is domiciled or can be found within the state of any document issued in connection with a proceeding in a tribunal outside the state. The order shall direct the manner of service.

(b) Without court order. Service in connection with a proceeding in a tribunal outside the state may be made within the state without an order of court.

(c) Effect. Service under this rule does not, of itself, require the recognition or enforcement of an order, judgment or decree rendered outside the state.

ARTICLE 3-A

**CONFLICT OF LAW IN ACTIONS RELATED
TO LEGALLY PROTECTED HEALTH ACTIVITY**

Section 350. Legally protected health activities.

§ 350. Legally protected health activities. Notwithstanding any general or special law, common law, or conflict of law rule to the contrary, the laws of this state shall govern in any case or controversy heard in this state related to legally protected health activity, as defined by section 570.17 of the criminal procedure law.

ARTICLE 4

SPECIAL PROCEEDINGS

401. Parties.

402. Pleadings.

403. Notice of petition; service; order to show cause.

(a) Notice of petition.

- (b) Time for service of notice of petition and answer.
 - (c) Manner of service.
 - (d) Order to show cause.
- 404. Objections in point of law.
 - (a) By respondent.
 - (b) By petitioner.
- 405. Correction of defects in papers.
 - (a) Motion to correct.
 - (b) Time limits; pleading after disposition.
 - (c) Petitioner's motion.
- 406. Motions.
- 407. Severance.
- 408. Disclosure.
- 409. Hearing.
 - (a) Furnishing of papers; filing.
 - (b) Summary determination.
- 410. Trial.
- 411. Judgment.

§ 401. Parties. The party commencing a special proceeding shall be styled the petitioner and any adverse party the respondent. After a proceeding is commenced, no party shall be joined or interpleaded and no third-party practice or intervention shall be allowed, except by leave of court.

§ 402. Pleadings. There shall be a petition, which shall comply with the requirements for a complaint in an action, and an answer where there is an adverse party. There shall be a reply to a counterclaim denominated as such and there may be a reply to new matter in the answer in any case. The court may permit such other pleadings as are authorized in an action upon such terms as it may specify. Where there is no adverse party the petition shall state the result of any prior application for similar relief and shall specify the new facts, if any, that were not previously shown.

§ 403. Notice of petition; service; order to show cause. (a) Notice of petition. A notice of petition shall specify the time and place of the hearing on the petition and the supporting affidavits, if any, accompanying the petition.

(b) Time for service of notice of petition and answer. A notice of petition, together with the petition and affidavits specified in the notice, shall be served on any adverse party at least eight days before the time at which the petition is noticed to be heard. An answer and supporting affidavits, if any, shall be served at least two days before such time. A reply, together with supporting affidavits, if any, shall be served at or before such time. An answer shall be served at least seven days before such time if a notice of petition served at least twelve days before such time so demands; whereupon any reply shall be served at least one day before such time.

(c) Manner of service. A notice of petition shall be served in the same manner as a summons in an action.

(d) Order to show cause. The court may grant an order to show cause to be served, in lieu of a notice of petition at a time and in a manner specified therein.

§ 404. Objections in point of law. (a) By respondent. The respondent may raise an objection in point of law by setting it forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer. If the motion is denied, the court may permit the respondent to answer, upon such terms as may be just; and unless the order specifies otherwise, such answer shall be served and filed within five days after service of the order with notice of entry; and the petitioner may re-notice the matter for hearing upon two days' notice, or the respondent may re-notice the matter for hearing upon service of the answer upon seven days' notice.

(b) By petitioner. The petitioner may raise an objection in point of law to new matter contained in the answer by setting it forth in his reply or by moving to strike such matter on the day the petition is noticed or re-noticed to be heard.

§ 405. Correction of defects in papers. (a) Motion to correct. Either party may move to cure a defect or omission in the record, or to strike scandalous or prejudicial matter unnecessarily inserted in a pleading, or for a more definite statement of a pleading which is so vague or ambiguous that he cannot reasonably be required to frame a response.

(b) Time limits; pleading after disposition. A party shall make a motion under this section by serving a notice of motion or order to show cause within the time allowed for his responsive pleading. Unless the court so orders on motion made without notice on the ground that the party is unable to plead until the papers are corrected, the motion shall not extend the time for such responsive pleading. If the motion is granted, the party who made the motion shall serve and file his responsive pleading within five days after service of the amended pleading. If the motion is denied and the time to serve a responsive pleading has been extended, the party shall serve and file his responsive pleading within two days after service of the order denying the motion with notice of entry, unless the order specifies otherwise. A party may re-notice the matter for hearing upon two days' notice.

(c) Petitioner's motion. The petitioner may raise the objections specified in subdivision (a) in his reply or by motion on the day on which the petition has been noticed or re-noticed to be heard.

Rule 406. Motions. Motions in a special proceeding, made before the time at which the petition is noticed to be heard, shall be noticed to be heard at that time.

§ 407. Severance. The court may at any time order a severance of a particular claim, counterclaim or cross-claim, or as to a particular party, and order that, as to such claim or party, the special proceeding continue as an action or as a separate special proceeding.

§ 408. Disclosure. Leave of court shall be required for disclosure except for a notice under section 3123. A notice under section 3123 may

be served at any time not later than three days before the petition is noticed to be heard and the statement denying or setting forth the reasons for failing to admit or deny shall be served not later than one day before the petition is noticed to be heard, unless the court orders otherwise on motion made without notice. This section shall not be applicable to proceedings in a surrogate's court, nor to proceedings relating to express trusts pursuant to article 77, both of which shall be governed by article 31.

Rule 409. Hearing. (a) Furnishing of papers; filing. Upon the hearing, each party shall furnish to the court all papers served by him. The petitioner shall furnish all other papers not already in the possession of the court necessary to the consideration of the questions involved. Where such papers are in the possession of an adverse party, they shall be produced by such party at the hearing on notice served with the petition. The court may require the submission of additional proof. All papers furnished to the court shall be filed unless the court orders otherwise.

(b) Summary determination. The court shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised. The court may make any orders permitted on a motion for summary judgment.

§ 410. Trial. If triable issues of fact are raised they shall be tried forthwith and the court shall make a final determination thereon. If issues are triable of right by jury, the court shall give the parties an opportunity to demand a jury trial of such issues. Failure to make such demand within the time limited by the court, or, if no such time is limited, before trial begins, shall be deemed a waiver of the right to trial by jury.

Rule 411. Judgment. The court shall direct that a judgment be entered determining the rights of the parties to the special proceeding.

ARTICLE 5

VENUE

- 501. Contractual provisions fixing venue.
- 502. Conflicting venue provisions.
- 503. Venue based on residence.
 - (a) Generally.
 - (b) Executor, administrator, trustee, committee, conservator, general or testamentary guardian, or receiver.
 - (c) Corporation.
 - (d) Unincorporated association, partnership, or individually-owned business.
 - (e) Assignee.
 - (f) Consumer credit transaction.
- 504. Actions against counties, cities, towns, villages, school districts and district corporations.
- 505. Actions involving public authorities.
 - (a) Generally.
 - (b) Against New York city transit authority.
- 506. Where special proceeding commenced.
 - (a) Generally.
 - (b) Proceeding against body or officer.
- 507. Real property actions.
- 508. Actions to recover a chattel.
- 509. Venue in county designated.
- 510. Grounds for change of place of trial.
- 511. Change of place of trial.
 - (a) Time for motion or demand.
 - (b) Demand for change of place of trial upon ground of improper venue, where motion made.
 - (c) Stay of proceedings.
 - (d) Order, subsequent proceedings and appeal.
- 512. Change of place of trial of action or issue triable without a jury.
- 513. Misplacement of venue in consumer credit transactions.
- 514. Actions relating to consumer goods.

515. Venue in matrimonial actions.

§ 501. Contractual provisions fixing venue. Subject to the provisions of subdivision two of section five hundred ten and section five hundred fourteen of this article, written agreement fixing place of trial, made before an action is commenced, shall be enforced upon a motion for change of place of trial.

§ 502. Conflicting venue provisions. Where, because of joinder of claims or parties, there is a conflict of provisions under this article, the court, upon motion, shall order as the place of trial one proper under this article as to at least one of the parties or claims.

§ 503. Venue based on residence. (a) Generally. Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county.

(b) Executor, administrator, trustee, committee, conservator, general or testamentary guardian, or receiver. An executor, administrator, trustee, committee, conservator, general or testamentary guardian, or receiver shall be deemed a resident of the county of his appointment as well as the county in which he actually resides.

(c) Corporation. A domestic corporation, or a foreign corporation authorized to transact business in the state, shall be deemed a resident of the county in which its principal office is located; except that such a corporation, if a railroad or other common carrier, shall also be deemed a resident of the county where the cause of action arose.

(d) Unincorporated association, partnership, or individually-owned business. A president or treasurer of an unincorporated association, suing or being sued on behalf of the association, shall be deemed a resident of any county in which the association has its principal

office, as well as the county in which he actually resides. A partnership or an individually-owned business shall be deemed a resident of any county in which it has its principal office, as well as the county in which the partner or individual owner suing or being sued actually resides.

(e) Assignee. In an action for a sum of money only, brought by an assignee other than an assignee for the benefit of creditors or a holder in due course of a negotiable instrument, the assignee's residence shall be deemed the same as that of the original assignor at the time of the original assignment.

(f) Consumer credit transaction. In an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant, the place of trial shall be the residence of a defendant, if one resides within the state or the county where such transaction took place, if it is within the state, or, in other cases, as set forth in subdivision (a).

(g) Student debt. In an action to recover tuition, fees, room and board, educational benefit payments, student loans, or other such charges incurred by a student in furtherance of such student's education owed to the state of New York, the place of trial shall be the residence of a defendant, if one resides within the state, or, in other cases, as set forth in this article.

§ 504. Actions against counties, cities, towns, villages, school districts and district corporations. Notwithstanding the provisions of any charter heretofore granted by the state and subject to the provisions of subdivision (b) of section 506, the place of trial of all actions against counties, cities, towns, villages, school districts and district corporations or any of their officers, boards or departments shall be, for:

1. a county, in such county;
2. a city, except the city of New York, town, village, school district or district corporation, in the county in which such city, town, village, school district or district corporation is situated, or if such

school district or district corporation is situated in more than one county, in either county; and

3. the city of New York, in the county within the city in which the cause of action arose, or if it arose outside of the city, in the county of New York.

§ 505. Actions involving public authorities. (a) Generally. The place of trial of an action by or against a public authority constituted under the laws of the state shall be in the county in which the authority has its principal office or where it has facilities involved in the action.

(b) Against New York city transit authority. The place of trial of an action against the New York city transit authority shall be in the county within the city of New York in which the cause of action arose, or, if it arose outside of the city, in the county of New York.

§ 506. Where special proceeding commenced. (a) Generally. Unless otherwise prescribed in subdivision (b) or in the law authorizing the proceeding, a special proceeding may be commenced in any county within the judicial district where the proceeding is triable.

(b) Proceeding against body or officer. A proceeding against a body or officer shall be commenced in any county within the judicial district where the respondent made the determination complained of or refused to perform the duty specifically enjoined upon him by law, or where the proceedings were brought or taken in the course of which the matter sought to be restrained originated, or where the material events otherwise took place, or where the principal office of the respondent is located, except that

1. a proceeding against a justice of the supreme court or a judge of a county court or the court of general sessions shall be commenced in the appellate division in the judicial department where the action, in the course of which the matter sought to be enforced or restrained originated, is triable, unless a term of the appellate division in that department is not in session, in which case the proceeding may be

commenced in the appellate division in an adjoining judicial department; and

2. a proceeding against the regents of the university of the state of New York, the commissioner of education, the commissioner of taxation and finance, the tax appeals tribunal except as provided in section two thousand sixteen of the tax law, the public service commission, the commissioner or the department of transportation relating to articles three, four, five, six, seven, eight, nine or ten of the transportation law or to the railroad law, the water resources board, the comptroller or the department of agriculture and markets, shall be commenced in the supreme court, Albany county.

3. notwithstanding the provisions of paragraph two of this subdivision, a proceeding against the commissioner of education pursuant to section forty-four hundred four of the education law may be commenced in the supreme court in the county of residence of the petitioner.

4. a proceeding against the New York city tax appeals tribunal established by section one hundred sixty-eight of the New York city charter shall be commenced in the appellate division of the supreme court, first department.

5. a proceeding challenging apportionment by the legislature shall be commenced in the supreme court in any of the following designated counties in a judicial department where at least one petitioner resides:

- (i) first judicial department: New York county;
- (ii) second judicial department: Westchester county;
- (iii) third judicial department: Albany county; or
- (iv) fourth judicial department: Erie county.

§ 507. Real property actions. The place of trial of an action in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property shall be in the county in which any part of the subject of the action is situated.

§ 508. Actions to recover a chattel. The place of trial of an action to recover a chattel may be in the county in which any part of the subject of the action is situated at the time of the commencement of the action.

§ 509. Venue in county designated. Notwithstanding any provision of this article except for rule 515, the place of trial of an action shall be in the county designated by the plaintiff, unless the place of trial is changed to another county by order upon motion, or by consent as provided in subdivision (b) of rule 511 of this article.

§ 510. Grounds for change of place of trial. The court, upon motion, may change the place of trial of an action where:

1. the county designated for that purpose is not a proper county; or
2. there is reason to believe that an impartial trial cannot be had in the proper county; or
3. the convenience of material witnesses and the ends of justice will be promoted by the change.

Rule. 511. Change of place of trial. (a) Time for motion or demand. A demand under subdivision (b) for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served. A motion for change of place of trial on any other ground shall be made within a reasonable time after commencement of the action.

(b) Demand for change of place of trial upon ground of improper venue, where motion made. The defendant shall serve a written demand that the action be tried in a county he specifies as proper. Thereafter the defendant may move to change the place of trial within fifteen days after service of the demand, unless within five days after such service

plaintiff serves a written consent to change the place of trial to that specified by the defendant. Defendant may notice such motion to be heard as if the action were pending in the county he specified, unless plaintiff within five days after service of the demand serves an affidavit showing either that the county specified by the defendant is not proper or that the county designated by him is proper.

(c) Stay of proceedings. No order to stay proceedings for the purpose of changing the place of trial shall be granted unless it appears from the papers that the change is sought with due diligence.

(d) Order, subsequent proceedings and appeal. Upon filing of consent by the plaintiff or entry of an order changing the place of trial by the clerk of the county from which it is changed, the clerk shall forthwith deliver to the clerk of the county to which it is changed all papers filed in the action and certified copies of all minutes and entries, which shall be filed, entered or recorded, as the case requires, in the office of the latter clerk. Subsequent proceedings shall be had in the county to which the change is made as if it had been designated originally as the place of trial, except as otherwise directed by the court. An appeal from an order changing the place of trial shall be taken in the department in which the motion for the order was heard and determined.

Rule 512. Change of place of trial of action or issue triable without a jury. The place of trial of an action or any issue triable without a jury may be, in the discretion of the court, in any county within the judicial district in which the action is triable. After the trial, the decision and all other papers relating to the trial shall be filed and the judgment entered in the county where the action is pending.

§ 513. Misplacement of venue in consumer credit transactions. (a) In an action arising out of a consumer credit transaction, the clerk shall not accept a summons for filing when it appears upon its face that the proper venue is a county other than the county where such summons is offered for filing.

(b) The clerk shall indicate upon the summons the date of the

rejection and shall enter such date in a register maintained by him together with the name of the counties in which the summons may properly be filed.

(c) Notwithstanding subdivisions one and three of section three hundred eight, where a summons has been rejected for filing by virtue of this section, service is complete ten days after such summons is filed in the proper county with proof of service upon the defendant of the summons, together with proof of service upon the defendant by registered or certified mail of a notice setting forth the following:

1. the proper county,
2. the date of filing of the summons,
3. the date within which the answer or notice of appearance is to be filed, and
4. the address at which it is to be filed.

§ 514. Actions relating to consumer goods. 1. For the purposes of this section, "consumer goods" shall mean goods, wares, paid merchandise or services purchased or paid for by a consumer, the intended use or benefit of which is intended for the personal, family or household purposes of such consumer.

2. In any contract involving the sale, lease or otherwise providing of consumer goods, any portion of the contract or any clause which purports to designate, restrict, or limit the venue in which a claim shall be adjudicated or arbitrated shall be deemed void as against public policy. Nothing in this section shall be deemed to affect the validity of any other aspect of a contract.

Rule 515. Venue in matrimonial actions. (a) This rule applies to all actions wherein all or part of the relief granted is divorce, all actions brought in supreme court for custody or visitation, all

applications to modify a supreme court order of custody or visitation, all actions wherein all or part of the relief granted is the dissolution, annulment or declaration of the nullity of a marriage, all proceedings to obtain a distribution of marital property following a foreign judgment of divorce, and all post-judgment proceedings following a judgment of divorce.

(b) Notwithstanding anything to the contrary in this article, the place of trial in an action subject to subdivision (a) of this rule shall be in a county in which either party resides or, if there are minor children of the marriage, the place of trial may also be in the county where one of such children resides; except that where any of the addresses of these residences is not a matter of public record, or where any of these addresses is subject to an existing confidentiality order pursuant to section 254 of the domestic relations law or section 154-b of the family court act, the place of trial designated by the plaintiff in any action specified in subdivision (a) of this rule may be as specified in section 509 of this article.

(c) In any action specified in subdivision (a) of this rule, the court may, for good cause shown, allow the trial to proceed before it, notwithstanding that venue would not lie pursuant to subdivision (b) of this rule. Good cause applications shall be made by motion or order to show cause.

ARTICLE 6

JOINDER OF CLAIMS, CONSOLIDATION AND SEVERANCE

601. Joinder of claims.

602. Consolidation.

(a) Generally.

(b) Cases pending in different courts.

603. Severance and separate trials.

604. Change by supreme court of place of trial of action pending in another court.

§ 601. Joinder of claims. (a) The plaintiff in a complaint or the defendant in an answer setting forth a counterclaim or cross-claim may

join as many claims as he may have against an adverse party. There may be like joinder of claims when there are multiple parties.

(b) Two or more plaintiffs may join no more than five claims in any one action or proceeding against the same defendant arising out of separate consumer credit transactions, provided that the plaintiffs are represented by the same attorney.

§ 602. Consolidation. (a) Generally. When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Cases pending in different courts. Where an action is pending in the supreme court it may, upon motion, remove to itself an action pending in another court and consolidate it or have it tried together with that in the supreme court. Where an action is pending in the county court, it may, upon motion, remove to itself an action pending in a city, municipal, district or justice court in the county and consolidate it or have it tried together with that in the county court.

§ 603. Severance and separate trials. In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue. The court may order the trial of any claim or issue prior to the trial of the others.

§ 604. Change by supreme court of place of trial of action pending in another court. Upon motion of any party, the supreme court may order that an issue of fact in an action pending in another court, except an action relating to real property pending in a county court, be tried in the supreme court in another county upon such terms as may be just. After the trial, the clerk of the county in which it has taken place shall certify the minutes thereof, which shall be filed with the clerk

of the court in which the action is pending. Subsequent proceedings shall be the same as if the issue had been tried in the court in which the action is pending.

ARTICLE 9 CLASS ACTIONS

Section 901. Prerequisites to a class action.

902. Order allowing class action.

903. Description of class.

904. Notice of class action.

905. Judgment.

906. Actions conducted partially as class actions.

Rule 907. Orders in conduct of class actions.

Rule 908. Dismissal, discontinuance or compromise.

Rule 909. Attorneys' fees.

§ 901. Prerequisites to a class action. a. One or more members of a class may sue or be sued as representative parties on behalf of all if:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;

3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;

4. the representative parties will fairly and adequately protect the interests of the class; and

5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

b. Unless a statute creating or imposing a penalty, or a minimum

measure of recovery specifically authorizes the recovery thereof in a class action, an action to recover a penalty, or minimum measure of recovery created or imposed by statute may not be maintained as a class action.

§ 902. Order allowing class action. Within sixty days after the time to serve a responsive pleading has expired for all persons named as defendants in an action brought as a class action, the plaintiff shall move for an order to determine whether it is to be so maintained. An order under this section may be conditional, and may be altered or amended before the decision on the merits on the court's own motion or on motion of the parties. The action may be maintained as a class action only if the court finds that the prerequisites under section 901 have been satisfied. Among the matters which the court shall consider in determining whether the action may proceed as a class action are:

1. the interest of members of the class in individually controlling the prosecution or defense of separate actions;
2. the impracticability or inefficiency of prosecuting or defending separate actions;
3. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
4. the desirability or undesirability of concentrating the litigation of the claim in the particular forum;
5. the difficulties likely to be encountered in the management of a class action.

§ 903. Description of class. The order permitting a class action shall describe the class. When appropriate the court may limit the class to those members who do not request exclusion from the class within a specified time after notice.

§ 904. Notice of class action. (a) In class actions brought primarily for injunctive or declaratory relief, notice of the pendency of the action need not be given to the class unless the court finds that notice is necessary to protect the interests of the represented parties and that the cost of notice will not prevent the action from going forward.

(b) In all other class actions, reasonable notice of the commencement of a class action shall be given to the class in such manner as the court directs.

(c) The content of the notice shall be subject to court approval. In determining the method by which notice is to be given, the court shall consider

I. the cost of giving notice by each method considered

II. the resources of the parties and

III. the stake of each represented member of the class, and the likelihood that significant numbers of represented members would desire to exclude themselves from the class or to appear individually, which may be determined, in the court's discretion, by sending notice to a random sample of the class.

(d) I. Preliminary determination of expenses of notification. Unless the court orders otherwise, the plaintiff shall bear the expense of notification. The court may, if justice requires, require that the defendant bear the expense of notification, or may require each of them to bear a part of the expense in proportion to the likelihood that each will prevail upon the merits. The court may hold a preliminary hearing to determine how the costs of notice should be apportioned.

II. Final determination. Upon termination of the action by order or judgment, the court may, but shall not be required to, allow to the prevailing party the expenses of notification as taxable disbursements under article eighty-three of the civil practice law and rules.

§ 905. Judgment. The judgment in an action maintained as a class action, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class.

§ 906. Actions conducted partially as class actions. When appropriate,

1. an action may be brought or maintained as a class action with respect to particular issues, or

2. a class may be divided into subclasses and each subclass treated as a class.

The provisions of this article shall then be construed and applied accordingly.

Rule 907. Orders in conduct of class actions. In the conduct of class actions the court may make appropriate orders:

1. determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

2. requiring, for the protection of the members of the class, or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, or to appear and present claims or defenses, or otherwise to come into the action;

3. imposing conditions on the representative parties or on intervenors;

4. requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action

proceed accordingly;

5. directing that a money judgment favorable to the class be paid either in one sum, whether forthwith or within such period as the court may fix, or in such installments as the court may specify;

6. dealing with similar procedural matters.

The orders may be altered or amended as may be desirable from time to time.

Rule 908. Dismissal, discontinuance or compromise. A class action shall not be dismissed, discontinued, or compromised without the approval of the court. Notice of the proposed dismissal, discontinuance, or compromise shall be given to all members of the class in such manner as the court directs.

Rule 909. Attorneys' fees. If a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys' fees to the representatives of the class and/or to any other person that the court finds has acted to benefit the class based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount awarded from the opponent of the class.

ARTICLE 10

PARTIES GENERALLY

1001. Necessary joinder of parties.

- (a) Parties who should be joined.
- (b) When joinder excused.

1002. Permissive joinder of parties.

- (a) Plaintiffs.
- (b) Defendants.
- (c) Separate relief; separate trials.

- 1003. Nonjoinder and misjoinder of parties.
- 1004. When joinder unnecessary.
- 1006. Interpleader.
 - (a) Stakeholder; claimant; action of interpleader.
 - (b) Defensive interpleader.
 - (c) Effect of pendency of another action against stakeholder.
 - (d) Abolition of former grounds for objection.
 - (e) Issue of independent liability.
 - (f) Discharge of stakeholder.
 - (g) Deposit of money as basis for jurisdiction.
- 1007. When third-party practice allowed.
- 1008. Answer of third-party defendant; defenses.
- 1009. Claim by plaintiff against third-party defendant.
- 1010. Dismissal or separate trial of third-party complaint.
- 1011. Successive third-party proceedings; counterclaims.
- 1012. Intervention as of right; notice to attorney-general, city, county, town or village where constitutionality in issue.
 - (a) Intervention as of right.
 - (b) Notice to attorney-general, city, county, town or village where constitutionality in issue.
 - (c) Notice to comptroller of the state of New York where public retirement benefits are in issue.
- 1013. Intervention by permission.
- 1014. Proposed intervention pleading.
- 1015. Substitution upon death.
 - (a) Generally.
 - (b) Devolution of rights or liabilities on other parties.
- 1016. Substitution of committee or conservator.
- 1017. Substitution in case of receivership or dissolution of a corporation.
- 1018. Substitution upon transfer of interest.
- 1019. Substitution of public officers.
- 1020. Substitution of indemnitors for executing or attaching officer.

- 1021. Substitution procedure; dismissal for failure to substitute; presentation of appeal.
- 1022. Substitution: extension of time for taking procedural steps.
- 1023. Public body or officer described by official title.
- 1024. Unknown parties.
- 1025. Partnerships and unincorporated associations.
- 1026. Review of determinations by administrative officers of the unified court system.

§ 1001. Necessary joinder of parties. (a) Parties who should be joined. Persons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so he may be made a defendant.

(b) When joinder excused. When a person who should be joined under subdivision (a) has not been made a party and is subject to the jurisdiction of the court, the court shall order him summoned. If jurisdiction over him can be obtained only by his consent or appearance, the court, when justice requires, may allow the action to proceed without his being made a party. In determining whether to allow the action to proceed, the court shall consider:

1. whether the plaintiff has another effective remedy in case the action is dismissed on account of the nonjoinder;
2. the prejudice which may accrue from the nonjoinder to the defendant or to the person not joined;
3. whether and by whom prejudice might have been avoided or may in the future be avoided;
4. the feasibility of a protective provision by order of the court or in the judgment; and

5. whether an effective judgment may be rendered in the absence of the person who is not joined.

§ 1002. Permissive joinder of parties. (a) Plaintiffs. Persons who assert any right to relief jointly, severally, or in the alternative arising out of the same transaction, occurrence, or series of transactions or occurrences, may join in one action as plaintiffs if any common question of law or fact would arise.

(b) Defendants. Persons against whom there is asserted any right to relief jointly, severally, or in the alternative, arising out of the same transaction, occurrence, or series of transactions or occurrences, may be joined in one action as defendants if any common question of law or fact would arise.

(c) Separate relief; separate trials. It shall not be necessary that each plaintiff be interested in obtaining, or each defendant be interested in defending against, all the relief demanded or as to every claim included in an action; but the court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and, who asserts no claim against him, and may order separate trials or make other orders to prevent prejudice.

§ 1003. Nonjoinder and misjoinder of parties. Nonjoinder of a party who should be joined under section 1001 is a ground for dismissal of an action without prejudice unless the court allows the action to proceed without that party under the provisions of that section. Misjoinder of parties is not a ground for dismissal of an action. Parties may be added at any stage of the action by leave of court or by stipulation of all parties who have appeared, or once without leave of court within twenty days after service of the original summons or at anytime before the period for responding to that summons expires or within twenty days after service of a pleading responding to it. Parties may be dropped by the court, on motion of any party or on its own initiative, at any stage of the action and upon such terms as may be just. The court may order any claim against a party severed and proceeded with separately.

§ 1004. When joinder unnecessary. Except where otherwise prescribed by order of the court, an executor, administrator, guardian of the property of an infant, committee of the property of a judicially declared incompetent, conservator of the property of a conservatee, trustee of an express trust, insured person who has executed to his insurer either a loan or subrogation receipt, trust agreement, or other similar agreement, or person with whom or in whose name a contract has been made for the benefit of another, may sue or be sued without joining with him the person for or against whose interest the action is brought.

§ 1006. Interpleader. (a) Stakeholder; claimant; action of interpleader. A stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims. A claimant is a person who has made or may be expected to make such a claim. A stakeholder may commence an action of interpleader against two or more claimants.

(b) Defensive interpleader. A defendant stakeholder may bring in a claimant who is not a party by filing a summons and interpleader complaint. Service of process upon such a claimant shall be by serving upon such claimant a summons and interpleader complaint and all prior pleadings served in the action.

(c) Effect of pendency of another action against stakeholder. If a stakeholder seeks to bring in a claimant pursuant to subdivision (b) and there is pending in a court of the state an action between the claimant and the stakeholder based upon the same claim, the appropriate court, on motion, upon such terms as may be just, may dismiss the interpleader complaint and order consolidation or joint trial of the actions, or may make the claimant a party and stay the pending action until final disposition of the action in which interpleader is so granted, and may make such further order as may be just.

(d) Abolition of former grounds for objection. It is not ground for objection to interpleader that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or

that the stakeholder avers that he is not liable in whole or in part to any or all of the claimants.

(e) Issue of independent liability. Where the issue of an independent liability of the stakeholder to a claimant is raised by the pleadings or upon motion, the court may dismiss the claim of the appropriate claimant, order severance or separate trials, or require the issue to be tried in the action.

(f) Discharge of stakeholder. After the time for all parties to plead has expired, the stakeholder may move for an order discharging him from liability in whole or in part to any party. The stakeholder shall submit proof by affidavit or otherwise of the allegations in his pleading. The court may grant the motion and require payment into court, delivery to a person designated by the court or retention to the credit of the action, of the subject matter of the action to be disposed of in accordance with further order or the judgment. An order under subdivision (g) shall not discharge the stakeholder from liability to any claimant until an order granted under this subdivision is complied with. The court shall impose such terms relating to payment of expenses, costs and disbursements as may be just and which may be charged against the subject matter of the action. If the court shall determine that a party is entitled to interest, in the absence of an agreement by the stakeholder as to the rate of interest, he shall be liable to such party for interest to the date of discharge at a rate no greater than the lowest discount rate of the Federal Reserve Bank of New York for discounts for, and advances to, member banks in effect from time to time during the period for which, as found by the court, interest should be paid.

(g) Deposit of money as basis for jurisdiction. Where a stakeholder is otherwise entitled to proceed under this section for the determination of a right to, interest in or lien upon a sum of money, whether or not liquidated in amount, payable in the state pursuant to a contract or claimed as damages for unlawful retention of specific real or personal property in the state, he may move, either before or after an action has been commenced against him, for an order permitting him to pay the sum of money or part of it into court or to a designated person or to retain it to the credit of the action. Upon compliance with a court order permitting such deposit or retention, the sum of money shall be deemed specific property within the state within the meaning of paragraph two

of section 314.

§ 1007. When third-party practice allowed. (a) After the service of a defendant's answer, the defendant may proceed against a person or legal entity not a party who is or may be liable to that defendant for all or part of the plaintiff's claim against that defendant, by filing pursuant to section three hundred four of this chapter a third-party summons and complaint with the clerk of the court in the county in which the main action is pending, for which a separate index number shall not be issued but a separate index number fee shall be collected. The third-party summons and complaint and all prior pleadings served in the action shall be served upon such person or legal entity within twenty days of the filing. A defendant serving a third-party complaint shall be styled a third-party plaintiff and the person or legal entity so served shall be styled a third-party defendant. The defendant shall also serve a copy of such third-party complaint upon the plaintiff's attorney simultaneously upon issuance for service of the third-party complaint on the third-party defendant.

(b) A defendant shall not file a third-party summons and complaint more than ninety days after serving its answer without an order of the court.

(c) No third-party summons and complaint may be filed after the filing of a note of issue unless upon good cause shown or in the interest of justice.

(d) An action filed in violation of this subdivision shall be severed or dismissed without prejudice.

(e) Notwithstanding subdivisions (b) and (c) of this section, a defendant or third-party defendant may file a third-party summons and complaint against an employer of the plaintiff without an order of the court within ninety days after the later of: 1. the date the identity of the employer of the plaintiff becomes known to the defendant or third-party defendant, or 2. the date the defendant or third-party defendant knows or should know the plaintiff sustained a grave injury, as such term is defined in section eleven of the workers' compensation law.

(f) In the event a third-party action is severed from the initial

action pursuant to this section, and a third-party plaintiff proceeds to initiate a new action by the filing of a summons and complaint against a severed third-party defendant, any motion to consolidate such actions shall not be permitted.

§ 1008. Answer of third-party defendant; defenses. The third-party defendant shall answer the claim asserted against him or her by serving copies of his or her answer upon the third-party plaintiff. The third-party defendant may assert against the plaintiff in his or her answer any defenses which the third-party plaintiff has to the plaintiff's claim except an objection or defense that the summons and complaint, summons with notice or notice of petition and petition was not properly served, or that jurisdiction was not obtained over the third-party plaintiff. The third-party defendant shall have the rights of a party adverse to the other parties in the action, including the right to counter-claim, cross-claim and appeal.

Rule 1009. Claim by plaintiff against third-party defendant. Within twenty days after service of the answer to the third-party complaint upon plaintiff's attorney, the plaintiff may amend his complaint without leave of court to assert against the third-party defendant any claim plaintiff has against the third-party defendant.

Rule 1010. Dismissal or separate trial of third-party complaint. The court may dismiss a third-party complaint without prejudice, order a separate trial of the third-party claim or of any separate issue thereof, or make such other order as may be just. In exercising its discretion, the court shall consider whether the controversy between the third-party plaintiff and the third-party defendant will unduly delay the determination of the main action or prejudice the substantial rights of any party.

Rule 1011. Successive third-party proceedings; counterclaims. A

third-party defendant may proceed pursuant to section 1007 against any person who is or may be liable to him for all or part of the third-party claim. When a counterclaim is asserted against a plaintiff, he may proceed pursuant to section 1007 as if he were a defendant.

§ 1012. Intervention as of right; notice to attorney-general, city, county, town or village where constitutionality in issue. (a)

Intervention as of right. Upon timely motion, any person shall be permitted to intervene in any action:

1. when a statute of the state confers an absolute right to intervene;
or

2. when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment;
or

3. when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment.

(b) Notice to attorney-general, city, county, town or village where constitutionality in issue. 1. When the constitutionality of a statute of the state, or a rule and regulation adopted pursuant thereto is involved in an action to which the state is not a party, the attorney-general, shall be notified and permitted to intervene in support of its constitutionality.

2. When the constitutionality of a local law, ordinance, rule or regulation of a city, county, town or village is involved in an action to which the city, county, town or village that enacted the provision is not a party, such city, county, town or village shall be notified and permitted to intervene in support of its constitutionality.

3. The court having jurisdiction in an action or proceeding in which the constitutionality of a state statute, local law, ordinance, rule or regulation is challenged shall not consider any challenge to the

constitutionality of such state statute, local law, ordinance, rule or regulation unless proof of service of the notice required by this subdivision is filed with such court.

(c) Notice to comptroller of the state of New York where public retirement benefits are in issue. Where public retirement benefits, paid, payable, claimed, or sought to be paid by a state retirement system or any other retirement system established for public employees within this state or any subdivision thereof, or the interpretation of any provisions of law or rules governing any such retirement system or the operation thereof, are involved in an action to which the comptroller of the state of New York is not a party, the court shall notify said comptroller, who shall be permitted, in his discretion, to intervene in such action or to file a brief *amicus curiae*.

§ 1013. Intervention by permission. Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

§ 1014. Proposed intervention pleading. A motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought.

§ 1015. Substitution upon death. (a) Generally. If a party dies and the claim for or against him is not thereby extinguished the court shall order substitution of the proper parties.

(b) Devolution of rights or liabilities on other parties. Upon the death of one or more of the plaintiffs or defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or against the surviving defendants, the action does not abate. The death shall be noted on the record and the action shall

proceed.

§ 1016. Substitution of committee or conservator. If a party is adjudicated incompetent or a conservator has been appointed, the court shall order substitution of his committee or conservator.

§ 1017. Substitution in case of receivership or dissolution of a corporation. If a receiver is appointed for a party, or a corporate party is dissolved, the court shall order substitution of the proper parties.

§ 1018. Substitution upon transfer of interest. Upon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action.

§ 1019. Substitution of public officers. If a person made a party in his capacity as public officer dies or otherwise ceases to hold office, the action may be continued by or against his successor if it is shown to the court that there is need for so continuing it. Before a substitution is made his successor and, unless the court otherwise orders, the party shall be given reasonable notice of the motion and accorded an opportunity to object. When, in accordance with section 1023, an officer is described by his official title and his name is not added, no substitution is necessary.

§ 1020. Substitution of indemnitors for executing or attaching officer. Where an action is brought against an officer to recover a chattel levied upon by virtue of an execution or order of attachment, or to recover damages for the detention or sale of such a chattel, and an undertaking indemnifying the officer against such acts has been given, the court may order that the indemnitor be substituted for the officer.

§ 1021. Substitution procedure; dismissal for failure to substitute; presentation of appeal. A motion for substitution may be made by the successors or representatives of a party or by any party. If a person who should be substituted does not appear voluntarily he may be made a party defendant. If the event requiring substitution occurs before final judgment and substitution is not made within a reasonable time, the action may be dismissed as to the party for whom substitution should have been made, however, such dismissal shall not be on the merits unless the court shall so indicate. If the event requiring substitution occurs after final judgment, substitution may be made in either the court from or to which an appeal could be or is taken, or the court of original instance, and if substitution is not made within four months after the event requiring substitution, the court to which the appeal is or could be taken may dismiss the appeal, impose conditions or prevent it from being taken. Whether or not it occurs before or after final judgment, if the event requiring substitution is the death of a party, and timely substitution has not been made, the court, before proceeding further, shall, on such notice as it may in its discretion direct, order the persons interested in the decedent's estate to show cause why the action or appeal should not be dismissed.

§ 1022. Substitution: extension of time for taking procedural steps. Unless the court orders otherwise, if the time for making a motion for a new trial or for taking an appeal or for making a motion for permission to appeal or for taking any other procedural step in the action has not expired before the occurrence of an event permitting substitution of a party, the period is extended as to all parties until fifteen days after substitution is made, or, in case of dismissal of the action under section 1021, is extended as to all parties until fifteen days after such dismissal.

§ 1023. Public body or officer described by official title. When a public officer, body, board, commission or other public agency may sue

or be sued in its official capacity, it may be designated by its official title, subject to the power of the court to require names to be added.

§ 1024. Unknown parties. A party who is ignorant, in whole or in part, of the name or identity of a person who may properly be made a party, may proceed against such person as an unknown party by designating so much of his name and identity as is known. If the name or remainder of the name becomes known all subsequent proceedings shall be taken under the true name and all prior proceedings shall be deemed amended accordingly.

§ 1025. Partnerships and unincorporated associations. Two or more persons conducting a business as a partnership may sue or be sued in the partnership name, and actions may be brought by or against the president or treasurer of an unincorporated association on behalf of the association in accordance with the provisions of the general associations law.

§ 1026. Review of determinations by administrative officers of the unified court system. In any action or proceeding brought to review a determination of the chief judge of the court of appeals, of the court of appeals or of the administrative board of the courts, made pursuant to the provisions of article seven-A of the judiciary law or section twenty-eight of article six of the constitution, the only proper party to be named therein shall be the chief administrator of the courts, in his representative capacity. No action or proceeding so instituted shall name the chief judge, the court of appeals or any member thereof, or the administrative board or any member thereof as a party.

ARTICLE 11

WAIVER OF COSTS, FEES, AND EXPENSES

1101. Motion to waive costs, fees, and expenses; affidavit or

affirmation; certificate; notice; when motion not required.

(a) Motion; affidavit or affirmation.

(b) Certificate.

(c) Notice.

(d) Waiver of fee in certain cases.

(e) When motion not required.

(f) Fees for inmates.

1102. Privileges of party with insufficient means to pay costs, fees, and expenses in an action or on appeal.

(a) Attorney.

(b) Stenographic transcript.

(c) Appeals.

(d) Costs and fees.

1103. Distribution of recovery in favor of party with insufficient means to pay costs, fees, and expenses.

§ 1101. Motion to waive costs, fees, and expenses; affidavit or affirmation; certificate; notice; when motion not required. (a) Motion; affidavit or affirmation. Upon motion of any party, the court in which an action is triable, or to which an appeal has been or will be taken, may waive the costs, fees, and expenses if such party has insufficient means to pay such costs, fees, and expenses. Where a motion to waive costs, fees, and expenses is made in the court in which an appeal has been or will be taken, such court shall hear such motion on the merits and shall not remand such motion to the trial court for consideration. The moving party shall file an affidavit or affirmation setting forth the amount and sources of such party's income and assets and listing any real property owned by such party with its value; that such party lacks sufficient means to pay the costs, fees, and expenses necessary to prosecute or defend the action or to maintain or respond to the appeal; the nature of the action; sufficient facts so that the merit of the contentions can be ascertained; and whether any other person is beneficially interested in any recovery sought and, if so, whether every such person is unable to pay such costs, fees, and expenses. An executor, administrator, or other representative may move for a waiver

of costs, fees, and expenses on behalf of a deceased, infant, or incompetent person.

(b) Certificate. The court may require the moving party to file with the affidavit a certificate of an attorney stating that the attorney has examined the action and believes there is merit to the moving party's contentions.

(c) Notice. Except as provided in subdivisions (d) and (e) of this section, if an action has already been commenced, notice of the motion shall be served on all parties, and notice shall also be given to the county attorney in the county in which the action is triable or the corporation counsel if the action is triable in the city of New York.

* (d) Waiver of fee in certain cases. Except as otherwise provided in subdivision (f) of this section, if applicable, a plaintiff may seek to commence his or her action without payment of the fee required by filing the form affidavit, attesting that such plaintiff is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, which shall be available in the clerk's office along with the summons and complaint or summons with notice or third-party summons and complaint. The case will be given an index number, or, in courts other than the supreme or county courts, any necessary filing number and the application will be submitted to a judge of the court. If the court approves the application, the plaintiff will by written order be given notice that all fees and costs relating to the filing and service shall be waived. If the court denies the application the plaintiff will by written order be given notice that the case will be dismissed if the fee is not paid within one hundred twenty days of the date of the order.

* NB Effective until September 1, 2027

* (d) Waiver of fee in certain cases. A plaintiff may seek to commence his or her action without payment of the fee required by filing the form affidavit, attesting that such plaintiff is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, which shall be available in the clerk's office along with the summons and complaint or summons with notice or third-party summons and complaint. The case will be given an index number, or, in courts other than the supreme or county courts, any necessary filing number and the application will be submitted to a judge of the court. If the court approves the application, the plaintiff will by written order be given

notice that all fees and costs relating to the filing and service shall be waived. If the court denies the application the plaintiff will by written order be given notice that the case will be dismissed if the fee is not paid within one hundred twenty days of the date of the order.

* NB Effective September 1, 2027

(e) When motion not required. Where a party is represented in a civil action by a legal aid society or a legal services or other nonprofit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society or organization, all fees and costs relating to the filing and service shall be waived without the necessity of a motion and the case shall be given an index number, or, in a court other than the supreme or county court, an appropriate filing number, provided that a determination has been made by such society, organization or attorney that such party is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, and that an attorney's certification that such determination has been made is filed with the clerk of the court along with the summons and complaint or summons with notice or third-party summons and complaint or otherwise provided to the clerk of the court. Where an attorney certifies, pursuant to section eleven hundred eighteen of the family court act, and in accordance with procedures of the appropriate appellate division, that a party or child who is the subject of an appeal has been represented in the family court by assigned counsel or by a legal aid society or a legal services or other nonprofit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society or organization, and, in the case of a counsel assigned to an adult party, that the party continues to be indigent, the party or child shall be presumed eligible for poor person relief pursuant to this section.

* (f) Fees for incarcerated individuals. 1. Notwithstanding any other provision of law to the contrary, a federal, state or local incarcerated individual under sentence for conviction of a crime may seek to commence his or her action or proceeding by paying a reduced filing fee as provided in paragraph two of this subdivision. Such incarcerated individual shall file the form affidavit referred to in subdivision (d)

of this section along with the summons and complaint or summons with notice or third-party summons and complaint or petition or notice of petition or order to show cause. As part of such application, the incarcerated individual shall indicate the name and mailing address of the facility at which he or she is confined along with the name and mailing address of any other federal, state or local facility at which he or she was confined during the preceding six month period. The case will be given an index number if applicable, or, in courts other than the supreme or county courts, any necessary filing number and the application will be submitted to a judge of the court. Upon receipt of the application, the court shall obtain from the appropriate official of the facility at which the incarcerated individual is confined a certified copy of the incarcerated individual's trust fund account statement (or institutional equivalent) for the six month period preceding filing of the incarcerated individual's application. If the incarcerated individual has been confined for less than six months at such facility, the court shall obtain additional information as follows:

(i) in the case of a state incarcerated individual who has been transferred from another state correctional facility, the court shall obtain a trust fund account statement for the six month period from the central office of the department of corrections and community supervision in Albany; or

(ii) in the case of a state incarcerated individual who is newly transferred from a federal or local correctional facility, the court shall obtain any trust fund account statement currently available from such facility. The court may, in its discretion, seek further information from the prior or current facility.

2. If the court determines that the incarcerated individual has insufficient means to pay the full filing fee, the court may permit the incarcerated individual to pay a reduced filing fee, the minimum of which shall not be less than fifteen dollars and the maximum of which shall not be more than fifty dollars. The court shall require an initial payment of such portion of the reduced filing fee as the incarcerated individual can reasonably afford or shall authorize no initial payment of the fee if exceptional circumstances render the incarcerated individual unable to pay any fee; provided however, that the difference

between the amount of the reduced filing fee and the amount paid by the incarcerated individual in the initial partial payment shall be assessed against the incarcerated individual as an outstanding obligation to be collected either by the superintendent or the municipal official of the facility at which the incarcerated individual is confined, as the case may be, in the same manner that mandatory surcharges are collected as provided for in subdivision five of section 60.35 of the penal law. The court shall notify the superintendent or the municipal official of the facility where the incarcerated individual is housed of the amount of the reduced filing fee that was not directed to be paid by the incarcerated individual. Thereafter, the superintendent or the municipal official shall forward to the court any fee obligations that have been collected, provided however, that:

(i) in no event shall the filing fee collected exceed the amount of fees required for the commencement of an action or proceeding; and

(ii) in no event shall an incarcerated individual be prohibited from proceeding for the reason that the incarcerated individual has no assets and no means by which to pay the initial partial filing fee.

3. The institution at which an incarcerated individual is confined, or the central office for the department of corrections and community supervision, whichever is applicable, shall promptly provide the trust fund account statement to the incarcerated individual as required by this subdivision.

4. Whenever any federal, state or local incarcerated individual obtains a judgment in connection with any action or proceeding which exceeds the amount of the filing fee, paid in accordance with the provisions of this subdivision for commencing such action or proceeding, the court shall award to the prevailing incarcerated individual, as a taxable disbursement, the actual amount of any fee paid to commence the action or proceeding.

5. The provisions of this subdivision shall not apply to a proceeding commenced pursuant to article seventy-eight of this chapter which alleges a failure to correctly award or certify jail time credit due an incarcerated individual, in violation of section six hundred-a of the

correction law and section 70.30 of the penal law.

* NB Expires September 1, 2027

§ 1102. Privileges of party with insufficient means to pay costs, fees, and expenses in an action or on appeal. (a) Attorney. Where a court grants a motion pursuant to subdivision (a) of section one thousand one hundred one of this article, the court, in its order determining the motion, may assign an attorney to the moving party.

(b) Stenographic transcript. Where a court grants a motion pursuant to subdivision (a) of section one thousand one hundred one of this article, the court clerk, within two days after the filing of such court's order with the court clerk, shall so notify the court stenographer, who, within twenty days of such notification shall make and certify two typewritten transcripts of the stenographic minutes of said trial or hearing, and shall deliver one of said transcripts to the moving party or such moving party's attorney, and file the other with the court clerk together with an affidavit of the fact and date of such delivery and filing. The expense of such transcripts shall be a county charge or, in the counties within the city of New York, a city charge, as the case may be, payable to the stenographer out of the court fund upon the certificate of the judge presiding at the trial or hearing. A moving party may be furnished with a stenographic transcript without fee by order of the court in proceedings other than appeal, the fee therefor to be paid by the county or, in the counties within the city of New York by the city, as the case may be, in the same manner as is paid for transcripts on appeal. Notwithstanding this or any other provision of law, fees paid for stenographic transcripts with respect to those proceedings specified in paragraph a of subdivision one of section thirty-five of the judiciary law shall be paid by the state in the manner prescribed by subdivision four of section thirty-five of the judiciary law.

(c) Appeals. On an appeal or motion for permission to appeal where a court grants a motion pursuant to subdivision (a) of section one thousand one hundred one of this article, the moving party may submit typewritten briefs and appendices, furnishing one legible copy for each appellate justice.

(d) Costs and fees. Where a court grants a motion pursuant to subdivision (a) of section one thousand one hundred one of this article, the moving party shall not be liable for the payment of any costs or fees unless a recovery by judgment or by settlement is had in such moving party's favor, in which event the court may direct such party to pay out of the recovery all or part of the costs and fees, a reasonable sum for the services and expenses of any attorney assigned to such party and any sum expended by the county or city under subdivision (b) of this section.

§ 1103. Distribution of recovery in favor of party with insufficient means to pay costs, fees, and expenses. Where a court grants a motion pursuant to subdivision (a) of section one thousand one hundred one of this article, recovery by judgment or by settlement had in favor of the moving party shall be paid to the clerk of the court in which the order determining the motion was entered, to await distribution pursuant to court order.

ARTICLE 12

INFANTS, INCOMPETENTS AND CONSERVATEES

- 1201. Representation of infant, incompetent person, or conservatee.
- 1202. Appointment of guardian ad litem.
 - (a) By whom motion made.
 - (b) Notice of motion.
 - (c) Consent.
- 1203. Default judgment.
- 1204. Compensation of guardian ad litem.
- 1205. Liability for costs of infant, judicially declared incompetent, or conservatee, or representative.
- 1206. Disposition of proceeds of claim of infant, judicially declared incompetent or conservatee.
- 1207. Settlement of action or claim by infant, judicially declared incompetent or conservatee, by whom motion made; special proceeding; notice; order of settlement.

1208. Settlement procedure; papers; representation.
- (a) Affidavit of infant's or incompetent's representative.
 - (b) Affidavit of attorney.
 - (c) Medical or hospital report.
 - (d) Appearance before court.
 - (e) Representation.
 - (f) Preparation of papers by attorney for adverse party.
1209. Arbitration of controversy involving infant, judicially declared incompetent or conservatee.
1210. Guardian of infant.
- (a) Petition for appointment; by whom presented; contents.
 - (b) Hearing.
 - (c) Undertaking.
 - (d) Direction as to management of estate.
 - (e) Filing of certified copy of order of appointment.
1211. Allowance for infant's support.
- (a) Petition to supreme court, county court or surrogate's court; contents.
 - (b) Notice.

§ 1201. Representation of infant, incompetent person, or conservatee.

Unless the court appoints a guardian ad litem, an infant shall appear by the guardian of his property or, if there is no such guardian, by a parent having legal custody, or, if there is no such parent, by another person or agency having legal custody, or, if the infant is married, by an adult spouse residing with the infant, a person judicially declared to be incompetent shall appear by the committee of his property, and a conservatee shall appear by the conservator of his property. A person shall appear by his guardian ad litem if he is an infant and has no guardian of his property, parent, or other person or agency having legal custody, or adult spouse with whom he resides, or if he is an infant, person judicially declared to be incompetent, or a conservatee as defined in section 77.01 of the mental hygiene law and the court so directs because of a conflict of interest or for other cause, or if he

is an adult incapable of adequately prosecuting or defending his rights.

Rule 1202. Appointment of guardian ad litem. (a) By whom motion made. The court in which an action is triable may appoint a guardian ad litem at any stage in the action upon its own initiative or upon the motion of:

1. an infant party if he is more than fourteen years of age; or
2. a relative, friend or a guardian, committee of the property, or conservator; or

3. any other party to the action if a motion has not been made under paragraph one or two within ten days after completion of service.

(b) Notice of motion. Notice of a motion for appointment of a guardian ad litem for a person shall be served upon the guardian of his property, upon his committee or upon his conservator, or if he has no such guardian, committee, or conservator, upon the person with whom he resides. Notice shall also be served upon the person who would be represented if he is more than fourteen years of age and has not been judicially declared to be incompetent.

(c) Consent. No order appointing a guardian ad litem shall be effective until a written consent of the proposed guardian has been submitted to the court together with an affidavit stating facts showing his ability to answer for any damage sustained by his negligence or misconduct.

§ 1203. Default judgment. No judgment by default may be entered against an infant or a person judicially declared to be incompetent unless his representative appeared in the action or twenty days have expired since appointment of a guardian ad litem for him. No default judgment may be entered against an adult incapable of adequately protecting his rights for whom a guardian ad litem has been appointed unless twenty days have expired since the appointment.

§ 1204. Compensation of guardian ad litem. A court may allow a guardian ad litem a reasonable compensation for his services to be paid in whole or part by any other party or from any recovery had on behalf of the person whom such guardian represents or from such person's other property. No order allowing compensation shall be made except on an affidavit of the guardian or his attorney showing the services rendered.

§ 1205. Liability for costs of infant, judicially declared incompetent, or conservatee, or representative. An infant, a person judicially declared to be incompetent, a conservatee, a person for whom a guardian ad litem has been appointed, or a representative of any such person, shall not be liable for costs unless the court otherwise orders.

§ 1206. Disposition of proceeds of claim of infant, judicially declared incompetent or conservatee. Except as provided in EPTL 7-4.9, any property to which an infant, a person judicially declared to be incompetent or a conservatee is entitled, after deducting any expenses allowed by the court, shall be distributed to the guardian of his property, the committee of his property or conservator to be held for the use and benefit of such infant, incompetent, or conservatee except that:

(a) in the case of an infant who is married to and resides with an adult spouse, the court may order that the property be distributed to such adult spouse for the use and benefit of the infant; or

(b) if the value of the property does not exceed ten thousand dollars the court may order the property distributed to a person with whom such infant, incompetent or conservatee resides or who has some interest in his welfare to be held for the use and benefit of such infant, incompetent or conservatee; or

(c) the court may order that money constituting any part of the property be deposited in one or more specified insured banks or trust companies or savings banks or insured state or federal credit unions or be invested in one or more specified accounts in insured savings and loan associations, or it may order that a structured settlement

agreement be executed, which shall include any settlement whose terms contain provisions for the payment of funds on an installment basis, provided that with respect to future installment payments, the court may order that each party liable for such payments shall fund such payments, in an amount necessary to assure the future payments, in the form of an annuity contract executed by a qualified insurer and approved by the superintendent of financial services pursuant to articles fifty-A and fifty-B of this chapter. The court may elect that the money be deposited in a high interest yield account such as an insured "savings certificate" or an insured "money market" account. The court may further elect to invest the money in one or more insured or guaranteed United States treasury or municipal bills, notes or bonds. This money is subject to withdrawal only upon order of the court, except that no court order shall be required to pay over to the infant who has attained the age of eighteen years all moneys so held unless the depository is in receipt of an order from a court of competent jurisdiction directing it to withhold such payment beyond the infant's eighteenth birthday. Notwithstanding the preceding sentence, the ability of an infant who has attained the age of eighteen years to accelerate the receipt of future installment payments pursuant to a structured settlement agreement shall be governed by the terms of such agreement. The reference to the age of twenty-one years in any order made pursuant to this subdivision or its predecessor, prior to September first, nineteen hundred seventy-four, directing payment to the infant without further court order when he reaches the age of twenty-one years, shall be deemed to designate the age of eighteen years; or

(d) the court may order that the property be held for the use and benefit of such infant, incompetent or conservatee as provided by subdivision (d) of section 1210.

§ 1207. Settlement of action or claim by infant, judicially declared incompetent or conservatee, by whom motion made; special proceeding; notice; order of settlement. Upon motion of a guardian of the property or guardian ad litem of an infant or, if there is no such guardian, then of a parent having legal custody of an infant, or if there is no such parent, by another person having legal custody, or if the infant is

married, by an adult spouse residing with the infant, or of the committee of the property of a person judicially declared to be incompetent, or of the conservator of the property of a conservatee, the court may order settlement of any action commenced by or on behalf of the infant, incompetent or conservatee. If no action has been commenced, a special proceeding may be commenced upon petition of such a representative for settlement of any claim by the infant, incompetent or conservatee in any court where an action for the amount of the proposed settlement could have been commenced. Unless otherwise provided by rule of the chief administrator of the courts, if no motion term is being held and there is no justice of the supreme court available in a county where the action or an action on the claim is triable, such a motion may be made, or special proceeding may be commenced, in a county court and the county judge shall act with the same power as a justice of the supreme court even though the amount of the settlement may exceed the jurisdictional limits of the county court. Notice of the motion or petition shall be given as directed by the court. An order on such a motion shall have the effect of a judgment. Such order, or the judgment in a special proceeding, shall be entered without costs and shall approve the fee for the infant's, incompetent's or conservatee's attorney, if any.

Rule 1208. Settlement procedure; papers; representation.

(a) Affidavit of infant's or incompetent's representative. An affidavit of the infant's or incompetent's representative shall be included in the supporting papers and shall state:

1. his name, residence and relationship to the infant or incompetent;
2. the name, age and residence of the infant or incompetent;
3. the circumstances giving rise to the action or claim;
4. the nature and extent of the damages sustained by the infant or incompetent, and if the action or claim is for damages for personal injuries to the infant or incompetent, the name of each physician who

attended or treated the infant or incompetent or who was consulted, the medical expenses, the period of disability, the amount of wages lost, and the present physical condition of the infant or incompetent;

5. the terms and proposed distribution of the settlement and his approval of both;

6. the facts surrounding any other motion or petition for settlement of the same claim, of an action to recover on the same claim or of the same action;

7. whether reimbursement for medical or other expenses has been received from any source; and

8. whether the infant's or incompetent's representative or any member of the infant's or incompetent's family has made a claim for damages alleged to have been suffered as a result of the same occurrence giving rise to the infant's or incompetent's claim and, if so, the amount paid or to be paid in settlement of such claim or if such claim has not been settled the reasons therefor.

(b) Affidavit of attorney. If the infant or incompetent or his representative is represented by an attorney, an affidavit of the attorney shall be included in the supporting papers and shall state:

1. his reasons for recommending the settlement;

2. that directly or indirectly he has neither become concerned in the settlement at the instance of a party or person opposing, or with interests adverse to, the infant or incompetent nor received nor will receive any compensation from such party, and whether or not he has represented or now represents any other person asserting a claim arising from the same occurrence; and

3. the services rendered by him.

(c) Medical or hospital report. If the action or claim is for damages for personal injuries to the infant or incompetent, one or more medical or hospital reports, which need not be verified, shall be included in

the supporting papers.

(d) Appearance before court. On the hearing, the moving party or petitioner, the infant or incompetent, and his attorney shall attend before the court unless attendance is excused for good cause.

(e) Representation. No attorney having or representing any interest conflicting with that of an infant or incompetent may represent the infant or incompetent.

(f) Preparation of papers by attorney for adverse party. If the infant or incompetent is not represented by an attorney the papers may be prepared by the attorney for an adverse party or person and shall state that fact.

§ 1209. Arbitration of controversy involving infant, judicially declared incompetent or conservatee. A controversy involving an infant, person judicially declared to be incompetent or conservatee shall not be submitted to arbitration except pursuant to a court order made upon application of the representative of such infant, incompetent or conservatee; provided, however, that a claim brought on behalf of an infant pursuant to paragraph one or two of subdivision (f) of section three thousand four hundred twenty of the insurance law may be submitted to arbitration without a court order.

Rule 1210. Guardian of infant. (a) Petition for appointment; by whom presented; contents. An infant, if of the age of fourteen years or more, or a relative or friend of an infant, may present a petition to the court for appointment of a guardian. The petition shall state the age and residence of the infant, the name and residence of any living parent and of the person proposed as guardian, the relationship if any which such person bears to the infant, and the nature, status and value of the infant's estate.

(b) Hearing. The court shall ascertain the age of the infant, the amount of his personal property, the gross amount or value of the rents and profits of his real estate during his minority, and the sufficiency of the security offered by the proposed guardian. If the infant is of the age of fourteen years or more, the court shall examine him as to his

voluntary nomination of or preference for a suitable guardian; if he is under the age of fourteen, the court shall select and appoint a suitable guardian.

(c) Undertaking. The court shall make an order requiring or dispensing wholly or partly with an undertaking, in an amount and according to the conditions set forth in section seventeen hundred eight of the surrogate's court procedure act.

(d) Direction as to management of estate. The court in its discretion may direct that the principal of the estate or any part of it be invested in bonds of the state of New York or of the United States, or invested in bonds or other obligations of any county, city, town, village or school district of the state of New York, or deposited with any bank, trust company, insured savings and loan association or insured savings bank or insured state or federal credit union which has been designated as a depository for such fund; or invested in a bond and mortgage on unincumbered and improved property within the state, having a value, to be shown to the satisfaction of the court, of at least double the amount of principal invested, for the benefit of the infant, and may direct that only the interest or income be received by the guardian.

(e) Filing of certified copy of order of appointment. Upon the appointment of a guardian of the person or property, or both, of an infant, the guardian shall file a certified copy of the order of his appointment with the clerk of the surrogate's court of the county in which he has been appointed.

Rule 1211. Allowance for infant's support. (a) Petition to supreme court, county court or surrogate's court; contents. A petition to the supreme court, county court or the surrogate's court for the application of an infant's property or a portion thereof to the infant's support, maintenance or education shall set forth in detail:

1. the amount and nature of the infant's property, where it is situated and how invested, his income from such property or any other source and any claim against the infant;

2. whether or not the infant's parents are living and, if either of them is living, all circumstances relative to their ability to support the infant, and, if neither of them is living, the names of other persons legally obligated to support the infant and the circumstances relative to their ability to support the infant; and

3. the terms of any previous order made by any court within or without the state for similar relief and the disposition made of any property pursuant thereto.

(b) Notice. Such notice as the court shall direct shall be given to:

1. the guardian of the property of the infant, if the petition is presented by a person other than such guardian;

2. all parents and guardians of the person of the infant; and

3. the infant if he or she is of the age of fourteen years or more.

ARTICLE 13

ACTIONS BY THE STATE

Section 1301. Actions in behalf of the people to be brought in the name of the state.

1302. Action brought on relation of a person.

1303. Procedure in action brought by the state.

§ 1301. Actions in behalf of the people to be brought in the name of the state. An action brought in behalf of the people, except an action to recover a penalty or forfeiture expressly given by law to a particular officer, shall be brought in the name of the state.

§ 1302. Action brought on relation of a person. Where an action is brought by the attorney-general on the relation or information of a person having an interest in the question, the complaint shall allege, and the title of the action shall show, that the action is so brought.

As a condition of bringing an action for the benefit of a person having an interest in the question, the attorney-general shall require the relator to give an undertaking to indemnify the state against costs and expenses.

§ 1303. Procedure in action brought by the state. Except as otherwise specially prescribed by statute or rule the proceedings in an action brought by the state shall be the same as in an action by a private person.

ARTICLE 13-A

PROCEEDS OF A CRIME-FORFEITURE

- Section 1310. Definitions.
1311. Forfeiture actions.
- 1311-a. Subpoena duces tecum.
- 1311-b. Money judgment.
1312. Provisional remedies; generally.
1313. Debt or property subject to attachment; proper garnishee.
1314. Attaching creditor's rights in personal property.
1315. Discharge of garnishee's obligation.
1316. Order of attachment on notice; temporary restraining order; contents.
1317. Order of attachment without notice.
1318. Motion papers; filing; demand; damages.
1319. Service of summons.
1320. Levy upon personal property by service of order.
1321. Levy upon personal property by seizure.
1322. Levy upon real property.
1323. Additional undertaking to carrier garnishee.
1324. Claiming agent's duties after levy.
1325. Garnishee's statement.
1326. Disclosure.
1327. Proceedings to determine adverse claims.
1328. Discharge of attachment.

- 1329. Vacating or modifying attachment.
- 1330. Annulment of attachment.
- 1331. Return of property; directions to clerk and claiming agent.
- 1332. Disposition of attachment property after execution issued; priority of orders of attachment.
- 1333. Grounds for preliminary injunction and temporary restraining order.
- 1334. Motion papers.
- 1335. Temporary restraining order.
- 1336. Vacating or modifying preliminary injunction or temporary restraining order.
- 1337. Ascertaining damages sustained by reason of preliminary injunction or temporary restraining order.
- 1338. Appointment and powers of temporary receiver.
- 1339. Oath.
- 1340. Undertaking.
- 1341. Accounts.
- 1342. Removal.
- 1343. Notice of pendency; constructive notice.
- 1344. Filing, content and indexing of notice of pendency.
- 1345. Service of summons.
- 1346. Duration of notice of pendency.
- 1347. Motion for cancellation of notice of pendency.
- 1348. Undertaking for cancellation of notice of pendency.
- 1349. Disposal of property.
- 1350. Rules of procedure; in general.
- 1351. Application of article.
- 1352. Preservation of other rights and remedies.

§ 1310. Definitions. In this article:

1. "Property" means and includes: real property, personal property, money, negotiable instruments, securities, or any thing of value or any interest in a thing of value.

2. "Proceeds of a crime" means any property obtained through the commission of a felony crime defined in subdivisions five and six hereof, and includes any appreciation in value of such property.

3. "Substituted proceeds of a crime" means any property obtained by the sale or exchange of proceeds of a crime, and any gain realized by such sale or exchange.

4. "Instrumentality of a crime" means any property, other than real property and any buildings, fixtures, appurtenances, and improvements thereon, whose use contributes directly and materially to the commission of a crime defined in subdivisions five and six hereof.

4-a. "Real property instrumentality of a crime" means an interest in real property the use of which contributes directly and materially to the commission of a specified felony offense.

4-b. "Specified felony offense" means:

(a) a conviction of a person for a violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law, or where the accusatory instrument charges one or more of such offenses, conviction upon a plea of guilty to any of the felonies for which such plea is otherwise authorized by law or a conviction of a person for conspiracy to commit a violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law, where the controlled substances which are the object of the conspiracy are located in the real property which is the subject of the forfeiture action; or

(b) on three or more occasions, engaging in conduct constituting a violation of any of the felonies defined in section 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41 or 220.43 of the penal law, which violations do not constitute a single criminal offense as defined in subdivision one of section 40.10 of the criminal procedure law, or a single criminal transaction, as defined in paragraph (a) of subdivision two of section 40.10 of the criminal procedure law, and at least one of which resulted in a conviction of such offense, or where the accusatory instrument charges one or more of such felonies, conviction upon a plea of guilty to a felony for which such plea is

otherwise authorized by law; or

(c) a conviction of a person for a violation of section 220.09, 220.16, 220.34 or 220.39 of the penal law, or where the accusatory instrument charges any such felony, conviction upon a plea of guilty to a felony for which the plea is otherwise authorized by law, together with evidence which: (i) provides substantial indicia that the defendant used the real property to engage in a continual, ongoing course of conduct involving the unlawful mixing, compounding, manufacturing, warehousing, or packaging of controlled substances as part of an illegal trade or business for gain; and (ii) establishes, where the conviction is for possession of a controlled substance, that such possession was with the intent to sell it.

5. "Post-conviction forfeiture crime" means any felony defined in the penal law or any other chapter of the consolidated laws of the state.

7. "Court" means a superior court.

8. "Defendant" means a person against whom a forfeiture action is commenced and includes a "criminal defendant" and a "non-criminal defendant".

9. "Criminal defendant" means a person who has criminal liability for a crime defined in subdivision five of this section. For purposes of this article, a person has criminal liability when he has been convicted of a post-conviction forfeiture crime.

10. "Non-criminal defendant" means a person, other than a criminal defendant, who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

11. "Claiming authority" means the district attorney having jurisdiction over the offense or the attorney general for purpose of those crimes for which the attorney general has criminal jurisdiction in a case where the underlying criminal charge has been, is being or is about to be brought by the attorney general, or the appropriate corporation counsel or county attorney, provided that the corporation

counsel or county attorney may act as a claiming authority only with the consent of the district attorney or the attorney general, as appropriate.

12. "Claiming agent" means and shall include all persons described in subdivision thirty-four of section 1.20 of the criminal procedure law, and sheriffs, undersheriffs and deputy sheriffs of counties within the city of New York.

13. "Fair consideration" means fair consideration is given for property, or obligation, (a) when in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or (b) when such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

14. "District attorney" means and shall include all persons described in subdivision thirty-two of section 1.20 of the criminal procedure law and the special assistant district attorney in charge of the office of prosecution, special narcotics courts of the city of New York.

§ 1311. Forfeiture actions. 1. A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (b) of subdivision three of this section shall be limited to the amount of the proceeds of the crime. Any action under this article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in personam in nature and shall not be deemed to be a penalty or criminal

forfeiture for any purpose. Except as otherwise specially provided by statute, the proceedings under this article shall be governed by this chapter. An action under this article is not a criminal proceeding and may not be deemed to be a previous prosecution under article forty of the criminal procedure law.

(a) Actions relating to post-conviction forfeiture crimes. An action relating to a post-conviction forfeiture crime must be grounded upon a conviction of a felony defined in subdivision five of section one thousand three hundred ten of this article or upon a count of an indictment or information alleging a felony which was dismissed at the time of a plea of guilty to a felony in satisfaction of such count. A court may not grant forfeiture until such conviction has occurred. However, an action may be commenced, and a court may grant a provisional remedy provided under this article, prior to such conviction having occurred. An action under this paragraph must be dismissed at any time after sixty days of the commencement of the action unless the conviction upon which the action is grounded has occurred, or an indictment or information upon which the asserted conviction is to be based is pending in a superior court. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, however, that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provisions of law.

(b) Actions relating to pre-conviction forfeiture crimes. An action relating to a pre-conviction forfeiture crime need not be grounded upon conviction of a pre-conviction forfeiture crime, provided, however, that if the action is not grounded upon such a conviction, it shall be necessary in the action for the claiming authority to prove the commission of a pre-conviction forfeiture crime by clear and convincing evidence. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, that upon motion of a defendant in the forfeiture action or the claiming authority, a court may, in the interest of justice and for good cause, and with the consent of all parties, order that the forfeiture action proceed despite the pending criminal action; and provided that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provision of law.

2. All defendants in a forfeiture action brought pursuant to this article shall have the right to trial by jury on any issue of fact.

3. In a forfeiture action pursuant to this article the following burdens of proof shall apply:

(a) In a forfeiture action commenced by a claiming authority against a criminal defendant, except for those facts referred to in paragraph (b) of subdivision nine of section one thousand three hundred ten and paragraph (b) of subdivision one of this section which must be proven by clear and convincing evidence, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture.

(b) In a forfeiture action commenced by a claiming authority against a non-criminal defendant:

(i) in an action relating to a pre-conviction forfeiture crime, the burden shall be upon the claiming authority to prove by clear and convincing evidence the commission of the crime by a person, provided, however, that it shall not be necessary to prove the identity of such person.

(ii) if the action relates to the proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew or should have known that the proceeds were obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the proceeds to avoid forfeiture.

(iii) if the action relates to the substituted proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the property sold or exchanged to obtain an interest in the substituted proceeds was obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the substituted proceeds to avoid forfeiture.

(iv) if the action relates to an instrumentality of a crime, except as provided for in subparagraph (i) hereof, the burden shall be upon the

claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the instrumentality was or would be used in the commission of a crime or (B) knowingly obtained his or her interest in the instrumentality to avoid forfeiture.

(v) if the action relates to a real property instrumentality of a crime, the burden shall be upon the claiming authority to prove those facts referred to in subdivision four-b of section thirteen hundred ten of this article by clear and convincing evidence. The claiming authority shall also prove by a clear and convincing evidence that the non-criminal defendant knew that such property was or would be used for the commission of specified felony offenses, and either (A) knowingly and unlawfully benefitted from such conduct or (B) voluntarily agreed to the use of such property for the commission of such offenses by consent freely given. For purposes of this subparagraph, a non-criminal defendant knowingly and unlawfully benefits from the commission of a specified felony offense when he derives in exchange for permitting the use or occupancy of such real property by a person or persons committing such specified offense a substantial benefit that would otherwise not accrue as a result of the lawful use or occupancy of such real property. "Benefit" means benefit as defined in subdivision seventeen of section 10.00 of the penal law.

(c) In a forfeiture action commenced by a claiming authority against a non-criminal defendant the following rebuttable presumptions shall apply:

(i) a non-criminal defendant who did not pay fair consideration for the proceeds of a crime, the substituted proceeds of a crime or the instrumentality of a crime shall be presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(ii) a non-criminal defendant who obtains an interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime with knowledge of an order of provisional remedy relating to said property issued pursuant to this article, shall be presumed to know that such property was the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime.

(iii) in an action relating to a post-conviction forfeiture crime, a

non-criminal defendant who the claiming authority proves by clear and convincing evidence has criminal liability under section 20.00 of the penal law for the crime of conviction or for criminal activity arising from a common scheme or plan of which such crime is a part and who possesses an interest in the proceeds, the substituted proceeds, or an instrumentality of such criminal activity is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(iv) a non-criminal defendant who participated in or was aware of a scheme to conceal or disguise the manner in which said non-criminal obtained his or her interest in the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(d) In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are (i) found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a violation of section 220.18 or 220.21 of the penal law, or (ii) found in close proximity to any quantity of a controlled substance unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance.

(e) The presumption set forth pursuant to paragraph (d) of this subdivision shall be rebutted by credible and reliable evidence which tends to show that such currency or negotiable instrument payable to the bearer is not the proceeds of a preconviction forfeiture crime. In an action tried before a jury, the jury shall be so instructed. Any sworn testimony of a defendant offered to rebut the presumption and any other evidence which is obtained as a result of such testimony, shall be inadmissible in any subsequent proceeding relating to the forfeiture action, or in any other civil or criminal action, except in a prosecution for a violation of article two hundred ten of the penal law. In an action tried before a jury, at the commencement of the trial, or

at such other time as the court reasonably directs, the claiming authority shall provide notice to the court and to the defendant of its intent to request that the court charge such presumption.

3-a. Conviction of a person in a criminal action upon an accusatory instrument which includes one or more of the felonies specified in subdivision four-b of section thirteen hundred ten of this article, of any felony other than such felonies, shall not preclude a defendant, in any subsequent proceeding under this article where that conviction is at issue, from adducing evidence that the conduct underlying the conviction would not establish the elements of any of the felonies specified in such subdivision other than the one to which the criminal defendant pled guilty. If the defendant does adduce such evidence, the burden shall be upon the claiming authority to prove, by clear and convincing evidence, that the conduct underlying the criminal conviction would establish the elements of the felony specified in such subdivision. Nothing contained in this subdivision shall affect the validity of a settlement of any forfeiture action negotiated between the claiming authority and a criminal defendant contemporaneously with the taking of a plea of guilty in a criminal action to any felony defined in article two hundred twenty of the penal law, or to a felony conspiracy to commit the same.

4. The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon its own motion or upon an application as provided for herein.

(a) At any time during the pendency of a forfeiture action, the claiming authority who instituted the action, or a defendant may (i) apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice, or (ii) may apply for an order limiting the forfeiture to an amount equivalent in value to the value of property constituting the proceeds or substituted proceeds of a crime in the interest of justice.

(b) Such application for the relief provided in paragraph (a) hereof must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

(c) An application for the relief provided for in paragraph (a) hereof

must be brought exclusively in the superior court in which the forfeiture action is pending.

(d) The court may grant the relief provided in paragraph (a) hereof if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property of any part thereof, would not serve the ends of justice. Among the factors, considerations and circumstances the court may consider, among others, are:

(i) the seriousness and circumstances of the crime to which the property is connected relative to the impact of forfeiture of property upon the person who committed the crime; or

(ii) the adverse impact of a forfeiture of property upon innocent persons; or

(iii) the appropriateness of a judgment of forfeiture in an action relating to pre-conviction forfeiture crime where the criminal proceeding based on the crime to which the property is allegedly connected results in an acquittal of the criminal defendant or a dismissal of the accusatory instrument on the merits; or

(iv) in the case of an action relating to an instrumentality, whether the value of the instrumentality substantially exceeds the value of the property constituting the proceeds or substituted proceeds of a crime.

(e) The court must issue a written decision stating the basis for an order issued pursuant to this subdivision.

4-a. (a) The court in which a forfeiture action relating to real property is pending may, upon its own motion or upon the motion of the claiming authority which instituted the action, the defendant, or any other person who has a lawful property interest in such property, enter an order:

(i) appointing an administrator pursuant to section seven hundred seventy-eight of the real property actions and proceedings law when the owner of a dwelling is a defendant in such action, and when persons who are not defendants in such action lawfully occupy one or more units within such dwelling, in order to maintain and preserve the property on behalf of such persons or any other person or entity who has a lawful property interest in such property, or in order to remedy any other condition which is dangerous to life, health or safety; or

(ii) otherwise limiting, modifying or dismissing the forfeiture action in order to preserve or protect the lawful property interest of any non-criminal defendant or any other person who is not a criminal defendant, or the lawful property interest of a defendant which is not subject to forfeiture; or

(iii) where such action involves interest in a residential leasehold or a statutory tenancy, directing that upon entry of a judgment of forfeiture, the lease or statutory tenancy will be modified as a matter of law to terminate only the interest of the defendant or defendants, and to continue the occupancy or tenancy of any other person or persons who lawfully reside in such demised premises, with such rights as such parties would otherwise have had if the defendant's interest had not been forfeited pursuant to this article.

(b) For purposes of this subdivision the term "owner" has the same meaning as prescribed for that term in section seven hundred eighty-one of the real property actions and proceedings law and the term "dwelling" shall mean any building or structure or portion thereof which is principally occupied in whole or part as the home, residence or sleeping place of one or more human beings.

5. An action for forfeiture shall be commenced by service pursuant to this chapter of a summons with notice or summons and verified complaint. No person shall forfeit any right, title, or interest in any property who is not a defendant in the action. The claiming authority shall also file a copy of such papers with the state division of criminal justice services; provided, however, failure to file such papers shall not be grounds for any relief by a defendant in this section.

6. On the motion of any party to the forfeiture action, and for good cause shown, a court may seal any papers, including those pertaining to any provisional remedy, which relate to the forfeiture action until such time as the property which is the subject of the forfeiture action has been levied upon. A motion to seal such papers may be made ex parte and in camera.

7. Remission. In addition to any other relief provided under this chapter, at any time within one year after the entry of a judgment of

forfeiture, any person, claiming an interest in the property subject to forfeiture who did not receive actual notice of the forfeiture action may petition the judge before whom the forfeiture action was held for a remission or mitigation of the forfeiture and restoration of the property or the proceeds of any sale resulting from the forfeiture, or such part thereof, as may be claimed by him. The court may restore said property upon such terms and conditions as it deems reasonable and just if (i) the petitioner establishes that he or she was without actual knowledge of the forfeiture action or any related proceeding for a provisional remedy and did not know or should not have known that the forfeited property was connected to a crime or fraudulently conveyed and (ii) the court determines that restoration of the property would serve the ends of justice.

8. The total amount that may be recovered by the claiming authority against all criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the same proceeds of the same crime or the same substituted proceeds of the same crime recovered against all non-criminal defendants. Any such recovery for the value of an instrumentality of a crime shall be reduced by an amount which equals the value of the same instrumentality recovered against any non-criminal defendant.

The total amount that may be recovered against all non-criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or the substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against non-criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the proceeds of the crime or substituted proceeds of the crime recovered against all criminal

defendants. A judgment against a non-criminal defendant pursuant to clause (A) of subparagraph (iv) of paragraph (b) of subdivision three of this section shall be limited to the amount of the proceeds of the crime. Any recovery for the value of an instrumentality of the crime shall be reduced by an amount equal to the value of the same instrumentality recovered against any criminal defendant.

9. Any defendant in a forfeiture action who knowingly and intentionally conceals, destroys, dissipates, alters, removes from the jurisdiction, or otherwise disposes of, property specified in a provisional remedy ordered by the court or in a judgment of forfeiture in knowing contempt of said order or judgment shall be subject to criminal liability and sanctions under sections 80.05 and 215.80 of the penal law.

10. The proper venue for trial of an action for forfeiture is:

(a) In the case of an action for post-conviction forfeiture commenced after conviction, the county where the conviction occurred.

(b) In all other cases, the county where a criminal prosecution could be commenced under article twenty of the criminal procedure law, or, in the case of an action commenced by the office of prosecution, special narcotics courts of the city of New York, under section one hundred seventy-seven-b of the judiciary law.

11. (a) Any stipulation or settlement agreement between the parties to a forfeiture action shall be filed with the clerk of the court in which the forfeiture action is pending. No stipulation or settlement agreement shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of the stipulation or settlement agreement, including the terms of such, has been given to the office of victim services, the state division of criminal justice services.

(b) No judgment or order of forfeiture shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of judgment or order, including the terms of such, has been given to the office of victim services, the state division of criminal justice services.

(c) Any claiming authority or claiming agent which receives any property pursuant to chapter thirteen of the food and drug laws (21 U.S.C. §801 et seq.) of the United States and/or chapter four of the customs duties laws (19 U.S.C. §1301 et seq.) of the United States and/or chapter 96 of the crimes and criminal procedure laws (18 U.S.C. §1961 et seq.) of the United States shall provide an affidavit to the commissioner of the division of criminal justice services stating the estimated present value of the property received.

(d) Any stipulation, settlement agreement, judgement, order or affidavit required to be given to the state division of criminal justice services pursuant to this subdivision shall include the defendant's name and such other demographic data as required by the state division of criminal justice services.

12. Property acquired in good faith by an attorney as payment for the reasonable and bona fide fees of legal services or reimbursement of reasonable and bona fide expenses related to the representation of a defendant in connection with a civil or criminal forfeiture proceeding or a related criminal matter, shall be exempt from a judgment of forfeiture. For purposes of this subdivision and subdivision four of section one thousand three hundred twelve of this article, "bona fide" means that the attorney who acquired such property had no reasonable basis to believe that the fee transaction was a fraudulent or sham transaction designed to shield property from forfeiture, hide its existence from governmental investigative agencies, or was conducted for any purpose other than for legitimate legal representation.

§ 1311-a. Subpoena duces tecum. 1. At any time before an action pursuant to this article is commenced, the claiming authority may, pursuant to the provisions of subdivision two of this section, apply without notice for the issuance of a subpoena duces tecum.

2. An application for a subpoena duces tecum pursuant to this section:
(a) shall be made in the judicial district in which the claiming authority may commence an action pursuant to this article, and shall be made in writing to a justice of the supreme court, or a judge of the

county court; and

(b) shall be supported by an affidavit, and such other written documentation as may be submitted which: (i) sets forth the identity of the claiming authority and certifies that the applicant is authorized to make the application on the claiming authority's behalf; (ii) demonstrates reasonable grounds to believe that the execution of the subpoena would be reasonably likely to lead to information about the nature and location of any debt or property against which a forfeiture judgment may be enforced; (iii) states whether any other such subpoena or provisional remedy has been previously sought or obtained with respect to the subject matter of the subpoena or the matter to which it relates; (iv) contains a factual statement which sets forth the basis for the issuance of the subpoena, including a particular description of the nature of the information sought to be obtained; (v) states whether the issuance of the subpoena is sought without notice to any interested party; and (vi) where the application seeks the issuance of the subpoena without notice to any interested party, contains a statement setting forth the factual basis for the claiming authority's belief that providing notice of the application for the issuance of the subpoena may result in any property being destroyed, removed from the jurisdiction of the court, or otherwise being unavailable for forfeiture or to satisfy a money judgment that may be entered in the forfeiture action, and may interfere with law enforcement investigations or judicial proceedings.

3. An application made pursuant to this section may be granted, in the court's discretion, upon a determination that the application meets the requirements set forth in subdivision two of this section; provided, however, that no such subpoena may be issued or directed to an attorney with regard to privileged records or documents or attorney work-product relating to a client. When a subpoena has been issued pursuant to this section, the claiming authority shall have the right to possession of the subpoenaed material. The possession shall be for a period of time, and on such reasonable terms and conditions, as the court may direct. The reasonableness of such possession, time, terms and conditions shall be determined with consideration for, among other things, (a) the good cause shown by the party issuing the subpoena or in whose behalf the subpoena is issued, (b) the rights and legitimate needs of the person

subpoenaed and (c) the feasibility and appropriateness of making copies of the subpoenaed material. Where the application seeks a subpoena to compel the production of an original record or document, the court in its discretion may order the production of a certified transcript or certified copy thereof.

4. Upon a determination pursuant to subdivision three of this section that the subpoena should be granted, the court shall issue the subpoena, seal all papers relating thereto, and direct that the recipient shall not, except as otherwise ordered by the court, disclose the fact of issuance or the subject of the subpoena to any person or entity; provided, however, that the court may require that notice be given to any interested party prior to the issuance of the subpoena, or at any time thereafter, when: (a) an order granting a provisional remedy pursuant to this article with respect to the subject matter of the subpoena or the matter to which it relates has been served upon the defendant whose books and records are the subject matter of the subpoena, whether such books and records are in the possession of the defendant or a third party; or (b) the court determines that providing notice of the application (i) will not result in any property being destroyed, removed from the jurisdiction of the court, or otherwise being unavailable for forfeiture or to satisfy a money judgment that may be entered in the forfeiture action and (ii) will not interfere with law enforcement investigations or judicial proceedings. For purposes of this section, "interested party" means any person whom the court determines might have an interest in the property subject to the forfeiture action brought pursuant to this article.

5. Notwithstanding the provisions of subdivision four of this section, where a subpoena duces tecum has been issued pursuant to this section without notice to any interested party, the claiming authority shall serve written notice of the fact and date of the issuance of the subpoena duces tecum, and of the fact that information was obtained thereby, upon any interested party not later than ninety days after the date of compliance with such subpoena, or upon commencement of a forfeiture action, whichever occurs first; provided, however, where the action has not been commenced and upon a showing of good cause, service

of the notice required herein may be postponed by order of the court for a reasonable period of time. The court, upon the filing of a motion by any interested party served with such notice, may, in its discretion, make available to such party or the party's counsel for inspection such portions of the information obtained pursuant to the subpoena as the court directs.

6. Nothing contained in this section shall be construed to diminish or impair any right of subpoena or discovery that may otherwise be provided for by law to the claiming authority or to a defendant in a forfeiture action.

§ 1311-b. Money judgment. If a claiming authority obtains a forfeiture judgment against a defendant for the proceeds, substituted proceeds, instrumentality of a crime or real property instrumentality of a crime, but is unable to locate all or part of any such property, the claiming authority may apply to the court for a money judgment against the defendant in the amount of the value of the forfeited property that cannot be located. The defendant shall have the right to challenge the valuation of any property that is the basis for such an application. The claiming authority shall have the burden of establishing the value of the property under this section by a preponderance of the evidence.

§ 1312. Provisional remedies; generally. 1. The provisional remedies of attachment, injunction, receivership and notice of pendency provided for herein, shall be available in all actions to recover property under this article.

2. On a motion for a provisional remedy, the claiming authority shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the claiming authority to elect between those remedies to which it would otherwise be entitled.

3. A court may grant an application for a provisional remedy when it

determines that: (a) there is a substantial probability that the claiming authority will be able to demonstrate at trial that the property is the proceeds, substituted proceeds, instrumentality of the crime or real property instrumentality of the crime, that the claiming authority will prevail on the issue of forfeiture, and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture; (b) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate; and (c) in an action relating to real property, that entry of the requested order will not substantially diminish, impair, or terminate the lawful property interest in such real property of any person or persons other than the defendant or defendants.

4. Upon motion of any party against whom a provisional remedy granted pursuant to this article is in effect, the court may issue an order modifying or vacating such provisional remedy if necessary to permit the moving party to obtain funds for the payment of reasonable living expenses, other costs or expenses related to the maintenance, operation, or preservation of property which is the subject of any such provisional remedy or reasonable and bona fide attorneys' fees and expenses for the representation of the defendant in the forfeiture proceeding or in a related criminal matter relating thereto, payment for which is not otherwise available from assets of the defendant which are not subject to such provisional remedy. Any such motion shall be supported by an affidavit establishing the unavailability of other assets of the moving party which are not the subject of such provisional remedy for payment of such expenses or fees. That funds sought to be released under this subdivision are alleged to be the proceeds, substituted proceeds, instrumentality of a crime or real property instrumentality of a crime shall not be a factor for the court in considering and determining a motion made pursuant to this subdivision.

§ 1313. Debt or property subject to attachment; proper garnishee. Any debt or property against which a forfeiture judgment may be enforced as

provided under this article is subject to attachment. The proper garnishee of any such property or debt is the person designated as a proper garnishee for purposes of enforcing money judgments in section five thousand two hundred one of this chapter. For the purpose of applying the provisions to attachment, references to a "judgment debtor" in section five thousand two hundred one and in subdivision (i) of section one hundred five of this chapter shall be construed to mean "defendant".

§ 1314. Attaching creditor's rights in personal property. Where the claiming authority has delivered an order of attachment to a claiming agent, the claiming authority's rights in a debt owed to a defendant or in an interest of a defendant in personal property against which debt or property a judgment may be enforced, are superior to the extent of the amount of the attachment to the rights of any transferee of the debt or property, except:

1. A transferee who acquired the debt or property before it was levied upon for fair consideration and without knowledge of the order of attachment; or

2. A transferee who acquired the debt or property for fair consideration after it was levied upon without knowledge of the levy while it was not in the possession of the claiming agent.

§ 1315. Discharge of garnishee's obligation. A person who, pursuant to an order of attachment, pays or delivers to the claiming agent money or other personal property in which a defendant has or will have an interest, or so pays a debt he or she owes the defendant, is discharged from his or her obligation to the defendant to the extent of the payment or delivery.

§ 1316. Order of attachment on notice; temporary restraining order; contents. Upon a motion on notice for an order of attachment, the court

may, without notice to the defendant, grant a temporary restraining order prohibiting the transfer of assets by a garnishee as provided in subdivision two of section one thousand three hundred twenty of this article. The contents of the order of attachment granted pursuant to this section shall be as provided in subdivision one of section one thousand three hundred seventeen of this article.

§ 1317. Order of attachment without notice. 1. When granted; contents. An order of attachment may be granted without notice, before or after service of summons and at any time prior to judgment. It shall specify the amount to be secured by the order of attachment including any interest, costs and any claiming agent's fees and expenses, be endorsed with the name and address of the claiming authority and shall be directed to a claiming agent in any county or in the city of New York where any property in which the defendant has an interest is located or where a garnishee may be served. The order shall direct the claiming agent to levy within his or her jurisdiction, at any time before final judgment, upon such property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy the amount specified in the order of attachment.

2. Confirmation of order. An order of attachment granted without notice shall provide that within a period not to exceed five days after levy, the claiming authority shall move, on such notice as the court shall direct to the defendant, the garnishee, if any, and the claiming agent, for an order confirming the order of attachment. If the claiming authority fails to make such motion within the required period, the order of attachment and levy thereunder shall have no further effect and shall be vacated upon motion. Upon the motion to confirm, the provisions of subdivision two of section one thousand three hundred twenty-nine of this article shall apply. An order of attachment granted without notice may provide that the claiming agent refrain from taking any property levied upon into his actual custody, pending further order of the court.

§ 1318. Motion papers; filing; demand; damages. 1. Affidavit; other

papers. On a motion for an order of attachment, or for an order to confirm an order of attachment, the claiming authority shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action and showing grounds for relief as required by section one thousand three hundred twelve of this article.

2. Filing. Within ten days after the granting of an order of attachment, the claiming authority shall file it and the affidavit and other papers upon which it was based and the summons and complaint or proposed complaint in the action. A court for good cause shown may extend the time for such filing upon application of the claiming authority. Unless the time for filing has been extended, the order shall be invalid if not so filed, except that a person upon whom it is served shall not be liable for acting upon it as if it were valid without knowledge of the invalidity.

3. Demand for papers. At any time after property has been levied upon, the defendant may serve upon the claiming authority a written demand that the papers upon which the order of attachment was granted and the levy made be served upon him or her. As soon as practicable after service of the demand, the claiming authority shall cause the papers demanded to be served by mailing the same to the address specified in the demand. A demand under this subdivision shall not of itself constitute an appearance in the action.

4. Damages. The claiming authority shall be liable to the defendant for all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the attachment if the defendant recovers judgment, or if it is finally decided that the claiming authority was not entitled to an attachment of the defendant's property. In order to establish the claiming authority's liability, the defendant must prove by a preponderance of the evidence that in obtaining the order of attachment the claiming authority acted without reasonable cause and not in good faith.

§ 1319. Service of summons. An order of attachment granted before

service is made on the defendant against whom the attachment is granted is valid only if, within sixty days after the order is granted, a summons is served upon the defendant or first publication of the summons against the defendant is made pursuant to an order and publication is subsequently completed, except that a person upon whom the order of attachment is served shall not be liable for acting upon it as if it were valid without knowledge of the invalidity. If the defendant dies within sixty days after the order is granted and before the summons is served upon him or her or publication is completed, the order is valid only if the summons is served upon his or her executor or administrator within sixty days after letters are issued. Upon such terms as may be just and upon good cause shown the court may extend the time, not exceeding sixty days, within which the summons must be served or publication commenced pursuant to this section, provided that the application for extension is made before the expiration of the time fixed.

§ 1320. Levy upon personal property by service of order. 1. Method of levy. The claiming agent shall levy upon any interest of the defendant in personal property, or upon any debt owed to the defendant, by serving a copy of the order of attachment upon the garnishee, or upon the defendant if property to be levied upon is in the defendant's possession or custody, in the same manner as a summons except that such service shall not be made by delivery of a copy to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule three hundred eighteen of this chapter.

2. Effect of levy; prohibition of transfer. A levy by service of an order of attachment upon a person other than the defendant is effective only if, at the time of service, such person owes a debt to the defendant or such person is in the possession or custody of property in which such person knows or has reason to believe the defendant has an interest, or if the claiming authority has stated in a notice which shall be served with the order that a specified debt is owed by the person served to the defendant or that the defendant has an interest in specified property in the possession or custody of the person served.

All property in which the defendant is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such person, including any specified in the notice, then due and thereafter coming due to the defendant, shall be subject to the levy. Unless the court orders otherwise, the person served with the order shall forthwith transfer or deliver all such property, and pay all such debts upon maturity, up to the amount specified in order of attachment, to the claiming agent and execute any document necessary to effect the payment, transfer or delivery. After such payment, transfer or delivery, property coming into the possession or custody of the garnishee, or debt incurred by him or her, shall not be subject to the levy. Until such payment, transfer or delivery is made, or until the expiration of ninety days after the service of the order of attachment upon him or her, or of such further time as is provided by any subsequent order of the court served upon him or her, whichever event first occurs, the garnishee is prohibited to make or suffer any sale, assignment or transfer of, or any interference with any such property, or pay over or otherwise dispose of any such debt, to any person other than the claiming agent except upon direction of the claiming agent or pursuant to an order of the court. A garnishee, however, may collect or redeem an instrument received by him or her for such purpose and he or she may sell or transfer in good faith property held as collateral or otherwise pursuant to pledge thereof or at the direction of any person other than the defendant authorized to direct sale or transfer, provided that the proceeds in which the defendant has an interest be retained subject to the levy. A claiming authority who has specified personal property or debt to be levied upon in a notice served with an order of attachment shall be liable to the owner of the property or the person to whom the debt is owed, if other than the defendant, for any damages sustained by reason of the levy. In order to establish the claiming authority's liability, the owner of the property of the person to whom the debt is owed must prove by a preponderance of the evidence that, in causing the levy to occur, the claiming authority acted without reasonable cause and not in good faith.

3. Seizure by claiming agent; notice of satisfaction. Where property

or debts have been levied upon by service of an order of attachment, the claiming agent shall take into his or her actual custody all such property capable of delivery and shall collect and receive all such debts. When the claiming agent has taken into his or her actual custody property or debts having value sufficient to satisfy the amount specified in the order of attachment, the claiming agent shall notify the defendant and each person upon whom the order of attachment was served that the order of attachment has been fully executed.

4. Proceeding to compel payment or delivery. Where property or debts have been levied upon by service of an order of attachment, the claiming authority may commence a special proceeding against the garnishee served with the order to compel the payment, delivery or transfer to the claiming agent of such property or debts, or to secure a judgment against the garnishee. Notice of petition shall also be served upon the parties to the action and the claiming agent. A garnishee may assert any defense or counterclaim which he or she may have asserted against the defendant. The court may permit any adverse claimant to intervene in the proceeding and may determine his or her rights in accordance with section one thousand three hundred twenty-seven of this article.

5. Failure to proceed. At the expiration of ninety days after a levy is made by service of the order of attachment, or of such further time as the court, upon motion of the claiming authority on notice to the parties to the action, has provided, the levy shall be void except as to property or debts which the claiming agent has taken into his or her actual custody, collected or received or as to which a proceeding under subdivision four hereof has been commenced.

§ 1321. Levy upon personal property by seizure. If the claiming authority shall so direct the collecting agent, as an alternative to the method prescribed by section one thousand three hundred twenty of this article, shall levy upon property capable of delivery by taking the property into his actual custody. In cases in which the collecting agent is a sheriff, the sheriff may require that the claiming authority furnish indemnity that is either satisfactory to the sheriff or is fixed

by the court. The collecting agent shall within four days serve a copy of the order of attachment in the manner prescribed by subdivision one of section one thousand three hundred twenty of this article upon the person from whose possession or custody the property was taken.

§ 1322. Levy upon real property. The claiming agent shall levy upon any interest of the defendant in real property by filing with the clerk of the county in which the property is located a notice of attachment endorsed with the name and address of the claiming authority and stating the names of the parties to the action, the amount specified in the order of attachment and a description of the property levied upon. The clerk shall record and index the notice in the same books, in the same manner and with the same effect, as a notice of the pendency of an action.

§ 1323. Additional undertaking to carrier garnishee. A garnishee who is a common carrier may transport or deliver property actually loaded on a conveyance, notwithstanding the service upon him or her of an order of attachment, if it was loaded without reason to believe that an order of attachment affecting the property had been granted, unless the claiming authority gives an undertaking in an amount fixed by the court, that the claiming authority shall pay any such carrier all expenses and damages which may be incurred for unloading the property and for detention of the conveyance necessary for that purpose.

§ 1324. Claiming agent's duties after levy. 1. Retention of property. The claiming agent shall hold and safely keep all property or debts paid, delivered, transferred or assigned to him or her or taken into his or her custody to answer any judgment that may be obtained against the defendant in the action, unless otherwise directed by the court or the claiming authority, subject to the payment of the claiming agent's fees and expenses, if any. Any money shall be held for the benefit of the parties to the action in an interest-bearing trust account at a national or state bank or trust company. If the urgency of the case requires, the

court may direct sale or other disposition of property, specifying the manner and terms thereof, with notice to the parties to the action and the garnishee who has possession of such property.

2. Inventory. Within fifteen days after service of an order of attachment or forthwith after such order has been vacated or annulled, the claiming agent shall file an inventory of property seized, a description of real property levied upon, the names and addresses of all persons served with the order of attachment, and an estimate of the value of all property levied upon.

§ 1325. Garnishee's statement. Within ten days after service upon a garnishee of an order of attachment, or within such shorter time as the court may direct, the garnishee shall serve upon the claiming agent a statement specifying all debts of the garnishee to the defendant, when the debts are due, all property in the possession or custody of the garnishee in which the defendant has an interest, and the amounts and value of the debts and property specified. If the garnishee has money belonging to, or is indebted to, the defendant in at least the amount of the attachment, he or she may limit his or her statement to that fact.

§ 1326. Disclosure. Upon motion of any interested person, at any time after the granting of an order of attachment and prior to final judgment in the action, upon such notice as the court may direct, the court may order disclosure by any person of information regarding any property in which the defendant has or may have interest, or any debts owed or which may be owed to the defendant.

§ 1327. Proceedings to determine adverse claims. Prior to the application of property or debt to the satisfaction of a judgment, any person, other than a party to the action, who has an interest in the property subject to forfeiture may commence a special proceeding against the claiming authority to determine the rights of adverse claimants to the property or debt, and in such proceeding shall serve a notice of

petition upon the claiming agent and upon each party in the same manner as a notice of motion. The proceeding may be commenced in the county where the property was levied upon, or in the county where the order of attachment is filed. The court may vacate or discharge the attachment, void the levy, direct the disposition of the property or debt, direct that undertakings be provided or released, or direct that damages be awarded. Where there appear to be disputed questions of fact, the court shall order a separate trial, indicating the person who shall have possession of the property pending a decision and the undertaking, if any, which such person shall give. If the court determines that the adverse claim was fraudulent or made without any reasonable basis whatsoever, it may require the claimant to pay the claiming authority the reasonable expenses incurred in the proceeding, including reasonable attorney's fees, and any other damages suffered by reason of the claim. The commencement of the proceeding shall not of itself subject the adverse claimant to personal jurisdiction with respect to any matter other than the claim asserted in the proceeding.

§ 1328. Discharge of attachment. 1. A defendant whose property or debt has been levied upon may move, upon notice to the claiming authority and the claiming agent, for any order discharging the attachment as to all or part of the property or debt upon payment of the claiming agent's fees and expenses, if any. On such a motion, the defendant shall give an undertaking, in an amount equal to the value of the property or debt sought to be discharged, that the defendant will pay to the claiming authority the amount of any judgment which may be recovered in the action against him or her, not exceeding the amount of the undertaking. Making a motion or giving an undertaking under this section shall not of itself constitute an appearance in the action.

2. When a motion to discharge is made in the case of property levied upon pursuant to a claimed violation of the tax law, the amount of the undertaking required shall be an amount equal to the lesser of:

- (a) The amount specified in subdivision one of this section; or
- (b) The aggregate amount of all unpaid tax and civil penalties for such violation.

§ 1329. Vacating or modifying attachment. 1. Motion to vacate or modify. Prior to the application of property or debt to the satisfaction of a judgment, the defendant, the garnishee or any person having an interest in the property or debt may move, on notice to each party and the claiming agent, for an order vacating or modifying the order of attachment. Upon the motion, the court may give the claiming authority a reasonable opportunity to correct any defect. If, after the defendant has appeared in the action, the court determines that the attachment is unnecessary to the security of the claiming authority, it shall vacate the order of attachment. Such a motion shall not of itself constitute an appearance in the action.

2. Burden of proof. Upon a motion to vacate or modify an order of attachment the claiming authority shall have the burden of establishing the grounds for the attachment, the need for continuing the levy and the probability that he or she will succeed on the merits.

§ 1330. Annulment of attachment. An order of attachment is annulled when the action in which it was granted abates or is discontinued or a judgment entered therein in favor of the claiming authority is fully satisfied, or a judgment is entered therein in favor of the defendant. In the last specified case a stay of proceedings suspends the effect of the annulment, and a reversal or vacating of the judgment revives the order of attachment.

§ 1331. Return of property; directions to clerk and claiming agent. Upon motion of any interested person, on notice to the claiming agent and each party, the court may direct the clerk of any county to cancel a notice of attachment and may direct the claiming agent to dispose of, account for, assign, return or release any property or debt, or the proceeds thereof, or any undertaking, or to file additional inventories or returns, subject to the payment of the claiming agent's fees, and expenses, if any. The court shall direct that notice of the motion be

given to the claiming authority and plaintiffs in other orders of attachment, if any, and to the judgment creditors of executions, if any, affecting any property or debt, or the proceeds thereof, sought to be returned or released.

§ 1332. Disposition of attachment property after execution issued; priority of orders of attachment. Where an execution is issued upon a judgment entered against the defendant, the claiming agent's duty with respect to custody and disposition of property or debt levied upon pursuant to an order of attachment is the same as if he or she had levied upon it pursuant to the execution. The priority among two or more orders of attachment against the same defendant shall be in the order in which they were delivered to the officer who levied upon the property or debt. The priority between an order of attachment and an execution, or a payment, delivery or receivership order, is set forth in section five thousand two hundred thirty-four of this chapter.

§ 1333. Grounds for preliminary injunction and temporary restraining order. A preliminary injunction may be granted in any action under this article, whether for money damages or otherwise, where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the claiming authority's rights respecting the subject of the action, and thereby tending to render a resulting judgment ineffectual. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had. A preliminary injunction may be granted only upon notice to the defendant. Notice of the motion may be served with the summons or at any time thereafter and prior to judgment.

§ 1334. Motion papers. Affidavit; other papers. On a motion for a preliminary injunction the claiming authority shall show, by affidavit and such other written evidence as may be submitted, that there is a

cause of action and showing grounds for relief as required by section one thousand three hundred twelve of this article.

§ 1335. Temporary restraining order. 1. Generally. If, on a motion for a preliminary injunction, the claiming authority shall show that immediate and irreparable injury, loss or damages may result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time.

2. Service. Unless the court orders otherwise, a temporary restraining order together with the papers upon which it was based, and a notice of hearing for the preliminary injunction, shall be personally served in the same manner as a summons.

§ 1336. Vacating or modifying preliminary injunction or temporary restraining order. A defendant enjoined by a preliminary injunction may move at any time, on notice to the claiming authority, to vacate or modify it. On motion, without notice, made by a defendant enjoined by a temporary restraining order, the judge who granted it, or in his or her absence or disability, another judge, may vacate or modify the order. An order granted without notice and vacating or modifying a temporary restraining order shall be effective when, together with the papers upon which it is based, it is filed with the clerk and served upon the claiming authority. As a condition to granting an order vacating or modifying a preliminary injunction or a temporary restraining order, a court may require the defendant to give an undertaking, in an amount to be fixed by the court, that the defendant shall pay to the claiming authority any loss sustained by reason of the vacating or modifying order.

§ 1337. Ascertaining damages sustained by reason of preliminary injunction or temporary restraining order. The damages sustained by

reason of a preliminary injunction or temporary restraining order may be ascertained upon motion on such notice to all interested persons as the court shall direct. Where the defendant enjoined was an officer of a corporation or joint-stock association or a representative of another person, the damages sustained by such corporation, association or person represented, to the amount of such excess, may also be ascertained. The amount of damages so ascertained is conclusive upon all persons who were served with notice of the motion and such amount may be recovered by the person entitled thereto in a separate action. In order to establish the claiming authority's liability for damages, the person seeking such damages must prove by a preponderance of the evidence that, in causing the temporary restraining order or preliminary injunction to be granted, the claiming authority acted without reasonable cause and not in good faith.

§ 1338. Appointment and powers of temporary receiver. 1. Appointment of temporary receiver; joinder of moving party. Upon motion of the claiming authority on any other person having an apparent interest in property which is the subject of an action pursuant to this article, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed. A motion made by a person not already a party to the action constitutes an appearance in the action and the person shall be joined as a party.

2. Powers of temporary receiver. The court appointing a receiver may authorize him or her to take and hold real and personal property, and sue for, collect and sell debts or claims, upon such conditions and for such purposes as the court shall direct. A receiver shall have no power to employ counsel unless expressly so authorized by order of the court. Upon motion of the receiver or a party, powers granted to a temporary receiver may be extended or limited or the receivership may be extended to another action involving the property.

3. Duration of temporary receivership. A temporary receivership shall

not continue after final judgment unless otherwise directed by the court.

§ 1339. Oath. A temporary receiver, before entering upon his or her duties, shall be sworn faithfully and fairly to discharge the trust committed to him or her. The oath may be administered by any person authorized to take acknowledgments of deeds by the real property law. The oath may be waived upon consent of all parties.

§ 1340. Undertaking. A temporary receiver shall give an undertaking in an amount to be fixed by the court making the appointment, that he or she will faithfully discharge his or her duties.

§ 1341. Accounts. A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds, which shall be open to inspection by any person having an apparent interest in the property, the court may require the keeping of particular records or direct or limit inspection or require presentation of a temporary receiver's accounts. Notice of a motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on his or her undertaking as well as upon each party.

§ 1342. Removal. Upon motion of any party or upon its own initiative, the court which appointed a receiver may remove him or her at any time.

§ 1343. Notice of pendency; constructive notice. A notice of pendency may be filed in any action brought pursuant to this article in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property. The pendency of such an action is constructive notice, from the time of filing of the notice only, to a purchaser from, or incumbrancer against, any defendant named in a notice

of pendency indexed in a block index against a block in which property affected is situated or any defendant against whose name a notice of pendency is indexed. A person whose conveyance or incumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as if he or she were a party.

§ 1344. Filing, content and indexing of notice of pendency. 1. Filing. In a case specified in section one thousand three hundred forty-three of this article the notice of pendency shall be filed in the office of the clerk of any county where property affected is situated, before or after service of a summons and at any time prior to judgment. Unless it has already been filed in that county, the complaint shall be filed with the notice of pendency.

2. Content, designation of index. A notice of pendency shall state the names of the parties to the action, that the action is for forfeiture pursuant to this article and a description of the property affected. A notice of pendency filed with a clerk who maintains a block index shall contain a designation of the number of each block on the land map of a county which is affected by the notice. A notice of pendency filed with a clerk who does not maintain a block index shall contain a designation of the names of each defendant against whom the notice is directed to be indexed.

3. Indexing. Each county clerk with whom a notice of pendency is filed shall immediately record and index it against the blocks or names designated. A county clerk who does not maintain a block index shall index a notice of pendency of an action for partition against the names of each claiming authority and each defendant not designated as wholly fictitious.

§ 1345. Service of summons. A notice of pendency filed before an action is commenced is effective only if, within thirty days after filing, a summons is served upon the defendant or first publication of

the summons against the defendant is made pursuant to an order and publication is subsequently completed. If the defendant dies within thirty days after filing and before the summons served upon him or her or publication is completed, the notice is effective only if the summons is served upon his or her executor or administrator within sixty days after letters are issued.

§ 1346. Duration of notice of pendency. A notice of pendency shall be effective for a period of three years from the date of filing. Before expiration of a period or extended period, the court, upon motion of the claiming authority and upon such notice as it may require, for good cause shown, may grant an extension for a like additional period. An extension order shall be filed, recorded and indexed before expiration of the prior period.

§ 1347. Motion for cancellation of notice of pendency. 1. Mandatory cancellation. The court, upon motion of any person aggrieved and upon such notice as it may require, shall direct any county clerk to cancel a notice of pendency, if service of a summons has not been completed within the time limited by section one thousand three hundred forty-five of this article; or if the action has been settled, discontinued or abated; or if the time to appeal from a final judgment against the claiming authority has expired.

2. Discretionary cancellation. The court, upon a motion of any person aggrieved and upon such notice as it may require, may direct any county clerk to cancel a notice of pendency, if the claiming authority has not commenced or prosecuted the action in good faith.

3. Costs and expenses. The court, in an order canceling a notice of pendency under this section, may direct the claiming authority to pay any costs and expenses occasioned by the filing and cancellation, in addition to any costs of the action. In order to establish the claiming authority's liability for such costs and expenses, the person seeking such costs and expenses must prove by a preponderance of the evidence

that, in causing the notice to pendency to be filed, the claiming authority acted without reasonable cause and not in good faith.

4. Cancellation by stipulation. At any time prior to entry of judgment, a notice of pendency shall be cancelled by the county clerk without an order, on the filing with him or her of:

(a) An affidavit by the claiming authority showing which defendants have been served with process, which defendants are in default in appearing or answering, and which defendants have appeared or answered and by whom; and

(b) A stipulation consenting to the cancellation, signed by the claiming authority and by the attorneys for all the defendants who have appeared or answered including those who have waived all notices, and executed and acknowledged, in the form required to entitle a deed to be recorded, by the defendants who have been served with process and have not appeared but whose time to do so has not expired, and by any defendants who have appeared in person.

5. Cancellation by a claiming authority. At any time prior to the entry of a judgment a notice of pendency of action shall be cancelled by the county clerk without an order on the filing with him or her of an affidavit by the claiming authority showing that there have been no appearances and that the time to appear has expired for all parties.

§ 1348. Undertaking for cancellation of notice of pendency. The court, upon motion of any person aggrieved and upon such notice of pendency as it may require, may direct any county clerk to cancel a notice of pendency, upon such terms as are just, whether or not the judgment demanded would affect specific real property, if the moving party shall give an undertaking in an amount to be fixed by the court, and if the court finds that adequate relief can be secured to the claiming authority by the giving of such an undertaking.

§ 1349. Disposal of property. 1. Any judgment or order of forfeiture issued pursuant to this article shall include provisions for the

disposal of the property found to have been forfeited.

2. If any other provision of law expressly governs the manner of disposition of property subject to the judgment or order of forfeiture, that provision of law shall be controlling, with the exception that, notwithstanding the provisions of any other law, all forfeited monies and proceeds from forfeited property shall be deposited into and disbursed from an asset forfeiture escrow fund established pursuant to section six-v of the general municipal law, which shall govern the maintenance of such monies and proceeds from forfeited property. Upon application by a claiming agent for reimbursement of moneys directly expended by a claiming agent in the underlying criminal investigation for the purchase of contraband which were converted into a non-monetary form or which have not been otherwise recovered, the court shall direct such reimbursement from money forfeited pursuant to this article. Upon application of the claiming agent, the court may direct that any vehicles, vessels or aircraft forfeited pursuant to this article be retained by the claiming agent for law enforcement purposes, unless the court determines that such property is subject to a perfected lien, in which case the court may not direct that the property be retained unless all such liens on the property to be retained have been satisfied or pursuant to the court's order will be satisfied. In the absence of an application by the claiming agent, the claiming authority may apply to the court to retain such property for law enforcement purposes. Upon such application, the court may direct that such property be retained by the claiming authority for law enforcement purposes, unless the court determines that such property is subject to a perfected lien. If not so retained, the judgment or order shall direct the claiming authority to sell the property in accordance with article fifty-one of this chapter, and that the proceeds of such sale and any other moneys realized as a consequence of any forfeiture pursuant to this article shall be deposited to an asset forfeiture escrow fund established pursuant to section six-v of the general municipal law and shall be apportioned and paid in the following descending order of priority:

(a) Amounts ordered to be paid by the court in satisfaction of any lien or claim against property forfeited. A fine imposed pursuant to the penal law shall not be deemed to constitute a lien or claim for purposes

of this section;

(b) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of the crime, which crime constitutes the basis upon which forfeiture was effected under this article, to the extent such amounts remain unpaid;

(c) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of any crime committed by the defendant even though such crime did not constitute the basis for forfeiture under this article, to the extent that such amounts remain unpaid;

(d) Amounts actually expended by a claiming authority or claiming agent, which amounts are substantiated by vouchers or other evidence, for the: (i) maintenance and operation of real property attached pursuant to this article. Expenditures authorized by this subparagraph are limited to mortgage, tax and other financial obligations imposed by law and those other payments necessary to provide essential services and repairs to real property whose occupants are innocent of the criminal conduct which led to the attachment or forfeiture; and

(ii) proper storage, cleanup and disposal of hazardous substances or other materials, the disposal of which is governed by the environmental conservation law, when such storage, cleanup or disposal is required by circumstances attendant to either the commission of the crime or the forfeiture action, or any order entered pursuant thereto;

(e) In addition to amounts, if any, distributed pursuant to paragraph (d) of this subdivision, fifteen percent of all moneys realized through forfeiture to the claiming authority in satisfaction of actual costs and expenses incurred in the investigation, preparation and litigation of the forfeiture action, including that proportion of the salaries of the attorneys, clerical and investigative personnel devoted thereto, plus all costs and disbursements taxable under the provisions of this chapter;

(f) In addition to amounts, if any, distributed pursuant to paragraph (d) of this subdivision, five percent of all moneys realized through forfeiture to the claiming agent in satisfaction of actual costs incurred for protecting, maintaining and forfeiting the property including that proportion of the salaries of attorneys, clerical and investigative personnel devoted thereto;

(g) Forty percent of all moneys realized through forfeiture which are remaining after distributions pursuant to paragraphs (a) through (f) of this subdivision, to the chemical dependence service fund established pursuant to section ninety-seven-w of the state finance law;

(h) All moneys remaining after distributions pursuant to paragraphs (a) through (g) of this subdivision shall be distributed as follows:

(i) seventy-five percent of such moneys shall be deposited to a law enforcement purposes subaccount of the general fund of the state where the claiming agent is an agency of the state or the political subdivision or public authority of which the claiming agent is a part, to be used for law enforcement use in the investigation of penal law offenses or law enforcement assisted diversion;

(ii) the remaining twenty-five percent of such moneys shall be deposited to a prosecution services subaccount of the general fund of the state where the claiming authority is the attorney general or the political subdivision of which the claiming authority is a part, to be used for the prosecution of penal law offenses.

Where multiple claiming agents participated in the forfeiture action, funds available pursuant to subparagraph (i) of this paragraph shall be disbursed to the appropriate law enforcement purposes subaccounts in accordance with the terms of a written agreement reflecting the participation of each claiming agent entered into by the participating claiming agents.

3. All moneys distributed to the claiming agent and the claiming authority pursuant to paragraph (h) of subdivision two of this section shall be used to enhance law enforcement efforts and not in supplantation of ordinary budgetary costs including salaries of personnel, and expenses of the claiming authority or claiming agent during the fiscal year in which this section takes effect.

4. The claiming authority shall report the disposal of property and collection of assets pursuant to this section to the office of victim services, the state division of criminal justice services and the state division of substance abuse services.

5. Monies and proceeds from the sale of property realized as a consequence of any forfeiture distributed to the claiming agent or claiming authority of any county, town, city, or village of which the claiming agent or claiming authority is a part, shall be deposited to an asset forfeiture escrow fund established pursuant to section six-v of the general municipal law.

§ 1350. Rules of procedure; in general. The civil practice law and rules shall govern the procedure in proceedings and actions commenced under this article, except where the procedure is regulated by any inconsistent provisions herein.

§ 1351. Application of article. If any provision of this article or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined (i) in its operation of the provision, or (ii) in its application to the person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

§ 1352. Preservation of other rights and remedies. The remedies provided for in this article are not intended to substitute for or limit or supersede the lawful authority of any public officer or agency or other person to enforce any other right or remedy provided for by law. The exercise of such lawful authority in the forfeiture of property alleged to be the proceeds, substitute proceeds, instrumentality of a crime or real property instrumentality of crime must include the provision of a prompt opportunity to be heard for the owner of seized property in order to ensure the legitimacy and the necessity of its continued retention by law enforcement, as well as clear notice of deadlines for accomplishing the return of such property.

ARTICLE 13-B

CIVIL REMEDIES; ENTERPRISE CORRUPTION

Section 1353. Civil remedies.

1354. Joinder of a party.

1355. Civil actions notice.

§ 1353. Civil remedies. 1. Upon or after conviction of a person of any subdivision of section 460.20 of the penal law, the court may, after making due provision for the rights of innocent persons, enjoin future activity by the person so convicted or an enterprise he controls or in whose control he participates upon a showing that injunctive action is necessary to prevent further violation of that section. In such case the court may:

(a) order the defendant to divest himself of any interest in a specified enterprise;

(b) impose reasonable restrictions upon the future activities or investments of the defendant, including prohibiting the defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of section 460.20 of the penal law;

(c) order the dissolution of any enterprise he controls or the reorganization of any enterprise he controls or of which he participates in the control;

(d) order the suspension or revocation of a license, permit or prior approval granted by any agency of the state or any political subdivision thereof to the defendant or to any enterprise controlled by him or in whose control he participates, provided however, that when the court orders such license, permit or approval revoked or suspended for a period of more than two years, the court shall set a period of time within two years of the date of such revocation or suspension after which the defendant or enterprise may petition the court to permit the defendant or enterprise to request restoration or renewal of such license, permit or approval, by the agency or board empowered to grant it, after notice to and hearing of the party who brought the action in which the revocation or suspension was ordered;

(e) order the revocation of the certificate of incorporation of a corporation organized under the laws of the state in which the defendant

has a controlling interest or the revocation of authorization for a foreign corporation in which the defendant has a controlling interest to conduct business within the state upon a finding that the board of directors or a high managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in activity made unlawful by section 460.20 of the penal law and that such action is necessary for the prevention of future criminal activity made unlawful by section 460.20 of the penal law.

2. The attorney general, the deputy attorney general in charge of the statewide organized crime task force, or any district attorney may institute civil proceedings in the supreme court under this section. Any action brought under this article shall constitute a special proceeding. In any action brought under this article, the supreme court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination, the supreme court may, at any time, enter such injunctions, prohibitions, or restraining orders or take such actions, including the acceptance of satisfactory performance bonds, ordering of disclosure under article thirty-one of this chapter, or other action as the court may deem proper.

§ 1354. Joinder of a party. A person or enterprise not convicted of the crime of enterprise corruption may be made a party to a civil action under this article, whenever joinder of such person or enterprise is necessary pursuant to section 1001 of this chapter.

§ 1355. Civil actions notice. Within fifteen days of commencing a civil proceeding pursuant to this article, the prosecutor bringing such action must notify those district attorneys who were affected district attorneys within the meaning of section 460.60 of the penal law in the prior criminal proceeding.

ARTICLE 14

CONTRIBUTION

Section 1401. Claim for contribution.

1402. Amount of contribution.

1403. How contribution claimed.

1404. Rights of persons entitled to damages not affected; Rights of indemnity or subrogation preserved.

§ 1401. Claim for contribution. Except as provided in sections 15-108 and 18-201 of the general obligations law, sections eleven and twenty-nine of the workers' compensation law, or the workers' compensation law of any other state or the federal government, two or more persons who are subject to liability for damages for the same personal injury, injury to property or wrongful death, may claim contribution among them whether or not an action has been brought or a judgment has been rendered against the person from whom contribution is sought.

§ 1402. Amount of contribution. The amount of contribution to which a person is entitled shall be the excess paid by him over and above his equitable share of the judgment recovered by the injured party; but no person shall be required to contribute an amount greater than his equitable share. The equitable shares shall be determined in accordance with the relative culpability of each person liable for contribution.

§ 1403. How contribution claimed. A cause of action for contribution may be asserted in a separate action or by cross-claim, counterclaim or third-party claim in a pending action.

§ 1404. Rights of persons entitled to damages not affected; Rights of indemnity or subrogation preserved. (a) Nothing contained in this article shall impair the rights of any person entitled to damages under existing law.

(b) Nothing contained in this article shall impair any right of indemnity or subrogation under existing law.

ARTICLE 14-A

**DAMAGE ACTIONS: EFFECT OF CONTRIBUTORY
NEGLIGENCE AND ASSUMPTION OF RISK**

- 1411. Damages recoverable when contributory negligence or assumption of risk is established.
- 1412. Burden of pleading; burden of proof.
- 1413. Applicability.

§ 1411. Damages recoverable when contributory negligence or assumption of risk is established. (a) Except as provided in subsection (b) of this section, in any action to recover damages for personal injury, injury to property, or wrongful death, the culpable conduct attributable to the claimant or to the decedent, including contributory negligence or assumption of risk, shall not bar recovery. The amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to the claimant or decedent bears to the culpable conduct which caused the damages.

(b) In any action to recover damages for personal injury subject to article fifty-one of the insurance law, the culpable conduct attributable to the claimant shall bar recovery if the culpable conduct attributable to the claimant is greater than the culpable conduct of the person against whom recovery is sought or is greater than the combined culpable conduct of the persons against whom recovery is sought.

§ 1412. Burden of pleading; burden of proof. Culpable conduct claimed in diminution of damages, in accordance with section fourteen hundred eleven, shall be an affirmative defense to be pleaded and proved by the party asserting the defense.

§ 1413. Applicability. This article shall apply to all causes of action accruing on or after September first, nineteen hundred seventy-five.

ARTICLE 15

ACTIONS AGAINST PERSONS JOINTLY LIABLE

1501. Actions against persons jointly liable; service of summons; judgment.

1502. Provisional remedies and defenses in subsequent action against co-obligor.

§ 1501. Actions against persons jointly liable; service of summons; judgment. Where less than all of the named defendants in an action based upon a joint obligation, contract or liability are served with the summons, the plaintiff may proceed against the defendants served, unless the court otherwise directs, and if the judgment is for the plaintiff it may be taken against all the defendants.

§ 1502. Provisional remedies and defenses in subsequent action against co-obligor. A subsequent action against a co-obligor who was not summoned in the original action must be maintained in order to procure a judgment enforceable against his individually held property for the sum remaining unpaid upon the original judgment, and such action shall be regarded as based upon the same obligation, contract or liability as the original judgment for the purpose of obtaining any provisional remedy. The complaint in the subsequent action shall be verified. The defendant in the subsequent action may raise any defenses or counterclaims that he might have raised in the original action if the summons had been served on him when it was first served on a co-obligor, and may raise objections to the original judgment, and defenses or counterclaims that have arisen since it was entered.

ARTICLE 16

LIMITED LIABILITY OF PERSONS JOINTLY LIABLE

1600. Definitions.

1601. Limited liability of persons jointly liable.

1602. Application.

1603. Burdens of proof.

§ 1600. Definitions. As used in this article the term "non-economic loss" includes but is not limited to pain and suffering, mental anguish, loss of consortium or other damages for non-economic loss.

§ 1601. Limited liability of persons jointly liable. 1. Notwithstanding any other provision of law, when a verdict or decision in an action or claim for personal injury is determined in favor of a claimant in an action involving two or more tortfeasors jointly liable or in a claim against the state and the liability of a defendant is found to be fifty percent or less of the total liability assigned to all persons liable, the liability of such defendant to the claimant for non-economic loss shall not exceed that defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss; provided, however that the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence he or she was unable to obtain jurisdiction over such person in said action (or in a claim against the state, in a court of this state); and further provided that the culpable conduct of any person shall not be considered in determining any equitable share herein to the extent that action against such person is barred because the claimant has not sustained a "grave injury" as defined in section eleven of the workers' compensation law.

2. Nothing in this section shall be construed to affect or impair any right of a tortfeasor under section 15-108 of the general obligations law.

§ 1602. Application. The limitations set forth in this article shall:

1. apply to any claim for contribution or indemnification, but shall

not include:

(a) a claim for indemnification if, prior to the accident or occurrence on which the claim is based, the claimant and the tortfeasor had entered into a written contract in which the tortfeasor had expressly agreed to indemnify the claimant for the type of loss suffered; or

(b) a claim for indemnification by a public employee, including indemnification pursuant to section fifty-k of the general municipal law or section seventeen or eighteen of the public officers law.

2. not be construed to impair, alter, limit, modify, enlarge, abrogate or restrict (i) the limitations set forth in section twenty-a of the court of claims act; (ii) any immunity or right of indemnification available to or conferred upon any defendant for any negligent or wrongful act or omission; (iii) any right on the part of any defendant to plead and prove an affirmative defense as to culpable conduct attributable to a claimant or decedent which is claimed by such defendant in the diminution of damages in any action; and (iv) any liability arising by reason of a non-delegable duty or by reason of the doctrine of respondeat superior.

3. not apply to administrative proceedings.

4. not apply to claims under the workers' compensation law or to a claim against a defendant where claimant has sustained a "grave injury" as defined in section eleven of the workers' compensation law to the extent of the equitable share of any person against whom the claimant is barred from asserting a cause of action because of the applicability of the workers' compensation law provided, however, that nothing in this subdivision shall be construed to create, impair, alter, limit, modify, enlarge, abrogate, or restrict any theory of liability upon which any person may be held liable.

5. not apply to actions requiring proof of intent.

6. not apply to any person held liable by reason of his use, operation, or ownership of a motor vehicle or motorcycle, as those terms

are defined respectively in sections three hundred eleven and one hundred twenty-five of the vehicle and traffic law.

7. not apply to any person held liable for causing claimant's injury by having acted with reckless disregard for the safety of others.

8. not apply to any person held liable by reason of the applicability of article ten of the labor law.

9. not apply to any person held liable for causing claimant's injury by having unlawfully released into the environment a substance hazardous to public health, safety or the environment, a substance acutely hazardous to public health, safety or the environment or a hazardous waste, as defined in articles thirty-seven and twenty-seven of the environmental conservation law and in violation of article seventy-one of such law; provided, however, that nothing herein shall require that the violation of said article by such person has resulted in a criminal conviction or administrative adjudication of liability.

10. not apply to any person held liable in a product liability action where the manufacturer of the product is not a party to the action and the claimant establishes by a preponderance of the evidence that jurisdiction over the manufacturer could not with due diligence be obtained and that if the manufacturer were a party to the action, liability for claimant's injury would have been imposed upon said manufacturer by reason of the doctrine of strict liability, to the extent of the equitable share of such manufacturer.

11. not apply to any parties found to have acted knowingly or intentionally, and in concert, to cause the acts or failures upon which liability is based; provided, however, that nothing in this subdivision shall be construed to create, impair, alter, limit, modify, enlarge, abrogate, or restrict any theory of liability upon which said parties may be held liable to the claimant.

12. in conjunction with the other provisions of this article not be construed to create or enlarge actions for contribution or indemnity

barred because of the applicability of the workers' compensation law of this state, any other state or the federal government, or section 18-201 of the general obligations law.

13. not apply to any person responsible for the disposal or presence of hazardous or dangerous materials that is the result of the unlawful manufacture of methamphetamine, when such person has been convicted of section 220.73, 220.74, 220.75 or 220.76 of the penal law.

14. not apply to any party held liable for claims arising from the failure to obey or enforce (a) an order of protection or a temporary order of protection issued or modified pursuant to article four, five, six, seven, eight or ten of the family court act, section 530.12 of the criminal procedure law, section two hundred forty or two hundred fifty-two of the domestic relations law, or (b) an order of protection or temporary order of protection issued or modified by a court of competent jurisdiction in another state, territorial or tribal jurisdiction.

§ 1603. Burdens of proof. In any action or claim for damages for personal injury a party asserting that the limitations on liability set forth in this article do not apply shall allege and prove by a preponderance of the evidence that one or more of the exemptions set forth in subdivision one of section sixteen hundred one or section sixteen hundred two applies. A party asserting limited liability pursuant to this article shall have the burden of proving by a preponderance of the evidence its equitable share of the total liability.

ARTICLE 20

MISTAKES, DEFECTS, IRREGULARITIES AND EXTENSIONS OF TIME

2001. Mistakes, omissions, defects and irregularities.

2002. Error in ruling of court.

2003. Irregularity in judicial sale.

2004. Extensions of time generally.

2005. Excusable delay or default.

§ 2001. Mistakes, omissions, defects and irregularities. At any stage of an action, including the filing of a summons with notice, summons and complaint or petition to commence an action, the court may permit a mistake, omission, defect or irregularity, including the failure to purchase or acquire an index number or other mistake in the filing process, to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded, provided that any applicable fees shall be paid.

§ 2002. Error in ruling of court. An error in a ruling of the court shall be disregarded if a substantial right of a party is not prejudiced.

§ 2003. Irregularity in judicial sale. At any time within one year after a sale made pursuant to a judgment or order, but not thereafter, the court, upon such terms as may be just, may set the sale aside for a failure to comply with the requirements of the civil practice law and rules as to the notice, time or manner of such sale, if a substantial right of a party was prejudiced by the defect. This section does not apply to judicial sales made pursuant to article 9 of the uniform commercial code.

§ 2004. Extensions of time generally. Except where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed.

§ 2005. Excusable delay or default. Upon an application satisfying the

requirements of subdivision (d) of section 3012 or subdivision (a) of rule 5015, the court shall not, as a matter of law, be precluded from exercising its discretion in the interests of justice to excuse delay or default resulting from law office failure.

ARTICLE 21

PAPERS

- 2101. Form of papers.
 - (a) Quality, size and legibility.
 - (b) Language.
 - (c) Caption.
 - (d) Indorsement by attorney.
 - (e) Copies.
 - (f) Defects in form; waiver.
 - (g) Service by electronic means.
- 2102. Filing of papers.
- 2103. Service of papers.
 - (a) Who can serve.
 - (b) Upon an attorney.
 - (c) Upon a party.
 - (d) Filing.
 - (e) Parties to be served.
 - (f) Definitions.
- 2103-a. Confidentiality of addresses in civil proceedings.
- 2104. Stipulations.
- 2105. Certification by attorney.
- 2106. Affirmation of truth of statement by attorney, physician, osteopath or dentist.

Rule 2101. Form of papers. (a) Quality, size and legibility. Each paper served or filed shall be durable, white and, except for summonses, subpoenas, notices of appearance, notes of issue, orders of protection, temporary orders of protection and exhibits, shall be eleven by eight and one-half inches in size. The writing shall be legible and in black ink. Beneath each signature shall be printed the name signed. The

letters in the summons shall be in clear type of no less than twelve-point in size. Each other printed or typed paper served or filed, except an exhibit, shall be in clear type of no less than ten-point in size.

(b) Language. Each paper served or filed shall be in the English language which, where practicable, shall be of ordinary usage. Where an affidavit or exhibit annexed to a paper served or filed is in a foreign language, it shall be accompanied by an English translation and an affidavit by the translator stating his qualifications and that the translation is accurate.

(c) Caption. Each paper served or filed shall begin with a caption setting forth the name of the court, the venue, the title of the action, the nature of the paper and the index number of the action if one has been assigned. In a summons, a complaint or a judgment the title shall include the names of all parties, but in all other papers it shall be sufficient to state the name of the first named party on each side with an appropriate indication of any omissions.

(d) Indorsement by attorney. Each paper served or filed shall be indorsed with the name, address and telephone number of the attorney for the party serving or filing the paper, or if the party does not appear by attorney, with the name, address and telephone number of the party.

(e) Copies. Except where otherwise specifically prescribed, copies, rather than originals, of all papers, including orders, affidavits and exhibits may be served or filed. Where it is required that the original be served or filed and the original is lost or withheld, the court may authorize a copy to be served or filed.

(f) Defects in form; waiver. A defect in the form of a paper, if a substantial right of a party is not prejudiced, shall be disregarded by the court, and leave to correct shall be freely given. The party on whom a paper is served shall be deemed to have waived objection to any defect in form unless, within fifteen days after the receipt thereof, the party on whom the paper is served returns the paper to the party serving it with a statement of particular objections.

(g) Service by electronic means. Each paper served or filed by electronic means, as defined in subdivision (f) of rule twenty-one hundred three, shall be capable of being reproduced by the receiver so as to comply with the provisions of subdivisions (a) through (d) of this

rule.

Rule 2102. Filing of papers. (a) Except where otherwise prescribed by law or order of court, papers required to be filed shall be filed with the clerk of the court in which the action is triable. In an action or proceeding in supreme or county court and in a proceeding not brought in a court, papers required to be filed shall be filed with the clerk of the county in which the proceeding is brought.

(b) A paper filed in accordance with the rules of the chief administrator or any local rule or practice established by the court shall be deemed filed. Where such rules or practice allow for the filing of a paper other than at the office of the clerk of the court, such paper shall be transmitted to the clerk of the court.

(c) A clerk shall not refuse to accept for filing any paper presented for that purpose except where specifically directed to do so by statute or rules promulgated by the chief administrator of the courts, or order of the court.

Rule 2103. Service of papers. (a) Who can serve. Except where otherwise prescribed by law or order of court, papers may be served by any person not a party of the age of eighteen years or over.

(b) Upon an attorney. Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served upon the party's attorney. Where the same attorney appears for two or more parties, only one copy need be served upon the attorney. Such service upon an attorney shall be made:

1. by delivering the paper to the attorney personally; or

2. by mailing the paper to the attorney at the address designated by that attorney for that purpose or, if none is designated, at the attorney's last known address; service by mail shall be complete upon mailing; where a period of time prescribed by law is measured from the service of a paper and service is by mail, five days shall be added to the prescribed period if the mailing is made within the state and six

days if the mailing is made from outside the state but within the geographic boundaries of the United States; or

3. if the attorney's office is open, by leaving the paper with a person in charge, or if no person is in charge, by leaving it in a conspicuous place; or if the attorney's office is not open, by depositing the paper, enclosed in a sealed wrapper directed to the attorney, in the attorney's office letter drop or box; or

4. by leaving it at the attorney's residence within the state with a person of suitable age and discretion. Service upon an attorney shall not be made at the attorney's residence unless service at the attorney's office cannot be made; or

5. by transmitting the paper to the attorney by facsimile transmission, provided that a facsimile telephone number is designated by the attorney for that purpose. Service by facsimile transmission shall be complete upon the receipt by the sender of a signal from the equipment of the attorney served indicating that the transmission was received, and the mailing of a copy of the paper to that attorney. The designation of a facsimile telephone number in the address block subscribed on a paper served or filed in the course of an action or proceeding shall constitute consent to service by facsimile transmission in accordance with this subdivision. An attorney may change or rescind a facsimile telephone number by serving a notice on the other parties; or

6. by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose or, if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by law is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. "Overnight delivery service" means any delivery service which regularly accepts items for

overnight delivery to any address in the state; or

7. by transmitting the paper to the attorney by electronic means where and in the manner authorized by the chief administrator of the courts by rule and, unless such rule shall otherwise provide, such transmission shall be upon the party's written consent. The subject matter heading for each paper sent by electronic means must indicate that the matter being transmitted electronically is related to a court proceeding.

(c) Upon a party. If a party has not appeared by an attorney or the party's attorney cannot be served, service shall be upon the party by a method specified in paragraph one, two, four, five or six of subdivision (b) of this rule.

(d) Filing. If a paper cannot be served by any of the methods specified in subdivisions (b) and (c), service may be made by filing the paper as if it were a paper required to be filed.

(e) Parties to be served. Each paper served on any party shall be served on every other party who has appeared, except as otherwise may be provided by court order or as provided in section 3012 or in subdivision (f) of section 3215. Upon demand by a party, the plaintiff shall supply that party with a list of those who have appeared and the names and addresses of their attorneys.

(f) Definitions. For the purposes of this rule:

1. "Mailing" means the deposit of a paper enclosed in a first class postpaid wrapper, addressed to the address designated by a person for that purpose or, if none is designated, at that person's last known address, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the United States;

2. "Electronic means" means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression;

3. "Facsimile transmission" means any method of transmission of

documents to a facsimile machine at a remote location which can automatically produce a tangible copy of such documents.

Rule 2103-a. Confidentiality of addresses in civil proceedings. (a) Notwithstanding any other provision of law, in any civil proceeding, whether or not an order of protection or temporary order of protection is sought or has been sought in the past, the court may, upon its own motion or upon the motion of any party, authorize any party to keep his or her residential and business addresses and telephone numbers confidential from any party in any pleadings or other papers submitted to the court, where the court makes specific findings on the record supporting a conclusion that disclosure of such addresses or telephone numbers would pose an unreasonable risk to the health or safety of a party. Pending such a finding, any such addresses or telephone numbers of the party seeking confidentiality shall be safeguarded and sealed in order to prevent its inadvertent or unauthorized use or disclosure.

(b) Notwithstanding any other provision of law, if a party has resided or resides in a residential program for victims of domestic violence as defined in section four hundred fifty-nine-a of the social services law, the present address of such party and the address of the residential program for victims of domestic violence shall not be revealed by the court or any court personnel who may have access to such information.

(c) Upon such authorization, the court shall designate the clerk of the court or such other disinterested person as it deems appropriate, with consent of such disinterested person, as the agent for service of process for the party whose residential and business addresses or telephone numbers are to remain confidential and shall notify the parties of such designation and the address of the agent in writing. The clerk or disinterested person designated by the court shall, when served with process on behalf of the party whose information is to remain confidential, promptly notify such party whose information is to remain confidential and forward such process to him or her in a manner calculated to be timely received.

(d) In any case in which such confidentiality authorization is made, the party whose information is to remain confidential shall inform the clerk of the court or disinterested person designated by the court of

any change in address for purposes of receipt of service of process or any papers.

Rule 2104. Stipulations. An agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney or reduced to the form of an order and entered. With respect to stipulations of settlement and notwithstanding the form of the stipulation of settlement, the terms of such stipulation shall be filed by the defendant with the county clerk.

§ 2105. Certification by attorney. Where a certified copy of a paper is required by law, an attorney admitted to practice in the courts of the state may certify that it has been compared by him with the original and found to be a true and complete copy. Such a certificate, when subscribed by such attorney, has the same effect as if made by a clerk.

Rule 2106. Affirmation of truth of statement. (a) The statement of any person wherever made, subscribed and affirmed by that person to be true under the penalties of perjury, other than in a deposition, or an oath of office, or an oath required to be taken before a specified person other than a notary, may be used in an action in New York in lieu of and with the same force and effect as an affidavit, a certificate, a response to a notice to admit, an answer to interrogatories, a verification of a pleading, a bill of particulars and any other sworn statement. Such affirmation shall be in substantially the following form:

I affirm this ____ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters alleged on information and belief and as to those matters I believe it to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature)

(b) Nothing in this rule shall be construed to eliminate any requirement under the domestic relations law that matrimonial agreements must be acknowledged in the form of deed.

ARTICLE 21-A

FILING OF PAPERS IN THE COURTS BY FACSIMILE TRANSMISSION AND BY ELECTRONIC MEANS

Section 2110. Definitions.

2111. Filing of papers in the trial courts by facsimile transmission and by electronic means.

2112. Filing of papers in the appellate division by electronic means.

§ 2110. Definitions. For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule 2103 of this chapter.

§ 2111. Filing of papers in the trial courts by facsimile transmission and by electronic means. (a) Notwithstanding any other provision of law, the chief administrator of the courts, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of facsimile transmission only in the court of claims and electronic means in the courts of New York having civil jurisdiction for: (i) the commencement of civil actions and proceedings, and (ii) the filing and service of papers in pending actions and proceedings. Provided, however, the chief administrator shall consult with the county clerk of a county outside the city of New York before the use of electronic means is to be authorized hereunder in the supreme court or the county court of such county, afford him or her the opportunity to submit comments with respect thereto, consider any such comments and obtain the agreement thereto of such county clerk.

(b) 1. Participation in this program may be required or may be voluntary as provided by the chief administrator, except that it shall

be strictly voluntary as to any party to an action or proceeding who is not represented by counsel.

2. (A) Where participation in this program is to be voluntary:

(i) commencement of an action or proceeding by facsimile transmission or electronic means shall not require the consent of any other party; nor shall a party's failure to consent to participation in an action or proceeding bar any other party to the action or proceeding from filing and serving papers by facsimile transmission or electronic means upon the court or any other party to such action or proceeding who has consented to participation;

(ii) all parties shall be notified clearly, in plain language, about their options to participate in filing by electronic means;

(iii) no party to an action or proceeding shall be compelled, directly or indirectly, to participate;

(iv) where a party is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program.

(B) Where participation in this program is to be required:

(i) such requirement shall not be effective in a court in a county unless, in addition to consulting with the county clerk of such county and obtaining his or her agreement thereto if the court is a supreme court or county court, the chief administrator shall:

(1) first consult with members of the organized bar including but not limited to city, state, county, and women's bar associations and, where they practice in such court in such county, with (a) institutional service providers, (b) not-for-profit legal service providers, (c) attorneys assigned pursuant to article eighteen-B of the county law, (d) unaffiliated attorneys who regularly appear in proceedings that are or have been affected by a program of electronic filing in such county, and (e) any other persons as deemed to be appropriate by the chief administrator;

(2) afford all those with whom he or she consults pursuant to item one of this clause the opportunity to submit comments with respect to the program, which comments, including but not limited to comments related to unrepresented litigants, he or she shall consider and shall post for public review on the office of court administration's website; and

(ii) as provided in paragraph three of this subdivision, no party who is not represented by counsel nor any counsel in an affected case who opts out of participation in the program shall be required to participate therein.

3. Where the chief administrator requires participation in electronic filing as provided in paragraph one of this subdivision, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the clerk of the court where the action is pending. Such form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

(A) where the attorney certifies in good faith that he or she lacks the computer hardware and/or connection to the internet and/or scanner or other device by which documents may be converted to an electronic format; or

(B) where the attorney certifies in good faith that he or she lacks the requisite knowledge in the operation of such computers and/or scanners necessary to participate. For the purposes of this subparagraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney.

Notwithstanding any other provision of this subdivision, where a party is not represented by counsel, the clerk shall explain such party's options for electronic filing in plain language and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request after said party has been presented with sufficient information in plain language concerning the program; and a party not represented by counsel who has chosen to participate in the program

shall be afforded the opportunity to opt out of the program for any reason via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending; and a court may exempt any attorney from being required to participate in the program upon application for such exemption, showing good cause therefor.

(c) For purposes of this section, "the filing and service of papers in pending actions and proceedings" shall include the filing and service of a notice of appeal pursuant to section fifty-five hundred fifteen of this chapter.

§ 2112. Filing of papers in the appellate division by electronic means. Notwithstanding any other provision of law, and except as otherwise provided in subdivision (c) of section twenty-one hundred eleven of this article, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for: (i) appeals to such court from the judgment or order of a court of original instance or from that of another appellate court, (ii) making a motion for permission to appeal to such court, (iii) commencement of any other proceeding that may be brought in such court, and (iv) the filing and service of papers in pending actions and proceedings. Provided however, such rules shall not require an unrepresented party or any attorney who furnishes a certificate specified in subparagraph (A) or (B) of paragraph three of subdivision (b) of section twenty-one hundred eleven of this article to take or perfect an appeal by electronic means. Provided further, however, before promulgating any such rules, the appellate division in each judicial department shall consult with the chief administrator of the courts and shall provide an opportunity for review and comment by all those who are or would be affected including city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by promulgation of rules concerning the use of the electronic filing program in the appellate division of any judicial department; and any

other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by any appellate division. To the extent practicable, rules promulgated by the appellate division in each judicial department pursuant to this section shall be uniform and may apply to any appellate term established by an appellate division.

ARTICLE 22

STAY, MOTIONS, ORDERS AND MANDATES

- 2201. Stay.
- 2211. Application for order; when motion made.
- 2212. Where motion made, in supreme court action.
 - (a) Motions on notice.
 - (b) Ex parte motions.
 - (c) Motions before a county court or judge.
 - (d) Rules of the chief administrator of the courts.
- 2213. Where motion made, in county court action.
 - (a) Ex parte motions.
 - (b) Motions that may be made before the supreme court or a justice thereof.
- 2214. Motion papers; service; time.
 - (a) Notice of motion.
 - (b) Time for service of notice and affidavits.
 - (c) Furnishing papers to the court.
 - (d) Order to show cause.
- 2215. Relief demanded by other than moving party.
- 2217. Prior motion; ex parte motion; transfer of motion.
 - (a) Prior motion.
 - (b) Affidavit on ex parte motion.
 - (c) Transfer of motion.
 - (d) Rules of the chief administrator of the courts.
- 2218. Trial of issue raised on motion.
- 2219. Time and form of order.
 - (a) Time and form of order determining motion, generally.
 - (b) Signature on appellate court order.

2220. Entry and filing of order; service.

(a) Entry and filing.

(b) Service.

2221. Motion affecting prior order.

(b) Rules of the chief administrator of the courts.

2222. Docketing order as judgment.

2223. Duties of officer receiving mandate.

§ 2201. Stay. Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.

§ 2211. Application for order; when motion made. A motion is an application for an order. A motion on notice is made when a notice of the motion or an order to show cause is served.

§ 2212. Where motion made, in supreme court action. (a) Motions on notice. A motion on notice in an action in the supreme court shall be noticed to be heard in the judicial district where the action is triable or in a county adjoining the county where the action is triable. Unless statute, civil practice rule or local court rule provides otherwise, the motion shall be noticed to be heard before a motion term or, upon order to show cause granted by a justice, before that justice out of court.

(b) Ex parte motions. A motion in an action in the supreme court that may be made without notice may be made at a motion term or to a justice out of court in any county in the state.

(c) Motions before a county court or judge. The chief administrator of the courts may by rule provide for the hearing of motions on notice or ex parte motions in an action or proceeding in the supreme court by a term of the county court or a county judge in the county in which venue is laid during periods in which no supreme court trial or special term is in session in the county.

(d) Rules of the chief administrator of the courts. The chief administrator may by rule exclude motions within a department, district

or county from the operation of subdivisions (a),(b) and (c) of this section, provided, however, that the practice in counties within the city of New York shall be uniform.

§ 2213. Where motion made, in county court action. (a) Ex parte motions. A motion in an action in a county court that may be made without notice may be made before a motion term of the county court or before the county judge out of court in any county in the state.

(b) Motions that may be made before the supreme court or a justice thereof. When no motion term is being held and there is no county judge available within the county, any motion in an action in a county court, whether or not on notice, may be made or noticed to be heard before a motion term of the supreme court or, upon order to show cause granted by a justice of the supreme court, before such justice out of court, in the judicial district where the action is triable or in a county adjoining the county where the action is triable, except a motion under article forty-four or a motion for an order that would dispose of the action, in whole or in part, in any manner other than by settlement under section 1207.

(c) The chief administrator of the courts may by rule exclude motions from the operation of this section within a department, district or county.

Rule 2214. Motion papers; service; time. (a) Notice of motion. A notice of motion shall specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded and the grounds therefor. Relief in the alternative or of several different types may be demanded.

(b) Time for service of notice and affidavits. A notice of motion and supporting affidavits shall be served at least eight days before the time at which the motion is noticed to be heard. Answering affidavits shall be served at least two days before such time. Answering affidavits and any notice of cross-motion, with supporting papers, if any, shall be served at least seven days before such time if a notice of motion served at least sixteen days before such time so demands; whereupon any reply

or responding affidavits shall be served at least one day before such time.

(c) Furnishing papers to the court. Each party shall furnish to the court all papers served by that party. The moving party shall furnish all other papers not already in the possession of the court necessary to the consideration of the questions involved. Except when the rules of the court provide otherwise, in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system. Where such papers are in the possession of an adverse party, they shall be produced by that party at the hearing on notice served with the motion papers. Only papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct.

(d) Order to show cause. The court in a proper case may grant an order to show cause, to be served in lieu of a notice of motion, at a time and in a manner specified therein. An order to show cause against a state body or officers must be served in addition to service upon the defendant or respondent state body or officers upon the attorney general by delivery to an assistant attorney general at an office of the attorney general in the county in which venue of the action is designated or if there is no office of the attorney general in such county, at the office of the attorney general nearest such county.

Rule 2215. Relief demanded by other than moving party. At least three days prior to the time at which the motion is noticed to be heard, or seven days prior to such time if demand is properly made pursuant to subdivision (b) of rule 2214, a party may serve upon the moving party a notice of cross-motion demanding relief, with or without supporting papers; provided, however, that:

(a) if such notice and any supporting papers are served by mailing, as provided in paragraph two of subdivision (b) of rule 2103, they shall be served three days earlier than as prescribed in this rule; and

(b) if served by overnight delivery, as provided in paragraph six of subdivision (b) of rule 2103, they shall be served one day earlier than

as prescribed in this rule. Relief in the alternative or of several different types may be demanded; relief need not be responsive to that demanded by the moving party.

Rule 2217. Prior motion; ex parte motion; transfer of motion.

(a) Prior motion. Any motion may be referred to a judge who decided a prior motion in the action.

(b) Affidavit on ex parte motion. An ex parte motion shall be accompanied by an affidavit stating the result of any prior motion for similar relief and specifying the new facts, if any, that were not previously shown.

(c) Transfer of motion. If a motion is made to a judge who is or will be for any reason unable to hear it, it may be transferred by order of such judge or by written stipulation of the parties to any other judge to whom it might originally have been made.

(d) Rules of the chief administrator of the courts. The chief administrator may by rule exclude motions within a department, district or county from the operation of subdivisions (a) and (c) of this rule.

§ 2218. Trial of issue raised on motion. The court may order that an issue of fact raised on a motion shall be separately tried by the court or a referee. If the issue is triable of right by jury, the court shall give the parties an opportunity to demand a jury trial of such issue. Failure to make such demand within the time limited by the court, or, if no such time is limited, before trial begins, shall be deemed a waiver of the right to trial by jury. An order under this rule shall specify the issue to be tried.

Rule 2219. Time and form of order. (a) Time and form of order determining motion, generally. An order determining a motion relating to a provisional remedy shall be made within twenty days, and an order determining any other motion shall be made within sixty days, after the motion is submitted for decision. The order shall be in writing and shall be the same in form whether made by a court or a judge out of

court. An order determining a motion made upon supporting papers shall be signed with the judge's signature or initials by the judge who made it, state the court of which he or she is a judge and the place and date of the signature, recite the papers used on the motion, and give the determination or direction in such detail as the judge deems proper. Except in a town or village court or where otherwise provided by law, upon the request of any party, an order or ruling made by a judge, whether upon written or oral application or sua sponte, shall be reduced to writing or otherwise recorded.

(b) Signature on appellate court order. An order of an appellate court shall be signed by a judge thereof except that, upon written authorization by the presiding judge, it may be signed by the clerk of the court or, in his absence or disability, by a deputy clerk.

Rule 2220. Entry and filing of order; service. (a) Entry and filing. An order determining a motion shall be entered and filed in the office of the clerk of the court where the action is triable, and all papers used on the motion and any opinion or memorandum in writing shall be filed with that clerk unless the order dispenses with such filing. When a statute or civil practice rule requires such filing and entry in a county other than that in which the order was made, the party prevailing on the motion shall file the order and the papers used on the motion with the proper clerk after receiving them. If a party fails to file any papers required to be filed under this subdivision, the order may be vacated as irregular, with costs.

(b) Service. Service of an order shall be made by serving a copy of the order.

Rule 2221. Motion affecting prior order. (a) A motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it, except that:

1. if the order was made upon a default such motion may be made, on

notice, to any judge of the court; and

2. if the order was made without notice such motion may be made, without notice, to the judge who signed it, or, on notice, to any other judge of the court.

(b) Rules of the chief administrator of the courts. The chief administrator may by rule exclude motions within a department, district or county from the operation of subdivision (a) of this rule.

(c) A motion made to other than a proper judge under this rule shall be transferred to the proper judge.

(d) A motion for leave to reargue:

1. shall be identified specifically as such;

2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and

3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. This rule shall not apply to motions to reargue a decision made by the appellate division or the court of appeals.

(e) A motion for leave to renew:

1. shall be identified specifically as such;

2. shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and

3. shall contain reasonable justification for the failure to present such facts on the prior motion.

(f) A combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought. The court, in determining a combined motion for leave to reargue and leave to renew, shall decide each part of the motion as if it were separately made. If a motion for leave to reargue or leave to renew is

granted, the court may adhere to the determination on the original motion or may alter that determination.

Rule 2222. Docketing order as judgment. At the request of any party the clerk shall docket as a judgment an order directing the payment of money, including motion costs, or affecting the title to, or the possession, use or enjoyment of, real property, provided, however, that where the clerk maintains a section and block index, an order affecting the title to, or the possession, use or enjoyment of, real property may be entered in such index in lieu thereof.

Rule 2223. Duties of officer receiving mandate. An officer to whom a mandate is delivered to be executed shall:

1. execute the mandate according to its command;
2. give without compensation to the person delivering the mandate, if requested, a written receipt describing the mandate and specifying the day and hour of receiving it;
3. deliver without compensation to the person served, if requested, a copy of the mandate; and
4. return the mandate together with his return thereon, by delivering or mailing it to the clerk's office.

ARTICLE 23

SUBPOENAS, OATHS AND AFFIRMATIONS

- 2301. Scope of subpoena.
- 2302. Authority to issue.
 - (a) Without court order.
 - (b) Issuance by court.
- 2303. Service of subpoena; payment of fees in advance.
- 2303-a. Service of a trial subpoena.

- 2304. Motion to quash, fix conditions or modify.
- 2305. Attendance required pursuant to subpoena; possession of books, records, documents or papers.
 - (a) When person required to attend.
 - (b) Subpoena duces tecum; attendance by substitute.
 - (c) Inspection, examination and audit of records.
- 2306. Hospital records; medical records of department or bureau of a municipal corporation or of the state.
 - (a) Transcript or reproduction.
 - (b) Delivery to clerk.
- 2307. Books, papers and other things of a library, department or bureau of a municipal corporation or of the state.
- 2308. Disobedience of subpoena.
 - (a) Judicial.
 - (b) Non-judicial.
 - (c) Review of proceedings.
- 2309. Oaths and affirmations.
 - (a) Persons authorized to administer.
 - (b) Form.
 - (c) Oaths and affirmations taken without the state.
 - (d) Form of certificate of oath or affirmation administered by officer of the armed forces of the United States.

§ 2301. Scope of subpoena. A subpoena requires the attendance of a person to give testimony. A subpoena duces tecum requires production of books, papers and other things. A child support subpoena is a subpoena issued pursuant to section one hundred eleven-p of the social services law by the office of temporary and disability assistance or a local social services district, or its authorized representative, or another state's child support enforcement agency governed by title IV-D of the social security act. A trial subpoena duces tecum shall state on its face that all papers or other items delivered to the court pursuant to such subpoena shall be accompanied by a copy of such subpoena.

§ 2302. Authority to issue. (a) Without court order. Subpoenas may be issued without a court order by the clerk of the court, a judge where there is no clerk, the attorney general, an attorney of record for a party to an action, an administrative proceeding or an arbitration, an arbitrator, a referee, or any member of a board, commission or committee authorized by law to hear, try or determine a matter or to do any other act, in an official capacity, in relation to which proof may be taken or the attendance of a person as a witness may be required; provided, however, that a subpoena to compel production of a patient's clinical record maintained pursuant to the provisions of section 33.13 of the mental hygiene law shall be accompanied by a court order. A child support subpoena may be issued by the department, or the child support enforcement unit coordinator or support collection unit supervisor of a social services district, or his or her designee, or another state's child support enforcement agency governed by title IV-D of the social security act.

(b) Issuance by court. A subpoena to compel production of an original record or document where a certified transcript or copy is admissible in evidence, or to compel attendance of any person confined in a penitentiary or jail, shall be issued by the court. Unless the court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the person having custody of the record, document or person confined. A subpoena to produce a prisoner so confined shall be issued by a judge to whom a petition for habeas corpus could be made under subdivision (b) of section seven thousand two of this chapter or a judge of the court of claims, if the matter is pending before the court of claims, or a judge of the surrogate's court, if the matter is pending before the surrogate's court, or a judge or support magistrate of the family court, if the matter is pending before the family court, or a judge of the New York city civil court, if the matter is pending before the New York city civil court and it has been removed thereto from the supreme court pursuant to subdivision (d) of section three hundred twenty-five of this chapter. In the absence of an authorization by a patient, a trial subpoena duces tecum for the patient's medical records may only be issued by a court.

§ 2303. Service of subpoena; payment of fees in advance. (a) A subpoena requiring attendance or a subpoena duces tecum shall be served in the same manner as a summons, except that where service of such a subpoena is made pursuant to subdivision two or four of section three hundred eight of this chapter, the filing of proof of service shall not be required and service shall be deemed complete upon the later of the delivering or mailing of the subpoena, if made pursuant to subdivision two of section three hundred eight of this chapter, or upon the later of the affixing or mailing of the subpoena, if made pursuant to subdivision four of section three hundred eight of this chapter. Any person subpoenaed shall be paid or tendered in advance authorized traveling expenses and one day's witness fee. A copy of any subpoena duces tecum served in a pending civil judicial proceeding shall also be served, in the manner set forth in rule twenty-one hundred three of this chapter, on each party who has appeared in the civil judicial proceeding so that it is received by such parties promptly after service on the witness and before the production of books, papers or other things.

(b) A child support subpoena issued pursuant to section one hundred eleven-p of the social services law to public utility companies and corporations, including but not limited to cable television, gas, electric, steam, and telephone companies and corporations, as defined in section two of the public service law, may be served by regular mail, or through an automated process where information sought is maintained in an automated data base. All other child support subpoenas issued pursuant to section one hundred eleven-p of the social services law shall be served in accordance with the provisions of subdivision (a) of this section.

§ 2303-a. Service of a trial subpoena. Where the attendance at trial of a party or person within the party's control can be compelled by a trial subpoena, that subpoena may be served by delivery in accordance with subdivision (b) of rule 2103 to the party's attorney of record.

§ 2304. Motion to quash, fix conditions or modify. A motion to quash, fix conditions or modify a subpoena shall be made promptly in the court

in which the subpoena is returnable. If the subpoena is not returnable in a court, a request to withdraw or modify the subpoena shall first be made to the person who issued it and a motion to quash, fix conditions or modify may thereafter be made in the supreme court; except that such motion with respect to a child support subpoena issued pursuant to section one hundred eleven-p of the social services law shall be made to a judge of the family court or the supreme court. Reasonable conditions may be imposed upon the granting or denial of a motion to quash or modify.

§ 2305. Attendance required pursuant to subpoena; possession of books, records, documents or papers. (a) When person required to attend. A subpoena may provide that the person subpoenaed shall appear on the date stated and any recessed or adjourned date of the trial, hearing or examination. If he is given reasonable notice of such recess or adjournment, no further process shall be required to compel his attendance on the adjourned date. At the end of each day's attendance, the person subpoenaed may demand his fee for the next day on which he is to attend. If the fee is not then paid, he shall be deemed discharged.

(b) Subpoena duces tecum; attendance by substitute. 1. A subpoena duces tecum may be joined with a subpoena to testify at a trial, hearing or examination or may be issued separately.

2. Any person may comply with a subpoena duces tecum for a trial, hearing or examination by having the requisite books, documents or things produced by a person able to identify them and testify respecting their origin, purpose and custody.

(c) Inspection, examination and audit of records. Whenever by statute any department or agency of government, or officer thereof, is authorized to issue a subpoena requiring the production of books, records, documents or papers, the issuing party shall have the right to the possession of such material for a period of time, and on terms and conditions, as may reasonably be required for the inspection, examination or audit of the material. The reasonableness of such possession, time, terms, and conditions shall be determined with consideration for, among other things, (i) the good cause shown by the

issuing party, (ii) the rights and needs of the person subpoenaed, and (iii) the feasibility and appropriateness of making copies of the material. The cost of reproduction and transportation incident thereto shall be borne by the person or party issuing the subpoena unless the court determines otherwise in the interest of justice.

(d) Subpoena duces tecum for a trial; service of subpoena and delivery for records. Where a trial subpoena directs service of the subpoenaed documents to the attorney or self-represented party at the return address set forth in the subpoena, a copy of the subpoena shall be served upon all parties simultaneously and the party receiving such subpoenaed records, in any format, shall deliver a complete copy of such records in the same format to all opposing counsel and self-represented parties where applicable, forthwith.

§ 2306. Hospital records; medical records of department or bureau of a municipal corporation or of the state. (a) Transcript or reproduction. Where a subpoena duces tecum is served upon a hospital, or upon a department or bureau of a municipal corporation or of the state, or an officer thereof, requiring the production of records relating to the condition or treatment of a patient, a transcript or a full-sized legible reproduction, certified as correct by the superintendent or head of the hospital, department or bureau or his assistant, or the officer, may be produced unless otherwise ordered by a court. Such a subpoena shall be served at least three days before the time fixed for the production of the records unless otherwise ordered by a court.

(b) Delivery to clerk. Where a court has designated a clerk to receive records described in subdivision (a), delivery may be made to him at or before the time fixed for their production. The clerk shall give a receipt for the records and notify the person subpoenaed when they are no longer required. The records shall be delivered in a sealed envelope indicating the title of the action, the date fixed for production and the name and address of the attorney appearing on the subpoena. They shall be available for inspection pursuant to the rules or order of the court.

§ 2307. Books, papers and other things of a library, department or bureau of a municipal corporation or of the state. Issuance by court. A subpoena duces tecum to be served upon a library, or a department or bureau of a municipal corporation or of the state, or an officer thereof, requiring the production of any books, papers or other things, shall be issued by a justice of the supreme court in the district in which the book, paper or other thing is located or by a judge of the court in which an action for which it is required is triable. Unless the court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the library, department, bureau or officer having custody of the book, document or other thing and the adverse party. Such subpoena must be served upon such library, or such department or bureau of such municipal corporation or of the state or an officer having custody of the book, document or other thing and the adverse party at least twenty-four hours before the time fixed for the production of such records unless in the case of an emergency the court shall by order dispense with such notice otherwise required. Compliance with a subpoena duces tecum may be made by producing a full-sized legible reproduction of the item or items required to be produced certified as complete and accurate by the person in charge of such library, department or bureau, or a designee of such person, and no personal appearance to certify such item or items shall be required of such person or designee, unless the court shall order otherwise pursuant to subdivision (d) of rule 2214 of this chapter. Where a stipulation would serve the same purpose as production of the book, document or other thing and the subpoena is required because the parties will not stipulate, the judge may impose terms on any party, including the cost of production of the book or document, and require such cost to be paid as an additional fee to the library, department or officer.

§ 2308. Disobedience of subpoena. (a) Judicial. Failure to comply with a subpoena issued by a judge, clerk or officer of the court shall be punishable as a contempt of court. If the witness is a party the court may also strike his or her pleadings. A subpoenaed person shall also be liable to the person on whose behalf the subpoena was issued for a penalty not exceeding one hundred fifty dollars and damages sustained by

reason of the failure to comply. A court may issue a warrant directing a sheriff to bring the witness into court. If a person so subpoenaed attends or is brought into court, but refuses without reasonable cause to be examined, or to answer a legal and pertinent question, or to produce a book, paper or other thing which he or she was directed to produce by the subpoena, or to subscribe his or her deposition after it has been correctly reduced to writing, the court may forthwith issue a warrant directed to the sheriff of the county where the person is, committing him or her to jail, there to remain until he or she submits to do the act which he or she was so required to do or is discharged according to law. Such a warrant of commitment shall specify particularly the cause of the commitment and, if the witness is committed for refusing to answer a question, the question shall be inserted in the warrant.

(b) Non-judicial. (1) Unless otherwise provided, if a person fails to comply with a subpoena which is not returnable in a court, the issuer or the person on whose behalf the subpoena was issued may move in the supreme court to compel compliance. If the court finds that the subpoena was authorized, it shall order compliance and may impose costs not exceeding fifty dollars. A subpoenaed person shall also be liable to the person on whose behalf the subpoena was issued for a penalty not exceeding fifty dollars and damages sustained by reason of the failure to comply. A court may issue a warrant directing a sheriff to bring the witness before the person or body requiring his appearance. If a person so subpoenaed attends or is brought before such person or body, but refuses without reasonable cause to be examined, or to answer a legal and pertinent question, or to produce a book, paper or other thing which he was directed to produce by the subpoena, or to subscribe his deposition after it has been correctly reduced to writing, the court, upon proof by affidavit, may issue a warrant directed to the sheriff of the county where the person is, committing him to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law. Such a warrant of commitment shall specify particularly the cause of the commitment and, if the witness is committed for refusing to answer a question, the question shall be inserted in the warrant.

(2) Notwithstanding the provisions of paragraph one of this

subdivision, if a person fails to comply with a subpoena issued pursuant to section one hundred eleven-p of the social services law by the office of temporary and disability assistance or a social services district, or its authorized representative, or another state's child support enforcement agency governed by title IV-D of the social security act, such office or district is authorized to impose a penalty against the subpoenaed person. The amount of the penalty shall be determined by the commissioner of the office of temporary and disability assistance and set forth in regulation, and shall not exceed fifty dollars. Payment of the penalty shall not be required, however, if in response to notification of the imposition of the penalty the subpoenaed person complies immediately with the subpoena.

(c) Review of proceedings. Within ninety days after the offender shall have been committed to jail he shall, if not then discharged by law, be brought, by the sheriff, or other officer, as a matter of course personally before the court issuing the warrant of commitment and a review of the proceedings shall then be held to determine whether the offender shall be discharged from commitment. At periodic intervals of not more than ninety days following such review, the offender, if not then discharged by law from such commitment, shall be brought, by the sheriff, or other officer, personally before the court issuing the warrant of commitment and further reviews of the proceedings shall then be held to determine whether he shall be discharged from commitment. The clerk of the court before which such review of the proceedings shall be held, or the judge or justice of such court in case there be no clerk, shall give reasonable notice in writing of the date, time and place of each such review to each party or his attorney who shall have appeared of record in the proceeding resulting in the issuance of the warrant of commitment, at their last known address.

§ 2309. Oaths and affirmations. (a) Persons authorized to administer. Unless otherwise provided, an oath or affirmation may be administered by any person authorized to take acknowledgments of deeds by the real property law. Any person authorized by the laws of this state to receive evidence may administer an oath or affirmation for that purpose. An oath to a juror or jurors may be administered by a clerk of court and

his deputies. This section shall not apply to an oath of office.

(b) Form. An oath or affirmation shall be administered in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs.

(c) Oaths and affirmations taken without the state. An oath or affirmation taken without the state shall be treated as if taken within the state if it is accompanied by such certificate or certificates as would be required to entitle a deed acknowledged without the state to be recorded within the state if made in accordance with the provisions of this section.

(d) Form of certificate of oath or affirmation administered by officer of the armed forces of the United States. The certificate of an oath or affirmation administered within or without the state or the United States, by an officer of the armed forces of the United States authorized by the real property law to take acknowledgment of deeds, shall state:

1. the rank and serial number of the officer before whom the oath or affirmation is taken and the command to which he is attached;

2. that the person taking the oath or affirmation was, at the time of taking it, a person enlisted or commissioned in or serving in or with the armed forces of the United States or the dependent of such a person, or a person attached to or accompanying the armed forces of the United States; and

3. the serial number of the person who takes, or whose dependent takes the oath or affirmation, if such person is enlisted or commissioned in the armed forces of the United States. The place where such oath or affidavit is taken need not be disclosed.

ARTICLE 24

PUBLICATION

2401. Order when publication cannot be made.

2402. Computation of time for publication of notice.

§ 2401. Order when publication cannot be made. 1. Where because of circumstances beyond the control of a party required to publish, publication required by any statute, rule or court order cannot be made or completed in the specified place or newspaper in the required manner, the court may by order require such other publication as will not unduly prejudice any other party.

2. Notwithstanding the provisions of paragraph 1, if publication required by any statute, rule or court order has been commenced and cannot be completed because of the suspension or termination of publication by a newspaper, publication may be completed in any other newspaper which complies with the statute, rule, or order without further court order.

§ 2402. Computation of time for publication of notice. The period of publication of a legal notice shall be computed by excluding the first day of publication and including the day on which the act or event of which notice is given is to take place or which completes the full period of publication.

ARTICLE 25

UNDERTAKINGS

2501. Undertaking; definition.

2502. Surety; form of affidavit; two or more undertakings; condition; acknowledgment.

(a) Surety; form of affidavit.

(b) Two or more undertakings.

(c) Condition.

(d) Acknowledgment.

2503. Undertaking of more than one thousand dollars; real property; lien.

(a) Creation of lien.

(b) Affidavit of surety.

(c) Filing of affidavit; recording.

- (d) Release of lien.
- 2504. Waiver of undertaking; removal and change of parties.
 - (a) Waiver of undertaking.
 - (b) Removal and change of parties.
- 2505. Filing of undertaking; service upon adverse party; time when effective.
- 2506. Exception to surety; allowance where no exception taken.
 - (a) Exception to surety.
 - (b) Allowance where no exception taken.
- 2507. Justification of surety.
 - (a) Motion to justify.
 - (b) Failure to justify.
- 2508. Motion for new or additional undertaking.
- 2509. Control of assets by agreement with surety.
- 2510. Discharge of surety on the undertaking of a fiduciary.
 - (a) Motion; new undertaking; accounting.
 - (b) Settlement of account.
- 2511. Liability of surety.
- 2512. Undertaking by the state, municipal corporation or public officer.
- 2513. Action on undertaking to a public officer, board or municipal corporation.

§ 2501. Undertaking; definition. Undertaking includes

1. Any obligation, whether or not the principal is a party thereto, which contains a covenant by a surety to pay the required amount, as specified therein, if any required condition, as specified therein or as provided in subdivision (c) section 2502, is not fulfilled; and
2. any deposit, made subject to the required condition, of the required amount in legal tender of the United States or in face value of unregistered bonds of the United States or of the state.

§ 2502. Surety; form of affidavit; two or more undertakings;

condition; acknowledgment. (a) Surety; form of affidavit. Unless the court orders otherwise, surety shall be:

1. an insurance company authorized to execute the undertaking within the state, or

2. a natural person, except an attorney, who shall execute with the undertaking his affidavit setting forth his full name and address and that he is domiciled within the state and worth at least the amount specified in the undertaking exclusive of liabilities and of property exempt from application to the satisfaction of a judgment.

(b) Two or more undertakings. Where two or more undertakings are authorized or required to be given, they may be contained in the same instrument.

(c) Condition. Where no condition is specified in an undertaking in an action or proceeding, the condition shall be that the principal shall faithfully and fairly discharge the duties and fulfill the obligations imposed by law, or court order. Where the condition specifies that the undertaking is to be void upon payment of an amount or performance of an act, the undertaking shall be construed in accordance with the provisions of section 7-301 of the general obligations law.

(d) Acknowledgment. The undertaking shall be acknowledged in the form required to entitle a deed to be recorded.

§ 2503. Undertaking of more than one thousand dollars; real property; lien. (a) Creation of lien. Unless the court orders otherwise, an undertaking in an amount of more than one thousand dollars, which is not a deposit of legal tender of the United States or in face value of unregistered bonds of the United States or of the state, upon which natural persons are surety shall be secured by real property located in the state which shall be worth the amount specified in the undertaking exclusive of all encumbrances. Such undertaking shall create a lien on the real property when recorded in the individual surety bond liens docket in the office of the clerk or register of the county where the real property is located.

(b) Affidavit of surety. The affidavit of the surety shall contain, in

addition to the information required by subdivision (a) of section 2502:

1. a statement that the surety or sureties is or are the sole owner or owners of the real property offered as security;

2. a description of the property, sufficiently identified to establish the lien of the undertaking;

3. a statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered; and

4. a statement of the assessed value of each property offered, its market value, and the value of the equity over and above all encumbrances, liens and unpaid taxes.

(c) Filing of affidavit; recording. A duplicate original of the affidavit required by this rule shall be filed in the office of the clerk or register of the county where the real property is located. The following information shall be entered on the individual surety bond liens docket in the office of the clerk or register of the county where the real property is located:

1. the names of the sureties listed in alphabetical order;

2. the amount of the undertaking;

3. a description of the real property or properties offered as security thereunder, sufficiently identified to clearly establish the lien of the undertaking;

4. the date of such recording;

5. the title of the action, proceeding or estate; and

6. the court in which the papers are filed.

(d) Release of lien. The clerk or register of the county where the property is located shall make an entry, which shall constitute a release of the lien for all purposes and as to all persons, upon

1. the filing of a consent acknowledged by the person for whose benefit the undertaking was given in the form required to entitle a deed to be recorded; or

2. the order of the court, discharging the surety, made upon motion with such notice to other persons as the court may direct.

§ 2504. Waiver of undertaking; removal and change of parties. (a) Waiver of undertaking. Unless the court orders otherwise, an undertaking may be waived by the written consent of all parties.

(b) Removal and change of parties. The liability on an undertaking shall remain in effect in favor of the party for whose benefit it was given, notwithstanding a removal of the action or a change of parties.

§ 2505. Filing of undertaking; service upon adverse party; time when effective. An undertaking together with any affidavit required by this article shall be filed with the clerk of the court in which the action is triable, or, upon an appeal, in the office where the judgment or order of the court of original instance is entered, and a copy shall be served upon the adverse party. The undertaking is effective when so served and filed.

§ 2506. Exception to surety; allowance where no exception taken. (a) Exception to surety. If a certificate of qualification issued pursuant to subsections (b), (c) and (d) of section one thousand one hundred eleven of the insurance law is not filed with the undertaking, a party may except to the sufficiency of a surety by a written notice of exception served upon the adverse party within ten days after receipt of a copy of the undertaking. Where the undertaking has been served upon a party by the sheriff, the notice of exception shall be served on the sheriff and on the adverse party. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs.

(b) Allowance where no exception taken. Where no exception to sureties is taken within ten days or where exceptions taken are set aside the undertaking is allowed.

§ 2507. Justification of surety. (a) Motion to justify. Within ten days after service of notice of exception, the surety excepted to or the person upon whose behalf the undertaking was given shall move to justify, upon notice to the adverse party and to the sheriff if he was served with the undertaking. The surety shall be present upon the hearing of such motion to be examined under oath. If the court find the surety sufficient, it shall make an appropriate indorsement on the undertaking. A certificate of qualification issued pursuant to subsections (b), (c) and (d) of section one thousand one hundred eleven of the insurance law shall be accepted in lieu of a justification.

(b) Failure to justify. If a motion to justify is not made within ten days after the notice of exception is served, the undertaking shall then be without effect, except as provided in this subdivision. Unless otherwise provided by order of court, a surety on an undertaking excepted to and not justified shall remain liable until a new undertaking is given and allowed, but the original undertaking shall be otherwise without effect.

§ 2508. Motion for new or additional undertaking. Upon motion of any interested person, upon notice to the parties and surety, and to the sheriff, where he was required to be served with the undertaking, the court may order a new or additional undertaking, a justification or rejustification of sureties, or new or additional sureties. Unless otherwise provided by order of court, a surety, on the original undertaking shall remain liable until such order is complied with, but the original undertaking shall be otherwise without effect.

§ 2509. Control of assets by agreement with surety. Any person of whom an undertaking is required may agree with his surety for the deposit of any assets for which his surety may be held responsible with a bank, or

safe deposit or trust company, authorized to do business in the state, if such deposit is otherwise proper and in such manner as to prevent withdrawal without the written consent of the surety or an order of court, made on notice to the surety. The agreement shall not affect the liability of the principal or surety as established by the terms of the undertaking.

§ 2510. Discharge of surety on the undertaking of a fiduciary. (a) Motion; new undertaking; accounting. Surety on the undertaking of any fiduciary may move with notice to the person upon whose behalf the undertaking was given, to be discharged from liability for any act or omission of such fiduciary subsequent to the order of the court or the time when a new undertaking satisfactory to the court is filed. The court may restrain such fiduciary from acting pending the order discharging such surety from liability. Upon the hearing, the court shall order the fiduciary to give a new undertaking and to account, within such time as the court orders but not exceeding twenty days, for all his acts. If a new undertaking is filed the fiduciary shall account for his acts up to and including the date of such filing. Where the fiduciary does not comply with the order to account, the surety may make and file such account with the same effect as though filed by the fiduciary, and may utilize any disclosure device in obtaining information necessary for such an accounting. The court shall make such provisions with respect to commissions, allowances, disbursements and costs as it deems just.

(b) Settlement of account. When such account has been filed, the court, upon sufficient notice, shall order all persons interested in the proceedings to attend a settlement of the account at a time and place specified, and such settlement shall be made and the rights and liabilities of all parties to the proceeding shall be determined and enforced. After settlement of the account, the court shall make an order relieving the surety from any act or omission of the fiduciary subsequent to the date of such order or the time when a new undertaking satisfactory to the court was filed, whichever is earlier. Upon written demand by the fiduciary, the surety shall return any compensation paid for the unexpired portion of such suretyship.

§ 2511. Liability of surety. Where two or more persons are surety on an undertaking in an action or proceeding, they shall be jointly and severally liable. The amount recoverable from a surety shall be determined in accordance with the provisions of section 7-301 of the general obligations law.

§ 2512. Undertaking by the state, municipal corporation or public officer. 1. Any provision of law authorizing or requiring an undertaking to be given by a party shall be construed as excluding the state, a domestic municipal corporation or a public officer in behalf of the state or of such a corporation. Such parties shall, however, be liable for damages as provided in such provision of law in an amount not exceeding an amount which shall be fixed by the court whenever it would require an undertaking of a private party.

2. Where an appeal is taken by any such party, only the court to which the appeal is taken may fix the amount which shall limit the liability for damages pursuant to this section.

§ 2513. Action on undertaking to a public officer, board or municipal corporation. A person for whose benefit an undertaking has been given to a public officer, board or municipal corporation of the state may move, on notice to persons interested in the disposition of the proceeds, for leave to bring an action in his own name for breach of a condition.

ARTICLE 26

PROPERTY PAID INTO COURT

2601. Payment of money or securities into court.

(a) Discharge of party paying money into court.

(b) Delivery of money and securities to county treasurer; commissioner of finance of city of New York.

(c) Title to funds paid into court.

(d) Subsequent control of money or securities paid into court.

2602. Payment into court of property other than money or securities; deposit with warehouse or safe deposit company.

2603. Cost of administration of property paid into court.

2604. Calculation of gross sum in lieu of income.

2605. Duties of depositories.

2606. Obtaining order for payment out of court.

2607. Payment of property paid into court.

2608. Liability of custodian.

2609. Deposit by referee appointed to sell property.

§ 2601. Payment of money or securities into court. (a) Discharge of party paying money into court. A party paying money into court pursuant to the direction of the court is discharged thereby from all further liability to the extent of the money so paid in.

(b) Delivery of money and securities to county treasurer; commissioner of finance of city of New York. All moneys and securities paid into court shall be delivered either by the party making the payment into court or when an officer other than the county treasurer first receives them, by that officer, to the county treasurer of the county where the action is triable or to such other county treasurer as the court specially directs. Where money or securities are received by an officer other than the county treasurer, he shall deliver them to the county treasurer within two days after he receives them. The commissioner of finance of the city of New York shall be considered the treasurer of each of the counties included within the city.

(c) Title to funds paid into court. Title for the benefit of interested parties is vested in the county treasurer to whom any security is transferred pursuant to this article. Any security purchased by the county treasurer as an investment of money paid into court shall be purchased in the name of his office. He may bring an action upon or in relation to a security in his official or representative character.

(d) Subsequent control of money or securities paid into court. A court may direct that money or securities in the custody of a county treasurer pursuant to this section be transferred or invested as it deems proper.

§ 2602. Payment into court of property other than money or securities; deposit with warehouse or safe deposit company. Property paid into court, other than money or securities, shall not be delivered to the county treasurer. The court may direct that such property be deposited in a warehouse or safe deposit company upon the filing of a bond for the cost of such storage by the party paying the property into court or the party who requested such disposition, as the court may provide. It may make such other or subsequent disposition as it deems proper.

§ 2603. Cost of administration of property paid into court. A party entitled to the income of any property paid into court shall be charged with the expense of administering such property and of receiving and paying over the income thereof.

§ 2604. Calculation of gross sum in lieu of income. A gross sum payable to a party in lieu of the income of a sum of money paid into court for his benefit shall be calculated according to article four of the real property actions and proceedings law.

Rule 2605. Duties of depositories. When property paid into court is deposited with any depository, the entry of such deposit in the books of the depository shall contain a short reference to the title of the cause or matter in relation to which the deposit is made and shall specify the time from which any interest or accumulation on the deposit, if any, is to commence. On or before the first day of February in each year, such depository shall transmit to the appellate division of the supreme court in the department in which the depository is situated a statement describing the property in its custody, including interest or accumulation, if any, to the credit of each cause or matter on the last

preceding first day of January.

Rule 2606. Obtaining order for payment out of court. Unless otherwise directed by the judgment or order under which the property was paid into court, an order for the payment of property out of court shall be made only:

1. on motion with notice to all parties who have appeared or filed a notice of claim to such property; or

2. by special proceeding. In either case the petition shall be accompanied by a copy of the judgment, order or other paper under which the property was paid into court, together with a certificate of the county treasurer or other depository of the property, showing the present condition and amount thereof, and stating separately, in the case of money, the amount of principal and interest.

Rule 2607. Payment of property paid into court. No property paid into court, or income from such property, shall be paid out except upon order of the court directing payment to a specified person, except that if the property so paid into court, or the income from such property, inclusive of interest, does not exceed fifty dollars, a county treasurer may pay the same, without a court order, to the person entitled thereto or his authorized attorney. When the whole or remaining balance of all payments of money into court in an action, or the whole or remaining balance of a distributive share thereof, or any security or other property, is directed to be paid out of court, the order must direct the payment of all accrued income belonging to the party to whom such money or distributive share or remaining balance thereof, or security or other property is paid. A certified copy of the order directing payment shall be delivered to the county treasurer or other custodian of the property. The custodian, in the case of money, shall draw a draft payable to the order of the party entitled thereto specifying the title of the cause or matter on account of which the draft is made and the date of the order authorizing the draft. A certified copy of the order, accompanied by a

draft in the case of money, shall be delivered to the depository of the property before it shall pay out any property. If an order directs that periodic payments be made, the filing of one copy of the order shall be sufficient to authorize the payment of subsequent drafts in pursuance thereof. Any other provision of law to the contrary notwithstanding, if an order directing payment by the county treasurer is made by the court, the copy of the order to be delivered to the county treasurer and the depository as herein provided shall be certified by the clerk of the court to be a true copy of the original of such order on file in his office.

§ 2608. Liability of custodian. No liability shall attach to a custodian of property paid into court because of a payment made by him in good faith in accordance with the direction of an order of the court or as provided in rule 2607.

Rule 2609. Deposit by referee appointed to sell property. Money received by a referee appointed to sell property shall be deposited forthwith by the referee, in his name as referee, in a bank or trust company authorized to transact business in this state, or with the chief fiscal officer or county treasurer of the county in which the action or proceeding is pending, as the court shall designate. Such moneys when paid to the chief fiscal officer of the county or county treasurer shall not be withdrawn except as directed by the judgment or order under which the deposit is made, or by an order under rule 2606.

ARTICLE 27

DISPOSITION OF PROPERTY IN LITIGATION

2701. When court may order disposition of property.

2702. Sale of property.

2703. Enforcement of order directing disposition of property.

§ 2701. When court may order disposition of property. The court, upon

motion or on its own initiative, with such notice as it deems proper, may order personal property capable of delivery which is the subject of the action, paid into court, or delivered to such person as it may direct, with such security as the court shall direct, and subject to its further direction if:

1. a party has such property in his possession, custody or control as trustee for another party or where it belongs or is due to another party; or

2. a party has such property in his possession, custody or control and it belongs or is due to another party, where special circumstances make it desirable that payment or delivery to such other party should be withheld; or

3. the ownership of such property will depend on the outcome of a pending action and no party is willing to accept possession or custody of it during the pendency of the action.

§ 2702. Sale of property. On motion of any party, the court may order the sale, in such manner and on such terms as it deems proper, of any personal property capable of delivery which is the subject of the action if it shall appear likely that its value will be substantially decreased during the pendency of the action. Any party to the action may purchase such property at a judicially-directed sale held pursuant to this section without prejudice to his claim.

§ 2703. Enforcement of order directing disposition of property. Where the court has directed disposition of personal property capable of delivery and the direction is disobeyed, the court by order, in addition to punishing the disobedience as a contempt, may require the sheriff to take and dispose of the property in accordance with its direction.

REMEDIES AND PLEADING

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§ 3001. Declaratory judgment. The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the

court declines to render such a judgment it shall state its grounds. A party who has brought a claim for personal injury or wrongful death against another party may maintain a declaratory judgment action directly against the insurer of such other party, as provided in paragraph six of subsection (a) of section three thousand four hundred twenty of the insurance law.

§ 3002. Actions and relief not barred for inconsistency. (a) Action against several persons. Where causes of action exist against several persons, the commencement or maintenance of an action against one, or the recovery against one of a judgment which is unsatisfied, shall not be deemed an election of remedies which bars an action against the others.

(b) Action against agent and undisclosed principal. Where causes of action exist against an agent and his undisclosed principal, the commencement or maintenance, after disclosure of the principal, of an action against either, or the recovery of a judgment against either which is unsatisfied, shall not be deemed an election of remedies which bars an action against the other.

(c) Action for conversion and on contract. Where causes of action exist against several persons for the conversion of property and upon express or implied contract, the commencement or maintenance of an action against one, or the recovery against one of a judgment which is unsatisfied, either for the conversion or upon the contract, shall not be deemed an election of remedies which bars an action against the others either for the conversion or upon the contract.

(d) Action on contract and to reform. A judgment denying recovery in an action upon an agreement in writing shall not be deemed to bar an action to reform such agreement and to enforce it as reformed.

(e) Claim for damages and rescission. A claim for damages sustained as a result of fraud or misrepresentation in the inducement of a contract or other transaction, shall not be deemed inconsistent with a claim for rescission or based upon rescission. In an action for rescission or based upon rescission the aggrieved party shall be allowed to obtain complete relief in one action, including rescission, restitution of the benefits, if any, conferred by him as a result of the transaction, and

damages to which he is entitled because of such fraud or misrepresentation; but such complete relief shall not include duplication of items of recovery.

(f) Vendee's lien not to depend upon form of action. When relief is sought, in an action or by way of defense or counterclaim, by a vendee under an agreement for the sale or exchange of real property, because of the rescission, failure, invalidity or disaffirmance of such agreement, a vendee's lien upon the property shall not be denied merely because the claim is for rescission, or is based upon the rescission, failure, invalidity or disaffirmance of such agreement.

§ 3003. Action for periodic payments due under pension or retirement contract no bar to action for future installments. The commencement or maintenance of an action for the recovery of payments which have become due under the terms of a written agreement providing for the payment of a pension or retirement compensation or deferred compensation for a period of years or for life, whether or not such agreement is part of an employment contract, shall not be deemed to bar subsequent actions to recover payments thereafter becoming due under the terms of such agreement.

§ 3004. Where restoration of benefits before judgment unnecessary. A party who has received benefits by reason of a transaction that is void or voidable because of fraud, misrepresentation, mistake, duress, infancy or incompetency, and who, in an action or by way of defense or counterclaim, seeks rescission, restitution, a declaration or judgment that such transaction is void, or other relief, whether formerly denominated legal or equitable, dependent upon a determination that such transaction was void or voidable, shall not be denied relief because of a failure to tender before judgment restoration of such benefits; but the court may make a tender of restoration a condition of its judgment, and may otherwise in its judgment so adjust the equities between the parties that unjust enrichment is avoided.

§ 3005. Relief against mistake of law. When relief against a mistake is sought in an action or by way of defense or counterclaim, relief shall not be denied merely because the mistake is one of law rather than one of fact.

§ 3011. Kinds of pleadings. There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff and a cross-claim against a defendant. A defendant's pleading against another claimant is an interpleader complaint, or against any other person not already a party is a third-party complaint. There shall be a reply to a counterclaim denominated as such, an answer to an interpleader complaint or third-party complaint, and an answer to a cross-claim that contains a demand for an answer. If no demand is made, the cross-claim shall be deemed denied or avoided. There shall be no other pleading unless the court orders otherwise.

§ 3012. Service of pleadings and demand for complaint. (a) Service of pleadings. The complaint may be served with the summons, except that in an action arising out of a consumer credit transaction, the complaint shall be served with the summons. A subsequent pleading asserting new or additional claims for relief shall be served upon a party who has not appeared in the manner provided for service of a summons. In any other case, a pleading shall be served in the manner provided for service of papers generally. Service of an answer or reply shall be made within twenty days after service of the pleading to which it responds.

(b) Service of complaint where summons served without complaint. If the complaint is not served with the summons, the defendant may serve a written demand for the complaint within the time provided in subdivision (a) of rule 320 for an appearance. Service of the complaint shall be made within twenty days after service of the demand. Service of the demand shall extend the time to appear until twenty days after service of the complaint. If no demand is made, the complaint shall be served within twenty days after service of the notice of appearance. The court upon motion may dismiss the action if service of the complaint is not made as provided in this subdivision. A demand or motion under this

subdivision does not of itself constitute an appearance in the action.

(c) Additional time to serve answer where summons and complaint not personally delivered to person to be served within the state. If the complaint is served with the summons and the service is made on the defendant by delivering the summons and complaint to an official of the state authorized to receive service in his behalf or if service of the summons and complaint is made pursuant to section 303, paragraphs two, three, four or five of section 308, or sections 313, 314 or 315, service of an answer shall be made within thirty days after service is complete.

(d) Extension of time to appear or plead. Upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default.

§ 3012-a. Certificate of merit in medical, dental and podiatric malpractice actions. (a) In any action for medical, dental or podiatric malpractice, the complaint shall be accompanied by a certificate, executed by the attorney for the plaintiff, declaring that:

(1) the attorney has reviewed the facts of the case and has consulted with at least one physician in medical malpractice actions, at least one dentist in dental malpractice actions or at least one podiatrist in podiatric malpractice actions who is licensed to practice in this state or any other state and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of such action; or

(2) the attorney was unable to obtain the consultation required by paragraph one of this subdivision because a limitation of time, established by article two of this chapter, would bar the action and that the certificate required by paragraph one of this subdivision could not reasonably be obtained before such time expired. If a certificate is executed pursuant to this subdivision, the certificate required by this section shall be filed within ninety days after service of the complaint; or

(3) the attorney was unable to obtain the consultation required by

paragraph one of this subdivision because the attorney had made three separate good faith attempts with three separate physicians, dentists or podiatrists, in accordance with the provisions of paragraph one of this subdivision to obtain such consultation and none of those contacted would agree to such a consultation.

(b) Where a certificate is required pursuant to this section, a single certificate shall be filed for each action, even if more than one defendant has been named in the complaint or is subsequently named.

(c) Where the attorney intends to rely solely on the doctrine of "res ipsa loquitur", this section shall be inapplicable. In such cases, the complaint shall be accompanied by a certificate, executed by the attorney, declaring that the attorney is solely relying on such doctrine and, for that reason, is not filing a certificate required by this section.

(d) If a request by the plaintiff for the records of the plaintiff's medical or dental treatment by the defendants has been made and such records have not been produced, the plaintiff shall not be required to serve the certificate required by this section until ninety days after such records have been produced.

(e) For purposes of this section, and subject to the provisions of section thirty-one hundred one of this chapter, an attorney who submits a certificate as required by paragraph one or two of subdivision (a) of this section and the physician, dentist or podiatrist with whom the attorney consulted shall not be required to disclose the identity of the physician, dentist or podiatrist consulted and the contents of such consultation; provided, however, that when the attorney makes a claim under paragraph three of subdivision (a) of this section that he was unable to obtain the required consultation with the physician, dentist or podiatrist, the court may, upon the request of a defendant made prior to compliance by the plaintiff with the provisions of section thirty-one hundred of this chapter, require the attorney to divulge to the court the names of physicians, dentists or podiatrists refusing such consultation.

(f) The provisions of this section shall not be applicable to a plaintiff who is not represented by an attorney.

(g) The plaintiff may, in lieu of serving the certificate required by this section, provide the defendant or defendants with the information

required by paragraph one of subdivision (d) of section thirty-one hundred one of this chapter within the period of time prescribed by this section.

§ 3012-b. Certificate of merit in certain residential foreclosure actions. (a) In any residential foreclosure action involving a home loan, as such term is defined in section thirteen hundred four of the real property actions and proceedings law, in which the defendant is a resident of the property which is subject to foreclosure, the complaint shall be accompanied by a certificate, signed by the attorney for the plaintiff, certifying that the attorney has reviewed the facts of the case and that, based on consultation with representatives of the plaintiff identified in the certificate and the attorney's review of pertinent documents, including the mortgage, security agreement and note or bond underlying the mortgage executed by defendant and all instruments of assignment, if any, and any other instrument of indebtedness including any modification, extension, and consolidation, to the best of such attorney's knowledge, information and belief there is a reasonable basis for the commencement of such action and that the plaintiff is currently the creditor entitled to enforce rights under such documents. If not attached to the summons and complaint in the action, a copy of the mortgage, security agreement and note or bond underlying the mortgage executed by defendant and all instruments of assignment, if any, and any other instrument of indebtedness including any modification, extension, and consolidation shall be attached to the certificate.

(b) Where a certificate is required pursuant to this section, a single certificate shall be filed for each action even if more than one defendant has been named in the complaint or is subsequently named.

(c) Where the documents required under subdivision (a) are not attached to the summons and complaint or to the certificate, the attorney for the plaintiff shall attach to the certificate supplemental affidavits by such attorney or representative of plaintiff attesting that such documents are lost whether by destruction, theft or otherwise. Nothing herein shall replace or abrogate plaintiff's obligations as set forth in the New York uniform commercial code.

(d) The provisions of subdivision (d) of rule 3015 of this article shall not be applicable to a defendant who is not represented by an attorney.

(e) If a plaintiff willfully fails to provide copies of the papers and documents as required by subdivision (a) of this section and the court finds, upon the motion of any party or on its own motion on notice to the parties, that such papers and documents ought to have been provided, the court may dismiss the complaint or make such final or conditional order with regard to such failure as is just including but not limited to denial of the accrual of any interest, costs, attorneys' fees and other fees, relating to the underlying mortgage debt. Any such dismissal shall be without prejudice and shall not be on the merits.

§ 3013. Particularity of statements generally. 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.

Rule 3014. Statements. Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as practicable, a single allegation. Reference to and incorporation of allegations may subsequently be by number. Prior statements in a pleading shall be deemed repeated or adopted subsequently in the same pleading whenever express repetition or adoption is unnecessary for a clear presentation of the subsequent matters. Separate causes of action or defenses shall be separately stated and numbered and may be stated regardless of consistency. Causes of action or defenses may be stated alternatively or hypothetically. A copy of any writing which is attached to a pleading is a part thereof for all purposes.

Rule 3015. Particularity as to specific matters. (a) Conditions precedent. The performance or occurrence of a condition precedent in a

contract need not be pleaded. A denial of performance or occurrence shall be made specifically and with particularity. In case of such denial, the party relying upon the performance or occurrence shall be required to prove on the trial only such performance or occurrence as shall have been so specified.

(b) Corporate status. Where any party is a corporation, the complaint shall so state and, where known, it shall specify the state, country or government by or under whose laws the party was created.

(c) Judgment, decision or determination. A judgment, decision or other determination of a court, judicial or quasi-judicial tribunal, or of a board or officer, may be pleaded without stating matter showing jurisdiction to render it.

(d) Signatures. Unless specifically denied in the pleadings each signature on a negotiable instrument is admitted.

(e) License to do business. Where the plaintiff's cause of action against a consumer arises from the plaintiff's conduct of a business which is required by state or local law to be licensed by the department of consumer affairs of the city of New York, the Suffolk county department of consumer affairs, the county of Rockland, the county of Putnam, the county of Westchester, or the Nassau county department of consumer affairs, the complaint shall allege, as part of the cause of action, that plaintiff was duly licensed at the time of services rendered and shall contain the name and number, if any, of such license and the governmental agency which issued such license. The failure of the plaintiff to comply with this subdivision will permit the defendant to move for dismissal pursuant to paragraph seven of subdivision (a) of rule thirty-two hundred eleven of this chapter.

Rule 3016. Particularity in specific actions. (a) Libel or slander. In an action for libel or slander, the particular words complained of shall be set forth in the complaint, but their application to the plaintiff may be stated generally.

(b) Fraud or mistake. Where a cause of action or defense is based upon misrepresentation, fraud, mistake, wilful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail.

(c) Separation or divorce. In an action for separation or divorce, the nature and circumstances of a party's alleged misconduct, if any, and the time and place of each act complained of, if any, shall be specified in the complaint or counterclaim as the case may be.

(d) Judgment. In an action on a judgment, the complaint shall state the extent to which any judgment recovered by the plaintiff against the defendant, or against a person jointly liable with the defendant, on the same cause of action has been satisfied.

(e) Law of foreign country. Where a cause of action or defense is based upon the law of a foreign country or its political subdivision, the substance of the foreign law relied upon shall be stated.

(f) Sale and delivery of goods or performing of labor or services. In an action involving the sale and delivery of goods, or the performing of labor or services, or the furnishing of materials, the plaintiff may set forth and number in his verified complaint the items of his claim and the reasonable value or agreed price of each. Thereupon the defendant by his verified answer shall indicate specifically those items he disputes and whether in respect of delivery or performance, reasonable value or agreed price.

(g) Personal injury. In an action designated in subsection (a) of section five thousand one hundred four of the insurance law, for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, the complaint shall state that the plaintiff has sustained a serious injury, as defined in subsection (d) of section five thousand one hundred two of the insurance law, or economic loss greater than basic economic loss, as defined in subsection (a) of section five thousand one hundred two of the insurance law.

(h) Gross negligence or intentional infliction of harm by certain directors, officers or trustees of certain corporations, associations, organizations or trusts. In an action or proceeding based upon the conduct of a director, officer or trustee described in section seven hundred twenty-a of the not-for-profit corporation law or subdivision six of section 20.09 of the arts and cultural affairs law, the complaint shall be verified and shall state whether or not said complaint is based upon gross negligence or intentional infliction of harm.

(i) Privacy of name in certain legal challenges to college/university disciplinary findings. In any proceeding brought against a college or

university that is chartered by the regents or incorporated by special act of the legislature, which proceeding seeks to vacate or modify a finding that a student was responsible for a violation of college or university rules regarding a violation covered by article one hundred twenty-nine-B of the education law, the name and identifying biographical information of any student shall be presumptively confidential and shall not be included in the pleadings and other papers from such proceeding absent a waiver or cause shown as determined by the court. Such witnesses shall be identified only as numbered witnesses. If such a name or identifying biographical information appears in a pleading or paper filed in such a proceeding, the court, absent such a waiver or cause shown, shall direct the clerk of the court to redact such name and identifying biographical information and so advise the parties.

(j) Consumer credit transactions. In an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant, the contract or other written instrument on which the action is based shall be attached to the complaint, however, for the purposes of this section, if the account was a revolving credit account, the charge-off statement may be attached to the complaint instead of the contract or other written instrument, and the following information shall be set forth in the complaint:

(1) The name of the original creditor;

(2) The last four digits of the account number printed on the most recent monthly statement recording a purchase transaction, last payment or balance transfer;

(3) The date and amount of the last payment or, if no payment was made, a statement that the purchaser, borrower or debtor made no payment on the account;

(4) If the complaint contains a cause of action based on an account stated, the date on or about which the final statement of account was provided to the defendant;

(5) (A) Except as provided in subparagraph (B) of this paragraph, an itemization of the amount sought, by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and charges.

(B) If the account was a revolving credit account, an itemization of the amount sought, by: (i) the total amount of the debt due as of charge-off; (ii) the total amount of interest accrued since charge-off; (iii) the total amount of non-interest charges or fees accrued since charge-off; and (iv) the total amount of payments and/or credits made on the debt since charge-off;

(6) The account balance printed on the most recent monthly statement recording a purchase transaction, last payment or balance transfer;

(7) (A) Whether the plaintiff is the original creditor.

(B) If the plaintiff is not the original creditor, the complaint shall also state (i) the date on which the debt was sold or assigned to the plaintiff; (ii) the name of each previous owner of the account from the original creditor to the plaintiff and the date on which the debt was assigned to that owner by the original creditor or subsequent owner; and (iii) the amount due at the time of the sale or assignment of the debt by the original creditor; and

(8) Any matters required to be stated with particularity pursuant to rule 3015 of this article.

§ 3017. Demand for relief. (a) Generally. Except as otherwise provided in subdivision (c) of this section, every complaint, counterclaim, cross-claim, interpleader complaint, and third-party complaint shall contain a demand for the relief to which the pleader deems himself entitled. Relief in the alternative or of several different types may be demanded. Except as provided in section 3215, the court may grant any type of relief within its jurisdiction appropriate to the proof whether or not demanded, imposing such terms as may be just.

(b) Declaratory judgment. In an action for a declaratory judgment, the demand for relief in the complaint shall specify the rights and other legal relations on which a declaration is requested and state whether further or consequential relief is or could be claimed and the nature and extent of any such relief which is claimed.

(c) Personal injury or wrongful death actions. In an action to recover damages for personal injuries or wrongful death, the complaint, counterclaim, cross-claim, interpleader complaint, and third-party complaint shall contain a prayer for general relief but shall not state

the amount of damages to which the pleader deems himself entitled. If the action is brought in the supreme court, the pleading shall also state whether or not the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction. Provided, however, that a party against whom an action to recover damages for personal injuries or wrongful death is brought, may at any time request a supplemental demand setting forth the total damages to which the pleader deems himself entitled. A supplemental demand shall be provided by the party bringing the action within fifteen days of the request. In the event the supplemental demand is not served within fifteen days, the court, on motion, may order that it be served. A supplemental demand served pursuant to this subdivision shall be treated in all respects as a demand made pursuant to subdivision (a) of this section.

§ 3018. Responsive pleadings. (a) Denials. A party shall deny those statements known or believed by him to be untrue. He shall specify those statements as to the truth of which he lacks knowledge or information sufficient to form a belief and this shall have the effect of a denial. All other statements of a pleading are deemed admitted, except that where no responsive pleading is permitted they are deemed denied or avoided.

(b) Affirmative defenses. A party shall plead all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading such as arbitration and award, collateral estoppel, culpable conduct claimed in diminution of damages as set forth in article fourteen-A, discharge in bankruptcy, facts showing illegality either by statute or common law, fraud, infancy or other disability of the party defending, payment, release, res judicata, statute of frauds, or statute of limitation. The application of this subdivision shall not be confined to the instances enumerated.

§ 3019. Counterclaims and cross-claims. (a) Subject of counterclaims. A counterclaim may be any cause of action in favor of one or more

defendants or a person whom a defendant represents against one or more plaintiffs, a person whom a plaintiff represents or a plaintiff and other persons alleged to be liable.

(b) Subject of cross-claims. A cross-claim may be any cause of action in favor of one or more defendants or a person whom a defendant represents against one or more defendants, a person whom a defendant represents or a defendant and other persons alleged to be liable. A cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(c) Counterclaim against trustee or nominal plaintiff. In an action brought by a trustee or in the name of a plaintiff who has no actual interest in the contract upon which it is founded, a claim against the plaintiff shall not be allowed as a counterclaim, but a claim existing against the person beneficially interested shall be allowed as a counterclaim to the extent of the plaintiff's claim, if it might have been so allowed in an action brought by the person beneficially interested.

(d) Cause of action in counterclaim or cross-claim deemed in complaint. A cause of action contained in a counterclaim or a cross-claim shall be treated, as far as practicable, as if it were contained in a complaint, except that separate process, trial or judgment may not be had unless the court so orders. Where a person not a party is alleged to be liable a summons and answer containing the counterclaim or cross-claim shall be filed, whereupon he or she shall become a defendant. Service upon such a defendant shall be by serving a summons and answer containing the counterclaim or cross-claim. Such defendant shall serve a reply or answer as if he or she were originally a party.

§ 3020. Verification. (a) Generally. A verification is a statement, subscribed and affirmed to be true under the penalties of perjury in accordance with rule twenty-one hundred six of this chapter, that the pleading is true to the knowledge of the deponent, except as to matters alleged on information and belief, and that as to those matters such deponent believes it to be true. Unless otherwise specified by law,

where a pleading is verified, each subsequent pleading shall also be verified, except the answer of an infant and except as to matter in the pleading concerning which the party would be privileged from testifying as a witness. Where the complaint is not verified, a counterclaim, cross-claim or third-party claim in the answer may be separately verified in the same manner and with the same effect as if it were a separate pleading.

(b) When answer must be verified. An answer shall be verified:

1. when the complaint charges the defendant with having confessed or suffered a judgment, executed a conveyance, assignment or other instrument, or transferred or delivered money or personal property with intent to hinder, delay or defraud his creditors, or with being a party or privy to such a transaction by another person with like intent towards the creditors of that person, or with any fraud whatever affecting a right or the property of another; or

2. in an action against a corporation to recover damages for the non-payment of a promissory note or other evidence of debt for the absolute payment of money upon demand or at a particular time.

(c) Defense not involving the merits. A defense which does not involve the merits of the action shall be verified.

(d) By whom verification made. The verification of a pleading shall be made by the affidavit of the party, or, if two or more parties united in interest are pleading together, by at least one of them who is acquainted with the facts, except:

1. if the party is a domestic corporation, the verification shall be made by an officer thereof and shall be deemed a verification by the party;

2. if the party is the state, a governmental subdivision, board, commission, or agency, or a public officer in behalf of any of them, the verification may be made by any person acquainted with the facts; and

3. if the party is a foreign corporation, or is not in the county where the attorney has his office, or if there are two or more parties

united in interest and pleading together and none of them acquainted with the facts is within that county, or if the action or defense is founded upon a written instrument for the payment of money only which is in the possession of an agent or the attorney, or if all the material allegations of the pleading are within the personal knowledge of an agent or the attorney, the verification may be made by such agent or attorney.

Rule 3021. Form of affidavit of verification. The affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. If it is made by a person other than the party, he must set forth in the affidavit the grounds of his belief as to all matters not stated upon his knowledge and the reason why it is not made by the party.

Rule 3022. Remedy for defective verification. A defectively verified pleading shall be treated as an unverified pleading. Where a pleading is served without a sufficient verification in a case where the adverse party is entitled to a verified pleading, he may treat it as a nullity, provided he gives notice with due diligence to the attorney of the adverse party that he elects so to do.

Rule 3023. Construction of verified pleading. The allegations or denials in a verified pleading must, in form, be stated to be made by the party pleading. Unless they are stated to be made upon the information and belief of the party, they must be regarded for all purposes, including a criminal prosecution, as having been made upon the knowledge of the person verifying the pleading. An allegation that the party has not sufficient knowledge or information to form a belief with respect to a matter, must, for the same purposes, be regarded as an allegation that the person verifying the pleading has not such knowledge or information.

Rule 3024. Motion to correct pleadings. (a) Vague or ambiguous pleadings. If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a response he may move for a more definite statement.

(b) Scandalous or prejudicial matter. A party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading.

(c) Time limits; pleading after disposition. A notice of motion under this rule shall be served within twenty days after service of the challenged pleading. If the motion is denied, the responsive pleading shall be served within ten days after service of notice of entry of the order and, if it is granted, an amended pleading complying with the order shall be served within that time.

Rule 3025. Amended and supplemental pleadings. (a) Amendments without leave. A party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it.

(b) Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

(c) Amendment to conform to the evidence. The court may permit pleadings to be amended before or after judgment to conform them to the evidence, upon such terms as may be just including the granting of costs and continuances.

(d) Responses to amended or supplemental pleadings. Except where otherwise prescribed by law or order of the court, there shall be an answer or reply to an amended or supplemental pleading if an answer or reply is required to the pleading being amended or supplemented. Service

of such an answer or reply shall be made within twenty days after service of the amended or supplemental pleading to which it responds.

§ 3026. Construction. Pleadings shall be liberally construed. Defects shall be ignored if a substantial right of a party is not prejudiced.

§ 3031. Simplified procedure for court determination of disputes--action without pleadings. An action may be commenced without the service of a summons, or may be continued after the service of a summons, without pleadings, by the filing of a statement, signed and acknowledged by all the parties or signed by their attorneys, specifying plainly and concisely the claims and defenses between the parties and the relief requested. Signing constitutes a certificate that the issues are genuine, and such filing, together with a note of issue, to be filed at the same time, shall constitute the joinder of issues in the action. The procedure in any action commenced under this section shall constitute "the New York Simplified Procedure for Court Determination of Disputes" and it shall be sufficient so to identify the procedure in any contract or other document referring to it. A submission of a controversy under this procedure shall constitute a waiver by the parties of the right to trial by jury.

Rule 3032. Contents of statement. The statement required when an action is commenced without summons, or continued after the service of a summons without pleadings, shall set forth plainly and concisely the claims and defenses in dispute between the parties and the relief sought, including the amount of money demanded, if any. With the permission of the court, amended or supplemental statements may be served and filed at any time.

§ 3033. Contracts to submit; enforcement of submission. 1. Any written contract, otherwise valid under the substantive law, to submit any existing or future controversy to the court pursuant to section 3031 is

valid and enforceable and shall be construed as an implied consent of the parties to the jurisdiction of the supreme court of this state to enforce it pursuant to the procedures of rule 3036, and to enter judgment thereon, and shall constitute a waiver by the parties of the right to trial by jury.

2. If the parties to a dispute arising under a contract to submit a controversy to the court under section 3031 are unable to agree on a statement of claims and defenses and relief sought pursuant to that section, the court on motion shall settle the terms of the statement. In deciding the motion the court shall consider and determine any questions as to the existence of the contract or its validity or the failure of any party to perform it. If a substantial issue of fact be raised as to the making of the contract or submission or the failure to comply therewith, the court or judge shall proceed to trial of such issue without a jury, unless either party should demand a jury trial.

Rule 3034. Motion procedure to settle statement terms. 1. A party aggrieved by the failure of another to perform under a contract to submit a controversy, upon filing a statement, signed and acknowledged by the party, specifying the claim and the relief requested, may move for an order directing settlement of the terms of the statement, if necessary, and the determination of the controversy pursuant to the New York Simplified Procedure for Court Determination of Disputes.

2. Eight days notice of the motion, or such other notice as the court shall deem appropriate, shall be served upon the party alleged to be in default, in such manner as the court shall direct.

3. If there is no substantial question as to the making of the contract or submission, or the failure to comply therewith, the court shall proceed with the determination of the controversy pursuant to the simplified procedure and these rules. If the court shall find that a substantial issue of fact has been raised as to the making of the contract or submission, or the failure to comply therewith, and the motion shall not have been denied as a matter of law, the court shall

proceed expeditiously with the trial thereof without a jury, unless either party upon argument of the motion shall have demanded in writing a trial by jury of the issue of the making of the contract or submission, in which event the court shall proceed as promptly as may be practicable with such trial before a jury.

§ 3035. Simplified procedure authorized. (a) Implementation and pre-trial. The procedure in any action under the New York simplified procedure for court determination of disputes authorized by sections 3031 and 3033 shall be as provided in rule 3036 adopted to implement the provisions hereof, which is designed to promote the speedy hearing of such actions and to provide for such actions a procedure that is as simple and informal as circumstances will permit. A pre-trial conference may be held relative to the disposition of questions of law which might be conclusive in the action and avoid a trial.

(b) Technical rules of evidence dispensed. The technical rules of evidence shall be dispensed with to the extent specified in such rule 3036.

(c) Practice. The practice under this procedure relating to motions to stay or to transfer pending actions, and relating to venue, assessment of costs, entry of judgment, judgment by default, and the continuance of the action in case of death or incompetency of parties shall be as prescribed in the rules adopted pursuant hereto.

Rule 3036. Court determination. 1. Except upon a trial under paragraph three of rule 3034 of the issue of the making of the contract or submission, the rules as to the admissibility of evidence, except as provided by statutes relating to privileged communications, and as to procedure shall be dispensed with unless the court shall otherwise direct, and shall not apply to or exclude, limit, or restrict the taking of any testimony and the adducing of any proof.

2. In any action brought pursuant to the simplified procedure for court determination of disputes in which the court shall be of the opinion that evidence by an impartial expert would be of material aid to

the just determination of the action, it may direct that such evidence be obtained. The fee and expenses of such expert shall be paid by the parties as, in its discretion, the court may direct.

3. Any action or proceeding, other than one brought in accordance with the simplified procedure, which presents an issue referable to the court for determination under the simplified procedure may be stayed by the court in which such action or proceeding is pending, or by the supreme court.

4. If the court directs a party to the contract or submission to serve a statement within a given time, and the party fails to do so, or if a party fails to appear upon proper notice, judgment by default may be awarded.

5. At a pre-trial conference, or at any other time on motion of any party or on its own motion, on notice to the parties, and upon such terms and conditions as in its discretion may seem proper, the court may (a) order or allow any party to serve an additional or amended statement of facts; (b) direct pre-trial disclosure of evidence and discovery and inspection of books, records and documents; (c) permit the taking of depositions for use at the hearing; (d) limit or restrict the number of experts to be heard as witnesses; (e) clarify and define the issues to be tried; (f) stay or transfer and consolidate with the action any other civil action or proceeding pending in any court between parties to the action; (g) grant summary judgment in favor of any party as in rule 3212 provided.

6. After a statement complying with the requirements of rule 3032 or settled in accordance with rule 3034 has been filed, any party may serve and file a note of issue. Trial of the action shall commence on the date specified in such note of issue or as soon thereafter as may be practicable. Completion of preliminary procedures required by local court rules prior to the placing of a case upon the calendar for trial shall not be required in actions under the New York Simplified Procedure for Court Determination of Disputes.

7. The judgment roll shall consist of the submission or contract; the statement of claims and defenses; each paper submitted to the court upon a motion and each order of the court thereon; a copy of the judgment and of each paper necessarily affecting the judgment.

8. Those provisions of the civil practice law and rules pertaining to venue, entry and enforcement of judgment and the continuance of a civil action in case of the death or incompetency of parties shall apply to actions under the simplified procedure.

9. Costs and disbursements may be awarded by the court in its discretion. If awarded, the amount thereof must be included in the judgment.

§ 3037. Appeal. An appeal may be taken only from a judgment, or an order determining the making of the contract or submission or the failure to comply therewith. There shall be no appeal from an intermediate order of the court or of a judge in an action under the simplified procedure provisions, except with the permission of the trial or appellate court, but such order or orders may be reviewed on the appeal from a judgment entered under these provisions. A decision of the trial judge on the facts shall be final if there is any substantial evidence to support it.

§ 3041. Bill of particulars in any case. Any party may require any other party to give a bill of particulars of such party's claim, or a copy of the items of the account alleged in a pleading. As used elsewhere in this article, the term "bill of particulars" shall include "copy of the items of an account."

Rule 3042. Procedure for bill of particulars. (a) Demand. A demand for a bill of particulars shall be made by serving a written demand stating the items concerning which particulars are desired. Within thirty days of service of a demand for a bill of particulars, the party on whom the

demand is made shall serve a bill of particulars complying with each item of the demand, except any item to which the party objects, in which event the reasons for the objection shall be stated with reasonable particularity. The assertion of an objection to one or more of the items in the demand shall not relieve the party on whom the demand is made from the obligation to respond in full within thirty days of service of the demand to the items of the demand to which no objection has been made.

(b) Amendment. In any action or proceeding in a court in which a note of issue is required to be filed, a party may amend the bill of particulars once as of course prior to the filing of a note of issue.

(c) Failure to respond or to comply with a demand. If a party fails to respond to a demand in a timely fashion or fails to comply fully with a demand, the party seeking the bill of particulars may move to compel compliance, or, if such failure is willful, for the imposition of penalties pursuant to subdivision (d) of this rule.

(d) Penalties for refusal to comply. If a party served with a demand for a bill of particulars willfully fails to provide particulars which the court finds ought to have been provided pursuant to this rule, the court may make such final or conditional order with regard to the failure or refusal as is just, including such relief as is set forth in section thirty-one hundred twenty-six of this chapter.

(e) Service of improper or unduly burdensome demands. If the court concludes that the demand for particulars, or a part thereof, is improper or unduly burdensome, in addition to vacating or modifying the demand, the court may make such order with regard to the improper or unduly burdensome demand as is just.

Rule 3043. Bill of particulars in personal injury actions. (a) Specified particulars. In actions to recover for personal injuries the following particulars may be required:

- (1) The date and approximate time of day of the occurrence;
- (2) Its approximate location;
- (3) General statement of the acts or omissions constituting the negligence claimed;
- (4) Where notice of a condition is a prerequisite, whether actual or

constructive notice is claimed;

(5) If actual notice is claimed, a statement of when and to whom it was given;

(6) Statement of the injuries and description of those claimed to be permanent, and in an action designated in subsection (a) of section five thousand one hundred four of the insurance law, for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, in what respect plaintiff has sustained a serious injury, as defined in subsection (d) of section five thousand one hundred two of the insurance law, or economic loss greater than basic economic loss, as defined in subsection (a) of section five thousand one hundred two of the insurance law;

(7) Length of time confined to bed and to house;

(8) Length of time incapacitated from employment; and

(9) Total amounts claimed as special damages for physicians' services and medical supplies; loss of earnings, with name and address of the employer; hospital expenses; nurses' services.

(b) Supplemental bill of particulars without leave. A party may serve a supplemental bill of particulars with respect to claims of continuing special damages and disabilities without leave of court at any time, but not less than thirty days prior to trial. Provided however that no new cause of action may be alleged or new injury claimed and that the other party shall upon seven days notice, be entitled to newly exercise any and all rights of discovery but only with respect to such continuing special damages and disabilities.

(c) Discretion of court. Nothing contained in the foregoing shall be deemed to limit the court in denying in a proper case, any one or more of the foregoing particulars, or in a proper case, in granting other, further or different particulars.

§ 3044. Verification of bill of particulars. If a pleading is verified, a subsequent bill of particulars shall also be verified. A bill of particulars of any pleading with respect to a cause of action for negligence shall be verified whether such pleading be verified or not.

§ 3045. Arbitration of damages in medical, dental or podiatric malpractice actions. (a) At any time after service of a bill of particulars but no later than sixty days after filing of the notice of dental, medical or podiatric malpractice action pursuant to rule thirty-four hundred six of this chapter, any defendant in such an action may demand that the plaintiff elect whether to consent to the arbitration of damages upon a concession of liability in accordance with the provisions of this section.

(b) Within twenty days after receipt of such a demand, the plaintiff shall elect whether to arbitrate damages in such an action pursuant to such a concession of liability by the defendant or defendants in the action. If the defendant or defendants serve a concession of liability upon the plaintiff within twenty days after receipt of such an election, the issue of damages, including the proximate cause thereof, shall be subject to arbitration in accordance with the provisions of article seventy-five-A of this chapter. A concession of liability, made pursuant to this section, shall not be binding on the defendant for any other purpose.

ARTICLE 31

DISCLOSURE

- 3101. Scope of disclosure.
 - (a) Generally.
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- 3105. Notice to party in default.
- 3106. Priority of depositions; witnesses; prisoners; designation of deponent.
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- 3107. Notice of taking oral questions.
- 3108. Written questions; when permitted.
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 - (e) Form of written questions.
- 3116. Signing deposition; physical preparation; copies.
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 - (b) Certification and filing by officer.
 - (c) Exhibits.
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- 3117. Use of depositions.
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 - (b) Use of part of deposition.
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- 3118. Demand for address of party or of person who possessed an assigned cause of action or defense.
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§ 3101. Scope of disclosure. (a) Generally. There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:

(1) a party, or the officer, director, member, agent or employee of a party;

(2) a person who possessed a cause of action or defense asserted in the action;

(3) a person about to depart from the state, or without the state, or residing at a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief

that he or she will not be able to attend the trial, or a person authorized to practice medicine, dentistry or podiatry who has provided medical, dental or podiatric care or diagnosis to the party demanding disclosure, or who has been retained by such party as an expert witness; and

(4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required.

(b) Privileged matter. Upon objection by a person entitled to assert the privilege, privileged matter shall not be obtainable.

(c) Attorney's work product. The work product of an attorney shall not be obtainable.

(d) Trial preparation.

1. Experts. (i) Upon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. However, where a party for good cause shown retains an expert an insufficient period of time before the commencement of trial to give appropriate notice thereof, the party shall not thereupon be precluded from introducing the expert's testimony at the trial solely on grounds of noncompliance with this paragraph. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. In an action for medical, dental or podiatric malpractice, a party, in responding to a request, may omit the names of medical, dental or podiatric experts but shall be required to disclose all other information concerning such experts otherwise required by this paragraph.

(ii) In an action for medical, dental or podiatric malpractice, any party may, by written offer made to and served upon all other parties and filed with the court, offer to disclose the name of, and to make available for examination upon oral deposition, any person the party making the offer expects to call as an expert witness at trial. Within twenty days of service of the offer, a party shall accept or reject the offer by serving a written reply upon all parties and filing a copy

thereof with the court. Failure to serve a reply within twenty days of service of the offer shall be deemed a rejection of the offer. If all parties accept the offer, each party shall be required to produce his or her expert witness for examination upon oral deposition upon receipt of a notice to take oral deposition in accordance with rule thirty-one hundred seven of this chapter. If any party, having made or accepted the offer, fails to make that party's expert available for oral deposition, that party shall be precluded from offering expert testimony at the trial of the action.

(iii) Further disclosure concerning the expected testimony of any expert may be obtained only by court order upon a showing of special circumstances and subject to restrictions as to scope and provisions concerning fees and expenses as the court may deem appropriate. However, a party, without court order, may take the testimony of a person authorized to practice medicine, dentistry or podiatry who is the party's treating or retained expert, as described in paragraph three of subdivision (a) of this section, in which event any other party shall be entitled to the full disclosure authorized by this article with respect to that expert without court order.

2. Materials. Subject to the provisions of paragraph one of this subdivision, materials otherwise discoverable under subdivision (a) of this section and prepared in anticipation of litigation or for trial by or for another party, or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent), may be obtained only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

(e) Party's statement. A party may obtain a copy of his own statement.

(f) Contents of insurance agreement. (1) No later than ninety days after service of an answer pursuant to rule three hundred twenty or section three thousand eleven or three thousand nineteen of this

chapter, any defendant, third-party defendant, or defendant on a cross-claim or counter-claim shall provide to the plaintiff, third-party plaintiff, plaintiff on counter-claim, and any other party in the action proof of the existence and contents of any insurance agreement in the form of a copy of the insurance policy in place at the time of the loss or, if agreed to by such plaintiff or party in writing, in the form of a declaration page, under which any person or entity may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the entry of final judgment. A plaintiff or party who agrees to accept a declaration page in lieu of a copy of any insurance policy does not waive the right to receive any other information required to be provided under this subdivision, and may revoke such agreement at any time, and upon notice to an applicable defendant of such revocation, shall be provided with the full copy of the insurance policy in place at the time of the loss. Information and documentation, as evidenced in the form of a copy of the insurance policy in place at the time of the loss or the declaration page, pursuant to this subdivision shall include:

- (i) all primary, excess and umbrella policies, contracts or agreements issued by private or publicly traded stock companies, mutual insurance companies, captive insurance entities, risk retention groups, reciprocal insurance exchanges, syndicates, including, but not limited to, Lloyd's Underwriters as defined in section six thousand one hundred sixteen of the insurance law, surplus line insurers and self-insurance programs insofar as such documents relate to the claim being litigated;

- (ii) if the insurance policy in place is provided, a complete copy of any policy, contract or agreement under which any person or entity may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the entry of final judgment as referred to in this paragraph, including, but not limited to, declarations, insuring agreements, conditions, exclusions, endorsements, and similar provisions;

- (iii) the contact information, including the name and e-mail address, of an assigned individual responsible for adjusting the claim at issue; and

- (iv) the total limits available under any policy, contract or agreement, which shall mean the actual funds, after taking into account

erosion and any other offsets, that can be used to satisfy a judgment described in this subdivision or to reimburse for payments made to satisfy the judgment.

(2) A defendant, third-party defendant, or defendant on a cross-claim or counter-claim required to produce to a plaintiff or third-party plaintiff or plaintiff on a counter-claim all information set forth in paragraph one of this subdivision must make reasonable efforts to ensure that the information remains accurate and complete, and provide updated information to any party to whom this information has been provided at the filing of the note of issue, when entering into any formal settlement negotiations conducted or supervised by the court, at a voluntary mediation, and when the case is called for trial, and for sixty days after any settlement or entry of final judgment in the case inclusive of all appeals.

(3) For purposes of this subdivision, an application for insurance shall not be treated as part of an insurance agreement. Disclosure of policy limits under this section shall not constitute an admission that an alleged injury or damage is covered by the policy.

(4) Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial.

(5) The requirements of this subdivision shall not apply to actions brought to recover motor vehicle insurance personal injury protection benefits under article fifty-one of the insurance law or regulation sixty-eight of title eleven of the New York codes, rules and regulations.

(g) Accident reports. Except as is otherwise provided by law, in addition to any other matter which may be subject to disclosure, there shall be full disclosure of any written report of an accident prepared in the regular course of business operations or practices of any person, firm, corporation, association or other public or private entity, unless prepared by a police or peace officer for a criminal investigation or prosecution and disclosure would interfere with a criminal investigation or prosecution.

(h) Amendment or supplementation of responses. A party shall amend or supplement a response previously given to a request for disclosure promptly upon the party's thereafter obtaining information that the response was incorrect or incomplete when made, or that the response,

though correct and complete when made, no longer is correct and complete, and the circumstances are such that a failure to amend or supplement the response would be materially misleading. Where a party obtains such information an insufficient period of time before the commencement of trial appropriately to amend or supplement the response, the party shall not thereupon be precluded from introducing evidence at the trial solely on grounds of noncompliance with this subdivision. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. Further amendment or supplementation may be obtained by court order.

(i) In addition to any other matter which may be subject to disclosure, there shall be full disclosure of any films, photographs, video tapes or audio tapes, including transcripts or memoranda thereof, involving a person referred to in paragraph one of subdivision (a) of this section. There shall be disclosure of all portions of such material, including out-takes, rather than only those portions a party intends to use. The provisions of this subdivision shall not apply to materials compiled for law enforcement purposes which are exempt from disclosure under section eighty-seven of the public officers law.

§ 3102. Method of obtaining disclosure. (a) Disclosure devices. Information is obtainable by one or more of the following disclosure devices: depositions upon oral questions or without the state upon written questions, interrogatories, demands for addresses, discovery and inspection of documents or property, physical and mental examinations of persons, and requests for admission.

(b) Stipulation or notice normal method. Unless otherwise provided by the civil practice law and rules or by the court, disclosure shall be obtained by stipulation or on notice without leave of the court.

(c) Before action commenced. Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. The court may appoint a referee to take testimony.

(d) After trial commenced. Except as provided in section 5223, during and after trial, disclosure may be obtained only by order of the trial court on notice.

(e) Action pending in another jurisdiction. Except as provided in section three thousand one hundred nineteen of this article, when under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, such witness may be compelled to appear and testify in the same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county court shall make any appropriate order in aid of taking such a deposition; provided that no order shall be issued under this section in connection with an out-of-state proceeding relating to any legally protected health activity, as defined in section 570.17 of the criminal procedure law, unless:

(1) such out-of-state proceeding (i) sounds in tort or contract, (ii) is actionable, in an equivalent or similar manner, under the laws of this state, and (iii) was brought by the person who received reproductive health care or gender-affirming care, as such terms are defined in section 570.17 of the criminal procedure law, or the person's legal representative in a manner consistent with subdivision (g) of section three thousand one hundred nineteen of this article; and

(2) the petition for such an order is accompanied by an affirmation compliant with subdivision (f) of this section.

(f) (1) Any petition for such an order brought under subdivision (e) of this section shall include an affirmation under penalty of perjury that the discovery either:

(i) is not related to, and that any information obtained shall not be used in, any investigation or proceeding that seeks to impose civil or criminal liability, professional sanctions, or any other legal consequences upon a person for any legally protected health activity; or

(ii) is related to such an investigation or proceeding, but falls within an exception provided in paragraph one of subdivision (g) of section three thousand one hundred nineteen of this article. Such affirmation shall identify which exception applies to the request.

(2) A party that submits a false affirmation pursuant to this section shall be subject to the jurisdiction of the courts of this state for any suit, penalties, or damages arising out of the false affirmation. A court shall assess a statutory penalty of fifteen thousand dollars per

violation if the court finds the false affirmation was made intentionally, knowingly, willingly or recklessly. This shall be in addition to any other legal or equitable remedy lawfully available. The attorney general may commence an action or special proceeding for damages and/or penalties against any party that submits a false affirmation pursuant to this section. Any action or special proceeding brought by the attorney general pursuant to this section shall be commenced within six years of the date on which the inquiry, investigation, subpoena, or summons that such false affirmation accompanied was filed with the supreme court or county court.

(g) Action to which state is party. In an action in which the state is properly a party, whether as plaintiff, defendant or otherwise, disclosure by the state shall be available as if the state were a private person.

§ 3103. Protective orders. (a) Prevention of abuse. The court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.

(b) Suspension of disclosure pending application for protective order. Service of a notice of motion for a protective order shall suspend disclosure of the particular matter in dispute.

(c) Suppression of information improperly obtained. If any disclosure under this article has been improperly or irregularly obtained so that a substantial right of a party is prejudiced, the court, on motion, may make an appropriate order, including an order that the information be suppressed.

§ 3104. Supervision of disclosure. (a) Motion for, and extent of, supervision of disclosure. Upon the motion of any party or witness on notice to all parties or on its own initiative without notice, the court in which an action is pending may by one of its judges or a referee

supervise all or part of any disclosure procedure.

(b) Selection of referee. A judicial hearing officer may be designated as a referee under this section, or the court may permit all of the parties in an action to stipulate that a named attorney may act as referee. In such latter event, the stipulation shall provide for payment of his fees which shall, unless otherwise agreed, be taxed as disbursements.

(c) Powers of referee; motions referred to person supervising disclosure. A referee under this section shall have all the powers of the court under this article except the power to relieve himself of his duties, to appoint a successor, or to adjudge any person guilty of contempt. All motions or applications made under this article shall be returnable before the judge or referee, designated under this section and after disposition, if requested by any party, his order shall be filed in the office of the clerk.

(d) Review of order of referee. Any party or witness may apply for review of an order made under this section by a referee. The application shall be by motion made in the court in which the action is pending within five days after the order is made. Service of a notice of motion for review shall suspend disclosure of the particular matter in dispute. If the question raised by the motion may affect the rights of a witness, notice shall be served on him personally or by mail at his last known address. It shall set forth succinctly the order complained of, the reason it is objectionable and the relief demanded.

(e) Payment of expenses of referee. Except where a judicial hearing officer has been designated a referee hereunder, the court may make an appropriate order for the payment of the reasonable expenses of the referee.

Rule 3105. Notice to party in default. When a party is in default for failure to appear, he shall not be entitled to notice or service of any copy required under this article.

Rule 3106. Priority of depositions; witnesses; prisoners; designation of deponent. (a) Normal priority. After an action is commenced, any

party may take the testimony of any person by deposition upon oral or written questions. Leave of the court, granted on motion, shall be obtained if notice of the taking of the deposition of a party is served by the plaintiff before that party's time for serving a responsive pleading has expired.

(b) Witnesses. Where the person to be examined is not a party or a person who at the time of taking the deposition is an officer, director, member or employee of a party, he shall be served with a subpoena. Unless the court orders otherwise, on motion with or without notice, such subpoena shall be served at least twenty days before the examination. Where a motion for a protective order against such an examination is made, the witness shall be notified by the moving party that the examination is stayed.

(c) Prisoners. The deposition of a person confined under legal process may be taken only by leave of the court.

(d) Designation of deponent. A party desiring to take the deposition of a particular officer, director, member or employee of a person shall include in the notice or subpoena served upon such person the identity, description or title of such individual. Such person shall produce the individual so designated unless they shall have, no later than ten days prior to the scheduled deposition, notified the requesting party that another individual would instead be produced and the identity, description or title of such individual is specified. If timely notification has been so given, such other individual shall instead be produced.

Rule 3107. Notice of taking oral questions. A party desiring to take the deposition of any person upon oral examination shall give to each party twenty days' notice, unless the court orders otherwise. The notice shall be in writing, stating the time and place for taking the deposition, the name and address of each person to be examined, if known, and, if any name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice need not enumerate the matters upon which the person is to be examined. A party to be examined pursuant to notice served by another party may serve notice of at least ten days for the examination of any

other party, his agent or employee, such examination to be noticed for and to follow at the same time and place.

Rule 3108. Written questions; when permitted. A deposition may be taken on written questions when the examining party and the deponent so stipulate or when the testimony is to be taken without the state. A commission or letters rogatory may be issued where necessary or convenient for the taking of a deposition outside of the state.

Rule 3109. Notice of taking deposition on written questions. (a) Notice of taking; service of questions and cross-questions. A party desiring to take the deposition of any person upon written questions shall serve such questions upon each party together with a notice stating the name and address of the person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within fifteen days thereafter a party so served may serve written cross-questions upon each party. Within seven days thereafter the original party may serve written redirect questions upon each party. Within five days after being served with written redirect questions, a party may serve written recross-questions upon each party.

(b) Officer asking written questions. A copy of the notice and copies of all written questions served shall be delivered by the party taking the deposition to the officer designated in the notice. The officer shall proceed promptly to take the testimony of the witness in response to the written questions and to prepare the deposition.

Rule 3110. Where the deposition is to be taken within the state. A deposition within the state on notice shall be taken:

1. when the person to be examined is a party or an officer, director, member or employee of a party, within the county in which he resides or

has an office for the regular transaction of business in person or where the action is pending; or

2. when any other person to be examined is a resident, within the county in which he resides, is regularly employed or has an office for the regular transaction of business in person, or if he is not a resident, within the county in which he is served, is regularly employed or has an office for the regular transaction of business in person; or

3. when the party to be examined is a public corporation or any officer, agent or employee thereof, within the county in which the action is pending; the place of such examination shall be the office of any of the attorneys for such a public corporation or any officer, agent or authorized employee thereof unless the parties stipulate otherwise.

For the purpose of this rule New York city shall be considered one county.

Rule 3111. Production of things at the examination. The notice or subpoena may require the production of books, papers and other things in the possession, custody or control of the person to be examined to be marked as exhibits, and used on the examination. The reasonable production expenses of a non-party witness shall be defrayed by the party seeking discovery.

Rule 3112. Errors in notice for taking depositions. All errors and irregularities in the notice for taking a deposition are waived unless at least three days before the time for taking the deposition written objection is served upon the party giving the notice.

Rule 3113. Conduct of the examination. (a) Persons before whom depositions may be taken. Depositions may be taken before any of the following persons except an attorney, or employee of an attorney, for a party or prospective party and except a person who would be disqualified

to act as a juror because of interest in the event or consanguinity or affinity to a party:

1. within the state, a person authorized by the laws of the state to administer oaths;

2. without the state but within the United States or within a territory or possession subject to the jurisdiction of the United States, a person authorized to take acknowledgments of deeds outside of the state by the real property law of the state or to administer oaths by the laws of the United States or of the place where the deposition is taken; and

3. in a foreign country, any diplomatic or consular agent or representative of the United States, appointed or accredited to, and residing within, the country, or a person appointed by commission or under letters rogatory, or an officer of the armed forces authorized to take the acknowledgment of deeds.

Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Authority in (here name the state or country)."

(b) Oath of witness; recording of testimony; objections; continuous examination; written questions read by examining officer. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction, record the testimony. The testimony shall be recorded by stenographic or other means, subject to such rules as may be adopted by the appellate division in the department where the action is pending. All objections made at the time of the examination to the qualifications of the officer taking the deposition or the person recording it, or to the manner of taking it, or to the testimony presented, or to the conduct of any person, and any other objection to the proceedings, shall be noted by the officer upon the deposition and the deposition shall proceed subject to the right of a person to apply for a protective order. The deposition shall be taken continuously and without unreasonable adjournment, unless the court otherwise orders or the witness and parties present otherwise

agree. In lieu of participating in an oral examination, any party served with notice of taking a deposition may transmit written questions to the officer, who shall propound them to the witness and record the answers.

(c) Examination and cross-examination. Examination and cross-examination of deponents shall proceed as permitted in the trial of actions in open court, except that a non-party deponent's counsel may participate in the deposition and make objections on behalf of his or her client in the same manner as counsel for a party. When the deposition of a party is taken at the instance of an adverse party, the deponent may be cross-examined by his or her own attorney. Cross-examination need not be limited to the subject matter of the examination in chief.

(d) The parties may stipulate that a deposition be taken by telephone or other remote electronic means and that a party may participate electronically. The stipulation shall designate reasonable provisions to ensure that an accurate record of the deposition is generated, shall specify, if appropriate, reasonable provisions for the use of exhibits at the deposition; shall specify who must and who may physically be present at the deposition; and shall provide for any other provisions appropriate under the circumstances. Unless otherwise stipulated to by the parties, the officer administering the oath shall be physically present at the place of the deposition and the additional costs of conducting the deposition by telephonic or other remote electronic means, such as telephone charges, shall be borne by the party requesting that the deposition be conducted by such means.

Rule 3114. Examination of witness who does not understand the English language. If the witness to be examined does not understand the English language, the examining party must, at his own expense, provide a translation of all questions and answers. Where the court settles questions, it may settle them in the foreign language and in English. It may use the services of one or more experts whose compensation shall be paid by the party seeking the examination and may be taxed as a disbursement.

Rule 3115. Objections to qualification of person taking deposition; competency; questions and answers. (a) Objection when deposition offered in evidence. Subject to the other provisions of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(b) Errors which might be obviated if made known promptly. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of persons, and errors of any kind which might be obviated or removed if objection were promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(c) Disqualification of person taking deposition. Objection to the taking of a deposition because of disqualification of the person by whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(d) Competency of witnesses or admissibility of testimony. Objections to the competency of a witness or to the admissibility of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if objection had been made at that time.

(e) Form of written questions. Objections to the form of written questions are waived unless served in writing upon the party propounding the questions within the time allowed for serving succeeding questions or within three days after service.

Rule 3116. Signing deposition; physical preparation; copies. (a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the

witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

(b) Certification and filing by officer. The officer before whom the deposition was taken shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall list all appearances by the parties and attorneys. If the deposition was taken on written questions, he shall attach to it the copy of the notice and written questions received by him. He shall then securely seal the deposition in an envelope endorsed with the title of the action and the index number of the action, if one has been assigned, and marked "Deposition of (here insert name of witness)" and shall promptly file it with, or send it by registered or certified mail to the clerk of the court where the case is to be tried. The deposition shall always be open to the inspection of the parties, each of whom is entitled to make copies thereof. If a copy of the deposition is furnished to each party or if the parties stipulate to waive filing, the officer need not file the original but may deliver it to the party taking the deposition.

(c) Exhibits. Documentary evidence exhibited before the officer or exhibits marked for identification during the examination of the witness shall be annexed to and returned with the deposition. However, if requested by the party producing documentary evidence or on exhibit, the officer shall mark it for identification as an exhibit in the case, give each party an opportunity to copy or inspect it, and return it to the party offering it, and it may then be used in the same manner as if annexed to and returned with the deposition.

(d) Expenses of taking. Unless the court orders otherwise, the party taking the deposition shall bear the expense thereof.

(e) Errors of officer or person transcribing. Errors and irregularities of the officer or the person transcribing the deposition are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Rule 3117. Use of depositions. (a) Impeachment of witnesses; parties; unavailable witness. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used in accordance with any of the following provisions:

1. any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

2. the deposition testimony of a party or of any person who was a party when the testimony was given or of any person who at the time the testimony was given was an officer, director, member, employee or managing or authorized agent of a party, may be used for any purpose by any party who was adversely interested when the deposition testimony was given or who is adversely interested when the deposition testimony is offered in evidence;

3. the deposition of any person may be used by any party for any purpose against any other party who was present or represented at the taking of the deposition or who had the notice required under these rules, provided the court finds:

(i) that the witness is dead; or

(ii) that the witness is at a greater distance than one hundred miles from the place of trial or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(iv) that the party offering the deposition has been unable to procure the attendance of the witness by diligent efforts; or

(v) upon motion or notice, that such exceptional circumstances exist as to make its use desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court;

4. the deposition of a person authorized to practice medicine may be used by any party without the necessity of showing unavailability or

special circumstances, subject to the right of any party to move pursuant to section 3103 to prevent abuse.

(b) Use of part of deposition. If only part of a deposition is read at the trial by a party, any other party may read any other part of the deposition which ought in fairness to be considered in connection with the part read.

(c) Substitution of parties; prior actions. Substitution of parties does not affect the right to use depositions previously taken. When an action has been brought in any court of any state or of the United States and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest all depositions taken in the former action may be used in the latter as if taken therein.

(d) Effect of using deposition. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use of a deposition as described in paragraph two of subdivision (a). At the trial, any party may rebut any relevant evidence contained in a deposition, whether introduced by him or by any other party.

Rule 3118. Demand for address of party or of person who possessed an assigned cause of action or defense. A party may serve on any party a written notice demanding a verified statement setting forth the post office address and residence of the party, of any specified officer or member of the party and of any person who possessed a cause of action or defense asserted in the action which has been assigned. The demand shall be complied with within ten days of its service.

§ 3119. Uniform interstate depositions and discovery. (a) Definitions. For purposes of this section:

(1) "Out-of-state subpoena" means a subpoena issued under authority of a court of record of a state other than this state.

(2) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(3) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(4) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(i) attend and give testimony at a deposition;

(ii) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody or control of the person; or

(iii) permit inspection of premises under the control of the person.

(5) "Legally protected health activity" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

(6) "Gender-affirming care" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

(7) "Reproductive health care" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

(b) Issuance of subpoena. (1) To request issuance of a subpoena under this section, a party must submit an out-of-state subpoena to the county clerk in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute an appearance in the courts of this state except as provided in subparagraph (iii) of paragraph two of this subdivision.

(2) (i) Any request for the issuance of a subpoena under paragraph one of this subdivision and any subpoena issued under paragraph five of this subdivision shall include an affirmation under penalty of perjury that such subpoena either:

(A) is not related to any investigation or proceeding that seeks to impose civil or criminal liability, professional sanctions, or any other legal consequences upon a person for any legally protected health activity; or

(B) is related to such an investigation or proceeding, but falls within an exception provided in subparagraph (i) of paragraph one of

subdivision (g) of this section. Such affirmation shall identify which exception applies to the request.

(ii) The chief administrator of the courts shall promulgate a standardized form for any affirmation submitted pursuant to this paragraph.

(iii) A party that submits a false affirmation pursuant to this section shall be subject to the jurisdiction of the courts of this state for any suit, penalties, or damages arising out of such false affirmation. A court shall assess a statutory penalty of fifteen thousand dollars per violation if the court finds such false affirmation was made intentionally, knowingly, willingly or recklessly. This shall be in addition to any other legal or equitable remedy lawfully available. The attorney general may commence an action or special proceeding for damages and/or penalties against any party that submits a false affirmation pursuant to this subparagraph.

(iv) Any action or special proceeding brought by the attorney general pursuant to this paragraph shall be commenced within six years of either (A) the date on which the inquiry, investigation, subpoena, or summons that such false affirmation accompanied was filed with the county clerk, for subpoenas requested pursuant to paragraph one of this subdivision; or (B) the date on which the subpoena was issued, for subpoenas issued pursuant to paragraph five of this subdivision.

(3) Except as provided by subdivision (g) of this section, when a party submits an out-of-state subpoena to the county clerk, the clerk, in accordance with that court's procedure and subject to the provisions of article twenty-three of this chapter, shall promptly issue a subpoena for service upon the person to which the out-of-state subpoena is directed.

(4) A subpoena under paragraph three of this subdivision must:

(i) incorporate the terms used in the out-of-state subpoena;

(ii) contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel; and

(iii) include the affirmation required by paragraph two of this subdivision.

(5) Notwithstanding paragraph one of this subdivision, and except as provided by subdivision (g) of this section, if a party to an

out-of-state proceeding retains an attorney licensed to practice in this state, and that attorney receives the original or a true copy of an out-of-state subpoena, the attorney may issue a subpoena under this section.

(c) Service of subpoena. A subpoena issued under this section must be served in compliance with sections two thousand three hundred two and two thousand three hundred three of this chapter.

(d) Deposition, production and inspection. Sections two thousand three hundred three, two thousand three hundred five, two thousand three hundred six, two thousand three hundred seven, two thousand three hundred eight and this article apply to subpoenas issued under subdivision (b) of this section.

(e) Application to court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued under this section must comply with the rules or statutes of this state and be submitted to the court in the county in which discovery is to be conducted.

(f) Uniformity of application and construction. Except as provided in subdivision (g) of this section, in applying and constructing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(g) Out-of-state proceedings regarding legally protected health activities. Notwithstanding any other provisions of this section or any other law, no court, county clerk, or attorney licensed to practice in this state shall issue a subpoena under this section in connection with an out-of-state proceeding relating to any legally protected health activity, unless:

(1) such out-of-state proceeding (i) sounds in tort or contract, (ii) is actionable, in an equivalent or similar manner, under the laws of this state, and (iii) was brought by the person who received reproductive health care or gender-affirming care, or the person's legal representative, so long as the person gives express consent unless express consent is not feasible due to their injury or death; and

(2) the subpoena is accompanied by an affirmation compliant with paragraph two of subdivision (b) of this section.

Rule 3120. Discovery and production of documents and things for inspection, testing, copying or photographing.

1. After commencement of an action, any party may serve on any other party a notice or on any other person a subpoena duces tecum:

(i) to produce and permit the party seeking discovery, or someone acting on his or her behalf, to inspect, copy, test or photograph any designated documents or any things which are in the possession, custody or control of the party or person served; or

(ii) to permit entry upon designated land or other property in the possession, custody or control of the party or person served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property or any specifically designated object or operation thereon.

2. The notice or subpoena duces tecum shall specify the time, which shall be not less than twenty days after service of the notice or subpoena, and the place and manner of making the inspection, copy, test or photograph, or of the entry upon the land or other property and, in the case of an inspection, copying, testing or photographing, shall set forth the items to be inspected, copied, tested or photographed by individual item or by category, and shall describe each item and category with reasonable particularity.

3. The party issuing a subpoena duces tecum as provided hereinabove shall at the same time serve a copy of the subpoena upon all other parties and, within five days of compliance therewith, in whole or in part, give to each party notice that the items produced in response thereto are available for inspection and copying, specifying the time and place thereof.

4. Nothing contained in this section shall be construed to change the requirement of section 2307 that a subpoena duces tecum to be served upon a library or a department or bureau of a municipal corporation, or of the state, or an officer thereof, requires a motion made on notice to the library, department, bureau or officer, and the adverse party, to a

justice of the supreme court or a judge of the court in which the action is triable.

§ 3121. Physical or mental examination. (a) Notice of examination. After commencement of an action in which the mental or physical condition or the blood relationship of a party, or of an agent, employee or person in the custody or under the legal control of a party, is in controversy, any party may serve notice on another party to submit to a physical, mental or blood examination by a designated physician, or to produce for such examination his agent, employee or the person in his custody or under his legal control. The notice may require duly executed and acknowledged written authorizations permitting all parties to obtain, and make copies of, the records of specified hospitals relating to such mental or physical condition or blood relationship; where a party obtains a copy of a hospital record as a result of the authorization of another party, he shall deliver a duplicate of the copy to such party. A copy of the notice shall be served on the person to be examined. It shall specify the time, which shall be not less than twenty days after service of the notice, and the conditions and scope of the examination.

(b) Copy of report. A copy of a detailed written report of the examining physician setting out his findings and conclusions shall be delivered by the party seeking the examination to any party requesting to exchange therefor a copy of each report in his control of an examination made with respect to the mental or physical condition in controversy.

Rule 3122. Objection to disclosure, inspection or examination; compliance. (a) 1. Within twenty days of service of a notice or subpoena duces tecum under rule 3120 or section 3121, the party or person to whom the notice or subpoena duces tecum is directed, if that party or person objects to the disclosure, inspection or examination, shall serve a response which shall state with reasonable particularity the reasons for each objection. If objection is made to part of an item or category, the part shall be specified. The party seeking disclosure under rule 3120 or

section 3121 may move for an order under rule 3124 or section 2308 with respect to any objection to, or other failure to respond to or permit inspection as requested by, the notice or subpoena duces tecum, respectively, or any part thereof.

2. A medical provider served with a subpoena duces tecum, other than a trial subpoena issued by a court, requesting the production of a patient's medical records pursuant to this rule need not respond or object to the subpoena if the subpoena is not accompanied by a written authorization by the patient. Any subpoena served upon a medical provider requesting the medical records of a patient shall state in conspicuous bold-faced type that the records shall not be provided unless the subpoena is accompanied by a written authorization by the patient, or the court has issued the subpoena or otherwise directed the production of the documents.

(b) Whenever a person is required pursuant to such a notice, subpoena duces tecum or order to produce documents for inspection, and where such person withholds one or more documents that appear to be within the category of the documents required by the notice, subpoena duces tecum or order to be produced, such person shall give notice to the party seeking the production and inspection of the documents that one or more such documents are being withheld. This notice shall indicate the legal ground for withholding each such document, and shall provide the following information as to each such document, unless the party withholding the document states that divulgence of such information would cause disclosure of the allegedly privileged information: (1) the type of document; (2) the general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document for a subpoena duces tecum.

(c) Whenever a person is required pursuant to such notice or order to produce documents for inspection, that person shall produce them as they are kept in the regular course of business or shall organize and label them to correspond to the categories in the request.

(d) Unless the subpoena duces tecum directs the production of original documents for inspection and copying at the place where such items are usually maintained, it shall be sufficient for the custodian or other qualified person to deliver complete and accurate copies of the items to

be produced. The reasonable production expenses of a non-party witness shall be defrayed by the party seeking discovery.

Rule 3122-a. Certification of business records. (a) Business records produced pursuant to a subpoena duces tecum under rule 3120 shall be accompanied by a certification, sworn in the form of an affidavit and subscribed by the custodian or other qualified witness charged with responsibility of maintaining the records, stating in substance each of the following:

1. The affiant is the duly authorized custodian or other qualified witness and has authority to make the certification;

2. To the best of the affiant's knowledge, after reasonable inquiry, the records or copies thereof are accurate versions of the documents described in the subpoena duces tecum that are in the possession, custody, or control of the person receiving the subpoena;

3. To the best of the affiant's knowledge, after reasonable inquiry, the records or copies produced represent all the documents described in the subpoena duces tecum, or if they do not represent a complete set of the documents subpoenaed, an explanation of which documents are missing and a reason for their absence is provided; and

4. The records or copies produced were made by the personnel or staff of the business, or persons acting under their control, in the regular course of business, at the time of the act, transaction, occurrence or event recorded therein, or within a reasonable time thereafter, and that it was the regular course of business to make such records.

(b) A certification made in compliance with subdivision (a) is admissible as to the matters set forth therein and as to such matters shall be presumed true. When more than one person has knowledge of the facts, more than one certification may be made.

(c) A party intending to offer at a trial or hearing business records authenticated by certification subscribed pursuant to this rule shall, at least thirty days before the trial or hearing, give notice of such

intent and specify the place where such records may be inspected at reasonable times. No later than ten days before the trial or hearing, a party upon whom such notice is served may object to the offer of business records by certification stating the grounds for the objection. Such objection may be asserted in any instance and shall not be subject to imposition of any penalty or sanction. Unless objection is made pursuant to this subdivision, or is made at trial based upon evidence which could not have been discovered by the exercise of due diligence prior to the time for objection otherwise required by this subdivision, business records certified in accordance with this rule shall be deemed to have satisfied the requirements of subdivision (a) of rule 4518. Notwithstanding the issuance of such notice or objection to same, a party may subpoena the custodian to appear and testify and require the production of original business records at the trial or hearing.

(d) The certification authorized by this rule may be used as to business records produced by non-parties whether or not pursuant to a subpoena so long as the custodian or other qualified witness attests to the facts set forth in paragraphs one, two and four of subdivision (a) of this rule.

§ 3122-b. Certification of insurance disclosure. Information provided pursuant to subdivision (f) of section thirty-one hundred one of this article shall be accompanied by a certification by the defendant, third-party defendant, or defendant on a cross-claim or counter-claim and a certification by any attorney appearing for the defendant, third-party defendant, or defendant on a cross-claim or counter-claim, sworn in the form of an affidavit or affirmation where appropriate, stating that the information is accurate and complete, and that reasonable efforts have been undertaken, and in accordance with paragraph two of subdivision (f) of section thirty-one hundred one of this article will be undertaken, to ensure that this information remains accurate and complete.

§ 3123. Admissions as to matters of fact, papers, documents and photographs. (a) Notice to admit; admission unless denied or denial

excused. At any time after service of the answer or after the expiration of twenty days from service of the summons, whichever is sooner, and not later than twenty days before the trial, a party may serve upon any other party a written request for admission by the latter of the genuineness of any papers or documents, or the correctness or fairness of representation of any photographs, described in and served with the request, or of the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute at the trial and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry. Copies of the papers, documents or photographs shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless within twenty days after service thereof or within such further time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters. If the matters of which an admission is requested cannot be fairly admitted without some material qualification or explanation, or if the matters constitute a trade secret or such party would be privileged or disqualified from testifying as a witness concerning them, such party may, in lieu of a denial or statement, serve a sworn statement setting forth in detail his claim and, if the claim is that the matters cannot be fairly admitted without some material qualification or explanation, admitting the matters with such qualification or explanation.

(b) Effect of admission. Any admission made, or deemed to be made, by a party pursuant to a request made under this rule is for the purpose of the pending action only and does not constitute an admission by him for any other purpose nor may it be used against him in any other proceeding; and the court, at any time, may allow a party to amend or withdraw any admission on such terms as may be just. Any admission shall be subject to all pertinent objections to admissibility which may be interposed at the trial.

(c) Penalty for unreasonable denial. If a party, after being served with a request under subdivision (a) does not admit and if the party

requesting the admission thereafter proves the genuineness of any such paper or document, or the correctness or fairness of representation of any such photograph, or the truth of any such matter of fact, he may move at or immediately following the trial for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or the refusal otherwise to admit or that the admissions sought were of no substantial importance, the order shall be made irrespective of the result of the action. Upon a trial by jury, the motion for such an order shall be determined by the court outside the presence of the jury.

Rule 3124. Failure to disclose; motion to compel disclosure. If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response.

Rule 3125. Place where motion to compel disclosure made. Unless otherwise provided by rule of the chief administrator of the courts, the county in which a deposition is being taken or an examination or inspection is being sought may be treated by the moving party as the county in which the action is pending for purposes of section 3124.

§ 3126. Penalties for refusal to comply with order or to disclose. If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

1. an order that the issues to which the information is relevant shall

be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or

2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or

3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

§ 3130. Use of interrogatories. 1. Except as otherwise provided herein, after commencement of an action, any party may serve upon any other party written interrogatories. Except in a matrimonial action, a party may not serve written interrogatories on another party and also demand a bill of particulars of the same party pursuant to section 3041. In the case of an action to recover damages for personal injury, injury to property or wrongful death predicated solely on a cause or causes of action for negligence, a party shall not be permitted to serve interrogatories on and conduct a deposition of the same party pursuant to rule 3107 without leave of court.

2. After the commencement of a matrimonial action or proceeding, upon motion brought by either party, upon such notice to the other party and to the non-party from whom financial disclosure is sought, and given in such manner as the court shall direct, the court may order a non-party to respond under oath to written interrogatories limited to furnishing financial information concerning a party, and further provided such information is both reasonable and necessary in the prosecution or the defense of such matrimonial action or proceeding.

§ 3131. Scope of interrogatories. Interrogatories may relate to any

matters embraced in the disclosure requirement of section 3101 and the answers may be used to the same extent as the depositions of a party. Interrogatories may require copies of such papers, documents or photographs as are relevant to the answers required, unless opportunity for this examination and copying be afforded.

Rule 3132. Service of interrogatories. After commencement of an action, any party may serve written interrogatories upon any other party. Interrogatories may not be served upon a defendant before that defendant's time for serving a responsive pleading has expired, except by leave of court granted with or without notice. A copy of the interrogatories and of any order made under this rule shall be served on each party.

Rule 3133. Service of answers or objections to interrogatories. (a) Service of an answer or objection. Within twenty days after service of interrogatories, the party upon whom they are served shall serve upon each of the parties a copy of the answer to each interrogatory, except one to which the party objects, in which event the reasons for the objection shall be stated with reasonable particularity.

(b) Form of answers and objections to interrogatories. Interrogatories shall be answered in writing under oath by the party served, if an individual, or, if the party served is a corporation, a partnership or a sole proprietorship, by an officer, director, member, agent or employee having the information. Each question shall be answered separately and fully, and each answer shall be preceded by the question to which it responds.

(c) Amended answers. Except with respect to amendment or supplementation of responses pursuant to subdivision (h) of section 3101, answers to interrogatories may be amended or supplemented only by order of the court upon motion.

§ 3140. Disclosure of appraisals in proceedings for condemnation, appropriation or review of tax assessments. Notwithstanding the

provisions of subdivisions (c) and (d) of section 3101, the chief administrator of the courts shall adopt rules governing the exchange of appraisal reports intended for use at the trial in proceedings for condemnation, appropriation or review of tax assessments.

ARTICLE 32

ACCELERATED JUDGMENT

3201. Confession of judgment before default on certain installment contracts invalid.

3211. Motion to dismiss.

- (a) Motion to dismiss cause of action.
- (b) Motion to dismiss defense.
- (c) Evidence permitted; immediate trial; motion treated as one for summary judgment.
- (d) Facts unavailable to opposing party.
- (e) Number, time and waiver of objections; motion to plead over.
- (f) Extension of time to plead.
- (g) Standards for motions to dismiss in certain cases involving public petition and participation.
- (h) Standards for motions to dismiss in certain cases involving licensed architects, engineers, land surveyors or landscape architects.

3212. Motion for summary judgment.

- (a) Time; kind of action.
- (b) Supporting proof; grounds; relief to either party.
- (c) Immediate trial.
- (e) Partial summary judgment; severance.
- (f) Facts unavailable to opposing party.
- (g) Limitation of issues of fact for trial.
- (h) Standards for summary judgment in certain cases involving public petition and participation.
- (i) Standards for summary judgment in certain cases involving licensed architects, engineers, land surveyors or landscape architects.

3213. Motion for summary judgment in lieu of complaint.

- 3214. Motions heard by judge supervising disclosure; stay of disclosure.
 - (a) Judge supervising disclosure.
 - (b) Stay of disclosure.
- 3215. Default judgment.
 - (a) Default and entry.
 - (b) Procedure before court.
 - (c) Default not entered within one year.
 - (d) Multiple defendants.
 - (e) Place of application to court.
 - (f) Proof.
 - (g) Notice.
 - (h) Judgment for excess where counterclaim interposed.
 - (i) Default judgment for failure to comply with stipulation of settlement.
- 3216. Want of prosecution.
- 3217. Voluntary discontinuance.
 - (a) Without an order.
 - (b) By order of court.
 - (c) Effect of discontinuance.
- 3218. Judgment by confession.
 - (a) Affidavit of defendant.
 - (b) Entry of judgment.
 - (c) Execution where the judgment is not all due.
 - (d) Confession by joint debtors.
- 3219. Tender.
- 3220. Offer to liquidate damages conditionally.
- 3221. Offer to compromise.
- 3222. Action on submitted facts.
 - (a) Commencement.
 - (b) Subsequent proceedings.

§ 3201. Confession of judgment before default on certain installment contracts invalid. Notwithstanding the provisions of section thirty-two hundred eighteen, no judgment by confession shall be entered on any affidavit which was executed prior to the time a default in the payment

of an installment occurs in connection with the purchase for fifteen hundred dollars or less of any commodities for any use other than a commercial or business use upon any plan of deferred payments whereby the price or cost is payable in two or more installments. Any judgment entered in violation of this section is void and unenforceable.

Rule 3211. Motion to dismiss. (a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

1. a defense is founded upon documentary evidence; or
2. the court has not jurisdiction of the subject matter of the cause of action; or
3. the party asserting the cause of action has not legal capacity to sue; or
4. there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires; or
5. the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds; or
6. with respect to a counterclaim, it may not properly be interposed in the action; or
7. the pleading fails to state a cause of action; or
8. the court has not jurisdiction of the person of the defendant; or
9. the court has not jurisdiction in an action where service was made

under section 314 or 315; or

10. the court should not proceed in the absence of a person who should be a party.

11. the party is immune from liability pursuant to section seven hundred twenty-a of the not-for-profit corporation law. Presumptive evidence of the status of the corporation, association, organization or trust under section 501 (c) (3) of the internal revenue code may consist of production of a letter from the United States internal revenue service reciting such determination on a preliminary or final basis or production of an official publication of the internal revenue service listing the corporation, association, organization or trust as an organization described in such section, and presumptive evidence of uncompensated status of the defendant may consist of an affidavit of the chief financial officer of the corporation, association, organization or trust. On a motion by a defendant based upon this paragraph the court shall determine whether such defendant is entitled to the benefit of section seven hundred twenty-a of the not-for-profit corporation law or subdivision six of section 20.09 of the arts and cultural affairs law and, if it so finds, whether there is a reasonable probability that the specific conduct of such defendant alleged constitutes gross negligence or was intended to cause the resulting harm. If the court finds that the defendant is entitled to the benefits of that section and does not find reasonable probability of gross negligence or intentional harm, it shall dismiss the cause of action as to such defendant.

(b) Motion to dismiss defense. A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.

(c) Evidence permitted; immediate trial; motion treated as one for summary judgment. Upon the hearing of a motion made under subdivision (a) or (b), either party may submit any evidence that could properly be considered on a motion for summary judgment. Whether or not issue has been joined, the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment. The court may, when appropriate for the expeditious disposition of the controversy, order immediate trial of the issues raised on the motion.

(d) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to a motion made under subdivision (a) or (b) that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion, allowing the moving party to assert the objection in his responsive pleading, if any, or may order a continuance to permit further affidavits to be obtained or disclosure to be had and may make such other order as may be just.

(e) Number, time and waiver of objections; motion to plead over. At any time before service of the responsive pleading is required, a party may move on one or more of the grounds set forth in subdivision (a) of this rule, and no more than one such motion shall be permitted. Any objection or defense based upon a ground set forth in paragraphs one, three, four, five and six of subdivision (a) of this rule is waived unless raised either by such motion or in the responsive pleading. A motion based upon a ground specified in paragraph two, seven or ten of subdivision (a) of this rule may be made at any subsequent time or in a later pleading, if one is permitted; an objection that the summons and complaint, summons with notice, or notice of petition and petition was not properly served is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading, unless the court extends the time upon the ground of undue hardship. The foregoing sentence shall not apply in any proceeding to collect a debt arising out of a consumer credit transaction where a consumer is a defendant or under subdivision one or two of section seven hundred eleven of the real property actions and proceedings law. The papers in opposition to a motion based on improper service shall contain a copy of the proof of service, whether or not previously filed. An objection based upon a ground specified in paragraph eight or nine of subdivision (a) of this rule is waived if a party moves on any of the grounds set forth in subdivision (a) of this rule without raising such objection or if, having made no objection under subdivision (a) of this rule, he or she does not raise such objection in the responsive pleading which, in any action to collect a debt arising out of a consumer credit transaction where a consumer is a defendant, includes any amended responsive pleading.

(f) Extension of time to plead. Service of a notice of motion under subdivision (a) or (b) before service of a pleading responsive to the

cause of action or defense sought to be dismissed extends the time to serve the pleading until ten days after service of notice of entry of the order.

(g) Stay of proceedings and standards for motions to dismiss in certain cases involving public petition and participation. 1. A motion to dismiss based on paragraph seven of subdivision (a) of this section, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action involving public petition and participation as defined in paragraph (a) of subdivision one of section seventy-six-a of the civil rights law, shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

2. In making its determination on a motion to dismiss made pursuant to paragraph one of this subdivision, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the action or defense is based. No determination made by the court on a motion to dismiss brought under this section, nor the fact of that determination, shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

3. All discovery, pending hearings, and motions in the action shall be stayed upon the filing of a motion made pursuant to this section. The stay shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and upon a showing by the nonmoving party, by affidavit or declaration under penalty of perjury that, for specified reasons, it cannot present facts essential to justify its opposition, may order that specified discovery be conducted notwithstanding this subdivision. Such discovery, if granted, shall be limited to the issues raised in the motion to dismiss.

4. For purposes of this section, "complaint" includes

"cross-complaint" and "petition", "plaintiff" includes "cross-complainant" and "petitioner", and "defendant" includes "cross-defendant" and "respondent."

(h) Standards for motions to dismiss in certain cases involving licensed architects, engineers, land surveyors or landscape architects. A motion to dismiss based on paragraph seven of subdivision (a) of this rule, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action in which a notice of claim must be served on a licensed architect, engineer, land surveyor or landscape architect pursuant to the provisions of subdivision one of section two hundred fourteen of this chapter, shall be granted unless the party responding to the motion demonstrates that a substantial basis in law exists to believe that the performance, conduct or omission complained of such licensed architect, engineer, land surveyor or landscape architect or such firm as set forth in the notice of claim was negligent and that such performance, conduct or omission was a proximate cause of personal injury, wrongful death or property damage complained of by the claimant or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant a preference in the hearing of such motion.

Rule 3212. Motion for summary judgment. (a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. Where an expert affidavit is submitted in

support of, or opposition to, a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange pursuant to subparagraph (i) of paragraph (1) of subdivision (d) of section 3101 was not furnished prior to the submission of the affidavit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion.

(c) Immediate trial. If it appears that the only triable issues of fact arising on a motion for summary judgment relate to the amount or extent of damages, or if the motion is based on any of the grounds enumerated in subdivision (a) or (b) of rule 3211, the court may, when appropriate for the expeditious disposition of the controversy, order an immediate trial of such issues of fact raised by the motion, before a referee, before the court, or before the court and a jury, whichever may be proper.

(e) Partial summary judgment; severance. In a matrimonial action summary judgment may not be granted in favor of the non-moving party. In any other action summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just. The court may also direct:

1. that the cause of action as to which summary judgment is granted shall be severed from any remaining cause of action; or

2. that the entry of the summary judgment shall be held in abeyance pending the determination of any remaining cause of action.

(f) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be

just.

(g) Limitation of issues of fact for trial. If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court, by interrogating counsel, shall, if practicable, ascertain what facts are not in dispute or are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in the action. The court may make any order as may aid in the disposition of the action.

(h) Standards for summary judgment in certain cases involving public petition and participation. A motion for summary judgment, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of the civil rights law, shall be granted unless the party responding to the motion demonstrates that the action, claim, cross claim or counterclaim has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

(i) Standards for summary judgment in certain cases involving licensed architects, engineers, land surveyors or landscape architects. A motion for summary judgment, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action in which a notice of claim must be served on a licensed architect, engineer, land surveyor or landscape architect pursuant to the provisions of subdivision one of section two hundred fourteen of this chapter, shall be granted unless the party responding to the motion demonstrates that a substantial basis in fact and in law exists to believe that the performance, conduct or omission complained of such licensed architect, engineer, land surveyor or landscape architect or such firm as set forth in the notice of claim was negligent and that such performance, conduct or omission was a proximate cause of personal injury, wrongful death or property damage complained of by the claimant or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant a preference in the hearing of such motion.

(j) Additional notice in any action to collect a debt arising out of a consumer credit transaction where a consumer is a defendant.

1. At the time of service of a notice of motion any part of which requests summary judgment in whole or in part, where the moving party is a plaintiff and the respondent is a consumer defendant in an action to collect a debt arising out of a consumer credit transaction, and where the consumer defendant against whom summary judgment is sought is not represented by an attorney, the plaintiff shall submit to the clerk a stamped, unsealed envelope addressed to the defendant together with the following additional notice in English and Spanish to be printed in clear type no less than twelve-point in size:

IMPORTANT NOTICE

The Plaintiff has asked the Court to enter judgment against you by making a Motion for Summary Judgment. Keep this Notice and the envelope it came in. The Motion for Summary Judgment was separately served on you. To avoid entry of judgment:

(1) You must appear in court as directed below:

WHERE: Name of Court, Street Address, Room Number

WHEN: Date and time

(2) You should oppose the motion IN WRITING.

HOW TO OPPOSE THE MOTION:

(1) State the legal reasons why the court should not enter judgment against you, including your defenses.

(2) State the facts that support your defenses.

(3) Attach affidavits and/or exhibits to support the facts you assert.

(a) Affidavits are sworn statements of witnesses (including you) who state facts they know to be true. The affidavit should state the facts and how the witness knows them. Also, the affidavit should explain any exhibits. An affidavit of service is an affidavit that states how and when papers were served. An affidavit must be signed in front of a notary. Free forms are available on the New York State Court system website at: _____.

(b) Exhibits are copies of documents. Exhibits are usually attached to affidavits.

(4) Have someone (not you or another defendant in the lawsuit) mail a copy of your opposition to the plaintiff's attorney before your court

date and have them prepare an affidavit of service by mail.

(5) Bring a copy of your opposition and the affidavit of service to your court date.

(6) Attend your court date.

IF YOU NEED MORE TIME:

If you need more time to prepare your written response, you should appear at your court date and ask the judge for more time. You can also ask the judge to refer you for legal help.

IF YOU NEED LEGAL HELP:

You may seek legal help from a private attorney or a legal aid office. Some courts have free legal assistance programs for people without lawyers. You can find resources on the New York State court system website at: _____.

2. The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in paragraph one of this subdivision and note the date of mailing in the case record. Summary judgment shall not be entered based on defendant's failure to oppose the motion unless there has been compliance with this section and at least fourteen days have elapsed from the date of mailing by the clerk or nineteen days if the plaintiff's notice of motion demands additional time under subdivision (b) of rule 2214 of this chapter.

3. The chief administrative judge shall issue a Spanish translation of the notice in paragraph one of this subdivision and shall maintain and publish the URL address for the web page containing consumer credit resources for unrepresented litigants.

§ 3213. Motion for summary judgment in lieu of complaint. When an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint. The summons served with such motion papers shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion. The minimum time such motion shall be noticed to be heard shall be as provided by subdivision (a) of rule 320

for making an appearance, depending upon the method of service. If the plaintiff sets the hearing date of the motion later than the minimum time therefor, he may require the defendant to serve a copy of his answering papers upon him within such extended period of time, not exceeding ten days, prior to such hearing date. No default judgment may be entered pursuant to subdivision (a) of section 3215 prior to the hearing date of the motion. If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise. The additional notice required by subdivision (j) of rule 3212 shall be applicable to a motion made pursuant to this section in any action to collect a debt arising out of a consumer credit transaction where a consumer is a defendant.

Rule. 3214. Motions heard by judge supervising disclosure; stay of disclosure. (a) Judge supervising disclosure. Unless the chief administrator of the courts has, by rule, provided otherwise, if a case has been assigned to a judge to supervise disclosure pursuant to section 3104, all motions preliminary to trial shall be referred to such judge whenever practicable.

(b) Stay of disclosure. Service of a notice of motion under rule 3211, 3212, or section 3213 stays disclosure until determination of the motion unless the court orders otherwise. If the motion is based solely on the defense that the summons and complaint, summons with notice, or notice of petition and petition was not properly served, disclosure shall not be stayed unless the court orders otherwise.

§ 3215. Default judgment. (a) Default and entry. When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him. If the plaintiff's claim is for a sum certain or for a sum which can by computation be made certain, application may be made to the clerk within one year after the default. The clerk, upon submission of the requisite proof, shall enter judgment for the amount demanded in the complaint or stated in the notice served pursuant to subdivision (b) of

rule 305, plus costs and interest. Upon entering a judgment against less than all defendants, the clerk shall also enter an order severing the action as to them. When a plaintiff has failed to proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the defendant may make application to the clerk within one year after the default and the clerk, upon submission of the requisite proof, shall enter judgment for costs. Where the case is not one in which the clerk can enter judgment, the plaintiff shall apply to the court for judgment.

(b) Procedure before court. The court, with or without a jury, may make an assessment or take an account or proof, or may direct a reference. The party entitled to judgment may be permitted to submit, in addition to the proof required by subdivision (f) of this section, properly executed affidavits or affirmations as proof of damages, provided that if the defaulting party gives reasonable notice that it will appear at the inquest, the party seeking damages may submit any such proof by oral testimony of the witnesses in open court or, after giving reasonable notice that it will do so, by written sworn statements of the witnesses, but shall make all such witnesses available for cross-examination. When a reference is directed, the court may direct that the report be returned to it for further action or, except where otherwise prescribed by law, that judgment be entered by the clerk in accordance with the report without any further application. Except in a matrimonial action, no finding of fact in writing shall be necessary to the entry of a judgment on default. The judgment shall not exceed in amount or differ in type from that demanded in the complaint or stated in the notice served pursuant to subdivision (b) of rule 305 of this chapter.

(c) Default not entered within one year. If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed. A motion by the defendant under this subdivision does not constitute an appearance in the action.

(d) Multiple defendants. Whenever a defendant has answered and one or more other defendants have failed to appear, plead, or proceed to trial

of an action reached and called for trial, notwithstanding the provisions of subdivision (c) of this section, upon application to the court within one year after the default of any such defendant, the court may enter an ex parte order directing that proceedings for the entry of a judgment or the making of an assessment, the taking of an account or proof, or the direction of a reference be conducted at the time of or following the trial or other disposition of the action against the defendant who has answered. Such order shall be served on the defaulting defendant in such manner as shall be directed by the court.

(e) Place of application to court. An application to the court under this section may be made, except where otherwise prescribed by rules of the chief administrator of the courts, by motion at any trial term in which the action is triable or at any special term in which a motion in the action could be made. Any reference shall be had in the county in which the action is triable, unless the court orders otherwise.

(f) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due, including, if applicable, a statement that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies, by affidavit made by the party, or where the state of New York is the plaintiff, by affidavit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise. Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney. In an action arising out of a consumer credit transaction, if the plaintiff is not the original creditor, the applicant shall include: (1) an affidavit by the original creditor of the facts constituting the debt, the default in payment, the sale or assignment of the debt, and the amount due at the time of sale or assignment; (2) for each subsequent assignment or sale of the debt to another entity, an affidavit of sale of the debt by the debt seller, completed by the seller or assignor; and (3) an affidavit of a witness of the plaintiff, which includes a chain of title of the

debt, completed by the plaintiff or plaintiff's witness. In an action arising from medical debt, if the plaintiff is not a hospital licensed under article twenty-eight of the public health law or a health care professional authorized under title eight of the education law, the applicant shall include: (1) an affidavit by the hospital or health care professional of the facts constituting the medical debt, the default in payment, the sale or assignment of the medical debt, and the amount due at the time of sale or assignment; (2) for each subsequent assignment or sale of the medical debt to another entity, an affidavit of sale of the medical debt by the debt seller, completed by the seller or assignor; and (3) an affidavit of a witness of the plaintiff, which includes a chain of title of the medical debt, completed by the plaintiff or plaintiff's witness. The chief administrative judge shall issue form affidavits to satisfy the requirements of this subdivision for consumer credit transactions and actions arising from medical debt. When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value. Proof of mailing the notice required by subdivision (g) of this section, where applicable, shall also be filed.

(g) Notice. 1. Except as otherwise provided with respect to specific actions, whenever application is made to the court or to the clerk, any defendant who has appeared is entitled to at least five days' notice of the time and place of the application, and if more than one year has elapsed since the default any defendant who has not appeared is entitled to the same notice unless the court orders otherwise. The court may dispense with the requirement of notice when a defendant who has appeared has failed to proceed to trial of an action reached and called for trial.

2. Where an application for judgment must be made to the court, the defendant who has failed to appear may serve on the plaintiff at any time before the motion for judgment is heard a written demand for notice of any reference or assessment by a jury which may be granted on the motion. Such a demand does not constitute an appearance in the action. Thereupon at least five days' notice of the time and place of the reference or assessment by a jury shall be given to the defendant by

service on the person whose name is subscribed to the demand, in the manner prescribed for service of papers generally.

3. (i) When a default judgment based upon nonappearance is sought against a natural person in an action based upon nonpayment of a contractual obligation an affidavit shall be submitted that additional notice has been given by or on behalf of the plaintiff at least twenty days before the entry of such judgment, by mailing a copy of the summons by first-class mail to the defendant at his place of residence in an envelope bearing the legend "personal and confidential" and not indicating on the outside of the envelope that the communication is from an attorney or concerns an alleged debt. In the event such mailing is returned as undeliverable by the post office before the entry of a default judgment, or if the place of residence of the defendant is unknown, a copy of the summons shall then be mailed in the same manner to the defendant at the defendant's place of employment if known; if neither the place of residence nor the place of employment of the defendant is known, then the mailing shall be to the defendant at his last known residence.

(ii) The additional notice may be mailed simultaneously with or after service of the summons on the defendant. An affidavit of mailing pursuant to this paragraph shall be executed by the person mailing the notice and shall be filed with the judgment. Where there has been compliance with the requirements of this paragraph, failure of the defendant to receive the additional notice shall not preclude the entry of default judgment.

(iii) This requirement shall not apply to cases in the small claims part of any court, or to any summary proceeding to recover possession of real property, or to actions affecting title to real property, except residential mortgage foreclosure actions.

4. (i) When a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation which has been served pursuant to paragraph (b) of section three hundred six of the business corporation law, an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days

before the entry of judgment.

(ii) The additional service of the summons by mail may be made simultaneously with or after the service of the summons on the defendant corporation pursuant to paragraph (b) of section three hundred six of the business corporation law, and shall be accompanied by a notice to the corporation that service is being made or has been made pursuant to that provision. An affidavit of mailing pursuant to this paragraph shall be executed by the person mailing the summons and shall be filed with the judgment. Where there has been compliance with the requirements of this paragraph, failure of the defendant corporation to receive the additional service of summons and notice provided for by this paragraph shall not preclude the entry of default judgment.

(iii) This requirement shall not apply to cases in the small claims part or commercial claims part of any court, or to any summary proceeding to recover possession of real property, or to actions affecting title to real property.

(h) Judgment for excess where counterclaim interposed. In an action upon a contract where the complaint demands judgment for a sum of money only, if the answer does not deny the plaintiff's claim but sets up a counterclaim demanding an amount less than the plaintiff's claim, the plaintiff upon filing with the clerk an admission of the counterclaim may take judgment for the excess as upon a default.

(i) Default judgment for failure to comply with stipulation of settlement. 1. Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount with interest, if any, from a date certain, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with a complaint or a concise statement of the facts on which the claim was based, and, if applicable, a statement that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies.

2. Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment dismissing the action, the clerk shall enter judgment on the stipulation and an

affidavit as to the failure to comply with the terms thereof, together with the pleadings or a concise statement of the facts on which the claim and the defense were based.

(j) Affidavit. A request for a default judgment entered by the clerk, must be accompanied by an affidavit by the plaintiff or plaintiff's attorney stating that after reasonable inquiry, he or she has reason to believe that the statute of limitations has not expired. The chief administrative judge shall issue form affidavits to satisfy the requirements of this subdivision for consumer credit transactions and actions arising from medical debt.

Rule 3216. Want of prosecution. (a) Where a party unreasonably neglects to proceed generally in an action or otherwise delays in the prosecution thereof against any party who may be liable to a separate judgment, or unreasonably fails to serve and file a note of issue, the court, on its own initiative or upon motion, with notice to the parties, may dismiss the party's pleading on terms. Unless the order specifies otherwise, the dismissal is not on the merits.

(b) No dismissal shall be directed under any portion of subdivision (a) of this rule and no court initiative shall be taken or motion made thereunder unless the following conditions precedent have been complied with:

(1) Issue must have been joined in the action;

(2) One year must have elapsed since the joinder of issue or six months must have elapsed since the issuance of the preliminary court conference order where such an order has been issued, whichever is later;

(3) The court or party seeking such relief, as the case may be, shall have served a written demand by registered or certified mail requiring the party against whom such relief is sought to resume prosecution of the action and to serve and file a note of issue within ninety days after receipt of such demand, and further stating that the default by the party upon whom such notice is served in complying with such demand within said ninety day period will serve as a basis for a motion by the party serving said demand for dismissal as against him or her for unreasonably neglecting to proceed. Where the written demand is served

by the court, the demand shall set forth the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.

(c) In the event that the party upon whom is served the demand specified in subdivision (b) (3) of this rule serves and files a note of issue within such ninety day period, the same shall be deemed sufficient compliance with such demand and diligent prosecution of the action; and in such event, no such court initiative shall be taken and no such motion shall be made, and if taken or made, the court initiative or motion to dismiss shall be denied. (d) After an action has been placed on the calendar by the service and filing of a note of issue, with or without any such demand, provided, however, if such demand has been served, within the said ninety day period, the action may not be dismissed by reason of any neglect, failure or delay in prosecution of the action prior to the said service and filing of such note of issue.

(e) In the event that the party upon whom is served the demand specified in subdivision (b) (3) of this rule fails to serve and file a note of issue within such ninety day period, the court may take such initiative or grant such motion unless the said party shows justifiable excuse for the delay and a good and meritorious cause of action.

(f) The provisions of this rule shall not apply to proceedings within rule thirty-four hundred four.

Rule 3217. Voluntary discontinuance. (a) Without an order. Any party asserting a claim may discontinue it without an order

1. by serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading is served or, if no responsive pleading is required, within twenty days after service of the pleading asserting the claim and filing the notice with proof of service with the clerk of the court; or

2. by filing with the clerk of the court before the case has been submitted to the court or jury a stipulation in writing signed by the attorneys of record for all parties, provided that no party is an infant, incompetent person for whom a committee has been appointed or

conservatee and no person not a party has an interest in the subject matter of the action; or

3. by filing with the clerk of the court before the case has been submitted to the court or jury a certificate or notice of discontinuance stating that any parcel of land which is the subject matter of the action is to be excluded pursuant to title three of article eleven of the real property tax law.

(b) By order of court. Except as provided in subdivision (a), an action shall not be discontinued by a party asserting a claim except upon order of the court and upon terms and conditions, as the court deems proper. After the cause has been submitted to the court or jury to determine the facts the court may not order an action discontinued except upon the stipulation of all parties appearing in the action.

(c) Effect of discontinuance. Unless otherwise stated in the notice, stipulation or order of discontinuance, the discontinuance is without prejudice, except that a discontinuance by means of notice operates as an adjudication on the merits if the party has once before discontinued by any method an action based on or including the same cause of action in a court of any state or the United States.

(d) All notices, stipulations, or certificates pursuant to this rule shall be filed with the county clerk by the defendant.

(e) Effect of discontinuance upon certain instruments. In any action on an instrument described under subdivision four of section two hundred thirteen of this chapter, the voluntary discontinuance of such action, whether on motion, order, stipulation or by notice, shall not, in form or effect, waive, postpone, cancel, toll, extend, revive or reset the limitations period to commence an action and to interpose a claim, unless expressly prescribed by statute.

§ 3218. Judgment by confession. (a) Affidavit of defendant. Except as provided in section thirty-two hundred one, a judgment by confession may be entered, without an action, either for money due or to become due, or to secure the plaintiff against a contingent liability in behalf of the defendant, or both, upon an affidavit executed by the defendant;

1. stating the sum for which judgment may be entered, authorizing the entry of judgment, stating the county where the defendant resides and, if applicable, stating that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies;

2. if the judgment to be confessed is for money due or to become due, stating concisely the facts out of which the debt arose and showing that the sum confessed is justly due or to become due; and

3. if the judgment to be confessed is for the purpose of securing the plaintiff against a contingent liability, stating concisely the facts constituting the liability and showing that the sum confessed does not exceed the amount of the liability.

(b) Entry of judgment. At any time within three years after the affidavit is executed, it may be filed, but only with the clerk of the county where the defendant's affidavit stated that the defendant resided when it was executed or where the defendant resided at the time of filing. The clerk shall then enter a judgment in the supreme court for the sum confessed. The clerk shall tax costs in the amount of fifteen dollars, besides disbursements taxable in an action. The judgment may be docketed and enforced in the same manner and with the same effect as a judgment in an action in the supreme court. No judgment by confession may be entered after the defendant's death. For purposes of this section, a non-natural person resides in any county where it has a place of business.

Notwithstanding any other provision of law to the contrary, a government agency engaged in the enforcement of civil or criminal law against a person or a non-natural person may file an affidavit in any county within the state.

(c) Execution where the judgment is not all due. Where the debt for which the judgment is entered is not all due, execution may be issued only for the sum which has become due. The execution shall be in the form prescribed for an execution upon a judgment for the full amount recovered, except that it shall direct the sheriff to collect only the sum due, stating the amount with interest and the costs of the judgment. Notwithstanding the issuance and collection of such an execution, the

judgment shall remain in force as security for the sum or sums to become due after the execution is issued. When further sums become due, further executions may be issued in the same manner.

(d) Confession by joint debtors. One or more joint debtors may confess a judgment for a joint debt due or to become due. Where all the joint debtors do not unite in the confession, the judgment shall be entered and enforced against only those who confessed it and it is not a bar to an action against the other joint debtors upon the same demand.

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.

Rule 3220. Offer to liquidate damages conditionally. At any time not later than ten days before trial, any party against whom a cause of action based upon contract, express or implied, is asserted may serve upon the claimant a written offer to allow judgment to be taken against him for a sum therein specified, with costs then accrued, if the party against whom the claim is asserted fails in his defense. If within ten days thereafter the claimant serves a written notice that he accepts the offer, and damages are awarded to him on the trial, they shall be assessed in the sum specified in the offer. If the offer is not so accepted and the claimant fails to obtain a more favorable judgment, he shall pay the expenses necessarily incurred by the party against whom the claim is asserted, for trying the issue of damages from the time of the offer. The expenses shall be ascertained by the judge or referee before whom the case is tried. An offer under this rule shall not be made known to the jury.

Rule 3221. Offer to compromise. Except in a matrimonial action, at any time not later than ten days before trial, any party against whom a claim is asserted, and against whom a separate judgment may be taken, may serve upon the claimant a written offer to allow judgment to be taken against him for a sum or property or to the effect therein specified, with costs then accrued. If within ten days thereafter the

claimant serves a written notice that he accepts the offer, either party may file the summons, complaint and offer, with proof of acceptance, and thereupon the clerk shall enter judgment accordingly. If the offer is not accepted and the claimant fails to obtain a more favorable judgment, he shall not recover costs from the time of the offer, but shall pay costs from that time. An offer of judgment shall not be made known to the jury.

Rule 3222. Action on submitted facts. (a) Commencement. An action, except a matrimonial action, may be commenced by filing with the clerk a submission of the controversy, acknowledged by all parties in the form required to entitle a deed to be recorded. The submission shall consist of a case, containing a statement of the facts upon which the controversy depends, and a statement that the controversy is real and that the submission is made in good faith for the purpose of determining the rights of the parties. If made to the supreme court, the submission shall specify the particular county clerk with whom the papers are to be filed.

(b) Subsequent proceedings. Subsequent proceedings shall be had according to the civil practice law and rules except that:

1. an order of attachment or a preliminary injunction shall not be granted;
2. the controversy shall be determined on the case alone;
3. if the submission is made to the supreme court, it shall be heard and determined either by the court, or by the appellate division, or, with his consent, by a specified judge or referee, as the parties may stipulate;
4. on such a submission the court, judge or referee may find facts by inference from the facts stipulated; and
5. if the statement of facts in the case is not sufficient to enable the court to enter judgment the submission shall be dismissed or the

court shall allow the filing of an additional statement.

ARTICLE 34

CALENDAR PRACTICE; TRIAL PREFERENCES

- 3401. Rules for the hearing of causes.
- 3402. Note of issue.
 - (a) Placing case on calendar.
 - (b) New parties.
- 3403. Trial preferences.
 - (a) Preferred cases.
 - (b) Obtaining preference.
- 3404. Dismissal of abandoned cases.
- 3405. Arbitration of certain claims.
- 3406. Mandatory filing and pre-calendar conference in dental, podiatric and medical malpractice actions.
 - (a) Mandatory filing.
 - (b) Pre-calendar conference.
- 3407. Preliminary conference in personal injury actions involving certain terminally ill parties.
 - (a) Request for conference.
 - (b) Preliminary conference.
- 3408. Mandatory settlement conference in residential foreclosure actions.
- 3409. Settlement conference in dental, podiatric and medical malpractice actions.
- 3410. Face-to-face meeting for foreclosure of reverse cooperative apartment unit loans.

Rule 3401. Rules for the hearing of causes. The chief administrator of the courts shall adopt rules regulating the hearing of causes, which may include the filing of notes of issue, the preparation and publication of calendars and the calendar practice for the courts of the unified court system. Insofar as practicable, such rules within the city of New York shall be uniform.

Rule 3402. Note of issue. (a) Placing case on calendar. At any time after issue is first joined, or at least forty days after service of a summons has been completed irrespective of joinder of issue, any party may place a case upon the calendar by filing, within ten days after service, with proof of such service two copies of a note of issue with the clerk and such other data as may be required by the applicable rules of the court in which the note is filed. The clerk shall enter the case upon the calendar as of the date of the filing of the note of issue.

(b) New parties. A party who brings in a new party shall within five days thereafter serve him with the note of issue and file a statement with the clerk advising him of the bringing in of such new party and of any change in the title of the action, with proof of service of the note of issue upon the new party, and of such statement upon all parties who have appeared in the action. The case shall retain its place upon the calendar unless the court otherwise directs.

Rule 3403. Trial preferences. (a) Preferred cases. Civil cases shall be tried in the order in which notes of issue have been filed, but the following shall be entitled to a preference:

1. an action brought by or against the state, or a political subdivision of the state, or an officer or board of officers of the state or a political subdivision of the state, in his or its official capacity, on the application of the state, the political subdivision, or the officer or board of officers;

2. an action where a preference is provided for by statute; and

3. an action in which the interests of justice will be served by an early trial.

4. in any action upon the application of a party who has reached the age of seventy years.

5. an action to recover damages for medical, dental or podiatric

malpractice.

6. an action to recover damages for personal injuries where the plaintiff is terminally ill and alleges that such terminal illness is a result of the conduct, culpability or negligence of the defendant.

7. any action which has been revived pursuant to section two hundred fourteen-g or two hundred fourteen-j of this chapter.

(b) Obtaining preference. Unless the court otherwise orders, notice of a motion for preference shall be served with the note of issue by the party serving the note of issue, or ten days after such service by any other party; or thereafter during the pendency of the action upon the application of a party who reaches the age of seventy years, or who is terminally ill.

Rule 3404. Dismissal of abandoned cases. A case in the supreme court or a county court marked "off" or struck from the calendar or unanswered on a clerk's calendar call, and not restored within one year thereafter, shall be deemed abandoned and shall be dismissed without costs for neglect to prosecute. The clerk shall make an appropriate entry without the necessity of an order.

Rule 3405. Arbitration of certain claims. The chief judge of the court of appeals may promulgate rules for the arbitration of claims for the recovery of a sum of money not exceeding six thousand dollars, exclusive of interest, pending in any court or courts except the civil court of the city of New York, and not exceeding ten thousand dollars, exclusive of interest, pending in the civil court of the city of New York. Such rules must permit a jury trial de novo upon demand by any party following the determination of the arbitrators and may require the demander to pay the cost of arbitration; and shall also provide for all procedures necessary to initiate, conduct and determine the arbitration. A judgment may be entered upon the arbitration award. The rules shall further provide for the recruitment and qualifications of the arbitrators and for their compensation; except that such rules may

authorize use of judicial hearing officers as arbitrators. All expenses for compensation, reimbursement and administration under this rule shall be a state charge to be paid out of funds appropriated to the administrative office for the courts for that purpose.

Rule 3406. Mandatory filing and pre-calendar conference in dental, podiatric and medical malpractice actions. (a) Mandatory filing. Not more than sixty days after issue is joined, the plaintiff in an action to recover damages for dental, medical or podiatric malpractice shall file with the clerk of the court in which the action is commenced a notice of dental, medical or podiatric malpractice action, on a form to be specified by the chief administrator of the courts. Together with such notice, the plaintiff shall file: (i) proof of service of such notice upon all other parties to the action; (ii) proof that, if demanded, authorizations to obtain medical, dental, podiatric and hospital records have been served upon the defendants in the action; and (iii) such other papers as may be required to be filed by rule of the chief administrator of the courts. The time for filing a notice of dental, medical or podiatric malpractice action may be extended by the court only upon a motion made pursuant to section two thousand four of this chapter.

(b) Pre-calendar conference. The chief administrator of the courts, in accordance with such standards and administrative policies as may be promulgated pursuant to section twenty-eight of article six of the constitution, shall adopt special calendar control rules for actions to recover damages for dental, podiatric or medical malpractice. Such rules shall require a pre-calendar conference in such an action, the purpose of which shall include, but not be limited to, encouraging settlement, simplifying or limiting issues and establishing a timetable for disclosure, establishing a timetable for offers and depositions pursuant to subparagraph (ii) of paragraph one of subdivision (d) of section thirty-one hundred one of this chapter, future conferences, and trial. The timetable for disclosure shall provide for the completion of disclosure not later than twelve months after the notice of dental, podiatric or medical malpractice is filed and shall require that all parties be ready for the trial of the case not later than eighteen

months after such notice is filed. The initial pre-calendar conference shall be held after issue is joined in a case but before a note of issue is filed. To the extent feasible, the justice convening the pre-calendar conference shall hear and decide all subsequent pre-trial motions in the case and shall be assigned the trial of the case. The chief administrator of the courts also shall provide for the imposition of costs or other sanctions, including imposition of reasonable attorney's fees, dismissal of an action, claim, cross-claim, counterclaim or defense, or rendering a judgment by default for failure of a party or a party's attorney to comply with these special calendar control rules or any order of a court made thereunder. The chief administrator of the courts, in the exercise of discretion, may provide for exemption from the requirement of a pre-calendar conference in any judicial district or a county where there exists no demonstrated need for such conferences.

Rule 3407. Preliminary conference in personal injury actions involving certain terminally ill parties. (a) Request for conference. At any time, a party to an action who is terminally ill, and who asserts in a pleading in such action that such terminal illness is the result of the culpable conduct of another party to such action, may request an expedited preliminary conference in such action. Such request shall be filed in writing with the clerk of the court, and shall be accompanied by a physician's affidavit stating that the party is terminally ill, the nature of the terminal illness, and the duration of life expectancy of such party, if known. The court shall hold a preliminary conference in such action within twenty days after the filing of such a request.

(b) 1. Preliminary conference. At such preliminary conference, the court shall issue an order establishing a schedule for the completion of all discovery proceedings, to be completed within ninety days after the date of the preliminary conference, unless it can be demonstrated for good cause that a longer period is necessary.

2. At such preliminary conference, the court shall issue an order that a note of issue and certificate of readiness be filed in such action within a period of time specified in the order, that the action receive a preference in trial, and that the trial be commenced within one year

from the date of such order. In its discretion, and upon application of any party, the court may advance or adjourn such trial date based on the circumstances of the case.

3. Notwithstanding the provisions of subdivision (b) of rule 3214 of this chapter, the service or pendency of a motion under rule 3211, 3212 or section 3213 of this chapter shall not stay disclosure in an action where a preliminary conference order has been entered pursuant to this rule.

Rule 3408. Mandatory settlement conference in residential foreclosure actions. (a) 1. Except as provided in paragraph two of this subdivision, in any residential foreclosure action involving a home loan as such term is defined in section thirteen hundred four of the real property actions and proceedings law, in which the defendant is a resident of the property subject to foreclosure, plaintiff shall file proof of service within twenty days of such service, however service is made, and the court shall hold a mandatory conference within sixty days after the date when proof of service upon such defendant is filed with the county clerk, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including, but not limited to: (i) determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, including, but not limited to, a loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation option; or (ii) whatever other purposes the court deems appropriate.

2. (i) Paragraph one of this subdivision shall not apply to a home loan secured by a reverse mortgage where the default was triggered by the death of the last surviving borrower unless:

(A) the last surviving borrower's spouse, if any, is a resident of the property subject to foreclosure; or

(B) the last surviving borrower's successor in interest, who, by bequest or through intestacy, owns, or has a claim to the ownership of the property subject to foreclosure, and who was a resident of such property at the time of the death of such last surviving borrower.

(ii) The superintendent of financial services may promulgate such rules and regulations as he or she shall deem necessary to implement the provisions of this paragraph.

(b) At the initial conference held pursuant to this section, any defendant currently appearing pro se, shall be deemed to have made a motion to proceed as a poor person under section eleven hundred one of this chapter. The court shall determine whether such permission shall be granted pursuant to standards set forth in section eleven hundred one of this chapter. If the court appoints defendant counsel pursuant to subdivision (a) of section eleven hundred two of this chapter, it shall adjourn the conference to a date certain for appearance of counsel and settlement discussions pursuant to subdivision (a) of this section, and otherwise shall proceed with the conference.

(c) At any conference held pursuant to this section, the plaintiff and the defendant shall appear in person or by counsel, and each party's representative at the conference shall be fully authorized to dispose of the case. If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant. Where appropriate, the court may permit a representative of the plaintiff or the defendant to attend the settlement conference telephonically or by video-conference.

(d) Upon the filing of a request for judicial intervention in any action pursuant to this section, the court shall send either a copy of such request or the defendant's name, address and telephone number (if available) to a housing counseling agency or agencies on a list designated by the division of housing and community renewal for the judicial district in which the defendant resides. Such information shall be used by the designated housing counseling agency or agencies exclusively for the purpose of making the homeowner aware of housing counseling and foreclosure prevention services and options available to them.

(e) The court shall promptly send a notice to parties advising them of the time and place of the settlement conference, the purpose of the

conference and the requirements of this section. The notice shall be in a form prescribed by the office of court administration, or, at the discretion of the office of court administration, the administrative judge of the judicial district in which the action is pending, and shall advise the parties of the documents that they shall bring to the conference.

1. For the plaintiff, such documents shall include, but are not limited to, (i) the payment history; (ii) an itemization of the amounts needed to cure and pay off the loan; (iii) the mortgage and note or copies of the same; (iv) standard application forms and a description of loss mitigation options, if any, which may be available to the defendant; and (v) any other documentation required by the presiding judge. If the plaintiff is not the owner of the mortgage and note, the plaintiff shall provide the name, address and telephone number of the legal owner of the mortgage and note. For cases in which the lender or its servicing agent has evaluated or is evaluating eligibility for home loan modification programs or other loss mitigation options, in addition to the documents listed above, the plaintiff shall bring a summary of the status of the lender's or servicing agent's evaluation for such modifications or other loss mitigation options, including, where applicable, a list of outstanding items required for the borrower to complete any modification application, an expected date of completion of the lender's or servicer agent's evaluation, and, if the modification(s) was denied, a denial letter or any other document explaining the reason(s) for denial and the data input fields and values used in the net present value evaluation. If the modification was denied on the basis of an investor restriction, the plaintiff shall bring the documentary evidence which provides the basis for the denial, such as a pooling and servicing agreement.

2. For the defendant, such documents shall include, but are not limited to, if applicable, information on current income tax returns, expenses, property taxes and previously submitted applications for loss mitigation; benefits information; rental agreements or proof of rental income; and any other documentation relevant to the proceeding required by the presiding judge.

(f) Both the plaintiff and defendant shall negotiate in good faith to reach a mutually agreeable resolution, including but not limited to a loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation, if possible. Compliance with the obligation to negotiate in good faith pursuant to this section shall be measured by the totality of the circumstances, including but not limited to the following factors:

1. Compliance with the requirements of this rule and applicable court rules, court orders, and directives by the court or its designee pertaining to the settlement conference process;

2. Compliance with applicable mortgage servicing laws, rules, regulations, investor directives, and loss mitigation standards or options concerning loan modifications, short sales, and deeds in lieu of foreclosure; and

3. Conduct consistent with efforts to reach a mutually agreeable resolution, including but not limited to, avoiding unreasonable delay, appearing at the settlement conference with authority to fully dispose of the case, avoiding prosecution of foreclosure proceedings while loss mitigation applications are pending, and providing accurate information to the court and parties.

Neither of the parties' failure to make the offer or accept the offer made by the other party is sufficient to establish a failure to negotiate in good faith.

(g) The plaintiff must file a notice of discontinuance and vacatur of the lis pendens within ninety days after any settlement agreement or loan modification is fully executed.

(h) A party to a foreclosure action may not charge, impose, or otherwise require payment from the other party for any cost, including but not limited to attorneys' fees, for appearance at or participation in the settlement conference.

(i) The court may determine whether either party fails to comply with the duty to negotiate in good faith pursuant to subdivision (f) of this section, and order remedies pursuant to subdivisions (j) and (k) of this

section, either on motion of any party or sua sponte on notice to the parties, in accordance with such procedures as may be established by the court or the office of court administration. A referee, judicial hearing officer, or other staff designated by the court to oversee the settlement conference process may hear and report findings of fact and conclusions of law, and may make reports and recommendations for relief to the court concerning any party's failure to negotiate in good faith pursuant to subdivision (f) of this section.

(j) Upon a finding by the court that the plaintiff failed to negotiate in good faith pursuant to subdivision (f) of this section, and order remedies pursuant to this subdivision and subdivision (k) of this section the court shall, at a minimum, toll the accumulation and collection of interest, costs, and fees during any undue delay caused by the plaintiff, and where appropriate, the court may also impose one or more of the following:

1. Compel production of any documents requested by the court pursuant to subdivision (e) of this section or the court's designee during the settlement conference;

2. Impose a civil penalty payable to the state that is sufficient to deter repetition of the conduct and in an amount not to exceed twenty-five thousand dollars;

3. The court may award actual damages, fees, including attorney fees and expenses to the defendant as a result of plaintiff's failure to negotiate in good faith; or

4. Award any other relief that the court deems just and proper.

(k) Upon a finding by the court that the defendant failed to negotiate in good faith pursuant to subdivision (f) of this section, the court shall, at a minimum, remove the case from the conference calendar. In considering such a finding, the court shall take into account equitable factors including, but not limited to, whether the defendant was represented by counsel.

(l) At the first settlement conference held pursuant to this section, if the defendant has not filed an answer or made a pre-answer motion to

dismiss, the court shall:

1. advise the defendant of the requirement to answer the complaint;
2. explain what is required to answer a complaint in court;
3. advise that if an answer is not interposed the ability to contest the foreclosure action and assert defenses may be lost; and
4. provide information about available resources for foreclosure prevention assistance.

At the first conference held pursuant to this section, the court shall also provide the defendant with a copy of the Consumer Bill of Rights provided for in section thirteen hundred three of the real property actions and proceedings law.

(m) A defendant who appears at the settlement conference but who failed to file a timely answer, pursuant to rule 320 of the civil practice law and rules, shall be presumed to have a reasonable excuse for the default and shall be permitted to serve and file an answer, without any substantive defenses deemed to have been waived within thirty days of initial appearance at the settlement conference. The default shall be deemed vacated upon service and filing of an answer.

(n) Any motions submitted by the plaintiff or defendant shall be held in abeyance while the settlement conference process is ongoing, except for motions concerning compliance with this rule and its implementing rules.

Rule 3409. Settlement conference in dental, podiatric and medical malpractice actions. In every dental, podiatric or medical malpractice action, the court shall hold a mandatory settlement conference within forty-five days after the filing of the note of issue and certificate of readiness or, if a party moves to vacate the note of issue and certificate of readiness, within forty-five days after the denial of such motion. Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to dispose of the case, or

accompanied by a person empowered to act on behalf of the party represented, will be permitted to appear at the conference. Where appropriate, the court may order parties, representatives of parties, representatives of insurance carriers or persons having an interest in any settlement to also attend in person or telephonically at the settlement conference. The chief administrative judge shall by rule adopt procedures to implement such settlement conference.

Rule 3410. Face-to-face meeting for foreclosure of reverse cooperative apartment unit loans. (a) For purposes of this rule, default shall only include a borrower's breach of an obligation under the reverse mortgage cooperative loan agreement, and shall not include death of the borrower, except as detailed in paragraph one of subdivision (i) of this rule, or the borrower's permanent vacating of the cooperative unit.

(b) In any action involving a borrower's default under a reverse cooperative apartment unit loan, as defined in paragraph (a) of subdivision one of section six-o of the banking law, the lender shall file a petition with the supreme court of the county in which the cooperative apartment is located stating that the loan is in default and the reason for the default. The petition must be served on the borrower pursuant to section three hundred eight of this chapter. Within ten days of the date of service of the notice to the borrower, the petitioner must file a specialized request for judicial intervention with the clerk. Within sixty days of receipt of the notice or on such adjourned date as has been agreed to by the parties, the court shall hold a mandatory settlement conference for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the loan documents, including, but not limited to:

1. determining whether the parties can reach a mutually agreeable resolution to help the borrower avoid losing his or her cooperative apartment unit, and evaluating the potential for a resolution or other workout options may be agreed; or

2. whatever other purposes the court deems appropriate.

(c) At any meeting held pursuant to this rule, the lender and the

borrower shall appear in person or by counsel, and each party's representative at the meeting shall be fully authorized to dispose of the matter. If the borrower is appearing without counsel, the court shall inform the borrower of the nature of the action and his or her rights and responsibilities. Where appropriate, the court may permit the borrower or a representative of the borrower or the defendant to attend the settlement conference telephonically or by video-conference.

(d) Upon the filing of the notice of default with the court, the court shall send either a copy of the notice or the borrower's name, address and telephone number (if available) to a housing counseling agency or agencies on a list designated by the department for the geographic region in which the borrower resides. Such information shall be used by the designated housing counseling agency or agencies exclusively for the purpose of making the borrower aware of housing counseling and foreclosure prevention services and options available to them.

(e) The court shall promptly send a notice to parties advising them of the time and place of the meeting, the purpose of the meeting and the requirements of this rule. The notice shall be in a form prescribed by the court, and shall advise the parties of the documents that they shall bring to the meeting.

(f) Both the lender and the borrower shall negotiate in good faith to reach a mutually agreeable resolution, including but not limited to a re-payment agreement, or any other loss mitigation, if possible. Compliance with the obligation to negotiate in good faith pursuant to this rule shall be measured by the totality of the circumstances, including but not limited to the following factors:

1. compliance with the requirements of this rule and applicable regulations pertaining to the face-to-face meeting process;

2. compliance with applicable lending and servicing laws, rules, regulations, investor directives, and loss mitigation standards or options; and

3. conduct consistent with efforts to reach a mutually agreeable resolution, including but not limited to, avoiding unreasonable delay, appearing at the meeting with authority to fully dispose of the matter,

avoiding moving forward to take possession while loss mitigation applications and attempts are pending, and providing accurate information to the department and all parties.

Neither of the parties' failure to make the offer or accept the offer made by the other party is sufficient to establish a failure to negotiate in good faith.

(g) Upon a finding by the court that the plaintiff failed to negotiate in good faith pursuant to subdivision (f) of this rule, the court shall, at a minimum, toll the accumulation and collection of interest, costs, and fees during any undue delay caused by the plaintiff, and where appropriate, the court may also impose one or more of the following:

1. compel production of any documents requested by the court or the court's designee during the settlement conference;
2. impose a civil penalty payable to the state that is sufficient to deter repetition of the conduct and in an amount not to exceed twenty-five thousand dollars;
3. the court may award actual damages, fees, including attorney fees and expenses to the defendant as a result of plaintiff's failure to negotiate in good faith; or
4. award any other relief that the court deems just and proper.

(h) A party to a default action may not charge, impose, or otherwise require payment from the other party for any cost, including but not limited to attorneys' fees, for appearance at or participation in the settlement conference process.

(i) This rule shall not apply if:

1. the borrower dies and there is no surviving borrower, unless: (i) the last surviving borrower's spouse, if any, is a resident of the property subject to foreclosure; or (ii) the last surviving borrower's successor in interest who by bequest or through intestacy, owns, or has a claim to the ownership of the property subject to foreclosure, and who was a resident of such property at the time of death of such last

surviving borrower; or the borrower does not reside in the unit after such non-occupancy by the borrower as verified by the lender and the lender has taken action as required by subdivision eight of section six-o of the banking law; or

2. a repayment plan or other workout consistent with the borrower's circumstances is entered into to bring the borrower's account current or otherwise cure the default thus making a meeting unnecessary.

ARTICLE 40

TRIAL GENERALLY

- 4001. Powers of referees.
- 4011. Sequence of trial.
- 4012. Marked pleadings furnished.
- 4013. Trial elsewhere than at courthouse.
- 4014. Duration of trial.
- 4015. Time for motion for referee or advisory jury.
- 4016. Opening and closing statements.
- 4017. Objections.
- 4018. Increased damages.
- 4019. Recording in camera interviews of infants.

§ 4001. Powers of referees. A court may appoint a referee to determine an issue, perform an act, or inquire and report in any case where this power was heretofore exercised and as may be hereafter authorized by law.

Rule 4011. Sequence of trial. The court may determine the sequence in which the issues shall be tried and otherwise regulate the conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matters at issue in a setting of proper decorum.

Rule 4012. Marked pleadings furnished. The party who has filed the

note of issue shall furnish the judge who is to preside at the trial with copies of each pleading, where they have not been superseded by the pre-trial order, plainly marked to indicate which statements are admitted and which controverted by the responsive pleading.

Rule 4013. Trial elsewhere than at courthouse. Upon stipulation of the parties, the judge who is to preside at the trial of an issue may direct trial in whole or in part at a specified place other than the courthouse.

Rule 4014. Duration of trial. Notwithstanding the expiration of the term at which it was commenced, a trial shall continue until it is completed.

Rule 4015. Time for motion for referee or advisory jury. A motion for trial by a referee or an advisory jury shall be made within twenty days after note of issue is filed, except where the issue to be tried arises on a motion or pursuant to a judgment.

Rule 4016. Opening and closing statements. (a) Before any evidence is offered, an attorney for each plaintiff having a separate right, and an attorney for each defendant having a separate right, may make an opening statement. At the close of all the evidence on the issues tried, an attorney for each such party may make a closing statement in inverse order to opening statements.

(b) In any action to recover damages for personal injuries or wrongful death, the attorney for a party shall be permitted to make reference, during closing statement, to a specific dollar amount that the attorney believes to be appropriate compensation for any element of damage that is sought to be recovered in the action. In the event that an attorney makes such a reference in an action being tried by a jury, the court shall, upon the request of any party, during the court's instructions to the jury at the conclusion of all closing statements, instruct the jury

that:

(1) the attorney's reference to such specific dollar amount is permitted as argument;

(2) the attorney's reference to a specific dollar amount is not evidence and should not be considered by the jury as evidence; and

(3) the determination of damages is solely for the jury to decide.

§ 4017. Objections. Formal exceptions to rulings of the court are unnecessary. At the time a ruling or order of the court is requested or made a party shall make known the action which he requests the court to take or, if he has not already indicated it, his objection to the action of the court. Failure to so make known objections, as prescribed in this section or in section 4110-b, may restrict review upon appeal in accordance with paragraphs three and four of subdivision (a) of section 5501.

Rule 4018. Increased damages. Where increased damages are granted by statute, the decision, report or verdict shall specify the sum awarded as single damages, and judgment shall be entered for the increased amount.

Rule 4019. Recording in camera interviews of infants. (a) A court shall not conduct an in camera interview of an infant in any action or proceeding to fix temporary or permanent custody or to modify judgments and orders of custody concerning marital separation, divorce, annulment of marriage and dissolution of marriage unless a stenographic record of such interview is made.

(b) If an appeal is taken to the appellate division from a judgment or order of the court on any such action or proceeding, the stenographic record of any such interview shall be made a part of the record and forwarded under seal to the appellate division.

TRIAL BY A JURY

- 4101. Issues triable by a jury revealed before trial.
- 4102. Demand and waiver of trial by jury; specification of issues.
 - (a) Demand.
 - (b) Specification of issues.
 - (c) Waiver.
 - (d) Local rules.
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- 4103. Issues triable by a jury revealed at trial; demand and waiver of trial by jury.
- 4104. Number of jurors.
- 4105. Persons who constitute the jury.
- 4106. Alternate jurors.
- 4107. Judge present at examination of jurors.
- 4108. Challenges generally.
- 4109. Peremptory challenges.
- 4110. Challenges for cause.
 - (a) Challenge to the favor.
 - (b) Disqualification of juror for relationship.
- 4110-a. Competency of inhabitants as justices or jurors; undertakings not required of village.
- 4110-b. Instructions to jury; objection.
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- 4111. General and special verdicts and written interrogatories.
 - (a) General and special verdict defined.
 - (b) Special verdict.
 - (c) General verdict accompanied by answers to interrogatories.
 - (d) Itemized verdict in medical, dental, or podiatric malpractice actions.
 - (e) Itemized verdict in certain actions against a public employer for personal injury and wrongful death.
 - (f) Itemized verdict in certain actions.
- 4112. Entry of verdict.

4113. Disagreement by jury.

- (a) Unanimous verdict not required.
- (b) Procedure where jurors disagree.

§ 4101. Issues triable by a jury revealed before trial. In the following actions, the issues of fact shall be tried by a jury unless a jury trial is waived or a reference is directed under section 4317, except that equitable defenses and equitable counterclaims shall be tried by the court:

1. an action in which a party demands and sets forth facts which would permit a judgment for a sum of money only;
2. an action of ejectment; for dower; for waste; for abatement of and damages for a nuisance; to recover a chattel; or for determination of a claim to real property under article fifteen of the real property actions and proceedings law; and
3. any other action in which a party is entitled by the constitution or by express provision of law to a trial by jury.

§ 4102. Demand and waiver of trial by jury; specification of issues.

(a) Demand. Any party may demand a trial by jury of any issue of fact triable of right by a jury, by serving upon all other parties and filing a note of issue containing a demand for trial by jury. Any party served with a note of issue not containing such a demand may demand a trial by jury by serving upon each party a demand for a trial by jury and filing such demand in the office where the note of issue was filed within fifteen days after service of the note of issue. A demand shall not be accepted for filing unless a note of issue is filed in the action. If no party shall demand a trial by jury as provided herein, the right to trial by jury shall be deemed waived by all parties. A party may not withdraw a demand for trial by jury without the consent of the other parties, regardless of whether another party previously filed a note of issue without a demand for trial by jury.

(b) Specification of issues. In his demand a party may specify the issues which he wishes tried by jury; otherwise he shall be deemed to have demanded trial by jury of all issues so triable. If he has demanded trial by jury of only some of the issues, any other party within ten days after service of the demand may serve and file a demand for trial by jury of any other issues in the action so triable.

(c) Waiver. A party who has demanded the trial of an issue of fact by a jury under this section waives his right by failing to appear at the trial, by filing a written waiver with the clerk or by oral waiver in open court. A waiver does not withdraw a demand for trial by jury without the consent of the other parties. A party shall not be deemed to have waived the right to trial by jury of the issues of fact arising upon a claim, by joining it with another claim with respect to which there is no right to trial by jury and which is based upon a separate transaction; or of the issues of fact arising upon a counterclaim, cross-claim or third party claim, by asserting it in an action in which there is no right to trial by jury.

(d) Local rules. The chief administrator of the courts may by rule provide that a party shall be deemed to have demanded trial by jury by filing a note of issue not containing an express waiver of trial by jury.

(e) Relief by court. The court may relieve a party from the effect of failing to comply with this section if no undue prejudice to the rights of another party would result.

§ 4103. Issues triable by a jury revealed at trial; demand and waiver of trial by jury. When it appears in the course of a trial by the court that the relief required, although not originally demanded by a party, entitles the adverse party to a trial by jury of certain issues of fact, the court shall give the adverse party an opportunity to demand a jury trial of such issues. Failure to make such demand within the time limited by the court shall be deemed a waiver of the right to trial by jury. Upon such demand, the court shall order a jury trial of any issues of fact which are required to be tried by jury.

§ 4104. Number of jurors. A jury shall be composed of six persons.

§ 4105. Persons who constitute the jury. The first six persons who appear as their names are drawn and called, and are approved as indifferent between the parties, and not discharged or excused, must be sworn and constitute the jury to try the issue.

§ 4106. Alternate jurors. One or more additional jurors, to be known as "alternate jurors", may be drawn upon the request of a party and consent of the court. Such alternate juror or jurors shall be drawn at the same time, from the same source, in the same manner, and have the same qualifications as regular jurors, and be subject to the same examinations and challenges. They shall be seated with, take the oath with, and be treated in the same manner as the regular jurors. After final submission of the case, the court may, in its discretion, retain such alternate juror or jurors to ensure availability if needed. At any time, before or after the final submission of the case, if a regular juror dies, or becomes ill, or is unable to perform the duties of a juror, the court may order that juror discharged and draw the name of an alternate, or retained alternate, if any, who shall replace the discharged juror, and be treated as if that juror had been selected as one of the regular jurors. Once deliberations have begun, the court may allow an alternate juror to participate in such deliberations only if a regular juror becomes unable to perform the duties of a juror.

Rule 4107. Judge present at examination of jurors. On application of any party, a judge shall be present at the examination of the jurors.

§ 4108. Challenges generally. An objection to the qualifications of a juror must be made by a challenge unless the parties stipulate to excuse him. A challenge of a juror, or a challenge to the panel or array of jurors, shall be tried and determined by the court.

§ 4109. Peremptory challenges. The plaintiff or plaintiffs shall have a combined total of three peremptory challenges plus one peremptory challenge for every two alternate jurors. The defendant or defendants (other than any third-party defendant or defendants) shall have a combined total of three peremptory challenges, plus one peremptory challenge for every two alternate jurors. The court, in its discretion before the examination of jurors begins, may grant an equal number of additional challenges to both sides as may be appropriate. In any case where a side has two or more parties, the court, in its discretion, may allocate that side's combined total of peremptory challenges among those parties in such manner as may be appropriate.

§ 4110. Challenges for cause. (a) Challenge to the favor. The fact that a juror is in the employ of a party to the action; or if a party to the action is a corporation, that he is a shareholder or a stockholder therein; or, in an action for damages for injuries to person or property, that he is a shareholder, stockholder, director, officer or employee, or in any manner interested, in any insurance company issuing policies for protection against liability for damages for injury to persons or property; shall constitute a ground for a challenge to the favor as to such juror. The fact that a juror is a resident of, or liable to pay taxes in, a city, village, town or county which is a party to the action shall not constitute a ground for challenge to the favor as to such juror.

(b) Disqualification of juror for relationship. Persons shall be disqualified from sitting as jurors if related within the sixth degree by consanguinity or affinity to a party. The party related to the juror must raise the objection before the case is opened; any other party must raise the objection no later than six months after the verdict.

§ 4110-a. Competency of inhabitants as justices or jurors; undertakings not required of village. In an action brought by or against a village it shall not be an objection against the person acting as justice or juror in such action that he is a resident of the village or

subject to taxation therein. It shall not be necessary for the village to give a bond, undertaking or security to appeal or to obtain a provisional remedy, or to take or prevent any other proceeding; or to do or perform any act or thing notwithstanding any provision of any other law to the contrary, but the village shall be liable to the same extent as if it had given the bond, undertaking or security otherwise required by or in pursuance of law.

§ 4110-b. Instructions to jury; objection. At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court, out of the hearing of the jury, shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict stating the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

§ 4110-c. Trial jury; viewing of premises. 1. When during the course of a trial the court is of the opinion that a viewing or observation by the jury of the premises or place where alleged injuries to person or property were sustained in an accident or occurrence claimed to have been the cause thereof or of any other premises or place involved in the case will be helpful to the jury in determining any material factual issue, it may in its discretion, at any time before the commencement of the summations, order that the jury be conducted to such premises or place for such purpose in accordance with the provisions of this section.

2. In such case, the jury must be kept together throughout under the supervision of an appropriate public servant or servants appointed by the court, and the court itself must be present throughout. The parties

to the action and counsel for them may as a matter of right be present throughout, but such right may be waived.

3. The purpose of such an inspection is solely to permit visual observation by the jury of the premises or place in question and neither the court, the parties, counsel nor the jurors may engage in discussion or argumentation concerning the significance or implications of anything under observation or concerning any issue in the case.

Rule 4111. General and special verdicts and written interrogatories.

(a) General and special verdict defined. The court may direct the jury to find either a general verdict or a special verdict. A general verdict is one in which the jury finds in favor of one or more parties. A special verdict is one in which the jury finds the facts only, leaving the court to determine which party is entitled to judgment thereon.

(b) Special verdict. When the court requires a jury to return a special verdict, the court shall submit to the jury written questions susceptible of brief answer or written forms of the several findings which might properly be made or it shall use any other appropriate method of submitting the issues and requiring written findings thereon. The court shall give sufficient instruction to enable the jury to make its findings upon each issue. If the court omits any issue of fact raised by the pleadings or evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without demand, the court may make an express finding or shall be deemed to have made a finding in accordance with the judgment.

(c) General verdict accompanied by answers to interrogatories. When the court requires the jury to return a general verdict, it may also require written answers to written interrogatories submitted to the jury upon one or more issues of fact. The court shall give sufficient instruction to enable the jury to render a general verdict and to answer the interrogatories. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court shall direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or it shall require the jury to

further consider its answers and verdict or it shall order a new trial. When the answers are inconsistent with each other and one or more is inconsistent with the general verdict, the court shall require the jury to further consider its answers and verdict or it shall order a new trial.

(d) Itemized verdict in medical, dental, or podiatric malpractice actions. In all actions seeking damages for medical, dental, or podiatric malpractice, or damages for wrongful death as a result of medical, dental, or podiatric malpractice, the court shall instruct the jury that if the jury finds a verdict awarding damages it shall in its verdict specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element, including but not limited to medical expenses, dental expenses, podiatric expenses, loss of earnings, impairment of earning ability, and pain and suffering. In all such actions, each element shall be further itemized into amounts intended to compensate for damages which have been incurred prior to the verdict and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future wrongful death damages, future loss of services, and future loss of consortium, the jury shall return the total amount of damages for each such item. In itemizing amounts intended to compensate for future pain and suffering, the jury shall return the total amounts of damages for future pain and suffering and shall set forth the period of years over which such amounts are intended to provide compensation. In itemizing amounts intended to compensate for future economic and pecuniary damages other than in wrongful death actions, the jury shall set forth as to each item of damage, (i) the annual amount in current dollars, (ii) the period of years for which such compensation is applicable and the date of commencement for that item of damage, (iii) the growth rate applicable for the period of years for the item of damage, and (iv) a finding of whether the loss or item of damage is permanent. Where the needs change in the future for a particular item of damage, that change shall be submitted to the jury as a separate item of damage commencing at that time. In all such actions other than wrongful death actions, the jury shall be instructed that the findings it makes with reference to future economic damages, shall be used by the court to determine future damages which are payable to the plaintiff over time.

(e) Itemized verdict in certain actions. In an action brought to recover damages for personal injury, injury to property or wrongful death, which is not subject to subdivision (d) of this rule, the court shall instruct the jury that if the jury finds a verdict awarding damages, it shall in its verdict specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element including, but not limited to, medical expenses, dental expenses, loss of earnings, impairment of earning ability, and pain and suffering. Each element shall be further itemized into amounts intended to compensate for damages that have been incurred prior to the verdict and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the jury shall set forth the period of years over which such amounts are intended to provide compensation. In actions in which article fifty-A or fifty-B of this chapter applies, in computing said damages, the jury shall be instructed to award the full amount of future damages, as calculated, without reduction to present value.

Rule 4112. Entry of verdict. When the jury renders a verdict, the clerk shall make an entry in his minutes specifying the time and place of the trial, the names of the jurors and witnesses, the general verdict and any answers to written interrogatories, or the questions and answers or other written findings constituting the special verdict and the direction, if any, which the court gives with respect to subsequent proceedings.

§ 4113. Disagreement by jury. (a) Unanimous verdict not required. A verdict may be rendered by not less than five-sixths of the jurors constituting a jury.

(b) Procedure where jurors disagree. Where five-sixths of the jurors constituting a jury cannot agree after being kept together for as long as is deemed reasonable by the court, the court shall discharge the jury and direct a new trial before another jury.

ARTICLE 42

TRIAL BY THE COURT

- 4201. Powers of referees to report.
- 4211. Issues to be decided by the court.
- 4212. Advisory jury; referee to report.
- 4213. Decision of the court.
 - (a) Requests for findings.
 - (b) Form of decision.
 - (c) Time for decision.

§ 4201. Powers of referees to report. A referee to inquire and report shall have the power to issue subpoenas, to administer oaths and to direct the parties to engage in and permit such disclosure proceedings as will expedite the disposition of the issues.

Rule 4211. Issues to be decided by the court. The court shall decide any issue not required to be tried by a jury unless it is referred to a referee to determine pursuant to section 4317.

Rule 4212. Advisory jury; referee to report. Upon the motion of any party as provided in rule 4015 or on its own initiative, the court may submit any issue of fact required to be decided by the court to an advisory jury or, upon a showing of some exceptional condition requiring it or in matters of account, to a referee to report. An order under this rule shall specify the issues to be submitted. The procedures to be followed in the use of an advisory jury shall be the same as those for a jury selected under article forty-one. Where no issues remain to be tried, the court shall render decision directing judgment in the action.

§ 4213. Decision of the court. (a) Requests for findings. Before the case is finally submitted, the court shall afford the parties an opportunity to submit requests for findings of fact. Each request shall

be numbered and so phrased that the court may conveniently pass upon it.

(b) Form of decision. The decision of the court may be oral or in writing and shall state the facts it deems essential. In any action brought to recover damages for personal injury, injury to property, or wrongful death, a decision awarding damages shall specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element, including but not limited to medical expenses, dental expenses, podiatric expenses, loss of earnings, impairment of earning ability, and pain and suffering. In a medical, dental or podiatric malpractice action, commenced on or after July twenty-sixth, two thousand three, the court's decision as to future damages shall be itemized in accordance with subdivision (d) of rule forty-one hundred eleven of this chapter. In any action brought to recover damages for personal injury, injury to property or wrongful death, other than a medical, dental or podiatric malpractice action commenced on or after July twenty-sixth, two thousand three, the court's decision as to future damages shall be itemized in accordance with subdivision (e) of rule forty-one hundred eleven of this chapter.

(c) Time for decision. The decision of the court shall be rendered within sixty days after the cause or matter is finally submitted or within sixty days after a motion under rule 4403, whichever is later, unless the parties agree to extend the time.

ARTICLE 43

TRIAL BY A REFEREE

4301. Powers of referee to determine.

4311. Order of reference.

4312. Number of referees; qualifications.

4313. Notice.

4314. Successor referee.

4315. Referee to be sworn.

4316. Procedure where more than one referee.

4317. When reference to determine may be used.

(a) Upon consent of the parties.

(b) Without consent of the parties.

(c) Transcript.

- 4318. Conduct of trial.
- 4319. Decision.
- 4320. Reference to report.
 - (a) Conduct of trial.
 - (b) Report; transcript.
- 4321. Fees and expenses.

§ 4301. Powers of referee to determine. A referee to determine an issue or to perform an act shall have all the powers of a court in performing a like function; but he shall have no power to relieve himself of his duties, to appoint a successor or to adjudge any person except a witness before him guilty of contempt. For the purposes of this article, the term referee shall be deemed to include judicial hearing officer.

Rule 4311. Order of reference. An order of reference shall direct the referee to determine the entire action or specific issues, to report issues, to perform particular acts, or to receive and report evidence only. It may specify or limit the powers of the referee and the time for the filing of his report and may fix a time and place for the hearing.

Rule 4312. Number of referees; qualifications. 1. A court may designate either one or three referees; provided, however, a judicial hearing officer may be designated a referee, in which case there shall be only one referee. Except by consent of the parties, no person shall be designated a referee unless he is an attorney admitted to practice in the state and in good standing. Where a referee may be designated by the parties, they may designate any number of referees.

2. Except in matrimonial actions or where the reference is to a judicial hearing officer, a person to whom all the parties object may not be designated as a referee. In matrimonial actions, only a judicial hearing officer or a special referee appointed by the chief administrator of the courts may be designated to determine an issue. In

a matrimonial action the court shall not order a reference to a referee nominated by a party.

3. No person shall serve as referee who holds the position of court clerk, or clerk, secretary or stenographer to a judge; or who is the partner or clerk of an attorney for any party to the action or occupies the same office with such attorney, except as provided in paragraph five of this rule.

4. A judge shall not serve as a referee in an action brought in a court of which he is a judge except by the written consent of the parties, and, in that case, he cannot receive any compensation as referee.

5. In uncontested matrimonial actions, a court clerk, law secretary, or any other non-judicial employee of the court, who is an attorney in good standing admitted to practice in the state, may be appointed by an administrative judge to serve without fee as a referee for the purpose of hearing and reporting to the court.

Rule 4313. Notice. Except where the reference is to a judicial hearing officer or a special referee, upon the entry of an order of reference, the clerk shall send a copy of the order to the referee. Unless the order of reference otherwise provides, the referee shall forthwith notify the parties of a time and place for the first hearing to be held within twenty days after the date of the order or shall forthwith notify the court that he declines to serve.

Rule 4314. Successor referee. Upon being notified that a referee declines or fails to serve, or in the case of the death, resignation or removal of a referee, or if a new trial is granted after a reference, on motion of any party or on its own initiative, the court may designate a successor referee, unless a stipulation upon which the order of reference is based expressly provides otherwise.

Rule 4315. Referee to be sworn. A referee, other than a judicial hearing officer or a special referee, before entering upon his duties, shall be sworn faithfully and fairly to do such acts and make such determination and report as the order requires. The oath may be administered by any person authorized to take acknowledgments of deeds by the real property law. The oath may be waived upon consent of all parties.

Rule 4316. Procedure where more than one referee. Where the reference is to more than one referee all must meet together and hear all the allegations and proofs of the parties; but a majority may appoint a time and place for the trial, decide any question which arises upon the trial, sign a report or settle a case. Any of them may administer an oath to a witness; and a majority of those present at a time and place appointed for the trial may adjourn the trial to a future day.

§ 4317. When reference to determine may be used. (a) Upon consent of the parties. The parties may stipulate that any issue shall be determined by a referee. Upon the filing of the stipulation with the clerk, the clerk shall forthwith enter an order referring the issue for trial to the referee named therein. Where the stipulation does not name a referee, the court shall designate a referee. Leave of court and designation by it of the referee is required for references in matrimonial actions; actions against a corporation to obtain a dissolution, to appoint a receiver of its property, or to distribute its property, unless such action is brought by the attorney-general; or actions where a defendant is an infant.

(b) Without consent of the parties. On motion of any party or on its own initiative, the court may order a reference to determine a cause of action or an issue where the trial will require the examination of a long account, including actions to foreclose mechanic's liens; or to determine an issue of damages separately triable and not requiring a trial by jury; or where otherwise authorized by law.

(c) Transcript. Unless otherwise stipulated, a transcript of the

testimony together with the exhibits or copies thereof of the issue heard before the referee shall be provided to all the parties involved upon payment of appropriate fees.

§ 4318. Conduct of trial. Unless otherwise specified in the order of reference, the referee shall conduct the trial in the same manner as a court trying an issue without a jury. The provisions of article forty-four applicable to trial by the court shall apply to a reference pursuant to this article.

§ 4319. Decision. The decision of a referee shall comply with the requirements for a decision by the court and shall stand as the decision of a court. Unless otherwise specified in the order of reference, the referee shall file his decision within thirty days after the cause or matter is finally submitted. If it is not filed within the required time, upon the motion of a party before it is filed, the court may grant a new trial and, in that event, the referee shall not be entitled to any fees.

§ 4320. Reference to report. (a) Conduct of trial. A referee to report shall conduct the trial in the same manner as a court trying an issue without a jury.

(b) Report; transcript. The referee shall file his report, setting forth findings of fact and conclusions of law, within thirty days after the cause or matter is finally submitted. Unless otherwise stipulated, a transcript of the testimony together with the exhibits or copies thereof shall be filed with the report.

Rule 4321. Fees and expenses. 1. An order or a stipulation for a reference shall determine the basis and method of computing the referee's fees and provide for their payment. The court may make an appropriate order for the payment of the reasonable expenses of the referee. Unless the court otherwise orders or the stipulation otherwise

provides, such fees and expenses of the referee shall be taxed as costs.

2. This section shall not apply where the reference is to a judicial hearing officer.

ARTICLE 44

TRIAL MOTIONS

- 4401. Motion for judgment during trial.
- 4401-a. Motion for judgment.
- 4402. Motion for continuance or new trial during trial.
- 4403. Motion for new trial or to confirm or reject or grant other relief after reference to report or verdict of advisory jury.
- 4404. Post-trial motion for judgment and new trial.
 - (a) Motion after trial where jury required.
 - (b) Motion after trial where jury not required.
- 4405. Time and judge before whom post-trial motion made.
- 4406. Single post-trial motion.

Rule 4401. Motion for judgment during trial. Any party may move for judgment with respect to a cause of action or issue upon the ground that the moving party is entitled to judgment as a matter of law, after the close of the evidence presented by an opposing party with respect to such cause of action or issue, or at any time on the basis of admissions. Grounds for the motion shall be specified. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties.

§ 4401-a. Motion for judgment. A motion for judgment at the end of the plaintiff's case must be granted as to any cause of action for medical malpractice based solely on lack of informed consent if the plaintiff has failed to adduce expert medical testimony in support of the alleged qualitative insufficiency of the consent.

Rule 4402. Motion for continuance or new trial during trial. At any time during the trial, the court, on motion of any party, may order a continuance or a new trial in the interest of justice on such terms as may be just.

Rule 4403. Motion for new trial or to confirm or reject or grant other relief after reference to report or verdict of advisory jury. Upon the motion of any party or on his own initiative, the judge required to decide the issue may confirm or reject, in whole or in part, the verdict of an advisory jury or the report of a referee to report; may make new findings with or without taking additional testimony; and may order a new trial or hearing. The motion shall be made within fifteen days after the verdict or the filing of the report and prior to further trial in the action. Where no issues remain to be tried the court shall render decision directing judgment in the action.

Rule 4404. Post-trial motion for judgment and new trial. (a) Motion after trial where jury required. After a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court.

(b) Motion after trial where jury not required. After a trial not triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside its decision or any judgment entered thereon. It may make new findings of fact or conclusions of law, with or without taking additional testimony, render a new decision and direct entry of judgment, or it may order a new trial of a cause of action or separable issue.

Rule 4405. Time and judge before whom post-trial motion made. A motion under this article shall be made before the judge who presided at the trial within fifteen days after decision, verdict or discharge of the jury. The court shall have no power to grant relief after argument or submission of an appeal from the final judgment.

Rule 4406. Single post-trial motion. In addition to motions made orally immediately after decision, verdict or discharge of the jury, there shall be only one motion under this article with respect to any decision by a court, or to a verdict on issues triable of right by a jury; and each party shall raise by the motion or by demand under rule 2215 every ground for post-trial relief then available to him.

ARTICLE 45

EVIDENCE

- 4501. Self-incrimination.
- 4502. Spouse.
 - (a) Incompetency where issue adultery.
 - (b) Confidential communication privileged.
- 4503. Attorney.
 - (a) Enacted without subdivision heading.
 - (b) Wills.
- 4504. Physician, dentist, podiatrist, chiropractor and nurse.
 - (a) Confidential information privileged.
 - (b) Identification by dentist; crime committed against patient under sixteen.
 - (c) Mental or physical condition of deceased patient.
 - (d) Proof of negligence; unauthorized practice of medicine.
- 4505. Confidential communication to clergy privileged.
- 4506. Eavesdropping evidence; admissibility; motion to suppress in certain cases.
- 4507. Psychologist.
- 4508. Social worker.

- (a) Confidential information privileged.
 - (b) Limitations on waiver.
- 4509. Library records.
- 4510. Rape crisis counselor or domestic violence advocate.
 - (a) Definitions.
 - (b) Confidential information privileged.
 - (c) Who may waive the privilege.
 - (d) Limitation on waiver.
- 4511. Judicial notice of law.
 - (a) When judicial notice shall be taken without request.
 - (b) When judicial notice may be taken without request; when it shall be taken on request.
 - (c) Determination by court; review as matter of law.
 - (d) Evidence to be received on matter to be judicially noticed.
- 4512. Competency of interested witness or spouse.
- 4513. Competency of person convicted of crime.
- 4514. Impeachment of witness by prior inconsistent statement.
- 4515. Form of expert opinion.
- 4516. Proof of age of child.
- 4517. Prior testimony in a civil action.
 - (a) Impeachment of witnesses; parties; unavailable witness.
 - (b) Use of part of the prior trial testimony of a witness.
 - (c) Substitution of parties; prior actions.
- 4518. Business records.
 - (a) Generally.
 - (b) Hospital bills.
 - (c) Other records.
 - (d) Enacted without subdivision heading.
 - (e) Enacted without subdivision heading.
 - (f) Enacted without subdivision heading.
 - (g) Pregnancy and childbirth costs.
- 4519. Personal transaction or communication between witness and decedent or mentally ill person.

- 4519-a. Possession of opioid antagonists; receipt into evidence.
- 4520. Certificate or affidavit of public officer.
- 4521. Lack of record.
- 4522. Ancient filed maps, surveys and records affecting real property.
- 4523. Search by title insurance or abstract company.
- 4524. Conveyance of real property without the state.
- 4525. Copies of statements under article nine of the uniform commercial code.
- 4526. Marriage certificate.
- 4527. Death or other status of missing person.
 - (a) Presumed death.
 - (b) Death, internment, capture and other status.
- 4528. Weather conditions.
- 4529. Inspection certificate issued by United States department of agriculture.
- 4530. Certificate of population.
 - (a) Prima facie evidence.
 - (b) Conclusive evidence.
- 4531. Affidavit of service or posting notice by person unavailable at trial.
- 4532. Self-authentication of newspapers and periodicals of general circulation.
- 4532-a. Admissibility of graphic, numerical, symbolic or pictorial representations of medical or diagnostic tests.
- 4532-b. (Enacted without section heading).
- 4533. Market reports.
 - 4533-a. Prima facie proof of damages.
 - 4533-b. Proof of payment by joint tort-feasor.
- 4534. Standard of measurement used by surveyor.
- 4536. Proof of writing by comparison of handwriting.
- 4537. Proof of writing subscribed by witness.
- 4538. Acknowledged, proved or certified writing; conveyance of real property without the state.
- 4539. Reproductions of original.
- 4540. Authentication of official record of court or government

office in the United States.

(a) Copies permitted.

(b) Certificate of officer of the state.

(c) Certificate of officer of another jurisdiction.

(d) Printed tariff or classification subject to public service commission, commissioner of transportation or interstate commerce commission.

4540-a. Presumption of authenticity based on a party's production of material authored or otherwise created by the party.

4541. Proof of proceedings before justice of the peace.

(a) Of the state.

(b) Of another state.

4542. Proof of foreign records and documents.

(a) Foreign record.

(b) Final certification.

(c) Lack of record.

4543. Proof of facts or writing by methods other than those authorized in this article.

4544. Contracts in small print.

4545. Admissibility of collateral source of payment.

(a) Action for medical, dental or podiatric malpractice.

(b) Certain actions against a public employer for personal injury and wrongful death.

(c) Actions for personal injury, injury to property or wrongful death.

(d) Voluntary charitable contributions excluded as a collateral source of payment.

4546. Loss of earnings and impairment of earning ability in actions for medical, dental or podiatric malpractice.

4547. Compromise and offers to compromise.

4548. Privileged communications; electronic communication thereof.

4549. Admissibility of an opposing party's statement.

4550. Admissibility of evidence related to legally protected health activity.

§ 4501. Self-incrimination. A competent witness shall not be excused from answering a relevant question, on the ground only that the answer may tend to establish that he owes a debt or is otherwise subject to a civil suit. This section does not require a witness to give an answer which will tend to accuse himself of a crime or to expose him to a penalty or forfeiture, nor does it vary any other rule respecting the examination of a witness.

§ 4502. Spouse. (a) Incompetency where issue adultery. A husband or wife is not competent to testify against the other in an action founded upon adultery, except to prove the marriage, disprove the adultery, or disprove a defense after evidence has been introduced tending to prove such defense.

(b) Confidential communication privileged. A husband or wife shall not be required, or, without consent of the other if living, allowed, to disclose a confidential communication made by one to the other during marriage.

§ 4503. Attorney. (a) 1. Confidential communication privileged. Unless the client waives the privilege, an attorney or his or her employee, or any person who obtains without the knowledge of the client evidence of a confidential communication made between the attorney or his or her employee and the client in the course of professional employment, shall not disclose, or be allowed to disclose such communication, nor shall the client be compelled to disclose such communication, in any action, disciplinary trial or hearing, or administrative action, proceeding or hearing conducted by or on behalf of any state, municipal or local governmental agency or by the legislature or any committee or body thereof. Evidence of any such communication obtained by any such person, and evidence resulting therefrom, shall not be disclosed by any state, municipal or local governmental agency or by the legislature or any committee or body

thereof. The relationship of an attorney and client shall exist between a professional service corporation organized under article fifteen of the business corporation law to practice as an attorney and counselor-at-law and the clients to whom it renders legal services.

2. Personal representatives. (A) For purposes of the attorney-client privilege, if the client is a personal representative and the attorney represents the personal representative in that capacity, in the absence of an agreement between the attorney and the personal representative to the contrary:

(i) No beneficiary of the estate is, or shall be treated as, the client of the attorney solely by reason of his or her status as beneficiary;

(ii) The existence of a fiduciary relationship between the personal representative and a beneficiary of the estate does not by itself constitute or give rise to any waiver of the privilege for confidential communications made in the course of professional employment between the attorney or his or her employee and the personal representative who is the client; and

(iii) The fiduciary's testimony that he or she has relied on the attorney's advice shall not by itself constitute such a waiver.

(B) For purposes of this paragraph, "personal representative" shall mean (i) the administrator, administrator c.t.a., ancillary administrator, executor, preliminary executor, temporary administrator, lifetime trustee or trustee to whom letters have been issued within the meaning of subdivision thirty-four of section one hundred three of the surrogate's court procedure act, and (ii) the guardian of an incapacitated communicant if and to the extent that the order appointing such guardian under subdivision (c) of section 81.16 of the mental hygiene law or any subsequent order of any court expressly provides that the guardian is to be the personal representative of the incapacitated communicant for purposes of this section; "beneficiary" shall have the meaning set forth in subdivision eight of section one hundred three of the surrogate's court procedure act and "estate" shall have the meaning set forth in subdivision nineteen of section one hundred three of the surrogate's court procedure act.

(b) Wills and revocable trusts. In any action involving the probate,

validity or construction of a will or, after the grantor's death, a revocable trust, an attorney or his employee shall be required to disclose information as to the preparation, execution or revocation of any will, revocable trust, or other relevant instrument, but he shall not be allowed to disclose any communication privileged under subdivision (a) which would tend to disgrace the memory of the decedent.

§ 4504. Physician, dentist, podiatrist, chiropractor and nurse. (a) Confidential information privileged. Unless the patient waives the privilege, a person authorized to practice medicine, registered professional nursing, licensed practical nursing, dentistry, podiatry or chiropractic shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity. The relationship of a physician and patient shall exist between a medical corporation, as defined in article forty-four of the public health law, a professional service corporation organized under article fifteen of the business corporation law to practice medicine, a university faculty practice corporation organized under section fourteen hundred twelve of the not-for-profit corporation law to practice medicine or dentistry, and the patients to whom they respectively render professional medical services.

A patient who, for the purpose of obtaining insurance benefits, authorizes the disclosure of any such privileged communication to any person shall not be deemed to have waived the privilege created by this subdivision. For purposes of this subdivision:

1. "person" shall mean any individual, insurer or agent thereof, peer review committee, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever; and

2. "insurance benefits" shall include payments under a self-insured plan.

(b) Identification by dentist; crime committed against patient under sixteen. A dentist shall be required to disclose information necessary for identification of a patient. A physician, dentist, podiatrist, chiropractor or nurse shall be required to disclose information indicating that a patient who is under the age of sixteen years has been the victim of a crime.

(c) Mental or physical condition of deceased patient. A physician or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subdivision (a), except information which would tend to disgrace the memory of the decedent, either in the absence of an objection by a party to the litigation or when the privilege has been waived:

1. by the personal representative, or the surviving spouse, or the next of kin of the decedent; or

2. in any litigation where the interests of the personal representative are deemed by the trial judge to be adverse to those of the estate of the decedent, by any party in interest; or

3. if the validity of the will of the decedent is in question, by the executor named in the will, or the surviving spouse or any heir-at-law or any of the next kin or any other party in interest.

(d) Proof of negligence; unauthorized practice of medicine. In any action for damages for personal injuries or death against a person not authorized to practice medicine under article 131 of the education law for any act or acts constituting the practice of medicine, when such act or acts were a competent producing proximate or contributing cause of such injuries or death, the fact that such person practiced medicine without being so authorized shall be deemed prima facie evidence of negligence.

§ 4505. Confidential communication to clergy privileged. Unless the person confessing or confiding waives the privilege, a clergyman, or other minister of any religion or duly accredited Christian Science practitioner, shall not be allowed disclose a confession or confidence

made to him in his professional character as spiritual advisor.

§ 4506. Eavesdropping evidence; admissibility; motion to suppress in certain cases. 1. The contents of any overheard or recorded communication, conversation or discussion, or evidence derived therefrom, which has been obtained by conduct constituting the crime of eavesdropping, as defined by section 250.05 of the penal law, may not be received in evidence in any trial, hearing or proceeding before any court or grand jury, or before any legislative committee, department, officer, agency, regulatory body, or other authority of the state, or a political subdivision thereof; provided, however, that such communication, conversation, discussion or evidence, shall be admissible in any civil or criminal trial, hearing or proceeding against a person who has, or is alleged to have, committed such crime of eavesdropping.

2. As used in this section, the term "aggrieved person" means:

(a) A person who was a sender or receiver of a telephonic or telegraphic communication which was intentionally overheard or recorded by a person other than the sender or receiver thereof, without the consent of the sender or receiver, by means of any instrument, device or equipment; or

(b) A party to a conversation or discussion which was intentionally overheard or recorded, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment; or

(c) A person against whom the overhearing or recording described in paragraphs (a) and (b) was directed.

3. An aggrieved person who is a party in any civil trial, hearing or proceeding before any court, or before any department, officer, agency, regulatory body, or other authority of the state, or a political subdivision thereof, may move to suppress the contents of any overheard or recorded communication, conversation or discussion or evidence derived therefrom, on the ground that:

(a) The communication, conversation or discussion was unlawfully overheard or recorded; or

(b) The eavesdropping warrant under which it was overheard or recorded is insufficient on its face; or

(c) The eavesdropping was not done in conformity with the eavesdropping warrant.

4. The motion prescribed in subdivision three of this section must be made before the judge or justice who issued the eavesdropping warrant. If no eavesdropping warrant was issued, such motion must be made before a justice of the supreme court of the judicial district in which the trial, hearing or proceeding is pending. The aggrieved person must allege in his motion papers that an overheard or recorded communication, conversation or discussion, or evidence derived therefrom, is subject to suppression under subdivision three of this section, and that such communication, conversation or discussion, or evidence, may be used against him in the civil trial, hearing or proceeding in which he is a party. The motion must be made prior to the commencement of such trial, hearing or proceeding, unless there was no opportunity to make such motion or the aggrieved person was not aware of the grounds of the motion. If the motion is granted, the contents of the overheard or recorded communication, conversation or discussion or evidence derived therefrom, may not be received in evidence in any trial, hearing or proceeding.

§ 4507. Psychologist. The confidential relations and communications between a psychologist registered under the provisions of article one hundred fifty-three of the education law and his client are placed on the same basis as those provided by law between attorney and client, and nothing in such article shall be construed to require any such privileged communications to be disclosed.

A client who, for the purpose of obtaining insurance benefits, authorizes the disclosure of any such privileged communication to any person shall not be deemed to have waived the privilege created by this section. For purposes of this section:

1. "person" shall mean any individual, insurer or agent thereof, peer

review committee, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever; and

2. "insurance benefits" shall include payments under a self-insured plan.

§ 4508. Social worker. (a) Confidential information privileged. A person licensed as a licensed master social worker or a licensed clinical social worker under the provisions of article one hundred fifty-four of the education law shall not be required to disclose a communication made by a client, or his or her advice given thereon, in the course of his or her professional employment, nor shall any clerk, stenographer or other person working for the same employer as such social worker or for such social worker be allowed to disclose any such communication or advice given thereon; except

1. that such social worker may disclose such information as the client may authorize;

2. that such social worker shall not be required to treat as confidential a communication by a client which reveals the contemplation of a crime or harmful act;

3. where the client is a child under the age of sixteen and the information acquired by such social worker indicates that the client has been the victim or subject of a crime, the social worker may be required to testify fully in relation thereto upon any examination, trial or other proceeding in which the commission of such crime is a subject of inquiry;

4. where the client waives the privilege by bringing charges against such social worker and such charges involve confidential communications between the client and the social worker.

(b) Limitations on waiver. A client who, for the purpose of obtaining

insurance benefits, authorizes the disclosure of any such privileged communication to any person shall not be deemed to have waived the privilege created by this section. For purposes of this subdivision:

1. "person" shall mean any individual, insurer or agent thereof, peer review committee, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever; and

2. "insurance benefits" shall include payments under a self-insured plan.

§ 4509. Library records. Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute.

§ 4510. Rape crisis counselor or domestic violence advocate. (a) Definitions. When used in this section, the following terms shall have the following meanings:

1. "Rape crisis program" means any office, institution or center which has been approved pursuant to subdivision fifteen of section two hundred six of the public health law, as added by chapter 432 of the laws of 1993, offering counseling and assistance to clients concerning sexual offenses, sexual abuses or incest.

2. "Rape crisis counselor" means any person who has been certified by an approved rape crisis program as having satisfied the training standards specified in subdivision fifteen of section two hundred six of the public health law, as added by chapter 432 of the laws of 1993, and who, regardless of compensation, is acting under the direction and supervision of an approved rape crisis program.

3. "Client" means (i) any person who is seeking or receiving the services of a rape crisis counselor for the purpose of securing counseling or assistance concerning any sexual offenses, sexual abuse, incest or attempts to commit sexual offenses, sexual abuse, or incest, as defined in the penal law; or

(ii) any victim of domestic violence as defined in section four hundred fifty-nine-a of the social services law.

4. "Domestic violence program" means a residential program for victims of domestic violence or a non-residential program for victims of domestic violence as defined in section four hundred fifty-nine-a of the social services law or any similar program operated by an Indian tribe, as defined by section two of the Indian law.

5. "Domestic violence advocate" means any person who is acting under the direction and supervision of a licensed and approved domestic violence program and has satisfied the training standards required by the office of children and family services.

(b) Confidential information privileged. A rape crisis counselor or domestic violence advocate shall not be required to disclose a communication made by his or her client to him or her, or advice given thereon, in the course of his or her services nor shall any clerk, stenographer or other person working for the same program as the rape crisis counselor or domestic violence advocate or for the rape crisis counselor or domestic violence advocate be allowed to disclose any such communication or advice given thereon nor shall any records made in the course of the services given to the client or recording of any communications made by or to a client be required to be disclosed, nor shall the client be compelled to disclose such communication or records,

except:

1. that a rape crisis counselor or domestic violence advocate may disclose such otherwise confidential communication to the extent authorized by the client;

2. that a rape crisis counselor or domestic violence advocate shall not be required to treat as confidential a communication by a client which reveals the intent to commit a crime or harmful act;

3. that a domestic violence advocate shall not be required to treat as confidential a communication by a client which reveals a case of suspected child abuse or maltreatment pursuant to title six of article six of the social services law;

4. in a case in which the client waives the privilege by instituting charges against the rape crisis counselor or domestic violence advocate or the rape crisis program or domestic violence program and such action or proceeding involves confidential communications between the client and the rape crisis counselor or domestic violence advocate.

(c) Who may waive the privilege. The privilege may only be waived if the client, the personal representative of a deceased client, or, in the case of a client who has been adjudicated incompetent or for whom a conservator has been appointed, the committee or conservator provides the rape crisis counselor or domestic violence advocate with informed, written and reasonably time-limited consent.

(d) Limitation on waiver. A client who, for the purposes of obtaining compensation under article twenty-two of the executive law or insurance benefits, authorizes the disclosure of any privileged communication to an employee of the office of victim services or an insurance representative shall not be deemed to have waived the privilege created by this section.

Rule 4511. Judicial notice of law. (a) When judicial notice shall be taken without request. Every court shall take judicial notice without request of the common law, constitutions and public statutes of the

United States and of every state, territory and jurisdiction of the United States and of the official compilation of codes, rules and regulations of the state except those that relate solely to the organization or internal management of an agency of the state and of all local laws and county acts.

(b) When judicial notice may be taken without request; when it shall be taken on request. Every court may take judicial notice without request of private acts and resolutions of the congress of the United States and of the legislature of the state; ordinances and regulations of officers, agencies or governmental subdivisions of the state or of the United States; and the laws of foreign countries or their political subdivisions. Judicial notice shall be taken of matters specified in this subdivision if a party requests it, furnishes the court sufficient information to enable it to comply with the request, and has given each adverse party notice of his intention to request it. Notice shall be given in the pleadings or prior to the presentation of any evidence at the trial, but a court may require or permit other notice.

(c) Determination by court; review as matter of law. Whether a matter is judicially noticed or proof is taken, every matter specified in this section shall be determined by the judge or referee, and included in his or her findings or charged to the jury. Such findings or charge shall be subject to review on appeal as a finding or charge on a matter of law.

(d) Evidence to be received on matter to be judicially noticed. In considering whether a matter of law should be judicially noticed and in determining the matter of law to be judicially noticed, the court may consider any testimony, document, information or argument on the subject, whether offered by a party or discovered through its own research. Whether or not judicial notice is taken, a printed copy of a statute or other written law or a proclamation, edict, decree or ordinance by an executive contained in a book or publication, purporting to have been published by a government or commonly admitted as evidence of the existing law in the judicial tribunals of the jurisdiction where it is in force, is prima facie evidence of such law and the unwritten or common law of a jurisdiction may be proved by witnesses or printed reports of cases of the courts of the jurisdiction.

§ 4512. Competency of interested witness or spouse. Except as otherwise expressly prescribed, a person shall not be excluded or excused from being a witness, by reason of his interest in the event or because he is a party or the spouse of a party.

§ 4513. Competency of person convicted of crime. A person who has been convicted of a crime is a competent witness; but the conviction may be proved, for the purpose of affecting the weight of his testimony, either by cross-examination, upon which he shall be required to answer any relevant question, or by the record. The party cross-examining is not concluded by such person's answer.

Rule 4514. Impeachment of witness by prior inconsistent statement. In addition to impeachment in the manner permitted by common law, any party may introduce proof that any witness has made a prior statement inconsistent with his testimony if the statement was made in a writing subscribed by him or was made under oath.

Rule 4515. Form of expert opinion. Unless the court orders otherwise, questions calling for the opinion of an expert witness need not be hypothetical in form, and the witness may state his opinion and reasons without first specifying the data upon which it is based. Upon cross-examination, he may be required to specify the data and other criteria supporting the opinion.

Rule 4516. Proof of age of child. Whenever it becomes necessary to determine the age of a child, he may be produced and exhibited to enable the court or jury to determine his age by a personal inspection.

Rule 4517. Prior testimony in a civil action. (a) Impeachment of witnesses; parties; unavailable witness. In a civil action, at the trial or upon the hearing of a motion or an interlocutory proceeding, all or

any part of the testimony of a witness that was taken at a prior trial in the same action or at a prior trial involving the same parties or their representatives and arising from the same subject matter, so far as admissible under the rules of evidence, may be used in accordance with any of the following provisions:

1. any such testimony may be used by any party for the purpose of contradicting or impeaching the testimony of the same witness;

2. the prior trial testimony of a party or of any person who was a party when the testimony was given or of any person who at the time the testimony was given was an officer, director, member, employee, or managing or authorized agent of a party, may be used for any purpose by any party who is adversely interested when the prior testimony is offered in evidence;

3. the prior trial testimony of any person may be used by any party for any purpose against any other party, provided the court finds:

(i) that the witness is dead; or

(ii) that the witness is at a greater distance than one hundred miles from the place of trial or is out of the state, unless it appears that the absence of the witness was procured by the party offering the testimony; or

(iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(iv) that the party offering the testimony has been unable to procure the attendance of the witness by diligent efforts; or

(v) upon motion on notice, that such exceptional circumstances exist as to make its use desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court;

4. the prior trial testimony of a person authorized to practice medicine may be used by any party without the necessity of showing unavailability or special circumstances subject to the right of any party to move for preclusion upon the ground that admission of the prior testimony would be prejudicial under the circumstances.

(b) Use of part of the prior trial testimony of a witness. If only part of the prior trial testimony of a witness is read at the trial by a party, any other party may read any other part of the prior testimony of that witness that ought in fairness to be considered in connection with the part read.

(c) Substitution of parties; prior actions. Substitution of parties does not affect the right to use testimony previously taken at trial.

Rule 4518. Business records. (a) Generally. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. An electronic record, as defined in section three hundred two of the state technology law, used or stored as such a memorandum or record, shall be admissible in a tangible exhibit that is a true and accurate representation of such electronic record. The court may consider the method or manner by which the electronic record was stored, maintained or retrieved in determining whether the exhibit is a true and accurate representation of such electronic record. All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but they shall not affect its admissibility. The term business includes a business, profession, occupation and calling of every kind.

(b) Hospital bills. A hospital bill is admissible in evidence under this rule and is prima facie evidence of the facts contained, provided it bears a certification by the head of the hospital or by a responsible employee in the controller's or accounting office that the bill is correct, that each of the items was necessarily supplied and that the amount charged is reasonable. This subdivision shall not apply to any proceeding in a surrogate's court nor in any action instituted by or on behalf of a hospital to recover payment for accommodations or supplies furnished or for services rendered by or in such hospital, except that

in a proceeding pursuant to section one hundred eighty-nine of the lien law to determine the validity and extent of the lien of a hospital, such certified hospital bills are prima facie evidence of the fact of services and of the reasonableness of any charges which do not exceed the comparable charges made by the hospital in the care of workmen's compensation patients.

(c) Other records. All records, writings and other things referred to in sections 2306 and 2307 are admissible in evidence under this rule and are prima facie evidence of the facts contained, provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state, or by an employee delegated for that purpose or by a qualified physician. Where a hospital record is in the custody of a warehouse as that term is defined by paragraph (thirteen) of subsection (a) of section 7--102 of the uniform commercial code, pursuant to a plan approved in writing by the state commissioner of health, admissibility under this subdivision may be established by a certification made by the manager of the warehouse that sets forth (i) the authority by which the record is held, including but not limited to a court order, order of the commissioner, or order or resolution of the governing body or official of the hospital, and (ii) that the record has been in the exclusive custody of such warehouse or warehousemen since its receipt from the hospital or, if another has had access to it, the name and address of such person and the date on which and the circumstances under which such access was had. Any warehouse providing a certification as required by this subdivision shall have no liability for acts or omissions relating thereto, except for intentional misconduct, and the warehouse is authorized to assess and collect a reasonable charge for providing the certification described by this subdivision. Where a hospital record is located in a jurisdiction other than this state, admissibility under this subdivision may be established by either a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state or by an employee delegated for that purpose, or by a qualified physician.

(d) Any records or reports relating to the administration and analysis of a genetic marker or DNA test, including records or reports of the costs of such tests, administered pursuant to sections four hundred

eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law are admissible in evidence under this rule and are prima facie evidence of the facts contained therein provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or the state or by an employee delegated for that purpose, or by a qualified physician. If such record or report relating to the administration and analysis of a genetic marker test or DNA test or tests administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law indicates at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and shall, if unrebutted, establish the paternity of and liability for the support of a child pursuant to articles four and five of the family court act.

(e) Notwithstanding any other provision of law, a record or report relating to the administration and analysis of a genetic marker test or DNA test certified in accordance with subdivision (d) of this rule and administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law is admissible in evidence under this rule without the need for foundation testimony or further proof of authenticity or accuracy unless objections to the record or report are made in writing no later than twenty days before a hearing at which the record or report may be introduced into evidence or thirty days after receipt of the test results, whichever is earlier.

(f) Notwithstanding any other provision of law, records or reports of support payments and disbursements maintained pursuant to title six-A of article three of the social services law by the office of temporary and disability assistance or the fiscal agent under contract to the office for the provision of centralized collection and disbursement functions are admissible in evidence under this rule, provided that they bear a certification by an official of a social services district attesting to the accuracy of the content of the record or report of support payments and that in attesting to the accuracy of the record or report such official has received confirmation from the office of temporary and disability assistance or the fiscal agent under contract to the office

for the provision of centralized collection and disbursement functions pursuant to section one hundred eleven-h of the social services law that the record or report of support payments reflects the processing of all support payments in the possession of the office or the fiscal agent as of a specified date, and that the document is a record or report of support payments maintained pursuant to title six-A of article three of the social services law. If so certified, such record or report shall be admitted into evidence under this rule without the need for additional foundation testimony. Such records shall be the basis for a permissive inference of the facts contained therein unless the trier of fact finds good cause not to draw such inference.

(g) Pregnancy and childbirth costs. Any hospital bills or records relating to the costs of pregnancy or birth of a child for whom proceedings to establish paternity, pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law have been or are being undertaken, are admissible in evidence under this rule and are prima facie evidence of the facts contained therein, provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or the state or by an employee designated for that purpose, or by a qualified physician.

§ 4519. Personal transaction or communication between witness and decedent or person with a mental illness. Upon the trial of an action or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be examined as a witness in his own behalf or interest, or in behalf of the party succeeding to his title or interest against the executor, administrator or survivor of a deceased person or the committee of a person with a mental illness, or a person deriving his title or interest from, through or under a deceased person or person with a mental illness, by assignment or otherwise, concerning a personal transaction or communication between the witness and the deceased person or person with a mental illness, except where the executor, administrator, survivor, committee or person so deriving title or

interest is examined in his own behalf, or the testimony of the person with a mental illness or deceased person is given in evidence, concerning the same transaction or communication. A person shall not be deemed interested for the purposes of this section by reason of being a stockholder or officer of any banking corporation which is a party to the action or proceeding, or interested in the event thereof. No party or person interested in the event, who is otherwise competent to testify, shall be disqualified from testifying by the possible imposition of costs against him or the award of costs to him. A party or person interested in the event or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be qualified for the purposes of this section, to testify in his own behalf or interest, or in behalf of the party succeeding to his title or interest, to personal transactions or communications with the donee of a power of appointment in an action or proceeding for the probate of a will, which exercises or attempts to exercise a power of appointment granted by the will of a donor of such power, or in an action or proceeding involving the construction of the will of the donee after its admission to probate.

Nothing contained in this section, however, shall render a person incompetent to testify as to the facts of an accident or the results therefrom where the proceeding, hearing, defense or cause of action involves a claim of negligence or contributory negligence in an action wherein one or more parties is the representative of a deceased or incompetent person based upon, or by reason of, the operation or ownership of a motor vehicle being operated upon the highways of the state, or the operation or ownership of aircraft being operated in the air space over the state, or the operation or ownership of a vessel on any of the lakes, rivers, streams, canals or other waters of this state, but this provision shall not be construed as permitting testimony as to conversations with the deceased.

§ 4519-a. Possession of opioid antagonists; receipt into evidence. 1. Possession of an opioid antagonist may not be received in evidence in any trial, hearing or proceeding pursuant to subdivision one of section

two hundred thirty-one and paragraph three of subdivision b of section two hundred thirty-three of the real property law or subdivision five of section seven hundred eleven and subdivision one of section seven hundred fifteen of the real property actions and proceedings law as evidence that the building or premises are being used for illegal trade, manufacture, or other illegal business.

2. For the purposes of this section, opioid antagonist shall have the same meaning as set forth in subdivision two of section 60.49 of the criminal procedure law.

Rule 4520. Certificate or affidavit of public officer. Where a public officer is required or authorized, by special provision of law, to make a certificate or an affidavit to a fact ascertained, or an act performed, by him in the course of his official duty, and to file or deposit it in a public office of the state, the certificate or affidavit so filed or deposited is prima facie evidence of the facts stated.

Rule 4521. Lack of record. A statement signed by an officer or a deputy of an officer having legal custody of specified official records of the United States or of any state, territory or jurisdiction of the United States, or of any court thereof, or kept in any public office thereof, that he has made diligent search of the records and has found no record or entry of a specified nature, is prima facie evidence that the records contain no such record or entry, provided that the statement is accompanied by a certificate that legal custody of the specified official records belongs to such person, which certificate shall be made by a person described in rule 4540.

Rule 4522. Ancient filed maps, surveys and records affecting real property. All maps, surveys and official records affecting real property, which have been on file in the state in the office of the register of any county, any county clerk, any court of record or any department of the city of New York for more than ten years, are prima

facie evidence of their contents.

Rule 4523. Search by title insurance or abstract company. A search affecting real property, when made and certified to by a title insurance, abstract or searching company, organized under the laws of this state, may be used in place of, and with the same legal effect as, an official search.

Rule 4524. Conveyance of real property without the state. A record of a conveyance of real property situated within another state, territory or jurisdiction of the United States, recorded therein pursuant to its laws, is prima facie evidence of conveyance and of due execution.

Rule 4525. Copies of statements under article nine of the uniform commercial code. A copy of a statement which is noted or certified by a filing officer pursuant to section 9--523 of the uniform commercial code and which states that the copy is a true copy is prima facie evidence of the facts stated in the notation or certification and that the copy is a true copy of a statement filed in the office of the filing officer.

Rule 4526. Marriage certificate. An original certificate of a marriage made by the person by whom it was solemnized within the state, or the original entry thereof made pursuant to law in the office of the clerk of a city or a town within the state, is prima facie evidence of the marriage.

§ 4527. Death or other status of missing person. (a) Presumed death. A written finding of presumed death, made by any person authorized to make such findings by the federal missing persons act is prima facie evidence of the death, and the date, circumstances and place of disappearance. In the case of a merchant seaman, a written finding of presumed death, made by the maritime war emergency board or by the war

shipping administration or the successors or assigns of such board or administration in connection with war risk insurance is prima facie evidence of the death, and the date, circumstances and place of disappearance.

(b) Death, internment, capture and other status. An official written report or record that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by an officer or employee of the United States authorized by law of the United States to make it is prima facie evidence of such fact.

Rule 4528. Weather conditions. Any record of the observations of the weather, taken under the direction of the United States weather bureau, is prima facie evidence of the facts stated.

Rule 4529. Inspection certificate issued by United States department of agriculture. An inspection certificate issued by the authorized agents of the United States department of agriculture on file with the United States secretary of agriculture is prima facie evidence of the facts stated.

§ 4530. Certificate of population. (a) Prima facie evidence. A certificate of the officer in charge of the census of the United States, attested by the United States secretary of commerce, giving the result of the census is, except as hereinafter provided, prima facie evidence of such result.

(b) Conclusive evidence. Where the population of the state or a subdivision, or a portion of a subdivision of the state is required to be determined according to the federal or state census or enumeration last preceding a particular time, a certificate of the officer in charge of the census of the United States, attested by the United States secretary of commerce, as to such population as shown by such federal census, or a certificate of the secretary of state as to such population as shown by such state enumeration, is conclusive evidence of such

population.

Rule 4531. Affidavit of service or posting notice by person unavailable at trial. An affidavit by a person who served, posted or affixed a notice, showing such service, posting or affixing is prima facie evidence of the service, posting or affixing if the affiant is dead, mentally ill or cannot be compelled with due diligence to attend at the trial.

Rule 4532. Self-authentication of newspapers and periodicals of general circulation. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to printed materials purporting to be newspapers or periodicals of general circulation; provided however, nothing herein shall be deemed to preclude or limit the right of a party to challenge the authenticity of such printed material, by extrinsic evidence or otherwise, prior to admission by the court or to raise the issue of authenticity as an issue of fact.

Rule 4532-a. Admissibility of graphic, numerical, symbolic or pictorial representations of medical or diagnostic tests. A graphic, numerical, symbolic or pictorial representation of the results of a medical or diagnostic procedure or test is admissible in evidence provided:

(1) the name of the injured party, the date when the information constituting the graphic, numerical, symbolic or pictorial representation was taken, and such additional identifying information as is customarily inscribed by the medical practitioner or medical facility is inserted on such graphic, numerical, symbolic or pictorial representation; and

(2) (a) the representation has been previously received or examined by the party or parties against whom it is being offered; or

(b)(i) at least ten days before the date of trial of the action, the party intending to offer such graphic, numerical, symbolic or pictorial

representation as a proposed exhibit serves upon the party or parties against whom said proposed exhibit is to be offered, a notice of intention to offer such proposed exhibit in evidence during the trial and that the same is available for inspection; and

(ii) the notice aforesaid is accompanied by an affidavit or affirmation of such physician identifying such graphic, numerical, symbolic or pictorial representation and attesting to the identifying information inscribed thereon, attesting that the identifying information inscribed thereon is the same as is customarily inscribed by the medical practitioner or facility, and further attesting that, if called as a witness in the action, he or she would so testify.

Nothing contained in this rule, however, shall prohibit the admissibility of a graphic, numerical, symbolic or pictorial representation in evidence where otherwise admissible.

§ 4532-b. An image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool, is admissible in evidence if such image, map, location, distance, calculation, or other information indicates the date such material was created and subject to a challenge that the image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool does not fairly and accurately portray that which it is being offered to prove. A party intending to offer such image or information in evidence at a trial or hearing shall, at least thirty days before the trial or hearing, give notice of such intent, providing a copy or specifying the internet address at which such image or information may be inspected. No later than ten days before the trial or hearing, or later for good cause shown, a party upon whom such notice is served may object to the request to admit into evidence such image or information, stating the grounds for the objection. Unless objection is made pursuant to this subdivision, the court shall take judicial notice and admit into evidence such image, map, location, distance, calculation or other information.

Rule 4533. Market reports. A report of a regularly organized stock or commodity market published in a newspaper or periodical of general circulation or in an official publication or trade journal is admissible in evidence to prove the market price or value of any article regularly sold or dealt in on such market. The circumstances of the preparation of such a report may be shown to affect its weight, but they shall not affect its admissibility.

Rule 4533-a. Prima facie proof of damages. An itemized bill or invoice, receipted or marked paid, for services or repairs of an amount not in excess of two thousand dollars is admissible in evidence and is prima facie evidence of the reasonable value and necessity of such services or repairs itemized therein in any civil action provided it bears a certification by the person, firm or corporation, or an authorized agent or employee thereof, rendering such services or making such repairs and charging for the same, and contains a verified statement that no part of the payment received therefor will be refunded to the debtor, and that the amounts itemized therein are the usual and customary rates charged for such services or repairs by the affiant or his employer; and provided further that a true copy of such itemized bill or invoice together with a notice of intention to introduce such bill or invoice into evidence pursuant to this rule is served upon each party at least ten days before the trial. No more than one bill or invoice from the same person, firm or corporation to the same debtor shall be admissible in evidence under this rule in the same action.

Rule 4533-b. Proof of payment by joint tort-feasor. In an action for personal injury, injury to property or for wrongful death, any proof as to payment by or settlement with another joint tort-feasor, or one claimed to be a joint tort-feasor, offered by a defendant in mitigation of damages, shall be taken out of the hearing of the jury. The court shall deduct the proper amount, as determined pursuant to section 15-108 of the general obligations law, from the award made by the jury.

Rule 4534. Standard of measurement used by surveyor. An official certificate of any state, county, city, village or town sealer elected or appointed pursuant to the laws of the state, or the statement under oath of a surveyor, that the chain or measure used by him conformed to the state standard at the time a survey was made is prima facie evidence of conformity, and an official certificate made by any sealer that the implement used in measuring such chain or other measure was the one provided the sealer pursuant to the provisions of the laws of the state is prima facie evidence of that fact.

Rule 4536. Proof of writing by comparison of handwriting. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be the handwriting of the person claimed to have made the disputed writing shall be permitted.

Rule 4537. Proof of writing subscribed by witness. Unless a writing requires a subscribing witness for its validity, it may be proved as if there was no subscribing witness.

Rule 4538. Acknowledged, proved or certified writing; conveyance of real property without the state. Certification of the acknowledgment or proof of a writing, except a will, in the manner prescribed by law for taking and certifying the acknowledgment or proof of a conveyance of real property within the state is prima facie evidence that it was executed by the person who purported to do so. A conveyance of real property, situated within another state, territory or jurisdiction of the United States, which has been duly authenticated, according to the laws of that state, territory or jurisdiction, so as to be read in evidence in the courts thereof, is admissible in evidence in the state.

Rule 4539. Reproductions of original. (a) If any business, institution, or member of a profession or calling, in the regular course

of business or activity has made, kept or recorded any writing, entry, print or representation and in the regular course of business has recorded, copied, or reproduced it by any process, including reproduction, which accurately reproduces or forms a durable medium for reproducing the original, such reproduction, when satisfactorily identified, is as admissible in evidence as the original, whether the original is in existence or not, and an enlargement or facsimile of such reproduction is admissible in evidence if the original reproduction is in existence and available for inspection under direction of the court. The introduction of a reproduction does not preclude admission of the original.

(b) A reproduction created by any process which stores an image of any writing, entry, print or representation and which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes, when authenticated by competent testimony or affidavit which shall include the manner or method by which tampering or degradation of the reproduction is prevented, shall be as admissible in evidence as the original.

Rule 4540. Authentication of official record of court or government office in the United States. (a) Copies permitted. An official publication, or a copy attested as correct by an officer or a deputy of an officer having legal custody of an official record of the United States or of any state, territory or jurisdiction of the United States, or of any of its courts, legislature, offices, public bodies or boards is prima facie evidence of such record.

(b) Certificate of officer of the state. Where the copy is attested by an officer of the state, it shall be accompanied by a certificate signed by, or with a facsimile of the signature of, the clerk of a court having legal custody of the record, and, except where the copy is used in the same court or before one of its officers, with the seal of the court affixed; or signed by, or with a facsimile of the signature of, the officer having legal custody of the original, or his deputy or clerk, with his official seal affixed; or signed by, or with a facsimile of the signature of, the presiding officer, secretary or clerk of the public body or board and, except where it is certified by the clerk or

secretary of either house of the legislature, with the seal of the body or board affixed. If the certificate is made by a county clerk, the county seal shall be affixed.

(c) Certificate of officer of another jurisdiction. Where the copy is attested by an officer of another jurisdiction, it shall be accompanied by a certificate that such officer has legal custody of the record, and that his signature is believed to be genuine, which certificate shall be made by a judge of a court of record of the district or political subdivision in which the record is kept, with the seal of the court affixed; or by any public officer having a seal of office and having official duties in that district or political subdivision with respect to the subject matter of the record, with the seal of his office affixed.

(d) Printed tariff or classification subject to public service commission, commissioner of transportation or interstate commerce commission. A printed copy of a tariff or classification which shows a public service commission or commissioner of transportation number of this state and an effective date, or a printed copy of a tariff or classification which shows an interstate commerce commission number and an effective date, is admissible in evidence, without certification, and is prima facie evidence of the filed original tariff or classification.

Rule 4540-a. Presumption of authenticity based on a party's production of material authored or otherwise created by the party. Material produced by a party in response to a demand pursuant to article thirty-one of this chapter for material authored or otherwise created by such party shall be presumed authentic when offered into evidence by an adverse party. Such presumption may be rebutted by a preponderance of evidence proving such material is not authentic, and shall not preclude any other objection to admissibility.

Rule 4541. Proof of proceedings before justice of the peace. (a) Of the state. A transcript from the docket-book of a justice of the peace of the state, subscribed by him, and authenticated by a certificate signed by the clerk of the county in which the justice resides, with the

county seal affixed, to the effect that the person subscribing the transcript is a justice of the peace of that county, is prima facie evidence of any matter stated in the transcript which is required by law to be entered by the justice in his docket-book.

(b) Of another state. A transcript from the docket-book of a justice of the peace of another state, of his minutes of the proceedings in a cause, of a judgment rendered by him, of an execution issued thereon or of the return of an execution, when subscribed by him, and authenticated as prescribed in this subdivision is prima facie evidence of his jurisdiction in the cause and of the matters shown by the transcript. The transcript shall be authenticated by a certificate of the justice to the effect that it is in all respects correct and that he had jurisdiction of the cause; and also by a certificate of the clerk or prothonotary of the county in which the justice resides, with his official seal affixed, to the effect that the person subscribing the certificate attached to the transcript is a justice of the peace of that county.

Rule 4542. Proof of foreign records and documents. (a) Foreign record. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position

1. of the attesting person, or

2. of any foreign official whose certificate of genuineness of signature and official position

- (i) relates to the attestation, or

- (ii) is in a chain of certificates of genuineness of signature and official position relating to the attestation.

(b) Final certification. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the

United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, admit an attested copy without final certification, or permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(c) Lack of record. A written statement that after diligent search no record or entry of a specified tenor was found to exist in the foreign records designated by the statement, authenticated in compliance with the requirements set forth in subdivisions (a) and (b) for a copy of a foreign record is admissible as evidence that the records contain no such record or entry.

§ 4543. Proof of facts or writing by methods other than those authorized in this article. Nothing in this article prevents the proof of a fact or a writing by any method authorized by any applicable statute or by the rules of evidence at common law.

§ 4544. Contracts in small print. The portion of any printed contract or agreement involving a consumer transaction or a lease for space to be occupied for residential purposes where the print is not clear and legible or is less than eight points in depth or five and one-half points in depth for upper case type may not be received in evidence in any trial, hearing or proceeding on behalf of the party who printed or prepared such contract or agreement, or who caused said agreement or contract to be printed or prepared. As used in the immediately preceding sentence, the term "consumer transaction" means a transaction wherein the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes. No provision of any contract or agreement waiving the provisions of this section shall be effective. The provisions of this section shall not apply to agreements or contracts entered into prior to the effective date of this section.

§ 4545. Admissibility of collateral source of payment. (a) Actions for

personal injury, injury to property or wrongful death. In any action brought to recover damages for personal injury, injury to property or wrongful death, where the plaintiff seeks to recover for the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, evidence shall be admissible for consideration by the court to establish that any such past or future cost or expense was or will, with reasonable certainty, be replaced or indemnified, in whole or in part, from any collateral source, except for life insurance and those payments as to which there is a statutory right of reimbursement. If the court finds that any such cost or expense was or will, with reasonable certainty, be replaced or indemnified from any such collateral source, it shall reduce the amount of the award by such finding, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two-year period immediately preceding the accrual of such action and minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits. In order to find that any future cost or expense will, with reasonable certainty, be replaced or indemnified by the collateral source, the court must find that the plaintiff is legally entitled to the continued receipt of such collateral source, pursuant to a contract or otherwise enforceable agreement, subject only to the continued payment of a premium and such other financial obligations as may be required by such agreement. Any collateral source deduction required by this subdivision shall be made by the trial court after the rendering of the jury's verdict. The plaintiff may prove his or her losses and expenses at the trial irrespective of whether such sums will later have to be deducted from the plaintiff's recovery.

(b) Voluntary charitable contributions excluded as a collateral source of payment. Voluntary charitable contributions received by an injured party shall not be considered to be a collateral source of payment that is admissible in evidence to reduce the amount of any award, judgment or settlement.

§ 4546. Loss of earnings and impairment of earning ability in actions for medical, dental or podiatric malpractice. 1. In any action for medical, dental or podiatric malpractice where the plaintiff seeks to

recover damages for loss of earnings or impairment of earning ability, evidence shall be admissible for consideration by the court, outside of the presence of the jury, to establish the federal, state and local personal income taxes which the plaintiff would have been obligated by law to pay.

2. In any such action, the court shall instruct the jury not to deduct federal, state and local personal income taxes in determining the award, if any, for loss of earnings and impairment of earning ability. The court shall further instruct the jury that any reduction for such taxes from any award shall, if warranted, be made by the court.

3. In any such action, the court shall, if warranted by the evidence, reduce any award for loss of earnings or impairment of earning ability by the amount of federal, state and local personal income taxes which the court finds, with reasonable certainty, that the plaintiff would have been obligated by law to pay.

§ 4547. Compromise and offers to compromise. Evidence of (a) furnishing, or offering or promising to furnish, or (b) accepting, or offering or promising to accept, any valuable consideration in compromising or attempting to compromise a claim which is disputed as to either validity or amount of damages, shall be inadmissible as proof of liability for or invalidity of the claim or the amount of damages. Evidence of any conduct or statement made during compromise negotiations shall also be inadmissible. The provisions of this section shall not require the exclusion of any evidence, which is otherwise discoverable, solely because such evidence was presented during the course of compromise negotiations. Furthermore, the exclusion established by this section shall not limit the admissibility of such evidence when it is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay or proof of an effort to obstruct a criminal investigation or prosecution.

§ 4548. Privileged communications; electronic communication thereof.

No communication privileged under this article shall lose its privileged character for the sole reason that it is communicated by electronic means or because persons necessary for the delivery or facilitation of such electronic communication may have access to the content of the communication.

§ 4549. Admissibility of an opposing party's statement. A statement offered against an opposing party shall not be excluded from evidence as hearsay if made by a person whom the opposing party authorized to make a statement on the subject or by the opposing party's agent or employee on a matter within the scope of that relationship and during the existence of that relationship.

§ 4550. Admissibility of evidence related to legally protected health activity. Evidence relating to the involvement of a party engaging in legally protected health activity, as defined by section 570.17 of the criminal procedure law shall not be offered against such party as evidence that such party has engaged in any wrongdoing, whether civil, criminal, professional, or otherwise by virtue of engaging in such legally protected health activity. Nothing in this section shall prevent a party from offering such evidence in a proceeding that (i) sounds in tort or contract, (ii) is actionable, in an equivalent or similar manner, under the laws of this state, and (iii) was brought by the person who received reproductive health care or gender-affirming care, or the person's legal representative in a manner consistent with subparagraph (iii) of paragraph one of subdivision (g) of section three thousand one hundred nineteen of this chapter.

Rule 4551. New York voting and elections database. The data, information, and/or estimates maintained by the New York voting and elections database within the state board of elections or copies of such data, information and/or estimates provided to the attorney general pursuant to subdivision three of section 3-112 of the election law shall be granted a rebuttable presumption of validity by any court concerning

any claim brought.

ARTICLE 50

JUDGMENTS GENERALLY

- 5001. Interest to verdict, report or decision.
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§ 5001. Interest to verdict, report or decision. (a) Actions in which recoverable. Interest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property, except that in an action of an equitable nature, interest and the rate and date from which it shall be computed shall be in the court's discretion.

(b) Date from which computed. Interest shall be computed from the earliest ascertainable date the cause of action existed, except that interest upon damages incurred thereafter shall be computed from the date incurred. Where such damages were incurred at various times, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date.

(c) Specifying date; computing interest. The date from which interest is to be computed shall be specified in the verdict, report or decision. If a jury is discharged without specifying the date, the court upon motion shall fix the date, except that where the date is certain and not

in dispute, the date may be fixed by the clerk of the court upon affidavit. The amount of interest shall be computed by the clerk of the court, to the date the verdict was rendered or the report or decision was made, and included in the total sum awarded.

§ 5002. Interest from verdict, report or decision to judgment.

Interest shall be recovered upon the total sum awarded, including interest to verdict, report or decision, in any action, from the date the verdict was rendered or the report or decision was made to the date of entry of final judgment. The amount of interest shall be computed by the clerk of the court and included in the judgment.

§ 5003. Interest upon judgment. Every money judgment shall bear interest from the date of its entry. Every order directing the payment of money which has been docketed as a judgment shall bear interest from the date of such docketing.

§ 5003-a. Prompt payment following settlement. (a) When an action to recover damages has been settled, any settling defendant, except those defendants to whom subdivisions (b) and (c) of this section apply, shall pay all sums due to any settling plaintiff within twenty-one days of tender, by the settling plaintiff to the settling defendant, of a duly executed release and a stipulation discontinuing action executed on behalf of the settling plaintiff.

(b) When an action to recover damages has been settled and the settling defendant is a municipality or any subdivision thereof, or any public corporation that is not indemnified by the state, it shall pay all sums due to any settling plaintiff within ninety days of tender, by the settling plaintiff to it, of duly executed release and a stipulation discontinuing action executed on behalf of the settling plaintiff. The provisions of this paragraph shall not inure to the benefit of any insurance carrier for a municipality or any subdivision thereof, or any public corporation that is not indemnified by the state. Any such insurance carrier shall pay all sums due to any settling plaintiff in

accordance with the provisions of subdivision (a) of this section.

(c) When an action to recover damages has been settled and the settling defendant is the state, an officer or employee of the state entitled to indemnification pursuant to section seventeen of the public officers law, or a public benefit corporation indemnified by the state, payment of all sums due to any settling plaintiff shall be made within ninety days of the comptroller's determination that all papers required to effectuate the settlement have been received by him. The provisions of this paragraph shall not inure to the benefit of any insurance carrier for the state, an officer or employee of the state entitled to indemnification pursuant to section seventeen of the public officers law, or a public benefit corporation indemnified by the state. Any such insurance carrier shall pay all sums due to any settling plaintiff in accordance with the provisions of subdivision (a) of this section.

(d) In an action which requires judicial approval of settlement, other than an action to which subdivision (c) of this section applies, the plaintiff shall also tender a copy of the order approving such settlement with the duly executed release and stipulation discontinuing action executed on behalf of the plaintiff.

(e) In the event that a settling defendant fails to promptly pay all sums as required by subdivisions (a), (b), and (c) of this section, any unpaid plaintiff may enter judgment, without further notice, against such settling defendant who has not paid. The judgment shall be for the amount set forth in the release, together with costs and lawful disbursements, and interest on the amount set forth in the release from the date that the release and stipulation discontinuing action were tendered.

(f) Nothing in this section shall apply to settlements subject to article seventy-four of the insurance law or to future installment payments to be paid pursuant to a structured settlement agreement.

(g) The term "tender", as used herein, shall mean either to personally deliver or to mail, by registered or certified mail, return receipt requested.

§ 5003-b. Nondisclosure agreements. Notwithstanding any other law to the contrary, for any claim or cause of action, whether arising under

common law, equity, or any provision of law, the factual foundation for which involves discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, no employer, its officer or employee shall have the authority to include or agree to include in such resolution any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the plaintiff's preference. Any such term or condition must be provided to all parties, and the plaintiff shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the plaintiff's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the plaintiff may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

§ 5004. Rate of interest. (a) Interest shall be at the rate of nine per centum per annum, except where otherwise provided by statute; provided the annual rate of interest to be paid in an action arising out of a consumer debt where a natural person is a defendant shall be two per centum per annum (i) on a judgment or accrued claim for judgments entered on or after the effective date of the chapter of the laws of two thousand twenty-one which amended this section, and (ii) for interest upon a judgment pursuant to section five thousand three of this article from the date of the entry of judgment on any part of a judgment entered before the effective date of the chapter of the laws of two thousand twenty-one which amended this section that is unpaid as of such effective date.

(b) For the purpose of this section "consumer debt" means any obligation or alleged obligation of any natural person to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment, including, but not limited to, a consumer

credit transaction, as defined in subdivision (f) of section one hundred five of this chapter.

(c) This section does not affect or create any rights or remedies related to any amounts paid prior to the effective date of this subdivision, including amounts paid to satisfy judgments or to accrued interest or fees paid, or with respect to judgments satisfied prior to the effective date of this subdivision. For amounts paid prior to the effective date of this subdivision and lawfully applied in satisfaction or partial satisfaction of interest or fees accrued prior to the effective date of this subdivision, this section shall not be construed to require a judgment creditor or sheriff to (i) return or refund such amounts to judgment debtors; or (ii) apply such payments to satisfy any part of a money judgment other than fees or interest upon judgment pursuant to section five thousand three of this article.

(d) If any word, phrase, clause, sentence, paragraph, subdivision, or part of this section or its application to any person or circumstance is held invalid by any court of competent jurisdiction after exhaustion of all further judicial review, the invalidity shall not affect, impair, or invalidate the remainder of this section or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

§ 5011. Definition and content of judgment. A judgment is the determination of the rights of the parties in an action or special proceeding and may be either interlocutory or final. A judgment shall refer to, and state the result of, the verdict or decision, or recite the default upon which it is based. A judgment may direct that property be paid into court when the party would not have the benefit or use or control of such property or where special circumstances make it desirable that payment or delivery to the party entitled to it should be withheld. In any case where damages are awarded to an incarcerated individual serving a sentence of imprisonment with the state department of corrections and community supervision or to a prisoner confined at a local correctional facility, the court shall give prompt written notice to the office of victim services, and at the same time shall direct that no payment be made to such incarcerated individual or prisoner for a

period of thirty days following the date of entry of the order containing such direction.

Rule 5012. Judgment upon part of cause of action; upon several causes.

The court, having ordered a severance, may direct judgment upon a part of a cause of action or upon one or more causes of action as to one or more parties.

Rule 5013. Effect of judgment dismissing claim. A judgment dismissing a cause of action before the close of the proponent's evidence is not a dismissal on the merits unless it specifies otherwise, but a judgment dismissing a cause of action after the close of the proponent's evidence is a dismissal on the merits unless it specifies otherwise.

§ 5014. Action upon judgment. Except as permitted by section 15-102 of the general obligations law, an action upon a money judgment entered in a court of the state may only be maintained between the original parties to the judgment where:

1. ten years have elapsed since the first docketing of the judgment;
or

2. the judgment was entered against the defendant by default for want of appearance and the summons was served other than by personal delivery to him or to his agent for service designated under rule 318, either within or without the state; or

3. the court in which the action is sought to be brought so orders on motion with such notice to such other persons as the court may direct.

An action may be commenced under subdivision one of this section during the year prior to the expiration of ten years since the first docketing of the judgment. The judgment in such action shall be designated a renewal judgment and shall be so docketed by the clerk. The

lien of a renewal judgment shall take effect upon the expiration of ten years from the first docketing of the original judgment.

Rule 5015. Relief from judgment or order. (a) On motion. The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:

1. excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry; or

2. newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under section 4404; or

3. fraud, misrepresentation, or other misconduct of an adverse party; or

4. lack of jurisdiction to render the judgment or order; or

5. reversal, modification or vacatur of a prior judgment or order upon which it is based.

(b) On stipulation. The clerk of the court may vacate a default judgment entered pursuant to section 3215 upon the filing with him of a stipulation of consent to such vacatur by the parties personally or by their attorneys.

(c) On application of an administrative judge. An administrative judge, upon a showing that default judgments were obtained by fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities or where such default judgments were obtained in cases in which those defendants would be uniformly entitled to interpose a defense predicated upon but not limited to the foregoing defenses, and where such default judgments have been obtained in a number deemed sufficient by him to justify such action as set forth

herein, and upon appropriate notice to counsel for the respective parties, or to the parties themselves, may bring a proceeding to relieve a party or parties from them upon such terms as may be just. The disposition of any proceeding so instituted shall be determined by a judge other than the administrative judge.

(d) Restitution. Where a judgment or order is set aside or vacated, the court may direct and enforce restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal.

Rule 5016. Entry of judgment. (a) What constitutes entry. A judgment is entered when, after it has been signed by the clerk, it is filed by him.

(b) Judgment upon verdict. Judgment upon the general verdict of a jury after a trial by jury as of right shall be entered by the clerk unless the court otherwise directs; if there is a special verdict, the court shall direct entry of an appropriate judgment.

(c) Judgment upon decision. Judgment upon the decision of a court or a referee to determine shall be entered by the clerk as directed therein. When relief other than for money or costs only is granted, the court or referee shall, on motion, determine the form of the judgment.

(d) After death of party. No verdict or decision shall be rendered against a deceased party, but if a party dies before entry of judgment and after a verdict, decision or accepted offer to compromise pursuant to rule 3221, judgment shall be entered in the names of the original parties unless the verdict, decision or offer is set aside. This provision shall not bar dismissal of an action or appeal pursuant to section 1021.

(e) Final judgment after interlocutory judgment. Where an interlocutory judgment has been directed, a party may move for final judgment when he becomes entitled thereto.

Rule 5017. Judgment-roll. (a) Preparation and filing. A judgment-roll shall be prepared by the attorney for the party at whose instance the judgment is entered or by the clerk. It shall be filed by

the clerk when he enters judgment, and shall state the date and time of its filing.

(b) Content. The judgment-roll shall contain the summons, pleadings, admissions, each judgment and each order involving the merits or necessarily affecting the final judgment. If the judgment was taken by default, it shall also contain the proof required by subdivision (f) of section 3215 and the result of any assessment, account or reference under subdivision (b) of section 3215. If a trial was had, it shall also contain the verdict or decision, any tender or offer made pursuant to rules 3219, 3220 or 3221, and any transcript of proceedings then on file. If any appeal was taken, it shall also contain the determination and opinion of each appellate court and the papers on which each appeal was heard. In an action to recover a chattel, it shall also contain the sheriff's return. In an action on submitted facts under rule 3222, the judgment-roll shall consist of the case, submission, affidavit, each judgment and each order necessarily affecting the final judgment. The judgment-roll of a judgment by confession under section 3218 shall consist of the affidavit and a copy of the judgment.

§ 5018. Docketing of judgment. (a) Docketing by clerk; docketing elsewhere by transcript. Immediately after filing the judgment-roll the clerk shall docket a money judgment, and at the request of any party specifying the particular adverse party or parties against whom docketing shall be made, the clerk shall so docket a judgment affecting the title to real property, provided, however, that where the clerk maintains a section and block index, a judgment affecting the title to, or the possession, use or enjoyment of, real property may be entered in such index in lieu thereof. If the judgment is upon a joint liability of two or more persons the words "not summoned" shall be written next to the name of each defendant who was not summoned. Upon the filing of a transcript of the docket of a judgment of a court other than the supreme, county or a family court, the clerk of the county in which the judgment was entered shall docket the judgment. Upon the filing of a transcript of the docket of a judgment which has been docketed in the office of the clerk of the county in which it was entered, the clerk of any other county in the state shall docket the judgment. Whenever a

county clerk docket a judgment by transcript under this subdivision, he shall notify the clerk who issued it, who, upon receiving such notification, shall make an entry on the docket of the judgment in his office indicating where the transcript has been filed. A judgment docketed by transcript under this subdivision shall have the same effect as a docketed judgment entered in the supreme court within the county where it is docketed.

(b) Docketing of judgment of court of United States. A transcript of the judgment of a court of the United States rendered or filed within the state may be filed in the office of the clerk of any county and upon such filing the clerk shall docket the judgment in the same manner and with the same effect as a judgment entered in the supreme court within the county.

(c) Form of docketing. A judgment is docketed by making an entry in the proper docket book as follows:

1. under the surname of the judgment debtor first named in the judgment, the entry shall consist of:

- (i) the name and last known address of each judgment debtor and his trade or profession if stated in the judgment;
- (ii) the name and last known address of the judgment creditor;
- (iii) the sum recovered or directed to be paid in figures;
- (iv) the date and time the judgment-roll was filed;
- (v) the date and time of docketing;
- (vi) the court and county in which judgment was entered; and
- (vii) the name and office address of the attorney for the judgment creditor;

2. under the surname of every other judgment debtor, if any, the entry shall consist of his name and last known address and an appropriate cross-reference to the first entry.

If no address is known for the judgment debtor or judgment creditor, an affidavit executed by the party at whose instance the judgment is docketed or his attorney shall be filed stating that the affiant has no knowledge of an address.

(d) A county clerk may adopt a new docketing system utilizing electro-mechanical, electronic or any other method he deems suitable for

maintaining the dockets.

§ 5019. Validity and correction of judgment or order; amendment of docket. (a) Validity and correction of judgment or order. A judgment or order shall not be stayed, impaired or affected by any mistake, defect or irregularity in the papers or procedures in the action not affecting a substantial right of a party. A trial or an appellate court may require the mistake, defect or irregularity to be cured.

(b) Subsequent judgment or order affecting judgment or lien. When a docketed judgment or the lien thereof is affected in any way by a subsequent order or judgment or retaxation of costs, the clerk of the court in which the judgment was entered shall make an appropriate entry on the docket of the judgment. In the case of a judgment of a court other than the supreme, county or a family court which has been docketed by the clerk of the county in which it was entered, such county clerk shall make an appropriate entry on his docket upon the filing of a certified copy of the order or judgment effecting the change or a certificate of the change issued by the clerk of the court in which the judgment was entered. Unless the order or judgment effecting the change otherwise provides, the duration of the judgment lien on real property shall be measured from the filing of the judgment-roll.

(c) Change in judgment creditor. A person other than the party recovering a judgment who becomes entitled to enforce it, shall file in the office of the clerk of the court in which the judgment was entered or, in the case of a judgment of a court other than the supreme, county or a family court which has been docketed by the clerk of the county in which it was entered, in the office of such county clerk, a copy of the instrument on which his authority is based, acknowledged in the form required to entitle a deed to be recorded, or, if his authority is based on a court order, a certified copy of the order. Upon such filing the clerk shall make an appropriate entry on his docket of the judgment. This subdivision shall not apply when there is a change to the owner of a debt through a sale, assignment, or other transfer where no judgment exists.

(d) Certificate of county clerk. Upon the filing of a certificate of change of the docket of any judgment docketed with the clerk of the

county in which it was entered, issued by such county clerk, the clerk of any court or county where the judgment has been docketed shall make an appropriate entry on his docket of the judgment.

§ 5020. Satisfaction-piece. (a) Generally. When a person entitled to enforce a judgment receives satisfaction or partial satisfaction of the judgment, he shall execute and file with the proper clerk pursuant to subdivision (a) of section 5021, a satisfaction-piece or partial satisfaction-piece acknowledged in the form required to entitle a deed to be recorded, which shall set forth the book and page where the judgment is docketed. A copy of the satisfaction-piece or partial satisfaction-piece filed with the clerk shall be mailed to the judgment debtor by the person entitled to enforce the judgment within ten days after the date of filing.

(b) Attorney of record. Within ten years after the entry of a judgment the attorney of record or the attorney named on the docket for the judgment creditor may execute a satisfaction-piece or a partial satisfaction-piece, but if his authority was revoked before it was executed, the judgment may nevertheless be enforced against a person who had actual notice of the revocation before a payment on the judgment was made or a purchase of property bound by it was effected.

(c) When a judgment for less than five thousand dollars is fully satisfied, if the person required to execute and file with the proper clerk pursuant to subdivisions (a) and (d) of this section fails or refuses to do so within twenty days after receiving full satisfaction, then the judgment creditor shall be subject to a penalty of one hundred dollars recoverable by the judgment debtor pursuant to section seventy-two hundred two of this chapter or article eighteen of either the New York City civil court act, uniform district court act or uniform city court act. When a judgment for five thousand dollars or more is fully satisfied, if the person required to execute and file with the proper clerk pursuant to subdivisions (a) and (d) of this section fails or refuses to do so within twenty days after receiving full satisfaction, then the judgment creditor shall be subject to a penalty of five hundred dollars recoverable by the judgment debtor pursuant to section seventy-two hundred two of this chapter or article eighteen of

either the New York city civil court act, uniform district court act or uniform city court act; provided, however, that such penalties shall not be recoverable when a city with a population greater than one million persons is the judgment creditor, unless such judgment creditor shall fail to execute and file a satisfaction-piece with the proper clerk pursuant to subdivisions (a) and (d) of this section within twenty days after having been served by the judgment debtor with a written demand therefor by certified mail, return receipt requested.

(d) Where a transcript of the docket of a judgment has been docketed in any other county of the state pursuant to subdivision (a) of section 5018, the person required to execute and file with the proper clerk pursuant to subdivision (a) hereof shall, upon receiving full satisfaction, file a certificate of the clerk of the county in which the judgment was entered, in accordance with subdivision (c) of section 5021, with the clerks of all other counties in which such judgment has been docketed.

§ 5020-a. Payment of judgment in certain cases. When a judgment debtor has shown to the satisfaction of the clerk of the court from which an execution has been issued that a sum of money which satisfies the judgment had been sent to the last known address of the judgment creditor by registered or certified mail, return receipt requested, but was returned as unclaimed or undeliverable by the post office, the judgment debtor may deposit with the clerk of such court a certified check in an amount equal to the sum of money which satisfies the judgment. Upon receipt of such check any additional charges relating to an execution shall cease to accrue against the judgment debtor and the clerk shall forthwith notify each sheriff to whom an execution was issued that such execution is hereby rescinded. Such notice shall not be effective upon the sheriff until its receipt by him from the clerk. Provided, however, no entry of the satisfaction on the docket of the judgment made be made by the clerk except pursuant to the provisions of section 5021.

§ 5021. Entry of satisfaction. (a) Entry upon satisfaction-piece,

court order, deposit into court, discharge of compounding joint debtor. The clerk of the court in which the judgment was entered or, in the case of a judgment of a court other than the supreme, county or a family court which has been docketed by the clerk of the county in which it was entered, such county clerk, shall make an entry of the satisfaction or partial satisfaction on the docket of the judgment upon:

1. the filing of a satisfaction-piece or partial satisfaction-piece; or

2. the order of the court, made upon motion with such notice to other persons as the court may require, when the judgment has been wholly or partially satisfied but the judgment debtor cannot furnish the clerk with a satisfaction-piece or partial satisfaction-piece; or

3. the deposit with the clerk of a sum of money which satisfies or partially satisfies the judgment pursuant to an order of the court, made upon motion with such notice to other persons as the court may require, permitting such deposit; such an order shall not be made unless the court is satisfied that there are no outstanding executions on which sheriff's fees have not been paid; or

4. the filing of an instrument specified in article eight of the debtor and creditor law, executed by a creditor releasing or discharging a compounding joint debtor; in such case, the entry on the docket of the judgment shall state that the judgment is satisfied as to the compounding debtor only.

(b) Entry upon return of execution. A sheriff shall return an execution to the clerk of the court from which the execution issued if such execution is wholly or partially satisfied, and the clerk shall make an appropriate entry on his docket of the judgment. The sheriff shall also deliver to the person making payment, upon request, a certified copy of the execution and of the return of satisfaction or partial satisfaction. Upon the filing of such copy with the clerk of the county where the execution was satisfied, such clerk shall enter satisfaction or partial satisfaction on his docket of the judgment. Provided however that, in addition, a return of execution arising out of

an action brought pursuant to article eighteen of the New York city civil court act, article eighteen of the uniform city court act, article eighteen of the uniform district court act, or article eighteen of the uniform justice court act shall be made and entered whether wholly or partially satisfied, or unsatisfied, within ninety days after receipt of the judgment by the sheriff and the clerk shall make an appropriate entry on his docket of the judgment.

(c) Entry upon certificate. Upon the filing of a certificate of the clerk of the county in which the judgment was entered, stating that the judgment has been wholly or partially satisfied, the clerk of any court or county where a judgment has been docketed shall make an appropriate entry on his docket of the judgment.

ARTICLE 50-A

PERIODIC PAYMENT OF

JUDGMENTS IN MEDICAL AND DENTAL MALPRACTICE ACTIONS

5031. Basis for determining judgment to be entered.

5032. Form of security.

5033. Posting and maintaining security.

5034. Failure to make payment.

5036. Adjustment of payments.

5037. Settlements.

5038. Assignment of periodic installments.

5039. Duties of superintendent of financial services.

§ 5031. Basis for determining judgment to be entered. In order to determine what judgment is to be entered on a verdict in an action to recover damages for medical, dental, or podiatric malpractice, or damages for wrongful death as a result of medical, dental, or podiatric malpractice, the court shall proceed as follows:

(a) The court shall apply to the findings of past and future damages any applicable rules of law regarding additurs and/or remittiturs, and adjust the verdict accordingly.

(b) Awards for all past damages, all damages for future loss of services, all damages for future loss of consortium, all damages in

wrongful death actions, and damages for future pain and suffering of five hundred thousand dollars or less shall be paid in a lump sum. In any case in which all damages are to be paid in lump sums, the judgment shall be entered on the total of the lump sums, without further regard to this section.

(c) As to any award of damages for future pain and suffering in excess of five hundred thousand dollars, the court shall determine the greater of thirty-five percent of such damages or five hundred thousand dollars and such amount shall be paid in a lump sum. The remaining amount of the award for damages for future pain and suffering shall be paid in a stream of payments over the period of time determined by the trier of fact or eight years, whichever is less. The stream of payments for future pain and suffering shall be calculated by dividing the remaining amount of damages for future pain and suffering by the number of years over which such payments shall be made to determine the first year's payment and the payment due in each succeeding year shall be computed by adding four percent to the previous year's payment. The court shall determine the present value of the stream of payments by applying a discount rate to the stream of payments.

(d) The findings of future economic and pecuniary damages except in wrongful death actions, shall be used to determine a stream of payments for each such item of damages by applying (i) the growth rate, to the (ii) annual amount in current dollars, for the (iii) period of years, all of such items as determined by the finder of fact for each such item of damages. The court shall determine the present value of the stream of payments for each such item of damages by applying a discount rate to the stream of payments. After determining the present value of the stream of payments for future economic and pecuniary damages, thirty-five percent of that present value shall be paid in a lump sum, and the stream of payments for future economic and pecuniary damages shall be adjusted accordingly by proportionately reducing each item of the remaining stream of payments for future economic and pecuniary damages and paying those amounts over time in the form of an annuity in accordance with the provisions set forth in subdivision (g) of this section, subject to the adjustments and deductions specified in subdivision (f) of this section.

(e) The discount rate to be used in determining the present value of

all streams of payments for periods of up to twenty years shall be the rate in effect for the ten-year United States Treasury Bond on the date of the verdict. As to any streams of payments for which the period of years exceeds twenty years, the discount rate to be used in determining the present value shall be calculated by averaging, on an annual basis, the rate in effect for the ten-year United States Treasury Bond on the date of the verdict for the first twenty years and two percentage points above the rate in effect for the ten-year United States Treasury Bond on the date of the verdict for the years after twenty years.

(f) After making the applicable calculations set forth above:

(1) The court shall apply any set-offs for comparative negligence and settlements by deducting them proportionately from each item of the damages awards, including the lump sum payments specified in subdivisions (b), (c), and (d) of this section, and the present value of the streams of payments specified in such subdivisions (c) and (d). After such deductions, the streams of payments specified in such subdivisions (c) and (d) and their present value shall be adjusted accordingly.

(2) The court shall then deduct the litigation expenses of the plaintiff's attorney proportionately from each remaining item of the damages awards, including the remaining lump sum payments specified in such subdivisions (b), (c), and (d), and the present value of the remaining streams of payments specified in such subdivisions (c) and (d), and such expenses shall be paid in a lump sum. After said deductions, the streams of payments specified in such subdivisions (c) and (d) and their present value shall be adjusted accordingly.

(3) The court shall then determine the attorney's fees based upon the remaining damages awards, including the remaining lump sum payments specified in such subdivisions (b), (c), and (d), and the present value of the remaining streams of payments specified in such subdivisions (c) and (d). The attorney's fees shall be deducted proportionately from each item of the remaining damages awards, including the remaining lump sum payments specified in such subdivisions (b), (c), and (d), and the present value of the remaining streams of payments specified in such subdivisions (c) and (d), and such fees shall be paid in a lump sum. After said deductions, the stream of payments specified in such subdivisions (c) and (d) and their present value shall be adjusted

accordingly.

(4) Any liens which are not the subject of a separate award by the finder of fact shall then be deducted proportionately from each item of the remaining damages awards, including the remaining lump sum payments specified in such subdivisions (b), (c), and (d), and the present value of the remaining streams of payments specified in such subdivisions (c) and (d), and such liens shall be paid in a lump sum. After said deductions, the stream of payments specified in such subdivisions (c) and (d) and their present value shall be adjusted accordingly.

(g) The defendants and their insurance carriers shall be required to offer and to guarantee the purchase and payment of an annuity contract to make annual payments in equal monthly installments of the remaining streams of payments specified in such subdivisions (c) and (d), after making the deductions and adjustments prescribed in subdivision (f) of this section. The annuity contract shall provide that the payments shall run from the date of the verdict (unless some other date is specified in the verdict) for the period of years determined by the finder of fact (except the stream of payments for future pain and suffering, which shall not exceed eight years) or the life of the plaintiff, whichever is shorter, except that:

(1) awards for lost earnings shall be paid for the full term of the award determined by the finder of fact; and

(2) awards for any item of economic or pecuniary damages as to which the finder of fact found that the loss or item of damage is permanent, the payments for that item shall continue to run for the entire life of the plaintiff, increasing each year beyond the period of years determined by the finder of fact at the same growth rate as determined by the finder of fact.

(h) The judgment shall be entered on the lump sum payments and the present value of the streams of payments required to be made by the defendants under this section.

§ 5032. Form of security. Security authorized or required for payment of a judgment for periodic installments entered in accordance with this article must be in the form of an annuity contract, executed by a qualified insurer and approved by the superintendent of financial

services pursuant to section five thousand thirty-nine of this article, and approved by the court.

§ 5033. Posting and maintaining security. (a) If the court enters a judgment for periodic installments, each party liable for all or a portion of such judgment shall separately or jointly with one or more others post security in an amount necessary to secure payment for the amount of the judgment for future periodic installments within thirty days after the date the judgment is entered. A liability insurer having a contractual obligation and any other person adjudged to have an obligation to pay all or part of a judgment for periodic installments on behalf of a judgment debtor is obligated to post security to the extent of its contractual or adjudged obligation if the judgment debtor has not done so.

(b) A judgment creditor or successor in interest and any party having rights may move that the court find that security has not been posted and maintained with regard to a judgment obligation owing to the moving party. Upon so finding, the court shall order that security complying with this article be posted within thirty days. If security is not posted within that time and subdivision (c) of this section does not apply, the court shall enter a judgment for the lump sum as such sum is determinable under the law without regard to this article.

(c) If a judgment debtor who is the only person liable for a portion of a judgment for periodic installments fails to post and maintain security, the right to lump sum payment described in subdivision (b) of this section applies only against that judgment debtor and the portion of the judgment so owed.

(d) If more than one party is liable for all or a portion of a judgment requiring security under this article and the required security is posted by one or more but fewer than all of the parties liable, the security requirements are satisfied and those posting security may proceed under subdivision (b) of this section to enforce rights for security or lump sum payment to satisfy or protect rights of reimbursement from a party not posting security.

§ 5034. Failure to make payment. If at any time following entry of judgment, a judgment debtor fails for any reason to make a payment in a timely fashion according to the terms of this article, the judgment creditor may petition the court which rendered the original judgment for an order requiring payment by the judgment debtor of the outstanding payments in a lump sum. In calculating the amount of the lump sum judgment, the court shall total the remaining periodic payments due and owing to the judgment creditor, as calculated pursuant to subdivision (e) of section five thousand thirty-one of this article, and shall not convert these amounts to their present value. The court may also require the payment of interest on the outstanding judgment.

§ 5036. Adjustment of payments. (a) If, at any time after entry of judgment, a judgment creditor or successor in interest can establish that the continued payment of the judgment in periodic installments will impose a hardship, the court may, in its discretion, order that the remaining payments or a portion thereof shall be made to the judgment creditor in a lump sum. The court shall, before entering such an order, find that: (i) unanticipated and substantial medical, dental or other needs have arisen that warrant the payment of the remaining payments, or a portion thereof, in a lump sum; (ii) ordering such a lump sum payment would not impose an unreasonable financial burden on the judgment debtor or debtors; (iii) ordering such a lump sum payment will accommodate the future medical and other needs of the judgment creditor; and (iv) ordering such a lump sum payment would further the interests of justice.

(b) If a lump sum payment is ordered by the court, such payment shall be made by the medical malpractice insurance association created pursuant to article fifty-five of the insurance law and shall not be the obligation of the insurer providing the initial annuity contract. Such insurer shall thereafter make all future payments due under its annuity contract to the association, except that, if the lump sum payment ordered by the court is a portion of the remaining periodic payments, such insurer shall appropriately apportion future payments due under its annuity contract between the association and the judgment creditor or successor in interest. Such lump sum payment to be paid to the judgment creditor or successor in interest by the association shall be calculated

on the basis of the present value of the annuity contract, which shall be based on its cost at such time, for remaining periodic payments, or portions thereof, that are converted into a lump sum payment. In no event shall such lump sum payment be greater than the present value of the annuity contract for the remaining periodic payments.

§ 5037. Settlements. Nothing in this article shall be construed to limit the right of a plaintiff, defendant or defendants and any insurer to settle dental, medical or podiatric malpractice claims as they consider appropriate and in their complete discretion.

§ 5038. Assignment of periodic installments. An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under this article is enforceable only as to amounts: (a) to secure payment of alimony, maintenance, or child support; (b) for the cost of products, services, or accommodations provided or to be provided by the assignee for medical, dental or other health care; or (c) for attorney's fees and other expenses of litigation incurred in securing the judgment.

§ 5039. Duties of superintendent of financial services. The superintendent of financial services shall establish rules and procedures for determining which insurers, self-insurers, plans or arrangements are financially qualified to provide the security required under this article and to be designated as qualified insurers.

ARTICLE 50-B

PERIODIC PAYMENT OF JUDGMENTS IN PERSONAL

INJURY, INJURY TO PROPERTY AND WRONGFUL DEATH ACTIONS

5041. Basis for determining judgment to be entered.

5042. Form of security.

5043. Posting and maintaining security.

5044. Failure to make payment.

5045. Effect of death of judgment creditor.

5046. Adjustment of payments.

5047. Settlements.

5048. Assignment of periodic installments.

5049. Duties of superintendent of financial services.

§ 5041. Basis for determining judgment to be entered. In order to determine what judgment is to be entered on a verdict in an action to recover damages for personal injury, injury to property or wrongful death under this article, and not subject to article fifty-A of this chapter, the court shall proceed as follows:

(a) The court shall apply to the findings of past and future damages any applicable rules of law, including set-offs, credits, comparative negligence pursuant to section fourteen hundred eleven of this chapter, additurs, and remittiturs, in calculating the respective amounts of past and future damages claimants are entitled to recover and defendants are obligated to pay.

(b) The court shall enter judgment in lump sum for past damages, for future damages not in excess of two hundred fifty thousand dollars, and for any damages, fees or costs payable in lump sum or otherwise under subdivisions (c) and (d) of this section. For the purposes of this section, any lump sum payment of a portion of future damages shall be deemed to include the elements of future damages in the same proportion as such elements comprise of the total award for future damages as determined by the trier of fact.

(c) Payment of litigation expenses and that portion of the attorney's fees related to past damages shall be payable in a lump sum. Payment of that portion of the attorney's fees related to future damages for which, pursuant to this article, the claimant is entitled to a lump sum payment shall also be payable in a lump sum. Payment of that portion of the attorney's fees related to the future periodically paid damages shall also be payable in a lump sum, based on the present value of the annuity contract purchased to provide payment of such future periodically paid damages pursuant to subdivision (e) of this section.

(d) Upon election of a subrogee or a lien holder, including an employer or insurer who provides workers' compensation, filed within the

time permitted by rule of court, any part of future damages allocable to reimbursement of payments previously made by the subrogee or the lien holder shall be paid in lump sum to the subrogee or the lien holder in such amount as is calculable and determinable under the law in effect at the time of such payment.

(e) With respect to awards of future damages in excess of two hundred fifty thousand dollars in an action to recover damages for personal injury, injury to property or wrongful death, the court shall enter judgment as follows:

After making any adjustment prescribed by subdivisions (b), (c) and (d) of this section, the court shall enter a judgment for the amount of the present value of an annuity contract that will provide for the payment of the remaining amounts of future damages in periodic installments. The present value of such contract shall be determined in accordance with generally accepted actuarial practices by applying the discount rate in effect at the time of the award to the full amount of the remaining future damages, as calculated pursuant to this subdivision. The period of time over which such periodic payments shall be made and the period of time used to calculate the present value of the annuity contract shall be the period of years determined by the trier of fact in arriving at the itemized verdict; provided, however, that the period of time over which such periodic payments shall be made and the period of time used to calculate the present value for damages attributable to pain and suffering shall be ten years or the period of time determined by the trier of fact, whichever is less. The court, as part of its judgment, shall direct that the defendants and their insurance carriers shall be required to offer and to guarantee the purchase and payment of such an annuity contract. Such annuity contract shall provide for the payment of the annual payments of such remaining future damages over the period of time determined pursuant to this subdivision. The annual payment for the first year shall be calculated by dividing the remaining amount of future damages by the number of years over which such payments shall be made and the payment due in each succeeding year shall be computed by adding four percent to the previous year's payment. Where payment of a portion of the future damages terminates in accordance with the provisions of this article, the four

percent added payment shall be based only upon that portion of the damages that remains subject to continued payment. Unless otherwise agreed, the annual sum so arrived at shall be paid in equal monthly installments and in advance.

(f) With the consent of the claimant and any party liable, in whole or in part, for the judgment, the court shall enter judgment for the amount found for future damages attributable to said party as such are determinable without regard to the provisions of this article.

§ 5042. Form of security. Security authorized or required for payment of a judgment for periodic installments entered in accordance with this article must be in the form of an annuity contract, executed by a qualified insurer and approved by the superintendent of financial services pursuant to section five thousand forty-nine of this article, and approved by the court.

§ 5043. Posting and maintaining security. (a) If the court enters a judgment for periodic installments, each party liable for all or a portion of such judgment shall separately or jointly with one or more others post security in an amount necessary to secure payment for the amount of the judgment for future periodic installments within thirty days after the date the judgment is entered. A liability insurer having a contractual obligation and any other person adjudged to have an obligation to pay all or part of a judgment for periodic installments on behalf of a judgment debtor is obligated to post security to the extent of its contractual or adjudged obligation if the judgment debtor has not done so.

(b) A judgment creditor or successor in interest and any party having rights may move that the court find that security has not been posted and maintained with regard to a judgment obligation owing to the moving party. Upon so finding, the court shall order that security complying with this article be posted within thirty days. If security is not posted within that time and subdivision (c) of this section does not apply, the court shall enter a judgment for the lump sum as such sum is determinable under the law without regard to this article.

(c) If a judgment debtor who is the only person liable for a portion of a judgment for periodic installments fails to post and maintain security, the right to lump sum payment described in subdivision (b) of this section applies only against that judgment debtor and the portion of judgment so owed.

(d) If more than one party is liable for all or a portion of a judgment requiring security under this article and the required security is posted by one or more but fewer than all of the parties liable, the security requirements are satisfied and those posting security may proceed under subdivision (b) of this section to enforce rights for security or lump sum payment to satisfy or protect rights of reimbursement from a party not posting security.

§ 5044. Failure to make payment. If at any time following entry of judgment, a judgment debtor fails for any reason to make a payment in a timely fashion according to the terms of this article, the judgment creditor may petition the court which rendered the original judgment for an order requiring payment by the judgment debtor of the outstanding payments in a lump sum. In calculating the amount of the lump sum judgment, the court shall total the remaining periodic payments due and owing to the judgment creditor, as calculated pursuant to subdivision (e) of section five thousand forty-one of this article, and shall not convert these amounts to their present value. The court may also require the payment of interest on the outstanding judgment.

§ 5045. Effect of death of judgment creditor. (a) Unless otherwise agreed between the parties at the time security is posted pursuant to section five thousand forty-three of this article, in all cases covered by this article in which future damages are payable in periodic installments, the liability for payment of any installments for medical, dental or other costs of health care or non-economic loss not yet due at the death of the judgment creditor terminates upon the death of the judgment creditor.

(b) The portion of any periodic payment allocable to loss of future earnings shall not be reduced or terminated by reason of the death of

the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support immediately prior to his death to the extent that such duty of support exists under applicable law at the time of the death of the judgment creditor. Such payments to such persons shall continue for the remainder of the period as originally found by the jury or until such duty of support ceases to exist, whichever occurs first. In such cases, the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the future payments of such unpaid future damages in accordance with this subdivision which apportioned amounts shall be payable in the future as provided for in this article. In the event that the judgment creditor does not owe a duty of support to any person at the time of the death of the judgment creditor or such duty ceases to exist, the remaining payments shall be considered part of the estate of the judgment creditor. In such cases, the court which rendered the original judgment may, upon petition of any party in interest, convert those portions of such periodic payments allocable to the loss of future earnings to a lump sum by calculating the present value of such payments in order to assist in the settlement of the estate of the judgment creditor.

§ 5046. Adjustment of payments. (a) If, at any time after entry of judgment, a judgment creditor or successor in interest can establish that the continued payment of the judgment in periodic installments will impose a hardship, the court may, in its discretion, order that the remaining payments or a portion thereof shall be made to the judgment creditor in a lump sum. The court shall, before entering such an order, find that: (i) unanticipated and substantial medical, dental or other health needs have arisen that warrant the payment of the remaining payments, or a portion thereof, in a lump sum; (ii) ordering such a lump sum payment would not impose an unreasonable financial burden on the judgment debtor or debtors; (iii) ordering such a lump sum payment will accommodate the future medical, dental and other health needs of the judgment creditor; and (iv) ordering such a lump sum payment would further the interests of justice.

(b) If a lump sum payment is ordered by the court, such lump sum shall

be calculated on the basis of the present value of remaining periodic payments, or portions thereof, that are converted into a lump sum payment. Unless specifically waived by all parties, the annuity contract executed pursuant to section five thousand forty-two of this article shall contain a provision authorizing such a lump sum payment if such payment is approved pursuant to this section. The remaining future periodic payments, if any, shall be reduced accordingly. For the purposes of this section, present value shall be calculated based on the interest rate and mortality assumptions at the time such a lump sum payment is made as determined by the insurer who has provided the annuity contract, in accordance with regulations issued by the superintendent of financial services.

§ 5047. Settlements. Nothing in this article shall be construed to limit the right of a plaintiff, defendant or defendants and any insurer to settle property damage, personal injury or wrongful death claims as they consider appropriate and in their complete discretion.

§ 5048. Assignment of periodic installments. An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under this article is enforceable only as to amounts: (a) to secure payment of alimony, maintenance, or child support; (b) for the cost of products, services, or accommodations provided or to be provided by the assignee for medical, dental or other health care; or (c) for attorney's fees and other expenses of litigation incurred in securing the judgment.

§ 5049. Duties of superintendent of financial services. The superintendent of financial services shall establish rules and procedures for determining which insurers, self-insurers, plans or arrangements are financially qualified to provide the security required under this article and to be designated as qualified insurers.

ARTICLE 51

ENFORCEMENT OF JUDGMENTS AND ORDERS GENERALLY

- 5101. Enforcement of money judgment or order.
- 5102. Enforcement of judgment or order awarding possession of real property or a chattel.
- 5103. Enforcement of judgment or order directing sale of real property.
 - (a) Entry in county where real property situated.
 - (b) Place and mode of sale; security.
- 5104. Enforcement of judgment or order by contempt.
- 5105. Alternative enforcement of judgment or order.
- 5106. Appointment of receiver.
- 5107. Conveyance by sheriff.

§ 5101. Enforcement of money judgment or order. A money judgment and an order directing the payment of money, including motion costs, may be enforced as prescribed in article fifty-two. An order of support, alimony or maintenance of any court of competent jurisdiction where arrears/past-due support have not been reduced to judgment, including motion costs, may be enforced as prescribed in article fifty-two upon the default of a debtor as such term is defined in paragraph seven of subdivision (a) of section fifty-two hundred forty-one of this article, except that for the purposes of this section only, a default shall not be founded upon retroactive child support obligations as defined in paragraph (a) of subdivision one of section four hundred forty of the family court act and subdivision one of section two hundred forty, and paragraph b of subdivision nine of section two hundred thirty-six of the domestic relations law. The establishment of a default shall be subject to the procedures established for the determination of a mistake of fact for income executions pursuant to subdivision (e) of section fifty-two hundred forty-one of this article.

§ 5102. Enforcement of judgment or order awarding possession of real property or a chattel. A judgment or order, or a part thereof, awarding possession of real property or a chattel may be enforced by an

execution, which shall particularly describe the property and designate the party to whom the judgment or order awards its possession. The execution shall comply with the provisions of section 5230, except that it shall direct the sheriff to deliver possession of the property to the party designated. In an action to recover a chattel, where the judgment awards possession of the chattel and in the alternative its value, the execution shall also direct the sheriff, if the chattel cannot be found within his county, to levy upon real and personal property as upon an execution to enforce a money judgment. After the death of a party against whom a judgment or order awarding possession of real property has been obtained, an order granting leave to issue such execution may be granted upon twenty days' notice, to be served in the same manner as a summons, to the occupants of the real property and to the heirs or devisees of the deceased party.

§ 5103. Enforcement of judgment or order directing sale of real property. (a) Entry in county where real property situated. Where real property directed by a judgment or order to be sold is not situated in the county in which the judgment or order is entered, the judgment or order shall also be entered by the clerk of the county in which the property is situated upon filing with him a certified copy of the judgment or order. A purchaser of the property is not required to pay the purchase money or accept a deed until the judgment or order is so entered.

(b) Place and mode of sale; security. Where a judgment or order directs that real property shall be sold, it shall be sold in such manner as the judgment or order may direct in the county where it is situated by the sheriff of that county or by a referee appointed by the court for the purpose. If the property is situated in more than one county, it may be sold in a county in which any part is situated unless the judgment or order directs otherwise. If a referee is appointed to sell the property, the court may require him to give an undertaking in an amount fixed by it for the proper application of the proceeds of the sale. The conveyance shall specify in the granting clause the party whose right, title or interest is directed to be sold by the judgment or order and is being conveyed.

§ 5104. Enforcement of judgment or order by contempt. Any interlocutory or final judgment or order, or any part thereof, not enforceable under either article fifty-two or section 5102 may be enforced by serving a certified copy of the judgment or order upon the party or other person required thereby or by law to obey it and, if he refuses or wilfully neglects to obey it, by punishing him for a contempt of the court.

§ 5105. Alternative enforcement of judgment or order. An interlocutory or final judgment or order, or any part thereof, may be enforced either by the method prescribed in article fifty-two or that prescribed in section 5104, or both, where such judgment or part:

1. requires the payment of money into court or to an officer of, or receiver appointed by, the court, except where the money is due upon an express or implied contract or as damages for non-performance of a contract; or

2. requires a trustee or person acting in a fiduciary relationship to pay a sum of money for a willful default or dereliction of his duty.

§ 5106. Appointment of receiver. A court, by or after judgment, may appoint a receiver of property which is the subject of an action, to carry the judgment into effect or to dispose of the property according to its directions. Unless the court otherwise orders, such a receivership shall be subject to the provisions of article sixty-four.

§ 5107. Conveyance by sheriff. The court may require the sheriff to convey real property in conformity with its directions.

ENFORCEMENT OF MONEY JUDGMENTS

- 5201. Debt or property subject to enforcement; proper garnishee.
 - (a) Debt against which a money judgment may be enforced.
 - (b) Property against which a money judgment may be enforced.
 - (c) Proper garnishee for particular property or debt.
- 5202. Judgment creditor's rights in personal property.
 - (a) Execution creditor's rights.
 - (b) Other judgment creditor's rights.
- 5203. Priorities and liens upon real property.
 - (a) Priority and lien on docketing judgment.
 - (b) Extension of lien.
- 5204. Release of lien or levy upon appeal.
- 5205. Personal property exempt from application to the satisfaction of money judgments.
 - (a) Exemption for personal property.
 - (b) Exemption of cause of action and damages for taking or injuring exempt personal property.
 - (c) Trust exemption.
 - (d) Income exemptions.
 - (e) Exemptions to members of armed forces.
 - (f) Exemption for unpaid milk proceeds.
 - (g) Security deposit exemption.
 - (h) Enacted without subdivision heading.
 - (i) Exemption for life insurance policies.
 - (j) Exemption for New York state college choice tuition savings program trust fund payment monies.
 - (k) Enacted without subdivision heading.
 - (l) Exemption of banking institution accounts into which statutorily exempt payments are made electronically or by direct deposit.
 - (m) Enacted without subdivision heading.
 - (n) Enacted without subdivision heading.
- 5206. Real property exempt from application to the satisfaction of money judgments.
 - (a) Exemption of homestead.
 - (b) Homestead exemption after owner's death.

- (c) Suspension of occupation as affecting homestead.
 - (d) Exemption of homestead exceeding one hundred fifty thousand dollars in value for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thousand dollars for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars for the remaining counties of the state.
 - (e) Sale of homestead exceeding one hundred fifty thousand dollars for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thousand dollars for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars for the remaining counties of the state in value.
 - (f) Exemption of burying ground.
5207. Enforcement involving the state.
5208. Enforcement after death of judgment debtor; leave of court; extension of lien.
5209. Discharge of garnishee's obligation.
5210. Power of court to punish for contempt.
5211. Privilege on examination; immunity.
5221. Where enforcement proceeding commenced.
- (a) Court and county in which proceeding commenced.
 - (b) Notices, subpoenas and motions.
5222. Restraining notice.
- (a) Issuance; on whom served; form; service.
 - (b) Effect of restraint; prohibition of transfer; duration.
 - (c) Subsequent notice.
 - (d) Notice to judgement debtor or obligor.
 - (e) Content of notice.
 - (f) Enacted without subdivision heading.
 - (g) Restraining notice in the form of magnetic tape or

other electronic means.

- (h) Effect of restraint on judgment debtor's banking institution account into which statutorily exempt payments are made electronically or by direct deposit.
- (i) Effect of restraint on judgment debtor's banking institution account.
- (j) Fee for banking institution's costs in processing a restraining notice for an account.

5222-a. Service of notices and forms and procedure for claim of exemption.

- (a) Applicability.
- (b) Service of exemption notice and exemption claim form.
- (c) Claim of exemption.
- (d) Objection to exemption claim and request for hearing.
- (e) Duties of banking institution if objection is made to exemption claim.
- (f) Release of funds.
- (g) Proceedings; bad faith claims.
- (h) Rights of judgment debtor.

5223. Disclosure.

5224. Subpoena; procedure.

- (a) Kinds and service of subpoena.
- (a-1) Scope of subpoena duces tecum.
- (b) Fees.
- (c) Time and place of examination.
- (d) Conduct of examination.
- (e) Signing deposition; physical preparation.
- (f) Subsequent examination.

5225. Payment or delivery of property of judgment debtor.

- (a) Property in the possession of judgment debtor.
- (b) Property not in the possession of judgment debtor.
- (c) Documents to effect payment or delivery.

5226. Installment payment order.

5227. Payment of debts owed to judgment debtor.

5228. Receivers.

- (a) Appointment of receiver.
- (b) Extension of receivership.

5229. Enforcement before judgment entered.

5230. Executions.

- (a) Form.
- (b) Issuance.
- (c) Return.
- (d) Records of sheriff or support collection unit.
- (e) Enacted without subdivision heading.

5231. Income execution.

- (a) Form.
- (b) Issuance.
- (c) Definition of earnings and disposable earnings.
- (d) Service upon debtor.
- (e) Levy upon default or failure to serve debtor.
- (f) Withholding of installments.
- (g) Statement on income execution.
- (h) Levy upon money payable by municipal corporation or the state.
- (i) Modification.
- (j) Priority; delivery to another sheriff.
- (k) Accounting by sheriff.

5232. Levy upon personal property.

- (a) Levy by service of execution.
- (b) Levy by seizure.
- (c) Notice to judgment debtor or obligor.
- (d) Enacted without subdivision heading.
- (e) Enacted without subdivision heading.
- (f) Fee for banking institution's costs in processing a levy by service of execution when account contains only exempt, direct deposit or electronic payments.
- (g) Enacted without subdivision heading.

5233. Sale of personal property.

- (a) Public auction.
- (b) Public notice.

- (c) Order for immediate sale or disposition.
 - (d) Unsaleable material.
- 5234. Distribution of proceeds of personal property; priorities.
 - (a) Distribution of proceeds of personal property.
 - (b) Priority among execution creditors.
 - (c) Priority of other judgment creditors.
- 5235. Levy upon real property.
- 5236. Sale of real property.
 - (a) Time of sale; public auction.
 - (b) Sale of mortgaged property.
 - (c) Notice of sale.
 - (d) Notice of postponement of sale.
 - (e) Effect of notice as against judgment creditors.
 - (f) Conveyance; proof of notice.
 - (g) Disposition of proceeds of sale.
- 5237. Failure of title to property sold.
- 5238. Directions to the sheriff.
- 5239. Proceeding to determine adverse claims.
- 5240. Modification or protective order; supervision of enforcement.
- 5241. Income execution for support enforcement.
 - (a) Definitions.
 - (b) Issuance.
 - (c) Execution for support enforcement; form.
 - (d) Notice to debtor.
 - (e) Determination of mistake of fact.
 - (f) Levy.
 - (g) Deduction from income.
 - (h) Priority.
 - (i) Levy upon money payable by the state.
- 5242. Income deduction order for support enforcement.
- 5250. Arrest of judgment debtor.
- 5251. Disobedience of subpoena, restraining notice or order; false swearing; destroying notice of sale.
- 5252. Discrimination against employees and prospective employees based upon wage assignment or income execution.
- 5253. Cost of living adjustment for personal and real property

exempt from application to the satisfaction of money judgments and exemptions in bankruptcy.

§ 5201. Debt or property subject to enforcement; proper garnishee. (a) Debt against which a money judgment may be enforced. A money judgment may be enforced against any debt, which is past due or which is yet to become due, certainly or upon demand of the judgment debtor, whether it was incurred within or without the state, to or from a resident or non-resident, unless it is exempt from application to the satisfaction of the judgment. A debt may consist of a cause of action which could be assigned or transferred accruing within or without the state.

(b) Property against which a money judgment may be enforced. A money judgment may be enforced against any property which could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested, unless it is exempt from application to the satisfaction of the judgment. A money judgment entered upon a joint liability of two or more persons may be enforced against individual property of those persons summoned and joint property of such persons with any other persons against whom the judgment is entered. No property lien shall be entered or enforced against a debtor's primary residence in an action arising from a medical debt and brought by a hospital licensed under article twenty-eight of the public health law or a health care professional authorized under title eight of the education law.

(c) Proper garnishee for particular property or debt.

1. Where property consists of a right or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association on behalf of the association, shall be the garnishee.

2. Where property consists of a right or interest to or in a decedent's estate or any other property or fund held or controlled by a fiduciary, the executor or trustee under the will, administrator or other fiduciary shall be the garnishee.

3. Where property consists of an interest in a partnership, any partner other than the judgment debtor, on behalf of the partnership, shall be the garnishee.

4. Where property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee; except that section 8--112 of the uniform commercial code shall govern the extent to which and the means by which any interest in a certificated security, uncertificated security or security entitlement (as defined in article eight of the uniform commercial code) may be reached by garnishment, attachment or other legal process.

§ 5202. Judgment creditor's rights in personal property. (a)

Execution creditor's rights. Where a judgment creditor has delivered an execution to a sheriff, the judgment creditor's rights in a debt owed to the judgment debtor or in an interest of the judgment debtor in personal property, against which debt or property the judgment may be enforced, are superior to the extent of the amount of the execution to the rights of any transferee of the debt or property, except:

1. a transferee who acquired the debt or property for fair consideration before it was levied upon; or

2. a transferee who acquired a debt or personal property not capable of delivery for fair consideration after it was levied upon without knowledge of the levy.

(b) Other judgment creditor's rights. Where a judgment creditor has secured an order for delivery of, payment of, or appointment of a receiver of, a debt owed to the judgment debtor or an interest of the judgment debtor in personal property, the judgment creditor's rights in the debt or property are superior to the rights of any transferee of the debt or property, except a transferee who acquired the debt or property

for fair consideration and without notice of such order.

§ 5203. Priorities and liens upon real property. (a) Priority and lien on docketing judgment. No transfer of an interest of the judgment debtor in real property, against which property a money judgment may be enforced, is effective against the judgment creditor either from the time of the docketing of the judgment with the clerk of the county in which the property is located until ten years after filing of the judgment-roll, or from the time of the filing with such clerk of a notice of levy pursuant to an execution until the execution is returned, except:

1. a transfer or the payment of the proceeds of a judicial sale, which shall include an execution sale, in satisfaction either of a judgment previously so docketed or of a judgment where a notice of levy pursuant to an execution thereon was previously so filed; or

2. a transfer in satisfaction of a mortgage given to secure the payment of the purchase price of the judgment debtor's interest in the property; or

3. a transfer to a purchaser for value at a judicial sale, which shall include an execution sale; or

4. when the judgment was entered after the death of the judgment debtor; or

5. when the judgment debtor is the state, an officer, department, board or commission of the state, or a municipal corporation; or

6. when the judgment debtor is the personal representative of a decedent and the judgment was awarded in an action against him in his representative capacity.

(b) Extension of lien. Upon motion of the judgment creditor, upon notice to the judgment debtor, served personally or by registered or certified mail, return receipt requested, to the last known address of

the judgment debtor, the court may order that the lien of a money judgment upon real property be effective after the expiration of ten years from the filing of the judgment-roll, for a period no longer than the time during which the judgment creditor was stayed from enforcing the judgment, or the time necessary to complete advertisement and sale of real property in accordance with section 5236, pursuant to an execution delivered to a sheriff prior to the expiration of ten years from the filing of the judgment-roll. The order shall be effective from the time it is filed with the clerk of the county in which the property is located and an appropriate entry is made upon the docket of the judgment.

(c) Notwithstanding any other provision of law, where a court makes an oral or written determination on the record awarding ownership of an interest in real property, and a judgment effectuating such determination is docketed with the clerk of the county in which such property is located not later than thirty days thereafter, such judgement shall be deemed entered and docketed on the day immediately preceding the date of such determination solely for purposes of establishing the priority thereof against a judicial lien on such property created upon the simultaneous or later filing of a petition in bankruptcy pursuant to the United States bankruptcy code, as amended.

§ 5204. Release of lien or levy upon appeal. Upon motion of the judgment debtor, upon notice to the judgment creditor, the sheriff and the sureties upon the undertaking, the court may order, upon such terms as justice requires, that the lien of a money judgment, or that a levy made pursuant to an execution issued upon a money judgment, be released as to all or specified real or personal property upon the ground that the judgment debtor has given an undertaking upon appeal sufficient to secure the judgment creditor.

§ 5205. Personal property exempt from application to the satisfaction of money judgments. (a) Exemption for personal property. The following personal property when owned by any person is exempt from application to the satisfaction of a money judgment except where the judgment is for

the purchase price of the exempt property or was recovered by a domestic, laboring person or mechanic for work performed by that person in such capacity:

1. all stoves and home heating equipment kept for use in the judgment debtor's dwelling house and necessary fuel therefor for one hundred twenty days; one sewing machine with its appurtenances;

2. religious texts, family pictures and portraits, and school books used by the judgment debtor or in the family; and other books, not exceeding five hundred dollars in value, kept and used as part of the family or judgment debtor's library;

3. a seat or pew occupied by the judgment debtor or the family in a place of public worship;

4. domestic animals with the necessary food for those animals for one hundred twenty days, provided that the total value of such animals and food does not exceed one thousand dollars; all necessary food actually provided for the use of the judgment debtor or his family for one hundred twenty days;

5. all wearing apparel, household furniture, one mechanical, gas or electric refrigerator, one radio receiver, one television set, one computer and associated equipment, one cellphone, crockery, tableware and cooking utensils necessary for the judgment debtor and the family; all prescribed health aids;

6. a wedding ring; a watch, jewelry and art not exceeding one thousand dollars in value;

7. tools of trade, necessary working tools and implements, including those of a mechanic, farm machinery, team, professional instruments, furniture and library, not exceeding three thousand dollars in value, together with the necessary food for the team for one hundred twenty days, provided, however, that the articles specified in this paragraph are necessary to the carrying on of the judgment debtor's profession or

calling;

8. one motor vehicle not exceeding four thousand dollars in value above liens and encumbrances of the debtor; if such vehicle has been equipped for use by a disabled debtor, then ten thousand dollars in value above liens and encumbrances of the debtor; provided, however, that this exemption for one motor vehicle shall not apply if the debt enforced is for child support, spousal support, maintenance, alimony or equitable distribution, or if the state of New York or any of its agencies or any municipal corporation is the judgment creditor; and

9. if no homestead exemption is claimed, then one thousand dollars in personal property, bank account or cash.

(b) Exemption of cause of action and damages for taking or injuring exempt personal property. A cause of action, to recover damages for taking or injuring personal property exempt from application to the satisfaction of a money judgment, is exempt from application to the satisfaction of a money judgment. A money judgment and its proceeds arising out of such a cause of action is exempt, for one year after the collection thereof, from application to the satisfaction of a money judgment.

(c) Trust exemption. 1. Except as provided in paragraphs four and five of this subdivision, all property while held in trust for a judgment debtor, where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor, is exempt from application to the satisfaction of a money judgment.

2. For purposes of this subdivision, all trusts, custodial accounts, annuities, insurance contracts, monies, assets or interests established as part of, and all payments from, either any trust or plan, which is qualified as an individual retirement account under section four hundred eight or section four hundred eight A of the United States Internal Revenue Code of 1986, as amended, a Keogh (HR-10), retirement or other plan established by a corporation, which is qualified under section 401 of the United States Internal Revenue Code of 1986, as amended, or created as a result of rollovers from such plans pursuant to sections 402 (a) (5), 403 (a) (4), 408 (d) (3) or 408A of the Internal Revenue

Code of 1986, as amended, or a plan that satisfies the requirements of section 457 of the Internal Revenue Code of 1986, as amended, shall be considered a trust which has been created by or which has proceeded from a person other than the judgment debtor, even though such judgment debtor is (i) in the case of an individual retirement account plan, an individual who is the settlor of and depositor to such account plan, or (ii) a self-employed individual, or (iii) a partner of the entity sponsoring the Keogh (HR-10) plan, or (iv) a shareholder of the corporation sponsoring the retirement or other plan or (v) a participant in a section 457 plan.

3. All trusts, custodial accounts, annuities, insurance contracts, monies, assets, or interests described in paragraph two of this subdivision shall be conclusively presumed to be spendthrift trusts under this section and the common law of the state of New York for all purposes, including, but not limited to, all cases arising under or related to a case arising under sections one hundred one to thirteen hundred thirty of title eleven of the United States Bankruptcy Code, as amended.

4. This subdivision shall not impair any rights an individual has under a qualified domestic relations order as that term is defined in section 414(p) of the United States Internal Revenue Code of 1986, as amended or under any order of support, alimony or maintenance of any court of competent jurisdiction to enforce arrears/past due support whether or not such arrears/past due support have been reduced to a money judgment.

5. Additions to an asset described in paragraph two of this subdivision shall not be exempt from application to the satisfaction of a money judgment if (i) made after the date that is ninety days before the interposition of the claim on which such judgment was entered, or (ii) deemed to be voidable transactions under article ten of the debtor and creditor law.

(d) Income exemptions. The following personal property is exempt from application to the satisfaction of a money judgment, except such part as a court determines to be unnecessary for the reasonable requirements of

the judgment debtor and his dependents:

1. ninety per cent of the income or other payments from a trust the principal of which is exempt under subdivision (c); provided, however, that with respect to any income or payments made from trusts, custodial accounts, annuities, insurance contracts, monies, assets or interest established as part of an individual retirement account plan or as part of a Keogh (HR-10), retirement or other plan described in paragraph two of subdivision (c) of this section, the exception in this subdivision for such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his dependents shall not apply, and the ninety percent exclusion of this paragraph shall become a one hundred percent exclusion;

2. ninety per cent of the earnings of the judgment debtor for his personal services rendered within sixty days before, and at any time after, an income execution is delivered to the sheriff or a motion is made to secure the application of the judgment debtor's earnings to the satisfaction of the judgment; and

3. payments pursuant to an award in a matrimonial action, for the support of a wife, where the wife is the judgment debtor, or for the support of a child, where the child is the judgment debtor; where the award was made by a court of the state, determination of the extent to which it is unnecessary shall be made by that court.

(e) Exemptions to members of armed forces. The pay and bounty of a non-commissioned officer, musician or private in the armed forces of the United States or the state of New York; a land warrant, pension or other reward granted by the United States, or by a state, for services in the armed forces; a sword, horse, medal, emblem or device of any kind presented as a testimonial for services rendered in the armed forces of the United States or a state; and the uniform, arms and equipments which were used by a person in the service, are exempt from application to the satisfaction of a money judgment; provided, however, that the provisions of this subdivision shall not apply to the satisfaction of any order or money judgment for the support of a person's child, spouse, or former spouse.

(f) Exemption for unpaid milk proceeds. Ninety per cent of any money or debt due or to become due to the judgment debtor for the sale of milk produced on a farm operated by him and delivered for his account to a milk dealer licensed pursuant to article twenty-one of the agriculture and markets law is exempt from application to the satisfaction of a money judgment.

(g) Security deposit exemption. Money deposited as security for the rental of real property to be used as the residence of the judgment debtor or the judgment debtor's family; and money deposited as security with a gas, electric, water, steam, telegraph or telephone corporation, or a municipality rendering equivalent utility services, for services to judgment debtor's residence or the residence of judgment debtor's family, are exempt from application to the satisfaction of a money judgment.

(h) The following personal property is exempt from application to the satisfaction of money judgment, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his dependents:

1. any and all medical and dental accessions to the human body and all personal property or equipment that is necessary or proper to maintain or assist in sustaining or maintaining one or more major life activities or is utilized to provide mobility for a person with a permanent disability; and

2. any guide dog, service dog or hearing dog, as those terms are defined in section one hundred eight of the agriculture and markets law, or any animal trained to aid or assist a person with a permanent disability and actually being so used by such person, together with any and all food or feed for any such dog or other animal.

(i) Exemption for life insurance policies. The right of a judgment debtor to accelerate payment of part or all of the death benefit or special surrender value under a life insurance policy, as authorized by paragraph one of subsection (a) of section one thousand one hundred thirteen of the insurance law, or to enter into a viatical settlement pursuant to the provisions of article seventy-eight of the insurance law, is exempt from application to the satisfaction of a money judgment.

(j) Exemption for New York state college choice tuition savings program trust fund payment monies. Monies in an account created pursuant to article fourteen-A of the education law are exempt from application to the satisfaction of a money judgment as follows:

1. one hundred percent of monies in an account established in connection with a scholarship program established pursuant to such article is exempt;

2. one hundred percent of monies in an account is exempt where the judgment debtor is the account owner and designated beneficiary of such account and is a minor; and

3. an amount not exceeding ten thousand dollars in an account, or in the aggregate for more than one account, is exempt where the judgment debtor is the account owner of such account or accounts.

For purposes of this subdivision, the terms "account owner" and "designated beneficiary" shall have the meanings ascribed to them in article fourteen-A of the education law.

(k) Notwithstanding any other provision of law to the contrary, where the judgment involves funds of a convicted person as defined in paragraph (c) of subdivision one of section six hundred thirty-two-a of the executive law, and all or a portion of such funds represent compensatory damages awarded by judgment to a convicted person in a separate action, a judgment obtained pursuant to such section six hundred thirty-two-a shall not be subject to execution or enforcement against the first ten percent of the portion of such funds that represents compensatory damages in the convicted person's action; provided, however, that this exemption from execution or enforcement shall not apply to judgments obtained by a convicted person prior to the effective date of the chapter of the laws of two thousand one which added this sentence or to any amendment to such judgment where such amendment was obtained on or after the effective date of this subdivision. For the purpose of determining the amount of a judgment which is not subject to execution or enforcement pursuant to this subdivision: (i) the court shall deduct attorney's fees from that

portion of the judgment that represents compensatory damages and multiply the remainder of compensatory damages by ten percent; and (ii) when the judgment includes compensatory and punitive damages, attorney's fees shall be pro rated among compensatory and punitive damages in the same proportion that all attorney's fees bear to all damages recovered.

(l) Exemption of banking institution accounts into which statutorily exempt payments are made electronically or by direct deposit. 1. If direct deposit or electronic payments reasonably identifiable as statutorily exempt payments were made to the judgment debtor's account in any banking institution during the forty-five day period preceding the date a restraining notice was served on the banking institution or an execution was served upon the banking institution by a marshal or sheriff, then two thousand five hundred dollars in the judgment debtor's account is exempt from application to the satisfaction of a money judgment. Nothing in this subdivision shall be construed to limit a creditor's rights under 42 U.S.C. § 659 or 38 U.S.C. § 5301 or to enforce a child support, spousal support, alimony or maintenance obligation. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment or other legal process, pursuant to this section or under any other provision of state or federal law, or shall affect the right of a judgment debtor to claim such exemption.

2. For purposes of this article, "statutorily exempt payments" means any personal property exempt from application to the satisfaction of a money judgment under any provision of state or federal law. Such term shall include, but not be limited to, payments from any of the following sources: social security, including retirement, survivors' and disability benefits, supplemental security income or child support payments; veterans administration benefits; public assistance; workers' compensation; unemployment insurance; public or private pensions; railroad retirement; black lung benefits; and emergency relief funds.

3. (i) Beginning on April first, two thousand twelve, and at each three-year interval ending on April first thereafter, the dollar amount of the exemption provided in this section, subdivisions (e) and (h) of section fifty-two hundred twenty-two, subdivision (a) of section

fifty-two hundred thirty and subdivision (e) of section fifty-two hundred thirty-two of this article in effect immediately before that date shall be adjusted as provided in subparagraph (ii) of this paragraph.

(ii) The superintendent of financial services shall determine the amount of the adjustment based on the change in the Consumer Price Index for All Urban Consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the most recent three-year period ending on December thirty-first preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars.

(iii) Beginning on April first, two thousand twelve, and at each three-year interval ending on April first thereafter, the superintendent of financial services shall publish the current dollar amount of the exemption provided in this section, subdivisions (e) and (h) of section fifty-two hundred twenty-two, subdivision (a) of section fifty-two hundred thirty and subdivision (e) of section fifty-two hundred thirty-two of this chapter, together with the date of the next scheduled adjustment. The publication shall be substantially in the form set below:

CURRENT DOLLAR AMOUNT OF EXEMPTION FROM ENFORCEMENT OF JUDGMENT UNDER NEW YORK CIVIL PRACTICE LAW AND RULES Sections 5205(l), 5222(e), 5222(h), 5230(a), and 5232(e)

The following is the current dollar amount of exemption from enforcement of money judgments under CPLR sections 5205(l), 5222(e), 5222(h), 5230(a), and 5232(e), as required by CPLR section 5205(l)(3):
(Amount)

This amount is effective on April 1, (year) and shall not apply to cases commenced before April 1, (year). The next adjustment is scheduled for April 1, (year).

(iv) Adjustments made under subparagraph (i) of this paragraph shall not apply with respect to restraining notices served or executions effected before the date of the adjustment.

(m) Nothing in subdivision (l) of this section limits the judgment

debtor's exemption rights in this section or under any other law.

(n) Notwithstanding any other provision of law to the contrary, the term "banking institution" when used in this article shall mean and include all banks, trust companies, savings banks, savings and loan associations, credit unions, foreign banking corporations incorporated, chartered, organized or licensed under the laws of this state, foreign banking corporations maintaining a branch in this state, and nationally chartered banks.

(o) The provisions of subdivisions (l), (m) and (n) of this section do not apply when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that the restraining notice or execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.".

(p) Exemption for emergency relief funds. Any payments to individuals, including tax refunds, recovery rebates, refundable tax credits, and any advances of any tax credits, under the federal Families First Coronavirus Response Act (FFCRA), Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), Consolidated Appropriations Act of 2021, and American Rescue Plan Act of 2021 (ARPA) are exempt from application to the satisfaction of a money judgment. This exemption shall not apply (i) if the debt enforced is for child support, spousal support, maintenance, alimony, a distributive award in a matrimonial action, or restitution in a family offense proceeding, or (ii) to that portion of any money judgment awarded on a claim that the emergency relief funds referenced herein are the rightful property of the judgment creditor.

§ 5206. Real property exempt from application to the satisfaction of money judgments. (a) Exemption of homestead. Property of one of the following types, not exceeding one hundred fifty thousand dollars for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five

thousand dollars for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars for the remaining counties of the state in value above liens and encumbrances, owned and occupied as a principal residence, is exempt from application to the satisfaction of a money judgment, unless the judgment was recovered wholly for the purchase price thereof:

1. a lot of land with a dwelling thereon,
2. shares of stock in a cooperative apartment corporation,
3. units of a condominium apartment, or
4. a mobile home.

But no exempt homestead shall be exempt from taxation or from sale for non-payment of taxes or assessments.

(b) Homestead exemption after owner's death. The homestead exemption continues after the death of the person in whose favor the property was exempted for the benefit of the surviving spouse and surviving children until the majority of the youngest surviving child and until the death of the surviving spouse.

(c) Suspension of occupation as affecting homestead. The homestead exemption ceases if the property ceases to be occupied as a residence by a person for whose benefit it may so continue, except where the suspension of occupation is for a period not exceeding one year, and occurs in consequence of injury to, or destruction of, the dwelling house upon the premises.

(d) Exemption of homestead exceeding one hundred fifty thousand dollars in value for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thousand dollars for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars for the remaining counties of the state. The exemption of a homestead is not void because the value of the property exceeds one hundred fifty thousand dollars for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred

twenty-five thousand dollars for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars for the remaining counties of the state but the lien of a judgment attaches to the surplus.

(e) Sale of homestead exceeding one hundred fifty thousand dollars for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thousand dollars for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars for the remaining counties of the state in value. A judgment creditor may commence a special proceeding in the county in which the homestead is located against the judgment debtor for the sale, by a sheriff or receiver, of a homestead exceeding one hundred fifty thousand dollars for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thousand dollars for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars for the remaining counties of the state in value. The court may direct that the notice of petition be served upon any other person. The court, if it directs such a sale, shall so marshal the proceeds of the sale that the right and interest of each person in the proceeds shall correspond as nearly as may be to his right and interest in the property sold. Money, not exceeding one hundred fifty thousand dollars for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thousand dollars for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars for the remaining counties of the state, paid to a judgment debtor, as representing his interest in the proceeds, is exempt for one year after the payment, unless, before the expiration of the year, he acquires an exempt homestead, in which case, the exemption ceases with respect to so much of the money as was not expended for the purchase of that property; and the exemption of the property so acquired extends to every debt against which the property sold was exempt. Where the exemption of property sold as prescribed in this subdivision has been continued after the judgment debtor's death, or where he dies after the sale and before payment to him of his portion of the proceeds of the sale, the court may direct that portion of the proceeds which represents his interest be

invested for the benefit of the person or persons entitled to the benefit of the exemption, or be otherwise disposed of as justice requires.

(f) Exemption of burying ground. Land, set apart as a family or private burying ground, is exempt from application to the satisfaction of a money judgment, upon the following conditions only:

1. a portion of it must have been actually used for that purpose;
2. it must not exceed in extent one-fourth of an acre; and
3. it must not contain any building or structure, except one or more vaults or other places of deposit for the dead, or mortuary monuments.

§ 5207. Enforcement involving the state. None of the procedures for the enforcement of money judgments are applicable to a judgment against the state. All procedures for the enforcement of money judgments against other judgment debtors are applicable to the state, its officers, agencies and subdivisions, as a garnishee, except where otherwise prescribed by law, and except that an order in such a procedure shall only provide for the payment of moneys not claimed by the state, and no judgment shall be entered against the state, or any officer, department, board or commission thereof, in such a procedure. This section shall not be deemed to grant any court jurisdiction to hear and determine claims or actions against the state not otherwise given by law to such court.

§ 5208. Enforcement after death of judgment debtor; leave of court; extension of lien. Except where otherwise prescribed by law, after the death of a judgment debtor, an execution upon a money judgment shall not be levied upon any debt owed to him or any property in which he has an interest, nor shall any other enforcement procedure be undertaken with respect to such debt or property, except upon leave of the surrogate's court which granted letters testamentary or letters of administration upon the estate. If such letters have not been granted within eighteen months after the death, leave to issue such an execution or undertake

such enforcement procedure may thereafter be granted, upon motion of the judgment creditor upon such notice as the court may require, by any court from which the execution could issue or in which the enforcement procedure could be commenced. A judgment lien existing against real property at the time of a judgment debtor's death shall expire two years thereafter or ten years after filing of the judgment-roll, whichever is later.

§ 5209. Discharge of garnishee's obligation. A person who, pursuant to an execution or order, pays or delivers, to the judgment creditor or a sheriff or receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt he owes the judgment debtor, is discharged from his obligation to the judgment debtor to the extent of the payment or delivery.

§ 5210. Power of court to punish for contempt. Every court in which a special proceeding to enforce a money judgment may be commenced, shall have power to punish a contempt of court committed with respect to an enforcement procedure.

§ 5211. Privilege on examination; immunity. The court may confer immunity upon any witness in accordance with the provisions of section 50.20 of the criminal procedure law for testimony or evidence in an enforcement procedure relating to disposition of property in which the judgment debtor has an interest, or relating to his or another person's claim to be entitled, as against the judgment creditor or a receiver, to hold property derived from or through the judgment debtor, or to be discharged from the payment of a debt which was due to the judgment debtor; provided, however, that no immunity shall be conferred except upon twenty-four hours' written notice to the appropriate district attorney having an official interest therein.

§ 5221. Where enforcement proceeding commenced. (a) Court and county

in which proceeding commenced. 1. If the judgment sought to be enforced was entered in the city court of any city outside the city of New York, and the respondent resides or is regularly employed or has a place for the regular transaction of business in person within the county in which the court is or was located, a special proceeding authorized by this article shall be commenced in that court or in the county court of that county.

2. If the judgment sought to be enforced was entered in a district court, or by a justice of the peace whose office has been or is by law to be abolished and whose jurisdiction has been or is by law to be superseded by a district court, and the respondent resides or is regularly employed or has a place for the regular transaction of business in person within the county in which such district court is established, a special proceeding authorized by this article shall be commenced in such district court.

3. If the judgment sought to be enforced was entered in the municipal court of the city of New York, the city court of the city of New York or the civil court of the city of New York, and the respondent resides or is regularly employed or has a place for the regular transaction of business in person within that city, a special proceeding authorized by this article shall be commenced in the civil court of the city of New York.

4. In any other case, if the judgment sought to be enforced was entered in any court of this state, a special proceeding authorized by this article shall be commenced, either in the supreme court or a county court, in a county in which the respondent resides or is regularly employed or has a place for the regular transaction of business in person or, if there is no such county, in any county in which he may be served or the county in which the judgment was entered.

5. If no court in which a special proceeding authorized by this article could be commenced is in session, the special proceeding may be commenced in the supreme court or a county court in any county within the judicial district in which the proceeding could otherwise be

commenced or in any county adjoining the county in which the proceeding could otherwise be commenced.

(b) Notices, subpoenas and motions. A notice or subpoena authorized by this article may be issued from, and a motion authorized by this article may be made before, any court in which a special proceeding authorized by this article could be commenced if the person served with the notice, subpoena or notice of motion were respondent.

§ 5222. Restraining notice. (a) Issuance; on whom served; form; service. A restraining notice may be issued by the clerk of the court or the attorney for the judgment creditor as officer of the court, or by the support collection unit designated by the appropriate social services district. It may be served upon any person, except the employer of a judgment debtor or obligor where the property sought to be restrained consists of wages or salary due or to become due to the judgment debtor or obligor. It shall be served personally in the same manner as a summons or by registered or certified mail, return receipt requested or if issued by the support collection unit, by regular mail, or by electronic means as set forth in subdivision (g) of this section. It shall specify all of the parties to the action, the date that the judgment or order was entered, the court in which it was entered, the amount of the judgment or order and the amount then due thereon, the names of all parties in whose favor and against whom the judgment or order was entered, it shall set forth subdivision (b) and shall state that disobedience is punishable as a contempt of court, and it shall contain an original signature or copy of the original signature of the clerk of the court or attorney or the name of the support collection unit which issued it. If the applicable interest rate changes pursuant to section five thousand four of this chapter while a restraint is in effect, the judgment creditor shall issue an amended restraining notice, and include the date as of which the new interest rate applies, without leave of court as required under subdivision (c) of this section. Service of a restraining notice upon a department or agency of the state or upon an institution under its direction shall be made by serving a copy upon the head of the department, or the person designated by him or her and upon the state department of audit and control at its office in

Albany; a restraining notice served upon a state board, commission, body or agency which is not within any department of the state shall be made by serving the restraining notice upon the state department of audit and control at its office in Albany. Service at the office of a department of the state in Albany may be made by the sheriff of any county by registered or certified mail, return receipt requested, or if issued by the support collection unit, by regular mail.

(b) Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection

unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

(c) Subsequent notice. Leave of court is required to serve more than one restraining notice upon the same person with respect to the same judgment or order. A judgment creditor shall not serve more than two restraining notices per year upon a natural person's banking institution account. If the applicable interest rate changes pursuant to section five thousand four of this chapter while a restraint is in effect, the judgment creditor shall issue an amended restraining notice without leave of court.

(d) Notice to judgment debtor or obligor. Except where the provisions of section fifty-two hundred twenty-two-a of this article are applicable, pursuant to subdivision (a) of such section, if a notice in the form prescribed in subdivision (e) of this section has not been given to the judgment debtor or obligor within a year before service of a restraining notice, a copy of the restraining notice together with the notice to judgment debtor or obligor shall be mailed by first class mail or personally delivered to each judgment debtor or obligor who is a natural person within four days of the service of the restraining notice. Such notice shall be mailed to the defendant at his or her residence address; or in the event such mailing is returned as undeliverable by the post office, or if the residence address of the defendant is unknown, then to the defendant in care of the place of employment of the defendant if known, in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by the return address or otherwise, that the communication is from an attorney or concerns a judgment or order; or if neither the residence address nor the place of employment of the defendant is known then to the defendant at any other known address.

(e) Content of notice. The notice required by subdivision (d) of this section shall be in substantially the following form and may be included

in the restraining notice:

NOTICE TO JUDGMENT DEBTOR OR OBLIGOR

Money or property belonging to you may have been taken or held in order to satisfy a judgment or order which has been entered against you. Read this carefully.

YOU MAY BE ABLE TO GET YOUR MONEY BACK

State and federal laws prevent certain money or property from being taken to satisfy judgments or orders. Such money or property is said to be "exempt". The following is a partial list of money which may be exempt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans benefits;
10. Ninety percent of your wages or salary earned in the last sixty days;
11. Twenty-five hundred dollars of any bank account containing statutorily exempt payments that were deposited electronically or by direct deposit within the last forty-five days, including, but not

limited to, your social security, supplemental security income, veterans benefits, public assistance, workers' compensation, unemployment insurance, public or private pensions, railroad retirement benefits, black lung benefits, or child support payments;

12. Railroad retirement;

13. Black lung benefits; and

14. COVID-19 stimulus relief for individuals and families with children.

If you think that any of your money that has been taken or held is exempt, you must act promptly because the money may be applied to the judgment or order. If you claim that any of your money that has been taken or held is exempt, you may contact the person sending this notice.

Also, YOU MAY CONSULT AN ATTORNEY, INCLUDING ANY FREE LEGAL SERVICES ORGANIZATION IF YOU QUALIFY. You can also go to court without an attorney to get your money back. Bring this notice with you when you go. You are allowed to try to prove to a judge that your money is exempt from collection under New York civil practice law and rules, sections fifty-two hundred twenty-two-a, fifty-two hundred thirty-nine and fifty-two hundred forty. If you do not have a lawyer, the clerk of the court may give you forms to help you prove your account contains exempt money that the creditor cannot collect. The law (New York civil practice law and rules, article four and sections fifty-two hundred thirty-nine and fifty-two hundred forty) provides a procedure for determination of a claim to an exemption.

(f) For the purposes of this section "order" shall mean an order issued by a court of competent jurisdiction directing the payment of support, alimony or maintenance upon which a "default" as defined in paragraph seven of subdivision (a) of section fifty-two hundred forty-one of this article has been established subject to the procedures established for the determination of a "mistake of fact" for income executions pursuant to subdivision (e) of section fifty-two hundred forty-one of this article except that for the purposes of this section

only a default shall not be founded upon retroactive child support obligations as defined in paragraph (a) of subdivision one of section four hundred forty of the family court act and subdivision one of section two hundred forty and paragraph b of subdivision nine of section two hundred thirty-six of the domestic relations law.

(g) Restraining notice in the form of magnetic tape or other electronic means. Where such person consents thereto in writing, a restraining notice in the form of magnetic tape or other electronic means, as defined in subdivision (f) of rule twenty-one hundred three of this chapter, may be served upon a person other than the judgment debtor or obligor. A restraining notice in such form shall contain all of the information required to be specified in a restraining notice under subdivision (a), except for the original signature or copy of the original signature of the clerk or attorney who issued the restraining notice. The provisions of this subdivision notwithstanding, the notice required by subdivisions (d) and (e) shall be given to the judgment debtor or obligor in the written form set forth therein.

(h) Effect of restraint on judgment debtor's banking institution account into which statutorily exempt payments are made electronically or by direct deposit. Notwithstanding the provisions of subdivision (b) of this section, if direct deposit or electronic payments reasonably identifiable as statutorily exempt payments as defined in paragraph two of subdivision (l) of section fifty-two hundred five of this article were made to the judgment debtor's account during the forty-five day period preceding the date that the restraining notice was served on the banking institution, then the banking institution shall not restrain two thousand five hundred dollars in the judgment debtor's account. If the account contains an amount equal to or less than two thousand five hundred dollars, the account shall not be restrained and the restraining notice shall be deemed void. Nothing in this subdivision shall be construed to limit a banking institution's right or obligation to restrain or remove such funds from the judgment debtor's account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or by a court order. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment or other legal process, under section fifty-two hundred five of this article or under any other provision of state or federal law, or affect the right

of a judgment debtor to claim such exemption.

(i) Effect of restraint on judgment debtor's banking institution account. A restraining notice issued pursuant to this section shall not apply to an amount equal to or less than the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor) except such part thereof as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. This amount shall be equal to seventeen hundred sixteen dollars on the effective date of this subdivision, and shall rise to seventeen hundred forty dollars on July twenty-fourth, two thousand nine, and shall rise thereafter in tandem with the minimum wage. Nothing in this subdivision shall be construed to limit a banking institution's right or obligation to restrain or remove such funds from the judgment debtor's account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or by a court order. Where a judgment debtor's account contains an amount equal to or less than ninety percent of the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor), the account shall not be restrained and the restraining notice shall be deemed void, except as to those funds that a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. Nothing in this subdivision shall alter the exempt status of funds which are exempt from execution, levy, attachment or garnishment, under section fifty-two hundred five of this article or under any other provision of state or federal law, or the right of a judgment debtor to claim such exemption.

(j) Fee for banking institution's costs in processing a restraining notice for an account. In the event that a banking institution served with a restraining notice cannot lawfully restrain a judgment debtor's

banking institution account, or a restraint is placed on the judgment debtor's account in violation of any section of this chapter, the banking institution shall charge no fee to the judgment debtor regardless of any terms of agreement, or schedule of fees, or other contract between the judgment debtor and the banking institution.

(k) The provisions of subdivisions (h), (i) and (j) of this section do not apply when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that the restraining notice contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.".

§ 5222-a. Service of notices and forms and procedure for claim of exemption. (a) Applicability. Any person authorized under subdivision (a) of section fifty-two hundred twenty-two of this article issuing a restraining notice affecting a natural person's account at a banking institution pursuant to such subdivision must comply with this section, in addition to the general provisions set forth in such section. Any sheriff levying against a natural person's account at a banking institution pursuant to section fifty-two hundred thirty-two of this article must comply with this section, in addition to the general provisions set forth in section fifty-two hundred thirty-two of this article. The procedures set forth in subdivisions (b), (c), (d), (e), (f) and (g) of this section shall not apply where pursuant to subdivision (h) and/or (i) of section fifty-two hundred twenty-two or subdivision (e) of section fifty-two hundred thirty-two of this article, no funds in the account are restrained or levied upon.

(b) Service of exemption notice and exemption claim form. 1. Service with restraining notice upon banking institution. The person issuing the restraining notice pursuant to subdivision (a) of section fifty-two hundred twenty-two of this article shall provide the banking institution with the restraining notice, a copy of the restraining notice, an exemption notice and two exemption claim forms with sections titled

"ADDRESS A" and "ADDRESS B" completed. The exemption notice and exemption claim forms shall be in the forms set forth in paragraph four of this subdivision. The notice and the forms shall be served on the banking institution together with the restraining notice and copy of the restraining notice. Service must be accomplished in accordance with subdivision (a) or (g) of section fifty-two hundred twenty-two of this article. Failure to serve the notice and forms together with the restraining notice renders the restraining notice void, and the banking institution shall not restrain the account.

2. Service of execution by levy upon a garnishee banking institution. When serving an execution pursuant to subdivision (a) of section fifty-two hundred thirty-two of this article, the sheriff shall provide the banking institution with an exemption notice and two exemption claim forms, which shall be in the forms set forth in paragraph four of this subdivision. The sheriff shall serve both the exemption notice and the exemption claim forms on the banking institution together with the execution notice. Service must be accomplished in accordance with subdivision (a) of section fifty-two hundred thirty-two of this article. Failure to serve the notice and forms renders the execution void, and the banking institution shall not levy upon the account.

3. Service upon judgment debtor. Within two business days after receipt of the restraining notice or execution, exemption notice and exemption claim forms, the banking institution shall serve upon the judgment debtor the copy of the restraining notice, the exemption notice and two exemption claim forms. The banking institution shall serve the notice and forms by first class mail to the last known address of the judgment debtor. The inadvertent failure by a depository institution to provide the notice required by this subdivision shall not give rise to liability on the part of the depository institution.

4. Content of exemption notice and exemption claim form. a. The exemption notice shall be in the following form:

"EXEMPTION NOTICE as required by New York Law
YOUR BANK ACCOUNT IS RESTRAINED OR "FROZEN"

The attached Restraining Notice or notice of Levy by Execution has been issued against your bank account. You are receiving this notice because a creditor has obtained a money judgment against you, and one or more of your bank accounts has been restrained to pay the judgment. A money judgment is a court's decision that you owe money to a creditor. You should be aware that FUTURE DEPOSITS into your account(s) might also be restrained if you do not respond to this notice.

You may be able to "vacate" (remove) the judgment. If the judgment is vacated, your bank account will be released. Consult an attorney (including free legal services) or visit the court clerk for more information about how to do this.

Under state and federal law, certain types of funds cannot be taken from your bank account to pay a judgment. Such money is said to be "exempt."

DOES YOUR BANK ACCOUNT CONTAIN ANY OF THE FOLLOWING TYPES OF FUNDS?

1. Social security;
2. Social security disability (SSD);
3. Supplemental security income (SSI);
4. Public assistance (welfare);
5. Income earned while receiving SSI or public assistance;
6. Veterans benefits;
7. Unemployment insurance;
8. Payments from pensions and retirement accounts;
9. Disability benefits;

10. Income earned in the last 60 days (90% of which is exempt);
11. Workers' compensation benefits;
12. Child support;
13. Spousal support or maintenance (alimony);
14. Railroad retirement;
15. Black lung benefits; and/or
16. COVID-19 stimulus relief for individuals and families with children.

If YES, you can claim that your money is exempt and cannot be taken. To make the claim, you must

- (a) complete the EXEMPTION CLAIM FORM attached;
- (b) deliver or mail the form to the bank with the restrained or "frozen" account; and
- (c) deliver or mail the form to the creditor or its attorney at the address listed on the form.

You must send the forms within 20 DAYS of the postmarked date on the envelope holding this notice. You may be able to get your account released faster if you send to the creditor or its attorney written proof that your money is exempt. Proof can include an award letter from the government, an annual statement from your pension, pay stubs, copies of checks, bank records showing the last two months of account activity, or other papers showing that the money in your bank account is exempt. If you send the creditor's attorney proof that the money in your account is exempt, the attorney must release that money within seven days. You do not need an attorney to make an exemption claim using the form."

b. The exemption claim form shall be in the following form:
NAME OF COURT, NAME OF COUNTY

-----X

PLAINTIFF/PETITIONER/CLAIMANT

INDEX NO.

V.

DEFENDANT/RESPONDENT

EXEMPTION CLAIM FORM

-----X

NAME AND ADDRESS OF JUDGMENT

CREDITOR OR ATTORNEY

(To be completed by judgment
creditor or attorney)

ADDRESS

A_____

NAME AND ADDRESS OF FINANCIAL
INSTITUTION

(To be completed by judgment
creditor or attorney)

ADDRESS

B_____

Directions: To claim that some or all of the funds in your account are exempt, complete both copies of this form, and make one copy for yourself. Mail or deliver one form to ADDRESS A and one form to ADDRESS B within twenty days of the date on the envelope holding this notice. **If you have any documents, such as an award letter, an annual statement from your pension, paystubs, copies of checks or bank records showing the last two months of account activity, include copies of the documents with this form. Your account may be released more quickly.

I state that my account contains the following type(s) of funds (check all that apply):

____ Social security

____ Social security disability (SSD)

____ Supplemental security income (SSI)

____ Public assistance

____ Wages while receiving SSI or public assistance

____ Veterans benefits

____ Unemployment insurance

____ Payments from pensions and retirement accounts

____ Income earned in the last 60 days (90% of which is exempt)

____ Child support

____ Spousal support or maintenance (alimony)

____ Workers' compensation

____ Railroad retirement or black lung benefits

____ COVID-19 stimulus relief for individuals and families with children

____Other (describe exemption):_____

I request that any correspondence to me regarding my claim be sent to the following address:

(FILL IN YOUR COMPLETE ADDRESS)

I certify under penalty of perjury that the statement above is true to the best of my knowledge and belief.

DATE

SIGNATURE OF JUDGMENT DEBTOR

(c) Claim of exemption. 1. To claim an exemption pursuant to the procedures in this section, the judgment debtor shall complete the exemption claim forms, sign them under penalty of perjury, and serve them within twenty days of the date postmarked on the correspondence containing the notice and forms. The judgment debtor shall serve one completed exemption claim form on the banking institution and the other on the attorney for the judgment creditor. In the event that there is no attorney for the judgment creditor, then the exemption claim form must be served directly on the judgment creditor. The judgment debtor may serve the exemption claim forms in person or by first-class mail.

2. Where the banking institution receives an exemption claim form, it shall notify the judgment creditor forthwith of the date on which the funds will be released pursuant to paragraph three of this subdivision.

3. The banking institution shall release all funds in the judgment debtor's account eight days after the date postmarked on the envelope containing the executed exemption claim form mailed to the banking institution or the date of personal delivery of the executed exemption claim form to the banking institution, and the restraint shall be deemed void, except where the judgment creditor interposes an objection to the exemption within that time.

4. Where the executed exemption claim form sent to the judgment creditor is accompanied by information demonstrating that all funds in the account are exempt, the judgment creditor shall, within seven days of the postmark on the envelope containing the exemption claim form and accompanying information, instruct the banking institution to release

the account, and the restraint shall be deemed void. Where the account contains some funds from exempt sources, and other funds from unknown sources, the judgment creditor shall apply the lowest intermediate balance principle of accounting and, within seven days of the postmark on the envelope containing the exemption claim form and accompanying information, shall instruct the banking institution to release the exempt money in the account. The provisions of paragraph two of subdivision (b) of rule twenty-one hundred three of this chapter shall not enlarge the judgment creditor's time to move pursuant to this section. Information demonstrating that funds are exempt includes, but is not limited to, originals or copies of benefit award letters, checks, check stubs or any other document that discloses the source of the judgment debtor's income, and bank records showing the last two months of account activity. If the judgment creditor fails to act in accordance with this subdivision, the judgment creditor shall be deemed to have acted in bad faith and the judgment debtor may seek a court award of the damages, costs, fees and penalties provided for in subdivision (g) of this section.

5. If no claim of exemption is received by the banking institution within twenty-five days after the notice and forms are mailed to the judgment debtor, the funds remain subject to the restraining notice or execution. Failure of the judgment debtor to deliver the executed exemption claim form does not constitute a waiver of any right to an exemption.

(d) Objection to exemption claim and request for hearing. A judgment creditor may object to the claim of exemption by moving for an order pursuant to section fifty-two hundred forty of this article. The judgment creditor must serve the banking institution and the judgment debtor with its motion papers within eight days after the date postmarked on the envelope containing the executed exemption claim form or the date of personal delivery of the executed exemption claim form to the banking institution, and the provisions of paragraph one of subdivision (b) of rule twenty-one hundred three of this chapter shall not enlarge the judgment creditor's time to move pursuant to this section. The judgment debtor shall be served at the address provided on the exemption claim form. The affirmation or affidavit in support of the

motion shall demonstrate a reasonable belief that such judgment debtor's account contains funds that are not exempt from execution and the amount of such nonexempt funds. The executed exemption claim form shall be attached to the affirmation or affidavit. The affirmation or affidavit shall not be conclusory, but is required to show the factual basis upon which the reasonable belief is based. The hearing to decide the motion shall be noticed for seven days after service of the moving papers. The executed exemption claim form shall be prima facie evidence at such hearing that the funds in the account are exempt funds. The burden of proof shall be upon the judgment creditor to establish the amount of funds that are not exempt. The court shall, within five days of the hearing, issue an order stating whether or not funds in the account are exempt and ordering the appropriate relief. The judgment creditor or its attorney must serve the order on the banking institution and the judgment debtor no later than two business days after the court issues the order.

(e) Duties of banking institution if objection is made to exemption claim. Upon receipt of a written objection pursuant to subdivision (d) of this section from the judgment creditor or its attorney within the specified eight-day period, the banking institution shall retain the funds claimed to be exempt for twenty-one days unless otherwise ordered by the court. If the period of twenty-one days expires and the banking institution has not been otherwise ordered by the court, the banking institution shall release the funds to the judgment debtor.

(f) Release of funds. At any time during the procedure specified in this section, the judgment debtor or the judgment creditor may, by a writing dated after the service of the restraining notice, direct the banking institution to release the funds in question to the other party. Upon receipt of a release, the banking institution shall release the funds as directed.

(g) Proceedings; bad faith claims. Where the judgment creditor objects to a claim of exemption pursuant to subdivision (d) of this section and the court finds that the judgment creditor disputed the claim of exemption in bad faith, as provided in paragraph four of subdivision (c) of this section, the judgment debtor shall be awarded costs, reasonable attorney fees, actual damages and an amount not to exceed one thousand dollars.

(h) Rights of judgment debtor. Nothing in this section shall in any way restrict the rights and remedies otherwise available to a judgment debtor, including but not limited to, rights to property exemptions under federal and state law.

(i) The provisions of this section do not apply when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that the restraining notice contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.".

§ 5223. Disclosure. At any time before a judgment is satisfied or vacated, the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena, which shall specify all of the parties to the action, the date of the judgment, the court in which it was entered, the amount of the judgment and the amount then due thereon, and shall state that false swearing or failure to comply with the subpoena is punishable as a contempt of court.

Rule 5224. Subpoena; procedure. (a) Kinds and service of subpoena. Any or all of the following kinds of subpoenas may be served:

1. a subpoena requiring attendance for the taking of a deposition upon oral or written questions at a time and place named therein; or

2. a subpoena duces tecum requiring the production of books and papers for examination at a time and place named therein; or

3. an information subpoena, accompanied by a copy and original of written questions and a prepaid, addressed return envelope. Service of an information subpoena may be made by registered or certified mail,

return receipt requested. Answers shall be made in writing under oath by the person upon whom served, if an individual, or by an officer, director, agent or employee having the information, if a corporation, partnership or sole proprietorship. Each question shall be answered separately and fully and each answer shall refer to the question to which it responds. Answers shall be returned together with the original of the questions within seven days after receipt. Where the person serving the subpoena is a judgment creditor, other than where the state, a municipality or an agency or officer of the state or a municipality is the judgment creditor, the following additional rules shall apply:

(i) information subpoenas, served on an individual or entity other than the judgment debtor, may be served on an individual, corporation, partnership or sole proprietorship only if the judgment creditor or the judgment creditor's attorney has a reasonable belief that the party receiving the subpoena has in their possession information about the debtor that will assist the creditor in collecting his or her judgment. Any information subpoena served pursuant to this subparagraph shall contain a certification signed by the judgment creditor or his or her attorney stating the following: I HEREBY CERTIFY THAT THIS INFORMATION SUBPOENA COMPLIES WITH RULE 5224 OF THE CIVIL PRACTICE LAW AND RULES AND SECTION 601 OF THE GENERAL BUSINESS LAW THAT I HAVE A REASONABLE BELIEF THAT THE PARTY RECEIVING THIS SUBPOENA HAS IN THEIR POSSESSION INFORMATION ABOUT THE DEBTOR THAT WILL ASSIST THE CREDITOR IN COLLECTING THE JUDGMENT. By signing the certification, the judgment creditor or attorney certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the individual or entity receiving the subpoena has relevant information about the debtor.

(ii) if an information subpoena, served on an individual or entity other than the judgment debtor, does not contain the certification provided for in subparagraph (i) of this paragraph, such subpoena shall be deemed null and void.

(iii) if an information subpoena, served on an individual or entity other than the judgment debtor, does contain the certification provided for in subparagraph (i) of this paragraph, the individual, corporation, partnership or sole proprietorship receiving the subpoena, may move to quash the subpoena pursuant to section twenty-three hundred four of this

chapter, except that such motion shall be made in the court that issued the underlying judgment.

(iv) failure to comply with an information subpoena shall be governed by subdivision (b) of section twenty-three hundred eight of this chapter, except that such motion shall be made in the court that issued the underlying judgment.

4. an information subpoena in the form of magnetic tape or other electronic means. Where the person to be served consents thereto in writing, an information subpoena in the form of magnetic tape or electronic means, as defined in subdivision (f) of rule twenty-one hundred three of this chapter, may be served upon the individual, or if a corporation, partnership, limited liability company, or sole proprietorship, upon the officer, director, agent or employee having the information. Answers shall be provided within seven days.

(a-1) Scope of subpoena duces tecum. A subpoena duces tecum authorized by this rule and served on a judgment debtor, or on any individual while in the state, or on a corporation, partnership, limited liability company or sole proprietorship doing business, licensed, qualified, or otherwise entitled to do business in the state, shall subject the person or other entity or business served to the full disclosure prescribed by section fifty-two hundred twenty-three of this article whether the materials sought are in the possession, custody or control of the subpoenaed person, business or other entity within or without the state. Section fifty-two hundred twenty-nine of this article shall also apply to disclosure under this rule.

(b) Fees. A judgment debtor served with a subpoena under this section and any other person served with an information subpoena shall not be entitled to any fee. Any other person served with a subpoena requiring attendance or the production of books and papers shall be paid or tendered in advance authorized traveling expenses and one day's witness fee.

(c) Time and place of examination. A deposition on oral or written questions or an examination of books and papers may proceed upon not less than ten days' notice to the person subpoenaed, unless the court orders shorter notice, before any person authorized by subdivision (a) of rule 3113. An examination shall be held during business hours and, if

taken within the state, at a place specified in rule 3110. Upon consent of the witness, an examination may be held at any other place within the state and before any officer authorized to administer an oath.

(d) Conduct of examination. The officer before whom the deposition is to be taken shall put the witness on oath. If requested by the person conducting the examination, the officer shall personally, or by some one acting under his direction, record and transcribe the testimony and shall list all appearances by the parties and attorneys. Examination and cross-examination of the witness shall proceed as permitted in the trial of actions in open court. Cross-examination need not be limited to the subject matter of the examination in chief. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or of a person recording it, or to the manner of taking it, or to the testimony presented, or to the conduct of any person, and any other objection to the proceedings, shall be noted by the officer upon the deposition and the deposition shall proceed subject to the right of a person to apply for a protective order. The deposition shall be taken continuously and without unreasonable adjournment, unless the court orders or the witness agrees otherwise. If the witness does not understand the English language, the judgment creditor shall, at his own expense, provide a translation of all questions and answers. Unless the court orders otherwise, a person other than the judgment debtor served with a subpoena duces tecum requiring the production of books of account may produce in place of the original books of account a sworn transcript of such accounts as are relevant.

(e) Signing deposition; physical preparation. At the request of the person conducting the examination, a deposition on written questions or a deposition on oral questions which has been transcribed shall be submitted to the witness and shall be read to or by him, and any changes in form or substance which the witness desires to make shall be entered upon the deposition with a statement of the reasons given by the witness for making them; and the deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign the deposition, the officer before whom the deposition was taken shall sign it and state on the record the fact of the witness's failure or refusal to sign together with any reason given. The deposition may then be used as fully as though signed. Where testimony

is transcribed, the officer before whom the deposition was taken shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness.

(f) Subsequent examination. Leave of court is required to compel a judgment debtor to appear for the taking of his deposition or to compel the production by him of books and papers within one year after the conclusion of a previous examination of him with respect to the same judgment.

§ 5225. Payment or delivery of property of judgment debtor. (a)

Property in the possession of judgment debtor. Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested.

(b) Property not in the possession of judgment debtor. Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Costs of the proceeding shall not be awarded against a person who did not dispute the judgment debtor's

interest or right to possession. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239.

(c) Documents to effect payment or delivery. The court may order any person to execute and deliver any document necessary to effect payment or delivery.

§ 5226. Installment payment order. Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation, the court shall order that the judgment debtor make specified installment payments to the judgment creditor. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered.

§ 5227. Payment of debts owed to judgment debtor. Upon a special proceeding commenced by the judgment creditor, against any person who it is shown is or will become indebted to the judgment debtor, the court may require such person to pay to the judgment creditor the debt upon maturity, or so much of it as is sufficient to satisfy the judgment, and to execute and deliver any document necessary to effect payment; or it may direct that a judgment be entered against such person in favor of the judgment creditor. Costs of the proceeding shall not be awarded

against a person who did not dispute the indebtedness. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239.

§ 5228. Receivers. (a) Appointment of receiver. Upon motion of a judgment creditor, upon such notice as the court may require, the court may appoint a receiver who may be authorized to administer, collect, improve, lease, repair or sell any real or personal property in which the judgment debtor has an interest or to do any other acts designed to satisfy the judgment. As far as practicable, the court shall require that notice be given to the judgment debtor and to any other judgment creditors of the judgment debtor. The order of appointment shall specify the property to be received, the duties of the receiver and the manner in which they are to be performed. A receiver shall have no power to employ counsel unless expressly so authorized by order of the court. A receiver shall be entitled to necessary expenses and to such commissions, not exceeding five percent of the sums received and disbursed by him, as the court which appointed him allows, but if a judgment creditor is appointed receiver, he shall not be entitled to compensation. If a receiver has been appointed, a court making an order directing payment, or delivery, of property shall direct that payment, or delivery, be made to the receiver rather than to a sheriff. Sections 6402, 6403, 6404 and 6405 are applicable to receivers appointed under this subdivision.

(b) Extension of receivership. Where a receiver has been appointed, the court, upon motion of a judgment creditor, upon such notice as it may require, shall extend the receivership to his judgment.

§ 5229. Enforcement before judgment entered. In any court, before a judgment is entered, upon motion of the party in whose favor a verdict or decision has been rendered, the trial judge may order examination of

the adverse party and order him restrained with the same effect as if a restraining notice had been served upon him after judgment.

§ 5230. Executions. (a) Form. An execution shall specify the date that the judgment or order was entered, the court in which it was entered, the amount of the judgment or order, the applicable interest rate and the date as of which the new interest rate applies if the interest rate for consumer debt pursuant to section five thousand four of this chapter applies and the amount due thereon and it shall specify the names of the parties in whose favor and against whom the judgment or order was entered. If the applicable interest rate changes pursuant to section five thousand four of this chapter while an execution is ongoing, the judgment creditor shall issue an amended execution within sixty days of the effective date of the chapter of the laws of two thousand twenty-one which amended this subdivision, effective as of the date of the rate change. An execution shall direct that only the property in which a named judgment debtor or obligor who is not deceased has an interest, or the debts owed to the named judgment debtor or obligor, be levied upon or sold thereunder and shall specify the last known address of that judgment debtor or obligor. Except in cases when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that in those instances the execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.", an execution notice shall state that, pursuant to subdivision (l) of section fifty-two hundred five of this article, two thousand five hundred dollars of an account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments, as defined in paragraph two of subdivision (l) of section fifty-two hundred five of this article, is exempt from execution and that the garnishee cannot levy upon or restrain two thousand five hundred dollars in such an account. Except in cases when the state of New York, or any of its agencies or municipal

corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that in those instances the execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.", an execution notice shall likewise state that pursuant to subdivision (i) of section fifty-two hundred twenty-two of this article, an execution shall not apply to an amount equal to or less than ninety percent of the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. Where the judgment or order was entered in a court other than the supreme, county or a family court, the execution shall also specify the date on which a transcript of the judgment or order was filed with the clerk of the county in which the judgment was entered. Where jurisdiction in the action was based upon a levy upon property or debt pursuant to an order of attachment, the execution shall also state that fact, describe all property and debts levied upon, and direct that only such property and debts be sold thereunder. Where the judgment or order was recovered for all or part of a mortgage debt, the execution shall also describe the mortgaged property, specify the book and page where the mortgage is recorded, and direct that no part of the mortgaged property be levied upon or sold thereunder.

(b) Issuance. At any time before a judgment or order is satisfied or vacated, an execution may be issued from the supreme court, county court or a family court, in the county in which the judgment was first docketed, by the clerk of the court or the attorney for the judgment creditor as officer of the court, to the sheriffs of one or more counties of the state, directing each of them to satisfy the judgment or order out of the real and personal property of the judgment debtor or obligor and the debts due to him or her. Provided, however, if the applicable interest rate changes pursuant to section five thousand four

of this chapter while an execution is ongoing, the clerk of the court of the supreme court, county court or a family court, in the county in which the judgment was first docketed, or the attorney for the judgment creditor as officer of the court, shall be authorized to issue an amended execution to the sheriffs of one or more counties of the state and shall issue an amended execution within sixty days of the effective date of the chapter of the laws of two thousand twenty-one which amended this subdivision, effective as of the date of the rate change. Where the judgment or order is for support and is payable to the support collection unit designated by the appropriate social services district, such unit shall be authorized to issue the execution and to satisfy the judgment or order out of the real and personal property of the judgment debtor or obligor and the debts due to him or her.

(c) Return. An execution shall be returned to the clerk of the court from which it was issued or to the support collection unit within sixty days after issuance unless the execution has been served in accordance with section 5231 or subdivision (a) of section 5232. The time may be extended in writing for a period of not more than sixty additional days by the attorney for the judgment creditor or by the support collection unit. Further like extensions may be given by the attorney for the judgment creditor or by the support collection unit unless another execution against the same judgment debtor or obligor has been delivered to the same enforcement officer and has not been returned.

(d) Records of sheriff or support collection unit. Each sheriff or support collection unit shall keep a record of executions delivered showing the names of the parties and the judgment debtor or obligor; the dates of issue and return; the date and time of delivery, which shall be endorsed upon the execution; the amount due at the time the execution was delivered; and the amount of the judgment or order and of the sheriff's fees unpaid, if any, at the time of the return.

(e) For the purposes of this section "order" shall mean an order issued by a court of competent jurisdiction directing the payment of support, alimony or maintenance upon which a "default" as defined in paragraph seven of subdivision (a) of section fifty-two hundred forty-one of this article has been established subject to the procedures established for the determination of a "mistake of fact" for income executions pursuant to subdivision (e) of section fifty-two hundred

forty-one of this article, except that for the purposes of this section only, a default shall not be founded upon retroactive child support obligations as defined in paragraph (a) of subdivision one of section four hundred forty of the family court act and subdivision one of section two hundred forty, and paragraph b of subdivision nine of section two hundred thirty-six of the domestic relations law.

§ 5231. Income execution. (a) Form. An income execution shall specify, in addition to the requirements of subdivision (a) of section 5230: (i) the name and address of the person or entity from whom the judgment debtor is receiving or will receive money; (ii) the amount of money, the frequency of its payment and the amount of the installments to be collected therefrom; and (iii) shall contain a notice to the judgment debtor that he or she shall commence payment of the installments specified to the sheriff forthwith and that, upon his or her default, the execution will be served upon the person or entity from whom he or she is receiving or will receive money. Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, the income execution need only specify paragraphs (i) and (ii) of this subdivision.

(b) Issuance. Where a judgment debtor is receiving or will receive money from any source, an income execution for installments therefrom of not more than ten percent thereof may be issued and delivered to the sheriff of the county in which the judgment debtor resides or, where the judgment debtor is a non-resident, the county in which he is employed; provided, however, that (i) no amount shall be withheld from the judgment debtor's earnings pursuant to an income execution for any week unless the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable; (ii) the amount withheld from the judgment debtor's earnings pursuant to an income execution for any week shall not exceed twenty-five percent of

the disposable earnings of the judgment debtor for that week, or, the amount by which the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, whichever is less; (iii) if the earnings of the judgment debtor are also subject to deductions for alimony, support or maintenance for family members or former spouses pursuant to section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article, the amount withheld from the judgment debtor's earnings pursuant to this section shall not exceed the amount by which twenty-five percent of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings in accordance with section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article; and (iv) no amount shall be imposed in judgments arising from a medical debt action brought by a hospital licensed under article twenty-eight of the public health law or a health care professional authorized under title eight of the education law. Nothing in this section shall be construed to modify, abrogate, impair, or affect any exemption from the satisfaction of a money judgment otherwise granted by law.

(c) Definition of earnings and disposable earnings. (i) As used herein earnings means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(ii) As used herein disposable earnings means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(d) Service upon debtor; first service by sheriff. Within twenty days after an income execution is delivered to the sheriff, the sheriff shall serve a copy of it upon the judgment debtor, in the same manner as a summons or, in lieu thereof, by certified mail return receipt requested provided an additional copy is sent by regular mail to the debtor. If service is by mail as herein provided, the person effecting service shall retain the receipt together with a post office certificate of

mailing as proof of such service. Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, the sheriff shall serve a copy of the income execution within forty-five days after an income execution is delivered to the sheriff.

(e) Levy upon default or failure to serve debtor; second service by sheriff. If a judgment debtor fails to pay installments pursuant to an income execution served upon him or her for a period of twenty days, or if the sheriff is unable to serve an income execution upon the judgment debtor within twenty days after the execution is delivered to the sheriff, the sheriff shall levy upon the money that the judgment debtor is receiving or will receive by serving a copy of the income execution, indorsed to indicate the extent to which paid installments have satisfied the judgment, upon the person or entity from whom the judgment debtor is receiving or will receive money. The income execution shall be served personally within any county in which the person or entity from whom the judgment debtor is receiving or will receive money has an office or place of business in the same manner as a summons, or by certified mail return receipt requested, except that such service shall not be made by delivery to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318.

(f) Withholding of installments. A person served with an income execution shall withhold from money then or thereafter due to the judgment debtor installments as provided therein and pay them over to the sheriff. If such person shall fail to so pay the sheriff, the judgment creditor may commence a proceeding against him for accrued installments. If the money due to the judgment debtor consists of salary or wages and his employment is terminated by resignation or dismissal at any time after service of the execution, the levy shall thereafter be ineffective, and the execution shall be returned, unless the debtor is reinstated or re-employed within ninety days after such termination.

(g) Statement on income execution. Any income execution delivered to the sheriff on or after the effective date of this act shall contain the following statement:

THIS INCOME EXECUTION DIRECTS THE WITHHOLDING OF UP TO TEN PERCENT OF THE JUDGMENT DEBTOR'S GROSS INCOME. IN CERTAIN CASES, HOWEVER, STATE OR FEDERAL LAW DOES NOT PERMIT THE WITHHOLDING OF THAT MUCH OF THE JUDGMENT DEBTOR'S GROSS INCOME. THE JUDGMENT DEBTOR IS REFERRED TO NEW YORK CIVIL PRACTICE LAW AND RULES § 5231 AND 15 UNITED STATES CODE § 1671 ET SEQ.

I. LIMITATIONS ON THE AMOUNT THAT CAN BE WITHHELD.

A. AN INCOME EXECUTION FOR INSTALLMENTS FROM A JUDGMENT DEBTOR'S GROSS INCOME CANNOT EXCEED TEN PERCENT (10%) OF THE JUDGMENT DEBTOR'S GROSS INCOME.

B. IF A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNINGS ARE LESS THAN THIRTY (30) TIMES THE CURRENT FEDERAL MINIMUM WAGE (, PER HOUR), OR (), NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

C. A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNINGS CANNOT BE REDUCED BELOW THE AMOUNT ARRIVED AT BY MULTIPLYING THIRTY (30) TIMES THE CURRENT FEDERAL MINIMUM WAGE (, PER HOUR), OR (), UNDER THIS INCOME EXECUTION.

D. IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS EQUAL OR EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

E. IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS ARE LESS THAN TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, DEDUCTIONS MAY BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION. HOWEVER, THE AMOUNT ARRIVED AT BY ADDING THE DEDUCTIONS FROM EARNINGS MADE UNDER THIS EXECUTION TO THE DEDUCTIONS MADE FROM EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES CANNOT EXCEED TWENTY-FIVE PERCENT (25%) OF THE

JUDGMENT DEBTOR'S DISPOSABLE EARNINGS.

NOTE: NOTHING IN THIS NOTICE LIMITS THE PROPORTION OR AMOUNT WHICH MAY BE DEDUCTED UNDER ANY ORDER FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES.

II. EXPLANATION OF LIMITATIONS

DEFINITIONS:

DISPOSABLE EARNINGS

DISPOSABLE EARNINGS ARE THAT PART OF AN INDIVIDUAL'S EARNINGS LEFT AFTER DEDUCTING THOSE AMOUNTS THAT ARE REQUIRED BY LAW TO BE WITHHELD (FOR EXAMPLE, TAXES, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE, BUT NOT DEDUCTIONS FOR UNION DUES, INSURANCE PLANS, ETC.).

GROSS INCOME

GROSS INCOME IS SALARY, WAGES OR OTHER INCOME, INCLUDING ANY AND ALL OVERTIME EARNINGS, COMMISSIONS, AND INCOME FROM TRUSTS, BEFORE ANY DEDUCTIONS ARE MADE FROM SUCH INCOME.

ILLUSTRATIONS REGARDING EARNINGS:

	AMOUNT TO PAY OR DEDUCT FROM EARNINGS UNDER THIS INCOME EXECUTION IS:
IF DISPOSABLE EARNINGS IS:	
(a) 30 TIMES FEDERAL MINIMUM WAGE () OR LESS	NO PAYMENT OR DEDUCTION ALLOWED
(b) MORE THAN 30 TIMES FEDERAL MINIMUM WAGE () AND LESS THAN 40 TIMES FEDERAL MINIMUM WAGE ()	THE LESSER OF: THE EXCESS OVER 30 TIMES THE FEDERAL MINIMUM WAGE () IN DISPOSABLE EARNINGS, or 10% OF GROSS EARNINGS
(c) 40 TIMES THE FEDERAL MINIMUM WAGE () OR MORE	THE LESSER OF: 25% OF DISPOSABLE EARNINGS OR 10% OF GROSS EARNINGS.

III. NOTICE: YOU MAY BE ABLE TO CHALLENGE THIS INCOME EXECUTION THROUGH THE PROCEDURES PROVIDED IN CPLR § 5231 (i) AND CPLR § 5240

IF YOU THINK THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW,

YOU SHOULD ACT PROMPTLY BECAUSE THE MONEY WILL BE APPLIED TO THE JUDGMENT. IF YOU CLAIM THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW, YOU SHOULD CONTACT YOUR EMPLOYER OR OTHER PERSON PAYING YOUR INCOME. FURTHER, YOU MAY CONSULT AN ATTORNEY, INCLUDING LEGAL AID IF YOU QUALIFY. NEW YORK STATE LAW PROVIDES TWO PROCEDURES THROUGH WHICH AN INCOME EXECUTION CAN BE CHALLENGED:

CPLR § 5231(i) MODIFICATION. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A MOTION TO A COURT FOR AN ORDER MODIFYING AN INCOME EXECUTION.

CPLR § 5240 MODIFICATION OR PROTECTIVE ORDER: SUPERVISION OF ENFORCEMENT. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A MOTION TO A COURT FOR AN ORDER DENYING, LIMITING, CONDITIONING, REGULATING, EXTENDING OR MODIFYING THE USE OF ANY POST-JUDGMENT ENFORCEMENT PROCEDURE, INCLUDING THE USE OF INCOME EXECUTIONS.

(h) Levy upon money payable by municipal corporation or the state. The levy of an income execution served upon a municipal or public benefit corporation, or board of education, shall be effective fifteen days after such service. Such an execution shall specify the title or position of the judgment debtor and the bureau, office, department or subdivision in which he is employed and the municipal or public benefit corporation, or board of education, shall be entitled to a fee of two dollars upon being served. A levy upon money payable directly by a department of the state, or by an institution under its jurisdiction, shall be made by serving the income execution upon the head of the department, or upon a person designated by him, at the office of the department in Albany; a levy upon money payable directly upon the state comptroller's warrant, or directly by a state board, commission, body or agency which is not within any department of the state, shall be made by serving the income execution upon the state department of audit and control at its office in Albany. Service at the office of a department of the state in Albany may be made by the sheriff of any county by registered or certified mail, return receipt requested.

(i) Modification. At any time, the judgment creditor or the judgment debtor may move, upon such notice as the court may direct, for an order modifying an income execution.

(j) Priority; delivery to another sheriff. Two or more income executions issued against the same judgment debtor, specifying the same

person or entity from whom the money is received and delivered to the same or different enforcement officers shall be satisfied out of that money in the order in which the executions are delivered to an officer authorized to levy in the county, town or city in which the debtor resides or, in any county in which the person or entity from whom the judgment debtor is receiving or will receive money has an office or place of business, or where the judgment debtor is a non-resident, the county, town or city in which he or she is employed. If the applicable interest rate changes pursuant to section five thousand four of this chapter while an execution is ongoing, the issuance of the amended execution pursuant to section five thousand two hundred thirty of this article shall retain the priority of the ongoing execution. If an income execution delivered to a sheriff is returned unsatisfied in whole or in part because the sheriff to whom it was delivered is unable to find within the county the person or entity from whom the judgment debtor is receiving or will receive money, the execution may be delivered to the sheriff of any county in which such person or entity has an office or place of business. The priority of an income execution delivered to a sheriff within twenty days after its return by each previous sheriff shall be determined by the time of delivery to the first sheriff.

(k) Accounting by sheriff. It shall be the duty of the sheriff to whom such income execution shall be delivered, from time to time and at least once every ninety days from the time a levy shall be made thereunder, to account for and pay over to the person entitled thereto all monies collected thereon, less his lawful fees and expenses for collecting the same. Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, any money collected in excess of the judgment amount shall be promptly returned to the debtor.

§ 5232. Levy upon personal property. (a) Levy by service of execution. The sheriff or support collection unit designated by the appropriate social services district shall levy upon any interest of the judgment debtor or obligor in personal property not capable of delivery, or upon any debt owed to the judgment debtor or obligor, by serving a copy of

the execution upon the garnishee, in the same manner as a summons, except that such service shall not be made by delivery to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318. In the event the garnishee is the state of New York, such levy shall be made in the same manner as an income execution pursuant to section 5231 of this article. A levy by service of the execution is effective only if, at the time of service, the person served owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property not capable of delivery in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in a notice which shall be served with the execution that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property not capable of delivery in the possession or custody of the person served. All property not capable of delivery in which the judgment debtor or obligor is known or believed to have an interest then in or thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due or thereafter coming due to the judgment debtor or obligor, shall be subject to the levy. The person served with the execution shall forthwith transfer all such property, and pay all such debts upon maturity, to the sheriff or to the support collection unit and execute any document necessary to effect the transfer or payment. After such transfer or payment, property coming into the possession or custody of the garnishee, or debt incurred by him, or her shall not be subject to the levy. Until such transfer or payment is made, or until the expiration of ninety days after the service of the execution upon him or her, or of such further time as is provided by any order of the court served upon him or her, whichever event first occurs, the garnishee is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except upon direction of the sheriff or the support collection unit or pursuant to an order of the court. At the expiration of ninety days after a levy is made by service of the execution, or of

such further time as the court, upon motion of the judgment creditor or support collection unit has provided, the levy shall be void except as to property or debts which have been transferred or paid to the sheriff or to the support collection unit or as to which a proceeding under sections 5225 or 5227 has been brought. A judgment creditor who, or support collection unit which, has specified personal property or debt to be levied upon in a notice served with an execution shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the levy.

(b) Levy by seizure. The sheriff or support collection unit of the appropriate social services district shall levy upon any interest of the judgment debtor in personal property capable of delivery by taking the property into custody without interfering with the lawful possession of pledgees and lessees. The sheriff or support collection unit shall forthwith serve a copy of the execution in the manner prescribed by subdivision (a) upon the person from whose possession or custody the property was taken.

(c) Notice to judgment debtor or obligor. Where an execution does not state that a notice in the form presented by subdivision (e) of section fifty-two hundred twenty-two of this chapter has been duly served upon the judgment debtor or obligor within a year, the sheriff or support collection unit shall, not later than four days after service of the execution upon any garnishee, mail by first class mail, or personally deliver, to each judgment debtor or obligor who is a natural person, a copy of the execution together with such notice. The sheriff or support collection unit shall specify on the notice to judgment debtor or obligor the name and address of the judgment creditor or the judgment creditor's attorney or the support collection unit. The notice shall be mailed to the judgment debtor or obligor at his or her residence address; and in the event such mailing is returned as undeliverable by the post office, or if the residence address of the judgment debtor or obligor is unknown, then to the judgment debtor or obligor in care of the place of employment of the judgment debtor or obligor if known, in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by the return address or otherwise, that the communication is from a sheriff or support collection unit or

concerns a debt; or if neither the residence nor the place of employment of the judgment debtor or obligor is known, then to the judgment debtor or obligor at any other known address.

(d) For the purposes of this section "obligor" shall mean an individual other than a judgment debtor obligated to pay support, alimony or maintenance pursuant to an order of a court of competent jurisdiction who has been found to be in "default" of such order as such term is defined in paragraph seven of subdivision (a) of section fifty-two hundred forty-one of this article and the establishment of such default has been subject to the procedures established for the determination of a "mistake of fact" for income executions pursuant to subdivision (e) of section fifty-two hundred forty-one of this article, except that for the purposes of this section only, a default shall not be founded upon retroactive child support obligations as defined in paragraph (c) of subdivision one of section four hundred forty and subdivision one of section two hundred forty, and paragraph b of subdivision nine of section two hundred thirty-six of the domestic relations law.

(e) Notwithstanding the provisions of subdivision (a) of this section, if direct deposit or electronic payments reasonably identifiable as statutorily exempt payments as defined in paragraph two of subdivision (l) of section fifty-two hundred five of this article were made to the judgment debtor's account during the forty-five day period preceding the date that the execution notice was served on the garnishee banking institution, then a garnishee banking institution shall not execute, levy, attach, garnish or otherwise restrain or encumber two thousand five hundred dollars in the judgment debtor's account. Notwithstanding the provisions of subdivision (a) of this section, an execution shall not apply to an amount equal to or less than the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor) except such part thereof as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. This amount shall be equal to seventeen

hundred sixteen dollars on the effective date of this subdivision, and shall rise to seventeen hundred forty dollars on July twenty-fourth, two thousand nine, and shall rise thereafter in tandem with the minimum wage. Nothing in this subsection shall be construed to limit a banking institution's right or obligation to restrain, remove or execute upon such funds from the judgment debtor's account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or to enforce a child support, spousal support, alimony or maintenance obligation or by a court order. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment, or other legal process, under section fifty-two hundred five of this article or under any other provision of state or federal law, or affect the right of a judgment debtor to claim such exemption.

(f) Fee for banking institution's costs in processing a levy by service of execution when account contains only exempt, direct deposit or electronic payments. In the event that a banking institution cannot lawfully garnish or execute upon on a judgment debtor's banking institution account or funds are garnished or executed upon in violation of any section of this chapter, the banking institution shall charge no fee to the judgment debtor regardless of any terms of agreement, or schedule of fees, or other contract between the judgment debtor and the banking institution.

(g) Where a levy by execution pursuant to this section is made against a natural person's account at a banking institution, the sheriff or support collection unit shall serve the banking institution with the exemption notice and two exemption claim forms prescribed in subdivision (b) of section fifty-two hundred twenty-two-a of this article. The notice and forms must be served upon the banking institution simultaneously with the execution and section fifty-two hundred twenty-two-a of this article shall apply, and all procedures stated therein must be followed. The banking institution shall not transfer the funds in the account to the sheriff or support collection unit for at least twenty-seven days. If, after thirty days, the banking institution has not received an exemption claim form from the judgment debtor, or a court order directing otherwise, it may thereafter transfer the funds to the sheriff or support collection unit.

(h) The provisions of subdivisions (e), (f) and (g) of this section do

not apply when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony provided that in those instances the execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony."

§ 5233. Sale of personal property. (a) Public auction. The interest of the judgment debtor in personal property obtained by a sheriff pursuant to execution or order, other than legal tender of the United States, shall be sold by the sheriff at public auction at such time and place and as a unit or in such lots, or combination thereof, as in his judgment will bring the highest price, but no sale may be made to that sheriff or to his deputy or undersheriff. The property shall be present and within the view of those attending the sale unless otherwise ordered by the court.

(b) Public notice. A printed notice of the time and place of the sale shall be posted at least six days before the sale in three public places in the town or city in which the sale is to be held, provided however, in the city of New York, in lieu of posting such notice may be advertised in the auction columns of any morning newspaper published daily and Sunday in such city an edition of which appears on the newsstands the previous night and has a circulation of not less than three hundred thousand. An omission to so post or advertise notice, or the defacing or removal of a posted notice, does not affect the title of a purchaser without notice of the omission or offense.

(c) Order for immediate sale or disposition. The court may direct immediate sale or other disposition of property with or without notice if the urgency of the case requires.

(d) Unsaleable material. If property seized by the sheriff is considered by him to be material which, by law, may not be sold, he shall apply to the court for a determination whether the property can legally be sold. Reasonable notice of such application shall also be given to the owner of such property. If the court decides the property

may not be legally sold, it shall order appropriate disposition of the property which may include its destruction.

§ 5234. Distribution of proceeds of personal property; priorities.

(a) Distribution of proceeds of personal property. After deduction for and payment of fees, expenses and any taxes levied upon sale, delivery, transfer or payment, the proceeds of personal property or debt acquired by a receiver or a sheriff or other officer authorized to enforce the judgment shall be distributed to the judgment creditor and any excess shall be paid over to the judgment debtor. No distribution of proceeds shall be made until fifteen days after service of the execution except upon order of the court.

(b) Priority among execution creditors. Where two or more executions or orders of attachment are issued against the same judgment debtor or obligor and delivered to the same enforcement officer or issued by the support collection unit designated by the appropriate social services district, they shall be satisfied out of the proceeds of personal property or debt levied upon by the officer or by the support collection unit in the order in which they were delivered, such executions for child support shall have priority over any other assignment, levy or process. Where two or more executions or orders of attachment are issued against the same judgment debtor or obligor and delivered to different enforcement officers, and personal property or debt is levied upon within the jurisdiction of all of the officers, the proceeds shall be first applied in satisfaction of the execution or order of attachment delivered to the officer who levied, and thereafter shall be applied in satisfaction of the executions or orders of attachment delivered to those of the other officers who, before the proceeds are distributed, make a demand upon the officer who levied, in the order of such demands, except that such executions for child support shall have priority over any other assignment, levy or process. Where there is more than one past-due child support order, the proceeds shall be applied to the orders in proportion to the amount each order's claim bears to the combined total. Nothing herein shall be deemed to defeat or impair the rights of any secured party as such term is defined in paragraph seventy-two of subsection (a) of section 9--102 of the uniform

commercial code. An execution or order of attachment returned by an officer before a levy or delivered to him after the proceeds of the levy have been distributed shall not be satisfied out of those proceeds.

(c) Priority of other judgment creditors. Where personal property or debt has been ordered delivered, transferred or paid, or a receiver thereof has been appointed by order, or a receivership has been extended thereto by order, and the order is filed before the property or debt is levied upon, the rights of the judgment creditor who secured the order are superior to those of the judgment creditor entitled to the proceeds of the levy. Where two or more such orders affecting the same interest in personal property or debt are filed, the proceeds of the property or debt shall be applied in the order of filing. Where delivery, transfer, or payment to the judgment creditor, a receiver, or a sheriff or other officer is not completed within sixty days after an order is filed, the judgment creditor who secured the order is divested of priority, unless otherwise specified in the order or in an extension order filed within the sixty days.

§ 5235. Levy upon real property. After the expiration of ten years after the filing of the judgment-roll, the sheriff shall levy upon any interest of the judgment debtor in real property, pursuant to an execution other than one issued upon a judgment for any part of a mortgage debt upon the property, by filing with the clerk of the county in which the property is located a notice of levy describing the judgment, the execution and the property. The clerk shall record and index the notice against the name of the judgment debtor, or against the property, in the same books, and in the same manner as a notice of the pendency of an action.

§ 5236. Sale of real property. (a) Time of sale; public auction. Between the fifty-sixth and the sixty-third day after the first publication of a copy of the notice of sale, unless the time is extended by order or the sale postponed by the sheriff, the interest of the judgment debtor in real property which has been levied upon under an execution delivered to the sheriff or which was subject to the lien of

the judgment at the time of such delivery shall be sold by the sheriff pursuant to the execution at public auction at such time and place within the county where the real property is situated and as a unit or in such parcels, or combination thereof, as in his judgment will bring the highest price, but no sale may be made to that sheriff or to his deputy or undersheriff. If the property is situated in more than one county, it may be sold in a county in which any part is situated, unless the court orders otherwise.

(b) Sale of mortgaged property. Real property mortgaged shall not be sold pursuant to an execution issued upon a judgment recovered for all or part of the mortgage debt.

(c) Notice of sale. A printed notice of the time and place of the sale containing a description of the property to be sold shall be posted at least fifty-six days before the sale in three public places in the town or city in which the property is located, and, if the sale is to be held in another town or city, in three public places therein. Service by the sheriff of a copy of said notice on the judgment debtor shall be made as provided in section 308. A list containing the name and address of the judgment debtor and of every judgment creditor whose judgment was a lien on the real property to be sold and of every person who had of record any interest in or lien on such property forty-five days prior to the day fixed for the sale shall be furnished the sheriff by the judgment creditor, and each person on the list shall be served by the sheriff with a copy of the notice by personal delivery or by registered or certified mail, return receipt requested, at least thirty days prior to the day fixed for the sale. A copy of the notice shall be published at least once in each of four periods of fourteen successive days, the first of which periods may be measured from any day between the fifty-sixth and sixty-third days, preceding the time fixed for the sale in a newspaper published in the county in which the property is located or, if there is none, in a newspaper published in an adjoining county. An omission to give any notice required by this or the following subdivision, or the defacing or removal of a notice posted pursuant to either, does not affect the title of a purchaser without notice of the omission or offense.

(d) Notice of postponement of sale. Any person may, in a writing served on the sheriff either by personal delivery or by registered or

certified mail, return receipt requested, request that the sheriff notify him in the event that a scheduled sale is postponed. Such writing shall contain the person's name and mailing address. If the sale is for any reason postponed, notice of the postponed date need be given only to:

1. those whose requests, made as above provided, have been received by the sheriff at least five days prior to the postponed date,

2. those who appeared at the time and place previously appointed for the sale, and

3. the judgment debtor at his last known address.

The notice may be served either by personal delivery or by registered or certified mail, return receipt requested. Unless the court shall otherwise direct, it need not be posted or published.

(e) Effect of notice as against judgment creditors. A judgment creditor duly notified pursuant to subdivisions (c) or (d) who fails to deliver an execution to the sheriff prior to the sale shall have no further lien on the property and, except as against the judgment debtor, no further interest in the proceeds of the sale.

(f) Conveyance; proof of notice. Within ten days after the sale, the sheriff shall execute and deliver to the purchaser proofs of publication, service and posting of the notice of sale, and a deed which shall convey the right, title and interest sold. Such proofs may be filed and recorded in the office of the clerk of the county where the property is located.

(g) Disposition of proceeds of sale. After deduction for and payment of fees, expenses and any taxes levied on the sale, transfer or delivery, the sheriff making a sale of real property pursuant to an execution shall, unless the court otherwise directs,

1. distribute the proceeds to the judgment creditors who have delivered executions against the judgment debtor to the sheriff before the sale, which executions have not been returned, in the order in which their judgments have priority, and

2. pay over any excess to the judgment debtor.

§ 5237. Failure of title to property sold. The purchaser of property sold by a sheriff pursuant to execution or order may recover the purchase money from the judgment creditors who received the proceeds if the property is recovered from such purchaser in consequence of an irregularity in the sale or a vacatur, reversal or setting aside of the judgment upon which the execution or order was based. If a judgment for the purchase money is so recovered against a judgment creditor in consequence of an irregularity in the sale, such judgment creditor may enforce his judgment as if no levy or sale had been made, and, for that purpose, he may move without notice for an order restoring any lien or priority or amending any docket entry affected by the sale.

§ 5238. Directions to the sheriff. Upon motion of any party, on notice to the sheriff and all other parties, the court may direct the sheriff to dispose of, account for, assign, return or release all or any part of any property or debt, or the proceeds thereof, or to file additional returns, subject to the payment of the sheriff's fees and expenses. As far as practicable, the court shall direct that notice of the motion be given to any other judgment creditors, at the addresses shown on the judgment docket and to any persons who have secured orders of attachment affecting any property or debt, or the proceeds thereof, sought to be returned or released.

§ 5239. Proceeding to determine adverse claims. Prior to the application of property or debt by a sheriff or receiver to the satisfaction of a judgment, any interested person may commence a special proceeding against the judgment creditor or other person with whom a dispute exists to determine rights in the property or debt. Service of process in such a proceeding shall be made by service of a notice of petition upon the respondent, the sheriff or receiver, and such other person as the court directs, in the same manner as a notice of motion. The proceeding may be commenced in the county where the property was

levied upon, or in a court or county specified in subdivision (a) of section 5221. The court may vacate the execution or order, void the levy, direct the disposition of the property or debt, or direct that damages be awarded. Where there appear to be disputed questions of fact, the court shall order a separate trial, indicating the person who shall have possession of the property pending a decision and the undertaking, if any, which such person shall give. If the court determines that any claim asserted was fraudulent, it may require the claimant to pay to any party adversely affected thereby the reasonable expenses incurred by such party in the proceeding, including reasonable attorneys' fees, and any other damages suffered by reason of the claim. The court may permit any interested person to intervene in the proceeding.

§ 5240. Modification or protective order; supervision of enforcement.

The court may at any time, on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure. Section 3104 is applicable to procedures under this article.

§ 5241. Income execution for support enforcement. (a) Definitions. As used in this section and in section fifty-two hundred forty-two of this chapter, the following terms shall have the following meanings:

1. "Order of support" means any temporary or final order, judgment, agreement or stipulation incorporated by reference in such judgment or decree in a matrimonial action or family court proceeding, or any foreign support order, judgment or decree, registered pursuant to article five-B of the family court act which directs the payment of alimony, maintenance, support or child support.

2. "Debtor" means any person directed to make payments by an order of support.

3. "Creditor" means any person entitled to enforce an order of

support, including a support collection unit.

4. "Employer" means any employer, future employer, former employer, union or employees' organization.

5. "Income payor" includes:

(i) the auditor, comptroller, trustee or disbursing officer of any pension fund, benefit program, policy of insurance or annuity;

(ii) the state of New York or any political subdivision thereof, or the United States; and

(iii) any person, corporation, trustee, unincorporated business or association, partnership, financial institution, bank, savings and loan association, credit union, stock purchase plan, stock option plan, profit sharing plan, stock broker, commodities broker, bond broker, real estate broker, insurance company, entity or institution.

6. "Income" includes any earned, unearned, taxable or non-taxable income, benefits, or periodic or lump sum payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability benefits, unemployment insurance benefits, payments pursuant to a public or private pension or retirement program, federal social security benefits as defined in 42 U.S.C. section 662(f) (2), and interest, but excluding public assistance benefits paid pursuant to the social services law and federal supplemental security income.

7. "Default" means the failure of a debtor to remit to a creditor three payments on the date due in the full amount directed by the order of support, or the accumulation of arrears equal to or greater than the amount directed to be paid for one month, whichever first occurs.

8. "Mistake of fact" means an error in the amount of current support or arrears or in the identity of the debtor or that the order of support does not exist or has been vacated.

9. "Support collection unit" means any support collection unit established by a social services district pursuant to the provisions of

section one hundred eleven-h of the social services law.

10. "Date of withholding" means the date on which the income would otherwise have been paid or made available to the debtor were it not withheld by the employer or income payor.

11. "Health insurance benefits" means any medical, dental, optical and prescription drugs and health care services or other health care benefits which may be provided for dependents through an employer or organization, including such employers or organizations which are self-insured.

12. "Business day" means a day on which state offices are open for regular business.

13. "Issuer" means a support collection unit, sheriff, the clerk of court, or the attorney for the creditor.

(b) Issuance. (1) When a debtor is in default, an execution for support enforcement may be issued by the support collection unit, or by the sheriff, the clerk of court or the attorney for the creditor as an officer of the court. Where a debtor is receiving or will receive income, an execution for deductions therefrom in amounts not to exceed the limits set forth in subdivision (g) of this section may be served upon an employer or income payor after notice to the debtor. The amount of the deductions to be withheld shall be sufficient to ensure compliance with the direction in the order of support, and shall include an additional amount to be applied to the reduction of arrears. The issuer may amend the execution before or after service upon the employer or income payor to reflect additional arrears or payments made by the debtor after notice pursuant to subdivision (d) of this section, or to conform the execution to the facts found upon a determination made pursuant to subdivision (e) of this section.

(2) (i) Where the court orders the debtor to provide health insurance benefits for specified dependents, an execution for medical support enforcement may, except as provided for herein, be issued by the support collection unit, or by the sheriff, the clerk of court or the attorney for the creditor as an officer of the court; provided, however, that

when the court issues an order of child support or combined child and spousal support on behalf of persons other than those in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, such medical execution shall be in the form of a separate qualified medical child support order as provided by subdivision (j) of section four hundred sixteen of the family court act and paragraph (h) of subdivision one of section two hundred forty of the domestic relations law. Such execution for medical support enforcement may require the debtor's employer, organization or group health plan administrator to purchase on behalf of the debtor and the debtor's dependents such available health insurance benefits. Such execution shall direct the employer, organization or group health plan administrator to provide to the dependents for whom such benefits are required to be provided or such dependents' custodial parent or legal guardian or social services district on behalf of persons applying for or in receipt of public assistance any identification cards and benefit claim forms and to withhold from the debtor's income the employee's share of the cost of such health insurance benefits, and to provide written confirmation of such enrollment indicating the date such benefits were or become available or that such benefits are not available and the reasons therefor to the issuer of the execution. An execution for medical support enforcement shall not require a debtor's employer, organization or group health plan administrator to purchase or otherwise acquire health insurance or health insurance benefits that would not otherwise be available to the debtor by reason of his or her employment or membership. Nothing herein shall be deemed to obligate or otherwise hold any employer, organization or group health plan administrator responsible for an option exercised by the debtor in selecting medical insurance coverage by an employee or member.

(ii) Where the child support order requires the debtor to provide health insurance benefits for specified dependents, and where the debtor provides such coverage and then changes employment, and the new employer provides health care coverage, an amended execution for medical support enforcement may be issued by the support collection unit, or by the sheriff, the clerk of the court or the attorney for the creditor as an officer of the court without any return to court. The issuance of the amended execution shall transfer notice of the requirements of the order

and the execution to the new employer, organization or group health plan administrator, and shall have the same effect as the original execution for medical support issued pursuant to this section unless the debtor contests the execution.

(3) Any inconsistent provisions of this title or other law notwithstanding, in any case in which a parent is required by a court order to provide health coverage for a child and the parent is eligible for health insurance benefits as defined in this section through an employer or organization, including those which are self-insured, doing business in the state, such employer or organization must, in addition to implementing the provisions of a medical support execution:

(i) permit such parent to immediately enroll under such health insurance benefit coverage any such dependent who is otherwise eligible for such coverage without regard to any seasonal enrollment restrictions;

(ii) if such a parent is enrolled but fails to make application to obtain coverage of such dependent child, immediately enroll such dependent child under such health benefit coverage upon application by such child's other parent or by the office of temporary and disability assistance or social services district furnishing medical assistance to such child, and

(iii) not disenroll, or eliminate coverage of, such a child unless:
(A) the employer or organization is provided with satisfactory written evidence that such court order is no longer in effect, or the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment, or

(B) such employer or organization has eliminated health insurance coverage for all similarly situated employees.

(c) Execution for support enforcement; form. (1) The income execution shall be on the form for income withholding promulgated by the office of temporary and disability assistance for this purpose and shall include the necessary information and directions to ensure its characterization as an income withholding notice as described and required by subsection (b) of section six hundred sixty-six of title forty-two of the United States Code; provided, however, that where the court enters an order for spousal support only for which income withholding will be ordered by the

sheriff, the clerk of court or the attorney for the creditor, an alternate spousal support form for income withholding promulgated by the office of temporary and disability assistance may be used but is not required. In addition, the income execution shall specify the court in which it was entered, the amount of the periodic payments directed, and the names of the debtor and creditor. In addition, to the extent not already provided on the form for income withholding, a separate document shall be served with the income execution which shall include:

(i) the name and address of the employer or income payor from whom the debtor is receiving or will receive income;

(ii) the amount of the deductions to be made therefrom on account of current support, and the amount to be applied to the reduction of arrears;

(iii) a notice that deductions will apply to current and subsequent income;

(iv) a notice that the income execution will be served upon any current or subsequent employer or income payor unless a mistake of fact is shown within fifteen days, a notice of the manner in which a mistake of fact may be asserted, and a notice that, if the debtor claims a mistake of fact, a determination will be made within forty-five days after notice to the debtor as provided in subdivision (d) of this section, and that the debtor will receive written notice whether the income execution will be served and of the time that deductions will begin;

(v) a notice that the employer or income payor must commence deductions no later than the first pay period that occurs after fourteen days following the service of the income execution and that payment must be remitted within seven business days of the date that the debtor paid;

(vi) a notice that the income execution is binding until further notice;

(vii) a notice of the substance of the provisions of section fifty-two hundred fifty-two of this article and that a violation thereof is punishable as a contempt of court by fine or imprisonment or both;

(viii) a notice of the limitations upon deductions from wages set forth in subdivision (g) of this section;

(ix) a notice that an employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last address

and the name and address of the new employer, if known;

(x) a notice that when an employer receives an income withholding instrument issued by another state, the employer shall apply the income withholding law of the state of the debtor's principal place of employment in determining:

(A) the employer's fee for processing income withholding;

(B) the maximum amount permitted to be withheld from the debtor's income;

(C) the time periods within which the employer must implement the income withholding and forward the child support payment;

(D) the priorities for withholding and allocating income withheld for multiple child support creditors; and

(E) any withholding terms or conditions not specified in the withholding instrument;

(xi) a notice that an employer who complies with an income execution that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice; and

(xii) the amount of arrears.

(2) The medical support execution shall contain the caption of the order of support and specify the date that the order of support was entered and the court in which it was entered. Such execution shall include the name and address of the employer or organization and shall include:

(i) a notice that the debtor has been ordered by the court to enroll the dependents in any available health insurance benefits and to maintain such coverage for such dependents as long as such benefits remain available;

(ii) a notice inquiring of the employer or organization as to whether such health insurance benefits are presently in effect for the eligible dependents named in the execution, the date such benefits were or become available, or that such benefits are not available and the reasons therefor and directing that the response to such inquiry immediately be forwarded to the issuer of such execution;

(iii) a statement directing the employer or organization to purchase on behalf of the debtor any available health insurance benefits to be made available to the debtor's dependents as directed by the execution, including the enrollment of such eligible dependents in such benefit

plans and the provision to the dependents or such dependents' custodial parent or legal guardian or social services district on behalf of persons applying for or in receipt of public assistance of any identification cards and benefit claim forms;

(iv) a statement directing the employer or organization to deduct from the debtor's income such amount which is the debtor's share of the premium, if any, for such health insurance benefits for such dependents who are otherwise eligible for such coverage without regard to any seasonal enrollment restrictions;

(v) a notice that the debtor's employer must notify the issuer promptly at any time the debtor terminates or changes such health insurance benefits;

(vi) a statement that the debtor's employer or organization shall not be required to purchase or otherwise acquire health insurance or health insurance benefits for such dependents that would not otherwise be available to the debtor by reason of his employment or membership;

(vii) a statement that failure to enroll the eligible dependents in such health insurance plan or benefits or failure to deduct from the debtor's income the debtor's share of the premium for such plan or benefits shall make such employer or organization jointly and severally liable for all medical expenses incurred on the behalf of the debtor's dependents named in the execution while such dependents are not so enrolled to the extent of the health insurance benefits that should have been provided under the execution;

(viii) the name and last known mailing address of the debtor and the name and mailing address of the dependents; provided however, that the name and mailing address of a social services official may be substituted on behalf of such dependents;

(ix) a reasonable description of the type of coverage to be provided to each dependent, or the manner in which such type of coverage is to be determined;

(x) the period to which such execution applies; and

(xi) a statement that the debtor's employer or organization shall not be required to provide any type or form of benefit or option not otherwise provided under the group health plan except to the extent necessary to meet the requirements of a law relating to medical child support described in section one thousand three hundred ninety-six-g-1

of title forty-two of the United States Code.

(d) Notice to debtor. The issuer shall serve a copy of the execution upon the debtor by regular mail to the debtor at his last known residence or such other place where he is likely to receive notice, or in the same manner as a summons may be served.

(e) Determination of mistake of fact. Where the execution has been issued by the support collection unit, the debtor may assert a mistake of fact and shall have an opportunity to make a submission in support of the objection within fifteen days from service of a copy thereof. Thereafter, the agency shall determine the merits of the objection, and shall notify the debtor of its determination within forty-five days after notice to the debtor as provided in subdivision (d) of this section. If the objection is disallowed, the debtor shall be notified that the income execution will be served on the employer or income payor, and of the time that deductions will begin. Where the income execution has been issued by an attorney as officer of the court, or by the sheriff, or by the clerk of the court, the debtor may assert a mistake of fact within fifteen days from service of a copy thereof by application to the supreme court or to the family court having jurisdiction in accordance with section four hundred sixty-one of the family court act. If application is made to the family court, such application shall be by petition on notice to the creditor and it shall be heard and determined in accordance with the provisions of section four hundred thirty-nine of the family court act, and a determination thereof shall be made, and the debtor notified thereof within forty-five days of the application. If application is made to the supreme court such application shall be by order to show cause or motion on notice to the creditor in the action in which the order or judgement sought to be enforced was entered and a determination thereof shall be made, and the debtor notified thereof within forty-five days of the application.

(f) Levy. If a debtor fails to show mistake of fact within fifteen days, or after a determination pursuant to subdivision (e) of this section has been made, or if the issuer is unable to serve the execution upon the debtor, the creditor may levy upon the income that the debtor is receiving or will receive by serving the execution upon the employer or income payor personally in the same manner as a summons or by regular mail, except that such service shall not be made by delivery to a person

authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318.

(g) Deduction from income. (1) An employer or income payor served with an income execution shall commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs fourteen days after service of the execution, and shall remit payments within seven business days of the date that the debtor is paid. Each payment remitted by an employer or income payor shall include the information as instructed on the income execution and shall be payable to and remitted to the state disbursement unit established in this state in accordance with section six hundred fifty-four-b of title forty-two of the United States Code unless the income execution is for spousal support only, in which case the payments shall be payable to and remitted to the creditor. If the money due to the debtor consists of salary or wages and his or her employment is terminated by resignation or dismissal at any time after service of the execution, the levy shall thereafter be ineffective, and the execution shall be returned, unless the debtor is reinstated or re-employed within ninety days after such termination. An employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last address and name and address of the new employer, if known. An income payor must notify the issuer promptly when the debtor no longer receives income and must provide the debtor's last address and the name and address of the debtor's new employer, if known. Where the income is compensation paid or payable to the debtor for personal services, the amount of the deductions to be withheld shall not exceed the following:

(i) Where a debtor is currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld shall not exceed fifty percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable earnings"), except that if any part of such deduction is to be applied to the reduction of arrears which shall have accrued more than twelve weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction shall not exceed fifty-five percent of disposable earnings.

(ii) Where a debtor is not currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be

withheld shall not exceed sixty percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable earnings"), except that if any part of such deduction is to be applied to the reduction of arrears which shall have accrued more than twelve weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction shall not exceed sixty-five percent of disposable earnings.

(2) (A) An employer or income payor served with an income execution in accordance with paragraph one of this subdivision shall be liable to the creditor for failure to deduct the amounts specified. The creditor may commence a proceeding against the employer or income payor for accrued deductions, together with interest and reasonable attorney's fees.

(B) An employer or income payor served with an income execution in accordance with paragraph one of this subdivision shall be liable to the creditor and the debtor for failure to remit any amounts which have been deducted as directed by the income execution. Either party may commence a proceeding against the employer or income payor for accrued deductions, together with interest and reasonable attorney's fees.

(C) The actions of the employer or income payor in deducting or failing to deduct amounts specified by an income execution shall not relieve the debtor of the underlying obligation of support.

(D) In addition to the remedies herein provided and as may be otherwise authorized by law, upon a finding by the family court that the employer or income payor failed to deduct or remit deductions as directed in the income execution, the court shall issue to the employer or income payor an order directing compliance and may direct the payment of a civil penalty not to exceed five hundred dollars for the first instance and one thousand dollars per instance for the second and subsequent instances of employer or income payor noncompliance. The penalty shall be paid to the creditor and may be enforced in the same manner as a civil judgment or in any other manner permitted by law.

(3) If an employer, organization or group health plan administrator is served with an execution for medical support enforcement, such employer, organization or group health plan administrator shall: (i) purchase on behalf of the debtor any health insurance benefits which may be made available to the debtor's dependents as ordered by the execution, including the immediate enrollment of such eligible dependents in such

benefit plans; (ii) provide the dependents for whom such benefits are required, or a social services official substituted for such dependents, identification cards and benefit claim forms; (iii) commence deductions from income due or thereafter due to the debtor of such amount which is the debtor's share of the premium, if any, for such health insurance benefits, provided, however, that such deduction when combined with deductions for support does not exceed the limitations set forth in paragraph one of this subdivision and is consistent with the priority provisions set forth in subdivision (h) of this section; and (iv) provide a confirmation of such enrollment indicating the date such benefits were or become available or that such benefits are not available and the reasons therefor to the issuer of the execution. Except as otherwise provided by law, nothing herein shall be deemed to obligate an employer or organization to maintain or continue an employee's or member's health insurance benefits.

(4) If such employer, organization or group health plan administrator shall fail to so enroll such eligible dependents or to deduct from the debtor's income the debtor's share of the premium, such employer, organization or group health plan administrator shall be jointly and severally liable for all medical expenses incurred on behalf of the debtor's dependents named in the execution while such dependents are not so enrolled to the extent of the insurance benefits that should have been provided under such execution. Except as otherwise provided by law, nothing herein shall be deemed to obligate an employer, organization or group health plan administrator to maintain or continue an employee's or member's health insurance benefits.

(h) Priority. A levy pursuant to this section or an income deduction order pursuant to section 5242 of this chapter shall take priority over any other assignment, levy or process. If an employer or income payor is served with more than one execution pursuant to this section, or with an execution pursuant to this section and also an order pursuant to section 5242 of this chapter, and if the combined total amount of the deductions to be withheld exceeds the limits set forth in subdivision (g) of this section, the employer or income payor shall withhold the maximum amount permitted thereby and pay to each creditor that proportion thereof which such creditor's claim bears to the combined total. Any additional deduction authorized by subdivision (g) of this section to be applied to

the reduction of arrears shall be applied to such arrears in proportion to the amount of arrears due to each creditor. Deductions to satisfy current support obligations shall have priority over deductions for the debtor's share of health insurance premiums which shall have priority over any additional deduction authorized by subdivision (g) of this section.

(i) Levy upon money payable by the state. A levy upon money payable directly by a department of the state, or by an institution under its jurisdiction, shall be made by serving the income execution upon the head of the department, or upon a person designated by him, at the office of the department in Albany; a levy upon money payable directly upon the state comptroller's warrant, or directly by a state board, commission, body or agency which is not within any department of the state, shall be made by serving the execution upon the state department of audit and control at its office in Albany. Service at the office of a department or any agency or institution of the state in Albany may be made by registered or certified mail, return receipt requested.

§ 5242. Income deduction order for support enforcement. (a) Upon application of a creditor, for good cause shown, and upon such terms as justice may require, the court may correct any defect, irregularity, error or omission in an income execution for support enforcement issued pursuant to section 5241 of this article.

(b) Upon application of a creditor, for good cause shown, the court may enter an income deduction order for support enforcement. In determining good cause, the court may take into consideration evidence of the degree of such debtor's past financial responsibility, credit references, credit history, and any other matter the court considers relevant in determining the likelihood of payment in accordance with the order of support. Proof of default establishes a prima facie case against the debtor, which can be overcome only by proof of the debtor's inability to make the payments. Unless the prima facie case is overcome, the court shall enter an income deduction order for support enforcement pursuant to this section.

(c) When the court enters an order of support on behalf of persons other than those in receipt of public assistance or in receipt of

services pursuant to section one hundred eleven-g of the social services law, or registers pursuant to article five-B of the family court act an order of support which has been issued by a foreign jurisdiction and which is not to be enforced pursuant to title six-A of article three of the social services law, where the court determines that the debtor has income that could be subject to an income deduction order, the court shall issue an income deduction order to obtain payment of the order at the same time it issues or registers the order. The court shall enter the income deduction order unless the court finds and sets forth in writing (i) the reasons that there is good cause not to require immediate income withholding; or (ii) that an agreement providing for an alternative arrangement has been reached between the parties. Such agreement may include a written agreement or an oral stipulation, made on the record, that results in a written order. For purposes of this subdivision, good cause shall mean substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income deduction order shall not constitute good cause. When the court determines that there is good cause not to issue an income deduction order immediately or when the parties agree to an alternative arrangement as provided in this subdivision, the court shall state expressly in the order of support the basis for its decision.

(d) In entering the income deduction order, the court shall use the form for income withholding promulgated by the office of temporary and disability assistance for this purpose, which form shall include the necessary information and directions to ensure the characterization of the income deduction order as an income withholding notice as described and required by subsection (b) of section six hundred sixty-six of title forty-two of the United States Code; provided, however, that where the court enters an order for spousal support only, an alternate spousal support form for income withholding promulgated by the office of temporary and disability assistance may be used but is not required. The court shall serve or cause to be served a copy of the income deduction order on the employer or income payor and transmit copies of such order to the parties; and, in addition, where the income deduction order is for child support or combined child and spousal support, to the state disbursement unit established in this state in accordance with section six hundred fifty-four-b of title forty-two of the United States Code.

(e) An employer or income payor served with an income deduction order entered pursuant to this section shall commence deductions from the income due or thereafter due to the debtor no later than the first pay period that occurs fourteen days after service of the income deduction order, and shall make payments payable to and remit such payments to the state disbursement unit if the deductions are for child or combined child and spousal support, or to the creditor if the deductions are for spousal support only, within seven business days of the date that the debtor is paid. Each payment remitted by the employer or income payor shall include the information as instructed on the income deduction order. The amount remitted by the employer or income payor shall be as set forth in the income deduction order including the additional amount that shall be ordered by the court and applied to the reduction of arrears, if any, unless such deduction is otherwise limited by subdivision (f) of this section.

(f) An employer or income payor shall be liable to the creditor for failure to deduct the amounts specified in the income deduction order, provided however that deduction by the employer or income payor of the amounts specified shall not relieve the debtor of the underlying obligation of support. If an employer or income payor shall fail to so pay the state disbursement unit or, if a spousal support only payment the creditor, the creditor may commence a proceeding against the employer or income payor for accrued deductions, together with interest and reasonable attorney's fees. If the debtor's employment is terminated by resignation or dismissal at any time after service of the income deduction order, the order shall cease to have force and effect unless the debtor is reinstated or re-employed within ninety days after such termination. An employer must notify the issuer promptly when the debtor terminates employment and must provide the debtor's last address and the name and address of the debtor's new employer, if known. An income payor must notify the issuer when the debtor no longer receives income and must provide the debtor's last address and the name and address of the debtor's new employer, if known. Where the income is compensation paid or payable to the debtor for personal services, the amount withheld by the employer shall not exceed the following:

(i) Where the debtor currently is supporting a spouse or dependent child other than the creditor's dependent child, the amount withheld

shall not exceed fifty percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable earnings"), except that if any part of the deduction is to be applied to the reduction of arrears which shall have accrued more than twelve weeks prior to the beginning of the week for which such earnings are payable, the amount withheld shall not exceed fifty-five percent of disposable earnings.

(ii) Where the debtor currently is not supporting a spouse or dependent child other than the creditor's dependent child, the amount withheld shall not exceed sixty percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable earnings"), except that if any part of the deduction is to be applied to the reduction of arrears which shall have accrued more than twelve weeks prior to the beginning of the week for which such earnings are payable, the amount withheld shall not exceed sixty-five percent of disposable earnings.

(g) An order pursuant to this section shall take priority over any other assignment, levy or process. If an employer or income payor is served with more than one income deduction order pertaining to a single employee pursuant to this section, or with an order issued pursuant to this section and also an execution pursuant to section 5241 of this article, and if the combined total amount of the income to be withheld exceeds the limits set forth in subdivision (f) of this section, the employer or income payor shall withhold the maximum amount permitted thereby and pay to each creditor that proportion thereof which such creditor's claim bears to the combined total.

(h) An employer or income payor shall be liable to the creditor for failure to deduct the amounts specified, provided however that deduction of the amounts specified by the employer or income payor shall not relieve the debtor of the underlying obligation of support.

(i) A creditor shall not be required to issue process under section 5241 of this article prior to obtaining relief pursuant to this section.

§ 5250. Arrest of judgment debtor. Upon motion of the judgment creditor without notice, where it is shown that the judgment debtor is about to depart from the state, or keeps himself concealed therein, and

that there is reason to believe that he has in his possession or custody property in which he has an interest, the court may issue a warrant directed to the sheriff of any county in which the judgment debtor may be located. The warrant shall command the sheriff to arrest the judgment debtor forthwith and bring him before the court. The sheriff shall serve a copy of the warrant and the papers upon which it was based upon the judgment debtor at the time he makes the arrest. When the judgment debtor is brought before the court, the court may order that he give an undertaking, in a sum to be fixed by the court, that he will attend before the court for examination and that he will obey the terms of any restraining notice contained in the order.

§ 5251. Disobedience of subpoena, restraining notice or order; false swearing; destroying notice of sale. Refusal or willful neglect of any person to obey a subpoena or restraining notice issued, or order granted, pursuant to this title; false swearing upon an examination or in answering written questions; and willful defacing or removal of a posted notice of sale before the time fixed for the sale, shall each be punishable as a contempt of court.

§ 5252. Discrimination against employees and prospective employees based upon wage assignment or income execution. 1. No employer shall discharge, lay off, refuse to promote, or discipline an employee, or refuse to hire a prospective employee, because one or more wage assignments or income executions have been served upon such employer or a former employer against the employee's or prospective employee's wages or because of the pendency of any action or judgment against such employee or prospective employee for nonpayment of any alleged contractual obligation. In addition to being subject to the civil action authorized in subdivision two of this section, where any employer discharges, lays off, refuses to promote or disciplines an employee or refuses to hire a prospective employee because of the existence of one or more income executions and/or income deduction orders issued pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of this article, the court may direct the payment of a civil penalty not to

exceed five hundred dollars for the first instance and one thousand dollars per instance for the second and subsequent instances of employer or income payor discrimination. The penalty shall be paid to the creditor and may be enforced in the same manner as a civil judgment or in any other manner permitted by law.

2. An employee or prospective employee may institute a civil action for damages for wages lost as a result of a violation of this section within ninety days after such violation. Damages recoverable shall not exceed lost wages for six weeks and in such action the court also may order the reinstatement of such discharged employee or the hiring of such prospective employee. Except as provided for in subdivision (g) of section fifty-two hundred forty-one, not more than ten per centum of the damages recovered in such action shall be subject to any claims, attachments or executions by any creditors, judgment creditors or assignees of such employee or prospective employee. A violation of this section may also be punished as a contempt of court pursuant to the provisions of section seven hundred fifty-three of the judiciary law.

§ 5253. Cost of living adjustment for personal and real property exempt from application to the satisfaction of money judgments and exemptions in bankruptcy. (a) Beginning on April first, two thousand twelve, and at each three-year interval ending on April first thereafter, the dollar amount of the exemption provided in sections fifty-two hundred five and fifty-two hundred six of this article and sections two hundred eighty-two and two hundred eighty-three of the debtor and creditor law shall be adjusted as provided in subdivision (b) of this section.

(b) The superintendent of financial services shall determine the amount of the adjustment based on the change in the consumer price index for all urban consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, published by the U.S. department of labor, bureau of labor statistics, for the most recent three-year period ending on December thirty-first preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars.

(c) Beginning on April first, two thousand twelve, and at each

three-year interval ending on April first thereafter, the superintendent of financial services shall publish the current dollar amount of the applicable exemption provided in this article, together with the date of the next scheduled adjustment. The publication shall be substantially in the form set forth below:

"Current dollar amount of exemption from application to the satisfaction of money judgments under New York civil practice law and rules sections 5205 and 5206 and exemptions in bankruptcy under debtor and creditor law sections 282 and 283:

The following is the current dollar amount of exemptions from the satisfaction of money judgments under civil practice law and rules sections 5205 and 5206 and under debtor and creditor law sections 282 and 283:

(amount)

This amount is effective on April 1, (year) and shall not apply to cases commenced before April 1, (year). The next adjustment is scheduled for April 1, (year). Such adjustments shall not apply with respect to restraining notices served or executions effected before the date of the adjustment. Nothing in this section limits the judgment debtor's exemption rights in this section or under any other law."

ARTICLE 53

RECOGNITION OF FOREIGN COUNTRY MONEY JUDGMENTS

5300. Citation.

5301. Definitions.

(a) Foreign country.

(b) Foreign country judgment.

5302. Applicability.

5303. Recognition enforcement, and proceedings.

5304. Grounds for non-recognition.

5305. Personal jurisdiction.

5306. Stay of a proceeding pending appeal of a foreign country judgment.

5307. Effort of recognition.

5308. Uniformity of interpretation.

§ 5300. Citation. This article may be cited as the "Uniform Foreign Country Money Judgments Act."

§ 5301. Definitions. As used in this article the following definitions shall be applicable.

(a) Foreign country. "Foreign country" means a government other than:

1. the United States;

2. a state, district, commonwealth, territory or insular possession of the United States; or

3. any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) Foreign country judgment. "Foreign country judgment" means a judgment of a court of a foreign country.

§ 5302. Applicability. (a) Except as otherwise provided in subdivision (b) of this section, the provisions of this article apply to a foreign country judgment to the extent that such judgment:

1. grants or denies recovery of a sum of money; and

2. under the law of the foreign country where rendered, is final, conclusive and enforceable even though an appeal therefrom is pending or it is subject to appeal.

(b) This article does not apply to a foreign country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent the judgment is:

1. a judgment for taxes;

2. a fine or penalty; or

3. a judgment for divorce, support or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign country judgment has the burden of establishing that this article applies to the foreign country judgment.

§ 5303. Recognition enforcement, and proceedings. (a) Except as is otherwise provided in section fifty-three hundred four of this article or any controlling law of the United States, a court of this state shall recognize a foreign country judgment to which this article applies as conclusive between the parties to the extent that it grants or denies recovery of a sum of money.

(b) If recognition of a foreign country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action on the judgment or a motion for summary judgment in lieu of complaint seeking recognition of the foreign country judgment.

(c) If recognition of a foreign country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim or affirmative defense.

(d) An action to recognize a foreign country judgment must be commenced within the earlier of the time during which the foreign country judgment is effective in the foreign country or twenty years from the date that the foreign country judgment became effective in the foreign country.

§ 5304. Grounds for non-recognition. (a) A court of this state may not recognize a foreign country judgment if:

1. the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

2. the foreign court did not have personal jurisdiction over the defendant; or

3. the foreign court did not have jurisdiction over the subject matter.

(b) A court of this state need not recognize a foreign country judgment if:

1. the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

2. the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

3. the judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States;

4. the judgment conflicts with another final and conclusive judgment;

5. the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by a proceeding in that court;

6. in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

7. the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering courts with respect to the judgment;

8. the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law; or

9. the cause of action resulted in a defamation judgment obtained in a jurisdiction outside the United States, unless the court before which the matter is brought sitting in this state first determines that the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by both the United States and New York constitutions.

(c) A party resisting recognition of a foreign country judgment has the burden of establishing that a ground for non-recognition stated in subdivision (a) or (b) of this section exists; provided that the party seeking recognition shall bear the burden of establishing the adequate protections for freedom of speech and press required as a condition to recognition under paragraph nine of subdivision (b) of this section if the party resisting recognition establishes that the judgment is for defamation.

§ 5305. Personal jurisdiction. (a) A foreign country judgment may not be refused recognition for lack of personal jurisdiction if:

1. the defendant was served with process personally in the foreign country;

2. the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

3. the defendant prior to the commencement of the proceeding had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

4. the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, or had otherwise acquired corporate status, in the foreign country;

5. the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

6. the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of such operation.

(b) The courts of this state may recognize bases of personal jurisdiction other than those listed in subdivision (a) of this section as sufficient to support a foreign country judgment.

§ 5306. Stay of a proceeding pending appeal of a foreign country judgment. If a party establishes that an appeal from a foreign country judgment is pending or will be taken, the court may stay any proceeding with regard to the foreign country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

§ 5307. Effect of recognition. (a) If the court, in a proceeding under section fifty-three hundred five of this article finds that the judgment is entitled to recognition under this article, then, to the extent that the foreign country judgment grants or denies recovery of a sum of money, the foreign country judgment is:

1. conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

2. enforceable in the same manner and to the same extent as a judgment rendered in this state.

(b) This article does not prevent the recognition of a foreign country judgment in situations not covered by this article.

§ 5308. Uniformity of interpretation. This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact these provisions.

ARTICLE 54
ENFORCEMENT OF JUDGMENTS
ENTITLED TO FULL FAITH AND CREDIT
SUMMARY OF ARTICLE

Section 5401. Definition.

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(b) Status of foreign judgments.

5403. Notice of filing.

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(a) Based upon security in foreign jurisdiction.

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§ 5401. Definition. In this article "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, except one obtained by default in appearance, or by confession of judgment.

§ 5402. Filing and status of foreign judgments. (a) Filing. A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed within ninety days of the date of authentication in the office of any county clerk of the state. The judgment creditor shall file with the judgment an affidavit stating that the judgment was not obtained by default in appearance or by confession of judgment, that it is unsatisfied in whole or in part, the

amount remaining unpaid, and that its enforcement has not been stayed, and setting forth the name and last known address of the judgment debtor.

(b) Status of foreign judgments. The clerk shall treat the foreign judgment in the same manner as a judgment of the supreme court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the supreme court of this state and may be enforced or satisfied in like manner.

§ 5403. Notice of filing. Within thirty days after filing of the judgment and the affidavit, the judgment creditor shall mail notice of filing of the foreign judgment to the judgment debtor at his last known address. The proceeds of an execution shall not be distributed to the judgment creditor earlier than thirty days after filing of proof of service.

§ 5404. Stay. (a) Based upon security in foreign jurisdiction. If the judgment debtor shows the supreme court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) Based upon other grounds. If the judgment debtor shows the supreme court any ground upon which enforcement of a judgment of the supreme court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

§ 5405. Fees. When a foreign judgment is filed pursuant to this article, an index number shall be assigned in accordance with the

provisions of subdivision (a) of section 8018 and the fee shall be as prescribed therein.

§ 5406. Optional procedure. The right of a judgment creditor to proceed by an action on the judgment or a motion for summary judgment in lieu of complaint, instead of proceeding under this article, remains unimpaired.

§ 5407. Uniformity of interpretation. This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact these provisions.

§ 5408. Citation. This article may be cited as the "Uniform Enforcement of Foreign Judgments Act."

ARTICLE 55

APPEALS GENERALLY

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§ 5501. Scope of review. (a) Generally, from final judgment. An appeal from a final judgment brings up for review:

1. any non-final judgment or order which necessarily affects the final judgment, including any which was adverse to the respondent on the appeal from the final judgment and which, if reversed, would entitle the respondent to prevail in whole or in part on that appeal, provided that such non-final judgment or order has not previously been reviewed by the court to which the appeal is taken;

2. any order denying a new trial or hearing which has not previously been reviewed by the court to which the appeal is taken;

3. any ruling to which the appellant objected or had no opportunity to object or which was a refusal or failure to act as requested by the appellant, and any charge to the jury, or failure or refusal to charge as requested by the appellant, to which he objected;

4. any remark made by the judge to which the appellant objected; and

5. a verdict after a trial by jury as of right, when the final judgment was entered in a different amount pursuant to the respondent's stipulation on a motion to set aside the verdict as excessive or inadequate; the appellate court may increase such judgment to a sum not exceeding the verdict or reduce it to a sum not less than the verdict.

(b) Court of appeals. The court of appeals shall review questions of law only, except that it shall also review questions of fact where the appellate division, on reversing or modifying a final or interlocutory judgment, has expressly or impliedly found new facts and a final judgment pursuant thereto is entered. On an appeal pursuant to subdivision (d) of section fifty-six hundred one, or subparagraph (ii) of paragraph one of subdivision (a) of section fifty-six hundred two, or subparagraph (ii) of paragraph two of subdivision (b) of section fifty-six hundred two, only the non-final determination of the appellate division shall be reviewed.

(c) Appellate division. The appellate division shall review questions of law and questions of fact on an appeal from a judgment or order of a court of original instance and on an appeal from an order of the supreme court, a county court or an appellate term determining an appeal. The notice of appeal from an order directing summary judgment, or directing judgment on a motion addressed to the pleadings, shall be deemed to specify a judgment upon said order entered after service of the notice of appeal and before entry of the order of the appellate court upon such appeal, without however affecting the taxation of costs upon the appeal. In reviewing a money judgment in an action in which an itemized verdict is required by rule forty-one hundred eleven of this chapter in which it is contended that the award is excessive or inadequate and that a new

trial should have been granted unless a stipulation is entered to a different award, the appellate division shall determine that an award is excessive or inadequate if it deviates materially from what would be reasonable compensation.

(d) Appellate term. The appellate term shall review questions of law and questions of fact.

§ 5511. Permissible appellant and respondent. An aggrieved party or a person substituted for him may appeal from any appealable judgment or order except one entered upon the default of the aggrieved party. He shall be designated as the appellant and the adverse party as the respondent.

§ 5512. Appealable paper; entry of order made out of court. (a) Appealable paper. An initial appeal shall be taken from the judgment or order of the court of original instance and an appeal seeking review of an appellate determination shall be taken from the order entered in the office of the clerk of the court whose order is sought to be reviewed. If a timely appeal is taken from a judgment or order other than that specified in the last sentence and no prejudice results therefrom and the proper paper is furnished to the court to which the appeal is taken, the appeal shall be deemed taken from the proper judgment or order.

(b) Entry of order made out of court. Entry of an order made out of court and filing of the papers on which the order was granted may be compelled by order of the court from or to which an appeal from the order might be taken.

§ 5513. Time to take appeal, cross-appeal or move for permission to appeal. (a) Time to take appeal as of right. An appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

(b) Time to move for permission to appeal. The time within which a motion for permission to appeal must be made shall be computed from the date of service by a party upon the party seeking permission of a copy of the judgment or order to be appealed from and written notice of its entry, or, where permission has already been denied by order of the court whose determination is sought to be reviewed, of a copy of such order and written notice of its entry, except that when such party seeking permission to appeal has served a copy of such judgment or order and written notice of its entry, the time shall be computed from the date of such service. A motion for permission to appeal must be made within thirty days.

(c) Additional time where adverse party takes appeal or moves for permission to appeal. A party upon whom the adverse party has served a notice of appeal or motion papers on a motion for permission to appeal may take an appeal or make a motion for permission to appeal within ten days after such service or within the time limited by subdivision (a) or (b) of this section, whichever is longer, if such appeal or motion is otherwise available to such party.

(d) Additional time where service of judgment or order and notice of entry is served by mail or overnight delivery service. Where service of the judgment or order to be appealed from and written notice of its entry is made by mail pursuant to paragraph two of subdivision (b) of rule twenty-one hundred three or by overnight delivery service pursuant to paragraph six of subdivision (b) of rule twenty-one hundred three of this chapter, the additional days provided by such paragraphs shall apply to this action, regardless of which party serves the judgment or order with notice of entry.

§ 5514. Extension of time to take appeal or to move for permission to appeal. (a) Alternate method of appeal. If an appeal is taken or a motion for permission to appeal is made and such appeal is dismissed or motion is denied and, except for time limitations in section 5513, some other method of taking an appeal or of seeking permission to appeal is available, the time limited for such other method shall be computed from the dismissal or denial unless the court to which the appeal is sought to be taken orders otherwise.

(b) Disability of attorney. If the attorney for an aggrieved party dies, is removed or suspended, or becomes physically or mentally incapacitated or otherwise disabled before the expiration of the time limited for taking an appeal or moving for permission to appeal without having done so, such appeal may be taken or such motion for permission to appeal may be served within sixty days from the date of death, removal or suspension, or commencement of such incapacity or disability.

(c) Other extensions of time; substitutions or omissions. No extension of time shall be granted for taking an appeal or for moving for permission to appeal except as provided in this section, section 1022, or section 5520.

§ 5515. Taking an appeal; notice of appeal.

1. An appeal shall be taken by serving on the adverse party a notice of appeal and filing it in the office where the judgment or order of the court of original instance is entered except that where an order granting permission to appeal is made, the appeal is taken when such order is entered. A notice shall designate the party taking the appeal, the judgment or order or specific part of the judgment or order appealed from and the court to which the appeal is taken.

2. Whenever an appeal is taken to the court of appeals, a copy of the notice of appeal shall be sent forthwith to the clerk of the court of appeals by the clerk of the office where the notice of appeal is required to be filed pursuant to this section.

3. Where leave to appeal to the court of appeals is granted by permission of the appellate division, a copy of the order granting such permission to appeal shall be sent forthwith to the clerk of the court of appeals by the clerk of the appellate division.

Rule 5516. Motion for permission to appeal. A motion for permission to appeal shall be noticed to be heard at a motion day at least eight days and not more than fifteen days after notice of the motion is served,

unless there is no motion day during that period, in which case at the first motion day thereafter.

§ 5517. Subsequent orders. (a) Appeal not affected by certain subsequent orders. An appeal shall not be affected by:

1. the granting of a motion for reargument or the granting of an order upon reargument making the same or substantially the same determination as is made in the order appealed from; or

2. the granting of a motion for resettlement of the order appealed from; or

3. the denial of a motion, based on new or additional facts, for the same or substantially the same relief applied for in the motion on which the order appealed from was made.

(b) Review of subsequent orders. A court reviewing an order may also review any subsequent order made upon a motion specified in subdivision (a), if the subsequent order is appealable as of right.

§ 5518. Preliminary injunction or temporary restraining order by appellate division. The appellate division may grant, modify or limit a preliminary injunction or temporary restraining order pending an appeal or determination of a motion for permission to appeal in any case specified in section 6301.

§ 5519. Stay of enforcement. (a) Stay without court order. Service upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal where:

1. the appellant or moving party is the state or any political subdivision of the state or any officer or agency of the state or of any

political subdivision of the state; provided that where a court, after considering an issue specified in question four of section seventy-eight hundred three of this chapter, issues a judgment or order directing reinstatement of a license held by a corporation with no more than five stockholders and which employs no more than ten employees, a partnership with no more than five partners and which employs no more than ten employees, a proprietorship or a natural person, the stay provided for by this paragraph shall be for a period of fifteen days; or

2. the judgment or order directs the payment of a sum of money, and an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed; or

3. the judgment or order directs the payment of a sum of money, to be paid in fixed installments, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party shall pay each installment which becomes due pending the appeal and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay any installments or part of installments then due or the part of them as to which the judgment or order is affirmed; or

4. the judgment or order directs the assignment or delivery of personal property, and the property is placed in the custody of an officer designated by the court of original instance to abide the direction of the court to which the appeal is taken, or an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will obey the direction of the court to which the appeal is taken; or

5. the judgment or order directs the execution of any instrument, and the instrument is executed and deposited in the office where the original judgment or order is entered to abide the direction of the court to which the appeal is taken; or

6. the appellant or moving party is in possession or control of real property which the judgment or order directs be conveyed or delivered, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will not commit or suffer to be committed any waste and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the value of the use and occupancy of such property, or the part of it as to which the judgment or order is affirmed, from the taking of the appeal until the delivery of possession of the property; if the judgment or order directs the sale of mortgaged property and the payment of any deficiency, the undertaking shall also provide that the appellant or moving party shall pay any such deficiency; or

7. the judgment or order directs the performance of two or more of the acts specified in subparagraphs two through six and the appellant or moving party complies with each applicable subparagraph.

(b) Stay in action defended by insurer. If an appeal is taken from a judgment or order entered against an insured in an action which is defended by an insurance corporation, or other insurer, on behalf of the insured under a policy of insurance the limit of liability of which is less than the amount of said judgment or order, all proceedings to enforce the judgment or order to the extent of the policy coverage shall be stayed pending the appeal, and no action shall be commenced or maintained against the insurer for payment under the policy pending the appeal, where the insurer:

1. files with the clerk of the court in which the judgment or order was entered a sworn statement of one of its officers, describing the nature of the policy and the amount of coverage together with a written undertaking that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the insurer shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed, to the extent of the limit of liability in the policy, plus interest and costs;

2. serves a copy of such sworn statement and undertaking upon the judgment creditor or his attorney; and

3. delivers or mails to the insured at the latest address of the insured appearing upon the records of the insurer, written notice that the enforcement of such judgment or order, to the extent that the amount it directs to be paid exceeds the limit of liability in the policy, is not stated in respect to the insured. A stay of enforcement of the balance of the amount of the judgment or order may be imposed by giving an undertaking, as provided in paragraph two of subdivision (a), in an amount equal to that balance.

(c) Stay and limitation of stay by court order. The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal in a case not provided for in subdivision (a) or subdivision (b), or may grant a limited stay or may vacate, limit or modify any stay imposed by subdivision (a), subdivision (b) or this subdivision, except that only the court to which an appeal is taken may vacate, limit or modify a stay imposed by paragraph one of subdivision (a).

(d) Undertaking. On an appeal from an order affirming a judgment or order, the undertaking shall secure both the order and the judgment or order which is affirmed.

(e) Continuation of stay. If the judgment or order appealed from is affirmed or modified, the stay shall continue for five days after service upon the appellant of the order of affirmance or modification with notice of its entry in the court to which the appeal was taken. If an appeal is taken, or a motion is made for permission to appeal, from such an order before the expiration of the five days, the stay shall continue until five days after service of notice of the entry of the order determining such appeal or motion. When a motion for permission to appeal is involved, the stay, or any other stay granted pending determination of the motion for permission to appeal, shall:

(i) if the motion is granted, continue until five days after the appeal is determined; or

(ii) if the motion is denied, continue until five days after the movant is served with the order of denial with notice of its entry.

(f) Proceedings after stay. A stay of enforcement shall not prevent the court of original instance from proceeding in any matter not affected by the judgment or order appealed from or from directing the sale of perishable property.

(g) Appeals in medical, dental or podiatric malpractice judgments. In an action for medical, dental or podiatric malpractice, if an appeal is taken from a judgment in excess of one million dollars and an undertaking in the amount of one million dollars or the limit of insurance coverage available to the appellant for the occurrence, whichever is greater, is given together with a joint undertaking by the appellant and any insurer of the appellant's professional liability that, during the period of such stay, the appellant will make no voidable transaction as described in article ten of the debtor and creditor law, the court to which such an appeal is taken shall stay all proceedings to enforce the judgment pending such appeal if it finds that there is a reasonable probability that the judgment may be reversed or determined excessive. In making a determination under this subdivision, the court shall not consider the availability of a stay pursuant to subdivision (a) or (b) of this section. Liability under such joint undertaking shall be limited to voidable transactions made by the appellant subsequent to the execution of such undertaking and during the period of such stay, but nothing herein shall limit the liability of the appellant for voidable transactions pursuant to article ten of the debtor and creditor law or any other law. An insurer that pays money to a beneficiary of such a joint undertaking shall thereupon be subrogated, to the extent of the amount to be paid, to the rights and interests of such beneficiary, as a judgment creditor, against the appellant on whose behalf the joint undertaking was executed.

§ 5520. Omissions; appeal by improper method. (a) Omissions. If an appellant either serves or files a timely notice of appeal or notice of motion for permission to appeal, but neglects through mistake or excusable neglect to do another required act within the time limited, the court from or to which the appeal is taken or the court of original instance may grant an extension of time for curing the omission.

(b) Appeal by permission instead of as of right. An appeal taken by

permission shall not be dismissed upon the ground that the appeal would lie as of right and was not taken within the time limited for an appeal as of right, provided the motion for permission was made within the time limited for taking the appeal.

(c) Defects in form. Where a notice of appeal is premature or contains an inaccurate description of the judgment or order appealed from, the appellate court, in its discretion, when the interests of justice so demand, may treat such a notice as valid.

Rule 5521. Preferences. (a) Preferences in the hearing of an appeal may be granted in the discretion of the court to which the appeal is taken.

(b) Consistent with the provisions of section one thousand one hundred twelve of the family court act, appeals from orders, judgments or decrees in proceedings brought pursuant to articles three, seven, ten and ten-A and parts one and two of article six of the family court act, and pursuant to sections three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four, and three hundred eighty-four-b of the social services law, and pursuant to paragraph (d) of subdivision four and subparagraph (ii) of paragraph (d) of subdivision five of section eighty-nine of the public officers law, shall be given preference and may be brought on for argument on such terms and conditions as the court may direct without the necessity of a motion.

Rule 5522. Disposition of appeal. (a) A court to which an appeal is taken may reverse, affirm, or modify, wholly or in part, any judgment, or order before it, as to any party. The court shall render a final determination or, where necessary or proper, remit to another court for further proceedings. A court reversing or modifying a judgment or order without opinion shall briefly state the grounds of its decision.

(b) In an appeal from a money judgment in an action in which an itemized verdict is required by rule forty-one hundred eleven of this chapter in which it is contended that the award is excessive or inadequate, the appellate division shall set forth in its decision the

reasons therefor, including the factors it considered in complying with subdivision (c) of section fifty-five hundred one of this chapter.

§ 5523. Restitution. A court reversing or modifying a final judgment or order or affirming such a reversal or modification may order restitution of property or rights lost by the judgment or order, except that where the title of a purchaser in good faith and for value would be affected, the court may order the value or the purchase price restored or deposited in court.

Rule 5524. Entry of order; remittitur and further proceedings. (a) Entry of order in appellate court. An order of a court to which an appeal is taken shall be entered in the office of the clerk of that court.

(b) Remittitur and further proceedings. A copy of the order of the court to which an appeal is taken determining the appeal, together with the record on appeal, shall be remitted to the clerk of the court of original instance except that where further proceedings are ordered in another court, they shall be remitted to the clerk of such court. The entry of such copy shall be authority for any further proceedings. Any judgment directed by the order shall be entered by the clerk of the court to which remission is made.

Rule 5525. Preparation and settlement of transcript; statement in lieu of transcript. (a) Preparation of transcript. Where a stenographic record of the proceedings is made, the appellant, within the time for taking the appeal, shall serve upon the stenographic reporter a request for a transcript of the proceedings and, unless the appellant is the state or any political subdivision of the state or an officer or agency of the state or of any political subdivision of the state, shall deposit a sum sufficient to pay the fee. As soon as possible after receiving such notice the reporter shall serve upon the appellant the ribbon copy and a carbon copy of the typewritten transcript, or two copies of the transcript if it is reproduced by any other means. The appellate

division in each department may by rule applicable in the department to all appeals taken from judgments or orders entered in the department, provide that only a ribbon copy of the typewritten transcript be prepared and provide for the use of such copy by the parties and the court.

(b) Omission of part of transcript. The parties may stipulate that only a portion of the record be transcribed. No transcript is necessary where a party appeals from a judgment entered upon a referee's report, or a decision of the court upon a trial without a jury, and he relies only upon exceptions to rulings on questions of law made after the case is finally submitted.

(c) Settlement of transcript. 1. Within fifteen days after receiving the transcript from the court reporter or from any other source, the appellant shall make any proposed amendments and serve them and a copy of the transcript upon the respondent. Within fifteen days after such service the respondent shall make any proposed amendments or objections to the proposed amendments of the appellant and serve them upon the appellant. At any time thereafter and on at least four days' notice to the adverse party, the transcript and the proposed amendments and objections thereto shall be submitted for settlement to the judge or referee before whom the proceedings were had if the parties cannot agree on the amendments to the transcript. The original of the transcript shall be corrected by the appellant in accordance with the agreement of the parties or the direction of the court and its correctness shall be certified to thereon by the parties or the judge or referee before whom the proceedings were had. When he serves his brief upon the respondent the appellant shall also serve a conformed copy of the transcript or deposit it in the office of the clerk of the court of original instance who shall make it available to respondent.

2. If the appellant has timely proposed amendments and served them with a copy of the transcript on respondent, and no amendments or objections are proposed by the respondent within the time limited by paragraph 1, the transcript, certified as correct by the court reporter, together with appellant's proposed amendments, shall be deemed correct without the necessity of a stipulation by the parties certifying to its correctness or the settlement of the transcript by the judge or referee.

The appellant shall affix to such transcript an affirmation, certifying to his compliance with the time limitation, the service of the notice provided by paragraph 3 and the respondent's failure to propose amendments or objections within the time prescribed.

3. Appellant shall serve on respondent together with a copy of the transcript and the proposed amendments, a notice of settlement containing a specific reference to subdivision (c) of this rule, and stating that if respondent fails to propose amendments or objections within the time limited by paragraph 1, the provisions of paragraph 2 shall apply.

(d) Statement in lieu of stenographic transcript. Where no stenographic record of the proceedings is made, the appellant, within ten days after taking his appeal, shall prepare and serve upon the respondent a statement of the proceedings from the best available sources, including his recollection, for use instead of a transcript. The respondent may serve upon the appellant objections or proposed amendments to the statement within ten days after such service. The statement, with objections or proposed amendments, shall be submitted for settlement to the judge or referee before whom the proceedings were had.

(e) Special rules prescribing time limitations in settlement of transcript or statement in lieu thereof authorized. The appellate division in each department may by rule applicable in the department prescribe other limitations of time different from those prescribed in subdivisions (c) and (d) for serving transcripts, or statements in lieu of transcripts, and proposed amendments or objections, and for submission thereof for settlement.

Rule 5526. Content and form of record on appeal. The record on appeal from a final judgment shall consist of the notice of appeal, the judgment-roll, the corrected transcript of the proceedings or a statement pursuant to subdivision (d) of rule 5525 if a trial or hearing was held, any relevant exhibits, or copies of them, in the court of original instance, any other reviewable order, and any opinions in the case. The record on appeal from an interlocutory judgment or any order

shall consist of the notice of appeal, the judgment or order appealed from, the transcript, if any, the papers and other exhibits upon which the judgment or order was founded and any opinions in the case. All printed or reproduced papers comprising the record on appeal shall be eleven inches by eight and one-half inches. The subject matter of each page of the record shall be stated at the top thereof, except that in the case of papers other than testimony, the subject matter of the paper may be stated at the top of the first page of each paper, together with the page numbers of the first and last pages thereof. In the case of testimony, the name of the witness, by whom he was called and whether the testimony is direct, cross, redirect or recross examination shall be stated at the top of each page.

Rule 5527. Statement in lieu of record on appeal. When the questions presented by an appeal can be determined without an examination of all the pleadings and proceedings, the parties may prepare and sign a statement showing how the questions arose and were decided in the court from which the appeal is taken and setting forth only so much of the facts averred and proved or sought to be proved as are necessary to a decision of the questions. The statement may also include portions of the transcript of the proceedings and other relevant matter. It shall include a copy of the judgment or order appealed from, the notice of appeal and a statement of the issues to be determined. Within twenty days after the appellant has taken his appeal, the statement shall be presented to the court from which the appeal is taken for approval as the record on appeal. The court may make corrections or additions necessary to present fully the questions raised by the appeal. The approved statement shall be printed as a joint appendix.

Rule 5528. Content of briefs and appendices. (a) Appellant's brief and appendix. The brief of the appellant shall contain in the following order:

1. a table of contents, which shall include the contents of the appendix, if it is not bound separately, with references to the initial

page of each paper printed and of the direct, cross, and redirect examination of each witness;

2. a concise statement, not exceeding two pages, of the questions involved without names, dates, amounts or particulars, with each question numbered, set forth separately and followed immediately by the answer, if any, of the court from which the appeal is taken;

3. a concise statement of the nature of the case and of the facts which should be known to determine the questions involved, with supporting references to pages in the appendix;

4. the argument for the appellant, which shall be divided into points by appropriate headings distinctively printed; and

5. an appendix, which may be bound separately, containing only such parts of the record on appeal as are necessary to consider the questions involved, including those parts the appellant reasonably assumes will be relied upon by the respondent; provided, however, that the appellate division in each department may by rule applicable in the department authorize an appellant at his election to proceed upon a record on appeal printed or reproduced in like manner as an appendix, and in the event of such election an appendix shall not be required.

(b) Respondent's brief and appendix. The brief of the respondent shall conform to the requirements of subdivision (a), except that a counterstatement of the questions involved or a counterstatement of the nature and facts of the case shall be included only if the respondent disagrees with the statement of the appellant and the appendix shall contain only such additional parts of the record as are necessary to consider the questions involved.

(c) Appellant's reply brief and appendix. Any reply brief of the appellant shall conform to the requirements of subdivision (a) without repetition.

(d) Joint appendix. A joint appendix bound separately may be used. It shall be filed with the appellant's brief.

(e) Sanction. For any failure to comply with subdivision (a), (b) or (c) the court to which the appeal is taken may withhold or impose costs.

Rule 5529. Form of briefs and appendices. (a) Form of reproduction; size; paper; binding.

1. Briefs and appendices shall be reproduced by any method that produces a permanent, legible, black image on white paper. Paper shall be of a quality approved by the chief administrator of the courts.

2. Briefs and appendices shall be on white paper eleven inches along the bound edge by eight and one-half inches.

3. An appellate court may by rule applicable to practice therein prescribe the size of margins and type of briefs and appendices and the line spacing and the length of briefs.

(b) Numbering. Pages of briefs shall be numbered consecutively. Pages of appendices shall be separately numbered consecutively, each number preceded by the letter A.

(c) Page headings. The subject matter of each page of the appendix shall be stated at the top thereof, except that in the case of papers other than testimony, the subject matter of the paper may be stated at the top of the first page of each paper, together with the page numbers of the first and last pages thereof. In the case of testimony, the name of the witness, by whom he was called and whether the testimony is direct, cross, redirect or recross examination shall be stated at the top of each page.

(d) Quotations. Asterisks or other appropriate means shall be used to indicate omissions in quoted excerpts. Reference shall be made to the source of the excerpts quoted. Where an excerpt in the appendix is testimony of a witness quoted from the record the beginning of each page of the transcript shall be indicated by parenthetical insertion of the transcript page number.

(e) Citations of decisions. New York decisions shall be cited from the official reports, if any. All other decisions shall be cited from the official reports, if any, and also from the National Reporter System if they are there reported. Decisions not reported officially or in the National Reporter System shall be cited from the most available source.

(f) Questions and answers. The answer to a question in the appendix shall not begin a new paragraph.

Rule 5530. Filing record and briefs; service of briefs. (a) Generally. Within twenty days after settlement of the transcript or after settlement of the statement in lieu of stenographic transcript or after approval of the statement in lieu of record, the appellant shall file with the clerk of the court to which the appeal is taken the record on appeal or statement in lieu of record, and the required number of copies of his brief, and shall also serve upon the adverse party three copies of his brief. The respondent shall file and serve a like number of copies of his brief within fifteen days after service of the appellant's brief. The appellant may file and serve a like number of copies of a reply brief within ten days after service of the respondent's brief.

(b) Upon cross-appeal. Unless the court to which the appeals are taken otherwise orders, where both parties take an appeal from the same judgment or order, the plaintiff, or appellant in the court from which the appeal is taken, shall file and serve his brief first. The answering brief shall be filed and served within fifteen days after service of the first brief and shall include the points and arguments on the cross-appeal. A reply brief shall be filed and served within fifteen days after service of the answering brief, and shall include answering points and arguments on the cross-appeal. A reply brief to the cross-appeal may thereafter be served and filed within ten days after the service of the reply to the first brief.

(c) Special rules prescribing times for filing and serving authorized. The appellate division in each department may by rule applicable in the department prescribe other limitations of time different from those prescribed in subdivisions (a) and (b) for filing and serving records on appeal, or statements in lieu of records, and briefs in appeals taken therein.

Rule 5531. Description of action. The appellant shall file together with the record on appeal, in both criminal and civil actions, a statement containing the following information listed and numbered in

the following order:

1. the index number of the case in the court below,
2. the full names of the original parties and any change in the parties,
3. the court and county in which the action was commenced,
4. the date the action was commenced and the dates on which each pleading was served,
5. a brief description of the nature and object of the action,
6. a statement as to whether the appeal is from a judgment or an order or both, the dates of entry of each judgment or order appealed from, and the name of the judge or justice who directed the entry of the judgment or made the order being appealed, and
7. a statement as to the method of appeal being used:
 - (a) whether the appeal is on a full record, printed or reproduced, or
 - (b) on the original record, in which event, state whether the appendix method is being used, or leave to prosecute the appeal on the original record was granted by the court or by statute.

The statement shall be prefixed to the papers constituting the record on appeal. A copy of this statement shall be filed with the clerk at the time the record on appeal is filed.

Rule 5532. Stipulation in lieu of certification. The parties or their attorneys may stipulate as to the correctness of the entire record on appeal or any portion thereof in lieu of certification.

ARTICLE 56
APPEALS TO THE COURT OF APPEALS

- 5601. Appeals to the court of appeals as of right.
 - (a) Dissent.
 - (b) Constitutional grounds.
 - (c) From order granting new trial or hearing, upon stipulation for judgment absolute.
 - (d) Based upon nonfinal determination of appellate division.
- 5602. Appeals to the court of appeals by permission.
 - (a) Permission of appellate division or court of appeals.
 - (b) Permission of appellate division.
- 5611. When appellate division order deemed final.
- 5612. Presumptions as to determinations of questions of fact.
 - (a) Appeal from reversal or modification.
 - (b) Appeal on certified questions of law.
- 5613. Disposition upon reversal or modification.
- 5614. Disposition upon certified questions.
- 5615. Disposition upon appeal from order granting new trial or hearing.

§ 5601. Appeals to the court of appeals as of right. (a) Dissent. An appeal may be taken to the court of appeals as of right in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency, from an order of the appellate division which finally determines the action, where there is a dissent by at least two justices on a question of law in favor of the party taking such appeal.

(b) Constitutional grounds. An appeal may be taken to the court of appeals as of right:

1. from an order of the appellate division which finally determines an action where there is directly involved the construction of the constitution of the state or of the United States; and

2. from a judgment of a court of record of original instance which finally determines an action where the only question involved on the

appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States.

(c) From order granting new trial or hearing, upon stipulation for judgment absolute. An appeal may be taken to the court of appeals as of right in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency, from an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates that, upon affirmance, judgment absolute shall be entered against him.

(d) Based upon nonfinal determination of appellate division. An appeal may be taken to the court of appeals as of right from a final judgment entered in a court of original instance, from a final determination of an administrative agency or from a final arbitration award, or from an order of the appellate division which finally determines an appeal from such a judgment or determination, where the appellate division has made an order on a prior appeal in the action which necessarily affects the judgment, determination or award and which satisfies the requirements of subdivision (a) or of paragraph one of subdivision (b) except that of finality.

§ 5602. Appeals to the court of appeals by permission. (a) Permission of appellate division or court of appeals. An appeal may be taken to the court of appeals by permission of the appellate division granted before application to the court of appeals, or by permission of the court of appeals upon refusal by the appellate division or upon direct application. Permission by an appellate division for leave to appeal shall be pursuant to rules authorized by that appellate division. Permission by the court of appeals for leave to appeal shall be pursuant to rules authorized by the court which shall provide that leave to appeal be granted upon the approval of two judges of the court of appeals. Such appeal may be taken:

1. in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims, an

administrative agency or an arbitration,

(i) from an order of the appellate division which finally determines the action and which is not appealable as of right, or

(ii) from a final judgment of such court, final determination of such agency or final arbitration award where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment, determination or award and the final judgment, determination or award is not appealable as of right pursuant to subdivision (d) of section 5601 of this article; and

2. in a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal, from an order of the appellate division which does not finally determine such proceeding, except that the appellate division shall not grant permission to appeal from an order granting or affirming the granting of a new trial or hearing.

(b) Permission of appellate division. An appeal may be taken to the court of appeals by permission of the appellate division:

1. from an order of the appellate division which does not finally determine an action, except an order described in paragraph two of subdivision (a) or subparagraph (iii) of paragraph two of subdivision (b) of this section or in subdivision (c) of section 5601;

2. in an action originating in a court other than the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency.

(i) from an order of the appellate division which finally determines the action, and which is not appealable as of right pursuant to paragraph one of subdivision (b) of section 5601, or

(ii) from a final judgment of such court or a final determination of such agency where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment or determination and the final judgment or determination is not appealable as of right pursuant to subdivision (d) of section 5601, or

(iii) from an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates

that, upon affirmance, judgment absolute shall be entered against him.

§ 5611. When appellate division order deemed final. If the appellate division disposes of all the issues in the action its order shall be considered a final one, and a subsequent appeal may be taken only from that order and not from any judgment or order entered pursuant to it. If the aggrieved party is granted leave to replead or to perform some other act which would defeat the finality of the order, it shall not take effect as a final order until the expiration of the time limited for such act without his having performed it.

§ 5612. Presumptions as to determinations of questions of fact. (a) Appeal from reversal or modification. On an appeal from an order of the appellate division reversing, modifying or setting aside a determination and rendering a final or interlocutory determination, except when it reinstates a verdict, the court of appeals shall presume that questions of fact as to which no findings are made in the order or opinion of the appellate division were not considered by it, where such findings are required to be made by paragraph two of subdivision (b) of rule 5712.

(b) Appeal on certified questions of law. On an appeal on certified questions of law, the court of appeals shall presume that questions of fact as to which no findings are made in the order granting permission to appeal or in the order appealed from or in the opinion of the appellate division were determined in favor of the party who is respondent in the court of appeals.

§ 5613. Disposition upon reversal or modification. The court of appeals, upon reversing or modifying a determination of the appellate division, when it appears or must be presumed that questions of fact were not considered by the appellate division, shall remit the case to that court for determination of questions of fact raised in the appellate division.

§ 5614. Disposition upon certified questions. The order of the court of appeals determining an appeal upon certified questions shall certify its answers to the questions certified and direct entry of the appropriate judgment or order.

§ 5615. Disposition upon appeal from order granting new trial or hearing. When an appeal to the appellate division presented questions of fact and a further appeal is taken pursuant to subdivision (c) of section 5601, or subparagraph (iii) of paragraph two of subdivision (b) of section 5602, the court of appeals shall affirm the order appealed from and shall render judgment or order absolute against the appellant unless the order or opinion of the appellate division recites either that the questions of fact have not been considered or that the court has considered the questions of fact and has determined that it would not grant a new trial or hearing upon those questions.

ARTICLE 57

APPEALS TO THE APPELLATE DIVISION

5701. Appeals to appellate division from supreme and county courts.

(a) Appeals as of right.

(b) Orders not appealable as of right.

(c) Appeals by permission.

5702. Appeals to appellate division from other courts of original instance.

5703. Appeals to appellate division from appellate courts.

(a) From appellate terms.

(b) From other appellate courts.

5704. Review of ex parte orders.

(a) By appellate division.

(b) By appellate term.

5711. Where appeal heard.

5712. Content of order determining appeal.

(a) Dissents.

(b) Order of affirmance.

(c) Order of reversal or modification.

5713. Content of order granting permission to appeal to court of appeals.

§ 5701. Appeals to appellate division from supreme and county courts.

(a) Appeals as of right. An appeal may be taken to the appellate division as of right in an action, originating in the supreme court or a county court:

1. from any final or interlocutory judgment except one entered subsequent to an order of the appellate division which disposes of all the issues in the action; or

2. from an order not specified in subdivision (b), where the motion it decided was made upon notice and it:

(i) grants, refuses, continues or modifies a provisional remedy; or

(ii) settles, grants or refuses an application to resettle a transcript or statement on appeal; or

(iii) grants or refuses a new trial; except where specific questions of fact arising upon the issues in an action triable by the court have been tried by a jury, pursuant to an order for that purpose, and the order grants or refuses a new trial upon the merits; or

(iv) involves some part of the merits; or

(v) affects a substantial right; or

(vi) in effect determines the action and prevents a judgment from which an appeal might be taken; or

(vii) determines a statutory provision of the state to be unconstitutional, and the determination appears from the reasons given for the decision or is necessarily implied in the decision; or

(viii) grants a motion for leave to reargue made pursuant to subdivision (d) of rule 2221 or determines a motion for leave to renew made pursuant to subdivision (e) of rule 2221; or

3. from an order, where the motion it decided was made upon notice, refusing to vacate or modify a prior order, if the prior order would have been appealable as of right under paragraph two had it decided a

motion made upon notice.

(b) Orders not appealable as of right. An order is not appealable to the appellate division as of right where it:

1. is made in a proceeding against a body or officer pursuant to article 78; or

2. requires or refuses to require a more definite statement in a pleading; or

3. orders or refuses to order that scandalous or prejudicial matter be stricken from a pleading.

(c) Appeals by permission. An appeal may be taken to the appellate division from any order which is not appealable as of right in an action originating in the supreme court or a county court by permission of the judge who made the order granted before application to a justice of the appellate division; or by permission of a justice of the appellate division in the department to which the appeal could be taken, upon refusal by the judge who made the order or upon direct application.

§ 5702. Appeals to appellate division from other courts of original instance. An appeal may be taken to the appellate division from any judgment or order of a court of original instance other than the supreme court or a county court in accordance with the statute governing practice in such court.

§ 5703. Appeals to appellate division from appellate courts. (a) From appellate terms. An appeal may be taken to the appellate division, from an order of the appellate term which determines an appeal from a judgment or order of a lower court, by permission of the appellate term or, in case of refusal, of the appellate division. When permission to appeal is sought from an order granting or affirming the granting of a new trial or hearing, the appellant shall stipulate that, upon affirmance, judgment absolute may be entered against him.

(b) From other appellate courts. An appeal may be taken to the

appellate division as of right from an order of a county court or a special term of the supreme court which determines an appeal from a judgment of a lower court.

§ 5704. Review of ex parte orders. (a) By appellate division. The appellate division or a justice thereof may vacate or modify any order granted without notice to the adverse party by any court or a judge thereof from which an appeal would lie to such appellate division; and the appellate division may grant any order or provisional remedy applied for without notice to the adverse party and refused by any court or a judge thereof from which an appeal would lie to such appellate division.

(b) By appellate term. The appellate term in the first or second judicial department or a justice thereof may vacate or modify any order granted without notice to the adverse party by any court or a judge thereof from which an appeal would lie to such appellate term; and such appellate term may grant any order or provisional remedy applied for without notice to the adverse party and refused by any court or a judge thereof from which an appeal would lie to such appellate term.

§ 5711. Where appeal heard. Except as provided in subdivision (d) of rule 511, an appeal to the appellate division shall be brought in the department embracing the county in which the judgment or order appealed from is entered and there heard and determined unless, in furtherance of justice, the appeal is sent to another department.

§ 5712. Content of order determining appeal. (a) Dissents. Every order of the appellate division determining an appeal shall state whether one or more justices dissent from the determination.

(b) Order of affirmance. Whenever the appellate division, although affirming a final or interlocutory judgment or order, reverses or modifies any findings of fact, or makes new findings of fact, its order shall comply with the requirements of subdivision (c).

(c) Order of reversal or modification. Whenever the appellate division reverses or modifies or sets aside a determination and thereupon makes a

determination, except when it reinstates a verdict, its order shall state whether its determination is upon the law, or upon the facts, or upon the law and the facts:

1. if the determination is stated to be upon the law alone, the order shall also state whether or not the findings of fact below have been affirmed; and

2. if the determination is stated to be upon the facts, or upon the law and the facts, the order shall also specify the findings of fact which are reversed or modified, and set forth any new findings of fact made by the appellate division with such particularity as was employed for the statement of the findings of fact in the court of original instance; except that the order need not specify the findings of fact which are reversed or modified nor set forth any new findings of fact if the appeal is either from a determination by the court without any statement of the findings of fact or from a judgment entered upon a general verdict without answers to interrogatories.

§ 5713. Content of order granting permission to appeal to court of appeals. When the appellate division grants permission to appeal to the court of appeals, its order granting such permission shall state that questions of law have arisen which in its opinion ought to be reviewed. When the appeal is from a non-final order, the order granting such permission shall also state that the findings of fact have been affirmed, or reversed or modified and new findings of fact made, or have not been considered, shall specify the findings of fact which have been reversed or modified and set forth new findings of fact with at least the same particularity as was employed for the findings of fact below and shall certify the questions of law decisive of the correctness of its determination or of any separable portion of it.

ARTICLE 60

PROVISIONAL REMEDIES GENERALLY

6001. Kinds of provisional remedies; when remedy available to

defendant.

§ 6001. Kinds of provisional remedies; when remedy available to defendant. The provisional remedies are attachment, injunction, receivership and notice of pendency. On a motion for a provisional remedy, the plaintiff shall state whether any other provisional remedy has been secured or sought in the same action against the same defendant, and the court may require the plaintiff to elect between those remedies to which he would otherwise be entitled; for this purpose, seizure of a chattel in an action to recover a chattel is a provisional remedy. A cause of action contained in a counterclaim or a cross-claim, and a judgment demanded thereon, shall entitle the defendant to the same provisional remedies to which he would be entitled if he were the plaintiff, the party against whom the judgment is demanded were the defendant and the cause of action were contained in a complaint.

ARTICLE 62 ATTACHMENT

- 6201. Grounds for attachment.
- 6202. Debt or property subject to attachment; proper garnishee.
- 6203. Attaching creditor's rights in personal property.
- 6204. Discharge of garnishee's obligation.
- 6205. Order of attachment in certain cases.
- 6210. Order of attachment on notice; temporary restraining order; contents.
- 6211. Order of attachment without notice.
 - (a) When granted; contents.
 - (b) Confirmation of order.
- 6212. Motion papers; undertaking; filing; demand; damages.
 - (a) Affidavit; other papers.
 - (b) Undertaking.
 - (c) Filing.
 - (d) Demand for papers.
 - (e) Damages.

- 6213. Service of summons.
- 6214. Levy upon personal property by service of order.
 - (a) Method of levy.
 - (b) Effect of levy; prohibition of transfer.
 - (c) Seizure by sheriff; notice of satisfaction.
 - (d) Proceeding to compel payment or delivery.
 - (e) Failure to proceed.
- 6215. Levy upon personal property by seizure.
- 6216. Levy upon real property.
- 6217. Additional undertaking to carrier garnishee.
- 6218. Sheriff's duties after levy.
 - (a) Retention of property.
 - (b) Inventory.
- 6219. Garnishee's statement.
- 6220. Disclosure.
- 6221. Proceedings to determine adverse claims.
- 6222. Discharge of attachment.
- 6223. Vacating or modifying attachment.
 - (a) Motion to vacate or modify.
 - (b) Burden of proof.
- 6224. Annulment of attachment.
- 6225. Return of property; directions to clerk and sheriff.
- 6226. Disposition of attached property after execution issued; priority of orders of attachment.

§ 6201. Grounds for attachment. An order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when:

1. the defendant is a nondomiciliary residing without the state, or is a foreign corporation not qualified to do business in the state; or
2. the defendant resides or is domiciled in the state and cannot be personally served despite diligent efforts to do so; or

3. the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts; or

4. the action is brought by the victim or the representative of the victim of a crime, as defined in subdivision six of section six hundred twenty-one of the executive law, against the person or the legal representative or assignee of the person convicted of committing such crime and seeks to recover damages sustained as a result of such crime pursuant to section six hundred thirty-two-a of the executive law; or

5. the cause of action is based on a judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, or on a judgment which qualifies for recognition under the provisions of article 53.

§ 6202. Debt or property subject to attachment; proper garnishee. Any debt or property against which a money judgment may be enforced as provided in section 5201 is subject to attachment. The proper garnishee of any such property or debt is the person designated in section 5201; for the purpose of applying the provisions to attachment, references to a "judgment debtor" in section 5201 and in subdivision (i) of section 105 shall be construed to mean "defendant. "

§ 6203. Attaching creditor's rights in personal property. Where a plaintiff has delivered an order of attachment to a sheriff, the plaintiff's rights in a debt owed to the defendant or in an interest of the defendant in personal property against which debt or property a judgment may be enforced, are superior to the extent of the amount of the attachment to the rights of any transferee of the debt or property, except:

1. a transferee who acquired the debt or property before it was levied upon for fair consideration or without knowledge of the order of

attachment; or

2. a transferee who acquired the debt or property for fair consideration after it was levied upon without knowledge of the levy while it was not in the possession of the sheriff.

§ 6204. Discharge of garnishee's obligation. A person who, pursuant to an order of attachment, pays or delivers to the sheriff money or other personal property in which a defendant has or will have an interest, or so pays a debt he owes the defendant, is discharged from his obligation to the defendant to the extent of the payment or delivery.

§ 6205. Order of attachment in certain cases. An order of attachment may be granted in aid of execution to a party that has been awarded a money judgment against a foreign state, as defined in 28 United States Code Section 1603, in accordance with and subject to the limitations of 28 United States Code Section 1610 and other applicable law.

§ 6210. Order of attachment on notice; temporary restraining order; contents. Upon a motion on notice for an order of attachment, the court may, without notice to the defendant, grant a temporary restraining order prohibiting the transfer of assets by a garnishee as provided in subdivision (b) of section 6214. The contents of the order of attachment granted pursuant to this section shall be as provided in subdivision (a) of section 6211.

§ 6211. Order of attachment without notice. (a) When granted; contents. An order of attachment may be granted without notice, before or after service of summons and at any time prior to judgment, or as provided in section sixty-two hundred five of this article. It shall specify the amount to be secured by the order of attachment including any interest, costs and sheriff's fees and expenses, be indorsed with the name and address of the plaintiff's attorney and shall be directed

to the sheriff of any county or of the city of New York where any property in which the defendant has an interest is located or where a garnishee may be served. The order shall direct the sheriff to levy within his jurisdiction, at any time before final judgment, upon such property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy the amount specified in the order of attachment.

(b) Confirmation of order. Except where an order of attachment is granted on the ground specified in subdivision one of section 6201, an order of attachment granted without notice shall provide that within a period not to exceed five days after levy, the plaintiff shall move, on such notice as the court shall direct to the defendant, the garnishee, if any, and the sheriff, for an order confirming the order of attachment. Where an order of attachment without notice is granted on the ground specified in subdivision one of section 6201, the court shall direct that the statement required by section 6219 be served within five days, that a copy thereof be served upon the plaintiff, and the plaintiff shall move within ten days after levy for an order confirming the order of attachment. If the plaintiff upon such motion shall show that the statement has not been served and that the plaintiff will be unable to satisfy the requirement of subdivision (b) of section 6223 until the statement has been served, the court may grant one extension of the time to move for confirmation for a period not to exceed ten days. If plaintiff fails to make such motion within the required period, the order of attachment and any levy thereunder shall have no further effect and shall be vacated upon motion. Upon the motion to confirm, the provisions of subdivision (b) of section 6223 shall apply. An order of attachment granted without notice may provide that the sheriff refrain from taking any property levied upon into his actual custody, pending further order of the court.

Rule 6212. Motion papers; undertaking; filing; demand; damages. (a) Affidavit; other papers. On a motion for an order of attachment, or for an order to confirm an order of attachment, the plaintiff shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action, that it is probable that the plaintiff will

succeed on the merits, that one or more grounds for attachment provided in section 6201 exist, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff.

(b) Undertaking. On a motion for an order of attachment, the plaintiff shall give an undertaking, in a total amount fixed by the court, but not less than five hundred dollars, a specified part thereof conditioned that the plaintiff shall pay to the defendant all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the attachment if the defendant recovers judgment or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property, and the balance conditioned that the plaintiff shall pay to the sheriff all of his allowable fees. The attorney for the plaintiff shall not be liable to the sheriff for such fees. The surety on the undertaking shall not be discharged except upon notice to the sheriff.

(c) Filing. Within ten days after the granting of an order of attachment, the plaintiff shall file it and the affidavit and other papers upon which it was based and the summons and complaint in the action. Unless the time for filing has been extended, the order shall be invalid if not so filed, except that a person upon whom it is served shall not be liable for acting upon it as if it were valid without knowledge of the invalidity.

(d) Demand for papers. At any time after property has been levied upon, the defendant may serve upon the plaintiff a written demand that the papers upon which the order of attachment was granted and the levy made be served upon him. Not more than one day after service of the demand, the plaintiff shall cause the papers demanded to be served at the address specified in the demand. A demand under this subdivision shall not of itself constitute an appearance in the action.

(e) Damages. The plaintiff shall be liable to the defendant for all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the attachment if the defendant recovers judgment, or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property. Plaintiff's liability shall not be limited by the amount of the undertaking.

§ 6213. Service of summons. An order of attachment granted before service is made on the defendant against whom the attachment is granted is valid only if, within sixty days after the order is granted, a summons is served upon the defendant or first publication of the summons against the defendant is made pursuant to an order and publication is subsequently completed, except that a person upon whom the order of attachment is served shall not be liable for acting upon it as if it were valid without knowledge of the invalidity. If the defendant dies within sixty days after the order is granted and before the summons is served upon him or publication is completed, the order is valid only if the summons is served upon his executor or administrator within sixty days after letters are issued. Upon such terms as may be just and upon good cause shown the court may extend the time, not exceeding sixty days, within which the summons must be served or publication commenced pursuant to this section, provided that the application for extension is made before the expiration of the time fixed.

§ 6214. Levy upon personal property by service of order. (a) Method of levy. The sheriff shall levy upon any interest of the defendant in personal property, or upon any debt owed to the defendant, by serving a copy of the order of attachment upon the garnishee, or upon the defendant if property to be levied upon is in the defendant's possession or custody, in the same manner as a summons except that such service shall not be made by delivery of a copy to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318.

(b) Effect of levy; prohibition of transfer. A levy by service of an order of attachment upon a person other than the defendant is effective only if, at the time of service, such person owes a debt to the defendant or such person is in the possession or custody of property in which such person knows or has reason to believe the defendant has an interest, or if the plaintiff has stated in a notice which shall be served with the order that a specified debt is owed by the person served to the defendant or that the defendant has an interest in specified property in the possession or custody of the person served. All property in which the defendant is known or believed to have an interest then in

and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the defendant, shall be subject to the levy. Unless the court orders otherwise, the person served with the order shall forthwith transfer or deliver all such property, and pay all such debts upon maturity, up to the amount specified in the order of attachment, to the sheriff and execute any document necessary to effect the payment, transfer or delivery. After such payment, transfer or delivery, property coming into the possession or custody of the garnishee, or debt incurred by him, shall not be subject to the levy. Until such payment, transfer or delivery is made, or until the expiration of ninety days after the service of the order of attachment upon him, or of such further time as is provided by any subsequent order of the court served upon him, whichever event first occurs, the garnishee is forbidden to make or suffer any sale, assignment or transfer of, or any interference with any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order of the court. A garnishee, however, may collect or redeem an instrument received by him for such purpose and he may sell or transfer in good faith property held as collateral or otherwise pursuant to pledge thereof or at the direction of any person other than the defendant authorized to direct sale or transfer, provided that the proceeds in which the defendant has an interest be retained subject to the levy. A plaintiff who has specified personal property or debt to be levied upon in a notice served with an order of attachment shall be liable to the owner of the property or the person to whom the debt is owed, if other than the defendant, for any damages sustained by reason of the levy.

(c) Seizure by sheriff; notice of satisfaction. Where property or debts have been levied upon by service of an order of attachment, the sheriff shall take into his actual custody all such property capable of delivery and shall collect and receive all such debts. When the sheriff has taken into his actual custody property or debts having value sufficient to satisfy the amount specified in the order of attachment, the sheriff shall notify the defendant and each person upon whom the order of attachment was served that the order of attachment has been

fully executed.

(d) Proceeding to compel payment or delivery. Where property or debts have been levied upon by service of an order of attachment, the plaintiff may commence a special proceeding against the garnishee served with the order to compel the payment, delivery or transfer to the sheriff of such property or debts, or to secure a judgment against the garnishee. Notice of petition shall also be served upon the parties to the action and the sheriff. A garnishee may interpose any defense or counterclaim which he might have interposed against the defendant if sued by him. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 6221.

(e) Failure to proceed. At the expiration of ninety days after a levy is made by service of the order of attachment, or of such further time as the court, upon motion of the plaintiff on notice to the parties to the action, has provided, the levy shall be void except as to property or debts which the sheriff has taken into his actual custody, collected or received or as to which a proceeding under subdivision (d) has been commenced.

§ 6215. Levy upon personal property by seizure. If the plaintiff shall so direct and shall furnish the sheriff indemnity satisfactory to him or fixed by the court, the sheriff, as an alternative to the method prescribed by section 6214, shall levy upon property capable of delivery by taking the property into his actual custody. The sheriff shall forthwith serve a copy of the order of attachment in the manner prescribed by subdivision (a) of section 6214 upon the person from whose possession or custody the property was taken.

§ 6216. Levy upon real property. The sheriff shall levy upon any interest of the defendant in real property by filing with the clerk of the county in which the property is located a notice of attachment indorsed with the name and address of the plaintiff's attorney and stating the names of the parties to the action, the amount specified in the order of attachment and a description of the property levied upon.

The clerk shall record and index the notice in the same books, in the same manner and with the same effect, as a notice of the pendency of an action.

§ 6217. Additional undertaking to carrier garnishee. A garnishee who is a common carrier may transport or deliver property actually loaded on a conveyance, notwithstanding the service upon him of an order of attachment, if it was loaded without reason to believe that an order of attachment affecting the property had been granted, unless the plaintiff gives an undertaking in an amount fixed by the court, that the plaintiff shall pay any such carrier all expenses and damages which may be incurred for unloading the property and for detention of the conveyance necessary for that purpose.

§ 6218. Sheriff's duties after levy. (a) Retention of property. The sheriff shall hold and safely keep all property or debts paid, delivered, transferred or assigned to him or taken into his custody to answer any judgment that may be obtained against the defendant in the action, unless otherwise directed by the court or the plaintiff, subject to the payment of the sheriff's fees and expenses. Any money shall be held for the benefit of the parties to the action in an interest-bearing trust account at a national or state bank or trust company. If the urgency of the case requires, the court may direct sale or other disposition of property, specifying the manner and terms thereof, with notice to the parties to the action and the garnishee who had possession of such property.

(b) Inventory. Within fifteen days after service of an order of attachment or forthwith after such order has been vacated or annulled, the sheriff shall file an inventory of property seized, a description of real property levied upon, the names and addresses of all persons served with the order of attachment, and an estimate of the value of all property levied upon.

§ 6219. Garnishee's statement. Within ten days after service upon a

garnishee of an order of attachment, or within such shorter time as the court may direct, the garnishee shall serve upon the sheriff a statement specifying all debts of the garnishee to the defendant, when the debts are due, all property in the possession or custody of the garnishee in which the defendant has an interest, and the amounts and value of the debts and property specified. If the garnishee has money belonging to, or is indebted to, the defendant in at least the amount of the attachment, he may limit his statement to that fact.

§ 6220. Disclosure. Upon motion of any interested person, at any time after the granting of an order of attachment and prior to final judgment in the action, upon such notice as the court may direct, the court may order disclosure by any person of information regarding any property in which the defendant has an interest, or any debts owing to the defendant.

§ 6221. Proceedings to determine adverse claims. Prior to the application of property or debt to the satisfaction of a judgment, any interested person may commence a special proceeding against the plaintiff to determine the rights of adverse claimants to the property or debt. Service of process in such a proceeding shall be made by serving a notice of petition upon the sheriff and upon each party in the same manner as a notice of motion. The proceeding may be commenced in the county where the property was levied upon, or in the county where the order of attachment is filed. The court may vacate or discharge the attachment, void the levy, direct the disposition of the property or debt, direct that undertakings be provided or released, or direct that damages be awarded. Where there appear to be disputed questions of fact, the court shall order a separate trial, indicating the person who shall have possession of the property pending a decision and the undertaking, if any, which such person shall give. If the court determines that the adverse claim was fraudulent, it may require the claimant to pay the plaintiff the reasonable expenses incurred in the proceeding, including reasonable attorney's fees, and any other damages suffered by reason of the claim. The commencement of the proceeding shall not of itself

subject the adverse claimant to personal jurisdiction with respect to any matter other than the claim asserted in the proceeding.

§ 6222. Discharge of attachment. A defendant whose property or debt has been levied upon may move, upon notice to the plaintiff and the sheriff, for an order discharging the attachment as to all or a part of the property or debt upon payment of the sheriff's fees and expenses. On such a motion, the defendant shall give an undertaking, in an amount equal to the value of the property or debt sought to be discharged, that the defendant will pay to the plaintiff the amount of any judgment which may be recovered in the action against him, not exceeding the amount of the undertaking. Making a motion or giving an undertaking under this section shall not of itself constitute an appearance in the action.

§ 6223. Vacating or modifying attachment. (a) Motion to vacate or modify. Prior to the application of property or debt to the satisfaction of a judgment, the defendant, the garnishee or any person having an interest in the property or debt may move, on notice to each party and the sheriff, for an order vacating or modifying the order of attachment. Upon the motion, the court may give the plaintiff a reasonable opportunity to correct any defect. If, after the defendant has appeared in the action, the court determines that the attachment is unnecessary to the security of the plaintiff, it shall vacate the order of attachment. Such a motion shall not of itself constitute an appearance in the action.

(b) Burden of proof. Upon a motion to vacate or modify an order of attachment the plaintiff shall have the burden of establishing the grounds for the attachment, the need for continuing the levy and the probability that he will succeed on the merits.

§ 6224. Annulment of attachment. An order of attachment is annulled when the action in which it was granted abates or is discontinued, or a judgment entered therein in favor of the plaintiff is fully satisfied, or a judgment is entered therein in favor of the defendant. In the last

specified case a stay of proceedings suspends the effect of the annulment, and a reversal or vacating of the judgment revives the order of attachment.

§ 6225. Return of property; directions to clerk and sheriff. Upon motion of any interested person, on notice to the sheriff and each party, the court may direct the clerk of any county to cancel a notice of attachment and may direct the sheriff to dispose of, account for, assign, return or release any property or debt, or the proceeds thereof, or any undertaking, or to file additional inventories or returns, subject to the payment of the sheriff's fees and expenses. The court shall direct that notice of the motion be given to the plaintiffs in other orders of attachment, if any, and to the judgment creditors of executions, if any, affecting any property or debt, or the proceeds thereof, sought to be returned or released.

§ 6226. Disposition of attached property after execution issued; priority of orders of attachment. Where an execution is issued upon a judgment entered against the defendant, the sheriff's duty with respect to custody and disposition of property or debt levied upon pursuant to an order of attachment is the same as if he had levied upon it pursuant to the execution. The priority among two or more orders of attachment against the same defendant shall be in the order in which they were delivered to the officer who levied upon the property or debt. The priority between an order of attachment and an execution, or a payment, delivery or receivership order, is set forth in section 5234.

ARTICLE 63

INJUNCTION

6301. Grounds for preliminary injunction and temporary restraining order.

6311. Preliminary injunction.

6312. Motion papers; undertaking; issues of fact.

(a) Affidavit; other evidence.

- (b) Undertaking.
 - (c) Issues of fact.
- 6313. Temporary restraining order.
 - (a) Generally.
 - (b) Service.
 - (c) Undertaking.
- 6314. Vacating or modifying preliminary injunction or temporary restraining order.
- 6315. Ascertaining damages sustained by reason of preliminary injunction or temporary restraining order.
- 6330. Obscene prints and articles; jurisdiction.

§ 6301. Grounds for preliminary injunction and temporary restraining order. A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.

§ 6311. Preliminary injunction. 1. A preliminary injunction may be granted only upon notice to the defendant. Notice of the motion may be served with the summons or at any time thereafter and prior to judgment. A preliminary injunction to restrain a public officer, board or municipal corporation of the state from performing a statutory duty may be granted only by the supreme court at a term in the department in which the officer or board is located or in which the duty is required to be performed.

2. Notice of motion for a preliminary injunction to restrain state officers or boards of state officers under the provisions of this section must be upon notice served upon the defendant or respondent, state officers or board of state officers and must be served upon the attorney general by delivery of such notice to an assistant attorney general at an office of the attorney general in the county in which venue of the action is designated or if there is no office of the attorney general in such county, at the office of the attorney general nearest such county.

Rule 6312. Motion papers; undertaking; issues of fact. (a) Affidavit; other evidence. On a motion for a preliminary injunction the plaintiff shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action, and either that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual; or that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

(b) Undertaking. Except as provided in section 2512 and in actions brought under section two hundred sixty-five-a of the real property law, prior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the court, that the plaintiff, if it is finally determined that he or she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the injunction, including:

1. if the injunction is to stay proceedings in another action, on any ground other than that a report, verdict or decision was obtained by actual fraud, all damages and costs which may be, or which have been, awarded in the other action to the defendant as well as all damages and costs which may be awarded him or her in the action in which the injunction was granted; or,

2. if the injunction is to stay proceedings in an action to recover real property, or for dower, on any ground other than that a verdict, report or decision was obtained by actual fraud, all damages and costs which may be, or which have been, awarded to the defendant in the action in which the injunction was granted, including the reasonable rents and profits of, and any wastes committed upon, the real property which is sought to be recovered or which is the subject of the action for dower, after the granting of the injunction; or,

3. if the injunction is to stay proceedings upon a judgment for a sum of money on any ground other than that the judgment was obtained by actual fraud, the full amount of the judgment as well as all damages and costs which may be awarded to the defendant in the action in which the injunction was granted.

(c) Issues of fact. Provided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence sufficient to raise an issue of fact as to any of such elements shall not in itself be grounds for denial of the motion. In such event the court shall make a determination by hearing or otherwise whether each of the elements required for issuance of a preliminary injunction exists.

§ 6313. Temporary restraining order. (a) Generally. If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time. No temporary restraining order may be granted in an action arising out of a labor dispute as defined in section eight hundred seven of the labor law, nor against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties.

(b) Service. Unless the court orders otherwise, a temporary restraining order together with the papers upon which it was based, and a notice of hearing for the preliminary injunction, shall be personally

served in the same manner as a summons.

(c) Undertaking. Prior to the granting of a temporary restraining order the court may, in its discretion, require the plaintiff to give an undertaking in an amount to be fixed by the court, containing terms similar to those set forth in subdivision (b) of rule 6312, and subject to the exception set forth therein.

§ 6314. Vacating or modifying preliminary injunction or temporary restraining order. A defendant enjoined by a preliminary injunction may move at any time, on notice to the plaintiff, to vacate or modify it. On motion, without notice, made by a defendant enjoined by a temporary restraining order, the judge who granted it, or in his absence or disability, another judge, may vacate or modify the order. An order granted without notice and vacating or modifying a temporary restraining order shall be effective when, together with the papers upon which it is based, it is filed with the clerk and served upon the plaintiff. As a condition to granting an order vacating or modifying a preliminary injunction or a temporary restraining order, a court may require the defendant, except where the defendant is a public body or officer, to give an undertaking, in an amount to be fixed by the court, that the defendant shall pay to the plaintiff any loss sustained by reason of the vacating or modifying order.

§ 6315. Ascertaining damages sustained by reason of preliminary injunction or temporary restraining order. The damages sustained by reason of a preliminary injunction or temporary restraining order may be ascertained upon motion on such notice to all interested persons as the court shall direct. Where the defendant enjoined was an officer of a corporation or joint-stock association or a representative of another person, and the amount of the undertaking exceeds the damages sustained by the defendant by reason of the preliminary injunction or temporary restraining order, the damages sustained by such corporation, association or person represented, to the amount of such excess, may also be ascertained. The amount of damages so ascertained is conclusive upon all persons who were served with notice of the motion and such

amount may be recovered by the person entitled thereto in a separate action.

§ 6330. Obscene prints and articles; jurisdiction. The supreme court has jurisdiction to enjoin the sale or distribution of obscene prints and articles, as hereinafter specified:

1. The district attorney of any county, the chief executive officer of any city, town or village or the corporation counsel, or if there be none, the chief legal officer of any city, town, or village, in which a person, firm or corporation publishes, sells or distributes or displays or is about to sell or distribute or display or has in his possession with intent to sell or display or distribute or is about to acquire possession with intent to sell, display or distribute any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, motion picture, drawing, photograph, figure, image or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy, indecent or disgusting, or which contains an article or instrument of indecent or immoral use or purports to be for indecent or immoral use or purpose; or in any other respect defined in section 235.00 of the penal law, may maintain an action for an injunction against such person, firm or corporation in the supreme court to prevent the sale or further sale or the distribution or further distribution or the acquisition, publication or possession within the state of any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, motion picture, drawing, photograph, figure or image or any written or printed matter of an indecent character, herein described or described in section 235.00 of the penal law.

2. The person, firm or corporation sought to be enjoined shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered by the court within two days of the conclusion of the trial.

3. In the event that a final order or judgment of injunction be entered in favor of such officer of the city, town or village and

against the person, firm or corporation sought to be enjoined, such final order of judgment shall contain a provision directing the person, firm or corporation to surrender to such peace officer, acting pursuant to his special duties, or police officer, as the court may direct or to the sheriff of the county in which the action was brought any of the matter described in paragraph one hereof and such officer or sheriff shall be directed to seize and destroy the same.

4. In any action brought as herein provided such officer of the city, town or village shall not be required to file any undertaking before the issuance of an injunction order provided for in paragraph two hereof, shall not be liable for costs and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm or corporation sought to be enjoined.

5. Every person, firm or corporation who sells, distributes, or acquires possession with intent to sell or distribute any of the matter described in paragraph one hereof, after the service upon him of a summons and complaint in an action brought by such officer of any county, city, town or village pursuant to this section is chargeable with knowledge of the contents thereof.

6. The court, in its adjudication, may (1) grant the relief sought (2) deny the relief sought or (3) enjoin the sale, further sale, display, distribution, further distribution, acquisition, publication, or possession of the material, to persons under the age of seventeen, upon a finding that the material is of the kind described in paragraph a or b of subdivision one of section 235.21 of the penal law.

ARTICLE 63-A

EXTREME RISK PROTECTION ORDERS

Section 6340. Definitions.

6341. Application for an extreme risk protection order.

6342. Issuance of a temporary extreme risk protection order.

6343. Issuance of a final extreme risk protection order.

- 6344. Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order.
- 6345. Request for renewal of an extreme risk protection order.
- 6346. Expiration of an extreme risk protection order.
- 6347. Effect of findings and determinations in subsequent proceedings.
- 6348. Protections for health care providers applying for an extreme risk protection order.

§ 6340. Definitions. For the purposes of this article:

1. "Extreme risk protection order" means a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

2. "Petitioner" means: (a) a law enforcement agency that employs a police officer, as such term is defined in section 1.20 of the criminal procedure law, or a police officer or district attorney with jurisdiction in the county or city where the person against whom the order is sought resides; (b) a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, of the person against whom the order is sought; (c) a school administrator as defined in section eleven hundred twenty-five of the education law, or a school administrator's designee, of any school in which the person against whom the order is sought is currently enrolled or has been enrolled in the six months immediately preceding the filing of the petition; or (d) a licensed physician, licensed psychiatrist, licensed psychologist, registered nurse, licensed clinical social worker, certified clinical nurse specialist, certified nurse practitioner, licensed clinical marriage and family therapist, registered professional nurse, licensed master social worker or licensed mental health counselor who has treated the person against whom the order is sought in the six months immediately preceding the filing of the petition. For purposes of this article, a school administrator's designee shall be employed at the same school as the school administrator and shall be any of the following who has been designated

in writing to file a petition with respect to the person against whom the order is sought: a school teacher, school guidance counselor, school psychologist, school social worker, school nurse, or other school personnel required to hold a teaching or administrative license or certificate, and full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate.

3. "Respondent" means the person against whom an extreme risk protection order is or may be sought under this article.

4. "Possess" shall have the same meaning as defined in subdivision eight of section 10.00 of the penal law.

§ 6341. Application for an extreme risk protection order. In accordance with this article, a petitioner may file an application, which shall be sworn, and accompanying supporting documentation, setting forth the facts and circumstances justifying the issuance of an extreme risk protection order. Provided, however, that a petitioner that is a law enforcement agency that employs a police officer, as such term defined in section 1.20 of the criminal procedure law, or is a police officer or district attorney with jurisdiction in the county or city where the person against whom the order is sought resides shall file such application upon the receipt of credible information that an individual is likely to engage in conduct that would result in serious harm to themselves or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law, unless such petitioner determines that there is no probable cause for such filing. Such application and supporting documentation shall be filed in the supreme court in the county in which the respondent resides. The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. Such application form shall include inquiry as to whether the petitioner knows, or has reason to believe, that the respondent owns, possesses or has access to a firearm, rifle or shotgun and if so, a request that the petitioner list or describe such firearms, rifles and

shotguns, and the respective locations thereof, with as much specificity as possible.

§ 6342. Issuance of a temporary extreme risk protection order. 1. Upon application of a petitioner pursuant to this article, the court may issue a temporary extreme risk protection order, ex parte or otherwise, to prohibit the respondent from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun, upon a finding that there is probable cause to believe the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law. Such application for a temporary order shall be determined in writing on the same day the application is filed.

2. In determining whether grounds for a temporary extreme risk protection order exist, the court shall consider any relevant factors including, but not limited to, the following acts of the respondent:

- (a) a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;
- (b) a violation or alleged violation of an order of protection;
- (c) any pending charge or conviction for an offense involving the use of a weapon;
- (d) the reckless use, display or brandishing of a firearm, rifle or shotgun;
- (e) any history of a violation of an extreme risk protection order;
- (f) evidence of recent or ongoing abuse of controlled substances or alcohol;
- (g) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor; or
- (h) evidence of recent acts of aggravated cruelty to animals as defined in section three hundred fifty-three-a of the agriculture and markets law.

In considering the factors under this subdivision, the court shall consider the time that has elapsed since the occurrence of such act or

acts and the age of the person at the time of the occurrence of such act or acts.

For the purposes of this subdivision, "recent" means within the six months prior to the date the petition was filed.

3. The application of the petitioner and supporting documentation, if any, shall set forth the factual basis for the request and probable cause for issuance of a temporary order. The court may conduct an examination under oath of the petitioner and any witness the petitioner may produce.

4. A temporary extreme risk protection order, if warranted, shall issue in writing, and shall include:

- (a) a statement of the grounds found for the issuance of the order;
- (b) the date and time the order expires;
- (c) the address of the court that issued the order;

(d) a statement to the respondent: (i) directing that the respondent may not purchase, possess or attempt to purchase or possess a firearm, rifle or shotgun while the order is in effect and that any firearm, rifle or shotgun possessed by such respondent shall be promptly surrendered to any authorized law enforcement official in the same manner as set forth in subdivision five of section 530.14 of the criminal procedure law;

(ii) informing the respondent that the court will hold a hearing no sooner than three nor more than six business days after service of the temporary order, to determine whether a final extreme risk protection order will be issued and the date, time and location of such hearing, provided that the respondent shall be entitled to more than six days upon request in order to prepare for the hearing; and (iii) informing the respondent that he or she may seek the advice of an attorney and that an attorney should be consulted promptly; and

(e) a form to be completed and executed by the respondent at the time of service of the temporary extreme risk protection order which elicits a list of all firearms, rifles and shotguns possessed by the respondent and the particular location of each firearm, rifle or shotgun listed.

5. If the application for a temporary extreme risk protection order is not granted, the court shall notify the petitioner and, unless the application is voluntarily withdrawn by the petitioner, nonetheless schedule a hearing on the application for a final extreme risk protection order. Such hearing shall be scheduled to be held promptly, but in any event no later than ten business days after the date on which such application is served on the respondent, provided, however, that the respondent may request, and the court may grant, additional time to allow the respondent to prepare for the hearing. A notice of such hearing shall be prepared by the court and shall include the date and time of the hearing, the address of the court, and the subject of the hearing.

6. (a) The court shall, in the manner specified in paragraph (b) of this subdivision, arrange for prompt service of a copy of the temporary extreme risk protection order, if any, the application therefor and, if separately applied for or if a temporary extreme risk protection order was not granted, the application for an extreme risk protection order, any notice of hearing prepared by the court, along with any associated papers including the petition and any supporting documentation, provided, that the court may redact the address and contact information of the petitioner from such application and papers where the court finds that disclosure of such address or other contact information would pose an unreasonable risk to the health or safety of the petitioner.

(b) The court shall provide copies of such documents to the appropriate law enforcement agency serving the jurisdiction of the respondent's residence with a direction that such documents be promptly served, at no cost to the petitioner, on the respondent; provided, however, that the petitioner may voluntarily arrange for service of copies of such order and associated papers through a third party, such as a licensed process server.

7. (a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, the statewide computerized registry of orders of protection and warrants of arrest referred to in section two hundred twenty-one-a of the executive law, and the division of criminal justice services of

the issuance of a temporary extreme risk protection order and provide a copy of such order no later than the next business day after issuing the order to such persons or agencies or registry. The court also shall promptly notify such persons and agencies and registry and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. The court also shall report such demographic data as required by the state division of criminal justice services at the time such order is transmitted thereto. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

(b) Upon receiving notice of the issuance of a temporary extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of any such protection order, any court order amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

8. A law enforcement officer serving a temporary extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer to search for firearms, rifles and shotguns in the respondent's possession in a manner consistent with the procedures of article six hundred ninety of the criminal procedure law.

9. Upon issuance of a temporary extreme risk protection order, or upon setting a hearing for a final extreme risk protection order where a

temporary order is denied or not requested, the court shall direct the law enforcement agency having jurisdiction to conduct a background investigation and report to the court and, subject to any appropriate redactions to protect any person, each party regarding whether the respondent:

(a) has any prior criminal conviction for an offense involving domestic violence, use of a weapon, or other violence;

(b) has any criminal charge or violation currently pending against him or her;

(c) is currently on parole or probation;

(d) possesses any registered firearms, rifles or shotguns; and

(e) has been, or is, subject to any order of protection or has violated or allegedly violated any order of protection.

§ 6343. Issuance of a final extreme risk protection order. 1. In accordance with this article, no sooner than three business days nor later than six business days after service of a temporary extreme risk protection order and, alternatively, no later than ten business days after service of an application under this article where no temporary extreme risk protection order has been issued, the supreme court shall hold a hearing to determine whether to issue a final extreme risk protection order and, when applicable, whether a firearm, rifle or shotgun surrendered by, or removed from, the respondent should be returned to the respondent. The respondent shall be entitled to more than six business days if a temporary extreme risk protection order has been issued and the respondent requests a reasonable period of additional time to prepare for the hearing. Where no temporary order has been issued, the respondent may request, and the court may grant, additional time beyond the ten days to allow the respondent to prepare for the hearing.

2. At the hearing pursuant to subdivision one of this section, the petitioner shall have the burden of proving, by clear and convincing evidence, that the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental

hygiene law. The court may consider the petition and any evidence submitted by the petitioner, any evidence submitted by the respondent, any testimony presented, and the report of the relevant law enforcement agency submitted pursuant to subdivision nine of section sixty-three hundred forty-two of this article. The court shall also consider the factors set forth in subdivision two of section sixty-three hundred forty-two of this article.

3. (a) After the hearing pursuant to subdivision one of this section, the court shall issue a written order granting or denying the extreme risk protection order and setting forth the reasons for such determination. If the extreme risk protection order is granted, the court shall direct service of such order in the manner and in accordance with the protections for the petitioner set forth in subdivision six of section sixty-three hundred forty-two of this article.

(b) Upon issuance of an extreme risk protection order: (i) any firearm, rifle or shotgun removed pursuant to a temporary extreme risk protection order or such extreme risk protection order shall be retained by the law enforcement agency having jurisdiction for the duration of the order, unless ownership of the firearm, rifle or shotgun is legally transferred by the respondent to another individual permitted by law to own and possess such firearm, rifle or shotgun; (ii) the supreme court shall temporarily suspend any existing firearm license possessed by the respondent and order the respondent temporarily ineligible for such a license; (iii) the respondent shall be prohibited from purchasing or possessing, or attempting to purchase or possess, a firearm, rifle or shotgun; and (iv) the court shall direct the respondent to surrender any firearm, rifle or shotgun in his or her possession in the same manner as set forth in subdivision five of section 530.14 of the criminal procedure law.

(c) An extreme risk protection order issued in accordance with this section shall extend, as specified by the court, for a period of up to one year from the date of the issuance of such order; provided, however, that if such order was immediately preceded by the issuance of a temporary extreme risk protection order, then the duration of the extreme risk protection order shall be measured from the date of issuance of such temporary extreme risk protection order.

(d) A law enforcement officer serving a final extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer to search for firearms, rifles and shotguns in a respondent's possession consistent with the procedures of article six hundred ninety of the criminal procedure law.

4. (a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, the statewide computerized registry of orders of protection and warrants of arrest referred to in section two hundred twenty-one-a of the executive law, and the division of criminal justice services of the issuance of a final extreme risk protection order and provide a copy of such order to such persons and agencies and registry no later than the next business day after issuing the order. The court also shall promptly notify such persons and agencies and registry and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. The court also shall report such demographic data as required by the state division of criminal justice services at the time such order is transmitted thereto. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

(b) Upon receiving notice of the issuance of a final extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of such protection order and any court order amending or revoking such protection order or

restoring the respondent's ability to purchase a firearm, rifle or shotgun.

5. (a) If, in accordance with a temporary extreme risk protection order, a firearm, rifle or shotgun has been surrendered by or removed from the respondent, and the supreme court subsequently finds that the petitioner has not met the required standard of proof, the court's finding shall include a written order, issued to all parties, directing that any firearm, rifle or shotgun surrendered or removed pursuant to such temporary order shall be returned to the respondent, upon a written finding that there is no legal impediment to the respondent's possession of such firearm, rifle or shotgun.

(b) If any other person demonstrates that he or she is the lawful owner of any firearm, rifle or shotgun surrendered or removed pursuant to a protection order issued in accordance with this article, and provided that the court has made a written finding that there is no legal impediment to the person's possession of a surrendered or removed firearm, rifle or shotgun, the court shall direct that such firearm, rifle or shotgun be returned to such lawful owner and inform such person of the obligation to safely store such firearm, rifle, or shotgun in accordance with section 265.45 of the penal law.

6. The respondent shall be notified on the record and in writing by the court that he or she may submit one written request, at any time during the effective period of an extreme risk protection order, for a hearing setting aside any portion of such order. The request shall be submitted in substantially the same form and manner as prescribed by the chief administrator of the courts. Upon such request, the court shall promptly hold a hearing, in accordance with this article, after providing reasonable notice to the petitioner. The respondent shall bear the burden to prove, by clear and convincing evidence, any change of circumstances that may justify a change to the order.

§ 6344. Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order. 1. When a law enforcement officer takes any firearm, rifle or shotgun pursuant to a temporary

extreme risk protection order or a final extreme risk protection order, the officer shall give to the person from whom such firearm, rifle or shotgun is taken a receipt or voucher for the property taken, describing the property in detail. In the absence of a person, the officer shall leave the receipt or voucher in the place where the property was found, mail a copy of the receipt or voucher, retaining proof of mailing, to the last known address of the respondent and, if different, the owner of the firearm, rifle or shotgun, and file a copy of such receipt or voucher with the court. All firearms, rifles and shotguns in the possession of a law enforcement official pursuant to this article shall be subject to the provisions of applicable law, including but not limited to subdivision six of section 400.05 of the penal law; provided, however, that any such firearm, rifle or shotgun shall be retained and not disposed of by the law enforcement agency for at least two years unless legally transferred by the respondent to an individual permitted by law to own and possess such firearm, rifle or shotgun.

2. If the location to be searched during the execution of a temporary extreme risk protection order or extreme risk protection order is jointly occupied by two or more parties, and a firearm, rifle or shotgun located during the execution of such order is owned by a person other than the respondent, the court shall, upon a written finding that there is no legal impediment to the person other than the respondent's possession of such firearm, rifle or shotgun, order the return of such firearm, rifle or shotgun to such lawful owner and inform such person of their obligation to safely store their firearm, rifle, or shotgun in accordance with section 265.45 of the penal law.

§ 6345. Request for renewal of an extreme risk protection order. 1. If a petitioner believes a person subject to an extreme risk protection order continues to be likely to engage in conduct that would result in serious harm to himself, herself, or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law, such petitioner may, at any time within sixty days prior to the expiration of such existing extreme risk protection order, initiate a request for a renewal of such order, setting forth the facts and

circumstances necessitating the request. The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. The court may issue a temporary extreme risk protection order in accordance with section sixty-three hundred forty-two of this article, during the period that a request for renewal of an extreme risk protection order is under consideration pursuant to this section.

2. A hearing held pursuant to this section shall be conducted in the supreme court, in accordance with section sixty-three hundred forty-three of this article, to determine if a request for renewal of the order shall be granted. The respondent shall be served with written notice of an application for renewal a reasonable time before the hearing, and shall be afforded an opportunity to fully participate in the hearing. The court shall direct service of such application and the accompanying papers in the manner and in accordance with the protections for the petitioner set forth in subdivision six of section sixty-three hundred forty-two of this article.

§ 6346. Expiration of an extreme risk protection order. 1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order and the clerk of the court wherein such proceedings were conducted shall immediately notify the commissioner of the division of criminal justice services, the heads of all appropriate police departments, applicable licensing officers, and all other appropriate law enforcement agencies that the order has expired and that the record of such protection order shall be sealed and not be made available to any person or public or private entity, except that such records shall be made available to:

- (a) the respondent or the respondent's designated agent;
- (b) courts in the unified court system;
- (c) police forces and departments having responsibility for enforcement of the general criminal laws of the state;
- (d) any state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun, when the

respondent has made application for such a license; and

(e) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this subparagraph and afforded an opportunity to make an explanation thereto.

2. Upon expiration of a protection order issued pursuant to this article and upon written application of the respondent who is the subject of such order, with notice and opportunity to be heard to the petitioner and every licensing officer responsible for issuance of a firearm license to the subject of the order pursuant to article four hundred of the penal law, and upon a written finding that there is no legal impediment to the respondent's possession of a surrendered firearm, rifle or shotgun, the court shall order the return of a firearm, rifle or shotgun not otherwise disposed of in accordance with subdivision one of section sixty-three hundred forty-four of this article. When issuing such order in connection with any firearm subject to a license requirement under article four hundred of the penal law, if the licensing officer informs the court that he or she will seek to revoke the license, the order shall be stayed by the court until the conclusion of any license revocation proceeding.

§ 6347. Effect of findings and determinations in subsequent proceedings. Notwithstanding any contrary claim based on common law or a provision of any other law, no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding.

§ 6348. Protections for health care providers applying for an extreme

risk protection order. 1. (a) Notwithstanding the privileges set forth in article forty-five of this chapter, or any other provision of law to the contrary, a health care provider authorized under paragraph (d) of subdivision two of section sixty-three hundred forty of this article to file an application for an extreme risk protection order against a person such health care provider has examined shall, upon filing any application for an extreme risk protection order, be authorized to disclose protected health information, of the person against whom such order is sought as are necessary for the full investigation and disposition of such application for an extreme risk protection order under this article. When disclosing protected health information, such health care provider shall make reasonable efforts to limit protected health information to the minimum necessary to accomplish the filing of the application.

(b) Upon receipt of a petition by any health care provider identified in paragraph (a) of this subdivision and for good cause shown, the court may issue orders as may be necessary to obtain any records or documents relating to diagnosis, prognosis or treatment, and clinical records, of the patient against whom the order is sought as are necessary for the full investigation and disposition of an application for an extreme risk protection order under this article. All such records and other health information provided shall be sealed by the court.

2. The decision of any health care provider described in subdivision one of this section to disclose or not to disclose records or documents relating to the diagnosis, prognosis or treatment, and clinical records of a patient under paragraphs (a) and (b) of subdivision one of this section, when made reasonably and in good faith, shall not be the basis for any civil or criminal liability with respect to such health care provider.

ARTICLE 64

RECEIVERSHIP

6401. Appointment and powers of temporary receiver.

(a) Appointment of temporary receiver; joinder of moving party.

(b) Powers of temporary receiver.

(c) Duration of temporary receivership.

6402. Oath.

6403. Undertaking.

6404. Accounts.

6405. Removal.

§ 6401. Appointment and powers of temporary receiver. (a) Appointment of temporary receiver; joinder of moving party. Upon motion of a person having an apparent interest in property which is the subject of an action in the supreme or a county court, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed. A motion made by a person not already a party to the action constitutes an appearance in the action and the person shall be joined as a party.

(b) Powers of temporary receiver. The court appointing a receiver may authorize him to take and hold real and personal property, and sue for, collect and sell debts or claims, upon such conditions and for such purposes as the court shall direct. A receiver shall have no power to employ counsel unless expressly so authorized by order of the court. Upon motion of the receiver or a party, powers granted to a temporary receiver may be extended or limited or the receivership may be extended to another action involving the property.

(c) Duration of temporary receivership. A temporary receivership shall not continue after final judgment unless otherwise directed by the court.

§ 6402. Oath. A temporary receiver, before entering upon his duties, shall be sworn faithfully and fairly to discharge the trust committed to him. The oath may be administered by any person authorized to take acknowledgments of deeds by the real property law. The oath may be waived upon consent of all parties.

§ 6403. Undertaking. A temporary receiver shall give an undertaking in an amount to be fixed by the court making the appointment, that he will faithfully discharge his duties.

§ 6404. Accounts. A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds, which shall be open to inspection by any person having an apparent interest in the property. Upon motion of the receiver or of any person having an apparent interest in the property, the court may require the keeping of particular records or direct or limit inspection or require presentation of a temporary receiver's accounts. Notice of a motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on his undertaking as well as upon each party.

§ 6405. Removal. Upon motion of any party or upon its own initiative, the court which appointed a receiver may remove him at any time.

ARTICLE 65

NOTICE OF PENDENCY

6501. Notice of pendency; constructive notice.

6511. Filing, content and indexing of notice of pendency.

(a) Filing.

(b) Content; designation of index.

(c) Indexing.

(d) Electronic indexing.

6512. Service of summons.

6513. Duration of notice of pendency.

6514. Motion for cancellation of notice of pendency.

(a) Mandatory cancellation.

(b) Discretionary cancellation.

(c) Costs and expenses.

(d) Cancellation by stipulation.

(e) Cancellation by plaintiff.

6515. Undertaking for cancellation of notice of pendency;
security by plaintiff.

6516. Successive notices of pendency.

§ 6501. Notice of pendency; constructive notice. (a) A notice of pendency may be filed in any action in a court of the state or of the United States in which the judgment demanded would affect the title to, incumbrance of, or the possession, use or enjoyment of, real property, except in a summary proceeding brought to recover the possession of real property. The pendency of such an action is constructive notice, from the time of filing of the notice only, to a purchaser from, or incumbrancer against, any defendant named in a notice of pendency indexed in a block index against a block in which property affected is situated or any defendant against whose name a notice of pendency is indexed. A person whose conveyance or incumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as a party.

(b) Notwithstanding any provision of subdivision (a) of this section to the contrary, a notice of pendency may be filed by a district attorney's office or the office of the attorney general upon a determination after investigation that there is probable cause that a crime has occurred that affects the title to, incumbrance of, or possession of real property, in the county where the real property is located. Such notice of pendency shall remain in effect for a period of six months but may be renewed twice.

(c) Notwithstanding any provision of subdivision (a) of this section to the contrary, a notice of pendency may be filed by a district attorney's office or the office of the attorney general upon the filing of a criminal complaint or indictment that allege charges affecting the title to, incumbrance of or possession of real property, in the county where the real property is located. A notice of pendency filed will remain in effect until the prosecution of a criminal case is either dismissed, or otherwise disposed of at sentencing and is not subject to a three year period of expiration under section six thousand five hundred thirteen of this article.

Rule 6511. Filing, content and indexing of notice of pendency. (a)

Filing. In a case specified in section 6501, the notice of pendency shall be filed in the office of the clerk of any county where property affected is situated, before or after service of summons and at any time prior to judgment. Unless it has already been filed in that county, the complaint shall be filed with the notice of pendency.

(b) Content; designation of index. A notice of pendency shall state the names of the parties to the action, including the name and telephone number of the mortgage servicer for a foreclosing party involving a mortgage foreclosure of a one- to four-family residential property, the object of the action and a description of the property affected. A notice of pendency filed with a clerk who maintains a block index shall contain a designation of the number of each block on the land map of the county which is affected by the notice. Except in an action for partition a notice of pendency filed with a clerk who does not maintain a block index shall contain a designation of the names of each defendant against whom the notice is directed to be indexed.

(c) Indexing. Each county clerk with whom a notice of pendency is filed shall immediately record it and index it against the blocks or names designated. A county clerk who does not maintain a block index shall index a notice of pendency of an action for partition against the names of each plaintiff and each defendant not designated as wholly fictitious.

(d) Electronic indexing. A county clerk may adopt a new indexing system utilizing electro-mechanical, electronic or any other method he deems suitable for maintaining the indexes.

§ 6512. Service of summons. A notice of pendency is effective only if, within thirty days after filing, a summons is served upon the defendant or first publication of the summons against the defendant is made pursuant to an order and publication is subsequently completed. If the defendant dies within thirty days after filing and before the summons is served upon him or publication is completed, the notice is effective only if the summons is served upon his executor or administrator within

sixty days after letters are issued.

§ 6513. Duration of notice of pendency. A notice of pendency shall be effective for a period of three years from the date of filing. Before expiration of a period or extended period, the court, upon motion of the plaintiff and upon such notice as it may require, for good cause shown, may grant an extension for a like additional period. An extension order shall be filed, recorded and indexed before expiration of the prior period.

§ 6514. Motion for cancellation of notice of pendency. (a) Mandatory cancellation. The court, upon motion of any person aggrieved and upon such notice as it may require, shall direct any county clerk to cancel a notice of pendency, if service of a summons has not been completed within the time limited by section 6512; or if the action has been settled, discontinued or abated; or if the time to appeal from a final judgment against the plaintiff has expired; or if enforcement of a final judgment against the plaintiff has not been stayed pursuant to section 5519.

(b) Discretionary cancellation. The court, upon motion of any person aggrieved and upon such notice as it may require, may direct any county clerk to cancel a notice of pendency, if the plaintiff has not commenced or prosecuted the action in good faith.

(c) Costs and expenses. The court, in an order cancelling a notice of pendency under this section, may direct the plaintiff to pay any costs and expenses occasioned by the filing and cancellation, in addition to any costs of the action.

(d) Cancellation by stipulation. At any time prior to entry of judgment, a notice of pendency shall be cancelled by the county clerk without an order, on the filing with him of

1. an affidavit by the attorney for the plaintiff showing which defendants have been served with process, which defendants are in default in appearing or answering, and which defendants have appeared or answered and by whom, and

2. a stipulation consenting to the cancellation, signed by the attorney for the plaintiff and by the attorneys for all the defendants who have appeared or answered including those who have waived all notices, and executed and acknowledged, in the form required to entitle a deed to be recorded, by the defendants who have been served with process and have not appeared but whose time to do so has not expired, and by any defendants who have appeared in person.

(e) Cancellation by plaintiff. At any time prior to the entry of judgment a notice of pendency of action shall be cancelled by the county clerk without an order, on the filing with him of an affidavit by the attorney for the plaintiff showing that there have been no appearances and that the time to appear has expired for all parties.

§ 6515. Undertaking for cancellation of notice of pendency; security by plaintiff. In any action other than a foreclosure action as defined in subdivision (b) of section 6516 of this article or for partition or dower, the court, upon motion of any person aggrieved and upon such notice as it may require, may direct any county clerk to cancel a notice of pendency, upon such terms as are just, whether or not the judgment demanded would affect specific real property, if the moving party shall give an undertaking in an amount to be fixed by the court, and if:

1. the court finds that adequate relief can be secured to the plaintiff by the giving of such an undertaking; or

2. in such action, the plaintiff fails to give an undertaking, in an amount to be fixed by the court, that the plaintiff will indemnify the moving party for the damages that he or she may incur if the notice is not cancelled.

§ 6516. Successive notices of pendency. (a) In a foreclosure action, a successive notice of pendency may be filed to comply with section thirteen hundred thirty-one of the real property actions and proceedings law, notwithstanding that a previously filed notice of pendency in such

action or in a previous foreclosure action has expired pursuant to section 6513 of this article or has become ineffective because service of a summons had not been completed within the time limited by section 6512 of this article, whether or not such expiration or such ineffectiveness has been determined by the court. This subdivision is inapplicable to an action to foreclose a mechanic's lien, notwithstanding section forty-three of the lien law.

(b) For the purposes of this article, the term "foreclosure action" shall mean any action or proceeding in which the provisions of section thirteen hundred thirty-one of the real property actions and proceedings law are applicable or in which a similar requirement is imposed by law.

(c) Except as provided in subdivision (a) of this section, a notice of pendency may not be filed in any action in which a previously filed notice of pendency affecting the same property had been cancelled or vacated or had expired or become ineffective.

(d) Nothing contained in this section shall be construed as making the requirements of section thirteen hundred thirty-one of the real property actions and proceedings law applicable to a proceeding to foreclose a tax lien in which a list of delinquent taxes has been filed pursuant to subdivision seven of section eleven hundred twenty-two of the real property tax law or any comparable law, or as precluding the filing of a successive list of delinquent taxes in such a proceeding.

ARTICLE 70

HABEAS CORPUS

7001. Application of article; special proceeding.

7002. Petition.

(a) By whom made.

(b) To whom made.

(c) Content.

7003. When the writ shall be issued.

(a) Generally.

(b) Successive petitions for writ.

(c) Penalty for violation.

7004. Content of writ.

(a) For whom issued.

- (b) To whom directed.
 - (c) Before whom returnable.
 - (d) When returnable.
 - (e) Expenses; undertaking.
- 7005. Service of the writ.
- 7006. Obedience to the writ.
 - (a) Generally; defects in form.
 - (b) Compelling obedience.
 - (c) Precept to bring up person detained.
- 7007. Warrant preceding or accompanying writ.
- 7008. Return.
 - (a) When filed and served.
 - (b) Content.
- 7009. Hearing.
 - (a) Notice before hearing.
 - (b) Reply to return.
 - (c) Hearing to be summary.
 - (d) Sickness or infirmity of person detained.
 - (e) Custody during proceeding.
- 7010. Determination of proceeding.
 - (a) Discharge.
 - (b) Bail.
 - (c) Remand.
- 7011. Appeal.
- 7012. Redetention after discharge.

§ 7001. Application of article; special proceeding. Except as otherwise prescribed by statute, the provisions of this article are applicable to common law or statutory writs of habeas corpus and common law writs of certiorari to inquire into detention. A proceeding under this article is a special proceeding.

§ 7002. Petition. (a) By whom made. A person illegally imprisoned or otherwise restrained in his liberty within the state, or one acting on his behalf or a party in a child abuse proceeding subsequent to an order

of the family court, may petition without notice for a writ of habeas corpus to inquire into the cause of such detention and for deliverance. A judge authorized to issue writs of habeas corpus having evidence, in a judicial proceeding before him, that any person is so detained shall, on his own initiative, issue a writ of habeas corpus for the relief of that person.

(b) To whom made. Except as provided in paragraph five of this subdivision, a petition for the writ shall be made to:

1. the supreme court in the judicial district in which the person is detained; or

2. the appellate division in the department in which the person is detained; or

3. any justice of the supreme court; or

4. a county judge being or residing within the county in which the person is detained; where there is no judge within the county capable of issuing the writ, or if all within the county capable of doing so have refused, the petition may be made to a county judge being or residing within an adjoining county.

5. in a city having a population of one million or more inhabitants, a person held as a trial incarcerated individual in a city detention institution shall petition for a writ to the supreme court in the county in which the charge for which the incarcerated individual is being detained is pending. Such incarcerated individual may also petition for a writ to the appellate division in the department in which he is detained or to any justice of the supreme court provided that the writ shall be made returnable before a justice of the supreme court held in the county in which the charge for which the incarcerated individual is being detained is pending.

(c) Content. The petition shall be verified and shall state, or shall be accompanied by an affidavit which shall state,

1. that the person in whose behalf the petition is made is detained,

naming the person by whom he is detained and the place of detention if they are known, or describing them if they are not known; where the detention is by virtue of a mandate, a copy of it shall be annexed to the petition, or sufficient reason why a copy could not be obtained shall be stated;

2. the cause or pretense of the detention, according to the best knowledge and belief of the petitioner;

3. that a court or judge of the United States does not have exclusive jurisdiction to order him released;

4. if the writ is sought because of an illegal detention, the nature of the illegality;

5. whether any appeal has been taken from any order by virtue of which the person is detained, and, if so, the result;

6. the date, and the court or judge to whom made, of every previous application for the writ, the disposition of each such application and of any appeal taken, and the new facts, if any, presented in the petition that were not presented in any previous application; and

7. if the petition is made to a county judge outside the county in which the person is detained, the facts which authorize such judge to act.

§ 7003. When the writ shall be issued. (a) Generally. The court to whom the petition is made shall issue the writ without delay on any day, or, where the petitioner does not demand production of the person detained or it is clear that there is no disputable issue of fact, order the respondent to show cause why the person detained should not be released. If it appears from the petition or the documents annexed thereto that the person is not illegally detained or that a court or judge of the United States has exclusive jurisdiction to order him released, the petition shall be denied.

(b) Successive petitions for writ. A court is not required to issue a writ of habeas corpus if the legality of the detention has been determined by a court of the state on a prior proceeding for a writ of habeas corpus and the petition presents no ground not theretofore presented and determined and the court is satisfied that the ends of justice will not be served by granting it.

(c) Penalty for violation. For a violation of this section in refusing to issue the writ, a judge, or, if the petition was made to a court, each member of the court who assents to the violation, forfeits to the person detained one thousand dollars, to be recovered by an action in his name or in the name of the petitioner to his use.

§ 7004. Content of writ. (a) For whom issued. The writ shall be issued on behalf of the state, and where issued upon the petition of a private person, it shall show that it was issued upon his relation.

(b) To whom directed. The writ shall be directed to, and the respondent shall be, the person having custody of the person detained.

(c) Before whom returnable. A writ to secure the discharge of a person from a state institution shall be made returnable before a justice of the supreme court or a county judge being or residing within the county in which the person is detained; if there is no such judge it shall be made returnable before the nearest accessible supreme court justice or county judge. In all other cases, the writ shall be made returnable in the county where it was issued, except that where the petition was made to the supreme court or to a supreme court justice outside the county in which the person is detained, such court or justice may make the writ returnable before any judge authorized to issue it in the county of detention.

(d) When returnable. The writ may be made returnable forthwith or on any day or time certain, as the case requires.

(e) Expenses; undertaking. A court issuing a writ directed to any person other than a public officer may require the petitioner to pay the charges of bringing up the person detained and to deliver an undertaking to the person having him in custody, in an amount fixed by the court, to pay the charges for taking back the person detained if he should be remanded. Service of the writ shall not be complete until such charge is

paid or tendered and such undertaking is delivered.

§ 7005. Service of the writ. A writ of habeas corpus may be served on any day. Service shall be made by delivering the writ and a copy of the petition to the person to whom it is directed. If he cannot with due diligence be found, the writ may be served by leaving it and a copy of the petition with any person who has custody of the person detained at the time. Where the person to whom the writ is directed conceals himself or refuses admittance, the writ may be served by affixing it and a copy of the petition in a conspicuous place on the outside either of his dwelling or of the place where the person is detained and mailing a copy of the writ and the petition to him at such dwelling or place, unless the court which issues the writ determines, for good cause shown, that such mailing shall be dispensed with, or directs service in some other manner which it finds reasonably calculated to give notice to such person of the proceeding. If the person detained is in the custody of a person other than the one to whom the writ is directed, a copy of the writ may be served upon the person having such custody with the same effect as if the writ had been directed to him.

§ 7006. Obedience to the writ. (a) Generally; defects in form. A person upon whom the writ or a copy thereof is served, whether it is directed to him or not, shall make a return to it and, if required by it, produce the body of the person detained at the time and place specified, unless the person detained is too sick or infirm to make the required trip. A writ of habeas corpus shall not be disobeyed for defect of form so long as the identity of the person detained may be derived from its contents.

(b) Compelling obedience. If the person upon whom the writ or a copy thereof is served refuses or neglects fully to obey it, without showing sufficient cause, the court before whom the writ is returnable, upon proof of its service, shall forthwith issue a warrant of attachment against him directed to the sheriff in any county in which such person may be found requiring him to be brought before the court issuing the warrant; he may be ordered committed in close custody to the county jail

until he complies with the order of the court. Where such person is a sheriff, the warrant shall be directed to a person specifically designated to execute it. Such person shall have power to call to his aid the same assistance as the sheriff in executing the warrant; a sheriff shall be committed to a jail in a county other than his own.

(c) Precept to bring up person detained. A court issuing a warrant of attachment as prescribed in subdivision (b) may at the same time, or thereafter, issue a precept to the person to whom the warrant is directed ordering him immediately to bring before the court the person detained.

§ 7007. Warrant preceding or accompanying writ. A court authorized to issue a writ of habeas corpus, upon satisfactory proof that a person is wrongfully detained and will be removed from the state or suffer irreparable injury before he can be relieved by habeas corpus, shall issue a warrant of attachment directed to an appropriate officer requiring him immediately to bring the person detained before the court. A writ of habeas corpus directed to the person having custody of the person detained shall also be issued. Where it appears that the detention constitutes a criminal offense, the warrant may order the apprehension of the person responsible for the detention, who shall then be brought before the court issuing the warrant and examined as in a criminal case.

§ 7008. Return. (a) When filed and served. The return shall consist of an affidavit to be served in the same manner as an answer in a special proceeding and filed at the time and place specified in the writ, or, where the writ is returnable forthwith, within twenty-four hours after its service.

(b) Content. The affidavit shall fully and explicitly state whether the person detained is or has been in the custody of the person to whom the writ is directed, the authority and cause of the detention, whether custody has been transferred to another, and the facts of and authority for any such transfer. A copy of any mandate by virtue of which the person is detained shall be annexed to the affidavit, and the original

mandate shall be produced at the hearing; where the mandate has been delivered to the person to whom the person detained was transferred, or a copy of it cannot be obtained, the reason for failure to produce it and the substance of the mandate shall be stated in the affidavit.

§ 7009. Hearing. (a) Notice before hearing. Where the detention is by virtue of a mandate, the court shall not adjudicate the issues in the proceeding until written notice of the time and place of the hearing has been served either personally eight days prior to the hearing, or in any other manner or time as the court may order,

1. where the mandate was issued in a civil cause, upon the person interested in continuing the detention or upon his attorney; or,

2. where a person is detained by order of the family court, or by order of any court while a proceeding affecting him or her is pending in the family court, upon the judge who made the order. In all such proceedings, the court shall be represented by the attorney-general; or,

3. in any other case, upon the district attorney of the county in which the person was detained when the writ was served and upon the district attorney of the county from which he was committed.

(b) Reply to return. The petitioner or the person detained may deny under oath, orally or in writing, any material allegation of the answering affidavits or allege any fact showing that the person detained is entitled to be discharged.

(c) Hearing to be summary. The court shall proceed in a summary manner to hear the evidence produced in support of and against the detention and to dispose of the proceeding as justice requires.

(d) Sickness or infirmity of person detained. Where it is proved to the satisfaction of the court that the person detained is too sick or infirm to be brought to the appointed place, the hearing may be held without his presence, may be adjourned, or may be held at the place where the prisoner is detained.

(e) Custody during proceeding. Pending final disposition, the court may place the person detained in custody or parole him or admit him to

bail as justice requires.

§ 7010. Determination of proceeding. (a) Discharge. If the person is illegally detained a final judgment shall be directed discharging him forthwith. No person detained shall be discharged for a defect in the form of the commitment, or because the person detaining him is not entitled to do so if another person is so entitled. A final judgment to discharge a person may be enforced by the court issuing the order by attachment in the manner prescribed in subdivision (b) of section 7006.

(b) Bail. If the person detained has been admitted to bail but the amount fixed is so excessive as to constitute an abuse of discretion, and he is not ordered discharged, the court shall direct a final judgment reducing bail to a proper amount. If the person detained has been denied bail, and he is not ordered discharged, the court shall direct a final judgment admitting him to bail forthwith, if he is entitled to be admitted to bail as a matter of right, or if it appears that the denial of bail constituted an abuse of discretion. Such judgment must fix the amount of bail, specify the time and place at which the person detained is required to appear, and order his release upon bail being given in accordance with the criminal procedure law.

(c) Remand. If the person detained is not ordered discharged and not admitted to bail, a final judgment shall be directed dismissing the proceeding, and, if he was actually produced in court, remanding him to the detention from which he was taken, unless the person then detaining him was not entitled to do so, in which case he shall be remanded to proper detention.

§ 7011. Appeal. An appeal may be taken from a judgment refusing to grant a writ of habeas corpus or refusing an order to show cause issued under subdivision (a) of section 7003, or from a judgment made upon the return of such a writ or order to show cause. A person to whom notice is given pursuant to subdivision (a) of section 7009 is a party for purposes of appeal. The attorney-general may appeal in the name of the state in any case where a district attorney might do so. Where an appeal from a judgment admitting a person to bail is taken by the state, his

release shall not be stayed thereby.

§ 7012. Redetention after discharge. A person discharged upon the return of a writ of habeas corpus shall not be detained for the same cause, except by virtue of a subsequent lawful mandate.

ARTICLE 71

RECOVERY OF CHATTEL

7101. When action may be brought.

7102. Seizure of chattel on behalf of plaintiff.

(a) Seizure of chattel.

(b) Service.

(c) Affidavit.

(d) Order of seizure.

(e) Undertaking.

(f) Disposition of chattel by sheriff.

7103. Reclaiming, impounding or returning chattel.

(a) Reclaiming chattel.

(b) Impounding chattel.

(c) Returning chattel.

(d) Additional parties.

7104. Seizing, reclaiming or returning less than all chattels.

7105. Sale of perishable property.

7106. Payment of sheriff's fees and expenses; liability of sheriff.

(a) Payment of sheriff's fees and expenses.

(b) Liability of sheriff.

7107. Sheriff's return.

7108. Judgment; execution in certain cases; enforcement by contempt.

(a) Generally.

(b) Where value of chattel should not be awarded; execution.

(c) Failure of jury to fix sum.

7109. Unique chattel.

(a) Injunction, temporary restraining order.

(b) Judgment enforceable by contempt.

7110. Sheriff's powers.

7111. Action on undertaking.

7112. Testimony by deposition to ascertain location of chattel.

§ 7101. When action may be brought. An action under this article may be brought to try the right to possession of a chattel.

§ 7102. Seizure of chattel on behalf of plaintiff. (a) Seizure of chattel. When the plaintiff delivers to a sheriff an order of seizure, the papers on which the order was granted, the undertaking and a summons and complaint bearing the index number and the date of filing with the clerk of the court, in the action to recover the chattel, he shall seize the chattel in accordance with the provisions of the order and without delay.

(b) Service. The sheriff shall serve upon the person from whose possession the chattel is seized a copy of the order of seizure, the papers on which the order was granted, and the undertaking delivered to him by the plaintiff. Unless the order of seizure provides otherwise, the papers delivered to him by the plaintiff, shall be personally served by the sheriff on each defendant not in default in the same manner as a summons or as provided in section 314; if a defendant has appeared he shall be served in the manner provided for service of papers generally.

(c) Affidavit. The application for an order of seizure shall be supported by an affidavit which shall clearly identify the chattel to be seized and shall state:

1. that the plaintiff is entitled to possession by virtue of facts set forth;

2. that the chattel is wrongfully held by the defendant named;

3. whether an action to recover the chattel has been commenced, the defendants served, whether they are in default, and, if they have

appeared, where papers may be served upon them;

4. the value of each chattel or class of chattels claimed, or the aggregate value of all chattels claimed;

5. if the plaintiff seeks the inclusion in the order of seizure of a provision authorizing the sheriff to break open, enter and search for the chattel, the place where the chattel is located and facts sufficient to establish probable cause to believe that the chattel is located at that place;

6. that no defense to the claim is known to the plaintiff; and

7. if the plaintiff seeks an order of seizure without notice, facts sufficient to establish that unless such order is granted without notice, it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.

(d) Order of seizure. 1. Upon presentation of the affidavit and undertaking and upon finding that it is probable the plaintiff will succeed on the merits and the facts are as stated in the affidavit, the court may grant an order directing the sheriff of any county where the chattel is found to seize the chattel described in the affidavit and including, if the court so directs, a provision that, if the chattel is not delivered to the sheriff, he may break open, enter and search for the chattel in the place specified in the affidavit. The plaintiff shall have the burden of establishing the grounds for the order.

2. Upon a motion for an order of seizure, the court, without notice to the defendant, may grant a temporary restraining order that the chattel shall not be removed from the state if it is a vehicle, aircraft or vessel or, otherwise, from its location, transferred, sold, pledged, assigned or otherwise disposed of or permitted to become subject to a security interest or lien until further order of the court. Unless the court otherwise directs, the restraining order does not prohibit a disposition of the chattel to the plaintiff. Disobedience of the order may be punished as a contempt of court.

3. An order as provided in paragraph one of this subdivision may be granted without notice only if, in addition to the other prerequisites for the granting of the order, the court finds that unless such order is granted without notice it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.

4. An order of seizure granted without notice shall provide that the plaintiff shall move for an order confirming the order of seizure on such notice to the defendant and sheriff and within such period, not to exceed five days after seizure, as the court shall direct. Unless the motion is made within such period, the order of seizure shall have no further effect and shall be vacated on motion and any chattel seized thereunder shall be returned forthwith to the defendant. Upon the motion to confirm, the plaintiff shall have the burden of establishing the grounds for confirmation.

(e) Undertaking. The undertaking shall be executed by sufficient surety, acceptable to the court. The condition of the undertaking shall be that the surety is bound in a specified amount, not less than twice the value of the chattel stated in the plaintiff's affidavit, for the return of the chattel to any person to whom possession is awarded by the judgment, and for payment of any sum awarded by the judgment against the person giving the undertaking. A person claiming only a lien on or security interest in the chattel may except to the plaintiff's surety.

(f) Disposition of chattel by sheriff. Unless the court orders otherwise, the sheriff shall retain custody of a chattel for a period of ten days after seizure where seizure is pursuant to an order granted on notice, and until served with an order of confirmation where seizure is pursuant to an order granted without notice. At the expiration of such period, the sheriff shall deliver the chattel to the plaintiff if there has not been served upon him a notice of exception to plaintiff's surety, a notice of motion for an impounding or returning order, or the necessary papers to reclaim the chattel. Upon failure of the surety on plaintiff's undertaking to justify, the sheriff shall deliver possession of the chattel to the person from whom it was seized.

§ 7103. Reclaiming, impounding or returning chattel. (a) Reclaiming chattel. A chattel may be reclaimed by any person claiming the right to its possession, except a defendant claiming only a lien thereon or a security interest therein , by service upon the sheriff, and upon all parties to the action, of a notice that the reclaiming party requires a return of all or part of the chattels replevied; an undertaking executed as required by subdivision (e) of section 7102 and an affidavit stating that the reclaiming party is entitled to possession by virtue of facts set forth. The sheriff shall retain custody of the chattel for ten days after such papers have been served upon him. At the expiration of such period he shall deliver the chattel to the person serving the notice if there has not been served upon him a notice of exception to sureties or a notice of motion for an impounding order. Upon failure by the surety to justify, the sheriff shall deliver possession of the chattel to the plaintiff. If more than one person serves a reclaiming notice on the sheriff, the sheriff shall move, on notice to all parties, to have the court determine to whom the chattel shall be delivered.

(b) Impounding chattel. A chattel which is in the custody of the sheriff may be impounded pending judgment or further order of the court, upon motion of any person claiming the right to its possession, upon notice to the sheriff and to all parties to the action. The motion shall be granted if the chattel is of such a nature, or the circumstances are such, that the moving party, if found to be entitled to possession, would not be adequately compensated for its loss by the payment of its pecuniary value. An undertaking shall accompany the motion, in an amount not less than two hundred and fifty dollars, that the moving party will indemnify the sheriff for all expenses incurred by him in transporting, handling and safekeeping the chattel pending determination of the motion, and, if the motion is granted, pending judgment or further order of the court. All expenses resulting from impounding shall be taxed as disbursements in the action as the court may direct.

(c) Returning chattel. 1. If a chattel which is in the custody of the sheriff is personal property which if owned by a defendant would be exempt from application to the satisfaction of a money judgment, if the value of the possession of the chattel to the defendant is greater than

the value of its possession to the plaintiff, if the interest of the plaintiff would not thereby be prejudiced and if the interests of justice so require, upon motion of the defendant, upon notice to the sheriff and to all parties to the action, and on such terms and on such security and conditions as to the court may seem proper, the court may order its return to the defendant.

2. If the court orders the return of the chattel to the defendant, it shall grant a restraining order that the chattel shall not be removed from the state if it is a vehicle, aircraft or vessel or, otherwise, from its location, transferred, sold, pledged, assigned or otherwise disposed of or permitted to become subject to a security interest or lien until further order of the court. Unless the court otherwise directs, the restraining order does not prohibit a disposition of the chattel to the plaintiff. Disobedience of the order may be punished as a contempt of court.

(d) Additional parties. A motion under this section, or service upon plaintiff of a notice of reclamation or exception to surety by a person not a party to the action, makes such a person a party to the action. Plaintiff shall serve a copy of the complaint upon such person within twenty days after he becomes a party.

§ 7104. Seizing, reclaiming or returning less than all chattels. Where the seizure of two or more chattels is required by the order of seizure, the sheriff shall seize those chattels which can be found. Less than all of the seized chattels may be impounded, reclaimed or returned. The value of the chattels seized, as stated in the affidavit of the plaintiff, or as determined by the court upon application of the defendant, shall be the value for the purposes of subsequent undertakings in the action. Unless the court orders otherwise, the sheriff may, at any time before entry of judgment, seize those chattels not yet seized; the proceedings for reclaiming, impounding or returning a chattel subsequently seized are the same as on a former seizure.

§ 7105. Sale of perishable property. Upon motion with such notice as

the court may require, the court may order the sheriff to sell perishable property which has been seized. The court shall prescribe the time and place of the sale, and the manner and time in which notice thereof shall be given. Unless the court orders otherwise, the sheriff, after deducting his fees and necessary expenses, shall pay the proceeds into court to be held pending determination of the action.

§ 7106. Payment of sheriff's fees and expenses; liability of sheriff.

(a) Payment of sheriff's fees and expenses. The sheriff shall not deliver a chattel to the person entitled to possession unless such person shall, upon request, pay to the sheriff his lawful fees and the expenses necessarily incurred in taking and keeping the chattel. Such fees and expenses shall be taxed as costs in the action or may be taxed immediately upon motion and the sheriff may be required to refund any amount not found to be necessarily incurred.

(b) Liability of sheriff. A sheriff is liable for damages caused by his delivery of a chattel in violation of this article only to the extent that such damages can not be collected from the party to whom the chattel was delivered, or his surety. When a chattel is delivered by the sheriff to any party, as prescribed in this article, the sheriff ceases to be responsible for the sufficiency of the sureties of any party; until then, he is responsible for the sufficiency of the sureties of any party.

§ 7107. Sheriff's return. The sheriff shall file with the clerk a return within twenty days after he has delivered a chattel; it shall include all papers delivered to or served on him and a statement of all action taken by him. Where the sheriff has not filed a return before the hearing of a motion made by any party to punish him for contempt for such failure, he may be punished for contempt. At least ten days' notice of such motion shall be given to the sheriff.

§ 7108. Judgment; execution in certain cases; enforcement by contempt.

(a) Generally. Damages for wrongful taking or detention or for injury to

or depreciation of a chattel may be awarded to a party. If an order of seizure granted without notice is not confirmed as required pursuant to paragraph four of subdivision (d) of section 7102, the plaintiff, unless the court orders otherwise upon good cause shown, shall be liable to the defendant for all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the granting of the order of seizure without notice, and the plaintiff's liability shall not be limited to the amount of the undertaking. Except as provided in subdivision (b), judgment shall award possession of each chattel to the prevailing party or, if the action is discontinued or dismissed, to the person from whom it was seized; and where the person awarded possession is not in possession when judgment is entered, it shall in the alternative, award the value of each chattel at the time of trial or the sum for which it was sold under section 7105, decreased by the value of the interest of an unsuccessful party.

(b) Where value of chattel should not be awarded; execution. A verdict, report or decision in favor of the defendant where the chattel is in possession of the plaintiff at the time it is rendered shall not fix the value of the chattel where:

1. the plaintiff is the owner of the chattel but it was rightfully distrained doing damage, and the value of the chattel is greater than the damages sustained by the defendant; or

2. the plaintiff is the owner of the chattel, but the defendant had a special property therein, the value of which is less than the value of the chattel.

The verdict, report or decision shall state why the value of the chattel is not fixed, and the final judgment shall award to the defendant the amount of damages or value of his special property and, if such sum is not collected, possession of the chattel. An execution shall direct the sheriff to deliver possession of the chattel to the defendant unless the party in possession pays the sum awarded to the defendant with interest and sheriff's fees and in case the chattel cannot be found within his county, then to satisfy that sum from the property of the party against whom the judgment is entered. If the chattel is in

possession of the defendant, it may remain in his possession until the amount awarded is paid.

(c) Failure of jury to fix sum. If the jury shall fail to fix any sum required to be fixed by this section, such sum shall be fixed by a jury empanelled for the purpose upon motion made before the judge who presided at the trial within fifteen days after verdict.

§ 7109. Unique chattel. (a) Injunction, temporary restraining order. Where the chattel is unique, the court may grant a preliminary injunction or temporary restraining order that the chattel shall not be removed from the state, transferred, sold, pledged, assigned or otherwise disposed of until the further order of the court.

(b) Judgment enforceable by contempt. Where the chattel is unique, the court, in addition to granting a judgment under section 7108, may direct that a party in possession deliver the chattel to the party entitled to possession. Disobedience of a judgment or order so directing may be punished as a contempt of court. If a party accepts the value of the chattel awarded to him by the judgment, he shall have no claim to the chattel.

§ 7110. Sheriff's powers. If the order of seizure so provides, the sheriff, in accordance with the order of seizure, may break open, enter and search for the chattel in the place where the chattel may be and take the chattel into his possession.

§ 7111. Action on undertaking. An action on an undertaking cannot be maintained after final judgment until the return, wholly or partly unsatisfied, of an execution on the judgment for delivery of possession of the chattel or for payment of a sum of money in lieu of the chattel.

§ 7112. Testimony by deposition to ascertain location of chattel. A party to an action to recover a chattel may move, upon such notice as the court may direct, upon a showing that he lacks knowledge of the

location of the chattel or a part thereof, for an order to examine any person for the purpose of obtaining information with reference to such location. The order may be granted before or after service of summons and complaint, or anytime before or after final judgment, and may also restrain the adverse party from acting in violation of whatever rights the moving party may have in the chattel, upon the execution of a reasonable undertaking, with sufficient sureties, to reimburse the adverse party for all damages wrongfully caused by such restraint.

ARTICLE 72

RECOVERY OF PENALTY OR FORFEITURE

7201. Action by state.

- (a) Statutory penalty or forfeiture.
- (b) Forfeiture on conviction for treason.
- (c) Forfeiture of recognizance.

7202. Action by person aggrieved.

7203. Action by common informer.

- (a) When maintainable.
- (b) Service.
- (c) Action not barred by collusive recovery.

7204. Recovery of part of penalty or forfeiture.

7205. Defense of good faith reliance on judicial decision.

§ 7201. Action by state. (a) Statutory penalty or forfeiture. Where property has been forfeited or a penalty incurred to the state or to an officer, for its use, pursuant to statute, the attorney-general, or the district attorney of the county in which the action is triable, if such an action has not already been brought by the attorney-general, shall commence an action to recover the property or penalty. A recovery in such an action bars the recovery in any other action brought for the same cause.

(b) Forfeiture on conviction for treason. Where personal property is forfeited to the state upon a conviction of outlawry for treason, the attorney-general shall commence an action to recover the property or its value.

(c) Forfeiture of recognizance. Where the condition of a recognizance is broken, the recognizance is wholly forfeited by an order of the court directing its prosecution. Where a recognizance to the state is forfeited, it is not necessary to allege or prove any damages.

§ 7202. Action by person aggrieved. Where a penalty or forfeiture is given by a statute to a person aggrieved by the act or omission of another, the person aggrieved may commence an action to recover it.

§ 7203. Action by common informer. (a) When maintainable. Where a penalty or forfeiture is given by a statute to any person, an action to recover it may be maintained by any person in his own name; but the action cannot be compromised or settled without the leave of the court.

(b) Service. The summons can be served only by an officer authorized by law to collect upon an execution issued out of the same court. The summons cannot be countermanded by the plaintiff before service. Immediately after it has been served, the officer shall file it with his certificate of service with the judge who issued it or with the clerk of the court.

(c) Action not barred by collusive recovery. The plaintiff may recover, notwithstanding the recovery of a judgment, for or against the defendant, in an action brought by another person, if the former judgment was recovered collusively and fraudulently.

§ 7204. Recovery of part of penalty or forfeiture. Where a statute gives a pecuniary penalty or forfeiture not exceeding a specified sum, the whole sum or a part proportionate to the offense may be awarded.

§ 7205. Defense of good faith reliance on judicial decision. No action for a penalty or forfeiture may be brought for an act done in good faith and pursuant to a construction given to a statute by a decision of an appellate court and adjudged lawful thereby, where such act was done prior to a reversal or the overruling of such decision.

ARTICLE 75

ARBITRATION

- 7501. Effect of arbitration agreement.
- 7502. Applications to the court; venue; statutes of limitation; provisional remedies.
 - (a) Applications to the court; venue.
 - (b) Limitation of time.
 - (c) Provisional remedies.
- 7503. Application to compel or stay arbitration; stay of action; notice of intention to arbitrate.
 - (a) Application to compel arbitration; stay of action.
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- 7504. Court appointment of arbitrator.
- 7505. Powers of arbitrator.
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- 7507. Award; form; time; delivery.
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 - (c)
- 7516. Confirmation of an award based on a consumer credit transaction.

§ 7501. Effect of arbitration agreement. A written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award. In determining any matter arising under this article, the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute.

§ 7502. Applications to the court; venue; statutes of limitation; provisional remedies. (a) Applications to the court; venue. A special proceeding shall be used to bring before a court the first application arising out of an arbitrable controversy which is not made by motion in a pending action.

(i) The proceeding shall be brought in the court and county specified in the agreement. If the name of the county is not specified, proceedings to stay or bar arbitration shall be brought in the county where the party seeking arbitration resides or is doing business, and other proceedings affecting arbitration are to be brought in the county where at least one of the parties resides or is doing business or where

the arbitration was held or is pending.

(ii) If there is no county in which the proceeding may be brought under paragraph (i) of this subdivision, the proceeding may be brought in any county.

(iii) Notwithstanding the entry of judgment, all subsequent applications shall be made by motion in the special proceeding or action in which the first application was made.

(iv) If an application to confirm an arbitration award made within the one year as provided by section seventy-five hundred ten of this article, or an application to vacate or modify an award made within the ninety days as provided by subdivision (a) of section seventy-five hundred eleven of this article, was denied or dismissed solely on the ground that it was made in the form of a motion captioned in an earlier special proceeding having reference to the arbitration instead of as a distinct special proceeding, the time in which to apply to confirm the award and the time in which to apply to vacate or modify the award may, notwithstanding that the applicable period of time has expired, be made at any time within ninety days after the effective date of this paragraph, and may be made in whatever form is appropriate (motion or special proceeding) pursuant to this subdivision.

(b) Limitation of time. If, at the time that a demand for arbitration was made or a notice of intention to arbitrate was served, the claim sought to be arbitrated would have been barred by limitation of time had it been asserted in a court of the state, a party may assert the limitation as a bar to the arbitration on an application to the court as provided in section 7503 or subdivision (b) of section 7511. The failure to assert such bar by such application shall not preclude its assertion before the arbitrators, who may, in their sole discretion, apply or not apply the bar. Except as provided in subdivision (b) of section 7511, such exercise of discretion by the arbitrators shall not be subject to review by a court on an application to confirm, vacate or modify the award.

(c) Provisional remedies. The supreme court in the county in which an arbitration is pending or in a county specified in subdivision (a) of this section, may entertain an application for an order of attachment or for a preliminary injunction in connection with an arbitration that is pending or that is to be commenced inside or outside this state, whether

or not it is subject to the United Nations convention on the recognition and enforcement of foreign arbitral awards, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief. The provisions of articles 62 and 63 of this chapter shall apply to the application, including those relating to undertakings and to the time for commencement of an action (arbitration shall be deemed an action for this purpose), except that the sole ground for the granting of the remedy shall be as stated above. If an arbitration is not commenced within thirty days of the granting of the provisional relief, the order granting such relief shall expire and be null and void and costs, including reasonable attorney's fees, awarded to the respondent. The court may reduce or expand this period of time for good cause shown. The form of the application shall be as provided in subdivision (a) of this section.

§ 7503. Application to compel or stay arbitration; stay of action; notice of intention to arbitrate. (a) Application to compel arbitration; stay of action. A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate. Where any such question is raised, it shall be tried forthwith in said court. If an issue claimed to be arbitrable is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration.

(b) Application to stay arbitration. Subject to the provisions of subdivision (c), a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is barred by limitation under subdivision (b) of section 7502.

(c) Notice of intention to arbitrate. A party may serve upon another party a demand for arbitration or a notice of intention to arbitrate, specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice, or of an officer or agent thereof if such party is an association or corporation, and stating that unless the party served applies to stay the arbitration within twenty days after such service he shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time. Such notice or demand shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. An application to stay arbitration must be made by the party served within twenty days after service upon him of the notice or demand, or he shall be so precluded. Notice of such application shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. Service of the application may be made upon the adverse party, or upon his attorney if the attorney's name appears on the demand for arbitration or the notice of intention to arbitrate. Service of the application by mail shall be timely if such application is posted within the prescribed period. Any provision in an arbitration agreement or arbitration rules which waives the right to apply for a stay of arbitration is hereby declared null and void.

§ 7504. Court appointment of arbitrator. If the arbitration agreement does not provide for a method of appointment of an arbitrator, or if the agreed method fails or for any reason is not followed, or if an arbitrator fails to act and his successor has not been appointed, the court, on application of a party, shall appoint an arbitrator.

§ 7505. Powers of arbitrator. An arbitrator and any attorney of record in the arbitration proceeding has the power to issue subpoenas. An arbitrator has the power to administer oaths.

§ 7506. Hearing. (a) Oath of arbitrator. Before hearing any testimony,

an arbitrator shall be sworn to hear and decide the controversy faithfully and fairly by an officer authorized to administer an oath.

(b) Time and place. The arbitrator shall appoint a time and place for the hearing and notify the parties in writing personally or by registered or certified mail not less than eight days before the hearing. The arbitrator may adjourn or postpone the hearing. The court, upon application of any party, may direct the arbitrator to proceed promptly with the hearing and determination of the controversy.

(c) Evidence. The parties are entitled to be heard, to present evidence and to cross-examine witnesses. Notwithstanding the failure of a party duly notified to appear, the arbitrator may hear and determine the controversy upon the evidence produced.

(d) Representation by attorney. A party has the right to be represented by an attorney and may claim such right at any time as to any part of the arbitration or hearings which have not taken place. This right may not be waived. If a party is represented by an attorney, papers to be served on the party shall be served upon his attorney.

(e) Determination by majority. The hearing shall be conducted by all the arbitrators, but a majority may determine any question and render an award.

(f) Waiver. Except as provided in subdivision (d), a requirement of this section may be waived by written consent of the parties and it is waived if the parties continue with the arbitration without objection.

§ 7507. Award; form; time; delivery. Except as provided in section 7508, the award shall be in writing, signed and affirmed by the arbitrator making it within the time fixed by the agreement, or, if the time is not fixed, within such time as the court orders. The parties may in writing extend the time either before or after its expiration. A party waives the objection that an award was not made within the time required unless he notifies the arbitrator in writing of his objection prior to the delivery of the award to him. The arbitrator shall deliver a copy of the award to each party in the manner provided in the agreement, or, if no provision is so made, personally or by registered or certified mail, return receipt requested.

§ 7508. Award by confession. (a) When available. An award by confession may be made for money due or to become due at any time before an award is otherwise made. The award shall be based upon a statement, verified by each party, containing an authorization to make the award, the sum of the award or the method of ascertaining it, and the facts constituting the liability.

(b) Time of award. The award may be made at any time within three months after the statement is verified.

(c) Person or agency making award. The award may be made by an arbitrator or by the agency or person named by the parties to designate the abitrator.

§ 7509. Modification of award by arbitrator. On written application of a party to the arbitrators within twenty days after delivery of the award to the applicant, the arbitrators may modify the award upon the grounds stated in subdivision (c) of section 7511. Written notice of the application shall be given to other parties to the arbitration. Written objection to modification must be served on the arbitrators and other parties to the arbitration within ten days of receipt of the notice. The arbitrators shall dispose of any application made under this section in writing, signed and acknowledged by them, within thirty days after either written objection to modification has been served on them or the time for serving said objection has expired, whichever is earlier. The parties may in writing extend the time for such disposition either before or after its expiration.

§ 7510. Confirmation of award. The court shall confirm an award upon application of a party made within one year after its delivery to them, unless the award is vacated or modified upon a ground specified in section seventy-five hundred eleven of this article.

§ 7510-a. Confirmation of award for public sector arbitrations. (a) The court shall confirm an award in a public sector arbitration

proceeding upon application of a party made within one year after its delivery to the party, unless an application to vacate or modify the award upon a ground specified in section seventy-five hundred eleven of this article is made within ninety days after the delivery of the award to the party seeking to modify or vacate.

(b) This section shall only apply to awards from an arbitration between a public employer and an employee of the public employer.

(c) For the purposes of this section, "public employer" means (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission, or public benefit corporation, (vi) any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state, or (vii) in the case of a county sheriff's office in those counties where the office of sheriff is an elected position, both the county and the sheriff, shall be designated as a joint public employer for all purposes of this article.

§ 7511. Vacating or modifying award. (a) When application made. An application to vacate or modify an award may be made by a party within ninety days after its delivery to him.

(b) Grounds for vacating.

1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by:

(i) corruption, fraud or misconduct in procuring the award; or

(ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or

(iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or

(iv) failure to follow the procedure of this article, unless the party

applying to vacate the award continued with the arbitration with notice of the defect and without objection.

2. The award shall be vacated on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate if the court finds that:

(i) the rights of that party were prejudiced by one of the grounds specified in paragraph one; or

(ii) a valid agreement to arbitrate was not made; or

(iii) the agreement to arbitrate had not been complied with; or

(iv) the arbitrated claim was barred by limitation under subdivision (b) of section 7502.

(c) Grounds for modifying. The court shall modify the award if:

1. there was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award; or

2. the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

3. the award is imperfect in a matter of form, not affecting the merits of the controversy.

(d) Rehearing. Upon vacating an award, the court may order a rehearing and determination of all or any of the issues either before the same arbitrator or before a new arbitrator appointed in accordance with this article. Time in any provision limiting the time for a hearing or award shall be measured from the date of such order or rehearing, whichever is appropriate, or a time may be specified by the court.

(e) Confirmation. Upon the granting of a motion to modify, the court shall confirm the award as modified; upon the denial of a motion to vacate or modify, it shall confirm the award.

§ 7512. Death or incompetency of a party. Where a party dies after making a written agreement to submit a controversy to arbitration, the

proceedings may be begun or continued upon the application of, or upon notice to, his executor or administrator or, where it relates to real property, his distributee or devisee who has succeeded to his interest in the real property. Where a committee of the property or of the person of a party to such an agreement is appointed, the proceedings may be continued upon the application of, or notice to, the committee. Upon the death or incompetency of a party, the court may extend the time within which an application to confirm, vacate or modify the award or to stay arbitration must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as where a party dies after a verdict.

§ 7513. Fees and expenses. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including attorney's fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. The court, on application, may reduce or disallow any fee or expense it finds excessive or allocate it as justice requires.

§ 7514. Judgment on an award. (a) Entry. A judgment shall be entered upon the confirmation of an award.

(b) Judgment-roll. The judgment-roll consists of the original or a copy of the agreement and each written extension of time within which to make an award; the statement required by section 7508 where the award was by confession; the award; each paper submitted to the court and each order of the court upon an application under sections 7510 and 7511; and a copy of the judgment.

§ 7515. Mandatory arbitration clauses; prohibited. (a) Definitions. As used in this section:

1. The term "employer" shall have the same meaning as provided in subdivision five of section two hundred ninety-two of the executive law.

2. The term "prohibited clause" shall mean any clause or provision in any contract which requires as a condition of the enforcement of the contract or obtaining remedies under the contract that the parties submit to mandatory arbitration to resolve any allegation or claim of discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law.

3. The term "mandatory arbitration clause" shall mean a term or provision contained in a written contract which requires the parties to such contract to submit any matter thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the facts found or determination made by the arbitrator or panel of arbitrators in its application to a party alleging discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law shall be final and not subject to independent court review.

4. The term "arbitration" shall mean the use of a decision making forum conducted by an arbitrator or panel of arbitrators within the meaning and subject to the provisions of article seventy-five of the civil practice law and rules.

(b) (i) Prohibition. Except where inconsistent with federal law, no written contract, entered into on or after the effective date of this section shall contain a prohibited clause as defined in paragraph two of subdivision (a) of this section.

(ii) Exceptions. Nothing contained in this section shall be construed to impair or prohibit an employer from incorporating a non-prohibited clause or other mandatory arbitration provision within such contract, that the parties agree upon.

(iii) Mandatory arbitration clause null and void. Except where inconsistent with federal law, the provisions of such prohibited clause as defined in paragraph two of subdivision (a) of this section shall be null and void. The inclusion of such clause in a written contract shall not serve to impair the enforceability of any other provision of such contract.

(c) Where there is a conflict between any collective bargaining agreement and this section, such agreement shall be controlling.

§ 7516. Confirmation of an award based on a consumer credit transaction. In any proceeding under section 7510 of this article to confirm an award based on a consumer credit transaction, the party seeking to confirm the award shall plead the actual terms and conditions of the agreement to arbitrate. The party shall attach to its petition (a) the agreement to arbitrate; (b) the demand for arbitration or notice of intention to arbitrate, with proof of service; and (c) the arbitration award, with proof of service. If the award does not contain a statement of the claims submitted for arbitration, of the claims ruled upon by the arbitrator, and of the calculation of figures used by the arbitrator in arriving at the award, then the petition shall contain such a statement. The court shall not grant confirmation of an award based on a consumer credit transaction unless the party seeking to confirm the award has complied with this section.

ARTICLE 75-A

HEALTH CARE ARBITRATION

7550. Definitions.

7551. Applicability.

7552. Health care arbitration proceedings.

7553. Costs of the proceeding.

7554. Selection of arbitrators.

7555. Screening for bias; communication with arbitrator candidates.

7556. Demand for arbitration; minors; consolidation of proceedings.

7557. Reparation offers; denials of liability.

7558. Depositions and discovery; rules of the arbitration administrator; adjournments.

7559. Hearing; evidence; record; neutral experts.

7560. Subpoenas.

7561. Use of depositions; enforcement of discovery procedures.

7562. Witnesses' fees and mileage; arbitrators' fees and expenses.
7563. Briefs; award; decision.
7564. Form of decision; costs upon frivolous claims and counterclaims.
7565. Modification and judicial review of decision.

§ 7550. Definitions. As used in this article:

- (a) "Arbitration administrator" means an entity designated by the superintendent of financial services to administer the arbitration of disputes pursuant to this article.
- (b) "Hospital" has the same meaning as is set forth in subdivision ten of section twenty-eight hundred one of the public health law.
- (c) "Health maintenance organization" has the same meaning as is set forth in subdivision one of section forty-four hundred one of the public health law and shall include health maintenance organizations authorized pursuant to article forty-three of the insurance law.
- (d) "Health care provider" includes any person or entity employed or otherwise involved in the provision of health care or treatment.

§ 7551. Applicability. The provisions of this article shall apply to all claims for damages because of injury or death resulting from health care or treatment rendered or failed to be rendered to enrollees and other covered family members of health maintenance organizations and all other claims, cross-claims, counter-claims, and claims for contribution and indemnity arising from claims subject to agreements to arbitrate made pursuant to section forty-four hundred six-a of the public health law and to arbitrations authorized pursuant to section thirty hundred forty-five of this chapter.

§ 7552. Health care arbitration proceedings. (a) Proceedings pursuant to this article shall be commenced and conducted in accordance with article seventy-five of this chapter, except as otherwise provided by this article, and in accordance with rules promulgated by the

arbitration administrator and approved by the superintendent of financial services.

(b) The standards of duty, practice, or care to be applied to a physician, dentist, hospital, health maintenance organization or other health care provider in the arbitration shall be the same standards as would be applied in a comparable medical or dental malpractice action.

(c) Damages shall be determined in accordance with provisions of law applicable to medical and dental malpractice actions. Attorney contingency fee agreements shall be valid and subject to provisions of law applicable to medical and dental malpractice actions.

§ 7553. Costs of the proceeding. The administrative expense of arbitrations shall be paid from the arbitration administration fund established pursuant to section five thousand six hundred three of the insurance law.

§ 7554. Selection of arbitrators. (a) An arbitration under this article shall be heard by a panel of three arbitrators. The chairperson of the panel shall be an attorney who shall be appointed to serve in such capacity on a full-time basis for a fixed term. The chairperson shall have jurisdiction over prehearing procedures. Qualifications for the selection of such chairpersons shall be established by the arbitration administrator, subject to the approval of the superintendent of financial services.

(b) Except as otherwise provided in subdivision (e) of this section, the remaining two arbitrators, hereinafter referred to as associate arbitrators, shall be selected from a pool of candidates established pursuant to the rules and procedures promulgated by the arbitration administrator and approved by the superintendent of financial services. Attorneys whose practice substantially involves representation in personal injury matters, physicians, dentists, hospital and health maintenance organization personnel and other health care providers shall not be eligible to serve as associate arbitrators. The rules and procedures pertaining to selection of associate arbitrators under this article shall provide that the arbitration administrator send

simultaneously to each party an identical list of associate arbitrator candidates, together with a brief biographical statement on each candidate. A party may strike from the list any name which is unacceptable and shall number the remaining names in order of preference. When the lists are returned to the arbitration administrator they shall be compared and the first two mutually agreeable associate arbitrator candidates shall be invited to serve.

(c) When two mutually agreed upon associate arbitrators have not been selected from the first list, a second list of such candidates shall be sent in the manner provided for in subdivision (b) of this section.

(d) If a complete panel is not selected by mutual agreement of the parties pursuant to subdivisions (b) and (c) of this section, then, under applicable rules and procedures of the arbitration administrator, which are approved by the superintendent of financial services, the arbitration administrator shall appoint the remaining associate arbitrators. Any appointment of an associate arbitrator by the arbitration administrator shall be subject to challenge by any party for cause. To be sufficient, a challenge must allege facts which establish that community, professional or other pressures are likely to influence the objectivity of the appointed associate arbitrator. A decision on a request to strike an arbitrator for cause shall be made by the arbitration administrator.

(e) The parties shall not be restricted to the associate arbitrator candidates submitted for consideration. If all parties mutually agree upon one or more associate arbitrators, such arbitrators shall be invited to serve.

§ 7555. Screening for bias; communication with arbitrator candidates.

(a) Prior to inclusion on a list of proposed associate arbitrators, the arbitration administrator shall make an appropriate initial screening for bias and shall require associate arbitrator candidates for a particular case to complete a current personal disclosure statement under oath. In addition to other relevant information, the statement shall disclose any personal acquaintance with any of the parties or their counsel and the nature of such acquaintance. If the statement reveals facts which suggest the possibility of partiality, the

arbitration administrator shall communicate those facts to the parties.

(b) No party shall communicate with an associate arbitrator candidate, directly or indirectly, except through the arbitration administrator, at any time after the filing of the demand for arbitration. Any candidate who is aware of such communication shall immediately notify the arbitration administrator.

§ 7556. Demand for arbitration; minors; consolidation of proceedings.

(a) Any person subject to an arbitration agreement may seek to compel arbitration, pursuant to section seventy-five hundred three or section thirty hundred forty-five of this chapter.

(b) Notwithstanding the provisions of section twelve hundred nine of this chapter, a minor child and a person judicially determined to be incompetent shall be bound to arbitrate disputes, controversies, or issues upon the execution of an arbitration election on the person's behalf by a parent, legal guardian, committee, conservator or other person legally authorized to enroll such minor or incompetent person in a health maintenance organization, in accordance with the provisions of section forty-five hundred six-a of the public health law.

(c) Separate arbitration proceedings brought pursuant to this article, which involve common question of law and fact, shall be consolidated into a single arbitration proceeding.

(d) Except for arbitrations commenced pursuant to section thirty hundred forty-five of this chapter, any case involving a person who is not bound to participate in the arbitration proceeding pursuant to subdivision (e) of section forty-four hundred six-a of the public health law shall not be subject to the arbitration proceeding, unless such person and all parties who are subject to the arbitration consent to the arbitration of the claim. Absent such consent, any party may seek to stay such arbitrations, pursuant to section seventy-five hundred three of this chapter, notwithstanding any time limits that may otherwise apply to such a stay, and require the matter to proceed as a civil action. In the event that such an arbitration is stayed, the arbitration administrator shall forthwith transfer the case to the clerk of the court in the venue designated by the plaintiff, where the case shall be expeditiously reviewed and assigned in accordance with rules promulgated

by the chief administrator of the courts. If the demand for arbitration was made or a notice of intention to arbitrate was served within the limitations of time specified by article two of this chapter, and the arbitration was subsequently stayed and transferred to a court, the action shall be deemed to have been timely commenced, in accordance with the provisions of subdivision (a) of section two hundred five of this chapter.

§ 7557. Reparation offers; denials of liability. All communications incidental to settlement made orally or in writing by any party shall not be disclosed to the arbitration panel, unless all parties consent to such disclosure.

§ 7558. Depositions and discovery; rules of the arbitration administrator; adjournments. (a) After the appointment of the panel of arbitrators and notwithstanding inconsistent provisions of sections four hundred eight and three thousand one hundred two of this chapter, the parties to the arbitration may take depositions and obtain discovery regarding the subject matter of the arbitration and, to that end, use and exercise the same rights, remedies, and obligations in the arbitration as if the subject matter of the arbitration were pending in a civil action.

(b) The arbitration administrator shall promulgate rules, subject to the approval of the superintendent of financial services, to ensure the expeditious completion of discovery and the prompt commencement and conclusion of the hearing, consistent with applicable provisions of rule thirty-four hundred six of this chapter.

(c) An adjournment at the request of counsel for any of the parties may be granted only by the chairperson of the panel for good cause shown. A proceeding under this article shall be treated in the same manner as an action or proceeding in supreme court for the purpose of any claim by counsel of actual engagement.

§ 7559. Hearing; evidence; record; neutral experts. (a) An arbitration

hearing shall be informal and the rules of evidence shall be those applicable to arbitrations conducted pursuant to article seventy-five of this chapter.

(b) Testimony at the hearing shall be taken under oath and a record of the proceedings shall be made by a recording device. Any party may obtain a copy of the recording of the proceeding, which shall be provided without charge. A party, at that party's expense, may also utilize the services of a stenographic reporter. The cost of any transcription ordered by the panel of arbitrators for its own use shall be deemed part of the cost of the proceedings.

(c) The panel on its own motion may call a neutral expert witness who shall be subject to cross-examination by the parties. The cost of the expert will be deemed a cost of the proceeding.

§ 7560. Subpoenas. The chairperson of the panel and any attorney of record in the proceeding has the power to issue subpoenas, in accordance with section seventy-five hundred five of this chapter.

§ 7561. Use of depositions; enforcement of discovery procedures. (a) On application of a party to the arbitration, the chairperson may permit the deposition of a witness to be used as evidence, in accordance with the provisions of rule three thousand one hundred seventeen of this chapter.

(b) Depositions shall be taken in the manner prescribed by law for the taking of depositions in civil actions.

(c) The chairperson may enforce the failure of parties to comply with applicable discovery obligations in the same manner as a court, pursuant to section three thousand one hundred twenty-six of this chapter, including through the imposition of costs, payable to the arbitration fund, provided, however, that the chairperson shall not have the power to find a party in contempt.

§ 7562. Witnesses' fees and mileage; arbitrators' fees and expenses. (a) Except for the parties to the arbitration and their agents,

officers, and employees, all witnesses appearing pursuant to subpoena are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid by that party. The fee and mileage of a witness subpoenaed solely at the request of an arbitrator shall be deemed to be a cost of the proceeding.

(b) Each arbitrator's salary or fees and expenses, together with any other costs of the proceeding shall be paid from the arbitration administration fund established pursuant to section five thousand six hundred three of the insurance law. The range of such salary or fees and expenses and the manner of their payment shall be established by regulation of the superintendent of financial services.

§ 7563. Briefs; award; decision. (a) The panel may order that written briefs be submitted within thirty days after the close of hearings. In written briefs each party may summarize the evidence and testimony and may propose a comprehensive award of compensatory elements.

(b) The panel of arbitrators shall render its decision by majority vote and the decision shall be rendered within thirty days after the close of the hearing or the receipt of briefs, if briefs are requested.

§ 7564. Form of decision; costs upon frivolous claims and counterclaims. (a) The decision in the arbitration proceeding shall be in the form required by sections seven thousand five hundred seven and four thousand two hundred thirteen of this chapter and shall be filed with the arbitration administrator.

(b) The panel of arbitrators shall be empowered to award costs and reasonable attorney's fees to a successful party in an arbitration, if the panel finds that the action, claim, counterclaim, defense or cross claim of an unsuccessful party is frivolous, in accordance with the provisions and subject to the limitations of section eight thousand three hundred three-a of this chapter. The arbitration fee paid by the claimant shall be recoverable by the claimant in the event an award is made to the claimant.

§ 7565. Modification and judicial review of decision. A decision of a panel of arbitrators shall be binding on all parties, unless modified or vacated pursuant to section seven thousand five hundred nine or seven thousand five hundred eleven of this chapter.

ARTICLE 76

PROCEEDING TO ENFORCE AGREEMENT FOR DETERMINATION OF ISSUE

7601. Special proceeding to enforce agreement that issue or controversy be determined by a person named or to be selected.

§ 7601. Special proceeding to enforce agreement that issue or controversy be determined by a person named or to be selected. A special proceeding may be commenced to specifically enforce an agreement that a question of valuation, appraisal or other issue or controversy be determined by a person named or to be selected. The court may enforce such an agreement as if it were an arbitration agreement, in which case the proceeding shall be conducted as if brought under article seventy-five of this chapter. Where there is a defense which would require dismissal of an action for breach of the agreement, the proceeding shall be dismissed. Provided, however, that this section shall not apply to any agreement contained in the standard fire insurance policy of the state with the exception of an action to enforce the appraisal clause pursuant to section three thousand four hundred eight of the insurance law which shall not be enforced as an arbitration agreement.

ARTICLE 77

PROCEEDING RELATING TO EXPRESS TRUST

7701. Special proceeding relating to express trust.

7702. Verified account accompanying petition.

7703. Joinder and representation of persons interested in trust

property.

7704. Reference.

7705. Recording or filing instrument settling account.

7706. Order on filing instrument settling account.

§ 7701. Special proceeding relating to express trust. A special proceeding may be brought to determine a matter relating to any express trust except a voting trust, a mortgage, a trust for the benefit of creditors, a trust to carry out any plan of reorganization of real property acquired on foreclosure or otherwise of a mortgage or mortgages against which participation certificates have been issued and guaranteed by a corporation and for which the superintendent of financial services has been or may hereafter be appointed rehabilitator or liquidator or conservator, a trust to carry out any plan of reorganization pursuant to sections one hundred nineteen through one hundred twenty-three of the real property law or pursuant to section seventy-seven B of the national bankruptcy act, and trusts for cemetery purposes, as provided for by sections 8-1.5 and 8-1.6 of the estates, powers and trusts law.

Any party to the proceeding shall have the right to examine the trustees, under oath, either before or after filing an answer or objections, as to any matter relating to their administration of the trust, in accordance with the provisions of article thirty-one.

§ 7702. Verified account accompanying petition. A petition by a trustee praying that his intermediate or final account be judicially settled shall be accompanied by an account verified in the form required by section twenty-two hundred nine of the surrogate's court procedure act.

§ 7703. Joinder and representation of persons interested in trust property. The provisions as to joinder and representation of persons interested in estates as provided in the surrogate's court procedure act shall govern joinder and representation of persons interested in express

trusts. For these purposes, the term "will" used in the surrogate's court procedure act shall be construed to mean the instrument creating the trust.

§ 7704. Reference. No referee shall be appointed to examine and audit a trustee's account, or to hear and report on or to determine any questions arising upon the settlement of such account, where:

1. a question of law exclusively is involved; or

2. no objections have been filed to the transactions set forth in the account by any of the persons interested in the trust or by any representative authorized under section 1201 to appear for an infant or incompetent interested in the trust or by a guardian ad litem of a person not in being interested in the trust.

§ 7705. Recording or filing instrument settling account. There may be recorded or filed in the office of the clerk or register of the county where any trustee under an express trust not created by will, if an individual, resides, or, if a corporation, has its principal office, any instrument settling an account, in whole or in part, executed by one or more such trustees and by one or more of the persons interested in the subject-matter of the trust, none of whom is under the disability of infancy or incompetency. Every such instrument to be recorded or filed shall be acknowledged; and if recorded the record thereof, or a certified copy of the record or instrument shall be prima facie evidence of the contents of such instrument and its due execution.

§ 7706. Order on filing instrument settling account. Where an instrument described in section seven thousand seven hundred five of this article has been executed by all of the persons who would be necessary parties in a proceeding under section seven thousand seven hundred one of this article, none of whom is under the disability of infancy or incompetency, one or more of the trustees may present to the

court a petition showing the names and post office addresses of all persons interested in the trust, whether or not the trust has been fully executed, that the petitioner has fully accounted and made full disclosure in writing of his administration of the trust to all persons interested, and praying that his intermediate or final account be judicially settled. There shall be filed with the petition the instrument described in section seven thousand seven hundred five of this article. The court may thereupon make an order settling the petitioner's account and discharging the petitioner and sureties on his bond, if any, from any further liability to all persons interested therein.

ARTICLE 78

PROCEEDING AGAINST BODY OR OFFICER

7801. Nature of proceeding.

7802. Parties.

- (a) Definition of "body or officer".
- (b) Persons whose terms of office have expired; successors.
- (c) Prohibition in favor of another.
- (d) Other interested persons.

7803. Questions raised.

7804. Procedure.

- (a) Special proceeding.
- (b) Where proceeding brought.
- (c) Time for service of notice of petition and answer.
- (d) Pleadings.
- (e) Answering affidavits; record to be filed; default.
- (f) Objections in point of law.
- (g) Hearing and determination; transfer to appellate division.
- (h) Trial.
- (i) Appearance by judicial officer.

7805. Stay.

7806. Judgment.

§ 7801. Nature of proceeding. Relief previously obtained by writs of certiorari to review, mandamus or prohibition shall be obtained in a proceeding under this article. Wherever in any statute reference is made to a writ or order of certiorari, mandamus or prohibition, such reference shall, so far as applicable, be deemed to refer to the proceeding authorized by this article. Except where otherwise provided by law, a proceeding under this article shall not be used to challenge a determination:

1. which is not final or can be adequately reviewed by appeal to a court or to some other body or officer or where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the petitioner's application unless the determination to be reviewed was made upon a rehearing, or a rehearing has been denied, or the time within which the petitioner can procure a rehearing has elapsed; or

2. which was made in a civil action or criminal matter unless it is an order summarily punishing a contempt committed in the presence of the court.

§ 7802. Parties. (a) Definition of "body or officer". The expression "body or officer" includes every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article

(b) Persons whose terms of office have expired; successors. Whenever necessary to accomplish substantial justice, a proceeding under this article may be maintained against an officer exercising judicial or quasi-judicial functions, or member of a body whose term of office has expired. Any party may join the successor of such officer or member of a body or other person having custody of the record of proceedings under review.

(c) Prohibition in favor of another. Where the proceeding is brought to restrain a body or officer from proceeding without or in excess of jurisdiction in favor of another, the latter shall be joined as a party.

(d) Other interested persons. The court may direct that notice of the proceeding be given to any person. It may allow other interested persons to intervene.

§ 7803. Questions raised. The only questions that may be raised in a proceeding under this article are:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or

2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or

3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or

4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.

5. A proceeding to review the final determination or order of the state review officer pursuant to subdivision three of section forty-four hundred four of the education law shall be brought pursuant to article four of this chapter and such subdivision; provided, however, that the provisions of this article shall not apply to any proceeding commenced on or after the effective date of this subdivision.

§ 7804. Procedure. (a) Special proceeding. A proceeding under this article is a special proceeding.

(b) Where proceeding brought. A proceeding under this article shall be brought in the supreme court in the county specified in subdivision (b) of section 506 except as that subdivision otherwise provides.

(c) Time for service of notice of petition and answer. Unless the

court grants an order to show cause to be served in lieu of a notice of petition at a time and in a manner specified therein, a notice of petition, together with the petition and affidavits specified in the notice, shall be served on any adverse party at least twenty days before the time at which the petition is noticed to be heard. An answer and supporting affidavits, if any, shall be served at least five days before such time. A reply, together with supporting affidavits, if any, shall be served at least one day before such time. In the case of a proceeding pursuant to this article against a state body or officers, or against members of a state body or officers whose terms have expired as authorized by subdivision (b) of section 7802 of this chapter, commenced either by order to show cause or notice of petition, in addition to the service thereof provided in this section, the order to show cause or notice of petition must be served upon the attorney general by delivery of such order or notice to an assistant attorney general at an office of the attorney general in the county in which venue of the proceeding is designated, or if there is no office of the attorney general within such county, at the office of the attorney general nearest such county. In the case of a proceeding pursuant to this article against members of bodies of governmental subdivisions whose terms have expired as authorized by subdivision (b) of section 7802 of this chapter, the order to show cause or notice of petition must be served upon such governmental subdivision in accordance with section 311 of this chapter.

(d) Pleadings. There shall be a verified petition, which may be accompanied by affidavits or other written proof. Where there is an adverse party there shall be a verified answer, which must state pertinent and material facts showing the grounds of the respondent's action complained of. There shall be a reply to a counterclaim denominated as such and there shall be a reply to new matter in the answer or where the accuracy of proceedings annexed to the answer is disputed. The court may permit such other pleadings as are authorized in an action upon such terms as it may specify.

(e) Answering affidavits; record to be filed; default. The body or officer shall file with the answer a certified transcript of the record of the proceedings under consideration, unless such a transcript has already been filed with the clerk of the court. The respondent shall also serve and submit with the answer affidavits or other written proof

showing such evidentiary facts as shall entitle him to a trial of any issue of fact. The court may order the body or officer to supply any defect or omission in the answer, transcript or an answering affidavit. Statements made in the answer, transcript or an answering affidavit are not conclusive upon the petitioner. Should the body or officer fail either to file and serve an answer or to move to dismiss, the court may either issue a judgment in favor of the petitioner or order that an answer be submitted.

(f) Objections in point of law. The respondent may raise an objection in point of law by setting it forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer. If the motion is denied, the court shall permit the respondent to answer, upon such terms as may be just; and unless the order specifies otherwise, such answer shall be served and filed within five days after service of the order with notice of entry; and the petitioner may re-notice the matter for hearing upon two days' notice, or the respondent may re-notice the matter for hearing upon service of the answer upon seven days' notice. The petitioner may raise an objection in point of law to new matter contained in the answer by setting it forth in his reply or by moving to strike such matter on the day the petition is noticed or re-noticed to be heard.

(g) Hearing and determination; transfer to appellate division. Where the substantial evidence issue specified in question four of section 7803 is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding. Where such an issue is raised, the court shall first dispose of such other objections as could terminate the proceeding, including but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial evidence issue. If the determination of the other objections does not terminate the proceeding, the court shall make an order directing that it be transferred for disposition to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced. When the proceeding comes before it, whether by appeal or transfer, the appellate division shall dispose of all issues in the proceeding, or, if the papers are insufficient, it may remit the proceeding.

(h) Trial. If a triable issue of fact is raised in a proceeding under

this article, it shall be tried forthwith. Where the proceeding was transferred to the appellate division, the issue of fact shall be tried by a referee or by a justice of the supreme court and the verdict, report or decision rendered after the trial shall be returned to, and the order thereon made by, the appellate division.

(i) Appearance by judicial officer. Notwithstanding any other provision of law, where a proceeding is brought under this article against a justice, judge, referee or judicial hearing officer appointed by a court and (1) it is brought by a party to a pending action or proceeding, and (2) it is based upon an act or acts performed by the respondent in that pending action or proceeding either granting or denying relief sought by a party thereto, and (3) the respondent is not a named party to the pending action or proceeding, in addition to service on the respondent, the petitioner shall serve a copy of the petition together with copies of all moving papers upon all other parties to the pending action or proceeding. All such parties shall be designated as respondents. Unless ordered by the court upon application of a party the respondent justice, judge, referee or judicial hearing officer need not appear in the proceeding in which case the allegations of the petition shall not be deemed admitted or denied by him. Upon election of the justice, judge, referee or judicial hearing officer not to appear, any ruling, order or judgment of the court in such proceeding shall bind said respondent. If such respondent does appear he shall respond to the petition and shall be entitled to be represented by the attorney general. If such respondent does not elect to appear all other parties shall be given notice thereof.

§ 7805. Stay. On the motion of any party or on its own initiative, the court may stay further proceedings, or the enforcement of any determination under review, upon terms including notice, security and payment of costs, except that the enforcement of an order or judgment granted by the appellate division in a proceeding under this article may be stayed only by order of the appellate division or the court of appeals. Unless otherwise ordered, security given on a stay is effective in favor of a person subsequently joined as a party under section 7802.

§ 7806. Judgment. The judgment may grant the petitioner the relief to which he is entitled, or may dismiss the proceeding either on the merits or with leave to renew. If the proceeding was brought to review a determination, the judgment may annul or confirm the determination in whole or in part, or modify it, and may direct or prohibit specified action by the respondent. Any restitution or damages granted to the petitioner must be incidental to the primary relief sought by the petitioner, and must be such as he might otherwise recover on the same set of facts in a separate action or proceeding suable in the supreme court against the same body or officer in its or his official capacity.

ARTICLE 80

FEES

- 8001. Persons subpoenaed; examination before trial;
transcripts of records.
 - (a) Persons subpoenaed.
 - (b) Persons subpoenaed upon an examination before trial.
 - (c) Transcripts of records.
- 8002. Stenographers.
- 8003. Referees.
 - (a) Generally.
 - (b) Upon sale of real property.
- 8004. Commissions of receivers.
 - (a) Generally.
 - (b) Allowance where funds depleted.
- 8005. Commissions of trustees; advance payment of fees of an attorney-trustee.
- 8006. Premiums on undertakings by fiduciaries.
- 8007. Printers.
- 8008. Fees and expenses of officer to be paid before transmission of paper.
- 8009. Oaths; acknowledgments; certification or exemplification.
- 8010. County treasurers.

- 8011. Fixed fees of sheriffs.
 - (a) Order of attachment.
 - (b) Property execution.
 - (c) Income execution; service upon judgment debtor.
 - (d) Income execution; levy upon default or failure to serve judgment debtor.
 - (e) Recovery of chattel.
 - (f) Summary proceeding.
 - (g) Sales.
 - (h) Summons, subpoenas and other mandates.
 - (i) Undertakings; returns; copies.
 - (j) Prisoners.
 - (k) Jurors; view; constables' services.
- 8012. Mileage fees, poundage fees, additional compensation, and limitation on compensation of sheriffs.
 - (a) Mileage fees.
 - (b) Poundage fees.
 - (c) Additional compensation.
 - (d) Mileage fees in the city of New York.
- 8013. Expenses of sheriffs.
 - (a) Publication of notice of sale.
 - (b) Appraisal of attached property.
 - (c) Other expenses.
 - (d) Payment in advance.
- 8014. Collection of sheriff's fees on execution.
- 8015. County clerk where sheriff is a party or otherwise disqualified.
- 8016. Clerks of courts of record generally.
 - (a) Fees of clerks in actions.
 - (b) Certifying judgment-roll on appeal.
- 8017. Exemption of the state and counties, and agencies and officers thereof, from fees of clerks.
- 8018. Index number fees of county clerks.
 - (a) Amount of fee.
 - (b) Exemptions from index number fee.
 - (c) Endorsement of index number on papers.
 - (d) Additional services without fee where index number

assigned.

8019. County clerks generally.

- (a) Application.
- (b) Legible copies.
- (c) Notice to county clerk.
- (d) Exemptions for state or city of New York.
- (e) Size of page and type.
- (f) Copies of records.

8020. County clerks as clerks of court.

- (a) Placing cause on calendar.
- (b) Calendar fee for transferred cause, joint trial, retrial, or separate trial.
- (c) Filing demand for jury trial.
- (d) Filing a stipulation of settlement or a voluntary discontinuance.
- (e) Jury fee for transferred cause, joint trial, retrial or separate trial.
- (f) Certification, exemplification, and copies of papers.
- (g) Searches.
- (h) Production of court records.

8021. County clerks other than as clerks of court.

- (a) Services in connection with papers or instruments relating to real property and not filed under the uniform commercial code.
- (b) Filing, other than in connection with papers or instruments relating to real property or filed under the uniform commercial code.
- (c) Certification, issuing certificates, other papers and copies of papers, records, and related services, other than in connection with papers or instruments relating to real property or filed under the uniform commercial code.
- (d) Searches of records not filed under the uniform commercial code.
- (e) Production of records.
- (f) Services rendered pursuant to part four of article

nine of the uniform commercial code.

(g) Services rendered in relation to federal tax liens filed pursuant to the lien law.

8022. Fee on civil appeals and proceedings before appellate courts.

§ 8001. Persons subpoenaed; examination before trial; transcripts of records. (a) Persons subpoenaed. Any person whose attendance is compelled by a subpoena, whether or not actual testimony is taken, shall receive for each day's attendance fifteen dollars for attendance fees and twenty-three cents as travel expenses for each mile to the place of attendance from the place where he or she was served, and return. There shall be no mileage fee for travel wholly within a city.

(b) Persons subpoenaed upon an examination before trial. If a witness who is not a party, or agent or employee of a party, is subpoenaed to give testimony, or produce books, papers and other things at an examination before trial, he shall receive an additional three dollars for each day's attendance.

(c) Transcripts of records. Wherever the preparation of a transcript of records is required in order to comply with a subpoena, the person subpoenaed shall receive an additional fee of ten cents per folio upon demand.

§ 8002. Stenographers. Unless otherwise provided by law, a stenographer is entitled, for a copy fully written out from his or her stenographic notes of testimony or other proceedings taken in a court, and furnished upon request to a party or his or her attorney, to the fee set forth in the rules promulgated by the chief administrator of the courts.

§ 8003. Referees. (a) Generally. A referee is entitled, for each day spent in the business of the reference, to three hundred fifty dollars unless a different compensation is fixed by the court or by the consent in writing of all parties not in default for failure to appear or plead.

(b) Upon sale of real property. A referee appointed to sell real property pursuant to a judgment is entitled to the same fees and disbursements as those allowed to a sheriff. Where a referee is required to take security upon a sale, or to distribute, apply, or ascertain and report upon the distribution or application of any of the proceeds of the sale, he or she is also entitled to one-half of the commissions upon the amount secured, distributed or applied as are allowed by law to an executor or administrator for receiving and paying out money. Commissions in excess of fifty dollars shall not be allowed upon a sum bid by a party, and applied upon that party's judgment, without being paid to the referee. A referee's compensation, including commissions, upon a sale pursuant to a judgment in any action cannot exceed seven hundred fifty dollars, unless the property sold for fifty thousand dollars or more, in which event the referee may receive such additional compensation as to the court may seem proper.

(c) This section shall not apply to judicial hearing officers who have been designated referees.

§ 8004. Commissions of receivers. (a) Generally. A receiver, except where otherwise prescribed by statute, is entitled to such commissions, not exceeding five per cent upon the sums received and disbursed by him, as the court by which he is appointed allows, but if in any case the commissions, so computed, do not amount to one hundred dollars, the court, may allow the receiver such a sum, not exceeding one hundred dollars, as shall be commensurate with the services he rendered.

(b) Allowance where funds depleted. If, at the termination of a receivership, there are no funds in the hands of the receiver, the court, upon application of the receiver, may fix the compensation of the receiver and the fees of his attorney, in accordance with the respective services rendered, and may direct the party who moved for the appointment of the receiver to pay such sums, in addition to the necessary expenditures incurred by the receiver. This subdivision shall not apply to a receiver or his attorney appointed pursuant to article twenty-three-a of the general business law.

§ 8005. Commissions of trustees; advance payment of fees of an attorney-trustee. A trustee of an express trust shall be entitled to commissions and the allowance of his expenses and compensation and, if he be an attorney admitted to practice in this state, to the allowance of a sum on account of his compensation for legal services theretofore rendered to the trust, in the same manner and amount as that provided by sections twenty-one hundred eleven, twenty-three hundred eight and twenty-three hundred eleven of the surrogate's court procedure act for testamentary trustees, if the trust was established on or before August thirty-first, nineteen hundred fifty-six, or as that provided by sections twenty-one hundred eleven, twenty-three hundred nine and twenty-three hundred eleven of the surrogate's court procedure act for testamentary trustees, if the trust was established after August thirty-first, nineteen hundred fifty-six or as that provided for by sections twenty-one hundred eleven and twenty-three hundred eleven for testamentary trustees and twenty-three hundred twelve of the surrogate's court procedure act except that the statements required thereunder to be furnished annually in order to retain certain annual commissions need be furnished during the settlor's lifetime only to beneficiaries currently receiving income. The court shall make such determinations and allowances as the named sections require or authorize the surrogate to make, and the term "will" used in those sections shall be construed to mean the instrument creating the trust and the phrase "the court from which his letters were issued" shall be construed to mean the court having jurisdiction of the trust.

§ 8006. Premiums on undertakings by fiduciaries. A receiver, assignee, guardian, trustee, committee, conservator or person appointed under section one hundred eleven of the real property law or under section twenty of the personal property law, required by law to give an undertaking as such, may include as a part of his necessary expenses such reasonable sum, not exceeding one per cent per annum upon the amount of such undertaking paid his surety thereon, as the court appointing him shall allow.

§ 8007. Printers. Except where otherwise prescribed by law, the proprietor of a newspaper is entitled for publishing a summons, notice, order or other advertisement, required to be published by law or by the order of any court, or of the clerk of a court, to twenty-nine cents per line of a column width not less than ten pica ems, provided that in computing such charge per line the line shall average at least five words for each insertion in newspapers having a circulation of less than two thousand five hundred; twenty-nine and one-half cents per line for newspapers having two thousand five hundred or more circulation and less than five thousand; thirty and one-half cents per line for newspapers having five thousand or more circulation and less than seven thousand five hundred; thirty-one and one-half cents per line for newspapers having seven thousand five hundred or more circulation and less than ten thousand; thirty-two and one-half cents per line for newspapers having ten thousand or more circulation and less than fifteen thousand; and three and one-half cents per line, in addition to the thirty-two and one-half cents for the initial fifteen thousand circulation, for each additional five thousand circulation up to thirty-five thousand circulation and one and one-half cents per line for each additional five thousand possessed by a newspaper. To all of the above rates nine cents per line shall be added to the initial insertion charge of each separate advertisement. To all of the above rates for the initial insertion eight cents per line shall also be added for tabular matter or intricate composition. In reckoning line charges allowance shall be made for date lines, paragraph endings, titles, signatures and similar short lines as full lines where the same are set to conform to the usual rules of composition. Display advertising shall be charged agate measurement (fourteen lines to each inch), ten to thirteen pica ems wide, depending on the makeup of the newspaper publishing such copy. This rate shall not apply to any newspaper printed, principally circulated or having its principal office in the counties of New York or Bronx within the first judicial district or in the county of Kings within the second judicial district or in the county of Richmond within the thirteenth judicial district or in the county of Nassau within the tenth judicial district or in the county of Queens within the eleventh judicial district or in the county of Westchester within the ninth judicial district or in any city having a population of over one hundred seventy-five thousand

inhabitants within the eighth judicial district, where the rate for such publication may be equal to but shall not exceed the regularly established classified advertising rate of such newspapers. Every newspaper making claim for compensation under the provisions of this section must be established at least one year and entered in the post office as second class matter.

§ 8008. Fees and expenses of officer to be paid before transmission of paper. Each provision of law requiring a judge, clerk or other officer to transmit a paper to another officer, for the benefit of a party, is to be construed as requiring the transmission only at the request of the person so to be benefited, and upon payment by him of the fees allowed by law for the paper transmitted, or any copy or certificate connected therewith, and the expenses specified in section sixty-eight of the public officers law.

§ 8009. Oaths; acknowledgments; certification or exemplification. Any authorized officer is entitled, for the services specified, to the following fees:

1. for administering an oath or affirmation, and certifying it when required, except where another fee is specially prescribed by statute, two dollars;
2. for taking and certifying the acknowledgment or proof of the execution of a written instrument, two dollars for one person and two dollars for each additional person, and two dollars for swearing each witness thereto; and
3. for certifying or exemplifying a typewritten or printed copy of any document, paper, book or record in his custody, twenty-five cents for each folio with a minimum of one dollar.

§ 8010. County treasurers. The treasurer of a county or the

commissioner of finance of the city of New York is entitled for the services specified to the following fees:

1. two per cent upon a sum of money paid out of court by him;
2. one-half of one per cent upon a sum of money invested by him;
3. two per cent of the par value of investments transferred or assigned out of court by him, when the investments have been made by him;
4. two per cent of the par value of securities deposited into court and received by him, to be paid at the time of the deposit by the parties making it; and
5. one dollar for each certificate issued by him certifying as to the amount of deposit to the credit of court funds.

§ 8011. Fixed fees of sheriffs. For the services specified, a sheriff is entitled to the following fees and, where indicated, these shall be paid in advance.

(a) Order of attachment.

1. For receiving an order of attachment, entering it in the appropriate books, and return when required, twenty dollars, in advance.
2. For levying upon real or personal property, fifty dollars, in advance.
3. For each additional levy upon real or personal property by virtue of an order of attachment, fifty dollars, in advance.
4. For serving a copy of an order of attachment on a defendant, and for serving a copy on each additional defendant, twenty dollars, in advance.

5. For serving a summons with or without a complaint, twenty dollars, in advance.

6. For making and filing a description of real property, or an inventory of personal property, levied upon by virtue of an order of attachment, or an estimate of the value thereof, twenty dollars.

7. Mileage for services covered in paragraphs two, three and four of this subdivision, in advance, provided, however, that where the services covered in such paragraphs are performed at the same time and place, there shall be only one mileage fee.

(b) Property execution.

1. For receiving an execution against property, entering it in the appropriate books, and return when required, twenty dollars, in advance, except that in an execution which arises out of an action brought pursuant to article eighteen of the uniform district court act, article eighteen of the uniform city court act, article eighteen of the New York city civil court act or article eighteen of the uniform justice court act, the fees provided in this subdivision shall not be collected in advance.

2. For levying upon property by virtue of an execution, twenty dollars.

3. For making an inventory of property levied upon by virtue of an execution, twenty dollars.

4. Mileage for services covered in paragraphs two and three of this subdivision, in advance, provided however, that where the services covered in such paragraphs are performed at the same time, there shall be only one mileage fee.

(c) Income execution; service upon judgment debtor.

1. For receiving an income execution, entering it in appropriate books, and return when required, twenty dollars, in advance.

2. For serving the income execution upon the judgment debtor, twenty dollars, in advance.

3. Mileage for service covered in paragraph two of this subdivision, unless such execution is served by mail.

(d) Income execution; levy upon default or failure to serve judgment debtor.

1. For serving an income execution, entering it in the appropriate books, and return when required, twenty dollars, in advance.

2. For levying upon the money that the judgment debtor is receiving or will receive, twenty dollars, in advance.

3. Mileage for services covered in paragraph two of this subdivision unless such levy is made by mail.

(e) Recovery of chattel.

1. For receiving an order to recover chattel, entering it in the appropriate books, and return when required, twenty dollars, in advance.

2. For executing the order of seizure against the defendant's chattel or chattels, one hundred dollars, in advance.

3. For executing the order of seizure against the chattel or chattels of an additional defendant or any other person in whose possession said chattel or chattels may be found, fifty dollars, in advance.

4. For serving an additional copy of the required papers, twenty dollars, in advance.

5. For serving the summons with or without a complaint, twenty dollars, in advance.

6. Mileage for services covered in paragraphs two, three, four and five of this subdivision, in advance, provided however, that where the services covered in such paragraphs are performed at the same time and

place, there shall be only one mileage fee.

(f) Summary proceeding.

1. Notice of petition and petition.

(i) For receiving a notice of petition and petition, obtaining an index number when required, entering it in the appropriate books, and return, twenty dollars, in advance.

(ii) For serving the notice of petition on a tenant or other person in possession, twenty dollars, in advance.

(iii) For serving the notice of petition on each additional tenant, undertenant, subtenant, person or persons in possession, or person or persons not in possession to be served, twenty dollars, in advance.

(iv) For making an affidavit of military or nonmilitary service, twenty dollars for each affidavit, in advance.

(v) Mileage for services covered in subparagraph (ii) of this paragraph, and where person or persons named in the petition are to be served at an address or addresses other than the premises described in the petition, additional mileage shall be paid, in advance, except where two or more notices of petition are to be served at the same time, within the same site or location, there shall be only one mileage fee.

2. Warrant of eviction or any mandate requiring delivery of possession of real property and removal of person or persons in possession.

(i) For requisitioning, receiving, entering in the appropriate books, and for the return of a warrant of eviction or any other mandate, fifteen dollars, in advance.

(ii) For service of notice of eviction on a person or persons to be served, fifteen dollars for each person to be served, in advance.

(iii) Mileage of services covered in subparagraph (ii) of this paragraph, in advance, except where two or more notices of eviction are to be served at the same time, within the same site or location, there shall be only one mileage fee.

(iv) For executing a warrant of eviction or any mandate requiring him or her to put a person in possession of real property and removing person or persons in possession, seventy-five dollars, in advance.

(v) Mileage for services covered in subparagraph (iv) of this paragraph, in advance.

(g) Sales.

1. For posting of notice, including advertising real or personal property for sale by virtue of an execution, order of attachment, or other mandate, or in pursuance of a direction contained in a judgment, or for a notice of postponement of a sale, twenty dollars.
2. For drawing and executing a conveyance upon a sale of real property, twenty-five dollars, to be paid by the grantee, in advance.
3. For attending a sale of real or personal property, twenty dollars.
4. For conducting a sale of real or personal property, twenty dollars.
5. Mileage for services covered in paragraphs three and four of this subdivision provided, however, that where the services covered in such paragraphs are performed at the same time and place, there shall be only one mileage fee.

(h) Summons, subpoenas and other mandates.

1. For serving a summons, with or without a complaint or notice, for serving a subpoena, or for serving civil process, twenty dollars, in advance.
2. For serving or executing an order of arrest, or any other mandate for the service or execution of which no other fee is specifically prescribed by law, fifty-five dollars, in advance, except that when a court has directed the service of an order of protection, there shall be no fee for service of such order and of any related orders or papers to be served simultaneously.
3. Mileage for services subject to fees under paragraphs one and two of this subdivision, in advance.
4. For receiving a precept issued by commissioners appointed to inquire concerning the incompetency of a person, the fee allowed the clerk by subdivision (a) of section eight thousand twenty of this

article for placing a cause on the calendar, and for notifying a county clerk or commissioner of jurors pursuant to such a precept, the fee, if any, allowed the clerk by subdivision (c) of section eight thousand twenty of this article for filing a demand for jury trial.

(i) Undertakings; returns; copies.

1. For taking any undertaking which the sheriff is authorized to take two dollars, and the notary's fees to any affidavit or acknowledgements.

2. For making a copy of a description or any inventory of property levied upon by virtue of an order of attachment, or of a summons or complaint, or other mandate, or an affidavit or any other paper served by him or her, fifteen dollars, in advance.

3. For a certified copy of an execution, and of the return or satisfaction thereupon, or for a certified copy of any undertaking which he or she is authorized to take, fifteen dollars.

(j) Prisoners.

1. For each person committed to or discharged from prison, fifteen dollars, in advance, to be paid by the person at whose instance he or she is imprisoned.

2. For attending before an officer for the purpose of surrendering a prisoner, or receiving into custody a prisoner surrendered, in exoneration of his or her bail, fifteen dollars, for all his or her services upon such a surrender or receipt.

(k) Jurors; view; constables' services.

1. For notifying jurors to attend upon a writ of inquiry, three dollars for each juror notified, including the making and return of the inquisition, when required; and for attending a jury when required in such a case, thirty dollars.

2. For attending a view, fifteen dollars for each day.

3. For any services which may be rendered by a constable, other than

those specifically provided for in this section, section eight thousand twelve or eight thousand thirteen of this article, to the same fees as are allowed by law to a constable for those services.

§ 8012. Mileage fees, poundage fees, additional compensation, and limitation on compensation of sheriffs. (a) Mileage fees. A sheriff is entitled to the current federal internal revenue service mileage reimbursement rate for each mile necessarily travelled in performing the following services, payable in advance:

1. in serving or executing a mandate upon or against one person, or upon or against two or more persons in the course of one journey, computed from the nearest office of the sheriff in the county to the place of service or execution, and return;

2. in serving or executing two or more mandates in one action upon or against one person at one time, computed from the nearest office of the sheriff in the county to the place of service or execution, and return; and

3. in attending a view, computed from the nearest office of the sheriff in the county to the place of attendance, and return.

(b) Poundage fees.

1. A sheriff is entitled, for collecting money by virtue of an execution, an order of attachment, or an attachment for the payment of money in an action, or a warrant for the collection of money issued by the comptroller or by a county treasurer or by any agency of the state or a political subdivision thereof, or for collecting a fine by virtue of a commitment for civil contempt, to poundage of, in the counties within the city of New York, five per cent of the sum collected and in all other counties, five per cent upon the first two hundred fifty thousand dollars collected, and three per cent upon the residue of the sum collected.

2. Where a settlement is made after a levy by virtue of service of an

execution, the sheriff is entitled to poundage upon the judgment or settlement amount, whichever is less. Where an execution is vacated or set aside after levy, the sheriff is entitled to poundage upon the value of the property levied upon, not exceeding the amount specified in the execution, and the court may order the party liable therefor to pay the same to the sheriff.

3. Where a settlement is made, either before or after judgment, after a levy by virtue of service of an order of attachment, the sheriff is entitled to poundage upon the judgment or settlement amount, whichever is less. Where an order of attachment is vacated or set aside after levy, the sheriff is entitled to poundage upon the value of the property levied upon, not exceeding the amount specified in the order of attachment, and the court may order the party at whose instance the order of attachment was granted to pay the same to the sheriff. Where an order of attachment is otherwise discharged by order of the court, the sheriff is entitled to the same poundage, to be paid by the party at whose instance the order of attachment is discharged, and the sheriff is entitled to retain the property levied upon until the poundage is paid. The maximum amount upon which poundage shall be computed, if such a settlement is made or the order of attachment is vacated or set aside, is one million dollars.

4. Where a settlement is made (i) after service of an income execution upon the debtor pursuant to subdivision (d) of section fifty-two hundred thirty-one of this chapter or upon the garnishee pursuant to subdivision (e) of section fifty-two hundred thirty-one of this chapter, or (ii) after issuance of a property execution pursuant to section fifty-two hundred thirty of this chapter and levy against personal or real property pursuant to section fifty-two hundred thirty-two or fifty-two hundred thirty-five of this chapter, the sheriff is entitled to poundage upon the judgment amount or settlement amount, whichever is less. Where an income or property execution is vacated or set aside after levy, the sheriff is entitled to poundage upon the value of the property levied upon, not exceeding the amount specified in the execution, and the court may order the party liable therefor to pay the same to the sheriff.

5. A sheriff who brings an action in a court of competent jurisdiction to collect such amount provided for in this subdivision may also be awarded reasonable attorney's fees and court costs.

(c) Additional compensation. A sheriff is entitled in any case, including an instance in which a mandate has been stayed, vacated or set aside, or a settlement has been made after a levy, to such additional compensation for his trouble and expenses in taking possession of and preserving property under any mandate or in removing a person in possession of real property and the said person's property, as the court allows, and the court may make an order requiring the party liable therefor to pay the same to the sheriff.

(d) Mileage fees in the city of New York. For mileage travelled wholly within the city of New York the sheriff of the city of New York shall be entitled to thirty dollars payable in advance, as provided in section eight thousand eleven of this chapter, and commencing one year after the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision, such fee shall be thirty-five dollars.

§ 8013. Expenses of sheriffs. (a) Publication of notice of sale. A sheriff, where real property is to be sold by virtue of an execution or in pursuance of a direction contained in a judgment, is entitled to reimbursement for printer's fees, paid by him for the publication of a notice of the sale. Where the notice is published more than four times, or the sale is postponed, the expense of continuing the publication, or of publishing the notice of postponement, shall be paid by the person requesting it. Where two or more executions against the property of one judgment debtor are in the hands of the sheriff at the time when the proceeds are distributed, the sheriff is entitled to reimbursement for printer's fees upon only the execution issued upon the judgment first docketed in the county.

(b) Appraisal of attached property. A sheriff, where an estimate of the value of property levied upon by virtue of an order of attachment is made, shall be entitled to reimbursement for such compensation to appraisers actually employed thereupon as the court which granted the order of attachment may allow.

(c) Other expenses. A sheriff is entitled to reimbursement of all

expenses necessarily incurred in the execution of any mandate and in the protection, presentation, transportation or sale of property.

(d) Payment in advance. A sheriff, whenever he deems it necessary, may require payment to him in advance to cover any or all expenses for which he is entitled to reimbursement; advance payments made in connection with a mandate or direction affecting property shall be repaid by the sheriff out of the proceeds of the sale of the property, if any.

§ 8014. Collection of sheriff's fees on execution. The fees of a sheriff, upon an execution against property, which are not required by statute to be paid by a particular person and which are not included in the bill of costs of the party in whose favor the execution is issued, shall be collected by virtue of the execution in the same manner as the sum therein directed to be collected.

§ 8015. County clerk where sheriff is a party or otherwise disqualified. A county clerk is entitled for the services specified to the following fees:

1. for performing any duty of a sheriff in an action in which the sheriff, for any cause, is disqualified, the same compensation to which a sheriff is entitled for the same services; and

2. for confining a sheriff in a house by virtue of a mandate, and maintaining him while there, two dollars for each day, to be paid by the sheriff, before he is entitled to be discharged.

§ 8016. Clerks of courts of record generally. (a) Fees of clerks in actions. Except where a greater fee is allowed by another statute for the same service, each clerk of a court of record, except the clerk of the civil court of the city of New York, except a county clerk, except clerks of the family courts, and except the clerks of the district courts, is entitled for the services specified to the following fees, payable in advance:

1. upon the trial of an action, or the hearing, upon the merits, of a special proceeding, from the party bringing it on, one dollar;

2. for entering final judgment, including the filing of the judgment-roll and a copy of the judgment to insert therein, fifty cents, and fifteen cents in addition for each folio, exceeding five, contained in the judgment;

3. for entering any order or an interlocutory judgment, fifty cents, and fifteen cents in addition for each folio, exceeding five;

4. for a certified or other copy of an order, record or other paper in an action brought or transferred to the court of which he is clerk and entered or filed in his office, ten cents for each folio;

5. for a certified transcript of the docket of a judgment, fifty cents; and

6. for filing a transcript, or docketing or redocketing a judgment thereupon, fifty cents, and fifty cents in addition for each defendant, exceeding two.

(b) Certifying judgment-roll on appeal. Where, on an appeal from a judgment or order, a party shall present to the clerk of a court of record, except the clerk of the civil court of the city of New York, except a county clerk, except clerks of the family courts, and except the clerks of the district courts, a printed copy of the judgment-roll or order appealed from, it shall be the duty of the clerk to compare and certify the same, for which service he shall be entitled to be paid at the rate of fifty cents per page or portion thereof, unless a greater fee is allowed by another statute.

§ 8017. Exemption of the state and counties, and agencies and officers thereof, from fees of clerks. (a) Notwithstanding any other provision of this article or any other general, special or local law relating to fees of clerks, no clerk shall charge or collect a fee from the state, or an

agency or officer thereof, for any service rendered in an action in which any of them is involved, nor shall any clerk charge or collect a fee for filing, recording or indexing any paper, document, map or proceeding filed, recorded or indexed for the county, or an agency or officer thereof acting in an official capacity, nor for furnishing a transcript, certification or copy of any paper, document, map or proceeding to be used for official purposes.

(b) Notwithstanding any other provision of law the exemption of subdivision (a) of this section shall not apply to the fees of clerks where the action is on behalf of the New York State Higher Education Services Corporation to recover money due as a result of default of a student loan.

§ 8018. Index number fees of county clerks. (a) Amount of fee. 1. A county clerk is entitled, for the assignment of an index number to an action pending in a court of which he or she is clerk, to a fee of: (i) one hundred ninety dollars; and (ii) in an action to foreclose pursuant to article thirteen of the real property actions and proceedings law, such clerk is entitled to collect an additional fee of one hundred ninety dollars. Such fees are payable in advance.

2. The filing of a transcript of judgment in the county clerk's office is not to be deemed an action pending in the supreme or county court of the county in which it is filed, nor does it constitute the commencement of an action in such courts.

3. In addition, a county clerk is entitled, for the assignment of an index number to an action pending in a court of which he or she is clerk, to the following fee: an additional five dollars, to be paid monthly by the county clerk to the commissioner of education, after deducting twenty-five cents, for deposit into the New York state local government records management improvement fund and an additional fifteen dollars, after deducting seventy-five cents, for deposit to the cultural education account.

(b) Exemptions from index number fee. No fee shall be charged for the assignment of an index number:

1. upon the filing of an order of the appellate term of the supreme court or of an order or certificate of commitment under the mental hygiene law; or

2. upon the transfer of papers from the clerk of any other court, pursuant to an order for change of venue; or

3. to a criminal case or to any action at the request of a public agency, officer or poor person entitled by law to exemption from payment of fees to a county clerk; or

4. to any case in a county court on appeal from a judgment or order of the district court or a town, village or city court; or

5. to a civil cause of action in which a city, town, village, fire district, district corporation, school district or board of cooperative educational services is the plaintiff; or

6. upon the filing of an application for an extreme risk protection order pursuant to article sixty-three-a of this chapter.

(c) Endorsement of index number on papers. No paper in an action in the supreme or a county court, other than an order submitted for signature to a judge out of court, shall be submitted for any purpose to the supreme or county court or to a clerk thereof unless there is endorsed on such paper the index number of the action assigned by the clerk of the county.

(d) Additional services without fee where index number assigned. A county clerk who has assigned an index number shall charge no further fee in the action to which the index number is assigned:

1. for the filing, entering, indexing, or docketing, and in the counties within the city of New York, for recording, as required by statute, of any and all papers in the action, or preliminary thereto or supplementary to judgment;

2. for furnishing an extract of minutes for filing with the clerk of

the court, for affixing a certificate to a filed paper, for taxing costs, for sealing writs, for issuing commissions, for certifying a copy of the clerk's minutes to accompany papers transmitted upon entry of an order for change of venue, or for entering a judgment in the action;

3. for docketing of a satisfaction, a partial satisfaction, an assignment, a reversal, a modification, an amendment, a cancellation or a continuance of a previous entry or docket of a previously filed paper in the action;

4. for certifying a copy of an order of an appellate term of the supreme court for transmittal to the civil court of the city of New York or a city, municipal or district court, or for certifying a copy of an order for use in a division of the clerk's office or for transmittal to a city or county treasurer;

5. for docketing of a return of execution, satisfied, unsatisfied or partially satisfied;

6. for filing a notice or order continuing or cancelling a notice of pendency of action or a notice of attachment against real property; and

7. for discharging a judgment of record by deposit with the clerk.

§ 8019. County clerks generally. (a) Application. The fees of a county clerk specified in this article shall supersede the fees allowed by any other statute for the same services, except in so far as the administrative code of the city of New York sets forth different fees for the city register of the city of New York and the county clerk of Richmond, and except that such fees do not include the block fees as set out in the Nassau county administrative code or the tax map number verification fees on instruments presented for recording or filing as set out in the Suffolk county administrative code, which are to be charged in addition to the fees specified in this article. This subdivision does not apply to the fees specified in subdivision (f) of section 8021.

(b) Legible copies. Whenever a paper or document, presented to a county clerk for filing or recording, is not legible or otherwise suitable for copying or recording by the photocopying process, the county clerk may require a legible or suitable copy thereof along with such paper or document, and the same fees shall be payable for the copy as are payable for the paper or document.

(c) Notice to county clerk. A county clerk need not make an entry which is required by a court order unless proper notice is given to the clerk by a party to the action or a person legally interested therein.

(d) Exemptions for state or city of New York. A clerk of a county within the city of New York shall not charge or receive any fee from the city of New York or the state of New York or from any agency or officer of either acting in official capacity.

(e) Size of page and type. For purposes of this article, the size of each page accepted by a county clerk for recording and indexing shall not exceed nine inches by fourteen inches, except that in the counties of Cattaraugus, Columbia, Delaware, Herkimer, Monroe and Otsego, the size of the page shall not exceed eight and a half inches by fourteen inches, and every printed portion thereof shall be plainly printed in not smaller than eight point type. The county clerk acting as recording officer may in special circumstances accept a page exceeding the size or with smaller print than that prescribed herein, on such terms and at such fee, subject to review by the supreme court, as he may deem appropriate, but the fee for such recording and indexing shall not be less than double the fees otherwise chargeable by law therefor.

(f) Copies of records. The following fees, up to a maximum of forty dollars per record shall be payable to a county clerk or register for copies of the records of the office except records filed under the uniform commercial code:

1. to prepare a copy of any paper or record on file in the office, except as otherwise provided, sixty-five cents per page with a minimum fee of one dollar thirty cents;

2. to certify a prepared copy of any record or paper on file, sixty-five cents per page with a minimum fee of five dollars twenty cents;

3. to prepare and certify a copy of any record or paper on file, one dollar twenty-five cents per page with a minimum fee of five dollars;

4. to prepare and certify a copy of a certificate of honorable discharge, except as provided for in the military law, two dollars fifty cents; and

5. to prepare a copy of any paper or record on file in the office in a medium other than paper, the actual cost of reproducing the record in accordance with paragraph (c) of subdivision one of section eighty-seven of the public officers law.

§ 8020. County clerks as clerks of court. Whenever a county clerk renders a service in his capacity as clerk of the supreme or a county court, in an action pending in such court, he is entitled to the fees specified in this section, payable in advance.

(a) Placing cause on calendar. For placing a cause on a calendar for trial or inquest, one hundred twenty-five dollars in the supreme court and county court; except that where rules of the chief administrator of the courts require that a request for judicial intervention be made in an action pending in supreme court or county court, the county clerk shall be entitled to a fee of ninety-five dollars, payable before a judge may be assigned pursuant to such request, and thereafter, for placing such a cause on a calendar for trial or inquest, the county clerk shall be entitled to an additional fee of thirty dollars, and no other fee may be charged thereafter pursuant to this subdivision; except that the county clerk shall be entitled to a fee of forty-five dollars upon the filing of each motion or cross motion in such action. However, no fee shall be imposed for a motion which seeks leave to proceed as a poor person pursuant to subdivision (a) of section eleven hundred one of this chapter.

(b) Calendar fee for transferred cause, joint trial, retrial, or separate trial. Where a cause which has been placed upon a calendar is transferred before trial to a court for which a larger calendar fee is prescribed, the difference in calendar fee shall be paid at the time the

cause is placed upon the calendar of the latter court, except that no additional fee shall be required when the action is transferred for the purpose of consolidation or trial jointly with another action. No separate calendar fee shall be imposed for a retrial of a cause or for the trial of a separate issue in a cause.

(c) Filing demand for jury trial. For filing a demand for a jury trial in the following counties, where the right to a jury trial is duly demanded:

1. in the counties within the city of New York, sixty-five dollars in the supreme court;

2. in all other counties, sixty-five dollars in the supreme court and county court.

(d) Filing a stipulation of settlement or a voluntary discontinuance. For filing a stipulation of settlement pursuant to rule twenty-one hundred four of this chapter or a notice, stipulation, or certificate pursuant to subdivision (d) of rule thirty-two hundred seventeen of this chapter, the defendant shall file and pay:

1. in the counties within the city of New York, thirty-five dollars in the supreme court.

2. in all other counties, thirty-five dollars in the supreme court and county court.

Provided, however, that only one such fee shall be charged for each notice, stipulation or certificate filed pursuant to this subdivision.

(e) Jury fee for transferred cause, joint trial, retrial or separate trial. Where a cause in which a jury has been demanded is transferred before trial to a court for which a larger jury fee is prescribed, the difference in the jury fee shall be paid at the time the cause is placed upon the calendar of the latter court, except that no additional fee shall be required when the action is transferred for the purpose of consolidation or trial jointly with another action in which a jury fee has previously been paid. No separate jury fee shall be imposed for a retrial of a cause or for the trial of a separate issue in a cause.

(f) Certification, exemplification, and copies of papers.

1. For issuing any certificate, in counties within the city of New York, eight dollars, and in all other counties, four dollars, except as otherwise expressly provided in this article.

2. For a certificate of exemplification, exclusive of certification, in counties within the city of New York, twenty-five dollars, and in all other counties, ten dollars.

(g) Searches. For certifying to a search of any court records for a consecutive two-year period or fraction thereof, for each name so searched, five dollars.

(h) Production of court records. For each day or part thereof in attendance in any action pursuant to a subpoena duces tecum, twenty dollars, and in addition thereto, mileage fees of twelve cents per mile each way and the necessary expenses of the messenger, except that if the subpoena duces tecum be served within the city of New York, and the place of attendance is within the city of New York, then actual transportation costs shall be charged instead of the mileage fees.

§ 8021. County clerks other than as clerks of court. Whenever a county clerk renders a service other than in his capacity as clerk of the supreme or a county court, or other than in an action pending in a court of which he is clerk, he is entitled to the fees specified in this section, payable in advance.

(a) Services in connection with papers or instruments relating to real property and not filed under the uniform commercial code.

1. For filing any paper, document or other instrument of any nature or description which is required or permitted by law to be filed in his office, five dollars, except as otherwise expressly provided in this article and in article twelve of the real property law.

2. For filing and indexing any map, ten dollars.

3. For affixing and indexing a notice of foreclosure of a mortgage, as

prescribed in section fourteen hundred four of the real property actions and proceedings law, ten dollars.

4. a. (1) For recording, entering, indexing and endorsing a certificate on any instrument, five dollars, and, in addition thereto, three dollars for each page or portion of a page, and fifty cents for each additional town, city, block or other indices in which such instrument is to be indexed as directed by the endorsement thereon. On the assignment of a mortgage which assigns more than one mortgage or on a release of lease which releases more than one lease, then there shall be an additional fee of three dollars for every mortgage assigned or lease released in excess of one.

(2) Notwithstanding clause one of this subparagraph, any county may opt by county law to increase the fee for recording, entering, indexing and endorsing a certificate on any instrument from five dollars to twenty dollars and, in addition thereto, increase from three dollars to five dollars for each page or portion of a page. Such increase shall take effect thirty days after the county enacts such fees. For the purpose of determining the appropriate recording fee, the fee for any cover page shall be deemed an additional page of the instrument. A cover page shall not include any social security account number or date of birth. To the extent a county clerk has placed an image of such cover page online, such county clerk shall make a good faith effort to redact such information.

b. For recording, entering, indexing and endorsing a certificate on any instrument, an additional fee of five dollars to be paid monthly by county clerks to the commissioner of education, after deducting twenty-five cents, for deposit into the New York state local government records management improvement fund and an additional fifteen dollars, after deducting seventy-five cents, for deposit to the cultural education account.

5. For re-indexing a recorded instrument, two dollars for each town, city, block or other indices so re-indexed upon presentation of the instrument with such additional endorsement thereon or, if the original instrument is not obtainable, by request in writing sworn to by an

interested party, setting forth the facts.

6. For copying and mailing any map, such fees as may be fixed by the county clerk subject to review by the supreme court.

7. For entering a cross reference of the record of any instrument on the margin of the record of any other instrument referred to therein by liber and page, fifty cents for each cross reference.

8. For examining the record of each assignment of mortgage or other instrument recited in a certificate of discharge of mortgage, fifty cents.

9. For searching for any filed or recorded instrument, upon a written request specifying the kind of instrument, the location by town, city or block if a real property instrument, and the names and period to be searched, such fee as may be fixed by the county clerk subject to review by the supreme court.

10. For filing or recording a notice of pendency of action or a notice of attachment against real property, or an amended notice of pendency of action or an amended notice of action against real property, in counties within the city of New York, thirty-five dollars, and in all other counties, fifteen dollars, but no fee shall be charged for filing or recording a notice or order continuing or cancelling same.

11. For filing federal tax liens payment shall be made in the manner provided by section two hundred forty-three of the lien law.

(b) Filing, other than in connection with papers or instruments relating to real property or filed under the uniform commercial code.

1. For filing any paper, document or other instrument of any nature or description which is required or permitted by law to be filed in his office, five dollars, except as otherwise expressly provided in this article, and except that no fee shall be charged for filing a commission of appointment to public office or an oath of office of a public officer or employee, other than a notary public or commissioner of deeds.

2. For filing any certificate, instrument or document in relation to a corporation, or any certificate pursuant to section forty-nine-a of the personal property law, or any certificate, instrument or document in relation to a joint stock association, limited partnership, continued use of firm name or registration of hotel name, in counties within the city of New York, one hundred dollars, and in all other counties, twenty-five dollars. For filing any certificate pursuant to section one hundred thirty of the general business law, in counties within the city of New York, one hundred dollars, and in all other counties, twenty-five dollars. No fee shall be charged for filing proof of publication or a cancellation, discontinuance or dissolution certificate.

3. For filing an assignment of or order for the payment of salary or wages, in counties within the city of New York, ten dollars, and in all other counties, five dollars. No fee shall be charged for filing of a satisfaction, assignment, cancellation or vacation thereof.

4. For filing a notice of mechanics lien, or a notice of lending, in counties within the city of New York, thirty dollars, and in all other counties, fifteen dollars. No fee shall be charged for filing a notice or order continuing, amending or cancelling same, but when a mechanics lien is discharged by deposit with a clerk of the court, there shall be a fee of three dollars in all counties other than those within the city of New York.

5. For filing, examining and entering an absolute bill of sale of chattels, or any instrument affecting chattels, or a copy of the foregoing or an assignment of any such instrument, or a satisfaction of a chattel mortgage or conditional bill of sale, in all counties except those within the city of New York, one dollar and fifty cents. For filing, examining and entering an assignment of a notice of lien on merchandise, one dollar and fifty cents. Every instrument affecting chattels must be endorsed on the outside thereof with the character of the instrument, the names of all the parties thereto and the location of the property affected thereby, which must be distinguished from the address of the parties by the words "property located at, " or similar

words.

6. For filing a notice of hospital lien, five dollars. No fee shall be charged for filing a satisfaction, partial satisfaction, modification, assignment, cancellation, discharge of amendment thereof.

7. For filing a transcript of judgment, in counties within the city of New York, twenty-five dollars, and in all other counties, ten dollars. No fee shall be charged for filing a certificate or order of satisfaction, partial satisfaction, modification, assignment, reversal, cancellation or amendment, of judgment or lien.

8. For filing and indexing a certificate of appointment or official character of a notary public, or for filing and indexing a certificate of appointment as commissioner of deeds, ten dollars.

9. For filing an assignment of money due on a contract, or an order on owner, twenty-five dollars. No fee shall be charged for filing a notice or order continuing, amending or cancelling same.

10. For filing a building loan contract, in counties within the city of New York, fifty dollars, and in all other counties, twenty-five dollars.

11. a. For recording any instrument required by statute to be recorded, in counties within the city of New York, ten dollars, and in all other counties, five dollars, and, in addition thereto, three dollars for each page or portion of a page recorded, except that the charge for instruments of surrender and orders of commitment required to be filed and recorded pursuant to section three hundred eighty-four of the social services law shall be ten dollars per instrument or order in counties within the city of New York, and in all other counties, five dollars per instrument or order.

b. For recording any instrument required by statute to be recorded, an additional fee of five dollars to be paid monthly by county clerks to the commissioner of education, after deducting twenty-five cents, for

deposit into the New York state local government records management improvement fund and an additional fifteen dollars, after deducting seventy-five cents, for deposit to the cultural education account.

(c) Certification, issuing certificates, other papers and copies of papers, records, and related services, other than in connection with papers or instruments relating to real property or filed under the uniform commercial code.

1. For issuing any certificate, except as otherwise expressly provided for in this article, in counties within the city of New York, ten dollars, and in all other counties, five dollars.

2. For an execution of a judgment, five dollars.

3. For issuing a transcript of the docket of a judgment or other lien, in counties within the city of New York, fifteen dollars, and in all other counties, five dollars.

4. For issuing a certificate of appointment of a notary public, five dollars.

5. For issuing a certificate authenticating an official act by a notary public, commissioner of deeds or other public officer, three dollars, except that no fee shall be charged for a certificate on a paper required by the United States veterans' administration.

6. For issuing an official receipt for any instrument affecting personal property, two dollars.

7. For a certificate of exemplification, exclusive of certification, ten dollars.

8. For preparing and certifying a copy of a marriage record, five dollars.

9. No fee shall be charged to any county officer, employee or institution required to file or record any instrument in connection with

the official duties thereof, or to any public official in connection with the filing of his undertaking.

(d) Searches of records not filed under the uniform commercial code. For certifying to a search of any records, other than those in an action or relating to real property, for a consecutive two year period or fraction thereof, for each name so searched, five dollars; except that in the counties within the city of New York, when the records so searched are the census records of the state of New York, the charge shall be one dollar for a consecutive two-year period or fraction thereof.

(e) Production of records. The production in any action of any filed or recorded paper, document, map or other instrument which is part of the public records and papers of a county clerk's office, except the papers in an action which have been filed with the county clerk in his capacity as clerk of the court, is hereby prohibited in the interest of the safety and preservation thereof, unless the county clerk consents to such production, or the judge presiding in the court in which such production is sought so orders. Instead of the original, a certified copy of such filed or recorded paper, document, map or other instrument shall be produced in evidence as provided in section 4540 without an order. In the event that the original is to be produced on order of such judge, there shall be a fee for each day or part thereof in attendance pursuant to a subpoena duces tecum of twenty dollars and, in addition thereto, mileage fees of twelve cents per mile each way and the necessary expenses of the messenger, except that if the subpoena duces tecum be served within the city of New York and the place of attendance is within the city of New York, then actual transportation cost shall be charged instead of the mileage fees. In the event that a certified photo copy of the records subpoenaed is produced, there shall be the same fee as if the original was produced on the order of a judge.

(f) Services rendered pursuant to part four of article nine of the uniform commercial code.

1. For filing, indexing and furnishing filing data for a financing statement or a continuation statement on a form conforming to standards prescribed by the secretary of state, three dollars, or if the statement otherwise conforms to the requirements of part four of such article,

four dollars and fifty cents, plus, in either case,

(a) if the statement covers collateral which is crops or goods which are or are to become fixtures, fifty cents and, in addition,

(b) if the real estate is in the city of New York or the counties of Suffolk or Nassau, any block fees allowed by the administrative code of the city of New York or the Nassau county administrative code or any tax map number verification fees on instruments presented for recording or filing allowed by the Suffolk county administrative code;

(c) for each additional person, firm or organization, beyond the first, named as a debtor in the statement, seventy-five cents.

2. For filing and indexing an assignment or statement of assignment on a form conforming to standards prescribed by the secretary of state, of a security interest included in or accompanying a termination statement, three dollars, or if the assignment or statement of assignment otherwise conforms to the requirements of part four of such article, four dollars and fifty cents, plus, in either case, for each additional person, firm or organization, beyond the first, named as a debtor in the assignment or statement, seventy-five cents.

3. For filing and indexing a termination statement, including sending or delivering the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto, or an acknowledgment of the filing of the termination statement, one dollar and fifty cents and, otherwise, shall be three dollars, plus, in each case an additional fee of seventy-five cents for each name more than one against which the termination statement is required to be indexed.

4. For filing, indexing and furnishing filing data for a financing statement indicating an assignment of a security interest in the collateral on a form conforming to standards prescribed by the secretary of state, three dollars, or if the financing statement otherwise conforms to the requirements of part four of such article, four dollars and fifty cents, and seventy-five cents for each additional person, firm or organization, beyond the first, named as a debtor in the statement.

5. For filing, indexing and furnishing filing data about a statement

of assignment on a form conforming to standards prescribed by the secretary of state, separate from a financing statement, three dollars, or if the statement of assignment otherwise conforms to the requirements of part four of such article, four dollars and fifty cents plus, in either case, for each additional person, firm or organization, beyond the first, named as a debtor in the statement, seventy-five cents.

6. For filing and noting a statement of release of collateral on a form conforming to standards prescribed by the secretary of state, three dollars, or if the statement of release otherwise conforms to the requirements of part four of such article, four dollars and fifty cents plus, in either case, for each additional person, firm or organization, beyond the first, named as a debtor in the statement, seventy-five cents.

7. For noting the file number and date and hour of the filing of the original upon a copy thereof furnished by the person filing any financing statement, termination statement, statement of assignment, or statement of release, and delivering or sending the copy to such person, when the filed statement contains more than one page or the statement and copy are not on forms conforming to standards prescribed by the secretary of state, an amount equal to the product of one dollar and fifty cents multiplied by the number of pages the filed statement contains.

8. For issuing a certificate showing whether there is on file a presently effective financing statement naming a particular debtor and any statement of assignment thereof or statement of release of collateral pertaining thereto, and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein, four dollars and fifty cents if the request for the certificate is on a form conforming to standards prescribed by the secretary of state or, otherwise, seven dollars and fifty cents.

9. For furnishing a copy of any filed financing statement, continuation statement, termination statement, statement of assignment or statement of release, one dollar and fifty cents per page; provided,

however, that the county clerk may furnish duplicate copies of microfilm records of all financing statements, continuation statements, termination statements, statements of assignment and statements of release filed during any month to any person requesting the same at a fee, to be determined by the county clerk, of less than one dollar and fifty cents per page.

(g) Services rendered in relation to federal tax liens filed pursuant to the lien law.

1. For filing and indexing a notice of lien for taxes payable to the United States of America and certificates and notices affecting such liens, four dollars and fifty cents.

2. For issuing a certificate showing whether there is on file on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting such lien, filed on or after July third, nineteen hundred sixty-six, and if there is, giving the date and hour of filing each such notice or certificate, four dollars and fifty cents.

§ 8022. Fee on civil appeals proceedings before appellate courts. (a) A county clerk, upon filing a notice of appeal, is entitled to a fee of sixty-five dollars, payable in advance.

(b) The clerks of the appellate divisions of the supreme court and the clerk of the court of appeals are entitled, upon the filing of a record on a civil appeal or a statement in lieu of record on a civil appeal, as required by rule 5530 of this chapter, to a fee of three hundred fifteen dollars, payable in advance. The clerks of the appellate divisions also shall be entitled to such fee upon the filing of a notice of petition or order to show cause commencing a special proceeding in their respective courts. In addition, the clerks of the appellate divisions of the supreme court and the clerk of the court of appeals are entitled, upon the filing of each motion or cross motion with respect to a civil appeal or special proceeding, to a fee of forty-five dollars, payable in advance. However, no fee shall be imposed for a motion or cross motion which seeks leave to prosecute or defend a civil appeal or special proceeding as a poor person pursuant to subdivision (a) of section

eleven hundred one of this chapter.

ARTICLE 81
COSTS GENERALLY

- 8101. Costs in an action.
- 8102. Limitation of costs where action brought in higher court.
- 8103. Costs where parties prevail upon separate issues.
- 8104. Costs in consolidated, severed or removed action.
- 8105. Costs where more than one plaintiff or defendant.
- 8106. Costs upon motion.
- 8107. Costs upon appeal.
- 8108. Specification of denial or award of costs.
- 8109. Defendant's costs against the state.
 - (a) Action brought for benefit of municipal corporation.
 - (b) Payment of defendant's costs against the state.
- 8110. Costs against a fiduciary.

§ 8101. Costs in an action. The party in whose favor a judgment is entered is entitled to costs in the action, unless otherwise provided by statute or unless the court determines that to so allow costs would not be equitable, under all of the circumstances.

§ 8102. Limitation of costs where action brought in higher court. A plaintiff is not entitled to costs:

1. in an action brought in the supreme court in a county within the city of New York which could have been brought, except for the amount claimed, in the civil court of the city of New York, unless he shall recover six thousand dollars or more; or,

2. in an action brought in the supreme court in a county not within the city of New York which could have been brought, except for the amount claimed, in any court of limited monetary jurisdiction in the county, unless he shall recover five hundred dollars or more; or,

3. in an action brought in the county court which could have been brought, except for the amount claimed, in any court of lesser monetary jurisdiction in the county, unless he shall recover two hundred fifty dollars or more.

§ 8103. Costs where parties prevail upon separate issues. Upon the recovery of a judgment in favor of the plaintiff, the court may award costs in the action to a defendant without denying costs to the plaintiff, if it determines that a cause of action upon which the defendant prevailed is not substantially the same as any cause of action upon which the plaintiff recovered the judgment.

§ 8104. Costs in consolidated, severed or removed action. Where two or more actions are consolidated, costs shall be awarded in the consolidated action as if it had been instituted as a single action, unless the order of consolidation otherwise provides. Where an action is severed into two or more actions, costs shall be awarded in each such action as if it had been instituted as a separate action, unless the order of severance otherwise provides. Where an action is removed, except pursuant to subdivision (d) of section three hundred twenty-five of this chapter, costs in the action shall be awarded as if it had been instituted in the court to which it is removed, unless the order of removal otherwise provides and as limited by section eighty-one hundred two of this chapter. Where an action is removed pursuant to subdivision (d) of section three hundred twenty-five of this chapter, costs in the action shall be awarded as if it had remained in the court from which it was removed, as limited by section eighty-one hundred two of this chapter.

§ 8105. Costs where more than one plaintiff or defendant. Where a judgment is entered in favor of two or more parties, they shall be entitled, in all, to the same costs in the action as a single party, unless the court otherwise orders.

§ 8106. Costs upon motion. Costs upon a motion may be awarded to any party, in the discretion of the court, and absolutely or to abide the event of the action.

§ 8107. Costs upon appeal. The party in whose favor an appeal is decided in whole or in part is entitled to costs upon the appeal, whether or not he is entitled to costs in the action, unless otherwise provided by statute, rule or order of the appellate court. Where a new trial is directed upon appeal, costs upon the appeal may be awarded absolutely or to abide the event.

§ 8108. Specification of denial or award of costs. A denial of costs in an action to a party in whose favor the judgment is entered, an award of costs in an action to a party against whom the judgment is entered, an award of separate costs in an action to one or more parties, or an apportionment of costs among several parties, shall be made in the direction of the court for judgment, or in the report or decision upon which judgment is entered, or, upon motion of the party to be benefited thereby, by an order of the judge or referee who presided at the trial. The decision on a motion shall specify the amount of costs awarded upon the motion, if any, and each party to whom they are awarded. The decision on appeal shall specify the disposition made in regard to costs.

§ 8109. Defendant's costs against the state. (a) Action brought for benefit of municipal corporation. Costs awarded to the defendant in an action brought by the state for the benefit of a municipal corporation shall be awarded against the municipal corporation and not against the state.

(b) Payment of defendant's costs against the state. Where costs are awarded to the defendant and against the state in an action brought by a public officer, and the proceedings have not been stayed, the

comptroller shall draw his warrant upon the treasurer for the payment of the costs out of any money in the treasury appropriated for that purpose, upon the production to him of an exemplified copy of the judgment or order awarding the costs, a copy of a taxed bill of costs and a certificate of the attorney-general to the effect that the action was brought pursuant to law. The fees of the clerk for the exemplified copy shall be certified thereupon by him and included in the warrant.

§ 8110. Costs against a fiduciary. Where costs are awarded against a fiduciary, they shall be chargeable only upon the estate, fund or person he represents, unless the court directs them to be paid personally for mismanagement or bad faith in the prosecution or defense of the action.

ARTICLE 82

AMOUNT OF COSTS

8201. Amount of costs in an action.

8202. Amount of costs on motion.

8203. Amount of costs on appeal to appellate division and appellate term.

8204. Amount of costs on appeal to the court of appeals.

§ 8201. Amount of costs in an action. Costs awarded in an action shall be in the amount of:

1. two hundred dollars for all proceedings before a note of issue is filed; plus

2. two hundred dollars for all proceedings after a note of issue is filed and before trial; plus

3. three hundred dollars for each trial, inquest or assessment of damages.

§ 8202. Amount of costs on motion. Costs awarded on a motion shall be in an amount fixed by the court, not exceeding one hundred dollars.

§ 8203. Amount of costs on appeal to appellate division and appellate term. (a) Unless the court awards a lesser amount, costs awarded on an appeal to the appellate division shall be in the amount of two hundred fifty dollars.

(b) Costs on an appeal from a county court to an appellate term may be awarded by the appellate term in its discretion, and if awarded shall be as follows:

1. to the appellant upon reversal, not more than thirty dollars;
2. to the respondent upon affirmance, not more than twenty-five dollars;
3. to either party on modification, not more than twenty-five dollars.

On appeal from any other court to an appellate term costs shall be governed by the provisions of the applicable court act.

§ 8204. Amount of costs on appeal to the court of appeals. Unless the court awards a lesser amount, costs awarded on an appeal to the court of appeals shall be in the amount of five hundred dollars.

ARTICLE 83

DISBURSEMENTS AND ADDITIONAL ALLOWANCES

8301. Taxable disbursements.

- (a) Disbursements in action or on appeal.
- (b) Disbursements on motion.
- (c) Disbursements to party not awarded costs.
- (d) Reasonable fees taxable.

8302. Additional allowance to plaintiff as of right in real property actions.

- (a) Actions in which allowance made.
 - (b) Amount of allowance.
 - (c) Additional allowance where action settled.
 - (d) Additional allowance in foreclosure action.
8303. Additional allowance in the discretion of the court.
- (a) Discretionary allowance in action.
 - (b) Discretionary allowance on enforcement motion.
- 8303-a. Costs upon frivolous claims and counterclaims in actions to recover damages for personal injury, injury to property or wrongful death.

§ 8301. Taxable disbursements. (a) Disbursements in action or on appeal. A party to whom costs are awarded in an action or on appeal is entitled to tax his necessary disbursements for:

1. the legal fees of witnesses and of referees and other officers;
2. the reasonable compensation of commissioners taking depositions;
3. the legal fees for publication, where publication is directed pursuant to law;
4. the legal fees paid for a certified copy of a paper necessarily obtained for use on the trial;
5. the expense of securing copies of opinions and charges of judges;
6. the reasonable expenses of printing the papers for a hearing, when required;
7. the prospective charges for entering and docketing the judgment;
8. the sheriff's fees for receiving and returning one execution;
9. the reasonable expense of taking, and making two transcripts of testimony on an examination before trial, not exceeding two hundred

fifty dollars in any one action;

10. the expenses of searches made by title insurance, abstract or searching companies, or by any public officer authorized to make official searches and certify to the same, or by the attorney for the party to whom costs are awarded, taxable at rates not exceeding the cost of similar official searches;

11. the reasonable expenses actually incurred in securing an undertaking to stay enforcement of a judgment subsequently reversed; and

12. any fee imposed by section fifty-three of the general municipal law; and

13. such other reasonable and necessary expenses as are taxable according to the course and practice of the court, by express provision of law or by order of the court.

(b) Disbursements on motion. Upon motion of any party made after the determination of a motion, or upon its own initiative, the court may allow any party thereto to tax as disbursements his reasonable and necessary expenses of the motion.

(c) Disbursements to party not awarded costs. The court may allow taxation of disbursements by a party not awarded costs in an action or on appeal; and shall allow taxation of disbursements by a party not awarded costs in an action for a sum of money only where he recovers the sum of fifty dollars or more.

(d) Reasonable fees taxable. Where an expense for a service performed, other than a search, is a taxable disbursement, the court may allow its taxation in an amount equal to the reasonable sum actually and necessarily expended therefor, if it is the usual charge made by private persons for the service, although it is in excess of the fee allowed a public officer.

§ 8302. Additional allowance to plaintiff as of right in real property actions. (a) Actions in which allowance made. A plaintiff, if a judgment is entered in his favor and he recovers costs, is entitled to an

additional allowance, in an action:

1. to foreclose a mortgage upon real property; or
2. for the partition of real property; or
3. to compel the determination of a claim to real property.

(b) Amount of allowance. An additional allowance under this rule shall be computed upon the amount found to be due upon the mortgage, or the value of the property which is partitioned or the claim to which is determined, at the rate of:

1. ten per cent of a sum not exceeding two hundred dollars; plus
2. five per cent of any additional sum not exceeding eight hundred dollars; plus
3. two per cent of any additional sum not exceeding two thousand dollars; plus
4. one per cent of any additional sum not exceeding five thousand dollars.

(c) Additional allowance where action settled. Where an action specified in subdivision (a) is settled before judgment, the plaintiff is entitled to an additional allowance upon the amount paid upon the settlement, computed at one-half of the rates set forth in subdivision (b).

(d) Additional allowance in foreclosure action. In an action to foreclose a mortgage upon real property, a plaintiff entitled to an additional allowance pursuant to subdivision (a) or (c) shall also be entitled to the sum of fifty dollars. Where a part of the mortgage debt is not due, if the judgment directs the sale of the whole property, the additional allowance specified in subdivision (a) shall be computed as provided in subdivision (b) upon the whole sum unpaid upon the mortgage. If the judgment directs the sale of a part only, it shall be computed upon the sum actually due, and if the court thereafter grants an order directing the sale of the remainder or a part thereof, it shall be

computed upon the amount then due. The aggregate of additional allowances so computed shall not exceed the sum which would have been allowed if the entire sum secured by the mortgage had been due when the judgment was entered.

§ 8303. Additional allowance in the discretion of the court. (a) Discretionary allowance in action. Whether or not costs have been awarded, the court before which the trial was had, or in which the judgment was entered, on motion, may award:

1. to any party to an action to foreclose a mortgage upon real property, a sum not exceeding two and one-half percent of the sum due or claimed to be due upon such mortgage, and not exceeding the sum of three hundred dollars; or
2. to any party to a difficult or extraordinary case, where a defense has been interposed, a sum not exceeding five per cent of the sum recovered or claimed, or of the value of the subject matter involved, and not exceeding the sum of three thousand dollars; or
3. to any party to an action for the partition of real property, a sum not exceeding five per cent of the value of the subject matter involved and not exceeding the sum of three thousand dollars; or
4. to the fiduciary or to any party to an action which involves the construction of a will or an intervivos trust instrument, such sums as it deems reasonable for counsel fees and other expenses necessarily incurred with respect to such construction in the action; and the court may direct that the whole or any part of such allowance shall be paid to the attorney rendering the services in the action, and may provide that the determination of the amount of any allowance in connection therewith be reserved for a supplemental order to be entered after the time to appeal has expired, or if an appeal be taken, then after final determination of the appeal; and a court on appeal may make a like award and direction on appeal; or

5. to the attorney for the petitioner in a proceeding to dispose of an infant's property, such sum as to the court may seem just and proper; or

6. to the plaintiffs in an action or proceeding brought by the attorney-general under articles twenty-two, twenty-two-A, twenty-three-A or thirty-three or section three hundred ninety-one-b or five hundred twenty-a of the general business law, or under subdivision twelve of section sixty-three of the executive law, or under article twenty-three of the arts and cultural affairs law, or in an action or proceeding brought by the attorney-general under applicable statutes to dissolve a corporation or for usurpation of public office, or unlawful exercise of franchise or of corporate right, a sum not exceeding two thousand dollars against each defendant.

(b) Discretionary allowance on enforcement motion. The court, on a motion relating to the enforcement of a judgment, may award to the judgment creditor a sum not exceeding five per cent of the judgment or fifty dollars, whichever is more.

§ 8303-a. Costs upon frivolous claims and counterclaims in actions to recover damages for personal injury, injury to property or wrongful death.

(a) If in an action to recover damages for personal injury, injury to property or wrongful death, or an action brought by the individual who committed a crime against the victim of the crime, and such action or claim is commenced or continued by a plaintiff or a counterclaim, defense or cross claim is commenced or continued by a defendant and is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs and reasonable attorney's fees not exceeding ten thousand dollars.

(b) The costs and fees awarded under subdivision (a) of this section shall be assessed either against the party bringing the action, claim, cross claim, defense or counterclaim or against the attorney for such party, or against both, as may be determined by the court, based upon the circumstances of the case. Such costs and fees shall be in addition to any other judgment awarded to the successful party.

(c) In order to find the action, claim, counterclaim, defense or cross

claim to be frivolous under subdivision (a) of this section, the court must find one or more of the following:

(i) the action, claim, counterclaim, defense or cross claim was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another;

(ii) the action, claim, counterclaim, defense or cross claim was commenced or continued in bad faith without any reasonable basis in law or fact and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action, claim, counterclaim, defense or cross claim was promptly discontinued when the party or the attorney learned or should have learned that the action, claim, counterclaim, defense or cross claim lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

ARTICLE 84

TAXATION OF COSTS

8401. Computation by clerk.

8402. Taxation with notice.

8403. Taxation without notice.

8404. Judicial review of taxation or retaxation.

§ 8401. Computation by clerk. Costs, disbursements and additional allowances shall be taxed by the clerk upon the application of the party entitled thereto. A valuation of property necessary for fixing an additional allowance shall be ascertained by the court, unless it has been fixed by the decision of the court, verdict of the jury, or report of the referee or commissioners, upon which the judgment is entered. The clerk, whether or not objection is made, shall examine the bills presented to him for taxation; shall satisfy himself that all the items allowed by him are correct and allowable; and shall strike out all items of disbursements, other than the prospective charges expressly allowed by law, not supported by affidavit showing that they have been necessarily incurred and are reasonable in amount. The clerk shall

insert in the judgment the total of the amount taxed as costs, disbursements and additional allowances.

§ 8402. Taxation with notice. Costs may be taxed upon at least five days' notice to each adverse party interested in reducing the amount thereof except one against whom judgment was entered on default in appearance. A copy of the bill of costs, specifying the items in detail, and a copy of any supporting affidavits shall be served with the notice.

§ 8403. Taxation without notice. Costs may also be taxed without notice. A party who has taxed costs without notice shall immediately serve a copy of the bill of costs upon each party who is entitled to notice under section 8402. Within five days after such service, any such party may serve notice of retaxation of costs upon five days' notice to the party who has taxed the costs, specifying the item as to which retaxation is sought.

§ 8404. Judicial review of taxation or retaxation. Upon motion of any interested party, on notice, the court may allow or disallow any item objected to before the clerk; or it may order a retaxation before the clerk and it may specify the grounds or the proof upon which an item may be allowed or disallowed.

ARTICLE 85

SECURITY FOR COSTS

8501. Security for costs.

(a) As of right.

(b) In court's discretion.

8502. Stay and dismissal on failure to give security.

8503. Undertaking.

§ 8501. Security for costs. (a) As of right. Except where the

plaintiff has been granted permission to proceed as a poor person or is the petitioner in a habeas corpus proceeding, upon motion by the defendant without notice, the court or a judge thereof shall order security for costs to be given by the plaintiffs where none of them is a domestic corporation, a foreign corporation licensed to do business in the state or a resident of the state when the motion is made.

(b) In court's discretion. Upon motion by the defendant with notice, or upon its own initiative, the court may order the plaintiff to give security for costs in an action by or against an assignee or trustee for the benefit of creditors, a trustee, a receiver or debtor in possession in bankruptcy, an official trustee or committee of a person imprisoned in this state, an executor or administrator, the committee of a person judicially declared to be incompetent, the conservator of a conservatee, a guardian ad litem, or a receiver.

§ 8502. Stay and dismissal on failure to give security. Until security for costs is given pursuant to the order of the court, all proceedings other than to review or vacate such order shall be stayed. If the plaintiff shall not have given security for costs at the expiration of thirty days from the date of the order, the court may dismiss the complaint upon motion by the defendant, and award costs in his favor.

§ 8503. Undertaking. Security for costs shall be given by an undertaking in an amount of five hundred dollars in counties within the city of New York, and two hundred fifty dollars in all other counties, or such greater amount as shall be fixed by the court that the plaintiff shall pay all legal costs awarded to the defendant.

ARTICLE 86

COUNSEL FEES AND EXPENSES IN CERTAIN ACTIONS AGAINST THE STATE

8600. Intent and short title.

8601. Fees and other expenses in certain actions against the state.

- 8602. Definitions.
- 8603. Interest.
- 8604. Annual report.
- 8605. Applicability.

§ 8600. Intent and short title. It is the intent of this article, which may hereafter be known and cited as the "New York State Equal Access to Justice Act", to create a mechanism authorizing the recovery of counsel fees and other reasonable expenses in certain actions against the state of New York, similar to the provisions of federal law contained in 28 U.S.C. § 2412(d) and the significant body of case law that has evolved thereunder.

§ 8601. Fees and other expenses in certain actions against the state.
(a) When awarded. In addition to costs, disbursements and additional allowances awarded pursuant to sections eight thousand two hundred one through eight thousand two hundred four and eight thousand three hundred one through eight thousand three hundred three of this chapter, and except as otherwise specifically provided by statute, a court shall award to a prevailing party, other than the state, fees and other expenses incurred by such party in any civil action brought against the state, unless the court finds that the position of the state was substantially justified or that special circumstances make an award unjust. Whether the position of the state was substantially justified shall be determined solely on the basis of the record before the agency or official whose act, acts, or failure to act gave rise to the civil action. Fees shall be determined pursuant to prevailing market rates for the kind and quality of the services furnished, except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings.

(b) Application for fees. A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application which sets forth (1) the facts supporting the claim that the party is a prevailing party and is eligible to receive an award under this section, (2) the amount sought,

and (3) an itemized statement from every attorney or expert witness for whom fees or expenses are sought stating the actual time expended and the rate at which such fees and other expenses are claimed.

§ 8602. Definitions. For the purpose of this article:

(a) "Action" means any civil action or proceeding brought to seek judicial review of an action of the state as defined in subdivision (g) of this section, including an appellate proceeding, but does not include an action brought in the court of claims.

(b) "Fees and other expenses" means the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, consultation with experts, and like expenses, and reasonable attorney fees, including fees for work performed by law students or paralegals under the supervision of an attorney incurred in connection with an administrative proceeding and judicial action.

(c) "Final judgment" means a judgment that is final and not appealable, and settlement.

(d) "Party" means (i) an individual whose net worth, not including the value of a homestead used and occupied as a principal residence, did not exceed fifty thousand dollars at the time the civil action was filed; (ii) any owner of an unincorporated business or any partnership, corporation, association, real estate developer or organization which had no more than one hundred employees at the time the civil action was filed, (iii) any organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code regardless of the number of employees.

(e) "Position of the state" means the act, acts or failure to act from which judicial review is sought.

(f) "Prevailing party" means a plaintiff or petitioner in the civil action against the state who prevails in whole or in substantial part where such party and the state prevail upon separate issues.

(g) "State" means the state or any of its agencies or any of its officials acting in his or her official capacity.

§ 8603. Interest. If the state appeals an award made pursuant to this

section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award. Such interest shall run from the date of the award through the day before the date of the affirmance.

§ 8604. Annual report. The department of law shall file with the governor, the speaker of the assembly and the temporary president of the senate an annual report describing the number, nature and amount of each award in the previous fiscal year including the agency involved in each action, and other relevant information which might aid the legislature and the governor in evaluating the scope and impact of such awards.

§ 8605. Applicability. (a) Nothing contained in this article shall be construed to alter or modify the other provisions of this chapter where applicable to actions other than actions against the state.

(b) Nothing contained in this article shall be deemed to authorize the institution of a civil action for the sole purpose of obtaining fees incurred by a party to an administrative proceeding.

(c) Nothing contained in this article shall affect or preclude the right of any party to recover fees or other expenses authorized by common law or by any other statute, law or rule.

ARTICLE 90

FAILURE OR ADJOURNMENT OF TERM OF COURT

9001. No abatement by failure, adjournment, or change of time or place of term of court.

9002. Death, disability or incapacity of judge following verdict, report, decision, or determination of motion or special proceeding.

9003. Running of time when county judge disqualified from acting in a case.

Rule 9001. No abatement by failure, adjournment, or change of time or place of term of court. When a term of a court fails or is adjourned or

the time or place of holding it is changed, all persons are bound to appear and all proceedings shall continue at the time and place to which the term is adjourned or changed, or, if it has failed, at the next term, with like effect as if the term had been held as originally appointed.

Rule 9002. Death, disability or incapacity of judge following verdict, report, decision, or determination of motion or special proceeding.

The death, sickness, resignation, removal from or expiration of office or other disability or legal incapacity of a judge following his verdict, report, decision or determination of a motion or special proceeding in any matter in a civil judicial proceeding shall not affect its validity. Unless otherwise provided by rule of the chief administrator of the courts, any other judge of the same court may, on the application of a party, give effect to such verdict, report, decision or determination and make and sign an appropriate order or judgment based thereon, which shall have the same effect as if it had been made by the judge upon whose verdict, report, decision or determination it is based.

Rule 9003. Running of time when county judge disqualified from acting in a case. If a county judge is disqualified from acting in any case pending in his court and files a certificate pursuant to judiciary law section one hundred ninety-two, the time within which any proceeding may be taken, as fixed by statute or rule, does not begin to run until the certificate is filed.

ARTICLE 94

ADMISSION TO PRACTICE

9401. Committee.

9402. Application for admission.

9403. Referral to another judicial district.

9404. Certificate of character and fitness.

9405. Prior application.

9406. Proof.

9407. Filing.

Rule 9401. Committee. The appellate division in each judicial department shall appoint a committee of not less than three practicing lawyers for each judicial district within the department, for the purpose of investigating the character and fitness of every applicant for admission to practice as an attorney and counselor at law in the courts of this state. Each member of such committee shall serve until his death, resignation or the appointment of his successor. A lawyer who has been or who shall be appointed a member of the committee for one district may be appointed a member of the committee for another district within the same department.

Rule 9402. Application for admission. Every application for admission to practice pursuant to the provisions of paragraph a of subdivision one of section ninety of the judiciary law by a person who has been certified by the state board of law examiners, in accordance with the provisions of section four hundred sixty-four of said law, shall be referred by the appellate division to the committee for a district in its judicial department. Every application for admission to practice which is made on motion without the taking of the bar examination, pursuant to rules of the court of appeals and the provisions of paragraph b of subdivision one of section ninety of the judiciary law, by a person already admitted to practice in another jurisdiction, shall be referred by the appellate division to the committee for a district in its judicial department.

Rule 9403. Referral to another judicial district. Notwithstanding rule 9402, any application for admission to practice pending before a committee, may be referred to the committee for another judicial district in the same or another department by order or direction of the presiding justice of the appellate division of the department embracing

the district in which the application is pending. Such order or direction may be made only upon the written request of the chairman or acting chairman of the committee before which the application is pending and only upon his written certification either:

1. that the applicant, since he applied to take the bar examination or to dispense with such examination or since he applied on motion to be admitted to practice, has changed his actual residence to such other judicial district in the same or other department, or, if not a resident of the state, has acquired full-time employment in or changed his place of full-time employment to such other judicial district in the same or other department; or

2. that the majority of the members of such committee are not qualified to vote on the application or have disqualified themselves from voting or have refrained from voting thereon; or

3. that the members of such committee are equally divided in their opinion as the application; or

4. that strict compliance with rule 9402 will cause undue hardship to the applicant.

Rule 9404. Certificate of character and fitness. Unless otherwise ordered by the appellate division, no person shall be admitted to practice without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, he is entitled to admission. To enable the committee to make such investigation, the justices of the appellate division are authorized to prescribe and from time to time to amend a form of statement or questionnaire to be submitted by the applicant, including specifically his present and such past places of actual residence as may be required therein, listing the street and number, if any, and the period of time he resided at each place.

Rule 9405. Prior application. In the event that any applicant has made a prior application for admission to practice in this state or in any other jurisdiction, then upon said statement or questionnaire or in an accompanying signed statement, he shall set forth in detail all the facts with respect to such prior application and its disposition. If such prior application had been filed in any appellate division of this state and if the applicant failed to obtain a certificate of good character and fitness from the appropriate character committee or if for any reason such prior application was disapproved or rejected either by said committee or said appellate division, he shall obtain and submit the written consent of said appellate division to the renewal of his application in that appellate division or in any other appellate division.

Rule 9406. Proof. No person shall receive said certificate from any committee and no person shall be admitted to practice as an attorney and counselor at law in the courts of this state, unless he shall furnish satisfactory proof to the effect:

1. that he supports the constitutions of the United States and of the state of New York; and

2. that he has complied with all the requirements of the applicable statutes of this state, the applicable rules of the court of appeals and the applicable rules of the appellate division in which his application is pending, relating to the admission to practice as an attorney and counselor at law.

Rule 9407. Filing. Every application for admission to practice, together with all the papers submitted thereon, upon its final disposition by the appellate division shall be filed in the office of the clerk of such appellate division.

RECORDS OF CLERKS OF THE COURTS

9701. Records to be kept by the clerk of appellate division.

9702. Books to be kept by the clerks of other courts.

9703. Form of records.

Rule 9701. Records to be kept by the clerk of appellate division. The clerk of the appellate division in each department shall keep:

1. a book, properly indexed, or an index, in which shall be entered the title of all proceedings in that court, with entries under each, showing the proceedings taken therein and the final disposition thereof; and

2. a book in which shall be indexed all undertakings filed in the clerk's office, with a statement of the proceedings in which they are given, and a statement of any disposition or order made of or concerning them; and

3. a book, properly indexed, or an index, which shall contain (a) the name of each attorney admitted to practice in the department, with the date of the attorney's admission, and (b) the name of each person who has been refused admission or who has been disbarred, disciplined or censured by the court. The clerk of each department shall transmit to the clerk of the court of appeals and to the clerks of the other departments the names of all applicants who have been refused admission, and the names of all attorneys who have resigned or who have been disbarred, disciplined, censured or reinstated by the court.

Rule 9702. Books to be kept by the clerks of other courts. The clerks of the other courts shall keep:

1. a "judgment-book," in which shall be recorded all judgments entered in their offices;

2. a book, properly indexed, in which shall be entered the title of

all civil judicial proceedings, with proper entries under each denoting the papers filed and the orders made and the steps taken therein, with the dates of the filing of the several papers in the proceeding;

3. a book, properly indexed, in which shall be entered the name and address of each conservator, committee or guardian who is appointed pursuant to the provisions of the mental hygiene law, the title of the proceeding, the name and address of any surety, the papers filed, and any orders made or steps taken therein;

4. a book in which shall be recorded at length each undertaking of a public officer or any officer appointed by the court, filed in their offices, except the undertakings of receivers appointed under section 5228, with a statement showing when the undertaking was filed and a notation on the margin of the record showing any disposition, or order, made of or concerning it;

5. such other books, properly indexed, as may be necessary, or convenient, to contain the docket of judgments, the entry of orders, and all other necessary matters and proceedings; and

6. such other books as the chief administrator of the courts may direct to be kept.

Rule 9703. Form of records. A clerk shall keep books and records in such form and style as may be prescribed by the chief administrator of the courts.

ARTICLE 98

ACTIONS AGAINST VILLAGES

Section 9801. Actions against the village.

9802. Liability of villages in certain actions.

9803. Place of trial of actions and proceedings against villages.

9804. Notice of defects in certain actions.

§ 9801. Actions against the village. 1. No action shall be maintained against the village for a personal injury or injury to property alleged to have been sustained by reason of the negligence or wrongful act of the village or of any officer, agent or employee thereof, unless a notice of claim shall have been made and served in compliance with section fifty-e of the general municipal law.

2. Every such action shall be commenced pursuant to the provisions of section fifty-i of the general municipal law.

§ 9802. Liability of villages in certain actions. Except as provided otherwise in this chapter no action shall be maintained against the village upon or arising out of a contract of the village unless the same shall be commenced within eighteen months after the cause of action therefor shall have accrued, nor unless a written verified claim shall have been filed with the village clerk within one year after the cause of action shall have accrued, and no other action shall be maintained against the village unless the same shall be commenced within one year after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been made and served in compliance with section fifty-e of the general municipal law. The omission to present a claim or to commence an action thereon within the respective periods of time above stated applicable to such claim, shall be a bar to any claim or action therefor against said village; but no action shall be brought upon any such claim until forty days have elapsed after the filing of the claim in the office of the village clerk.

§ 9803. Place of trial of actions and proceedings against villages. The place of trial of all actions and proceedings against a village or any of its officers or boards shall be the county in which the village is situated.

§ 9804. Notice of defects in certain actions. No civil action shall be maintained against the village for damages or injuries to person or property sustained in consequence of any street, highway, bridge, culvert, sidewalk or crosswalk being defective, out of repair, unsafe, dangerous or obstructed or for damages or injuries to persons or property sustained solely in consequence of the existence of snow or ice upon any sidewalk, crosswalk, street, highway, bridge or culvert unless written notice of the defective, unsafe, dangerous or obstructive condition, or of the existence of the snow or ice, relating to the particular place, was actually given to the village clerk and there was a failure or neglect within a reasonable time after the receipt of such notice to repair or remove the defect, danger or obstruction complained of or to cause the snow or ice to be removed, or the place otherwise made reasonably safe.

ARTICLE 100

REPEAL; SAVING CLAUSES; EFFECTIVE DATE

- 10001. Repeal of the civil practice act.
- 10002. Abrogation of rules of civil practice.
- 10003. Pending and subsequent proceedings.
- 10004. Effect of unconstitutionality in part.
- 10005. Effective date.

§ 10001. Repeal of the civil practice act. Chapter nine hundred twenty-five of the laws of nineteen hundred twenty, entitled "An act in relation to the civil practice in the courts of the state of New York, " and all acts amendatory thereof and supplemental thereto, constituting the civil practice act, as heretofore in effect, are hereby repealed.

§ 10002. Abrogation of rules of civil practice. The rules of practice adopted by the convention provided for by chapter nine hundred two of the laws of nineteen hundred twenty, as amended or supplemented by appropriate action of the justices of the appellate division in the several departments pursuant to section eighty-three of the judiciary

law, comprising the rules of civil practice, as heretofore in effect, are hereby abrogated and shall no longer be in effect.

§ 10003. Pending and subsequent proceedings. This act shall apply to all actions hereafter commenced. This act shall also apply to all further proceedings in pending actions, except to the extent that the court determines that application in a particular pending action would not be feasible or would work injustice, in which event the former procedure applies. Proceedings pursuant to law in an action taken prior to the time this act takes effect shall not be rendered ineffectual or impaired by this act.

§ 10004. Effect of unconstitutionality in part. If any clause, sentence, paragraph, subdivision, section, rule or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, rule or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 10005. Effective date. This act shall take effect September first, nineteen hundred sixty-three.