ARTICLE 3

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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.