

# MOTION PRACTICE IN NEW YORK COURTS

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## Sources of Law

- CPLR § 2214 Notice of Motion
- CPLR § 2215 Cross Motions
- CPLR § 2103 Service of Papers
- 22 NYCRR 202.8 Motion procedure
- 22 NYCRR 202.7 Calendaring of Motions, Uniform Motion Form, Affirmations of Good Faith

## Motions: General Info

- A motion is a request to the court, by a party, to enter an order.
- Motions are brought one of two ways:
  - Notice of Motion: motion made on notice to the other side.
  - Order to Show Cause: proposed order and supporting papers submitted to the court on an *ex parte* basis, if court signs the OSC the moving party then serves it on the other side.

## Notice of Motion

- Governed by CPLR § 2214
- A notice of motion shall specify
  - The time and place of the hearing on the motion
  - The supporting papers on which it based
  - The relief demanded and the grounds for the requested relief
  - Relief in the alternative or several different types of relief may be demanded

## Notice of Motion Practice Tips

- As a best practice be as specific as possible when citing the grounds for your motion.
- Add a catch all phrase as part of the relief sought such as “and such other relief as the court may deem just and proper.”

## Supporting Papers

- Typically a motion will be supported by affidavits and/or affirmations.
- Admitted attorneys are allowed to submit affirmations rather than affidavits. CPLR § 2106. Client affidavits are often used to support motions.

## Supporting Papers cont.

- Relevant documents can be submitted as exhibits to an affidavit or affirmation, such a contract or a deed.
- Portions of deposition transcripts can also be used as support for the motion.

## Supporting papers continued

- A Memorandum of Law, a/k/a a brief, may also be submitted in support of a motion.
- “Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law.”  
Uniform Rules, 22 NYCRR 202.8

## Supporting Papers cont.

- “The moving party shall serve copies of all affidavits and briefs upon all parties at the same time of service of the notice of motion.” *Id.*
- Best practice tip: Even if not required by the rules, always try to submit a brief in all but the simplest of motions.

## Furnishing the Papers to the Court

- This is governed by CPLR § 2214(c) which requires that:
  - each party shall furnish to the court all papers served by that party, on or before the return date and
  - All other papers not already in the possession of the court necessary to the consideration of the questions involved.
    - Example: A motion to dismiss the complaint may be denied if the moving party fails to attach a copy of the complaint to the motion papers even if the responding party submits a copy with its papers.

## Furnishing papers to the court cont.

- With regard to this requirement in courts utilizing e-filing §2214(c) states that:

“Except when the rules of 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.”

## Furnishing papers to the court cont.

- Despite this language in §2214(c) the practitioner must be aware that many judges require in their individual rules that parties supply the court with or “working copies” of all the motion papers to be considered by the court.
- This is a potential pitfall because of the “except when the rules of the court provide otherwise” caveat in the statutory language.
- When providing the motion papers to the court you should include an affidavit of service.

## Time for Service of Motion Papers

- This is governed by CPLR § 2214(b); there are two options:
  - The 8-2 rule
    - Motion papers must be served at least eight days before the time the motion is noticed to be heard.
    - Answering papers must be served at least two days before the time the motion is noticed to be heard.

## Time for Service of Motion Papers cont.

- The 16-7-1 Rule
  - If the moving party wishes to file reply papers they must serve the motion papers at least sixteen days beforehand and demand in the notice of motion that responding papers be served at least seven days beforehand, whereupon the moving party may serve reply papers at least one day beforehand.

## Computation of time and method of service

- Motions may be served by regular mail. The motion is “made” the moment the papers are placed in the mail box. CPLR § 2211 and CPLR § 2103(b)(2)
- However, pursuant to CPLR § 2103 when service is made by mail the receiving party has an additional five days added to the time to respond.

## Computation of Time and Method of Service cont.

- So if serving by mail you must mail the papers thirteen days before the return date, or twenty-one days before if you want the right to file a reply.
- Thus it becomes either the 13-2 rule or the 21-7-1 rule when the motion is served by mail.



## Computation of Time and Method of Service

- If using overnight mail service you must add one additional to service time.
- In e-filing jurisdictions the motion is deemed served as soon as it is filed with no need to add additional days. 22 NYCRR 202.5-b(f)(2)(ii) & 22 NYCRR 202.5-bb(a)(1).

## The Return Date

- The movant normally picks the return date and must ensure that it is sufficiently far off that the notice requirements can be met and that the return date is on a day when the judge hears motions.
- You can find out when your judge hears motions by checking the court's website or calling the court.

## The Return Date cont.

- Stipulations of adjournment of the return date must be in writing and submitted to the assigned judge. 22 NYCRR 202.8 (e)(1)
- The stipulation is effective unless the court directs otherwise.
- If opposing counsel will not agree to an adjournment you may request an adjournment in writing to the judge, on notice to the other side, on or before the return date. The judge will indicate to the parties whether the request has been granted

## Cross Motions

- Cross Motions are governed by CPLR §2215
- At least three days before the time the motion is noticed to be heard, or seven days prior if such time demand has been made pursuant to §2214(b), a party may serve upon the moving party a notice of cross-motion.
- If the cross motion is served by mail it must be served three days earlier than described above.
- If the cross motion is served by overnight delivery it must be served one day earlier.

## Cross Motions cont.

- The party making the cross motion may demand relief in the alternative or may demand several different types of relief.
- The relief does not need to be responsive to the relief demanded by the moving party.

## Oral Argument

This is governed by the Uniform Rules, 22 NYCRR 202.8(d)

- A moving party requesting oral argument must set forth the request in the notice of motion.
- A responding party desiring oral argument must request it on the first page of the answering papers.
- The judge has discretion on whether or not schedule an oral argument. The rule states that where all parties request oral argument “oral argument shall be granted unless the court shall determine it to be unnecessary.”

## Filing Motions in Unassigned Cases

- This is governed by 22 NYCRR 202.8(b)
- In cases that have not been assigned to a judge yet the motion should be made returnable to the court “and a copy of the moving papers, together with a request for judicial intervention, shall be filed with the court, with proof of service upon all other parties...within five days of service upon the other parties.”

## Filing Motions in Unassigned Cases Cont.

- The moving party must give written notice of the index number to all other parties immediately after the filing of the papers.
- Copies of all responding papers with proof of service and the index number must be submitted to the court by the return date.
- A judge will be assigned to a case as soon as practicable after the filing of the RJI but in no event later than the return date.

## Order to Show Cause

- CPLR § 2214(d) states that “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.”
- Orders to Show Cause are generally used in cases where the movant cannot give the usual amount of notice due to a need for immediate relief. OSC often contain a request for a stay or a TRO.
- Orders to Show Cause are brought directly to the judge who reviews it on an ex parte basis. If the judge grants the OSC it must be served in the manner specified by the judge.

## Fee to File a Motion

- There is a \$45.00 fee charged to file a motion, either by notice of motion or by Order to Show cause. CPLR § 8020(a).
- Pursuant to CPLR § 1101(c) a party represented by a legal services attorney will be granted a fee waiver if the lawyer representing the party files an attorney certification that they have determined that the party is unable to pay the costs, fees and expenses necessary to prosecute or defend the action.