

CPLR ARTICLE 3:  
JURISDICTION, SERVICE, & APPEARANCE.

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Jurisdiction:

There are two (2) types of jurisdiction generally: subject matter, relating to the action itself; and personal jurisdiction, the power a Court holds over an individual. New York State has jurisdiction over its own residents. However there are also several ways a Court may obtain personal jurisdiction over a *non-domiciliary* (a non-resident); one such manner is based upon the actions of a person, as follows:

- If a person conducts business within this State;
- If a person commits a “tortuous” act within the State (a tort being a civil liability);
- If a person commits a tortuous act *outside* the State [excepting defamation of character],

IF:

- 1) the person regularly conducts business within the State;

OR,

- 2) the person can reasonably expect his actions to have consequences within the State.

- If a person own/uses/possesses any REAL property (land, think Real Estate).

Under certain actions (such as matrimonial or family actions, for support/alimony/maintenance) personal jurisdiction may be obtained over non-residents regardless of the above.

If a non-resident appears pursuant to an action where jurisdiction is based on the above however, such appearance does not in and of itself confer jurisdiction for any other type of actions.

If a non-resident files his or her own case though, by submitting themselves to this State’s jurisdiction, they open themselves up to being served on separate actions. If the person is represented by an attorney, such attorney is automatically designated as an agent for service of process upon that individual; if the person is representing his- or herself, the Clerk of Court for the venue where they filed their action would be the agent for service of process upon him/her.

If a Court has jurisdiction over a person, then a case can be filed against them, as follows:

Cases are commenced by filing the appropriate papers and a copy with the Clerk of the Court along with the fee(s). The Clerk shall date-stamp the first page of the copy, and return it to the filing party along with the index number. If papers are filed by facsimile (fax), the date-stamped first page with index number shall be transmitted back to the filing party. If filed by electronic means, the index number shall be communicated to the filing party.

An ACTION is between a PLAINTIFF and a DEFENDANT, and is commenced by filing a SUMMONS, together with either a COMPLAINT or NOTICE.

A SPECIAL PROCEEDING is between a PETITIONER and a RESPONDENT, and is commenced by filing a PETITION, together with a NOTICE or ORDER TO SHOW CAUSE (OTSC).

If papers commencing an action/proceeding cannot be filed, an ORDER may be filed commencing an action/proceeding in lieu thereof, papers to then be filed within 5 DAYS.

If a Notice is filed with a Summons (instead of the Complaint), the summons must specify the amount of money being sued for [EXCEPTING ONLY A MEDICAL MALPRACTICE SUIT].

Service of the papers must be made within 120 days of filing them; if the case pursuant to Election Law, or if the Statute of Limitations is 4 months or less, service shall be made no later than 15 days after expiration of statute of limitations.

Defendant may MOTION for Dismissal Without Prejudice for late service; Plaintiff may motion to extend time for good cause or in the interests of justice.

**SERVICE: PERSONAL SERVICE** includes forms of service (such as MAIL) other than just **PERSONAL DELIVERY**.

PROOF OF SERVICE:

Form:

CERTIFICATE; if served by Sheriff or other official.

AFFIDAVIT; if served by any other person.

ACKNOWLEDGMENT or WRITTEN ADMISSION by person served.

If served by Personal Delivery, Proof of Service must include description of

person served, including sex/skin color/hair color/age/weight/height.

If serving the STATE, can serve the Attorney General ONLY IF PHYSICALLY IN THIS STATE AT THE TIME, or an Assistant A.G., or the A.G.'s office.

If serving a State Agency, in addition to the A.G., serve the Chief Officer/Executive of the body by serving the executive's office; OR, mailing the summons to the office by certified mail - return receipt requested - and designating "Urgent Legal Mail" on the envelope.

Service on an individual can be by PERSONAL DELIVERY to such person; **OR** to that individual's DESIGNATED AGENT.

Service can also be made upon a person of SUITABLE AGE & DISCRETION [SAD] at address of the person to be served, **AND** by either mailing the summons to the last known address, **OR** to the person's place of business. If mailed to the place of business, envelope must be designated "Personal & Confidential", and not include any indication (including return address) that it comes from an attorney or concerns a court action.

"NAIL & MAIL" Service can also be made by affixing the summons to the door (if it cannot be made otherwise), and mailing the summons in the same manners as for SAD service.

In the case of SAD or NAIL & MAIL service, the mailing must be made within 20 days (either before or after) of the delivery to a person of SAD **OR** affixing the summons to the door; proof of service must be filed with the court within 20 days of whichever latter act completes the cycle. Service in these instances is deemed complete 10 days after the proof is filed with the Court.

If serving an INFANT (person under 18 years of age), service shall be made on the parent, or legal guardian, or legal custodian, or adult spouse, or - if none of these exist - on the person with whom the infant resides or is *employed* by. Service shall also be made upon an infant aged 14 years or older.

Service upon a person declared INCOMPETENT, or upon a CONSERVATEE, shall be on the COMMITTEE or CONSERVATOR.

Service upon a PARTNERSHIP can be on any partner; **OR** delivered to the managing or general agent, or person in charge of the office **AND** mailing 1<sup>st</sup> class to the partner's residence/last known address/place of business; **OR** by NAIL & MAIL.

Service upon a LIMITED PARTNERSHIP does **NOT** include service to a partner, mailing to a partner, or NAIL & MAIL.

Service upon a GOVERNMENTAL SUBDIVISION shall be to the appropriate

officer as specified in the statute (read it).

Service upon a CORPORATION is to the director, officer, managing or general agent, or cashier.

Service upon a LIMITED LIABILITY CORPORATION shall be to any member (if management is vest in the members), any manager (if vested in the managers), or to any other agent or designee.

Service upon a COURT composed of 3 or more Judges may be upon any Judge.

Service upon a board may be to the chairman, presiding officer, clerk, or secretary.

**PERSONAL MAIL SERVICE:** mail summons FIRST CLASS, with 2 copies of Statement of Mailing as well as Acknowledgment of Receipt. Person so served must complete 1 copy of the acknowledgment, and mail it back within 30 days, service is complete as of the date the acknowledgment is mailed back.

The Acknowledgment is to be AFFIRMED by the person served, under penalty of perjury, in the same manner as an AFFIDAVIT.

Person served personally by mail has 20 days to answer, counted from the date of mailing back the acknowledgment.

Upon failure to comply with the terms of the acknowledgment, the person may be liable for the cost of new service upon them, as a “disbursement”.

Upon MOTION to the Court WITHOUT NOTICE, service can be in any other manner as the Court directs.

Service on a resident of this State may be made upon them while they are physically outside of the State, by a person authorized to serve under the laws of this State, **OR** by a person so authorized under the laws of the State where the party to be served is located (such as a solicitor, barrister, etc...).

In certain cases, service outside of the State does NOT confer jurisdiction: matrimonial proceedings, actions regarding liens or interest upon specific REAL or PERSONAL property; and LEVY, or ATTACHMENT of CHATTEL.

Service by PUBLICATION: shall be by Order of the Court only, such order to be filed before date of first publication. Publication to commence within 30 days of filing Order. Publication shall to be in 2 separate newspapers - at least one English language - as is specified in the order. Publication shall be once in each of 4 successive weeks. Service completed on 28<sup>th</sup> day after first publication. [Excluding the first day, and including the date noticed (Article 24)].

Publication in a MATRIMONIAL proceeding is in 1 English-language paper, once each in 3 successive weeks, complete on 21<sup>st</sup> day.

In the case where service was by any other method than PERSONAL DELIVERY, the Defendant may challenge a DEFAULT within 1 year from DISCOVERY - but in no event more than 5 years after default.

A person or corporation (PRINCIPAL) can designate an AGENT to receive process, such designation to be filed with the Clerk of County where the Principal resides; and is good for 3 years unless first revoked.

APPEARANCE: is a "term of art". A person APPEARS by filing an ANSWER to the Summons, **OR** by filing a MOTION which has the effect of extending the time to answer. Either must be done within 20 days after *completed* service

A person's APPEARANCE confers JURISDICTION upon the COURT in that action, unless the person appearing objects to the service.

In cases where PERSONAL SERVICE is **NOT** a basis for jurisdiction - such as matrimonial proceedings, actions regarding liens or interest upon specific real or personal property; and levy, or attachment of chattel - a defendant's appearance does **NOT** in and of itself confer jurisdiction. **UNLESS:** the defendant had objected by motion, and then proceeded with the action anyway after such motion was denied.

**CORPORATIONS SHALL APPEAR BY ATTORNEY.**

An individual may elect to appear with or without an attorney. However, after appearing with an attorney, may not act in that attorney's absence without permission of the Court.

An attorney can be SUBSTITUTED on consent of all parties, **OR** by Order of the Court (made after motion with notice).

Death, disbarment, or other incapacity of an attorney must be noticed to the client, with an accompanying 30 day STAY in proceedings.

Any attorney acting for a party in a Real Property action (**EXCEPT** than counsel for a corporation owned entirely by the united states) must furnish PROOF of AUTHORITY to act on client's behalf, upon request of another party.

**REMOVALS:** a case can be REMOVED from one court to another, in the following circumstances:

- 1) By a SUPREME COURT, if filed in another court by mistake; or if that court lacks the jurisdiction to hear that type of case.

2) ON CONSENT, to a LOWER CIVIL COURT **IF** it appears that actual damages are less than demanded (with reduction of damages commensurate with the lower court's jurisdiction); consent **NOT** required of any defendant who has not interposed a counter-claim.

3) The APPELLATE DIVISION of a JUDICIAL DISTRICT **MAY** provide by rule that a Court - WITHOUT CONSENT - can remove a case to a lower civil court (calendars permitting); with **NO** reduction of damages!!!, if it appears that actual damages are less than demanded.

In these cases, any WAIVER of JURY TRIAL made in the first court is void following removal.

4) If a party dies, SUPREME COURT may remove to SURROGATES COURT, upon order of the SURROGATE.

5) By Supreme Court, if County Court unable to proceed due to incapacity of Judge.

Lower Courts may transfer cases between each other on motion if a Court cannot timely proceed (due to incapacity of Judge, inability to convene jury, etc...); provided that the other Court has jurisdiction over the SUBJECT MATTER or the case, as well as the CLASS of parties.

In cases of REMOVAL, either Court may grant a STAY in proceedings.

A Party may motion to STAY or DISMISS proceedings based on an "inconvenient forum", unless such forum was specifically provided for by contract.

Courts may assist out-of-state TRIBUNALS with service upon persons in this State, following receipt of LETTERS ROGATORY. Service from without the State may also be made in State even without a court order. This statute does not in and of itself require recognizing the validity of - nor enforcing - out-of-state orders.