

CPLR ARTICLE 30: REMEDIES & PLEADINGS.

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“DECLARATORY JUDGMENT can be rendered by Supreme Court with the same effect as a FINAL JUDGMENT as regards the rights of a party. If the Court declines to so render, it **SHALL** state the grounds.

An action made against one or more of several individuals against whom there is a claim is **not** deemed an “election of remedies”, and does not bar further actions against the others; including actions for “conversion of property” of on contract”, as long as recovery is incomplete.

An action against an agent **or** an “undisclosed principal” do not preclude a further action against the other.

An action for “recovery upon agreement” does **not** bar a “re-formed” action if it be otherwise denied.

An action for damages resultant of fraud on a contract is **not** “inconsistent” with an action for “rescission” (annulment) of the contract.

An action for rescission against a vendee (buyer) shall **not** deny a counter-claim for lien on the property, as the actions are independent of one another.

An action for payment of accrued pension funds does **not** preclude later actions for further payment.

In an action to void an agreement, the failure of a party to first “tender restoration” of benefits received under the agreement **shall not** result in a denial of the relief, but the court **may** condition restoration to avoid “unjust enrichment”.

A defense or counter-claim alleging “mistake” can be one of fact, or of law.

For every **COMPLAINT**, there shall be an **ANSWER**.

An ANSWER can include a **COUNTER-CLAIM** against a PLAINTIFF, and/or a **CROSS-CLAIM** regarding another DEFENDANT.

An **INTERPLEADER** COMPLAINT is made against a separate CLAIMANT.

A **3rd PARTY** COMPLAINT joins a (heretofore) non-party DEFENDANT.

PLEADINGS: There shall be a **REPLY** by the PLAINTIFF to any

DEFENDANT'S **COUNTER-CLAIM**; and **UPON DEMAND**, an **ANSWER** by a DEFENDANT to another DEFENDANT'S **CROSS-CLAIM**. If there is no **ANSWER** demanded by such **CROSS-CLAIM**, there shall be deemed an ANSWER of DENIAL or an AVOIDANCE. No other forms of PLEADINGS are allowed except by COURT ORDER.

A COMPLAINT can be served with the SUMMONS; Other such CLAIMS (CROSS-, COUNTER-, etc...) are served in like manner as any other papers, **EXCEPT** that a upon a NON-APPEARING party it shall be served in the same manner as a SUMMONS would be.

ANSWERS and REPLIES shall be made within 20 days following PERSONAL DELIVERY of the PLEADING to which they RESPOND, or else 20 days after ***completion*** of any other form of service (SAD, NAIL&MAIL, etc...).

EXCEPT, IF the COMPLAINT is served *with* the SUMMONS; **AND** by any method other than personal delivery; **OR** upon an AGENT of the State or Public Official; **OR** served *outside* of the State, then answer due within 30 days.

If the COMPLAINT is **NOT** served with the SUMMONS, a WRITTEN DEMAND for it may be made within the time allowed to ANSWER, which shall then EXTEND the time to ANSWER until 20 days AFTER service of the COMPLAINT. Service of the COMPLAINT shall be within 20 days of the demand; or if no DEMAND made, within 20 days of the service of the NOTICE of APPEARANCE.

The Court **MAY** - upon MOTION - dismiss an action for failure to serve the COMPLAINT as required.

The service of a DEMAND for the COMPLAINT **DOES NOT** constitute an APPEARANCE (as would be for an ANSWER).

The Court **MAY** allow more time for papers **OR** can direct the acceptance of papers served untimely, upon MOTION specifying a "reasonable excuse" for the delay/default.

Any **NON-PRO PER SE** action for Medical/Dental/Podiatric malpractice shall require a "Certificate of Merit" that the attorney has consulted with a *licensed* (including without the State) Dr. who has "relevant knowledge" of the particular action, and that there be a "reasonable basis" for the relief requested.

An attorney can also CERTIFY that there was not time for such a consultation due to Statute of Limitations time constraints, **OR** that no Dr. replied to requests for consult. Such certificate due within 90 days after serving complaint.

An action requires only ONE such CERTIFICATE, even if there are multiple

DEFENDANTS.

If the action will rely solely upon the principle of *RES IPSA LOQUITUR* [“the thing speaks for itself”], a certification of that basis may replace the “Certificate of Merit”.

If the PLAINTIFF has requested medical records in aid of the action, can delay Certificate of Merit until 90 days after receipt.

A Certificate of Merit need **NOT** divulge a Dr’s. name; **UNLESS** the certificate alleges that the Dr. failed to respond to requests for consult, and the Court so requires divulgence upon a defendant’s request (except if an actual Certificate of Merit be then provided instead).

DISCLOSURE pursuant to the CPLR of a PLAINTIFF’S **EXPERT WITNESS(ES)** may be made in lieu of a CERTIFICATE.

STATEMENTS in pleadings shall “particularly notice” the facts to be proved, and specify all material elements of the complaint.

STATEMENTS shall be in separate, consecutively numbered paragraphs (may thereafter be so referred to); with a single allegation per paragraph; in “plain & concise” language; unnecessary repeated or adopted allegations shall be so deemed; allegations can be stated in the alternative or hypothetical. Any ““copy of writing” attached to a pleading becomes a part thereof.

If a party is a CORPORATION, the Pleading must so state; and shall also specify the government under which laws created (**only if known**).

Plaintiff suing as a LICENSED entity shall detail the Licensing information; grounds for dismissal exist upon failure to do so.

LIBEL/SLANDER pleadings shall contain the “specific words”; fraud/mistake pleadings shall detail such acts; divorce pleadings shall lay out the time/place/nature of any alleged misconduct by the other party; actions on judgments shall note any recovery thereupon; a pleading relying on foreign law shall state the substance of such law; personal injury by motor vehicle pursuant to Insurance Law must plead **serious injury or economic loss greater** than basic.

COMPLAINTS against a director of a NON-PROFIT shall specify a cause of action for either “gross negligence” or the “intentional infliction of harm”; such complaints must be VERIFIED!

COMPLAINTS must demand some specific RELIEF (although the Court may ultimately grant any appropriate).

Personal injury and wrongful death actions shall **not** state a specific amount, **unless** there be a supplemental demand served, which must then be so complied with by 15 days.

Any RESPONSIVE PLEADINGS shall either deny an allegation, or state that the party has “no knowledge” thereof (deemed denial). All allegations not specifically so responded to are deemed admitted.

All AFFIRMATIVE DEFENSES must be so PLEADED.

COUNTER-CLAIMS can **NOT** be asserted against a TRUSTEE personally, if such person brought original action on BENEFICIARY’S behalf.

A cause of action in an answer is deemed a complaint. A complaint upon a [heretofore] non-party shall be accompanied by a summons, and require an answer; [original] defendant shall then reply.

If a pleading is VERIFIED, so too must be all subsequent pleadings; **EXCEPT** an infant’s answer, or statements otherwise “privileged from testimony”.

An ANSWER **must** be VERIFIED for the following actions: 1) on a judgment; 2) for alleged defrauding of creditors; 3) fraud regarding a person’s rights/property; 4) against a corporation for damages resulting from non-payment of a specific debt; 5) if the defense is **NOT** on the merits.

VERIFICATION is by AFFIDAVIT of a single party, or at least one of those “united in interest”. A corporation’s pleading can be verified by any officer. State or Public Officer’s pleading can be verified by *any person* acquainted with the facts. If the party is *outside* the county, an attorney or agent can verify; attorney/agent may also verify if they have knowledge of *all* facts, or possess *all* of the money at issue.

A VERIFICATION shall affirm that it is “true” to the person’s knowledge, or else that they “believe” it to be true. A non-party so verifying shall specify why they do so in place of a party, and what basis exists for their belief that such pleading be true.

A “Defective” verification is considered not to be verified at all; and - upon “duly diligent notice” to the adverse party’s **attorney** - is a “nullity” if it was otherwise required to be verified.

A party can motion to: 1) make definite a vague/ambiguous pleading; or 2) strike scandalous/prejudicial allegations. Motion on notice within 20 days from service of pleading. Responsive or amended pleadings required within 20 days of the denying/granting of the motion.

A party can amend a pleading once *without* leave of the court within 20days of service of the pleading, **OR** of responsive pleading. Leave of the court to amend/supplement pleadings shall be “freely given”, and may be upon “just term” (i.e.

costs, continuance, etc...). amended/supplemental pleadings also allowed on parties' stipulation. A responsive pleading to an amended/supplemental pleading is only required if so demanded.

The Court can allow pleadings to be conformed to the evidence adduced.

Pleadings shall be "liberally construed", and defects ignored if they do not prejudice a party.

Simplified Procedure for Submitting Disputes to the Court [hereinafter "Simplified Procedure"]: PLEADINGS are dispensed with pursuant to SIMPLIFIED PROCEDURE upon submission of a STATEMENT by parties specifying all claims/defenses, which together with a Note of Issue "joins issue" of the action. The right to jury trial is waived for Simplified Procedure.

A CONTRACT specifying referral to court of disputes by Simplified Procedure shall be Enforced. An issue of fact regarding the *contract* itself shall be tried without a jury unless a party so demands one. Upon failure to submit a statement to the court on a contract requiring Simplified Procedure, the "Aggrieved" party can motion for "settlement" of the statement upon 8 days notice. An issue of the *contract* shall be tried "expeditiously" without a jury; or "promptly" if one be demanded.

Simplified Procedure dispenses with "technical rules of evidence", but allows for a pre-trial conference.

In a Simplified Procedure the Court may direct expert testimony, and require parties to pay for such.

Failure to appear or make statement in a Simplified Procedure as directed **MAY** result in a DEFAULT JUDGMENT.

A court in which a non-Simplified Procedure action is brought, **OR** the Supreme Court, may STAY proceedings upon an issue otherwise referable for submission under Simplified Procedure.

Court RULES regarding PRELIMINARY procedure before a case can be CALENDARED are **NOT** required under Simplified Procedure.

A "JUDGMENT ROLL" in a Simplified Procedure shall include the CONTRACT requiring referral, as well as the STATEMENT. Any costs apportioned shall be specified in a judgment herein.

No APPEAL of interim orders in a simplified proceeding is allowed, save by permission. Such orders are reviewable however on appeal of the final judgment. Decisions of the trial court shall be final if a "substantial basis" exists therefor.

BILL OF PARTICULARS: A "Bill of Particulars" addressing specific demands

regarding details of the complaint must be provided within 30 days of DEMAND; OBJECTION(S) to any part thereof may be made instead. A Bill of Particulars may be amended ONCE before NOTE of ISSUE is filed (in such actions as one be required).

The party demanding the Bill of Particulars can motion to compel compliance for failure to properly address the demand; penalties can be assessed by the court if willfulness is determined.

In a personal injury action, a supplemental bill of particulars may be made at any time except within 30 days of trial; such supplement to address only “continuing” damages, not any new claims. Upon such supplemental bill of particulars, other party may exercise new discovery upon 7 days notice.

A Bill of Particulars **SHALL** be VERIFIED if the pleading was, **OR** in a cause of action for negligence.

In an action for medical/dental/podiatric malpractice, after service of a Bill of Particulars - and not more than 60 days following the service of the Certificate Required in Malpractice cases - the defendant may demand that the plaintiff “elect” whether to arbitrate damages, upon defendant’s “consent of liability”. The plaintiff has 20 days to respond to the demand. If plaintiff “elects” arbitration, the defendant has 20 days to serve “consent of liability”; such “concession” valid only for the instant action. Arbitration may thereafter proceed.